



EB-2012-0365

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Dufferin Wind
Power Inc. for an Order granting leave to construct a new
transmission line and associated facilities.

PROCEDURAL ORDER NO. 1

December 4, 2012

Dufferin Wind Power Inc., ("DWPI") has filed an application with the Board, dated September 21, 2012 under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B. DWPI has applied for an order of the Board for leave to construct approximately 47 km of single circuit 230 kilovolt electricity transmission line and associated facilities to connect DWPI's wind generation facility to the IESO-controlled grid. DWPI is also seeking an order approving the forms of easement agreements provided in the application, and an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch. The Board has assigned File No. EB-2012-0365 to this application.

Notice of Application and Service

The Board issued a Notice of Application and Written Hearing (the "Notice") on October 16, 2012, and directed DWPI to serve and publish the Notice. DWPI filed an affidavit that indicated that it has served and published the Notice as directed by the Board. On November 23, 2012 DWPI filed a letter and documentation informing the Board that certain sections of its application required amendment due in part to a change in the

proposed location of the switching station. With respect to this change, DWPI has provided the specific amendments to its application, has indicated that the change does not impact the language in the Notice and that the landowner of the lot upon which DWPI currently intends to locate the switching station was served with the original Notice.

DWPI also indicated that it has submitted a Project Change Memorandum to the Ministry of the Environment describing minor changes to the project, including the change in the location of the switching station. DWPI expects that the Ministry will take this information into account in carrying out its review of the completeness of DWPI's Renewable Energy Approval ("REA") submission.

The Board will require that DWPI file proof of the project change notification to the Ministry of the Environment, including the Project Change Memorandum referenced in DWPI's letter of November 23, 2012.

Based on the information provided in the November 23, 2012 letter and subject to a review of the information filed by DWPI with the Ministry of the Environment, the Board finds that the route proposed in DWPI's original application to the Board is not materially affected by the changes described in its letter of November 23, 2012. Therefore the Notice is not required to be changed or re-served as a result of the proposed change.

DWPI's November 23, 2012 letter also described some further amendments to its application related to the incorrect plotting of the boundaries and numbering of certain lot numbers on its baseline mapping. DWPI provided a revised drawing to address these errors. DWPI indicated that the incorrectly plotted properties do not form part of the transmission route, but are adjacent to it and as such, do not, in its view, impact the Notice. Based on the information provided, the Board agrees with this assessment.

Participation in the Proceeding and Cost Eligibility

The Board received requests for intervenor status from the Independent Electricity System Operator ("IESO"), the Corporation of the County of Dufferin ("the County"), the Township of Melancthon, Conserve our Rural Environment (CORE), The Highland Companies ("Highland"), Harvey J. Lyon, and Lori Bryenton.

Roy Thomas, Roselyn and Birks Bovaird, and Phil Anderson have requested observer status. The Board also received letters of comment from Roy Thomas, Joann Butcher,

the Township of Amaranth, Bill Little, the Town of Mono, the Town of Shelburne, Kathleen Kurtin, and John Maguire.

The Board grants intervenor status to the IESO, the County, the Township of Melancthon, CORE, Highland, Harvey J. Lyon, and Lori Bryenton. The Board also grants observer status to Roy Thomas, Roselyn and Birks Bovaird, and Phil Anderson.

A list containing the addresses of the applicant and intervenors is attached as Appendix A to this Order.

The County, Harvey J. Lyon, Highland, and Lori Bryenton, have requested cost eligibility. In assessing a party's eligibility for costs, the Board is guided by the *Practice Direction on Cost Awards* (the "Practice Direction"). The Board grants cost eligibility to Harvey J. Lyon, Highland, and Lori Bryenton for costs that relate to matters directly within the scope of this proceeding. The scope of the proceeding is described below. The parties are also advised to review the Practice Direction for further information about which types costs are eligible for recovery. For example, costs for counsel and consultants are generally recoverable, but costs for time spent directly by the intervenor are generally not recoverable.

The Practice Direction and related forms are available on the Board's website at www.ontarioenergyboard.ca.

The Board will not grant cost eligibility to the County. The Practice Direction explicitly excludes the County from eligibility on the basis that it is also a public body. The Board will only set aside this exclusion if special circumstances warrant it. The Board has determined that there are no special circumstances which warrant the granting of cost eligibility to the County. Although the County is a landowner, this does not amount to special circumstances because in any leave to construct application the local government will be a landowner or have an interest in the land. The County's claim for cost eligibility is denied.

Scope of the Board's Jurisdiction in a Section 92 Leave to Construct Application

The Board reminds parties that the scope of the Board's review of this matter is expressly limited by statute. Section 96(2) of the Act provides that, when considering an electricity leave to construct project, the Board can only consider the interests of consumers with respect to prices and the reliability and quality of electricity service and,

where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. Matters relating to environmental impacts, environmental approvals, construction activities, and health and aesthetic issues are not within the scope of the Board's jurisdiction.

Environmental issues are considered within the Ministry of the Environment ("MOE") Renewable Energy Approval ("REA") process. DWPI indicated in its pre-filed evidence that the complete REA was filed with the MOE on August 13, 2012, and that it expects a decision by January 2013. Parties with an interest in these issues are encouraged to participate in the REA process if they have any concerns. Although the Board has no role in the REA process, any approval of the leave to construct application would ordinarily be conditional on all necessary permits and authorizations being received, including an approved REA.

If parties pursue issues which are beyond the scope of this proceeding, the associated costs will not be recoverable.

Confidential Filings

On October 22, 2012 DWPI filed in confidence, a copy of the Feed-in-Tariff (FIT) Contract Assumption and Acknowledgment Agreement (the "Assignment Agreement") it signed with the Ontario Power Authority ("OPA") with respect to the specified contracted generation capacity. The Board has determined that while the fact that an appropriate assignment of the OPA contract exists is germane to this proceeding, the specific terms of the Assignment Agreement are commercially sensitive and are of limited probative value to the proceeding. The Board will therefore maintain the confidentiality of the Assignment Agreement as requested by DWPI.

Intervenor counsel who wish access to the confidential document must file with the Board a Declaration and Undertaking as set out in section 6 of the Board's *Practice Direction on Confidential Filings*. The Board will provide DWPI with an opportunity to object to the acceptance of any Declaration and Undertakings the Board receives, pursuant to section 6.1.4 of the *Practice Direction on Confidential Filings*.

Procedural Steps

In the Notice issued October 16, 2012, the Board indicated that it intended to proceed by way of a written hearing unless any party satisfied the Board that there was a good

reason for not proceeding by way of a written hearing. Several parties have requested an oral hearing. In a letter dated November 9, 2012, DWPI objected to the requests for an oral hearing, and asked the Board to retain a written process. The Board will determine if an oral hearing is required after the completion of the interrogatory phase.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. DWPI shall forthwith and no later than **December 10, 2012**, file with the Board and copy all intervenors proof of the project change notification to the Ministry of the Environment, including the Project Change Memorandum referenced in DWPI's letter of November 23, 2012.
2. On or before **December 10, 2012**, counsel to any intervenor wishing to access the confidential version of the Assignment Agreement shall execute and file with the Board a Declaration and Undertaking in accordance with section 6 of the *Practice Direction on Confidential Filings*.
3. Intervenors and Board staff who wish information from DWPI that is in addition to the evidence pre-filed with the Board and that is relevant to the hearing shall request the information by means of written interrogatories filed with the Board and delivered to DWPI, all intervenors and Board staff on or before **December 18, 2012**. All interrogatories and responses must include a reference to the section of the application which identifies the specific evidence on which the interrogatory is based.
4. DWPI shall, no later than **January 4, 2013** file with the Board and deliver to all intervenors and Board staff, a complete response to each of the interrogatories.

All filings to the Board must quote file number EB-2012-0365, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/> , and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and

document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, December 4, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX 'A'

TO

PROCEDURAL ORDER NO. 1

Applicant and List of Intervenor

Board File No: EB-2012-0365

December 4, 2012

**Dufferin Wind Power Inc.
EB-2012-0365**

APPLICANT & LIST OF INTERVENORS

December 4, 2012

APPLICANT

Rep. and Address for Service

Dufferin Wind Power Inc.

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**Dufferin Wind Power Inc.
EB-2012-0365**

APPLICANT & LIST OF INTERVENORS

December 4, 2012

INTERVENORS

Rep. and Address for Service

**Conserve Our Rural
Environment (“CORE”)**

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**Dufferin Wind Power Inc.
EB-2012-0365**

APPLICANT & LIST OF INTERVENORS

December 4, 2012

**Independent Participants -
General Public**

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**The Corporation of the
Township of Melancthon**

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**Dufferin Wind Power Inc.
EB-2012-0365**

APPLICANT & LIST OF INTERVENORS

December 4, 2012

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