



EB-2012-0365

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

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.

BEFORE: Cynthia Chaplin
Presiding Member and Vice Chair

Peter Noonan
Member

**DECISION WITH REASONS AND
PROCEDURAL ORDER NO. 4**

March 19, 2013

Dufferin Wind Power Inc., ("DWPI") filed an application with the Board dated September 21, 2012 under sections 92, 96(2), 97 and 101 of the Act. DWPI has applied for orders of the Board for leave to construct approximately 47 km of electricity transmission line and associated facilities, approving the forms of easement agreements provided in the application, and 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.

Submissions on the Form of Hearing

Procedural Order No. 3 made provisions for parties to file written submissions as to whether the Board should proceed by way of a written or oral hearing.

The Board received one submission, dated February 21, 2013, requesting an oral hearing from Conserve Our Rural Environment (“CORE”). The Board also received a letter from Board staff indicating that it would not be filing a submission on this matter. DWPI filed a reply submission which was received on February 26, 2013.

CORE submitted that the Board should conduct an oral hearing and identified areas for cross-examination, including matters related to community support; the status of negotiations with landowners and the forms of land agreements; the cost of alternatives (e.g. underground construction); DWPI’s financial position and its ability to achieve commercial operation, and its intended course of action if it does not achieve commercial operation; and the status of other regulatory approvals.

In its reply, DWPI responded that an oral hearing was not required. In DWPI’s submission, many of CORE’s concerns are beyond the scope of this proceeding because they are related to the wind farm project (as opposed to the transmission project) or to the Renewable Energy Approval process. DWPI also submitted that other concerns raised by CORE are more appropriately matters for argument, not additional fact finding in an oral hearing. In conclusion, DWPI advanced that any additional fact finding through an oral hearing would be of limited probative value.

Board Findings

The Board finds that an oral hearing is not required for this proceeding.

As indicated by the Board in EB-2011-0394, an oral hearing will be held if there is additional evidence or cross-examination required, but the matters must be of sufficient probative value to the Board’s decision-making:

The Board will conduct an oral hearing where it is determined to be the appropriate means of acquiring additional factual evidence which is required to reach a decision, or as a means of allowing parties to cross-examine on the written evidence. The Board has concluded that given the scope of the proceeding and the matter on which MCSEA proposed to cross-examine, an oral hearing on McLean’s evidence would be of insufficient probative value to warrant its conduct.¹

¹ Procedural Order No. 6 at pages 2-3

As indicated in Procedural Order No. 2 of the current proceeding, the Board's jurisdiction in this proceeding is limited by section 96(2) of the Ontario Energy Board Act. For example, the Board has no authority to consider issues related to the wind farm project or the environmental impacts of the transmission project.

CORE has identified a number of issues which it proposes to address in an oral hearing: the status of negotiations with landowners; the proposed forms of agreement; DWPI's financial position; the status of other regulatory approvals. These issues have been addressed in the applicant's evidence. In addition to the pre-filed evidence, all intervenors have had the opportunity to submit written interrogatories on these issues, and the applicant has answered them. Intervenors may address these matters in final written argument.

CORE also identified concerns with respect to potential alternatives and community support. The Board notes that the evidence is that DWPI will bear all of the costs of the transmission project. The Board finds that there would be limited probative value from additional fact finding on the cost of alternatives. With respect to the issue of community support, the Board agrees with DWPI that the adequacy of public consultation is largely an issue in the Renewable Energy Approval process. While the Board does consider evidence as to the consultation activities conducted by an applicant, the Board concludes that additional fact finding in this area would be of limited probative value.

In the view of the Board, the written process has provided an adequate opportunity for the parties to obtain the information that they require in order to present their case. In considering the nature of the issues proposed to be addressed within the limited decision-making authority conferred by its statute the Board finds that there would be limited probative value from additional fact-finding on these matters in an oral hearing.

To the extent that there are any deficiencies in the applicant's evidence, CORE (or any other party) will be able to present its views on these matters through written argument. The Board notes that the onus is on the applicant to prove its case. It is open to any party to argue that the application is deficient, and if the Board agrees, then the application may be denied, adjourned, or approved subject to conditions.

No intervenor has expressed an intention to file written evidence. The Board will therefore move to the argument phase of this proceeding. A schedule for written submissions is set out below.

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 file its argument-in-chief with the Board and copy all parties on or before **March 25, 2013**.
2. Intervenors and Board staff shall file any submissions, with the Board, and copy all parties, on or before **April 5, 2013**.
3. DWPI shall file its reply submission with the Board and copy all parties on or before **April 12, 2013**.

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, March 19, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary