



Legal Services

Wayne P. Meagher, H.B.A., LL. B., J.D.
County Solicitor/Director of Legal Services

March 21, 2013

Ontario Energy Board
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via e-mail (boardsec@ontarioenergyboard.ca)
and via facsimile (416.440.7656)

Attn: Ms. Kirsten Walli
Board Secretary

Dear Ms. Walli:

RE: EB-2013-0040
EB-2013-0041

Kindly be advised that the undersigned is legal counsel for the Corporation of the County of Middlesex ("the County"). The County hereby requests intervenor status with respect to the above noted applications. In addition, the County requests for the hearing of the applications to be conducted orally, as opposed to in writing. The County submits that the following good reasons exist for not holding a written hearing and instead, for the hearing to be conducted in oral fashion:

- 1) Additional evidence, which is not included in the applications, is needed for the Board to reach a conclusion with respect to subsection 96(2)1 and 2 of the *Ontario Energy Board Act*

The applications request approval to construct a transmission line within the rights of ways of roads under County jurisdiction. However, the applications do not contain all the information which the County Engineer nor the Board requires in order to reach a definite conclusion as to whether or not the proposed transmission line is in the public interest, within the confines of subsection 96(2)1-2 of the *Ontario Energy Board Act*.

In order to address the interests of consumers with respect to whether or not the proposed transmission line would constitute a reliable and quality transmission line and whether or not government policies would be adhered to in the promotion of renewable energy sources, further evidence is required in the following two areas:

a) Impacts/Compatibility

- The impact that the current and future needs of the right of way, including the maintenance thereof, would have on the proposed transmission line;
- The impact that the proposed transmission line would have on the current and future needs of the right of way, including the maintenance thereof;



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- The overall compatibility between the right of way and the transmission line.

Each of the bulleted points above will certainly have a significant impact on whether or not the proposed transmission line would constitute a reliable and quality transmission line. The County submits that at present, there is insufficient information contained within the applications with respect to such impacts/compatibility for either the County Engineer or the Board to make a final decision on the applications. In addition, the County submits that it would be inappropriate for the Board to conclude that the transmission line constitutes a reliable and quality transmission line and that its promotion adheres to government policy until a road user agreement between the County and the applicants has been approved by both the County and the Board. To date, no road user agreement has been agreed to.

Based on the Applications, the County requires the opportunity to cross examine the evidence of the applicants in the area of impacts/compatibility and would like for the County Engineer to be able to be cross examined by the other parties with respect to the County's ultimate conclusions on impacts/compatibility, including the proposed transmission route.

b) Transmission Route

The proposed route of the transmission line, as identified in the applications, has a significant impact on whether or not the proposed transmission line would constitute a reliable and quality transmission line and whether or not government policies have would have been adhered to in promotion of renewable energy sources. The County observes that the applications include drawings showing the existence of certain private easements, however, nowhere in the applications does the County see a clear explanation with respect to why the applicants cannot or would not utilize such easements for the transmission line proposed.

The County submits that such explanation is critical to the impacts/compatibility issue noted above and that the applications cannot be approved by the Board as a reliable and quality line unless and until it is shown through evidence that there is compatibility between the right of way and any proposed transmission line and that any negative impacts that the transmission line and the right of way (including the maintenance thereof) would have on each other are minimized and within ranges that are acceptable.

- 2) Cross examination on the evidence in this instance, would have high probative value (greater than that which can be obtained through written interrogatories) and would expedite the completion of the Hearing

The County finds it likely that the impacts/compatibility and transmission route issues identified above will be important and/or major issues in the Hearing. With respect to probative value, the County first suggests that there is a high probative value to the answers to the questions raised by the County, for the answers obtained may necessitate an alternate transmission route and/or significantly impact a potential road user agreement. More importantly, the County notes that an oral hearing is appropriate for this hearing because reaching conclusions on the two issues identified above will involve an evaluation of the credibility of the respective witnesses and their evidence and such credibility determinations will be a factor in the outcome of the applications.



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The County submits that the existence of such credibility issues, combined with the ability for real time clarification only offered by cross examination necessitates an oral hearing in this instance. Indeed, the County is of the opinion that its *audi alteram partem* would be limited in the event there is no oral hearing.

In addition, the County submits that there is a particular utility to an oral hearing with respect to these particular applications. This hearing will have a number of parties, observers and commenters. The County finds it likely that if interrogatories were be used alone to evaluate the evidence, the parties would very likely become involved in legal issues which could not be easily resolved without the OEB's in person and real time input, guidance, clarification, and intervention.

Overall, it is the County's view that an oral hearing would allow for objective consideration to be given to the major credibility issues of the hearing by all parties at one time and in one location, without significant amounts of written correspondence which in this case, would likely delay the Hearing and make the transparency of the Hearing less evident for some parties, observers or commenters.

Yours Truly,

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