

April 18, 2013

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

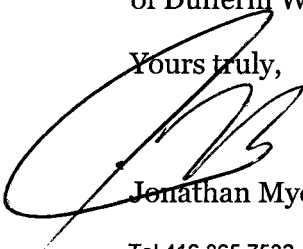
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Dufferin Wind Power Inc. - Application for Leave to Construct (EB-2012-0365) – Applicant's Amended Argument-in-Chief

We are counsel to the applicant, Dufferin Wind Power Inc. ("Dufferin Wind"), in the above-referenced proceeding. In accordance with Procedural Order No. 6, please find enclosed a copy of Dufferin Wind's Amended Argument-in-Chief.

Yours truly,



Jonathan Myers

Tel 416.865.7532
jmyers@torys.com

cc: Mr. J. Hammond, Dufferin Wind
Intervenors

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.

APPLICANT'S AMENDED ARGUMENT-IN-CHIEF

April 18, 2013

A. INTRODUCTION

1. Dufferin Wind Power Inc. ("DWPI" or the "Applicant") filed an application with the Ontario Energy Board (the "Board") on September 21, 2012 (the "Application") under sections 92, 97 and 101 of the *Ontario Energy Board Act, 1998* (the "OEB Act").
2. In its Application, DWPI requests an order of the Board granting leave to construct an approximately 47 km single circuit 230 kV electricity transmission line and associated facilities for the purpose of connecting DWPI's planned renewable energy generation facility, the Dufferin Wind Farm, to the IESO-controlled grid. DWPI's Application also seeks an order approving the forms of land agreements offered or to be offered to owners of land affected by the route or location of the proposed transmission facilities.
3. DWPI has filed detailed information concerning the Application in satisfaction of the applicable filing requirements and in response to requests from Board staff and intervenors. The evidence demonstrates that the public interest test for leave to construct under section 96(2) of the OEB Act has been met and that the proposed routing is both appropriate and offers important advantages over other alternatives that were considered. Accordingly, the Applicant submits that leave to construct the proposed transmission facilities should be granted.

The Application

4. In the Application, DWPI has sought leave to construct electricity transmission facilities comprised of:

- (a) a 34.5/230 kV intermediate transformer station on the southeast corner of the West half of Lot 26, Concession 2 in the Township of Melancthon (the “Project Substation”);
 - (b) an approximately 47 km 230 kV three phase single circuit transmission line running from the Project Substation to the Switching Station (the “Transmission Line”);
 - (c) a 230 kV switching station on Lot 5, Plan 131 in the Township of Amaranth, adjacent to Hydro One Networks Inc.’s (“Hydro One”) existing Orangeville Transformer Station in the Township of Amaranth (the “Switching Station”); and
 - (d) an approximately 100 m 230 kV interconnection that will connect the Switching Station to Orangeville TS (the “Interconnection”).¹
5. The proposed Transmission Project will be used for the purpose of conveying electricity generated by the Dufferin Wind Farm to the Hydro One transmission system, which forms part of the IESO-controlled grid.
6. The Dufferin Wind Farm is a planned 99.1 MW wind energy generation facility in the Township of Melancthon, in Dufferin County (the “Wind Farm”). The Wind Farm will consist of 49 wind turbines, the output of which will run along a 34.5 kV underground collection system that links the turbines to the Project Substation. The Wind Farm is the subject of a 20-year contract with the Ontario Power Authority (“OPA”) pursuant to the OPA’s Feed-in Tariff (“FIT”) Program.
7. As DWPI will be both a transmitter and a generator and will be transmitting electricity only for the purpose of conveying electricity to the IESO-controlled grid, the Applicant relies upon the exemption from the requirement to obtain a transmission licence as set out in section 4.0.2(1)(d) of Ontario Regulation 161/99.

Legislative Context

8. The Application is brought under Section 92(1) of the OEB Act, which provides that:

“No person shall construct, expand or reinforce an electricity transmission line . . . or make an interconnection without first

¹ The Project Substation, the Transmission Line, the Switching Station and the Interconnection, collectively, are referred to as the “Transmission Project”. The design features of each component of the Transmission Project are described in Exhibit D, Tab 1, Schedule 1 of the pre-filed evidence. The locations of the facilities comprising the Transmission Project are described in Exhibit B, Tab 2, Schedule 3 and are depicted in the maps provided at Exhibit B, Tab 2, Schedule 4.

obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.”

9. Section 96 of the OEB Act sets out the relevant test for an application under section 92:

(1) If, after considering an application under section . . . 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line . . . or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

10. The Board’s jurisdiction in considering DWPI’s request for leave to construct the proposed Transmission Project is therefore limited to the application of the public interest test set out in section 96(2), namely to a consideration of the interests of consumers with respect to prices, the interests of consumers with respect to the reliability and quality of electricity service, and the promotion of the use of renewable energy sources consistent with government policy. The Board’s jurisdiction on the Application is also limited to the proposed Transmission Project. The Wind Farm and its related 34.5 kV collector system are beyond the scope of the proceeding.
11. In Procedural Order No. 2, the Board reminded parties in the present proceeding of the limited scope of the Board’s review under Section 92. The Board stated that matters relating to environmental impacts, environmental approvals, construction activities, as well as health and aesthetic issues are not within the scope of the Board’s jurisdiction. Rather, the Board noted, many of these issues are instead considered within the scope of the Ministry of the Environment’s Renewable Energy Approval (“REA”) process.
12. Notwithstanding the limited scope of the Board’s jurisdiction with respect to the Application, the evidence filed by DWPI to assist the Board in considering the public interest implications of the proposed Transmission Project is extensive and includes:

- (a) the complete Application and pre-filed evidence, filed on September 21, 2012 in accordance with the applicable filing requirements;
- (b) a copy of the Director's Aboriginal Community List from the Ministry of the Environment, filed on October 10, 2012 in response to a request from Board staff;
- (c) a confidential copy of the FIT Contract Assumption and Acknowledgement Agreement pursuant to which the FIT Contract was assigned to DWPI, filed on October 22, 2012 in response to a request from Board staff;
- (d) amendments to the Application to reflect, among other things, a change in the proposed location of the Switching Station, together with supporting documentation, filed on November 23, 2012;
- (e) a copy of the project change notification filed by DWPI with the Ministry of the Environment for purposes of its REA application, filed December 18, 2012 in response to Procedural Order No. 2;
- (f) responses to nearly 70 interrogatories, comprising over 140 questions and requests filed by Board staff and four of the intervenors, with such responses being filed on January 16, 2013;
- (g) copies of the Applicant's FIT Contract, including all amendments, as well as additional information related to DWPI's corporate organization, resources and capabilities, filed (in part on a confidential basis) on February 15, 2013 in response to Procedural Order No. 3;
- (h) amendments to the Application to reflect minor changes in the transmission line route consistent with the REA application, as well as updates regarding the potential lengths of underground segments and orientation of the Project Substation, together with supporting documentation, filed on March 28, 2013; and
- (i) responses to 34 supplemental interrogatories comprising over 70 questions and requests filed by three of the intervenors, with such responses filed concurrently with these submissions on April 18, 2013.

B. SECTION 96(2) CONSIDERATIONS

Interests of Consumers With Respect to Prices and Project Need

13. Section 96(2) requires the Board, in applying the public interest test, to consider the interests of consumers with respect to prices. The *Electricity Act, 1998* defines "consumer" to mean a person who uses, for the person's own consumption, electricity that the person did not generate. The proposed Transmission Project will not directly

serve any “consumers” - it will be used only to convey electricity from the Dufferin Wind Farm to the Hydro One transmission system which forms part of the IESO-controlled grid. As indicated in the Application at Exhibit B, Tab 1, Schedule 1, the costs of constructing and operating the proposed Transmission Project are the responsibility of and will be paid for entirely by the Applicant.² These costs will not be passed on to consumers through transmission rates but rather will be paid by the Applicant from the revenues it expects to receive under its FIT Contract. The pricing available under the OPA’s form of FIT Contract is standardized and does not vary based on the particular transmission or interconnection costs that an individual supplier incurs for purposes of its generation facility. As such, the Transmission Project will not have an impact on transmission rates or prices in Ontario.

14. Although “project need” is not expressly listed in section 96(2) of the OEB Act as a consideration for the Board, in circumstances where the applicant is seeking to recover its project costs through transmission rates the Board will typically consider whether the additional costs to ratepayers are justified by the need for the project. In such circumstances, the Board will also consider the various routing alternatives to ensure that the selected route is the most cost effective from a ratepayer perspective. In the present Application, as noted, all of the costs of the proposed Transmission Project are being paid for by DWPI. In section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board will typically be satisfied as to the need for the transmission project where there is evidence of a power purchase agreement with the OPA.³
15. As indicated in Exhibit B, Tab 3, Schedule 1, the OPA offered a contract under the FIT Program in respect of the Wind Farm on April 8, 2010. In materials filed on February 15, 2013 in response to information requested by the Board in Procedural Order No. 3, the Applicant explains that the contract was finalized and entered into between the OPA and Farm Owned Power (Melancthon) Ltd. (“FOP”) as of April 30, 2010. On June 2, 2011, the OPA, FOP and DWPI entered into a FIT Contract Assumption and Acknowledgement Agreement pursuant to which the FIT Contract was assigned to DWPI. DWPI is therefore the owner responsible for the development, construction and operation of the Wind Farm pursuant to the April 30, 2010 FIT Contract with the OPA. Accordingly, DWPI is required to deliver renewable energy from the Wind Farm to its connection point on the IESO-controlled grid. The proposed Transmission Project is required to convey electricity for this purpose.

² See also Applicant responses to Board Staff Interrogatories #6(i) and #10(i).

³ See, for example, Grand Renewable Wind LP, Decision and Order dated December 8, 2011 at pp. 11-12 (EB-2011-0063), South Kent Wind LP, Decision and Order dated October 11, 2011 at pp. 3-4 (EB-2011-0217), McLean’s Mountain Wind LP, Decision and Order dated June 28, 2012 at p. 5 (EB-2011-0394), and Summerhaven Wind LP, Decision and Order dated November 11, 2011 at p. 3 (EB-2011-0027).

Interests of Consumers With Respect to Reliability and Quality of Electricity Service

16. As noted above, the proposed Transmission Project will not directly serve any “consumers”. The only potential impacts on the interests of consumers with respect to reliability and quality of electricity service would, therefore, be as a result of impacts from the proposed Transmission Project on Hydro One’s transmission system or the IESO-controlled grid, which in turn directly and indirectly serve consumers. These potential impacts have been considered through the IESO’s system impact assessment process and Hydro One’s customer impact assessment process and, moreover, will be addressed on an ongoing basis through the terms of the connection agreement that DWPI will be required to enter into with Hydro One, based on the Board’s prescribed form of agreement.
17. As described in Exhibit H, Tab 2, Schedule 2, DWPI applied for and on December 2, 2011 received a System Impact Assessment Report for the connection of the Wind Farm to the IESO-controlled grid via Hydro One’s Orangeville to Essa circuit E9V (the “SIA Report”). As a result of changes to the project configuration and connection point, DWPI requested and on August 31, 2012 received a System Impact Assessment Final Addendum Report which considered the proposed connection directly into the 230 kV Orangeville TS bus (the “SIA Addendum Report”). In the SIA Addendum Report, the IESO concludes that the proposed changes to the project configuration and connection point are expected to have no material adverse impacts on the reliability of the integrated power system. On this basis, the IESO issued a Notification of Conditional Approval for Connection. A copy of the Notification of Conditional Approval is provided in Exhibit H, Tab 2, Schedule 1. Copies of the SIA Report and the SIA Addendum Report are provided in Exhibit H, Tab 2, Schedule 2, Appendices ‘A’ and ‘B’.
18. As described in Exhibit H, Tab 3, Schedule 1, DWPI applied for and on December 6, 2011 received from Hydro One a Customer Impact Assessment Report for the connection of the Wind Farm to the IESO-controlled grid via Hydro One’s Orangeville to Essa circuit E9V. As a result of changes to the project configuration and connection point, DWPI requested and on August 31, 2012 received a new Customer Impact Assessment - Final Report which considered the proposed connection directly into the 230 kV Orangeville TS bus (the “Final CIA Report”). In the Final CIA Report, Hydro One concludes and confirms that the proposed connection of the Wind Farm can be incorporated into Hydro One’s system at the proposed connection point without any adverse impacts on Hydro One’s customers. A copy of the Final CIA Report is provided in Exhibit H, Tab 3, Schedule 1, Appendix ‘A’.

Promotion of Renewables Consistent with Government Policy

19. The Government of Ontario enacted the *Green Energy and Green Economy Act, 2009* to increase renewable energy generation and promote the creation of clean energy jobs. Under this legislation, the Minister of Energy directed the OPA to develop the FIT Program to procure energy from renewable energy sources. The procurement of renewable energy in Ontario is guided by *Ontario's Long-Term Energy Plan*, under which the Government of Ontario has committed to putting in place 10,700 MW of renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. The FIT Program has been the centerpiece of the Government's strategy for achieving this renewable energy target. The Government's efforts to increase renewable energy generation have been closely tied to the Government's commitment to phasing out coal generation in Ontario by 2014. The Province of Ontario made this commitment for purposes of reducing Ontario's carbon emissions and its impact on climate change, as well as for reducing local and regional air pollution and related health impacts.⁴
20. The Applicant entered into a 20-year contract with the OPA in respect of the Wind Farm under the FIT Program on April 30, 2010 (the "FIT Contract"). The Wind Farm will further the Government of Ontario's objective of increasing the amount of renewable energy generation that forms part of Ontario's energy supply mix. In particular, the Wind Farm will contribute 99.1 MW of renewable energy generation capacity towards this objective. The proposed Transmission Facilities are required to convey the electricity generated by the Wind Farm to the IESO-controlled grid so as to enable the Applicant to realize this objective, consistent with the Province's renewable energy policies.

Project Routing

21. The proposed location of the Project Substation, the route for the Transmission Line and the locations of the Switching Station and Interconnection are described in Exhibit B, Tab 2, Schedule 3 and depicted in the detailed mapping provided in Exhibit B, Tab 2, Schedule 4. The proposed routing includes crossings of municipally owned roads and highways, as well as utility lines.⁵ The proposed routing and locations of the proposed facilities are appropriate and offer a number of important advantages. Accordingly, the Applicant submits that the proposed routing and facility locations, including applicable crossings, should be approved.
22. As discussed in Exhibit B, Tab 4, Schedule 1 and in response to Board Staff Interrogatory #7, DWPI determined through consultations, technical and environmental reviews that the proposed route is preferred over several different transmission routes and designs that it had considered. The proposed Transmission Project route and design offers advantages in comparison to the various alternatives considered, including:

⁴ See *Ontario's Long-Term Energy Plan*, 2010, p. 3 at http://www.energy.gov.on.ca/docs/en/MEI_LTEP_en.pdf

⁵ See Response to Board Staff IR #5, as amended by Amendment #2.

- (a) greater line efficiency resulting in reduced line losses,⁶
- (b) less than half the number of poles,⁷
- (c) significantly greater spacing between poles,⁸
- (d) only minimal guying along only part of the route,⁹
- (e) fewer conductors running along the poles,¹⁰
- (f) being generally situated in less populated areas,¹¹
- (g) requiring only one transformer station along with a switching station, rather than two transformer stations,¹²
- (h) requiring a switching station location on an industrial lot next to Hydro One's existing transformer station, rather than a new transmission station being required in a greenfield location,¹³
- (i) operational efficiencies due to the use of a standard voltage and no joint use,¹⁴
- (j) impacts on fewer residences,¹⁵ and
- (k) avoidance of the community of Corbetton.¹⁶

23. As described in Exhibit G, Tab 1, Schedule 1, with respect to the various routing alternatives considered, DWPI has carried out a comprehensive consultation program and process involving members of the public, local groups, First Nations, local municipalities and governmental authorities from the early stages of the project. Through its REA process, the Applicant has held numerous public information centres, held frequent meetings with local governmental officials, met with and consulted potentially affected

⁶ See Exhibit B, Tab 4, Schedule 1, p. 4; Response to Board Staff IR #7(ii); Response to Bryenton IR #7.

⁷ See Exhibit B, Tab 4, Schedule 1, p. 3; Response to Board Staff IR #7(ii); Response to Bryenton IR #5; Response to Bryenton Supp. IR #2(a).

⁸ See Exhibit B, Tab 4, Schedule 1, p. 3; Response to Board Staff IR #7(ii).

⁹ See Response to Board Staff IR #7.

¹⁰ See Exhibit B, Tab 4, Schedule 1, p. 3; Response to Board Staff IR #7(ii).

¹¹ See Exhibit B, Tab 4, Schedule 1, p. 3 and 6; Response to Board Staff IR #7(ii).

¹² See Exhibit B, Tab 4, Schedule 1, pp. 3-4 and 6; Response to Board Staff IR #7(ii).

¹³ See Response to Board Staff IR #7(ii).

¹⁴ See Exhibit B, Tab 4, Schedule 1, p. 5; Responses to Board Staff IRs #7(i) and (ii);

¹⁵ See Exhibit B, Tab 4, Schedule 1, p. 7.

¹⁶ See Exhibit B, Tab 4, Schedule 1, p. 8.

Aboriginal communities, published and delivered numerous notices to the community and affected landowners, as well as maintained and regularly updated its project website. The Applicant's consultations with the community have informed its route selection and design of the proposed Transmission Project, as described in Exhibit G, Tab 1, Schedule 1 and Exhibit B, Tab 4, Schedule 1 and Amendment #2.

Renewable Energy Approval

24. In parallel with the Application, DWPI has also applied for a REA from the Ministry of the Environment. The scope of the REA application includes all aspects of the proposed Transmission Project.
25. As described in Exhibit E, Tab 2, Schedule 1, DWPI released its Draft REA Submission Package to the public on May 24, 2012. Following a comment period and a series of Public Information Centres in late July 2012, DWPI finalized and filed its REA Application with the Ministry of the Environment on August 13, 2012.
26. Copies of the reports comprising the REA Application were provided by the Applicant in response to Board Staff Interrogatory #15(iii). In addition, in response to Procedural Order No. 2, DWPI filed a copy of the project change notification that it had filed with the Ministry of the Environment for purposes of the REA Application. DWPI filed this information on December 18, 2012 to confirm that the amended location of the Switching Station in the Application is consistent with the location being considered in the REA application. Moreover, as part of Amendment #2, the Applicant has provided a copy of a March 2013 REA Changes Report that was filed with the Ministry of the Environment. The focus of Amendment #2 was to ensure consistency between the routing under the REA application and the routing in the present Application.
27. As indicated in response to Board Staff Interrogatory #15(i), the Ministry of the Environment deemed DWPI's REA application complete on December 27, 2012. From such date, the Ministry has a six month service guarantee for completing its review and determining whether to issue the REA. As of the date of these submissions, the REA application continues to be under technical review by the Ministry.
28. Exhibit E, Tab 2, Schedule 1 also references certain amendments to Ontario Regulation 359/09 (Renewable Energy Approvals) under the *Environmental Protection Act*. At the time the Application was filed, this regulation restricted the construction, installation or expansion of renewable energy generation facilities, including associated transmission lines, at project locations that are in provincially significant southern or coastal wetlands. In July 2012 the Ministry of the Environment proposed amendments that would, among other things, allow for construction of transmission lines through such wetland areas subject to completion of environmental impact studies. These proposed amendments were contemplated in the pre-filed evidence at Exhibit E, Tab 2, Schedule 1, p. 4 and as

indicated in response to CORE Interrogatory #3(a), the referenced amendments have since come into effect on November 2, 2012. On February 20, 2013 the Applicant received a clearance letter from the Ministry of Natural Resources confirming that the new regulatory requirements have been satisfied and that DWPI may, therefore, construct overhead transmission lines along those portions of the route that fall within the relevant wetland classifications. This development is referenced in the REA Changes Report included at Appendix 'A' of Amendment #2.

Land Matters

29. As part of the Application, DWPI seeks an order pursuant to section 97 of the OEB Act, which provides that in an application under section 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. The forms of land agreements for which DWPI seeks approval are provided in Exhibit F, Tab 2, Schedule 1 of the pre-filed evidence.
30. To support its Application, DWPI has also filed detailed descriptions of the land area required, the land rights required and the land acquisition process for the proposed Transmission Project.¹⁷
31. As described in Exhibit F, Tab 1, Schedule 1, the Project Substation will be situated on privately owned lands. DWPI currently holds a lease for a portion of the property for purposes of a wind turbine and will be amending this lease shortly to also allow for the Project Substation and the Transmission Line. The Switching Station will also be situated on privately owned lands. DWPI has secured an option to purchase this property.
32. An approximately 15.6 km portion of the Transmission Line, from the Project Substation to the Rail Corridor, will run primarily along private lands. There are approximately 20 parcels of privately owned land along this portion of the route, with 17 affected land owners. As discussed in Exhibit F, Tab 1, Schedule 1, DWPI has transmission easements or leases in place with each of these land owners.¹⁸ In addition, along this portion of the Transmission line there will be a short segment of approximately 110 m that will be located within a municipal road right-of-way. As is the case with road crossings along the route, the Applicant relies upon its statutory rights pursuant to section 41 of the *Electricity Act, 1998* for purposes of situating these facilities in the right-of-way.

¹⁷ See Exhibit F, Tab 1, Schedule 1.

¹⁸ DWPI is currently working towards amending several of these easements and leases to revise the descriptions of the land rights required, consistent with the Application and Amendment #2.

33. An approximately 31.2 km portion of the Transmission Line runs along the Rail Corridor from just south of the community of Corbetton to the Switching Station. This portion of the route is comprised of approximately 60 parcels of land which, other than certain road and highway crossings and several parcels for which the Applicant is in the process of curing historical title defects, are owned by the County of Dufferin. The Applicant and the County have been engaged in lengthy and ongoing discussions concerning DWPI's request for an easement along these lands. DWPI is hopeful that a negotiated agreement with respect to the easement will be reached with the County in the very near future so as not to adversely affect its project schedule.

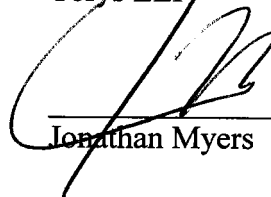
C. CONCLUSIONS

34. The Applicant has demonstrated the need for the proposed Transmission Project and that the proposed Transmission Project is consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.
35. DWPI has shown that the construction and operation of the proposed Transmission Project will not affect electricity consumers because the facilities that are the subject of the Application will be paid for entirely by the Applicant and will not be recovered through transmission rates in Ontario. Also, through the filing of impact assessment reports from Hydro One and the IESO, DWPI has demonstrated that the proposed Transmission Project will not adversely impact the interests of consumers with respect to reliability and quality of electricity service.
36. Furthermore, DWPI has demonstrated that the proposed routing and locations for the proposed transmission facilities are appropriate and offer a number of key advantages over other alternatives considered.
37. For the reasons set out herein, we respectfully request that the Board grant to DWPI leave to construct the proposed Transmission Project pursuant to section 92 of the OEB Act, along with such other relief as requested in the Application.

All of which is respectfully submitted this 18th day of April, 2013.

DUFFERIN WIND POWER INC.

By its counsel
Torys LLP


Jonathan Myers