



EB-2013-0031

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 Wainfleet Wind Energy Inc. for an Order or Orders pursuant to section 41(9) of the *Electricity Act 1998*, S.O. 1998, c. 15, Schedule A, as amended, establishing the location of Wainfleet Wind Energy Inc.'s distribution facilities within certain public right-of-way and street owned by the Township of Wainfleet, Regional Municipality of Niagara.

PROCEDURAL ORDER NO. 1
April 26, 2013

Wainfleet Wind Energy Inc. ("Wainfleet Wind") filed an application dated February 4, 2013, with the Ontario Energy Board (the "Board") under subsection 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A, as amended (the "*Electricity Act*") for an order or orders of the Board establishing the location of Wainfleet Wind's proposed distribution facilities ("Distribution System") within road allowances owned by the Township of Wainfleet (the "Township"). The Board has assigned File No. EB-2013-0031 to this application.

The Board issued a Notice of Application and Written Hearing on March 13, 2013.

Intervention Requests

The application has been made adverse to the interests of the Township and the Township is a necessary party to this proceeding. Although the Township has not applied for formal standing as an Intervenor, the Board pursuant to sections 1.03 and 22.02 of the Board's *Rules of Practice and Procedure*, grants leave to the Township to participate in this proceeding as an Intervenor.

Ms. Katherine Pilon applied for intervenor status and filed letters of comment in support of her intervention. Ms. Pilon, on behalf of residents of the Township, outlined objections to the Industrial Wind Turbine Project proposed for the Township of Wainfleet. Ms. Pilon also sought an oral hearing where residents' concerns "could be addressed in a more appropriate manner".

Wainfleet Wind objected to Ms. Pilon's request for intervenor status and an oral hearing on the basis that her intervention and letters of comment reference issues outside of the scope of the application. Wainfleet Wind reminded the Board that the application is made under section 41 of the *Electricity Act* and is related solely to the location of the Distribution System within the public highways under the authority of the Township.

Ms. Pilon's letters have been forwarded to the Panel hearing the application and have been placed on the official public record. The Board is limited, however, to determining the location of the Distribution System within the road allowances owned by the Township. The consideration of any aspect of the proposed wind generation facilities is not within the Board's jurisdiction. The Board finds that Ms. Pilon's concerns fall outside the scope of the Board's jurisdiction. Therefore, the Board will not grant Ms. Pilon intervenor status. However, the letters received by Ms. Pilon, which includes a signed petition from the residents of the Township, will remain on the official public record.

On April 5, 2013 the Township filed a letter explaining that municipal consent regarding the location of the Distribution System was deferred because of a pending Ontario Superior Court of Justice case (No.53800/12) concerning the legality of the Township's by-law with respect to setback for industrial wind turbines.

The Decision of the Honourable Justice Robert. B. Reid of the Ontario Superior Court of Justice in the matter of *Wainfleet Wind Energy Inc. v. Township of Wainfleet* was issued on April 12, 2013. In the decision it was determined the wind turbine set-back by-law is "invalid and without force and effect".

As a result of the Ontario Superior Court of Justice's findings, the Board will proceed to hear the application before it.

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. If the Board staff or the Township wish information and material from the Wainfleet Wind in relation to the application that is in addition to the Wainfleet Wind's pre-filed evidence with the Board, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to the Wainfleet Wind on or before **May 06, 2013**. Where possible, the questions should specifically reference the pre-filed evidence.
2. Wainfleet Wind shall, on or before **May 16, 2013**, file with the Board and deliver to the Township a complete response to each of the interrogatories.
3. Board staff and the Township shall file written submission, if any, with the Board, and deliver it to Wainfleet Wind by **May 27, 2013**.
4. If Wainfleet Wind wishes to respond to a submission, the response must be filed with the Board by **June 04, 2013**.

All filings to the Board must quote the file number, EB-2013-0031, 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. Please 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 you may email your document to the address below.

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, April 26, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary