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May 2, 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 Reply Submissions

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 Reply Submissions.

Yours truly,

A handwritten signature in black ink, appearing to be "J. Myers", written over the typed name "Jonathan Myers".

Jonathan Myers

Tel 416.865.7532
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cc: Intervenor
Mr. J. Hammond, Dufferin Wind
Mr. C. Keizer, Torys LLP

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 REPLY SUBMISSIONS

May 2, 2013

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**"). In accordance with Procedural Order No. 6, DWPI filed its Amended Argument-in-Chief on March 28, 2013.
2. This submission is made in reply to the four intervenors who, along with Board staff, have filed written submissions in this proceeding. These four intervenors are the County of Dufferin (the "**County**"), Conserve Our Rural Environment ("**CORE**"), Mr. Harvey Lyon and Ms. Lori Bryenton.
3. Each of CORE, Mr. Lyon and Ms. Bryenton have opposed the granting of leave to construct. The County has taken no position on any issue and has made no submissions other than with respect to the location of the proposed transmission facilities within, and the use of, the rail corridor. Board staff has not opposed the Application.
4. No submissions were filed by any of the three remaining parties, being the Independent Electricity System Operator (the "**IESO**"), the Township of Melancthon or The Highlands Group.
5. A number of issues and themes were raised in support of the positions and arguments put forward by the parties. This Reply Submission is organized so as to address each of those areas.

6. DWPI submits that none of the intervenors have demonstrated, based on evidence in this proceeding, that the Applicant has not satisfied the public interest test under section 96(2) of the OEB Act. DWPI has addressed all relevant aspects of the filing requirements and has shown that the proposed transmission facilities are in the public interest, having regard to the factors enumerated in section 96(2). The Board should therefore grant leave to construct the proposed transmission facilities. The need for the facilities has been established, there will be no impact on consumers with respect to price, there will be no adverse impacts on consumers with respect to the reliability or quality of electricity service, and the proposed transmission facilities will support the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.

CLARIFICATION REGARDING EVIDENCE

7. It is important to note that, as confirmed by the Board in Procedural Order No. 4, no intervenor has filed any evidence in this proceeding. Through attachments to various correspondence during the course of the proceeding, intervenors have filed a number of reports, letters and assorted other documentation. However, the Board should recognize that none of those documents have been filed as or constitute evidence in this proceeding. The materials filed by intervenors have not been tested by Board staff, the Applicant or other intervenors through interrogatories or otherwise. This includes the documents that have been included as attachments to certain of the intervenor submissions, including Appendices A-H to the CORE submission and Attachment 1 to Mr. Lyon's submission, as well as documents attached to correspondence, such as the reports and other materials included with CORE's April 17, 2013 letter.
8. Although several of the parties have sought to rely upon these materials in their submissions and ask that the Board draw various findings from them, in considering the Application the Board must disregard and give no weight to any such documents which are not evidence in this proceeding. Parties knew that they had an opportunity to file evidence, were alerted by the Board's finding in Procedural Order No. 4 that no intervenor evidence had to that point been filed or was expected to be filed, and parties nevertheless chose not to file any documents as evidence. The Applicant further notes that although Board staff in its April 25 submission has referenced and quoted directly from two such documents (both of which were attached to CORE's April 17, 2013 letter), it was inappropriate for staff to have done so and the references in staff's submissions should be disregarded.

ISSUES RAISED BY SUBMISSIONS OF THE PARTIES

Scope of the Board's Jurisdiction

9. In its submissions, CORE acknowledges that the Board's jurisdiction on a leave to construct application is narrow, but then goes on to suggest that the Board is being asked through the Application to approve the connection of a wind farm to the Province's electricity grid, which, CORE then suggests, engages policy issues related to the cost and

reliability of electricity in Ontario.¹ CORE also argues that applications for leave to construct entrust the Board with a “gatekeeper function”, which CORE suggests should be used to promote the connection of solar and bio-energy generation facilities rather than wind generation projects.²

10. With respect, CORE’s interpretation of the purpose and scope of the Application, and the Board’s jurisdiction in this proceeding, is not correct. The narrow scope of the Board’s jurisdiction in considering the Application has been articulated in Procedural Order No. 2 and was reiterated in Board staff’s submissions.³
11. The legislative context for the Application and the scope of the Board’s jurisdiction in this proceeding are also described in the Applicant’s Amended Argument-in-Chief.⁴ As explained therein, the Board is being asked in the Application to grant permission for DWPI to construct the proposed transmission facilities, as well as to approve the forms of agreement offered or to be offered to landowners from whom DWPI requires property rights for the proposed facilities. The Application is only concerned with the Dufferin Wind Farm insofar as is necessary to establish that there is a need for the proposed transmission facilities.
12. In respect of the Dufferin Wind Farm, DWPI does not require the permission of the Board in the leave to construct in order to connect to the Province’s electricity grid. This is pursuant to section 6.1.9 of the Transmission System Code and the Board-approved connection procedures that require the licensed transmitter, being Hydro One Networks Inc. (“**Hydro One**”), to permit non-discriminatory access. Section 26 of the *Electricity Act* provides for non-discriminatory access by generators and others to licensed transmission systems in Ontario and, pursuant to section 25.36 of the *Electricity Act*, licensed transmitters, including Hydro One, have an obligation to connect renewable energy generation facilities to their transmission systems in accordance with applicable regulations, the Market Rules and their transmission license. The obligation to connect renewable generation does not discriminate among different types of renewable generation, as CORE would have the Board do.
13. Moreover, contrary to CORE’s suggestion, the Application does not raise policy issues related to the cost of electricity in Ontario. This is because the proposed transmission facilities will be paid for by the Applicant. The costs of the facilities that are the subject of the Application will not be passed on to ratepayers through transmission rates. This issue, as well as the scope of the Board’s consideration of reliability issues, are discussed below.

¹ CORE Submission, paras. 2-3.

² CORE Submissions, paras. 44-46.

³ Board Staff Submissions, p. 7.

⁴ Amended Argument-in-Chief, para. 18 - 25.

Project Need

14. Regarding project need, Board staff in its submissions notes that the Applicant has filed all of the requisite information to support the need for the proposed transmission facilities and observes that no party appears to have challenged the need for the project.⁵ DWPI's submissions on project need are summarized in its Amended Argument-in-Chief.⁶
15. While Board staff does not challenge the need for the project, one comment relating to project need must be addressed. In the last paragraph of its submissions, Board staff comments that a party to whom leave to construct is granted and which cannot secure the necessary land rights may bring an expropriation application to the Board. Board staff then notes that "an expropriation proceeding may see delays that would affect the schedule of this project and possibly the FIT contract date for commercial operation of January 30, 2014. This may in turn affect the need for the project in the extreme case if the OPA were to terminate its contract."⁷
16. The Board's assessment of the need for the proposed transmission facilities should not take into consideration the question of whether or not the Applicant will ultimately need to pursue expropriation authority for any portion of the necessary land rights. To do so would be highly speculative and ignores the Board's well-established approach of making the granting of leave to construct conditional upon the proponent securing all necessary land rights. Uncertainties with respect to the securing of land rights are properly dealt with through such a condition of approval and should not be considered as a matter affecting the need for the project.
17. Board staff's statement also suggests some misunderstanding concerning the terms of the FIT Contract. Although DWPI is working diligently to achieve commercial operation by no later than January 30, 2014, as explained in response to Board Staff Interrogatory #2(iii) this is the Milestone Date for Commercial Operation ("MCOD"). The MCOD may be extended for up to two years if and to the extent that the Applicant experiences one or more events of force majeure.⁸ Regardless of whether MCOD is extended by reason of force majeure, the FIT Contract contemplates circumstances where the supplier achieves commercial operation subsequent to MCOD. In these circumstances, the term will nevertheless start on the MCOD⁹ and both the supplier (at a cost) and the OPA will have the option of extending the term to be the full 20 years from when commercial operation is actually achieved.¹⁰ The OPA's right to terminate only arises if commercial operation is not achieved by the date that is 18 months following the MCOD, as extended

⁵ Board Staff Submissions, pp. 7-8.

⁶ Amended Argument-in-Chief, paras. 14-15.

⁷ Board Staff Submissions, p. 9.

⁸ FIT Contract, General Terms and Conditions, s. 10.1(f) and (g).

⁹ FIT Contract, General Terms and Conditions, s. 2.5.

¹⁰ FIT Contract, General Terms and Conditions, s. 8.1(c) and (d).

by any force majeure event.¹¹ Based on the foregoing, Board staff's comments do not raise any legitimate concerns regarding the need for the proposed transmission facilities.

Interests of Consumers with Respect to Prices

18. Section 96(2) of the OEB Act requires the Board, in applying the public interest test, to consider the interests of consumers with respect to prices.
19. CORE argues that the interests of consumers with respect to prices are affected by the Application because, although CORE acknowledges that the cost of constructing the proposed transmission facilities will be borne by DWPI, the costs of adding wind power to the IESO-controlled grid will be borne by consumers through increased rates across Ontario.¹²
20. With respect, CORE's submissions on this point are not relevant to the Board's analysis. Potential impacts on the commodity price of electricity for consumers arising from government policy are outside the scope of the Board's jurisdiction in this proceeding. As indicated in the Application at Exhibit B, Tab 1, Schedule 1, the costs of constructing and operating the proposed transmission facilities are the responsibility of and will be paid for entirely by the Applicant.¹³ These costs will not be passed on to consumers through the Uniform Transmission Rates. Moreover, the pricing under the FIT Contract is standardized and does not vary based upon the particular transmission or interconnection costs that an individual supplier incurs for purposes of its generation facility. The Transmission Project will not have an impact on the interests of consumers with respect to prices.
21. Recent decisions of the Board provide guidance on this point and clarify that, in this context, "price" refers only to transmission rates. For example, in its decision on an application for leave to construct by South Kent Wind LP, the Board was satisfied that the project would not have an adverse impact on transmission rates based upon the applicant's evidence that the cost of the transmission facilities and interconnection to Hydro One's station would be paid for by the applicant.¹⁴ In its decision on an application for leave to construct by McLean's Mountain Wind LP, the Board explains:

In cases where an applicant will be seeking to recover the costs of a project through rates, the Board typically considers the issue of "need" through the lens of price - in other words, ensuring that customers are not responsible for costs associated with a project that is not actually needed. In this case, the evidence is that all of the costs of the Transmission Facilities will be borne by the

¹¹ FIT Contract, General Terms and Conditions, s. 9.1(j).

¹² CORE Submissions, para. 17-18.

¹³ See also Applicant responses to Board Staff Interrogatories #6(i) and #10(i).

¹⁴ Ontario Energy Board, Decision and Order, October 11, 2011, South Kent Wind LP, Application for Leave to Construct (EB-2011-0217).

applicant, and there will be no impact on the provincial uniform transmission rate.¹⁵

22. Based on the foregoing, the submissions of CORE with respect to electricity pricing, including the lengthy excerpts from a Fraser Institute report (which CORE included as Appendix A of its submissions and which, as indicated above, is not evidence in this proceeding), are not relevant to the Board's jurisdiction or the issue of price impacts in this proceeding and, accordingly, should be disregarded by the Board in applying the public interest test under section 96(2).

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

23. Section 96(2) of the OEB Act requires that, in applying the public interest test on a leave to construct application, the Board shall also consider the interests of consumers with respect to the reliability and quality of electricity service.
24. CORE argues that DWPI has not satisfied this branch of the test because it has not demonstrated that it is capable of providing reliable and quality electricity service. CORE states that the electricity DWPI produces will directly serve customers and interruptions in service due to operational or financial difficulties on the part of DWPI will impact the interests of consumers with respect to reliability and quality of electricity. The rest of CORE's submissions on this point attempt to establish that the interests of consumers with respect to reliability and quality of electricity service are at issue on account of (a) the reliability of wind as a source of energy, (b) uncertainties associated with DWPI's project development process, and (c) the fact that DWPI has refined its project over the past number of months.¹⁶
25. CORE's submissions on this point reflect a flawed understanding of the concepts of reliability and quality of electricity service in the context of leave to construct applications for non-rate-regulated transmission facilities. CORE is proposing that the Board regulate the generation of the commodity or the generator. This only occurs in a generation licensing proceeding. The leave to construct is in respect to transmission and that is what reliability relates to in the context of section 96(2). Consistent with this is that section 96(2) is specifically concerned with the interests of *consumers* with respect to reliability and quality of electricity service. As described in the Applicant's Amended Argument-in-Chief, the proposed transmission facilities will not directly serve any "consumers", which refers to persons who use, for their own consumption, electricity that they did not generate.¹⁷
26. Only licensed transmission and distribution systems, including the Hydro One transmission system to which the proposed transmission facilities will connect, may serve consumers. As such, in applying this branch of the public interest test the Board's

¹⁵ Ontario Energy Board, Decision and Order, June 28, 2012, McLean's Mountain Wind LP, Application for Leave to Construct (EB-2011-0394).

¹⁶ CORE Submissions, pp. 5-9.

¹⁷ Amended Argument-in-Chief, paras. 13 and 16.

concern will be whether the Applicant has met and will meet the requirements of the relevant licensed transmitter and the IESO under their respective connection assessment processes. By ensuring that the IESO and the licensed transmitter have carried out the appropriate assessments and have imposed the necessary conditions to protect their respective systems and the consumers served by those systems, the Board can be satisfied that the applicant in a leave to construct proceeding for non-rate-regulated facilities has met this component of the public interest test.

27. In this context, the reliability of wind as an energy source, the uncertainties associated with the project development process and the frequency or nature of project refinements made by the Applicant are simply not relevant to the Board's consideration of the interests of consumers with respect to the reliability and quality of electricity service. Although CORE's submissions pursue this line of argument at length, CORE's arguments are not relevant to the scope of section 96(2) and, accordingly, should be rejected by the Board.
28. As explained in the Applicant's Amended Argument-in-Chief, the evidence in this proceeding is that the potential impacts of the project on Hydro One's transmission system and on the IESO-controlled grid have been assessed through the Customer Impact Assessment ("CIA") by Hydro One and the System Impact Assessment ("SIA") from the IESO. The CIA concludes that, subject to the conditions therein, the proposed connection can be incorporated into Hydro One's system at the proposed connection point without any adverse impacts on Hydro One's customers. The SIA concludes that, subject to the conditions therein, the proposed connection will have no material adverse impacts on the reliability of the integrated power system.¹⁸
29. In its submissions, Board staff confirms that the Applicant has filed all requisite information relative to the impact of the project on the IESO-controlled grid and Hydro One's customers.¹⁹

Promotion of Renewable Energy Sources

30. Section 96(2) of the OEB Act further provides that, in applying the public interest test, the Board shall consider, where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.
31. CORE argues that just because a project is a renewable energy project does not mean that it automatically implements the policy of the Government of Ontario and that if a renewable project cannot be integrated into the system, then there are good policy reasons not to permit it to connect. On this basis, CORE argues that the Board should use the leave to construct process to exercise a "gatekeeping" function by deciding which types of renewable energy projects and which energy sources should be permitted to connect.²⁰

¹⁸ Amended Argument-in-Chief, para. 16-18.

¹⁹ Board Staff Submissions, p. 7.

²⁰ CORE Submissions, p. 10.

32. As the CIA and SIA have demonstrated that the proposed transmission facilities can be integrated into the system, the first part of CORE's argument is not relevant and deserves no further consideration. With respect to CORE's suggestion that the Board should serve as a gatekeeper in determining which types of renewable energy projects should be permitted to construct facilities that enable their connection to the grid, as explained in the discussion above concerning the scope of the Board's jurisdiction, Section 26 of the *Electricity Act* provides for non-discriminatory access by generators and others to licensed transmission systems in Ontario and, pursuant to section 25.36 of the *Electricity Act*, licensed transmitters, including Hydro One, have an obligation to connect renewable energy generation facilities to their transmission systems in accordance with applicable regulations, the Market Rules and their transmission licence. The obligation on the part of licensed transmitters to connect renewable generation does not discriminate among different types of renewable generation, as CORE would have the Board do.
33. Mr. Lyon argues that as part of the Board's responsibility for ensuring the project promotes the use of renewable energy sources, the Board should consider the implications for future renewable energy projects in the vicinity of DWPI's project. Mr. Lyon argues that approval of the proposed facilities will affect the prospect of future wind development in the area.²¹
34. With respect, Mr. Lyon's argument is flawed. It is the Ontario Power Authority, as the system planner and the contracting party under the *Electricity Act* that has this function, not the Board. Moreover, if the Board were to accept the argument that a renewable energy developer should not be granted leave to construct because doing so may make it more difficult for a hypothetical future renewable energy developer in the same area to connect their facility, no renewable energy generation facilities would ever be permitted to construct the facilities needed to connect their respective projects because there would always be potential for a hypothetical future developer to want to connect in the same geographic area.

Alternatives Considered

35. Mr. Lyon argues that DWPI's evidence regarding the relative advantages of the proposed transmission project over other alternatives considered is unsound. In support of this view, Mr. Lyon comments that modifications to existing lines would result in fewer impacts than the proposed new transmission line, that the Applicant's suggestion that the proposed routing is situated in a less populated area than the alternatives considered is untrue, and that there was no merit to an earlier route that had been considered in the vicinity of the community of Corbetton.²²
36. In its Decision and Order on an application for leave to construct transmission facilities by Grand Renewable Wind LP, the Board explained that "in cases where a proponent will be seeking to recover the costs of a project through rates, the Board typically considers the "need" issue through the lens of price - in other words ensuring that consumers are

²¹ Harvey Lyon Submissions, p. 2.

²² Harvey Lyon Submissions, p. 4.

not saddled with costs where a project is not actually needed. Similarly, routing alternatives are often considered from the perspective of price to ensure that the option chosen is the most cost effective. In the current case, all of the costs of the Project itself are being covered by GRWLP . . . regardless, the Board observes that there is a strong case for both the need for the Project and the route proposed by GRWLP.”²³

37. In its submissions, Board staff supports a similar approach when it states that “DWPI has provided a rationale for electing the current design . . . Staff observes that the applicant has pointed to the fact that as a non-regulated entity, its project will not financially impact ratepayers, and that the issue of alternatives ought to be examined through those lenses.”²⁴
38. Despite the narrow purpose for looking at the alternatives considered in the context of a leave to construct application for a non-rate-regulated entity, DWPI has provided considerable detail through its pre-filed evidence and interrogatory responses on the alternatives it previously considered and rejected in favour of the proposed transmission facilities design and routing. This is particularly so in respect of the 69 kV alternative, which Mr. Lyon alludes to in suggesting that modifications to existing lines would be preferable. DWPI discusses the alternatives, and its rationale for selecting the proposed transmission facilities as its preferred approach, in Exhibit B, Tab 4, Schedule 1 of its pre-filed evidence. This discussion is supplemented by the Applicant’s responses to interrogatories and, in particular, by responses to Board Staff Interrogatory #7 and Lori Bryenton Supplemental Interrogatory #2, all of which is summarized in the Applicant’s Argument-in-Chief. Accordingly, it is the Applicant’s submission that a strong case has been made to support DWPI’s proposed route and transmission design.

Routing and Design

39. The County’s submissions are primarily concerned with routing and design and can be summarized as follows. The County wants to ensure that the Applicant’s use of the rail corridor does not interfere with the County’s intended use of the rail corridor for purposes of a public trail and a potential future local railway. The County also wants the Board to require DWPI to install the transmission line underground for the entire length of the rail corridor, as well as for the routing to avoid the Town of Shelburne. Mr. Lyon and Ms. Bryenton echo the County’s request for the transmission line to be installed underground for the length of the rail corridor and Mr. Lyon also echoes the County’s request for the routing to avoid the Town of Shelburne.²⁵
40. The County acknowledges that DWPI has confirmed in the Application that its design will allow for the future redevelopment of a railway along the rail corridor.²⁶ This confirmation is provided in Exhibit G, Tab 1, Schedule 1, at p. 5. In addition, the means

²³ Ontario Energy Board, Decision and Order, Application for Leave to Construct by Grand Renewable Wind LP (EB-2011-0063), December 8, 2011, p. 8.

²⁴ Board Staff Submissions, p. 8.

²⁵ Harvey Lyon Submissions, p. 4 and Lori Bryenton Submissions, p. 1.

²⁶ Dufferin County Submissions, p. 5.

by which the Applicant has designed the transmission facilities so as to accommodate the County's request is described in Exhibit D, Tab 1, Schedule 1 at pp. 3-6. In particular, this includes reduced pole spacing to ensure that, with sagging, all clearance requirements necessary to accommodate potential rail development will be met. As a consequence of this reduced pole spacing, DWPI needs to install approximately 100 additional poles along the rail corridor as compared to what would have been needed if spacing was consistent with that along the rest of the transmission line. In addition, DWPI has placed the proposed transmission facilities as close to one side of the rail corridor as possible, while meeting all applicable safety and technical standards, so as to preserve the other side of the corridor for the public trail and/or future rail redevelopment. The County also notes that the Applicant has designed the proposed transmission facilities so as to eliminate the use of guy wires wherever possible in the rail corridor, in part so as to improve safety for recreational users of the public trail, which include snowmobilers and ATV users.²⁷

41. Regarding the submissions from the County, Mr. Lyon and Ms. Bryenton asking the Board to require DWPI to install the transmission line underground for the entire length of the rail corridor, as well as for the routing to avoid the Town of Shelburne, it is DWPI's position that, for the reasons that follow, these submissions should be rejected.
42. The County and Ms. Bryenton argue that there would be no technical issues or impacts on reliability if DWPI were to install the transmission line underground for the entire length of the rail corridor.²⁸ The intervenors have filed no evidence to support this assertion. The Applicant's evidence is that underground lines typically experience additional line losses relative to overhead lines, that power quality on overhead lines is superior to underground lines, that life expectancy is greater for overhead lines, and that overhead lines are easier to maintain.²⁹
43. The County argues that although the evidence shows that underground lines are more costly than overhead lines (see response to Board Staff Interrogatory # 6(i), which explains that underground installation is at least 6-7 times more costly), this is not a relevant concern for the Board because the Board does not have the authority under section 96(2) to consider cost impacts on the Applicant. With respect, this argument is flawed. Under section 96(2), it is beyond the scope of the Board's jurisdiction to consider the price impacts on consumers from the proposed transmission facilities, the cost of which will not be recovered through Uniform Transmission Rates. This is not an invitation for the Board to impose very significant costs or material design elements that the applicant has not itself proposed to undertake.
44. This is especially so when considering that the County's request sharply contrasts with established industry standards and practices with respect to the underground installation of high voltage transmission lines. As explained in response to CORE Interrogatory #6, the North American industry standard is for 230 kV transmission lines to be constructed

²⁷ Dufferin County Submissions, p. 5.

²⁸ Dufferin County Submissions, p. 2, para. 1-0; Lori Bryenton Submissions, p. 1.

²⁹ Response to CORE Interrogatory #6(a).

overhead. Hydro One, which is the largest licensed transmitter in Ontario, has a policy of building all high-voltage transmission lines above ground wherever possible and of installing such lines underground only where there are technical constraints that prevent overhead construction or if in a particular area the cost of overhead construction is not practical.³⁰ Also as noted in response to CORE Interrogatory #6, it is instructive to consider that as at December 31, 2010 Hydro One owned and operated 28,951 circuit kilometers of high-voltage transmission lines and that all of these lines are overhead with the exception of just 282 circuit kilometers, which consist of underground lines in urban areas. This represents less than 1% of Hydro One's transmission system.

45. In the Applicant's submission, its proposed routing and design are reasonable and appropriate and should be approved by the Board. DWPI has made significant efforts to accommodate the County's requests with respect to the design of its proposed transmission facilities. DWPI has proposed to install underground between 3.3 km and 4.8 km of the transmission line, all of which is in the rail corridor.³¹ Based on the total length of the route being 47.29 km (31.4 km of which is along the rail corridor),³² this represents 7-10% of the total line length that would be installed underground. Moreover, as one of the underground segments would be comprised of the portion of the transmission line running through the Town of Shelburne, DWPI's proposed design is, in the Applicant's submission, reasonably responsive to the concerns underlying the submissions of the County and Mr. Lyon with respect to desire to avoid the Town of Shelburne.
46. Moreover, the Applicant submits that the Board would be setting a dangerous precedent if it were to require an applicant in a leave to construct proceeding to construct its high voltage transmission line underground where the applicant has not itself proposed to do so, solely on the basis of the local community having expressed such a preference and in the absence of sound technical or public safety reasons for doing so. In the context of rate-regulated transmission facilities, such a precedent could result in significant transmission rate impacts for the ratepayers of Ontario.

Status of Land Rights Acquisition

47. Several of the parties commented on the status of the Applicant's land rights acquisition efforts and, in particular, on the fact that the easement with the County for use of the rail corridor has not yet been finalized.
48. Ms. Bryenton argues that, on this basis, and due to the possibility of an expropriation proceeding, the Application should be denied.³³ Mr. Lyon argues similarly, noting also that granting leave on condition that the land rights are secured prior to construction would not be appropriate in this case because "usually the outstanding agreements are

³⁰ Ontario Energy Board, Decision and Order, Application by Hydro One for Leave to Construct Toronto Midtown Transmission Reinforcement Project (EB-2009-0425), June 17, 2010, p. 9

³¹ Amendment #2, p. 3, March 28, 2013.

³² See amended response to CORE Interrogatory #11.

³³ Lori Bryenton Submissions, p. 1.

rather minor and/or there is a firm expectation that they will be secured.”³⁴ Mr. Lyon offers no support for this assertion.

49. In its submissions, Board staff expressed support for the Applicant’s argument, reiterated here, that obtaining all necessary land rights is not a prerequisite to the approval of a leave to construct application.³⁵ It is the Board’s long-established practice to deal with the circumstances of there being outstanding land rights by granting leave to construct on the condition that the necessary land rights be secured. Moreover, the overall regulatory framework for transmission projects provides for the possibility of a proponent seeking the necessary land rights through expropriation subsequent to the granting of leave to construct.³⁶
50. In response to Mr. Lyon’s suggestion that the outstanding land rights may only be of a minor nature, we note that in Hydro One’s application for expropriation authority in respect of the Bruce to Milton line, it had negotiated agreements for 64% of the relevant properties at the time of filing.³⁷ Although the numbers are not available, Hydro One likely had significantly fewer than 64% of agreements in place during the argument phase of its earlier leave to construct proceeding. This represents a significant proportion of the required land rights being outstanding. The Board, in granting leave to construct to Hydro One, expressed no indication of there being any requirement, in practice or at law, to suggest that Hydro One needed to reach a certain threshold or have a certain degree of expectation with regard to the securing of such outstanding land rights. Rather, the Board stated that it “recognizes that the need to plan for the acquisition of project associated land rights concurrently with the design stages of a project requires a measured and conditioned approach . . . The Board is satisfied that the steps taken by Hydro One in relation to land rights acquisitions have been commensurate with the evolutionary nature of the project.”³⁸
51. In its submissions, the County notes that DWPI has been working cooperatively with the County in an effort to assist the County in resolving certain historical defects in the County’s title to the rail corridor.³⁹ The County also makes submissions regarding the applicability of section 41 of the *Electricity Act* to the rail corridor. The Applicant generally agrees with the County’s submissions with respect to section 41 not being applicable to the rail corridor as the rail corridor is not a public street or highway. The Applicant notes, however, that section 41 is applicable in respect of any public street or highway crossings along the length of the rail corridor.

³⁴ Harvey Lyon Submissions, p. 5.

³⁵ Board Staff Submissions, p. 9.

³⁶ See s. 99, Ontario Energy Board Act; See also Ontario Energy Board, Decision and Order, McLean’s Mountain Wind LP (EB-2011-0394), June 28, 2012, p. 8.

³⁷ See Hydro One, Bruce to Milton Transmission Reinforcement Project Expropriation Application (EB-2010-0023), Application, Exhibit A, Tab 1, Schedule 1, p. 4, February 26, 2010.

³⁸ Ontario Energy Board, Decision and Order, Hydro One Networks Inc. Application for Leave to Construct (EB-2007-0050), September 15, 2008, p. 61.

³⁹ County Submissions, p. 1. See also Exhibit F, Tab , Schedule 1.

52. Ms. Bryenton submits that the Applicant has not negotiated an easement with the owner of Lot 27, Concession 3 and that this could give rise to the need for amendments regarding the portion of the line “which extends west after crossing the 3rd Line”.⁴⁰ Ms. Bryenton’s comments in this respect are incorrect. Exhibit B, Tab 2, Schedule 4, Figure 5(a) shows that there are two properties on the west side of 3rd Line. To the north is the East Half of Lot 27, Concession 3. This appears to be the property referred to in Ms. Bryenton’s submissions. To the south is the East Half of Lot 26, Concession 3. Figure 5(a) shows that the proposed transmission line route is situated entirely on the latter property, being the East Half of Lot 26, Concession 3 and not on the property referred to by Ms. Bryenton. This is consistent with the landowner line list, the non-confidential version of which was filed as Appendix G to the Applicant’s Responses to Board Staff Interrogatories. The landowner line list indicates that a lease is in place in respect of the East Half of Lot 26, Concession 3.
53. The Applicant also wishes to respond to one aspect of Board staff’s submission relating to the rail corridor lands. Board staff references and quotes from a report attached to correspondence filed by CORE on April 17, 2013.⁴¹ As indicated, the report attached to CORE’s letter is not in evidence and, as such, it was not appropriate for Board staff to reference or quote from such report. Nevertheless, as the statement reproduced in Board staff’s submissions may not accurately reflect the message conveyed by DWPI to the County and could be taken out of context, the Applicant wishes to provide some clarification for the Board.
54. The message being conveyed by DWPI was that it wanted the County to provide a clear indication of its intentions with respect to the requested easement. Negotiations had to that point proceeded in ‘fits and starts’ with the County’s intentions being unclear. Due to the Applicant’s project schedule, DWPI indicated that if agreement could not be reached then it would need to file an application for authority to expropriate promptly following the receipt of leave to construct in the present proceeding. DWPI also indicated that the compensation available to the County under a negotiated agreement prior to the filing of an application for expropriation would likely be greater than the compensation available through a negotiated agreement after such filing. This is because DWPI is, obviously, motivated to avoid the cost and delay associated with having to bring an expropriation application.
55. The principles expressed by DWPI are consistent with the Land Acquisition Compensation Principles relied upon by Hydro One, and accepted by the Board, in Hydro One’s Bruce to Milton Transmission Reinforcement Project. Those principles provided for Hydro One’s offers to landowners, which included compensation incentives, to lapse at such time as Hydro One filed its expropriation application. Any revised offer would instead comply with the compensation requirements of the *Expropriations Act* and would no longer include the incentives, which were intended to encourage early resolution.⁴²

⁴⁰ Lori Bryenton Submissions, p. 4.

⁴¹ Board Staff Submissions, p. 6.

⁴² See <http://www.hydroone.com/Projects/BrucetoMilton/Pages/LandAcquisition.aspx>

The message conveyed by DWPI to the County was generally in line with this approach and should not be interpreted otherwise.

Forms of Land Agreements

56. The County has asked the Board to confirm whether approval under section 97 of the OEB Act “refers to a starting point for negotiation and not a finding that the term is appropriate nor is it consistent with any rights that would be granted under a subsequent expropriation proceeding.”⁴³ In the Applicant’s view, the forms of agreement that have been filed are based on what the Applicant has offered (or will offer) and what the Applicant believes is fair to affected landowners. Section 97 provides that in a leave to construct application, the applicant must satisfy 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. It is DWPI’s understanding that, within this framework, although some negotiation between the relevant parties would be expected, significant deviations from the terms and principles expressed in an approved form of agreement are not.
57. The County is attempting to negotiate specific terms of the agreement through the leave to construction process which, in DWPI’s submission and in light of the scope of section 97, is not appropriate. In particular, the County raises concerns with specific provisions of the form of easement that is specific to the rail corridor, which has been filed by the Applicant in Exhibit F, Tab 2, Schedule 1, Appendix 6. One such concern relates to the term specified in the form of agreement.⁴⁴ The term specified is 45 years. The County suggests that a more appropriate term would be 23 years based on the 20 year term of the FIT Contract plus time for decommissioning and clean up. Although the Applicant questions whether the Board has the jurisdiction to establish the term of the agreement through its authority under section 97, the Applicant nevertheless notes that the term currently specified in the form of agreement is reasonable and fair. The term should have regard to the expected life of the relevant assets, not just the term of the FIT Contract. The expected life of the transmission facilities will be well in excess of the 23 years proposed by the County, as will the life expectancy of the generation assets that will be served by the proposed transmission facilities. Leases that the Applicant has in place for turbines, as well as the form of substation lease provided in Exhibit F, Tab 1, Schedule 1, Appendix 1, are for terms of 49 years.⁴⁵
58. It is possible that upon the FIT Contract terminating the wind farm could operate pursuant to a new power purchase agreement or as merchant generation. Accordingly, it is more appropriate to establish a term based on the expected life of the underlying assets. Based on a review of the forms of land agreements filed in recent leave to construct proceedings for transmission facilities that connect renewable energy generation facilities, we found that the Board has previously approved forms of agreement with

⁴³ Dufferin County Submissions, p. 4.

⁴⁴ Dufferin County Submissions, p. 4.

⁴⁵ Exhibit F, Tab 1, Schedule 1, Appendix 1, Sections 1.02 and 1.03.

terms of 40 years,⁴⁶ 50 years,⁴⁷ and in two instances with where the agreements would continue in perpetuity.⁴⁸ The term proposed by DWPI is consistent with these previously approved forms of agreement.

59. The County also argues that there are no express provisions that provide for the Applicant to access the rail corridor beyond the permanent easement that has been requested. The County's concern is that the form of agreement does not provide for necessary temporary working and access rights, and that the Applicant may not be able to access its facilities within the easement for maintenance or emergency response purposes. The Applicant notes that the last few lines of section 1 of the form of easement for the rail corridor provides for the grant of rights "... during the construction of the Works and when inspecting, maintaining and repairing the Works to access the Easement Lands with vehicles and equipment and to laydown materials and equipment on and over the County Lands."⁴⁹
60. The County further argues that the Board should require the form of agreement to be amended so as to impose liability on DWPI for the clean-up of historic environmental contamination on the rail corridor that is disturbed by the Applicant's construction and operational activities. In the Applicant's submission, this is not a matter for determination by the Board in the context of its limited authority under section 97 but, rather, is a matter for negotiation as between the parties.
61. CORE argues that the forms of land agreements should not be approved because it would be premature to do so due to the Applicant having recently amended the Application and due to the Applicant not having secured all necessary property rights. CORE further argues that approving the forms of land agreements would put parties who have not yet entered agreements at a disadvantage in their negotiations with DWPI.
62. In the Applicant's submission, CORE's arguments on this point are at odds with the requirements under section 97 of the OEB Act and should be rejected. Section 97 provides that in a leave to construct application, the applicant must satisfy 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 words "offered or will offer" makes it clear that there is no expectation for the property rights to have already

⁴⁶ McLean's Mountain Wind LP, Application for Leave to Construct, Exhibit G, Tab 1, Schedule 3, Form of "Indenture" Agreement (EB-2011-0394). This form of agreement specifies a term of 20 years plus four renewal periods of 5 years, for a total of 40 years.

⁴⁷ Grand Renewable Wind LP, Application for Leave to Construct, Exhibit B, Tab 3, Schedule 2, Form of Ground Lease (EB-2011-0063). This form of agreement specifies that the term shall be for a period of 21 years less a day subject to lessee's option to renew for a further period of 29 years, for a total of 50 years less a day.

⁴⁸ South Kent Wind LP, Application for Leave to Construct, Exhibit B, Tab 4, Schedule 6(i), Form of Transmission Easement (EB-2011-0217). This form of agreement specifies that the term shall be for a permanent and indefinite term without expiry. See also Summerhaven Wind LP, Application for Leave to Construct, Exhibit B, Tab 6, Schedule 3, Form of Transmission Easement (EB-2011-0027). This form of agreement specifies that the term shall commence on the effective date and continue in perpetuity.

⁴⁹ Exhibit F, Tab 1, Schedule 1, Appendix 6, Section 1.

been secured at the time the Board approves the forms of agreement. The purposes of section 97 would not be met if CORE's argument were to be accepted.

63. CORE also points out a concern with the clause regarding independent legal advice in section 15.11 of the form of wind turbine and transmission lease for private lands. Specifically, CORE notes that this clause is drafted on the basis of the agreement having been prepared by the landlord's lawyers rather than the tenant's (being DWPI). The Applicant notes that most of these leases were entered into early on in the development process. At that time, the owner/developer of the project, and the tenant under the leases, were Farm Owned Power (Melancthon) Ltd. ("**FOPM**") in conjunction with 401 Energy Ltd. The shareholders of FOPM were local landowners in the project area who entered into those leases with FOPM. Later in the development process, effective June 2, 2011, DWPI acquired the project and all development assets thereof, including the aforementioned leases. Any leases offered or to be offered by DWPI subsequent to the acquisition of the project from FOPM have used substantially the same form of agreement, but with a different independent legal advice clause. The clause used since project acquisition is consistent with that found in Exhibit F, Tab 1, Schedule 1, Appendix 4, Section 15.11 and with the applicable landlord's counsel inserted in place of the reference to Shibley Righton LLP shown therein.
64. CORE raises a further concern with certain references to the law firm of Shibley Righton LLP that appear in several of the forms of agreement. Specifically, CORE notes that Shibley Righton LLP is counsel to FOPM, based on correspondence to this effect which is appended to its submissions (but which has not been filed as evidence). FOPM is a minority shareholder in DWPI. CORE also notes that certain of the forms of land agreement indicate that Shibley Righton LLP is acting for the relevant landlord. CORE's concern is that counsel for a minority shareholder of the tenant cannot provide independent legal advice to the corresponding landlords with whom the land agreements were being negotiated. When the initial form of lease to be used for the project was negotiated, Shibley Righton LLP acted for FOPM and two other independent lawyers, one being from Stikeman Elliott LLP and the other being from SBMB Law, acted for the landlords to settle the form of project lease. All of the landlords were requested to sign that form of project lease which was dated January 1, 2010. When DWPI was negotiating to acquire the project, it requested that some amendments be made to the leases. The executive committee for the landowners requested that Shibley Righton LLP act for the landowners in connection with those amendments. Shibley Righton LLP then arranged for each of the landowners to sign the amended and restated leases dated April 15, 2011. Upon acquiring the project, DWPI assumed those leases from FOPM. A relatively small number of additional leases have been entered into since DWPI acquired the project. As indicated above, the independent legal advice clause used since the acquisition was modified. While Torys LLP acted on behalf of DWPI, in several instances the relevant landowners chose to retain Shibley Righton LLP and in other instances the relevant landowners chose other counsel or opted not to obtain legal advice despite DWPI's recommendations to them to do so. Although the circumstances are somewhat complicated, the Applicant submits that all landowners were treated fairly and were appropriately advised by DWPI or its predecessor to review the offered agreement and to seek independent legal advice prior to execution.

Consultation and Notice

65. As described in the Amended Argument-in-Chief, the Applicant has filed evidence describing in a thorough manner the consultation program and process undertaken by DWPI.⁵⁰ The Applicant has also met all requirements for notice in this proceeding, including as required by the Letter of Direction and in respect of the March 28, 2013 amendment, as confirmed by the Board in Procedural Order No. 6 and confirmed by Board staff in its submissions.⁵¹
66. In her submissions, Ms. Bryenton asks “that the Board note that (a particular indirectly affected) landowner does not approve of the amended route, is affected by it, and has not had his concerns addressed by the Applicant when making a decision as to whether it should deny leave to construct.”⁵² The Applicant notes that the proposed transmission facilities do not run along the referenced landowner’s property and that the effect of the March 28, 2013 amendment was that the proposed transmission facilities would be even further from this landowner’s property boundary than previously proposed. The Applicant further notes that this landowner had the opportunity, but chose not to seek intervenor or observer status or file a letter of comment in this proceeding. Ms. Bryenton’s counsel is not counsel of record for the relevant landowner in this proceeding. Accordingly, the Board should not give any weight to the representations that Ms. Bryenton’s counsel purports to make on behalf of this landowner.
67. Mr. Lyon argues that the Applicant’s consultations were not effective and references a statement from the Mayor of the Township of Melancthon to support this argument. As indicated, this statement is not in evidence and should therefore be disregarded and given no weight by the Board. We further note that the statement is political in nature and concerns discussions relating to a potential road use agreement, which largely relates to the collector system for the wind farm that is outside the scope of the present proceeding.

Factual Errors in Intervenor Submissions Received

68. Parties in the proceeding have, perhaps inadvertently, made factual errors in their submissions which have not otherwise been addressed in the foregoing discussion. DWPI takes this opportunity to correct these errors:
- (a) Board staff states that the FIT Contract is “in respect of the sale of 99.1 MW of electricity generated at DWPI’s wind farm.”⁵³ To clarify, the FIT Contract is in respect of the sale of all electricity generated at DWPI’s wind farm, which has 99.1 MW of generating capacity.

⁵⁰ Applicant’s Argument-in-Chief, para. 23.

⁵¹ Board Staff Submissions, p. 5.

⁵² Lori Bryenton Submissions, p. 3.

⁵³ Board Staff Submissions, p. 3.

- (b) Board staff states that “the environmental impact of the project which is determined through the REA process is ongoing.”⁵⁴ To clarify, it is the REA process itself that is ongoing and not the environmental impacts of the project. As indicated in the Applicant’s Amended Argument-in-Chief, the REA was deemed complete on December 27, 2012 and, from such date, the Ministry of the Environment has a six-month service guarantee for completing its review and determining whether to issue the REA. The REA application continues to be under technical review by the Ministry and a decision is expected in June 2013.
- (c) Board staff states that the project will affect privately held land, as well as municipal, Crown and County lands.⁵⁵ As there has been no discussion of Crown lands in this proceeding, DWPI wishes to clarify that the only Crown lands affected by the project are comprised of a very small number of parcels that consist of highway crossings and which are listed in the Applicant’s landowner line list.
- (d) Board staff lists the forms of land agreement that the Applicant has filed for Board approval. The list includes two mentions of “Form of Transmission Easement”. To clarify, one of these forms of easement is for use in respect of private easements and the other is in respect of the proposed use of the rail corridor. Please refer to Exhibit F, Tab 2, Schedule 1 for a complete listing.
- (e) Board staff refers to and quotes from a report appended to CORE’s letter of April 17, 2013.⁵⁶ The referenced report was prepared by DWPI and provided to the County to assist the County in holding a public meeting concerning the Dufferin Wind Farm project and the proposed transmission facilities in early 2013. As indicated, the report is not in evidence and it is therefore inappropriate for Board staff to have referenced or quoted from the report in its submissions. Nevertheless, as DWPI believes that the referenced statement could be misinterpreted, the Applicant wishes to provide the following clarification. First, although the statement could be interpreted as suggesting that DWPI is pursuing the 230 kV line as its preferred design strictly because of requirements imposed on DWPI by Hydro One to do so, the intention was to explain in a simplified manner that the proposed 230 kV facilities are the most efficient solution for connecting into Orangeville TS at 230 kV. The Applicant’s rationale for selecting the proposed approach have been presented throughout the course of the present proceeding. Second, the statement could be interpreted as suggesting that DWPI is overbuilding the transmission line. This statement was made in order to address an incorrect assumption that was being made by some members of the community that the proposed transmission facilities would be operated like a regional transmission line, which is always being used at or near its full capacity. Although the line will have more capacity than is necessary to convey electricity from the Dufferin Wind Farm to the IESO-controlled grid, this is a function of

⁵⁴ Board Staff Submissions, p. 5.

⁵⁵ Board Staff Submissions, p. 5.

⁵⁶ Board Staff Submissions, p. 4.

DWPI selecting a design and voltage that is suitable for the distance being covered. A lower voltage would result in significant line losses and would require a second transformer station to step up the voltage prior to connecting into Orangeville TS. Otherwise, a lower voltage line would have the same physical appearance as the proposed transmission line. Accordingly, the proposed transmission facilities would not be overbuilt and their design is both reasonable and appropriate.

- (f) CORE states that the Applicant “is asking for an approval that will give it carte blanche to construct transmission facilities without any real regulatory oversight” and that granting conditional approval gives “carte blanche to DWPI to do as it sees fit in the future, rather than as the regulatory agencies entrusted with preserving the public interest see fit.”⁵⁷ The Applicant notes that the granting of leave to construct subject to various conditions does not give DWPI full discretion to construct transmission facilities in any manner it wishes. Rather, it gives DWPI permission to construct the transmission facilities as they have been proposed and approved, subject to the conditions imposed by the Board. Typically, these conditions have required such things as compliance with the requirements of the IESO and the licensed transmitter whose system the facilities will be connected to, for all permits and approvals and land rights required for construction of the facilities to be secured, and for the proponent to seek prior approval of the Board or its designate before making any material changes to the approved project. To suggest that DWPI would have unlimited discretion is incorrect and to suggest that the Board’s proper exercise of its authority pursuant to section 92 of the OEB Act is not “real regulatory oversight” shows a significant lack of respect and understanding for the role and authority of the Board.
- (g) CORE states that “if DWPI ceases to operate, any consumers who had come to rely on the electricity transmitted by DWPI will have to find another source of electricity.”⁵⁸ To clarify, consumers in Ontario generally do not have the ability to specify or ascertain the specific source of electricity that serves them. For the most part, all generation is delivered onto the interconnected system (or onto local distribution systems) and all consumers are served by this ‘pool’ of electricity. Electricity is not traceable on the system. Consequently, consumers do not ‘come to rely on’ particular sources of generation and they will not need to actively seek alternative sources in the hypothetical circumstance described by CORE.
- (h) CORE states that in the March 28, 2013 amendment to the Application DWPI made seven changes to the project. To clarify, only one of these related to an actual change in the proposed route, which the Board has already found to not be material.⁵⁹ As explained in response to CORE Supplemental Interrogatory #2, several of the referenced changes are related to DWPI’s collector system which is not relevant to the Application. Another change refers to the placement of the

⁵⁷ CORE Submissions, pp. 1 and 12.

⁵⁸ CORE Submissions, p. 8.

⁵⁹ Procedural Order No. 6, p. 2.

line overhead through wetlands, which was contemplated by the Application at the time it was initially filed. Two other ‘changes’ refer to the potential extension of certain underground portions of the line, which changes would not affect the route or the overall length of the line.

- (i) Ms. Bryenton states that the Applicant’s assertion that the public interest test for leave to construct has been met is “not accurate as demonstrated by CORE and other intervenors who have stated within interrogatories and comments numerous reasons why the transmission route is neither appropriate nor acceptable.”⁶⁰ Statements made by intervenors within the interrogatories they posed to the Applicant comprise neither evidence nor argument in this proceeding and should be disregarded by the Board. Such statements may not be relied upon as “demonstrating” anything in this proceeding and no intervenor should benefit from having filed their interrogatories other than in accordance with the requirements under Rule 28 of the Board’s Rules of Practice and Procedure. It is also not clear as to which “comments” Ms. Bryenton refers to here as demonstrating the inaccuracy of DWPI’s assertion. However, to reiterate, no intervenor has filed any evidence in this proceeding.
- (j) Ms. Bryenton, in the last paragraph of her submissions, states that in the Applicant’s Argument-in-Chief at paragraph 15, “the Applicant indicates it has experienced multiple ownership issues, OPA FIT Contract extensions, numerous project layout changes, and transmission route alterations.”⁶¹ This is a completely inaccurate description of the content of paragraph 15 of the Applicant’s Amended Argument-in-Chief. Rather, this paragraph indicates that the OPA offered a FIT Contract, that it was finalized and executed, that it was assigned by Farm Owned Power (Melancthon) Ltd. to DWPI and that, as a result, DWPI is the owner responsible for the development, construction and operation of the wind farm for which the proposed transmission facilities are needed. A description of the amendments made to the FIT Contract is provided in response to Board Staff Interrogatory #1(i).

Conditions of Approval

- 69. In its submissions, Board staff argues that, in keeping with the Board’s general practice, approval of the leave to construct application should be made conditional on:
 - (a) the Applicant complying with all requirements of the IESO and Hydro One as described in the SIA and CIA, respectively;
 - (b) the successful completion of the REA approval process; and

⁶⁰ Lori Bryenton Submissions, p. 4.

⁶¹ Lori Bryenton Submissions, p. 5.

- (c) in the event of a change in the organizational structure of the transmission project, a requirement for the Applicant to inform the Board of the new contact point for the project for purposes of monitoring and reporting.⁶²

No specific language for these conditions and no other conditions of approval were proposed by Board staff.

70. DWPI does not oppose Board staff's recommendations in principle. However, in the absence of specific proposed language, DWPI has reviewed the conditions of approval issued by the Board for several recent leave to construct applications⁶³ and, in DWPI's submission, Board staff's recommendations can be addressed by the following conditions, each of which is based on common language used for previously imposed conditions in leave to construct applications for renewable energy generation facilities:
- (a) "DWPI shall satisfy the Independent Electricity System Operator ("IESO") requirements as reflected in the System Impact Assessment Report - Final Addendum Report dated August 31, 2012 and the System Impact Assessment Report - Final Report dated December 2nd, 2011 (as applicable)."
 - (b) "DWPI shall satisfy the Hydro One Networks Inc. ("Hydro One") requirements as reflected in the Customer Impact Assessment - Final Report dated August 31, 2012."
 - (c) "DWPI shall obtain all necessary approvals, permits, licenses, certificates and easement or other land rights required to construct, operate and maintain the transmission facilities, and shall provide copies of any such written approvals, permits, licenses and certificates upon the Board's request."

The Applicant has not found any precedent for a condition of approval that would satisfy Board staff's third recommendation listed above. Moreover, as Board staff has not made any proposals with respect to conditions of approval related to monitoring and reporting, the Applicant is not in a position to propose appropriate language.

71. The County proposes that the granting of leave to construct be made conditional on "compliance with all applicable laws, including the *Line Fences Act*."⁶⁴ The Applicant opposes the imposition of such a condition. Based on our review of conditions of approval imposed in recent leave to construct proceedings, the Board does not typically make the granting of leave to construct conditional on compliance with "all applicable laws" or anything similar. Instead, the Board normally imposes a condition similar to that proposed above in relation to obtaining necessary permits and approvals and land rights. In the Applicant's view, the Board's typical approach is preferable. The Board is not in a position to determine, monitor or enforce compliance with respect to all manner

⁶² Board Staff Submissions, p. 8.

⁶³ McLean's Mountain Wind LP, Decision and Order, Appendix A (EB-2011-0394), June 28, 2012; Grand Renewable Wind LP, Decision and Order, Appendix A (EB-2011-0063), December 8, 2011; South Kent Wind LP, Decision and Order, Appendix A (EB-2011-0217), October 11, 2011.

⁶⁴ Dufferin County Submissions, p. 2.

of laws applicable to the proposed facilities. Moreover, we note that such an obligation is already imposed on DWPI through the terms of the FIT Contract. In particular, section 2.1(a) of the standard terms requires the Supplier to design and build the “Contract Facility” meeting all applicable laws and regulations where “Contract Facility” refers to the “Renewable Generating Facility” which, in turn, is defined so as to include the facilities used for delivering electricity from the generating facility to the IESO-controlled grid. Finally, with respect to the *Line Fences Act*, the County has filed no evidence or made any submissions to identify the applicability or potential applicability of this legislation or to highlight any particular concerns it may have relating to matters under this legislation. To the extent this legislation applies to the Applicant, if at all, the terms of such legislation will be sufficient to ensure DWPI’s compliance. It is not necessary or appropriate for the Board to require compliance with this legislation as a condition of approval.

72. The County also requests that the Board confirm that any future change of ownership or control of the transmission line will be subject to the requirements of the OEB Act and that the Applicant be obligated to inform the County prior to any such change.⁶⁵ It is the Applicant’s submission that no such condition, confirmation or obligation should be imposed by the Board. First, we note that Ontario Regulation 161/99 provides for an exemption from the requirements of section 86 of the OEB Act (which deals with the change in ownership or control of transmission systems) for transmitters, such as DWPI, that are generators which transmit only for the purpose of conveying electricity to the IESO-controlled grid. Second, if a future change of ownership or control of the transmission line is otherwise subject to the OEB Act, then it will be those requirements of the OEB Act that will give rise to the obligation for DWPI to comply. An additional obligation requiring such compliance and imposed as a condition of approval would be of no value. With respect to the County’s request that the Board obligate the Applicant to inform the County prior to any such change, it is the Applicant’s view that this is a matter that is more appropriately addressed through the terms of the easement currently being negotiated by the Applicant and the County and we note that section 25 of the form of easement for the rail corridor, as filed in the Application, already addresses the circumstances associated with potential transfers, assignments and changes of control.⁶⁶
73. The County further requests that the Applicant be required to establish and maintain a public liaison committee to meet regularly with community representatives regarding the use of the Rail Corridor and that the Applicant also be required to post maintenance schedules at locations along the public trail and publish notices of scheduled maintenance in the local newspaper at least 15 days prior to undertaking such work.⁶⁷ The Applicant does not oppose these submissions. However, the Applicant asks the Board to consider whether these requests are more appropriately addressed through conditions of approval or pursuant to the easement agreement to be negotiated by the Applicant and the County. The Applicant is also unclear as to the proposed terms of reference for such a public liaison committee, but would be open to discussing this matter with the County.

⁶⁵ Dufferin County Submissions, p. 2.

⁶⁶ Exhibit F, Tab 1, Schedule 1, Appendix 6, s. 25.

⁶⁷ Dufferin County Submissions, pp. 1-2, 5.

74. CORE argues generally that it is not appropriate for the Board to grant conditional leave to construct due to various uncertainties associated with the project and that all uncertainties need to be resolved before the Board can consider granting leave to construct.⁶⁸ The Applicant strongly disagrees. CORE's argument is at odds with the regulatory framework applicable to transmission projects. For example, the regulatory framework inherently recognizes that not all land rights will necessarily be secured upon the granting of leave to construct. This is why the legislation provides for the right to seek authority to expropriate once a proponent has received leave to construct. If the Board could not grant leave to construct until all uncertainties were resolved, the process would be unworkable, inefficient and ineffective, as well as a strong deterrent to generation and transmission development in Ontario. Moreover, the Board understands that transmission projects are complex and involve a wide range of technical, environmental and regulatory requirements, not all of which are within the scope of the Board's jurisdiction. It is appropriate for the Board to address such uncertainties through appropriate conditions.

CONCLUSION

75. No party other than the Applicant has filed evidence in this proceeding. The only evidence that the Board may rely upon, therefore, is that of the Applicant. Based on this evidence, DWPI has demonstrated that the proposed transmission facilities are in the public interest, having regard to the scope of section 96(2) of the OEB Act.
76. In accordance with the OEB Act and the applicable Board filing requirements, as applicable to non-rate-regulated transmission facilities, the scope of the Board's mandate on an application for leave to construct excludes most, if not all of the issues raised by intervenors.
77. The Applicant has demonstrated the need for the proposed transmission facilities and has shown that the proposed project has fulfilled the requirements under section 96(2) of the OEB Act. As the costs of the project will be the responsibility of the Applicant and will not be recovered through transmission rates, there will be no impact on consumers with respect to rates. Moreover, the Applicant has successfully completed the SIA and CIA processes, and each of the IESO and Hydro One have determined that the proposed facilities may be connected to their respective systems without adversely impacting the reliability or quality of electricity service for existing consumers on their respective systems. Furthermore, DWPI has demonstrated that the proposed transmission facilities will support the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario. DWPI has also provided substantial evidence to support its route selection and project design, and has filed forms of land agreements that it has offered or will offer affected landowners, with terms that are reasonable and fair.
78. For the foregoing reasons, DWPI respectfully requests that leave to construct the applied for facilities, on the terms and conditions which were presented and considered throughout this proceeding, be granted.

⁶⁸ CORE Submissions, p. 11.

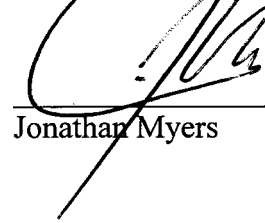
79. Having regard to the Applicant's project schedule, DWPI also respectfully requests that the Board endeavor to issue its decision in this matter in a reasonable timeframe.

All of which is respectfully submitted this 2nd day of May, 2013.

DUFFERIN WIND POWER INC.

By its counsel

Torys LLP

A handwritten signature in black ink, appearing to read 'Jonathan Myers', is written over a horizontal line. The signature is stylized and cursive.

Jonathan Myers