

May 24, 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) - Response to Correspondence from CORE**

We are counsel to Dufferin Wind Power Inc. ("Dufferin Wind"), applicant in the above-referenced proceeding. On May 22, 2013 Dufferin Wind was served with a copy of a letter from counsel for the intervenor Conserve Our Rural Environment ("CORE"). The purpose of CORE's letter was to request an amendment to the evidentiary record in this proceeding pursuant to Rule 11 of the Board's *Rules of Practice and Procedure*. For the reasons that follow, it is Dufferin Wind's submission that the materials filed by CORE are not relevant to the present proceeding and, therefore, should not be included in the evidentiary record.

In its letter, CORE argues that the recent filing of a statement of claim by a landowner (the "Blacks") in respect of certain leases entered into by the Blacks in connection with the Dufferin Wind Farm project constitutes a material change to the evidence that is already before the Board. As demonstrated by Exhibit F, Tab 1, Schedule 1 of Dufferin Wind's pre-filed evidence, neither the Blacks nor the lands that are the subject of the leases to which the statement of claim relates are directly affected by the proposed transmission facilities. Dufferin Wind has not and does not propose to place any transmission facilities on the Blacks' properties. Rather, the Blacks' leases only contemplate the placement of generation facilities and low voltage distribution/collector lines on the subject properties. Such generation and distribution facilities are beyond the scope of the leave to construct application that is before the Board. The requirement under section 97 of the *Ontario Energy Board Act* (the "Act") for an applicant under section 92 to demonstrate that it has offered or that it will offer to landowners an agreement in an approved form only extends to those landowners who own lands that will be affected by the approved route or location of the facilities that have been proposed in the leave to construct application. As such, the statement of claim filed by the Blacks has no relevance to the leave to construct application that is before the Board.

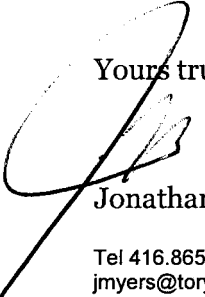
It is also important for the Board to recognize that, notwithstanding that the materials filed by CORE are not relevant to the proceeding, the materials do not provide evidence of any facts upon which the Board could reasonably rely. The statement of claim and notice of claim are

merely unproven and unsubstantiated allegations made by the Blacks. The only fact supported by the materials is that the Blacks have filed a claim relating to their leases which, as indicated above, is not relevant to the proposed transmission facilities or to Dufferin Wind's leave to construct application.

The evidentiary record in respect of the independent legal advice clauses in Dufferin Wind's forms of agreements, for which it seeks approval from the Board pursuant to section 97 of the Act, is sufficient for the Board to render a decision. In addition to the clauses and the forms of agreement that have been filed, the Board has received argument from CORE and reply argument from Dufferin Wind on this matter. The materials filed by CORE together with its request to amend the evidentiary record consist of unsubstantiated allegations, specific to the circumstances of the Blacks, which circumstances are not relevant to the application that is before the Board.

For the foregoing reasons, the Board should deny CORE's request. Dufferin Wind reserves the right to make further submissions concerning this matter should it become necessary for it to do so.

Yours truly,



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