



BOARD STAFF SUBMISSION

EB-2013-0031

May 27, 2013

Application & Background

Wainfleet Wind Energy Inc. (“Wainfleet Wind” or the “Applicant”) has filed an application with the Ontario Energy Board (the “Board”) under subsection 41(9) of the *Electricity Act, 1998*, (the “*Electricity Act*”) for an order or orders of the Board establishing the location of certain distribution facilities within road allowances owned by the Township of Wainfleet (the “Township”).

The Board issued a Notice of Application on March 6, 2013.

Although the Township did not request intervenor status the Board pursuant to sections 1.03 and 22.02 of the Board’s *Rules of Practice and Procedure*, granted leave to the Township to participate as an Intervenor.

Wainfleet Wind Energy Inc. is an Ontario corporation which carries on the business of developing renewable wind energy generation projects and the associated distribution facilities in the Township.

Wainfleet Wind has entered into a contract with the Ontario Power Authority and is in the process of developing a 9 MW wind power generating facility with five wind turbines in the Township of Wainfleet (the “Project”).

As part of the Project, Wainfleet Wind is proposing to construct a 27.6kV underground distribution system that will collect power from 5 turbines and deliver it to Hydro One Networks Inc.’s substation (collectively the “Distribution System”).

In its application, Wainfleet Wind stated that it is a “distributor”, as defined in the *Electricity Act* and pursuant to the statutory right provided under sub-section 41(1) and 41(5) of the *Electricity Act*, has chosen to locate sections of the Distribution System within municipal road allowances that are owned by the Township.

The Distribution System comprises an underground line running from Turbine 4 (at the southern edge), north along Station Road, west along Concession 1 Road, north along private lands and Sideroad 22, before terminating at a Hydro One substation. The system will be constructed using direct buried cables,

concrete encased duct banks and directional bored ducts for crossings. Wainfleet Wind has provided detailed drawings of the relevant sections of the Distribution System.

According to Wainfleet Wind's evidence, after discussions with the Township that started in December 2010, the two parties have not succeeded in reaching an agreement on the location of the Distribution System. During this time, the evidence is that, the Township Council passed a resolution seeking a moratorium on wind development, passed a by-law requiring wind turbines be set back 2km from residential properties, refused Municipal Consent applications, and deferred consideration of applications pending the outcome of the Renewable Energy Approval ("REA") application and a challenge of the wind turbine set-back by-law.

Wainfleet Wind has therefore requested that the Board issue an order pursuant to section 41(9) of the Electricity Act, establishing the location of Wainfleet Wind's distribution facilities as set out in Exhibit B, Tab 3, Schedule 1 of its application

Submission:

For the reasons set out below Board staff is of the view that the Applicant's request should be granted.

In its application Wainfleet Wind provided a detailed chronology of events, provided evidence of correspondence between Township staff and the Applicant relating to the location of the distribution facilities and council meeting minutes. The Township did not file any interrogatories on the evidence filed by Wainfleet Wind nor did it file any evidence with respect to an alternate route or location for the Distribution System.

Board staff also notes that the Township's opposition to the Project appears to be driven by a general opposition to the Project rather than any technical issues arising from the proposed location for the Distribution System. In this regard, Board staff notes that although the Township has passed a resolution seeking a moratorium on wind development and enacted a setback by-law, it has not provided the Applicant with any specific concerns relating to the route of the underground line in particular or the location of the associated facilities in general. For example, Board staff notes that the evidence indicates that the Township Council rejected Wainfleet Wind's application for a utility road crossing and provided no reasons for its refusal. Further, in refusing to approve Wainfleet

Wind's application for Municipal Consent, the Township Council did not identify any technical concerns for its decision and simply noted that it had decided to defer decision until the REA process had concluded and the outcome of the legal challenge to the setback by-law was known.

With respect to the legal challenge to the setback by-law, Board staff notes that the Ontario Superior Court of Justice issued its decision on April 12, 2013 and concluded that the by-law was "invalid and without force and effect". With respect to the status of the REA application, the Applicant stated that REA process was expected to be completed by June 13, 2013.

Board staff also notes that Township staff have recommended that Wainfleet Wind's applications for road crossings and Municipal Consent be approved. Board staff also submits that the proposed location of the Distribution System appears reasonable in that the Applicant has elected to build the line under ground and along municipal road allowances or rights-of-way. In the absence of information to the contrary, the route selected appears to staff to be the most efficient and least invasive.

All of which is respectfully submitted.