



McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

**George Vegh**

Direct Line: (416) 601-7709  
Direct Fax: (416) 868-0673  
Email: gvegh@mccarthy.ca

June 3, 2013

**VIA RESS and Courier**

Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Suite 2700  
Toronto, ON M4P 1E4

**Attention: Kirsten Walli**  
**Board Secretary**

Dear Ms. Walli:

**Re: Varna Wind Inc. Leave to Construct Application**  
**Board File No. EB-2012-0442**  
**Varna Wind Inc. – Argument- In-Chief**

We are counsel to Varna Wind, Inc. (the "Applicant") in the above-noted proceeding. Please find enclosed the Applicant's Argument-In-Chief.

Sincerely,

*Signed in the original*

George Vegh  
Enclosure

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B, as amended* (the “**OEB Act**”);

**AND IN THE MATTER** of an application by Varna Wind, Inc. for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct an electricity transmission line and related facilities.

**APPLICANT’S ARGUMENT-IN-CHIEF**

## **INTRODUCTION**

1. Varna Wind, Inc. (the “**Applicant**”) filed an application with the Ontario Energy Board (the “**Board**”) on November 16, 2012 under sections 92 and 96(2) of the OEB Act. The Applicant has applied to the Board for leave to construct an electricity transmission line and related facilities (collectively, the “**Facility**”). The Facility will consist of:
  - (a) a 115 kV transmission line (the “**Transmission Line**”) approximately 23 km in length, comprising a single circuit overhead line extending from a newly constructed transforming substation (the “**Substation**”) to the point of interconnection at an independent breaker (described below) that connects to an existing Hydro One Networks Inc. (“**HONI**”) transformer station, Seaforth TS;
  - (b) the Substation from the pull-off tower; and
  - (c) a newly constructed independent breaker (the “**Breaker**”) connecting to HONI’s Seaforth TS.
2. The Facility will be located in the municipalities of Bluewater and Huron East, and will be used to connect the Bluewater Wind Energy Centre (“**BWEC**”), a proposed 59.9 MW wind energy generation facility which was awarded a 20-year power purchase agreement under the Ontario Power Authority’s (“**OPA**”) Feed-in Tariff program (the “**FIT Program**”) in July 2011.
3. The Board issued a Notice of Application dated December 12, 2012, and directed the Applicant to serve and publish the Notice. The Board received requests for intervenor status from the Independent Electricity System Operator (the “**IESO**”), HONI, the Municipality of Bluewater, a group of landowners (the “**Group**”), J.R. McLachlan, Jeff Allan, Brian and Helen Oldfield (the “**Oldfields**”) and Gerhard and Heather Ritzema (the “**Ritzemas**”).
4. The Applicant did not object to any of the above parties being granted intervenor status. The Applicant did, however, ask to Board to a) clarify the scope of its jurisdiction in a leave to construct proceeding, and b) request that parties limit their participation to matters within the Board’s jurisdiction.<sup>1</sup>

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<sup>1</sup> Applicant’s correspondence to the Board dated January 16, 2013, pg. 2.

5. These submissions are in response to Procedural Order No. 4, wherein the Board set a timeline for the rest of the proceeding, including provision for the filing of the Applicant's reply evidence, interrogatories and replies on the reply evidence, and final submissions.

### ***Legislative Context***

6. In Procedural Order No. 1 issued February 4, 2013, the Board stated:

In this proceeding, the Board is required to consider only the public interest, which is defined as follows by subsection 96(2) of the Act:

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.

Board approval of the form of easement agreements is within the scope of the Board's jurisdiction pursuant to section 97 of the Act.

The Board does not have the power to consider any other issues.

Parties requesting intervenor status have indicated a broad range of interests in this proceeding. However, the Board notes that the following types of issues are not within its jurisdiction: environmental issues; issues related to matters of health; land-use issues; issues relating to the BWEC wind farm; policy and other issues concerning the Ontario Power Authority's feed in tariff program; and the Ontario government's renewable energy policy.

7. When determining whether a leave to construct is in the public interest, therefore, the Board can only consider the interests of consumers with respect to prices and reliability and quality of electricity service, and where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.
8. Pursuant to section 97 of the OEB Act, the Board also considers the form of easement agreement offered to landowners.

9. Furthermore, the Board's *Filing Requirements for Electricity Transmission and Distribution Applications* require that an Applicant show that it has engaged in communication and consultation with affected stakeholders.
10. As detailed below, the Applicant has demonstrated in its evidence and responses to interrogatories that the Application has met the criteria under section 96(2), and the construction of the Facility is in the public interest. Also as detailed below, the Applicant has consulted and continues to work with both directly and indirectly affected landowners as well as stakeholders more generally.

## **THE BOARD'S CRITERIA IN A LEAVE TO CONSTRUCT APPLICATION**

### ***Interests of Consumers With Respect to Prices***

11. The cost of the Facility will be borne by the Applicant, and the Facility will not have any adverse impact on the price of electricity in the wholesale market or on transmission rates.

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

#### *System Impact Assessment and Customer Impact Assessment*

12. The System Impact Assessment ("**SIA**") found that the connection of the BWEC via the Facility is acceptable to the IESO.<sup>2</sup> The Applicant will construct the Facility in accordance with the recommendations and conditions in the SIA.
13. The Customer Impact Assessment ("**CIA**") performed by HONI found that the proposed BWEC and Facility are not expected to adversely impact the transmission customers in the area.<sup>3</sup> The Applicant will construct the Facility in accordance with the recommendations and conditions in the CIA.

#### *HONI evidence on operational matters and incremental costs, both current and future*

14. In its evidence, HONI submitted that as part of this proceeding, the Board should consider operational matters and incremental costs, both current and future, associated with the connection of the Facility.

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<sup>2</sup> System Impact Assessment, pg. 1.

<sup>3</sup> Customer Impact Assessment, pg. 5.

15. In response and as previously indicated, the Applicant notes that it has and continues to work with HONI to develop protocols and procedures for operation and maintenance of the facilities and that moreover, the Applicant will be responsible for the cost of any direct impact that its project causes to the quality or reliability of HONI's electricity service. Discussions with HONI have been productive and have progressed.
16. As for the evidence filed by HONI on future impacts to HONI distribution, the Applicant continues to submit that evidence or discussion on these matters is out of scope in light of previous Board decisions wherein these questions were found to be outside the scope of a leave to construct proceeding.<sup>4</sup> The Applicant also maintains that HONI's evidence on these matters in this proceeding calls for relief that is beyond the authority of the panel in this proceeding to grant.<sup>5</sup>
17. The Applicant reserves its right to make further submissions on these matters should they be raised in final argument.

*Design and Construction Standards and Procedures – Protection of Pre-Existing Facilities and Personnel*

18. In addition to working with HONI to develop protocols and procedures for operation and maintenance, the Applicant will implement certain design and construction standards and procedures which will protect pre-existing facilities and personnel from direct and induced currents and voltages.<sup>6</sup>
19. In respect of design and standards, the Transmission Line design will comply with the Electrical Safety Authority's minimum electrical clearance requirements and maximum induction requirements.
20. With respect to cable location identification, the construction contractor building the line will be responsible for calling in for locates (Ontario One Call), and more in-depth underground location investigation may take place if there is a suspicion of pre-existing underground cables or any other underground facility such as gas lines and/or communication cables in the vicinity of a proposed pole location. The Applicant also contacted the owner of the only known gas line(s) along the route for corrosion protection discussions.

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<sup>4</sup> See the Applicant's Motion to Strike Evidence dated April 10, 2013, which discusses the leave to construct applications filed by Summerhaven Wind, LP and Grand Renewable Wind LP.

<sup>5</sup> See the Applicant's Motion to Strike Evidence dated April 10, 2013, pg. 3.

<sup>6</sup> See answer to Board Staff interrogatory 7 dated March 4, 2013.

21. In respect of grounding, each pole will have provision for ground rod installation, and ground rods will be installed wherever it is determined to be necessary.
22. On the question of stray voltage, the Applicant notes that the proposed Facility does not connect to the local distribution system and that it should thus not directly lead to any stray voltage. However and as mentioned, the Applicant has committed to work closely with HONI to mitigate impacts to local distribution customers in the event that a concern should arise. Also as discussed above, the Customer Impact Assessment concluded that the BWEC and Facility are not expected to adversely impact transmission customers in the area.

***Promotion of the Use of Renewable Energy Sources in a Manner Consistent with the Policies of the Government of Ontario***

23. One of the Board's objectives under the OEB Act is to facilitate the timely expansion of transmission and distribution systems to accommodate the connection of renewable energy generation facilities.<sup>7</sup> The Facility will connect the BWEC to the IESO-controlled grid.
24. As noted above, the BWEC has been awarded a power purchase agreement under Ontario's Feed-in Tariff Program, which program is in place to further the provincial government's policy objective of increasing the amount of renewable energy generation being added to the provincial grid.
25. The Facility is therefore consistent with government policy in respect of the promotion of renewable energy sources.

***Land Matters***

***Overview of Land Rights***

26. Certain sections of the Facility will be built within the municipal right-of-way along Centennial and Hensall roads, while other sections will be built on easements acquired from private landowners. As provided in paragraph 44 of the Application, and further provided in the Applicant's reply evidence filed May 8, 2013, the Applicant's proposed route for the Facility is comprised of a Corridor that includes Centennial and Hensall Roads and certain private lands adjacent thereto.

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<sup>7</sup> Section 1(1) 5 of the OEB Act.

27. As discussed in paragraph 45 of the Application, within this Corridor, the Applicant considered the options available to it with respect to the potential use of Municipal rights-of-way on either side of Centennial and Hensall Roads, having regard to existing facilities within those Municipal rights-of-way as well as the potential to use adjacent private easements on either side of the roads. The proposed Transmission Line route has been designed based on analysis of these options as well as related consultations regarding affected landowners and stakeholders.

***Form of Easement Agreement***

28. Section 97 of the OEB Act requires that the Board be satisfied that the Applicant has offered or will offer each landowner affected by the proposed route or location an agreement in a form approved by the Board.
29. As detailed in the Applicant's answers to interrogatories,<sup>8</sup> the Applicant made significant efforts to alleviate landowner concerns related to the agreement, including amending some terms, where possible, to address specific provisions. In cases where agreement terms could not be amended, the reasoning for the inclusion of the provision was fully explained and support material provided if required.<sup>9</sup> Upon request, the Applicant also provided reimbursement for legal expenses up to \$1500 to landowners.

***Project Routing***

30. The Applicant examined several different routing options, and chose the route with the least impact to the environment and landowners.
31. More specifically, and as discussed in paragraph 43 of the Application, it was determined early in the development process that the least environmental impact from the Transmission Line would occur if the Transmission Line ran along an existing Municipal right-of-way. A number of routes along back country corridors were considered in various places along the route, but were disqualified due to unacceptable environmental impacts (provincially significant wetland interference or tree clearing) or disinterest of landowners to participate in the project. In addition, several other roads were considered as corridors or routes but were disqualified due to higher

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<sup>8</sup> Applicant's answers to Board Staff IR No. 11 dated March 4, 2013.

<sup>9</sup> The Applicant also provided answers to questions about the agreement in its answers to Group IR 3 (a) and (b), and Group IR 29.

concentrations of residences, large amounts of pre-existing infrastructure in the right-of-way or unacceptable environmental impacts.<sup>10</sup>

***Proposed Mitigation / Accommodation Measures in Response to the Oldfields and the Ritzemas***

*Oldfields*

32. The submissions and evidence of the Oldfields indicated that the Oldfields considered that the proposed Transmission Line would be too close to their property. Although the Oldfields acknowledged that the proposed location of the Transmission Line would be compliant with Canadian Standards Association (CSA) standard CSA-C22,<sup>11</sup> the Oldfields noted that they found this standard to be unsatisfactory.<sup>12</sup>
33. Despite the fact that the Oldfields had previously turned down the Applicant's proposals to locate the Transmission Line along the back of the Oldfield's property,<sup>13</sup> the Applicant initiated and is currently working on another solution to address the Oldfields' concerns.<sup>14</sup> Specifically, the Applicant is working with HONI on a proposal to relocate the section of the Transmission Line which runs adjacent to the Oldfields' house and barn across the street from these structures.
34. As proposed and as detailed in the Applicant's reply evidence filed May 8, 2013, existing HONI distribution on the West side of Hensall Road would be buried underground, allowing for the Applicant to construct its transmission line where the HONI distribution line currently exists. HONI is currently in the detailed engineering phase of planning in respect of its work on this proposal. The Applicant will keep the Board and all parties informed of its progress in working with HONI in this regard.
35. As noted in the Applicant's reply evidence, though the Board does not have the authority to order the Applicant to have HONI bury its distribution line and move a portion of the Applicant's line across Hensall Road, the Applicant is pursuing this approach as a means to mitigate the impact of the Transmission Line on the Oldfields' property.

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<sup>10</sup> See also answer to Board Staff IR 6 and answer to Group IR 5(b).

<sup>11</sup> See the Applicant's Interrogatories 1 and 2 to the Oldfield's evidence, April 10, 2013.

<sup>12</sup> See the Oldfields' Response to Interrogatories, April 20, 2013.

<sup>13</sup> See the Applicant's reply evidence filed May 8, 2013, pg. 3.

<sup>14</sup> See the Applicant's reply evidence filed May 8, 2013, pg. 3.

*Ritzemas*

36. As detailed above, a section of the proposed Transmission Line follows the municipal right-of-way along Centennial Road. However, evidence filed by the Ritzemas indicated that Centennial Road does not follow, at the point immediately east of its crossing with Division Line, the original road allowance.<sup>15</sup> Instead, at this point of intersection with Division Line, Centennial Road deviates from the original road allowance and veers north for approximately 200 meters before rejoining the original road allowance.<sup>16</sup>
37. Also apparent from the Ritzema evidence is that a portion of the land in the original road allowance is now used for agricultural purposes.
38. In light of the Ritzema evidence, the Applicant indicated in its reply evidence that it was prepared to build the Transmission Line either along the original route (within the original road allowance) or, if the Ritzemas preferred, along the actual route of Centennial Road.<sup>17</sup>
39. On May 17, 2013, the Ritzemas filed a response to the Applicant's reply evidence indicating that they were prepared to work with the Applicant in respect of a mutually agreeable pole placement within the original road allowance for Centennial Road,<sup>18</sup> thereby permitting the Applicant to continue its original planned route with only a small modification in respect of the placement of one pole.<sup>19</sup> As detailed in the Applicant's responses to Board Staff interrogatories on the Applicant's reply evidence filed May 27, 2013, the Applicant will work with the Ritzemas in determining the pole placement and to document the legal arrangements respecting the use of the land.<sup>20</sup>

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<sup>15</sup> See the evidence filed by the Ritzemas on March 27, 2013.

<sup>16</sup> See Exhibit A of the Interrogatories of the Applicant to the Ritzemas dated April 10, 2013.

<sup>17</sup> See the Applicant's reply evidence on Ritzema evidence dated May 8, 2013. The alteration of the route would also have been subject to further information from the Municipality.

<sup>18</sup> The Ritzemas stated that they were "prepared to agree to the placement of one pole in the deviation area" based on specific parameters outlined in their response. See pg. 2 of the Ritzemas' response to the Applicant's reply evidence dated May 17, 2013.

<sup>19</sup> See pg. 2 of the Ritzemas' response to the Applicant's reply evidence dated May 17, 2013.

<sup>20</sup> The Applicant will seek the Board's assistance if necessary to effect this arrangement. See the Applicant's responses to Board Staff's interrogatories on the Applicant's reply evidence, filed May 27, 2013, pg. 2.

***Consultation with Municipalities and Stakeholders, including consultation through the REA process***

40. Public and stakeholder consultation has been an integral part of the environmental approval process for the BWEC and Facility.
41. The BWEC and the Facility are subject to the environmental screening process prescribed by *Ontario Regulation 359/09, Renewable Energy Approvals under Part V.0.1 of the Act* made pursuant to *Environmental Protection Act*, R.S.O. 1990, c. E.19.
42. As part of the REA process, consultation regarding key components of the planning and development of the BWEC and the Facility was carried out through direct mailings, newspapers advertisements, and several public open house meetings.<sup>21</sup> As indicated in answer to interrogatories, the Applicant's stakeholder consultation exceeded all legal requirements, as was the Applicant's intention.<sup>22</sup>
43. The Applicant received its REA from the Ministry of the Environment ("MOE") on April 22, 2013.

**CONCLUSION**

44. Based on the foregoing, the Applicant submits that approval of the Facility is in the public interest. The price, reliability and quality of electricity will be maintained, and approval of the Facility is consistent with the promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.
45. The Applicant therefore requests that the Board approve this application as proposed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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<sup>21</sup> See paras. 53-54 of the Application.

<sup>22</sup> See the Applicant's answer to Group interrogatory 31.