

August 21, 2013

**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 Authority to Expropriate  
(EB-2013-0268)**

We are counsel to the applicant, Dufferin Wind Power Inc. (“Dufferin Wind”) in the above-referenced proceeding. Dufferin Wind filed its application on July 19, 2013 (the “Expropriation Application”). Although the Board issued an acknowledgement letter on July 24, 2013, the Board has not yet issued a Notice of Application or a Letter of Direction. Given Dufferin Wind’s project schedule, the applicant requests that the Board proceed expeditiously to issue the Notice of Application and Letter of Direction.

As the Board is aware, on August 2, 2013 Conserve Our Rural Environment (CORE) Inc. served a Notice of Appeal to the Divisional Court from the Board’s Decision and Order in Dufferin Wind’s leave to construct proceeding (EB-2012-0365). An amended Notice of Appeal was served by CORE on August 8, 2013. Based on a discussion with Board counsel, we understand that the Board may be considering the procedural implications for the Expropriation Application, if any, of the Notice of Appeal. For the reasons that follow, Dufferin Wind is of the view that the Board should carry out the expropriation proceeding in parallel with the hearing by the Divisional Court of the leave to construct appeal and that there is no basis for the Board to hold in abeyance or delay its consideration or administration of the Expropriation Application.

Dufferin Wind recognizes that, pursuant to s. 99 of the *Ontario Energy Board Act* (the “Act”), obtaining leave to construct under s. 96 is a precondition to the filing of an application for authority to expropriate. However, in accordance with s. 33(6) of the Act the Board’s Decision and Order in EB-2012-0365 is not stayed by an appeal and CORE has not asked for a stay in its Notice of Appeal, nor has it brought a motion for that relief. Dufferin Wind therefore has satisfied and continues to be in satisfaction of the precondition for bringing the Expropriation Application under s. 99.

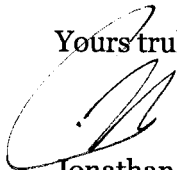
As the Board is aware from correspondence it received August 16, 2013 from counsel to CORE, Dufferin Wind proposed and CORE consented to a schedule for the conduct of the leave to

construct appeal whereby the appeal would be heard by the Divisional Court on November 13, 2013 or November 25 in the event the appeal takes a full, rather than half-day. Based on a consideration of the timelines in prior expropriation proceedings before the Board, it is anticipated that the leave to construct appeal will be determined prior to the Board making its final determination on the Expropriation Application. As such, the Board will have an opportunity to confirm whether the leave to construct decision has been upheld prior to granting authority to expropriate. If at such time the decision on the leave to construct appeal remains pending, the Board would have the ability to make its decision on the Expropriation Application conditional on the leave to construct Decision and Order being upheld.

We also note that to delay or hold in abeyance the Expropriation Application pending resolution of the leave to construct appeal would be administratively inefficient, unfair to the applicant and would not be in accordance with the Board's practice in similar circumstances. For example, on December 19, 2012 Union Gas filed a Notice of Appeal from the Board's November 19, 2012 Decision and Order on a Preliminary Issue in Union Gas' 2011 deferral account proceeding (EB-2012-0087). Although the appeal will be heard in October 2013, Union Gas has since filed its 2012 deferral account application in June 2013 (EB-2013-0109) and the Board is conducting the 2012 deferral account proceeding notwithstanding the appeal, which raises issues directly related to the 2012 application.

Accordingly, Dufferin Wind requests that the Board proceed expeditiously to issue the Notice of Application and Letter of Direction and proceed to carry out the expropriation proceeding notwithstanding CORE's appeal.

Yours truly,



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