



Via Facsimile

Via Email: boardsec@ontarioenergyboard.ca

August 26, 2013

Reply to St. Catharines Office
Sara J. Premi.
905.688-6655
sjpremi@sullivanmahoney.com

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Application for leave to construct under s. 92 and ss. 96 (2) of the Ontario Energy Board Act, 1998, S.O.C. 15 Schedule B. (the "Act") (EB-2013-0203 Niagara Region Wind Corporation) (the "Application")
Our File No. 88561

We act as solicitors to the Township of West Lincoln.

The Township hereby requests:

- A. intervenor status with respect to the above noted Application; and
- B. that the hearing of the above noted Application be done by way of an oral hearing and not as a written hearing.

The grounds for the Township's requests are set out below.

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Of Counsel (Commercial Law): M.D. Kriluck

A: Application for Intervenor Status

(i) Description of the Intervenor

The Township of West Lincoln (the “Township”) is a lower tier municipality located in the west end of the Regional Municipality of Niagara (the “Region”). The Township is an amalgamation of former Townships of South Grimsby, Caistor, and Gainsborough and has a population of 14,000 people. The Township is largely a rural municipality, with its chief urban area being Smithville. Smithville is the principal area of growth in the industrial, commercial and residential sectors, with a population of 5,000. Smithville is rapidly growing as an urban area in the Region.

The Township is currently undergoing certain Planning Act processes geared at urban boundary expansion of lands in the Smithville periphery.

(ii) Interests of the Intervenor

The Application proposes to construct 24.8 kilometres of the proposed 115 kV transmission line along or over road allowances in West Lincoln.

Just over 17.4 kilometres are to be constructed on the following road allowances which are owned by the Township:

- Concession 4 Road
- Port Davidson Road
- Sixteen Road
- South Grimsby Road 5
- South Grimsby Road 6
- Tober Road
- Young Street

The remaining 7.4 kilometres of transmission line is to be constructed on Regional Roads.

Approximately 3.5 kilometres of the proposed transmission line is within or bordering the urban or surrounding area of Smithville, some of which are subject to the urban area expansion referred to above.

The poles of the transmission line may be as high as 25.9 metres. There is currently no Road Use Agreement, and no agreement in principal on the form of that agreement, in place between the Applicant and the Township.

The Township is affected by the proposed transmission line in a manner that is related directly to the issues before the Board in its consideration of whether the Application is in the public interest.

In particular, the Township can contribute to the hearing in respect of the following issues:

- the interests of consumers with respect to the reliability and quality of electricity service;
- whether or not Provincial Policies will be adhered to in the promotion of renewable energy sources; and
- the form of agreement with landowners affected by the route or location of the proposed line.

(iii) Grounds for the Intervention

(1) The route for the proposed transmission line, the impact on Provincial Policy and growth in the community

In September 2012, the municipality provided the Applicant with mapping showing the potential areas for the urban boundary expansion of the Smithville urban area.

The Applicant was advised that the Township, for the purposes of good land use planning, required the transmission line to be away from South Grimsby Road 6, a key area of potential expansion of the Smithville Urban Boundary. There were some assurances given by the Applicant that the Township's planning concerns would be taken into consideration.

The Application references ongoing consultation with the Township, and identifies that the Township is currently considering defining an urban development area west of Smithville within the area transected by the preferred transmission line route. The Application indicates that there are no reasonable alternate transmission line routes around Smithville. However, the Application contains insufficient or incomplete information regarding the status of the urban boundary expansion, including an agreement relating to urban boundary expansion between the Region and the Township dated July 27th 2012. The Township has commenced a planning process to determine the location or locations for expansion of the urban area to accommodate a further 60 hectares of urban growth.

The route selection criteria include socioeconomic criteria. The Township has significant concerns with respect to the impact of the proposed transmission line on the Smithville Urban Area, and the lack of proper consideration of relevant socioeconomic criteria in this regard.

The Township has an interest in protecting its urban area expansion process and its future needs in relation to growth. It is in the public interest, as mandated through provincial policy, that the Application be considered in light of the requirement for Smithville and West Lincoln to be a complete and healthy community.

The Township has a legitimate interest in ensuring that the transmission line on its road allowances does not interfere with existing or planned infrastructure. The full impact of the transmission line vis a vis growth in the Township has not been fully considered and therefore,

the overall issue of compatibility of the Application has not been properly assessed.

(2) The location of the proposed transmission line

As early as August 2012, the Applicant was advised of concerns with respect to transmission lines being above ground, and particularly, above ground in the area surrounding Smithville.

On March 25, 2013, Council for the Township adopted the following resolution:

WHEREAS, the Township of West Lincoln has two industrial wind turbine applications in different stages of Renewable Energy Approval; and,

WHEREAS, the Township of West Lincoln has provided municipal consultation responses relating to each application; and

WHEREAS, within the most recent municipal consultation response, the Township of West Lincoln has requested that all transmission lines be buried within local and regional road allowances in the Township of West Lincoln; and,

WHEREAS, Niagara Region Wind Corporation has agreed to bury the transmission lines within the Niagara Escarpment Commission regulated lands, and both proponents (Niagara Region Wind Corporation and IPC/HAF) have agreed to bury the lines on the host properties; and,

WHEREAS, the Township of West Lincoln strongly believes that everyone should be treated equally with respect to the burial of transmission lines;

NOW THEREFORE, the Township of West Lincoln hereby requests that the Niagara Region Wind Corporation and IPC/HAF applicants honour the requirement of the Township of West Lincoln to have all transmission lines buried within the Township of West Lincoln; and,

THAT, each applicant enter into a Road Use Agreement with the Township of West Lincoln that will require that all lines be buried in the Township of West Lincoln; and,

THAT, the Ontario Energy Board, the Province, Niagara Peninsula Energy Inc., and all other approval authorities recognize and respect the Township of West Lincoln's requirements as contained within the Road Use Agreement; and,

THAT, Niagara Peninsula Energy Inc. be requested to support and lobby for the installation of buried transmission lines on behalf of the Township of West Lincoln; and,

THAT, this resolution be forwarded to the Premier, Leaders of the Official Oppositions, Ministers of the Ministries of the Environment, Infrastructure and Energy, Rural Affairs

and Agriculture and Food; Region of Niagara; Niagara Peninsula Energy Inc., local MP and MPP and the Renewable Energy Approval applicants in West Lincoln.

The Applicant has committed to install the transmission line underground through the provincially regulated Niagara Escarpment Planning Area within the Town of Lincoln, presumably a result of evaluation of the appropriate criteria in relation to impact. A similar evaluation has not been appropriately done in terms of the line in the Smithville urban area.

As part of planning well designed communities, there are regional and municipal urban area guidelines that recommend utilities be buried below grade. The Township's Official Plan Amendment No. 15 which has been adopted but not yet approved, contains the following regarding the location of public utilities:

“14.12 – Utilities

- (a) The Township will ensure that adequate utility networks, are or will be, established to served existing and anticipated development through discussions with public utility providers;
- (b) The Township will encourage all utilities to be planned for and installed on a co-ordinated and integrated basis in order to be more efficient, cost effective and minimize disruption;
- (c) The Township will ensure that the appropriate locations for large utility equipment and cluster sites have been determined and that consideration be given to the location requirements for larger infrastructure within public rights of way, as well as easements on private property;
- (d) Consideration shall be given to the location of utilities within public rights of way as well as on private property. Utilities shall be clustered or grouped where possible to minimize visual impact. The Township encourages utility providers to consider innovative methods of containing utility services on or within streetscape features such as gateways, lamp posts, transit shelters, etc. , when determining appropriate locations for large utility equipment and utility clusters.”

The Township's Municipal Engineering Standard as approved by Council in 2011 provides as follows:

“4.23 (4) Electrical Distribution

Design of the electrical distribution system is to meet the requirement of the local hydro authority and shall be carried out by a professional engineer licenced to practice in the Province of Ontario, who is experienced in the design and supervision of this type of project.

Underground street wiring and wiring to lots and houses are mandatory, unless otherwise approved by the Director. The Director shall provide any easements which may be necessary to complete electrical servicing of subdivisions.”

The compatibility between municipal rights of way and the transmission line has not been clearly established, and appropriate consideration has not been given to the expansion of the Smithville urban area.

(3) No existing Road Use Agreement

The Township has presented the proponent with a draft Road Use Agreement which addresses several issues in relation to the use, maintenance and repair of Township road allowances. The draft agreement presented to the Applicant also requires transmission lines to be buried.

There has been no response from the Applicant with respect to its position on burying the transmission line in the Township, nor has there been any finalization of a Road Use Agreement.

It is the Township's respectful submission that the evaluation of the Application in the public interest in accordance with sections 96(2) and 97 of the Act requires consideration of the terms of the Road Use Agreement for both municipal and regional road allowances.

For the reasons set out above, the Township respectfully requests intervenor status in the hearing of this application.

B: Oral Hearing

The Township respectfully requests that the hearing of the Application be done orally and not in writing.

The Township has a substantial interest in this matter and intends to participate actively and responsibly in the proceeding by calling evidence, by making argument and by cross-examining witnesses called on behalf of the proponent.

The Application is not complete, as the Applicant has not fully considered the status of the planning applications within the Township in terms of the urban development, urban boundary expansion and compatibility with the proposed transmission line.

The impacts of and the compatibility of the proposed transmission routes in Smithville will be key issues for the hearing. Alternative transmission routes will need to be considered as well as the specific terms of the proposed Road Use Agreement. The Township requires the opportunity to have its planner present evidence to the Board with respect to impact and compatibility of the proposed transmission route, and its engineer present evidence in relation to the terms of the Road Use Agreement. Further, the Township requires the opportunity to cross-examine the Applicant's experts in the areas of impact and compatibility.

There are several parties who are interested in the issue of transmission lines, including residents and developers. One developer has already raised concerns in respect of the design height and

appearance of the transmission line which is proposed along the south and west boundary of Smithville and in particular, along Town Line Road and Grimsby Road 6.

The Township believes that the hearing will likely have a number of parties and participants. Issues raised can be more readily and effectively dealt with in an oral hearing.

An oral hearing will provide transparency in the process. The West Lincoln community has been actively involved in renewable energy applications in its community and the Township submits that transparency is best served through an oral hearing in relation to this particular type of application.

In summary, the Township is of the view that the most effective way to deal with the issues raised by the Application and by those persons impacted by the Application would be through an oral hearing.

The Township does not intend to seek an award of costs as it is a Municipality and pursuant to the practice direction on costs award is not entitled pursuant to Section 3.05 (i).

The full name and address of two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding is as follows:

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Yours very truly

Sullivan Mahoney LLP

Per:



Thomas A. Richardson

Yours very truly

Sullivan Mahoney LLP

Per:



Sara J. Premi

SJP:ks

cc- The Applicant

cc- Derrick Thomson, CAO, Township of West Lincoln