

1 **ONTARIO ENERGY BOARD**

2
3 **EB-2013-0233**

4
5 IN THE MATTER OF the *Ontario Energy Board Act*,
6 1998, S.O., c. 15 (Sched. B);

7
8 AND IN THE MATTER OF an application by East
9 Durham Wind, Inc. for an Order or Orders pursuant to
10 Section 41(9) of the *Electricity Act, 1998* (as amended)
11 establishing the location of the applicant's distribution
12 facilities within certain road allowances owned by the
13 Municipality of West Grey.

14
15 **REPLY SUBMISSION**

16
17 In accordance with the Ontario Energy Board's (the "**Board's**") Procedural Order No. 2
18 dated August 1, 2013, East Durham Wind, Inc. ("**East Durham**") makes this written
19 submission in support of its application for an order or orders pursuant to Section 41(9)
20 of the *Electricity Act, 1998* (as amended) (the "**Electricity Act**") establishing the location
21 of East Durham's distribution facilities within certain public rights-of-way, streets and
22 highways owned by the Municipality of West Grey (collectively, the "**Road**
23 **Allowances**") and in reply to the submissions of the Municipality of West Grey dated
24 September 11, 2013 (the "**West Grey Submissions**") and the submissions of Mr. Syd
25 and Ms. Karen Parkin (the "**Parkins**") dated September 10, 2013 (the "**Parkins**
26 **Submissions**").

1 **1.0 THE PROJECT**

2 East Durham owns and will operate the generation and distribution assets of the East
3 Durham Wind Energy Centre (the “**Project**”), which is located in the Municipality of
4 West Grey (“**West Grey**”) in Grey County, Ontario. In addition to wind turbines, the
5 Project will involve 34.5 kilovolt (“**kV**”) underground distribution lines, which are
6 essential to the Project in that they will convey electricity from each of the wind turbines
7 to a transformer station, from which an overhead 44 kV line will convey the electricity to
8 the existing local distribution system of Hydro One Networks Inc. (“**HONI**”) and
9 ultimately to the IESO-controlled grid (collectively, the “**Distribution System**”).¹ East
10 Durham has proposed to locate certain power lines and other facilities associated with
11 this Distribution System within the Road Allowances, as more particularly identified in
12 Part 2.0 of East Durham’s September 4, 2013 Argument in Chief (the “**Argument in**
13 **Chief**”).

14 **2.0 SUMMARY ARGUMENT**

15 In the West Grey Submissions, West Grey argues that, because East Durham has not yet
16 received a renewable energy approval (“**REA**”) to construct and operate the Project, East
17 Durham is not a “distributor” under the Electricity Act and therefore cannot take
18 advantage of the rights afforded to distributors under Section 41 of the Electricity Act.²

¹ The Project is further described in Exhibit B, Tab 2, Schedule 1 of East Durham’s June 14, 2013 application (the “**Application**”).

² See West Grey Submissions, paras. 2 - 23.

1 However, EB-2010-0253³ (the “**Plateau Decision**”) and EB-2013-0031⁴ (the “**Wainfleet**
2 **Decision**”) indicate that East Durham (i) is a distributor under the Electricity Act and (ii)
3 can be granted an application under Section 41 of that Act prior to having received a
4 REA for a Project. In any event, the Board also has the authority to make its decision and
5 order conditional on East Durham receiving a REA for the Project.

6 West Grey also argues that the Application should not be granted because East Durham
7 has submitted “general locations” or “‘guidelines’ for determining locations” for the
8 Distribution System.⁵ However, East Durham has actually proposed a narrow corridor
9 for the proposed location of the Distribution System. This is as precise a location as
10 possible, given that West Grey – by its own admission⁶ – has refused to provide feedback
11 to East Durham prior to the present Application, or any evidence in this proceeding, to
12 help to further refine the proposed location. In addition, because the Board will be
13 determining the location of the Distribution System in this proceeding, prior to the start
14 of construction, the approved location must allow for some reasonable flexibility to
15 ensure that East Durham can appropriately address any engineering, environmental,
16 health and safety or other practical challenges that may arise during the actual
17 construction of the Distribution System.

18 In the Parkins Submissions, the Parkins raise questions regarding the proposed 1-4 metre
19 setback for the Distribution System and the potential impacts of “high voltage” electrical

³ Attached as Appendix A to Exhibit B, Tab 3, Schedule 1 of the Application.

⁴ Attached as Appendix A hereto.

⁵ West Grey Submissions, paras. 26 and 28.

⁶ West Grey Submissions, para. 24.

1 fields.⁷ The proposed setbacks provide appropriate space to minimize potential
2 interference with surrounding land uses and to adapt to any environmental or other
3 challenges that may arise during construction. Furthermore, as mentioned above, the
4 Distribution System consists of underground 34.5 kV collector lines and one short,
5 overhead 44 kV line (similar to nearby HONI 44 kV overhead lines), none of which are
6 considered “high voltage” electrical lines. Additionally, no evidence has been introduced
7 regarding potential harm from any of these lines.

8 **3.0 EAST DURHAM IS A DISTRIBUTOR**

9 Contrary to West Grey’s position, East Durham is clearly a distributor, as that term is
10 defined in the Electricity Act. West Grey has acknowledged that the Board in the Plateau
11 Decision confirmed the application of Section 41 to distribution systems that connect
12 renewable energy generation facilities to local distribution systems and the IESO grid.⁸
13 However, West Grey asserts that the Plateau Decision should be distinguished from the
14 present case on the basis that Plateau Wind Inc. (“**Plateau**”), at the time of its Section 41
15 application to the Board, had received some of the approvals required to construct its
16 renewable energy generation facilities, whereas East Durham has not yet received its
17 REA for the Project.⁹

18 Nothing in the Electricity Act indicates that it is necessary to have all necessary approvals
19 in hand prior to being able to access the rights afforded to distributors under Section 41 of

⁷ Parkins Submissions, pp. 2-3.

⁸ Plateau Decision, para. 12.

⁹ West Grey Submissions, paras. 13-16.

1 that Act. Moreover, it is important to note that the evidence in EB-2010-0253 did not
2 confirm that Plateau had all necessary approvals to construct and operate the Plateau
3 wind project.¹⁰ In fact, the Board engaged in no discussion of the status of Plateau's
4 approvals in the Plateau Decision; rather, the Board held that, "[a]s the owner of the
5 distribution system that is intended to transport the generated electricity to the IESO,
6 Plateau is a distributor".¹¹ Whether or not Plateau had certain approvals in place at the
7 time at the time of its Section 41 application was not cited as a basis for the Plateau
8 Decision and therefore should not be considered a distinguishing factor for the present
9 Application.

10 In addition, the Board has also already granted a Section 41 application of a distributor
11 prior to receipt of its REA in the Wainfleet Decision. Like East Durham,¹² Wainfleet
12 Wind Energy Inc. ("**Wainfleet**") has a contract with the Ontario Power Authority (the
13 "**OPA**") to develop a wind energy generating facility and the associated distribution
14 facilities necessary to connect it to the local distribution system.¹³ Also like East
15 Durham, Wainfleet's REA application to the Ministry of the Environment was deemed
16 complete at the time of filing its Section 41 application.¹⁴ On February 4, 2013,
17 Wainfleet filed an application with the Board under Section 41(9) of the Electricity Act to

¹⁰ Although the Chronology of Events in the Plateau application described the completion of the project's Environmental Screening and its acquisition of a Certificate of Approval, these were not the only approvals necessary for the construction and operation of a wind facility in Ontario prior to the coming into force of the REA regime.

¹¹ Plateau Decision, para. 40 [emphasis added].

¹² See Application, Exhibit B, Tab 2, Schedule 1, p. 1.

¹³ See Wainfleet Decision, p. 3.

¹⁴ East Durham's application was deemed complete on May 14, 2013 and Wainfleet's application was deemed complete on December 13, 2012: see Ontario Environmental Registry, EBR Registry Numbers 011-9146 and 011-7796.

1 confirm the location of its proposed distribution system and “in order to comply with its
2 contractual commitments to the OPA.”¹⁵ The Board granted the Section 41 application
3 on June 27, 2013, prior to Wainfleet having received a REA for its project.¹⁶ The
4 Board’s Decision and Order was not made conditional on the receipt of the Wainfleet
5 REA.

6 Therefore, based on the definition of “distributor” in the Electricity Act and the Board’s
7 Decisions and Orders in the Plateau and Wainfleet Section 41 applications, East Durham
8 is clearly a distributor with the right to bring the present Application.

9 **4.0 EAST DURHAM HAS PROPOSED A LOCATION**

10 East Durham has proposed a narrow corridor for the location of the Distribution System,
11 which is as focused a location as possible given that West Grey – by its own admission¹⁷
12 – did not provide feedback to East Durham prior to this Application, or evidence in this
13 proceeding, that would have allowed the parties to refine the proposal even further. In
14 addition, because the Board will be determining the location of the Distribution System in
15 this proceeding, prior to the start of construction, the approved location must allow for
16 some reasonable flexibility to ensure that East Durham can appropriately address any
17 engineering, environmental, health and safety or other practical challenges that may arise
18 during the actual construction of the Distribution System.

¹⁵ Wainfleet Decision, p. 3.

¹⁶ As of September 17, 2013, Wainfleet had still not received a REA: see Ontario Environmental Registry, EBR Registry Number 011-7796.

¹⁷ West Grey Submissions, para. 24.

1 Importantly, and contrary to the suggestions of West Grey, Section 41 does not require
2 the identification of a “precise” or “exact” location for a proposed distribution system.¹⁸

3 Section 41(9) only states that the “location” – and not the precise or exact location – of a
4 distribution system “shall be agreed on by the transmitter or distributor and the owner of
5 the street or highway” or otherwise be determined by the Board.¹⁹ Contrary to the
6 assertions of West Grey, which suggests the onus is on the distributor to propose a
7 location, Section 41(9) imposes a mutual obligation on the distributor and the owner of
8 the road allowances – in this case, East Durham and West Grey – to discuss and
9 determine the optimal location of the Distribution System, failing which the Board shall
10 determine the location of the facilities. The Act does not require that a project proponent
11 must put forward a location proposal and refine it without any input from the
12 municipality. If West Grey had provided comments regarding the proposed location and
13 information regarding any existing infrastructure in the area, it would have enabled East
14 Durham to further refine the proposed location.

15 In any event, East Durham’s current proposal identifies a narrow corridor to be utilized
16 by the Distribution System. This narrow corridor was proposed following numerous
17 environmental, social, technical and economic studies conducted as part of the renewable
18 energy approval process.²⁰ Yet because the Board will be determining the location of the
19 Distribution System prior to the start of construction, East Durham’s proposed location

¹⁸ See West Grey Submissions, paras. 33-37.

¹⁹ “The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board”: Electricity Act, s. 41(9).

²⁰ Interrogatory Responses, No. 3(i).

1 still permits reasonable flexibility to adapt to specific any engineering, environmental,
2 health and safety or other practical challenges that may arise during construction. For
3 example, it allows East Durham reasonable flexibility to finalize a location that avoids
4 any previously unknown environmental conditions or archaeological artifacts uncovered
5 in the construction process. Certain constraints may not be identified until construction
6 preparations have commenced; for examples, pipelines may be discovered that were not
7 previously registered or marked, or other infrastructure or archeological discoveries may
8 require slight deviations of the line within the proposed location. If West Grey identifies
9 specific issues with the location of the line following this proceeding, the location as
10 proposed will provide some flexibility for East Durham to work with West Grey and
11 address its concerns as much as possible.

12 Finally, East Durham respectfully submits that, given the detailed mapping and location
13 information provided in Appendix 6 to East Durham's responses to Ontario Energy
14 Board Staff Interrogatories, dated August 26, 2013 (the "**Interrogatory Responses**"),
15 and in Part 2.0 and Appendix A of the Argument in Chief, there is no confusion regarding
16 the proposed location of the Distribution System. In particular, the mapping provided in
17 Appendix 6 to the Interrogatory Responses clearly shows where the Distribution System
18 will enter and exit the Road Allowances, and the side of the Road Allowances through
19 which the Distribution System will travel. The proposed location of the Distribution
20 System is measured with respect to abutting property lines, not the centre of the Road

1 Allowances.²¹ To the extent that the travelled portion of the roadway is not centred
2 within the original road allowance, East Durham's proposed location has sufficient
3 flexibility to ensure that, except for identified crossings, the Distribution System is not
4 located under the travelled portion of the roadway.

5 East Durham's proposed location is therefore reasonable and prudent and contains as
6 much specificity as Section 41(9) of the Electricity Act requires. West Grey has not
7 provided any alternative location or any rationale as to why the Distribution System
8 could not be located within the narrow corridor that has been proposed by East Durham,
9 and East Durham should not bear the onus of providing further specificity in the absence
10 of any input from West Grey.

11 **5.0 PARKINS QUESTIONS**

12 In their submissions, the Parkins have posed questions regarding the proposed 1-4 metre
13 setback for the Distribution System and the potential impact of "high voltage" electrical
14 fields.

15 As previously noted, in the experience of East Durham and its parent company, the
16 location of collection line infrastructure 1-4 metres from abutting property lines in road
17 right of ways provides appropriate space to minimize potential interference with
18 surrounding land uses.²² This narrow corridor was proposed following numerous
19 environmental, social, technical and economic studies conducted as part of the renewable

²¹ See Application, Exhibit B, Tab 6, Schedule 1, p. 1; Interrogatory Responses, pp. 4-5; and Argument in Chief, p. 4.

²² Interrogatory Responses, No. 2(ii).

1 energy approval process.²³ In addition, as discussed in Part 4.0 of this Reply Submission,
2 this narrow corridor permits reasonable flexibility to adapt to any engineering,
3 environmental, health and safety or other practical challenges that may arise during
4 construction.

5 In general, East Durham will measure the 1-4 metre setback from formal survey
6 boundaries. However, where accepted fence lines or property lines encroach past formal
7 survey boundaries and into the Road Allowances, East Durham will seek to measure the
8 setback from the accepted fence line or property line, as applicable.

9 In its Argument in Chief, East Durham noted that once the detailed engineering process
10 regarding the construction of the Distribution System is completed, East Durham may be
11 required to slightly deviate from the proposed 1-4 metre setback. As East Durham noted,
12 the purpose for any such deviation would be to minimize the need for tree cutting, road
13 crossings and guy anchors on private properties, as well as to accommodate the flow of
14 ditch drainage.²⁴ It is not possible at this pre-construction time to quantify the amount by
15 which the setback may vary at a particular point in the line. However, any such variation
16 to the standard setback would be undertaken for the purpose of mitigating specific
17 engineering, environmental, health and safety or practical challenges.

18 The Parkins Submissions also assert that “[t]here have been a number of studies linking
19 childhood leukemia with exposure to high voltage electrical fields”²⁵ and request data

²³ Interrogatory Responses, No. 3(i).

²⁴ Argument in Chief, p. 4, footnote 3.

²⁵ Parkins Submissions, p. 3.

1 regarding a variety of sites in the Project area potentially frequented by children. No studies
2 or other supporting evidence were included in the Parkins Submissions. As mentioned
3 above, the Distribution System consists of underground 34.5 kV collector lines and one short,
4 overhead 44 kV line (similar to nearby HONI 44 kV overhead lines), none of which are
5 considered “high voltage” electrical lines. Furthermore, it is normal practice in Ontario to
6 site distribution lines in road allowances bordering residential and other buildings,
7 especially in rural areas where these lines are often used to deliver electricity to residents.
8 There are existing distribution lines located in road allowances in the Project area, and no
9 evidence has been introduced regarding potential harm from the 34.5 kV and 44 kV
10 distribution lines that are at issue in this proceeding.

11 **6.0 ORDER SOUGHT**

12 Contrary to West Grey’s assertions, East Durham is a distributor under the Electricity Act
13 and is therefore entitled to the rights afforded to distributors under Section 41 of that Act.
14 East Durham’s proposed location for the Distribution System within the Road
15 Allowances, as set out in Part 2.0 of the Argument in Chief, is reasonable. In particular,
16 for the reasons set out in the Application and Argument in Chief, there is carefully
17 considered rationale behind the proposed location and there are no feasible alternatives.²⁶
18 Importantly, throughout this proceeding neither West Grey nor the Parkins have proposed
19 an alternative location for the Distribution System.

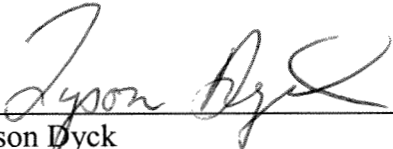
²⁶ See, in particular, Part 3.0 of the Argument in Chief.

1 East Durham therefore requests that the Board, pursuant to Section 41(9) of the
2 Electricity Act, issue an order or orders establishing the location of the Distribution
3 System within the Road Allowances. More particularly, East Durham requests that the
4 Board issue an order or orders establishing such location in accordance with the location
5 proposed in Part 2.0 of East Durham's Argument in Chief.

6
7 DATED at Toronto, Ontario, this 19th day of September, 2013.

8
9 All of which is respectfully submitted by:

10 EAST DURHAM WIND, INC.
11 By its counsel,

12
13 
14 _____
Tyson Dyck

1

APPENDIX A

2

Ontario Energy Board Decision and Order in EB-2013-0031



EB-2013-0031

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Wainfleet Wind Energy Inc. for an Order or Orders pursuant to subsection 41(9) of the *Electricity Act 1998*, S.O. 1998, c. 15, Schedule A, as amended, establishing the location of Wainfleet Wind Energy Inc.'s distribution facilities within certain public right-of-way and street owned by the Township of Wainfleet, Regional Municipality of Niagara.

BEFORE: Paula Conboy
Presiding Member

Peter Noonan
Member

DECISION AND ORDER

June 27, 2013

BACKGROUND

Wainfleet Wind Energy Inc. (“Wainfleet Wind” or the “Applicant”) filed an application dated February 4, 2013, with the Ontario Energy Board (the “Board”) under subsection 41(9) of the *Electricity Act, 1998, S.O. 1998, c. 15, Schedule A*, as amended (the “*Electricity Act*”) for an order or orders of the Board establishing the location of Wainfleet Wind’s proposed distribution facilities within certain road allowances owned by the Township of Wainfleet (the “Township”).

The Board issued a Notice of Application (“Notice”) on March 13, 2013.¹

Following the publication of Notice, Ms. Katherine Pilon applied for intervenor status and requested an oral hearing. The Applicant objected to her intervention request on the basis that her proposed intervention was directed at issues outside the scope of subsection 41(9) of the *Electricity Act*. The Board deliberated, and subsequently denied Ms. Pilon’s request to intervene upon the grounds that her proposed intervention dealt with matters that are outside the Board’s jurisdiction under subsection 41(9) of the *Electricity Act*. However, the Board allowed Ms. Pilon to file materials in this proceeding as letters of comment. No other person applied to the Board for intervenor status.

The Board decided to proceed by way of a written hearing process in this matter. Procedural Order No. 1 was issued on April 26, 2013 to set out the process for the conduct of the written hearing.

SCOPE OF PROCEEDING

As stated in the Board’s Notice, the scope of this proceeding is limited to determining the location of the Applicant’s Distribution System within the road allowances owned by the Township.

THE APPLICATION

Wainfleet Wind is an Ontario corporation which carries on the business of developing renewable wind energy generation projects. It has partnered with Rankin Construction Inc., a local contractor which carries on the business of building renewable

¹ The original Notice was issued on March 6, 2013 and a revised Notice was issued on March 13, 2013.

infrastructure. Wainfleet is a distributor of electricity within the meaning of the *Electricity Act*.

The Applicant has entered into a contract with the Ontario Power Authority (“OPA”) and is in the process of developing a 9 MW wind power generating facility with five wind turbines, located in the Township and the Niagara Region.

As part of the project, the Applicant is proposing to construct a 27.6kV underground system (“Distribution System”) that will collect power from the turbines and deliver it to a switching station, proposed to be located on private lands along the unopened road allowance of Sideroad 22 (also known as “Brawn Road”) in the Township. The Applicant proposes to install the Distribution System underground under private and public lands in the Township and elsewhere in the Niagara Region. This Application is made only in reference to the public lands within the authority of the Township. Wainfleet Wind states that its proposed Distribution System is necessary to transmit electricity from the wind turbines to the distribution system, in order to comply with its contractual commitments to the OPA.

The Applicant asserts that it has been unsuccessful in negotiations with the Township to obtain an agreement for the location of the underground Distribution System, including high voltage cables, associated ducts, and a communications cable along and across Concession 1 Road and across the unopened Sideroad 22 road allowance at the location of a municipal drain within the Township. Pursuant to subsection 41(9) of the *Electricity Act*, the Applicant requests that this Board determine the location of structures, equipment and other facilities to be installed under or on Concession 1 Road and unopened Sideroad 22.

In particular, the Applicant requests that the Board determine the location of an underground diagonal crossing of unopened Sideroad 22. The Applicant also intends to carry the Distribution System underground across private lands until the Distribution System intersects Concession 1 Road. The Applicant therefore requests that the Board determine the location of a concrete encased duct bank or directional bore crossing for a perpendicular crossing of Concession 1 Road. Finally, the Applicant requests that the Board determine the location of the Distribution System to be constructed underground within the road allowance of Concession 1 Road to its point of intersection with Station Road, a municipal road under the jurisdiction of the Regional Municipality of Niagara. The project for which the Applicant seeks the approval of this Board is described at

Exhibit B/Tab 2/Schedule 1 and shown on applicable engineering drawings² at Exhibit B/Tab 3/Schedule 1/Appendix A, of the application.

Wainfleet Wind states that the proposed cable installations of the Distribution System are designed to meet or exceed the requirements of the Ontario Electrical Safety Code Standard C22.3-#7, Underground Systems and permanent buried cable markers will be installed at either end of the road crossings as recommended by the Canadian Standards Association. Additional details are provided in the construction notes contained in applicable drawings.

THE RECORD

The record consists of the application, letters of comment submitted by members of the public, interrogatories of Board staff, the Applicant's response to Board staff interrogatories, and the submissions of Board staff and the Applicant.

Although the Township did not apply for intervenor status the Board granted leave to the Township to intervene in this proceeding. However, the Township did not take the opportunity to participate or make any submissions on the issues before the Board. Accordingly, the Applicant is the only formal party in this case.

The Board received a number of letters of comment from Ms. Katherine Pilon. The letters of comment filed by Ms. Pilon relate to her opposition to the wind generation project rather than to the issues pertinent to the decision that the Board must make under subsection 41(9) of the *Electricity Act*. Accordingly, the Board has not relied on any of the letters of comment except for a portion of Ms. Pilon's submissions of April 27 and April 30, 2013 in which she, like the Applicant, provided some additional information on the public utility of Station Road as background information about the project.

Pursuant to Procedural Order No. 1, Board staff submitted interrogatories to Wainfleet Wind. The Applicant provided satisfactory responses to all of the Board staff interrogatories.

On May 27, 2013, Board staff filed a written submission. Board staff observed that the Township staff were consulted about the proposed location of Distribution System and

² For the purpose of this application, the applicable drawings are: Drawing #'s: 123901C1.0, 123901C1.1 to 123901C1.4, 123901C1.14 and 123901C1.15

that the Township has not provided the Applicant with any concerns about the proposed location. The Board staff submission noted that: "In the absence of information to the contrary, the route selected appears to staff to be the most efficient and least invasive."

On June 3, 2013, Wainfleet Wind filed its reply submissions. Wainfleet Wind submitted that its application establishing the location of the Distribution System on road allowances owned by the Township should be approved.

Additionally, Wainfleet Wind also requested that the Board consider an award of costs against the Township. Wainfleet Wind noted that it was forced to bring this application because it was unable to reach an agreement with the Township and that the Township's conduct has inflicted unnecessary costs and inconvenience on Wainfleet Wind. The Applicant submitted that the Board should exercise its discretion to award costs against the Township in favour of Wainfleet Wind in the amount of \$3,500.00 plus the Board's cost of the Application. Wainfleet Wind stated that its request for costs only covers the publishing costs that it incurred as a necessary part of this application.

BOARD FINDINGS

The Applicant is the only formal party in this case. The Township received notice of this application but chose not to seek intervenor status or participate in the proceeding even after the Board, of its own motion, granted leave to the Township to intervene. Ms. Katherine Pilon filed several letters of comment but her concerns were directed at the wind generation facility project which is outside of the scope of this application. None of her comments were specific to the Applicant's request to locate the Distribution System within the Township's road allowances. The application by Wainfleet Wind pursuant to subsection 41(9) of the *Electricity Act* is essentially unopposed.

The Applicant has established that it is a distributor of electricity and that it has a statutory right to place its Distribution System within a municipal road allowance pursuant to subsection 41(1) of the *Electricity Act*. The Board finds that the Applicant and the Township have been unable to agree upon the location of the Distribution System within the road allowances that are the subject of this application. The Board notes that satisfactory responses have been made by the Applicant to the interrogatories posed by Board staff. The engineering drawings for the location of the distribution line and related structures have been considered and the Board finds that they are satisfactory. Therefore, the Board finds that the Applicant has satisfied the

burden of proof under the *Electricity Act* to demonstrate that the proposed location of its Distribution System in the municipal road allowances is appropriate and the application is approved.

In order to ensure that adequate regulatory oversight is provided for this project the Board has decided that the following conditions to its approval will be imposed on the Applicant:

- 1) The Applicant shall advise the Board's designated representative of any proposed material change in the location of the facilities as described in the Plans and Profiles as set out at ExB/T2/S1 and Ex B/T3/S1/Appendix A of the application and shall not make a material change in the Plans and Profiles without prior approval of the Board or its designated representative.
- 2) The Applicant shall designate a person as Project Manager and shall provide the name of the individual to the Board's designated representative. The Project Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site.
- 3) The Board's designated representative for the purpose of this Condition of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.

As to the question of costs, the Board has decided that this is not an appropriate case in which to award costs. The Township chose not to become a formal party to the Board's proceeding, as it was entitled to, and therefore did not add any delay or cost for the Applicant in this proceeding. Clearly, the Applicant is frustrated by its dealings with the Township and the Board is aware that other legal proceedings have taken place between the Applicant and the Township. However, the Board cannot take cognizance of those matters for the purposes of determining costs in this proceeding. We note that the Applicant requested in its Reply that the question of costs not delay the Board's decision, which would clearly be the result if the Board established a process to determine whether a non-party in the context of this case could, and should, be subjected to an award of costs. All things considered, the Board declines to make a cost order in this case.

THE BOARD ORDERS THAT:

1. The location of Wainfleet Wind's Distribution System on road allowances owned by the Township, as described in the application at Exhibit B/Tab 2/Schedule 1 and in the applicable drawings at Exhibit B/Tab 3/Schedule 1/Appendix A and subject to the Conditions of Approval set out in this Decision and Order is approved.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Wainfleet Wind shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

ISSUED AT Toronto on June 27, 2013

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary