

October 15, 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. (the "Applicant") in the above-referenced proceeding. On September 25, 2013 the Applicant received a copy of a request for intervenor status from The Corporation of the County of Dufferin (the "County"). The Applicant does not take issue with the County's request to be an intervenor in the expropriation proceeding. However, on behalf of the Applicant, we wish to respond to two matters raised in the County's letter.

First, the County has requested that the Board confirm its eligibility for costs in this proceeding. Section 3.03 of the Board's Practice Direction on Cost Awards provides that a party in a Board process is eligible to apply for a cost award where the party is a person with an interest in land that is affected by the process. However, we note that Section 3.05(i) of the Practice Direction states that despite Section 3.03 a municipality in Ontario is not eligible for a cost award.

Second, the County has suggested "that the Board (should) issue a procedural order that incorporates a preliminary motion or threshold issue of whether a stay of the proceeding should be imposed". The basis for the County's suggestion is that the Applicant's Renewable Energy Approval ("REA") is currently the subject of an appeal to the Environmental Review Tribunal and the Board's decision granting leave to construct in EB-2012-0365 is currently the subject of an appeal to the Divisional Court. For the reasons that follow, the Applicant strongly disagrees with the County's suggestion.

The Applicant, in its August 21, 2013 letter to the Board, explains that in accordance with section 33(6) of the *Ontario Energy Board Act* the Board's Decision and Order in EB-2012-0365 is not stayed by an appeal and the appellant 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 section 99 of the Act. Moreover, the parties in the leave to construct appeal proceeding have agreed on a hearing date in late November and, as such, it is reasonably expected that the

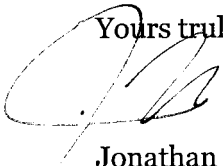
leave to construct appeal will be determined prior to the Board making its decision on the expropriation application. As such, the Board will have an opportunity to confirm whether the leave to construct decision has been upheld prior to granting authority to expropriate. If at such time the leave to 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. As further explained in the August 21 letter, it has been the Board's practice to allow proceedings to move forward in the normal course notwithstanding a pending appeal of a related Board decision.

The County also cites the REA appeal as a reason for the Board to consider a preliminary question of whether the expropriation application should be stayed. In the Applicant's view, the appeal of the Applicant's REA is not relevant to the present application for authority to expropriate and does not establish a basis for staying or delaying the expropriation proceeding. Notably, a REA appeal does not automatically stay the operation of the REA and a motion for a stay of the REA by one of the parties to the REA appeal proceeding was dismissed by the Environmental Review Tribunal on September 27, 2013. Given that the REA appeal has not stayed the operation of the very instrument that is the subject of that appeal, the suggestion that the REA appeal should nevertheless stay the present application, or cause the Board to consider this question as a preliminary matter, is unreasonable.

Furthermore, we note that the issue raised by the County has already been considered by the Board in deciding to issue the Notice of Application in this proceeding. The Application was filed on July 19, 2013 and the Board acknowledged receipt on July 24, 2013. However, it took the Board nearly two months to issue the Notice of Application on September 17, 2013. As described in the Applicant's August 21 and August 26 letters, this delay was at least partly attributable to the Board having actively considered whether there are any procedural implications for the expropriation application on account of the leave to construct decision having been appealed. The Board's decision to ultimately issue the Notice of Application indicates the Board's conclusion that the appeal should not delay or prevent the current application from being heard.

Based on the foregoing, it is the Applicant's view that the Board should not provide for any preliminary procedural steps to consider any threshold questions related to the staying of the application.

Yours truly,



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