



**EB-2013-0203**

**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 Niagara Region Wind Corporation for an order or orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* granting leave to construct transmission facilities in the *townships of West Lincoln, Lincoln, Wainfleet, the Niagara Region and Haldimand County*

**PROCEDURAL ORDER NO. 1**

**November 1, 2013**

Niagara Region Wind Corporation (the "Applicant") filed an application with the Ontario Energy Board (the "Board"), dated May 7, 2013 under sections 92, 96(2) and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the "Act"). The Applicant has applied for an order of the Board granting leave to construct an electricity transmission line and related facilities (the "Transmission Facilities") to connect the Niagara Region Wind Project ("NRWP") to the IESO-controlled grid, and for an order approving the forms of agreements that have been or will be offered to affected landowners. The Board has assigned file number EB-2013-0203 to this application.

The Board directed the Applicant to publish a Notice of Application in newspapers in the vicinity of the Transmission Facilities, and serve the Notice on various parties. The Board published and issued an Amended Notice to address an error in the Board's toll free number as it originally appeared in the Notice.

## Participation in the Proceeding and Cost Eligibility

### Intervenor Status

The Board has received 12 requests for intervenor status. The Board received requests from Hydro One Networks Inc. ("Hydro One"); the Independent Electricity System Operator ("IESO"); the Township of West Lincoln; Walker Road Landowners; Givens Farms Ltd; Phelps Homes Ltd; Canadian White Feather Farm Products; Craig Surveying and Mapping Inc.; Archie & Nancy Huizinga; Ken & Susan Durham; Norman Vaughan; and Peter & Nelly Oosterhoff. No objections were received from the applicant with respect to these requests.

The Board established the scope of this hearing in its Notice of Application. The scope is largely defined by section 96 (2) of the Act which provides the criteria that the Board must consider in determining whether the proposed Transmission Facilities are in the public interest. Section 96 (2) sets out the following criteria:

*96 (2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:*

- 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.*

The scope of this hearing is also defined by section 97 of the Act which requires the Board to approve the form of agreement that has been or will be offered to land owners:

*97 In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.*

Township of West Lincoln

The request for intervenor status from the Township of West Lincoln (“the Township”) states that it is affected by the proposed transmission line in a manner that is related directly to the issues before the Board. The Township provided the following as particular issues on which it submitted it can contribute to the hearing:

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

The Township provided its grounds for intervention under the following categories:

- 1) The route for the proposed transmission line, the impact on Provincial Policy and the growth in the community.
- 2) The location of the proposed transmission line.
- 3) No existing road use agreement.

The Board notes that under issue a) the Township has not provided any information on how its interests are affected with respect to reliability and quality of electricity service.

With respect to issue b) the Township’s stated grounds under category 1) explain its views as to how the proposed Transmission Facilities do not adhere to Provincial Policies in the promotion of renewable energy sources.

With respect to c) the Township’s stated grounds under categories 2) and 3) provide the basis for its interest in the form of agreement.

Township of West Lincoln's Grounds for Intervention1) The Route and Impact on Provincial Policy

In reference to the route of the proposed transmission line, the Township submits that "...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 also states it has significant concerns with respect to the impact of the proposed transmission line on the Smithville Urban Area and what it considered to be a lack of proper consideration of socioeconomic criteria in that regard.

2) Location of the Proposed Transmission Line

The concern raised in this area is that the proposed facility will be above ground as opposed to being buried underground. The Township submitted a resolution adopted by the Township Council in March of 2013 that, among other things, resolves to require two entities with applications for renewable generation facilities within the Township (one of which is Niagara Region Wind Corporation) to enter into Road Use Agreements that would require that all lines be buried in the Township of West Lincoln.

The Township provided an Amendment to its official plan that establishes its approach to utility planning and siting. The Township also provided an excerpt from its Municipal Engineering Standard that stipulates requirements pertaining to electrical distribution.

3) No Existing Road Use Agreement

The Township's submitted ground for intervention in this area is that there is no existing Road Use Agreement. The Township states that a proposed agreement has been provided to the Applicant and that it has not received a response. The Township states that the proposed agreement requires that the proposed Transmission Facilities be buried.

It is the Township's submission that the evaluation of the application in the public interest in accordance with sections 96 (2) and section 97 of the Act requires

consideration of the terms of the Road Use Agreement for both the municipal and regional road allowances.

#### Land Owners and other interested Parties

Other parties requesting intervenor status cited interests with respect to property values, impact on dairy cattle and poultry, planning criteria and negative impacts caused by the proposed wind turbines in the associated wind farm.

#### Hydro One and the IESO

Hydro One requested intervenor status citing that, as a distributor, it may be affected by the Application. The IESO requested intervenor status citing its licensed responsibility to direct the operation and maintain the integrity IESO-controlled grid and noted that it has an interest in all aspects of the proceeding. Both Hydro and the IESO noted that they would not be seeking an award of costs for their interventions.

#### **Board Determinations**

##### Township of West Lincoln

##### The Route and Impact on Provincial Policy

Issue b) is described as an issue that is before the Board in this hearing and is derived from section 96 (2) of the Act. The Township described its interest as being “whether or not Provincial Policies will be adhered to in the promotion of renewable energy sources”.

As indicated above, Section 96 (2) of the Act establishes the Board’s scope as follows:

*96 (2) In an application under section 92, the Board shall only **consider** the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest: (emphasis added)*

*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.*

Accordingly, in determining whether the construction of the Transmission Facilities is in the public interest, the Board must consider “in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources”.

The Board’s mandate is to consider specifically the construction of the Transmission Facilities in that context. It is not a mandate to consider the more general issue advanced by the Township of “whether or not provincial policies will be adhered to in the promotion of renewable energy sources”. Accordingly, the Board will not permit the Township to make submissions on this more general issue as an intervenor.

The Township’s cited concerns with respect to planning issues and the application of socioeconomic criteria also do not fall within the scope of this proceeding as established by the Act. Accordingly, the Board will not permit the Township to make submissions on these issues as an intervenor.

#### Location of Proposed Route and absence of executed Road Use Agreement

The Township submits that the evaluation of the application in the public interest in accordance with sections 96 (2) and section 97 of the Act requires consideration of the terms of the Road Use Agreement.

The Board has established Preliminary Issues and a process to hear further submissions on this and a related matter. These are described below.

The Township of West Lincoln’s request for intervenor status is granted. The scope of its intervention will be determined in consideration of the submissions on the preliminary matters.

#### Land Owners and other interested Parties

None of the interests cited by other parties and noted above fall within the criteria contained in section 96 of the Act. Accordingly the Board will not permit submissions to be made on these issues. The Board notes that all but two of the individuals requesting intervenor status have been identified by the Applicant as individuals who would be

required to be offered a form of agreement. The Board grants intervenor status to those parties, who are the following:

Walker Road Landowners; Givens Farms Ltd; Canadian White Feather Farm Products; Archie & Nancy Huizinga; Ken & Susan Durham; Norman Vaughan; and Peter & Nelly Oosterhoff.

With respect to the requests from Phelps Homes Ltd. and Craig Surveying and Mapping Inc. the Board notes that neither request cites issues that are within the Board's purview in this hearing.

Phelps Homes Ltd. concerns relate to its views on the impact of the location of the Transmission Facilities on adjacent residential development due to the visibility and the scale of size in relation to the adjacent housing that results in impacts on property values.

Craig Surveying and Mapping Inc.'s concern is with respect to proposed tower locations adjacent to its property and its view that towers or lines constructed in front of its property will devalue it.

The scope of this proceeding has been set out in the Notice of Application and also in this order, above. The issues cited by Phelps Homes Ltd. and Craig Surveying and Mapping are not within the scope of the proceeding and their requests are therefore denied.

Intervenors are advised to review the Practice Direction on Cost Awards for further information about which types of costs are eligible for recovery. For example, costs for counsel and consultants are generally recoverable, but costs for time spent directly by the intervenor are generally not recoverable. The Practice Direction and related forms are available on the Board's website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca).

#### Hydro One and the IESO

The Board grants intervenor status to Hydro One and the IESO on the grounds requested.

A list of approved intervenors is attached as Appendix A to this Order.

### **Preliminary Issues – Section 97**

#### *Location of the Transmission Line and Road Use Agreement*

The Township's listed issue c) pertains to the approval pursuant to section 97 of the form of agreement offered to landowners. The Township's second and third stated grounds for intervention status are based on this issue. Although the Board has determined that it will accept the Township's intervention request, it would like to receive submissions on the following issue.

The Applicant has sought approval for two forms of agreement under section 97: an "Exclusive Option for Substation" and a "Land Use Agreement (Transmission)". Although the Application references certain "Road Use Agreements" that the Applicant is seeking to negotiate with affected municipalities (including one or more with the Township), it does not appear to be seeking any approval for these particular agreements from the Board. It is therefore not clear if the Townships concern with respect to its road allowances and section 97 are within the scope of this proceeding.

The Board notes that section 41 of the *Electricity Act* provides as follows:

Public streets and highways

41. (1) A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines. 1998, c. 15, Sched. A, s. 41 (1).

[...]

Location

(9) 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. 1998, c. 15, Sched. A, s. 41 (9).

Application of subs. (9)

(10) Subsection (9) does not apply if section 92 of the Ontario Energy Board Act, 1998 applies. 1998, c. 15, Sched. A, s. 41 (10).

The Board would like to receive submissions from the parties and Board staff on the interplay between section 97 of the Act and section 41 of the *Electricity Act*. In particular, the Board would like the parties' views on whether an approval under section 97 for the form of road use agreements is required under the current circumstances.

#### *Interpretation of "approved route"*

The Board would further like to hear submissions from parties and Board staff respecting the appropriate interpretation of section 97. Section 97 states that an offer must be made to each owner of land "affected by the approved route or location". The Board is interested in parties' views respecting what is meant by "approved route or location." The Board would be assisted in hearing the parties' views on what is meant by the "approved route", and how is it determined. In this regard, parties may wish to consider the interplay between section 97 and section 96(2).

#### **Procedural Matters**

In its Notice the Board indicated that it intended to proceed by way of a written hearing unless any party satisfied the Board that there was a good reason for not proceeding by way of a written hearing. Several parties have requested an oral hearing. The Board will decide whether an oral hearing is required once it has considered the submissions on the preliminary issues described above.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE BOARD ORDERS THAT:**

1. Parties and Board staff wishing to make submissions on the preliminary issues described above shall file their submissions with the Board, and copy on all other parties, by November 15, 2013.
2. Parties and Board staff wishing to make submissions in response to the initial submissions of other parties shall file their submissions with the Board, and copy all other parties, by November 22, 2013.

All filings to the Board must quote the file number, EB-2013-0203, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

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

E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED at Toronto, November 1, 2013**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX "A"**

**NIAGARA REGION WIND CORPORATION**

**Leave to Construct Application**

**Board File No. EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

**Dated: November 1, 2013**

**Niagara Region Wind Corporation  
EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

**November-01-13**

**APPLICANT**

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Corporation**

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**Niagara Region Wind Corporation  
EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

November-01-13

**INTERVENORS**

**Rep. and Address for Service**

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**Niagara Region Wind Corporation  
EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

**November-01-13**

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**Niagara Region Wind Corporation  
EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

November-01-13

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**Walker Road Landowners**

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**Niagara Region Wind Corporation  
EB-2013-0203**

**APPLICANT & LIST OF INTERVENORS**

**November-01-13**

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