



November 15, 2013

Via Email: boardsec@ontarioenergyboard.ca

Reply to St. Catharines Office
Sara J. Premi
905-688-8039 – Direct Line
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: EB-2013-0203

Submissions on Preliminary Matters on behalf of the Township of West Lincoln

In its Procedural Order dated November 1, 2013 in relation to the above-noted matter, the Board has requested submissions relating to two issues. These submissions are set out below.

1. Location of the transmission line and road use agreement

The Board has requested submissions regarding the appropriateness of dealing with road use agreements between the Applicant and the Township as part of the proceeding before it.

It is the respectful position of the Township that its issues pertaining to road use, including the location of transmission facilities and the form of all applicable agreements, are properly before the Board in this proceeding.

The application is for leave to construct transmission facilities under section 92 of the *Ontario Energy Board Act* (the “OEBA”).

A condition of approval is that the Board be satisfied that an applicant has offered or will offer each owner of land affected by the approved route or location an agreement in the form approved by the Board.

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Section 41(1) of the *Electricity Act* provides authority for the installation of transmission facilities on public road allowances. Subsection 41(9) provides that the location of facilities shall be agreed to by the transmitter or distributor and the owner of a street or highway, and further that in the case of a disagreement, the issue of location shall be determined by the Board.

Subsection 41(10) provides that 41(9) does not apply if section 92 of the OEBA applies.

The applicant's proposal requires leave of the Board to construct transmission facilities. Section 92 of the OEBA is triggered, and as such, the parties are unable to rely on section 41(9). In circumstances where leave is not required under section 92, section 41(9) is otherwise available to the parties to obtain assistance from this Board where there is a disagreement on location for transmission facilities.

In our respectful view, leave to construct under section 92 contemplates approval of the location of transmission facilities within a road allowance. This is supported by the language of section 97, which also defines the scope of this hearing, as well as section 41(10). The purpose of Subsection 41(10) is simply to avoid duplication of proceedings. The issue of location of facilities within a road allowance, and the form of agreement in relation thereto, are appropriately before this Board regardless of whether the application is brought under section 41(9) or 92.

It would not be a reasonable interpretation of the legislation that an issue appropriate for the Board to consider where leave is not required, is not an appropriate issue where leave is required. In other words, it would not make sense that a municipality would lose the opportunity to have the assistance and guidance from the Board as contemplated under section 41(9) because a proponent requires approval under section 92 of the OEBA.

It is our respectful submission that the relationship between section 41 of the *Electricity Act* and section 92 and 97 of the OEBA is such that for the purposes of an application under section 92, as the municipality is an owner of land affected by the approved location, the form of all relevant agreements must be approved as a condition for leave to be granted.

The Act does not provide discretion for the applicant to select the agreements for which it seeks approval.

In summary therefore it is our respectful submission that an approval under section 92 and 97 relating to location of the transmission line and the form of agreement is required in this proceeding and is a matter appropriately before the Board.

2. Interpretation of "approved route"

The Board has also asked for submissions on the proper interpretation of "approved route" in Section 97 of the OEBA.

Section 94 of the OEBA requires the submission of a map showing the route and general location of the proposed works and the highways under, over, upon or across which the work is to pass. Consideration and approval of a route is part of the Board's mandate. Section 97 provides an additional requirement to have an agreement set out in a form approved by the Board, which reflects the Board's approval of the route and location.

Thank you for providing us the opportunity to make the above-noted submission.

Yours very truly

Sullivan Mahoney LLP

Per:



Thomas A. Richardson

SJP:bj

Yours very truly

Sullivan Mahoney LLP

Per:



Sara J. Premi