



November 25, 2013

Please Reply to St. Catharines Office

VIA EMAIL: boardsec@ontarioenergyboard.ca

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

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

In its Procedural Order dated November 1st, 2013 in relation to the above noted matter, the Board has requested reply submissions relating to two preliminary issues.

1. Road Use Agreement

The Applicant has submitted that the Board lacks jurisdiction to consider and approve a Road Use Agreement in this application for leave to construct under section 92. However, the Board has previously considered and approved Road Use Agreements, as included agreements under section 97, in many applications for leave to construct under section 92. This has not resulted in the imposition of an approval regime similar to that under the *Municipal Franchise Act*.

Section 97 is not discretionary; it requires the approval of agreements to each owner of land affected by the route. The Applicant does not dispute that the Township is such a land owner.

The Township submits that not only is it within the jurisdiction of the Board to consider a Road Use Agreement, the Board is required to consider and approve the form of the agreement pursuant to section 97.

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V.F. Muratori, Q.C.	P.B. Bedard	T.A. Richardson	P.M. Sheehan	W.B. McKaig	J. Dallal	D.A. Goslin
J.M. Gottli	R.B. Culliton	J.R. Bush	P.A. Mahoney	B.A. Macdonald	M.J. Bonomi	G.W. McCann
S.J. Premi	C. D'Angelo	R. Vacca	T. Wall	B.J. Troup	D.M. Contineza	D.M. Willer
L.K. Parson	J.P. Maloney	M.D. Atherton	J. McNulty	J.M. Armitage	M.W. Vanoostveen	G.C. Fahy
D.A. Maloney	L.T. Sgambelluri					

Counsel (Commercial Law): M.D. Kriluck

2. Interpretation of "Approved Route"

The Township submits that the Applicant has not provided support for its position that the Board cannot review and consider the location of the transmission lines within the road allowance on this application. The location of the transmission lines is a proper consideration under section 41 (9) where leave is not required: in fact, it is the only consideration to be determined on such an application. The Applicant's assertion that the requirement for leave to construct somehow imposes a limit on the Board's jurisdiction, such that it can only approve or a reject the proposed location, is not a reasonable interpretation of the legislation.

Further, the Board's previous approval of Road Use Agreements, and the location of transmission lines within the road allowance, has not resulted in an impairment of rights under section 41 of the *Electricity Act*. A consideration of where the Applicant can locate lines within the road allowance does not diminish the Applicant's right to be in the road allowance.

The Township submits that approval of the location of the transmission lines within the road allowance is properly part of the Board's considerations in a leave to construct application, and that the Board has the authority to impose conditions on the proposed location, where such conditions address matters within the Board's jurisdiction.

Correction to the Record of the Proceeding

The Township supports the Applicant's request to correct the record of proceeding. The Township's request for intervenor status stated:

"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".

We confirm that there has been communication between the parties with respect to the Road Use Agreement, but that no agreement has been reached as to the location of the transmission lines. We request the record be corrected accordingly.

Yours very truly,

Sullivan Mahoney LLP

Per:



Sara J. Premi

Thomas A. Richardson, C. S.

MDA:mm