

January 23, 2014

EMAIL, RES & COURIER

Ontario Energy Board
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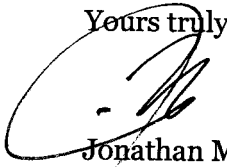
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli

**Re: Dufferin Wind Power Inc. (EB-2013-0268)
Applicant Submissions on Draft Issues List**

We are counsel to Dufferin Wind Power Inc. ("Dufferin Wind"), applicant in the above referenced proceeding. Please find enclosed the Applicant's submissions on draft issues list. This has been filed on RESS and served on all intervenors.

Yours truly,



Jonathan Myers

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Encl.

c: All Intervenors

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B) as amended (the “**Act**”);

AND IN THE MATTER OF an application by Dufferin Wind Power Inc. (“**DWPI**”) for an Order pursuant to section 99(5) of the Act granting authority to expropriate land for the purposes of constructing, operating and maintaining transmission and distribution facilities that will connect DWPI’s planned Dufferin Wind Farm to the IESO-controlled grid.

APPLICANT SUBMISSIONS ON DRAFT ISSUES LIST

January 23, 2014

INTRODUCTION

1. Dufferin Wind Power Inc. (“Dufferin” or the “Applicant”) filed an application with the Ontario Energy Board (the “Board”) on July 19, 2013 (the “Application”) under section 99 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) seeking authority to expropriate interests in certain lands for the purpose of constructing, operating and maintaining electricity transmission and distribution facilities necessary to connect it’s planned Dufferin Wind Farm to the IESO-controlled grid. Pursuant to Procedural Order No. 2, Board staff filed a Draft Issues List on January 17, 2014. The following are the Applicant’s submissions on the Draft Issues List.

SUBMISSIONS

2. In the Applicant’s view, the Draft Issues List proposed by Board staff is appropriate in scope. The Applicant does not propose the addition of any new issues or any revisions to the list. Moreover, the Applicant does not agree with the submissions on the Draft Issues List as filed by counsel for Mr. Atkinson, Atkinson Farms and Mr. Coe (“Atkinson & Coe”), which submissions propose the addition of two sub-issues and one new issue.

Response to Submissions on Draft Issues List from Atkinson & Coe

3. On January 22, 2014 Atkinson & Coe¹ filed submissions on the Draft Issues List by way of email. Atkinson & Coe propose the addition of sub-issue #3.1, sub-issue #4.1 and a new issue #6, all of which relate to the question of whether the Board can, in the present proceeding, require the Applicant to construct those portions of the transmission line running across the properties of Atkinson & Coe underground. In the Applicant's view, for the reasons that follow, this issue is outside the scope of the proceeding and the Board should therefore not consider evidence or argument from Atkinson & Coe on this point.

The Issue of Underground Installation Was Addressed in the Leave to Construct Proceeding

4. It is well established that in expropriation proceedings the Board will not revisit issues that have been determined in prior leave to construct proceedings.² As noted in the Board's decision granting leave to construct to Dufferin in EB-2012-0365³, the County argued that the Board should require the transmission line to be placed underground.⁴ Moreover, the Board in its leave to construct decision also notes that several letters of comment were filed which included requests for the Board to order the transmission line to be buried.

5. The issue of underground installation of the transmission line was also raised by CORE and other intervenors in interrogatories. For example, CORE, represented by counsel to Atkinson & Coe in this proceeding, filed an interrogatory asking "Other than cost to the Applicant, is there any other reason why the entire Transmission Line should not be buried?" To paraphrase, Dufferin's response indicated that the industry standard in North America is for 230 kV transmission lines to be installed overhead, a practice that recognizes that underground lines typically experience additional line losses, inferior power quality, lower life expectancy and more difficulties with maintenance relative to overhead lines. Dufferin also noted that its

¹ An email from Mr. Crocker dated January 21, 2014 implies that his client Mr. Vander Zaag is also an intervenor in this proceeding. However, in accordance with the October 29, 2013 letter from the Board, neither Mr. Vander Zaag nor his company D&G Ferguson Farms has been granted intervenor status. Mr. Crocker has not filed anything further on this point with the Board and from discussions with Mr. Crocker it was the Applicant's understanding that Mr. Crocker was satisfied that the application does not impact Mr. Vander Zaag or D&G Ferguson Farms.

² See Decision in EB-2010-0023 dated August 6, 2010.

³ The Board's Decision in EB-2012-0365 is included at Appendix 'A' of the pre-filed evidence.

⁴ See p. 9 of the Board's Decision in EB-2012-0365.

approach is consistent with the policies of Hydro One Networks Inc. with respect to this issue. Hydro One's policy is to build all high-voltage lines overhead where possible and to place transmission lines underground only where there are technical constraints preventing overhead construction or if the cost of overhead construction is not practical. Dufferin further noted that of the approximately 29,000 circuit kilometers of Hydro One transmission lines in Ontario, only 282 circuit kilometers are underground, consisting primarily of lines in urban areas.⁵

6. Despite the submissions from the County, the consideration of the issue in interrogatories and the comments received in support of requiring the underground installation of the line, the Board approved the forms of land agreement without requiring any conditions calling for underground installation. Moreover, the Board states in its Decision that "this is not a matter that falls under the jurisdiction of the Board unless it engages questions of reliability, which are not engaged in this case as evidenced by the conclusions of the IESO in the SIA Report. Rather, in the context of this application, that matter falls to be determined within the REA process administered by the Ministry of the Environment".⁶ Accordingly, the Board has already addressed the question of whether the transmission line should or should not be buried. As the Board does not revisit issues in an expropriation proceeding where the issue has been dealt with in a prior leave to construct proceeding, it should not be open to parties in the present proceeding to again raise this issue. Moreover, the Board found that, with the exception of reliability concerns, this is an issue for consideration under the REA process. Dufferin has received its REA and the appeal to the Environmental Review Tribunal was dismissed. The Board should not in the present proceeding visit issues that were properly within the scope of the REA process.

Underground Installation on the Crocker Intervenor Properties Would be Contrary to the Board's Decision and Order Granting Leave to Construct

7. In Dufferin's leave to construct proceeding the Board found the proposed transmission facilities to be in the public interest and granted leave to construct the transmission facilities subject to the Conditions of Approval attached to its Decision and Order dated July 5, 2013. The Conditions of Approval require, among other things, that the Applicant "construct the

⁵ See Dufferin Response to CORE Interrogatory #6 in EB-2012-0365, January 16, 2012.

⁶ See p. 12 of the Decision in EB-2012-0365.

transmission line and associated transmission facilities as defined in the Decision and Order in accordance with the Leave to Construct application, evidence and undertakings, except as modified by the Board's Decision and Order and by the Conditions of Approval and in accordance with applicable laws, codes and standards".⁷

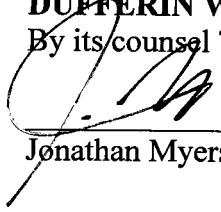
8. The application and evidence filed by Dufferin in that proceeding described, with a high level of detail, the proposed transmission line routing, the portions of the route to be constructed overhead, the two segments of the route to be installed underground and the three overhead to underground transition stations necessary to support this design. As such, the routing and design of the transmission facilities has already been established and approved in the leave to construct proceeding. The Board considered these aspects of the project and neither the Decision and Order nor the Conditions of Approval in any way modified them. Accordingly, pursuant to the Conditions of Approval Dufferin is required to construct the transmission facilities consistent with the approved routing and design, which specifies that the lines will be constructed overhead along the portion of the route that traverse the Crocker Intervenor properties.

9. While it is open to the Board to consider whether minor, lateral changes to the locations of facilities within the approved transmission corridor may be appropriate for purposes of minimizing impacts, it would be outside the scope of the present proceeding for the Board to consider any changes to the routing that would cause facilities to be situated outside of the approved transmission corridor. It would also be outside the scope of the present proceeding for the Board to consider any changes to the Applicant's approved transmission line design with respect to the construction of the transmission line primarily overhead with two specific segments being installed underground within the former rail corridor. For the foregoing reasons, the proposed additions to the Draft Issues List from Atkinson & Coe should be refused.

All of which is respectfully submitted this 23rd day of January, 2014.

DUFFERIN WIND POWER INC.

By its counsel Torys LLP


Jonathan Myers

⁷ See Decision in EB-2012-0365, Appendix B, Condition 1(a).