



**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

**BEFORE:** Ken Quesnelle  
Presiding Member

Ellen Fry  
Member

Peter Noonan  
Member

**DECISION ON THRESHOLD QUESTIONS  
AND PROCEDURAL ORDER NO. 2**

**February 04, 2014**

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 Independent Electricity System Operator-controlled grid, and for an order approving the forms of agreements that have been or will be offered to affected landowners.

On November 1, 2013, the Board issued Procedural Order No. 1 in which it granted intervenor status to Hydro One Networks Inc. (“Hydro One”); the Independent Electricity System Operator (“IESO”); the Township of West Lincoln (the “Township”); Walker Road Landowners; Givens Farms Ltd; Canadian White Feather Farm Products; Archie & Nancy Huizinga; Ken & Susan Durham; Norman Vaughan; and Peter & Nelly Oosterhoff.

As one of its grounds for intervention, the Township submitted that the evaluation of the application under subsection 92(2) and section 97 of the *Act* requires consideration of the terms of a road use agreement for both municipal and regional road allowances. In considering this issue, the Board sought further submissions from parties on two threshold questions and noted that the scope of the Townships intervention would be “determined in consideration of the submissions on the preliminary matters”.<sup>1</sup>

### **Threshold Questions asked by the Board**

First, the Board asked for 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 asked the parties’ for their views on whether an approval under section 97 for the form of road use agreements is required under the current circumstances.

Second, the Board asked for submissions on the appropriate interpretation of section 97 of the *Act*. Section 97 states that an offer must be made to each owner of land “affected by the approved route or location”. The Board asked for parties’ views respecting what is meant by “approved route or location” and how it is determined. In this regard, parties were reminded of the interplay between section 97 and subsection 96(2).

### **Position of Parties**

Pursuant to Procedural Order No. 1, the Board received submissions from the Township, Board staff, Walker Road Landowners and the Applicant. The Board also received reply submissions from the Applicant and the Township.

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<sup>1</sup> Procedural Order No. 1, p.6

With respect to the first threshold question, Board staff submitted that section 41 of the *Electricity Act* does not exempt the Applicant from the requirement set out in section 97 of the Act that requires an applicant to offer a form of agreement approved by the Board to each owner of land affected by the route or location. Staff noted that while section 41 of the *Electricity Act* does give a transmitter or distributor certain rights over municipal rights of way, nowhere in the section does it reference “the form of agreement” or section 97 of the Act. Therefore, staff submitted that in this case, the Township is a landowner that is affected by the route and as such the road use agreement with the Township is subject to approval as required by section 97 of the Act. Board staff further submitted that the approval of the road use agreement should be limited to the review of a standard form of agreement which represents the initial offering to the affected landowner, i.e. the Township. This position, Board staff submitted, was consistent with the Board’s approach in previous proceedings.

With respect to the second threshold question, Board staff submitted that the Board may consider route alternatives provided by the Applicant but only where such alternatives are in the public interest with respect to price, reliability and quality of electricity service. Board staff notes that in this proceeding, the construction of the transmission line will be paid for by the Applicant, not ratepayers, and this will be relevant to the Board’s consideration of price”.

With respect to the first threshold question, the Township submitted that for purposes of an application under section 92 of the Act, as the Township 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 Township stated: “... 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 the hearing, as well as subsection 41(10). The purpose of subsection 41(10) is simply to avoid duplication of proceedings”. The Township further stated: “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”.

With respect to the second threshold question, the Township noted that section 94 of the Act requires submission of a map showing the route and general location of the proposed works and therefore submitted that the approval of the route is part of the Board’s mandate

The Walker Road Landowners filed a response to Procedural Order No. 1 but did not address the threshold questions.<sup>2</sup>

With respect to the first threshold question, the Applicant submitted that approval of the form of a road use agreement under section 97 of the Act is not required. The Applicant submitted that a municipal road use agreement is not an agreement within the terms of section 97 of the Act rather that access to roads and highways is addressed entirely in section 41 of the *Electricity Act*. According to the Applicant, the legislation sets out two distinct regimes respecting uses of land: a private landowner regime in sections 97 to 100 of the Act and a separate regime for public streets and highways in section 41 of the *Electricity Act*. Each of these regimes, the Applicant submitted provides different rights and responsibilities for transmitters, landowners and the Board. The Applicant submitted that the private landowner regime in sections 97 to 100 of the Act is contractual, while the regulation of the use of public streets and highways in section 41 of the *Electricity Act* is determined by statutory rights and obligations. Accordingly the Applicant submitted that under the landowner contractual regime, all matters noted in subsection 41(1) to 41(4) of the *Electricity Act* (such as installation of equipment, maintenance and repair of equipment, access to land) are to be addressed in the form of a contract under section 97. In contrast, under section 41 of the *Electricity Act*, all these rights are exercisable without the consent of the owner or other person having an interest in the street or highway. The Applicant submitted that the Board has authority with respect to the placement of facilities on municipal roads where leave to construct is required and should exercise its mandate as prescribed in section 96 of the Act. The Applicant also submitted that the Township’s position is inconsistent with the current legal framework for electricity investment.

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<sup>2</sup> Walker Road Landowners submission on Threshold Questions, dated November 14, 2013, p.2

With respect to the second threshold question, the Applicant submitted that the approved route refers to the route applied for by an Applicant and approved by the Board in consideration of the criteria listed under subsection 96(2) of the Act.

In its reply, The Township submitted that section 97 is not discretionary and that the Board has previously considered and approved road use agreements.

In its reply the Applicant submitted that Board's staff position, that the Board set the minimum requirements of an agreement applicable to the use of public streets is directly contrary to section 41 of the *Electricity Act*. Further, the Applicant submitted that Board staff's suggestion that the Board should approve the form of road use agreements under section 97 would effectively overturn the legislative regime established by section 41.

With regard to the submissions of the Township, the Applicant submitted that subsection 96(2) does limit the role of the Board in a leave to construct application and noted that if the Township has any concerns respecting the use of its roads in should raise these matters in so far as they are within the scope of subsection 96(2) of the Act.

## **Board Decision on the Threshold Questions**

### ***General***

The Board has determined that in this proceeding it does not require the Applicant to submit a document to the Board showing a proposed form of agreement with the Township for purposes of section 97 of the Act.

Notwithstanding the Board's decision on this issue, the Board will permit the Township to participate as an intervenor with respect to the Board's determination of whether the Transmission Facilities are in the public interest as set out in section 96 of the Act.

The Board concludes that the "approved route or location" referred to in section 97 is the route or location approved by the Board in response to an application under section 92, approved in accordance with the criteria set out in section 96.

The reasons for the Board's decisions on the threshold questions are set out below.

***Majority Reasons of Ken Quesnelle and Peter Noonan, Board Members,  
with respect to Threshold Questions 1 and 2***

This case concerns an applicant that has received a contract for the provision of electricity to the IESO grid from the Ontario Power Authority under the provincial Feed-in-Tariff ("FIT") program. The application for leave to construct a proposed transmission line to connect a proposed wind farm to the IESO electrical grid has prompted the Board to raise two preliminary questions of law concerning the scope of the Township's intervention.

The focus of the Board's attention in the preliminary questions is section 97 of the Act which is set out in full below:

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.

Section 41 of the *Electricity Act* is also important in the Board's consideration of the preliminary questions. Section 41 provides statutory authority for a transmitter or distributor to place its lines in a municipal road allowance. The aspects of section 41 that are most relevant to this analysis are set out below:

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).

[...]

(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).

(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).

Some mention should also be made of other legislation that bears upon the construction of electrical transmission and distribution lines. The Legislature has vested jurisdiction over the environmental assessment of electrical transmission or distribution line projects in the Minister of the Environment pursuant to the *Environmental Assessment Act*.

### ***Section 97 of the Act***

Section 97 of the Act provides a mechanism for a project proponent to obtain an interest through a negotiated agreement in the real property that it will require in order to construct its facilities. The Legislature is concerned in this provision with balancing the public interest in bringing the project to fruition with the need to protect the interests of landowners. Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act.

Under section 97, the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner. The Board thereby ensures that the forms of agreements provided to landowners are appropriate in the circumstances. It is noteworthy that the Board's jurisdiction is limited in a number of ways by the Act. Firstly, under section 97 of the Act the Board is concerned with agreements in relation to land and is not concerned with other agreements that may pertain to other types of legal relationships, such as those of a commercial or personal nature. Secondly, the powers of the Board are limited to approving the form of the agreements. Finally, the form of the agreements approved by the Board must be in relation to the approved route of the proposed transmission or distribution line.

In the context of section 97 “form” is separate and distinguishable from the “substance” of an agreement. The word “form” is defined in *The Dictionary of Canadian Law* as: “The contents or structure of a document distinguished from its substance.”<sup>3</sup>

In *Re Van Elslander and Hewitt* a Canadian court examined the meaning of “form” and after reviewing pertinent case law on the subject the court stated:

The cases concluded and embraced the principle, and I think reasonably so, that “form” does not include “substance”, but is simply meant to express the framework within which the substance must find itself.<sup>4</sup>

The substantive content of any clauses that the Board approves for inclusion within a proposed agreement are not approved by the Board. Rather, the approval of the substance of the clauses in the agreement is left to the contracting parties. While the initial starting point for a negotiation between a landowner and an energy company will be the form of agreement that is approved by the Board, it is open to the landowner and the energy company to consensually develop an agreement with different subject matter than the clauses in the form of agreement approved by the Board. This has recently been underscored by a judgment of the Ontario Divisional Court. In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, (“CORE”) Justice Gordon stated:

It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resale.

Section 97 of the Act is essentially a narrow power that is concerned with the approval of the framework of agreements to be voluntarily negotiated between the parties to permit the construction of a proposed transmission or distribution line. The Legislature has been careful to ensure that the starting point for the conduct of those negotiations will not prejudice a landowner by requiring the Board to approve the initial terms of any agreement proposed to a landowner. In approving the form of agreements to be offered

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<sup>3</sup> *The Dictionary of Canadian Law*, 4<sup>th</sup> ed., Daphne Dukelow, Carswell, Toronto, 2011.

<sup>4</sup> *Re Van Elslander and Hewitt* (1979), 96 DLR (3d) 668 at 670 per Hewak J. (Man. Q.B.).

to landowners the Board may determine the appropriate content or structure of the form of an agreement to be offered. Section 97 does not give the Board any power to make a substantive determination of any matters in dispute between the negotiating parties.

Where negotiations between a project proponent and the landowner do not bear fruit the Legislature has provided that the proponent may subsequently seek to expropriate the interests in land that it requires pursuant to section 99 of the Act.

### ***Section 41 of the Electricity Act***

Section 41 of the *Electricity Act* grants a transmitter or distributor a statutory right to enter upon a road allowance and to construct a transmission or distribution line without seeking the approval of a municipality<sup>5</sup>. The use of a municipal road allowance for the purpose of locating electricity transmission and distribution lines has a public benefit in that it will reduce the need to acquire private lands for such a purpose, and it may assist in land development by creating corridors for the construction of necessary infrastructure.

While the consent of the municipality is not required<sup>6</sup> the project proponent may only undertake construction activities during reasonable hours<sup>7</sup> and must make good any damage that it causes as a result of its activities<sup>8</sup>. No expropriation compensation is payable by a project proponent to a municipality for its use of the road allowance<sup>9</sup>. In effect, section 41 of the *Electricity Act* provides a form of statutory appropriation of the road allowance for a compatible public use. It is a statutory alternative to expropriation where a proponent of an electrical transmission or distribution line wishes to avail itself of the use of a municipal road allowance.

The legislation further provides that the project proponent and the municipality should attempt to agree on the precise location of the project proponent's facilities within the

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<sup>5</sup> *Electricity Act* s. 41(1)

<sup>6</sup> *Ibid.*, s. 41(5)

<sup>7</sup> *Ibid.*, s. 41(3)

<sup>8</sup> *Ibid.*, s.41(7)

<sup>9</sup> *Ibid.*, s.41(8)

municipal road allowance<sup>10</sup> but if agreement is not possible the matter may be submitted to the Board for a determination of the precise location of the transmission or distribution line through the road allowance<sup>11</sup>. Significantly, however, the Board does not have the authority to determine the location of a transmission or distribution line within a road allowance under the *Electricity Act* if the project proponent is required to obtain a leave to construct order pursuant to section 92 of the Act<sup>12</sup>. In that event any jurisdiction that the Board may have with respect to the location of the line must arise from within the Act itself.

The exclusion (by virtue of subsection 10) of subsection 41(9) of the *Electricity Act*, in circumstances where the Board is seized of an application under section 92 of the Act, suggests that the Legislature intended the two statutes to be read together in this context.

A road allowance constitutes “lands” as that word is ordinarily interpreted. However, the fact that the Legislature has specifically addressed road allowances in section 41 of the *Electricity Act* excludes road allowances from the meaning of the word “lands” in section 97 of the Act, based on the interpretative principle that a specific provision will prevail over a more general provision. Therefore, the Applicant is not required to submit a proposed road use agreement to the Board for approval pursuant to section 97 of the Act.

Subsection 41(10) of the *Electricity Act* removes the power of the Board to determine the location of a line under the *Electricity Act* but it does not detract from the powers conferred upon a transmitter or distributor under the other provisions of section 41. The holder of a leave to construct order issued by the Board possesses at least an executory right to construct and own a transmission or distribution system for the purposes of section 41 of the *Electricity Act* and therefore may rely upon the rights conferred in subsections 41 (1)-(8) of the *Electricity Act*.

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<sup>10</sup> Ibid s.41(9)

<sup>11</sup> Ibid

<sup>12</sup> Ibid, s.41(10)

The remaining issue is the question of how to determine the precise location of a line in circumstances where section 92 of the Act applies.

### ***The Approved Route or Location***

An approved route or location is necessary in order to define with precision the facilities that will be the subject of the Board's leave to construct authority. The route will require an origin and a terminus, and must identify the lands and landowners who will need to be approached by an Applicant for a negotiated agreement for the use of private lands. Without an approved route there could be legal uncertainty concerning the precise definition of the work that is the subject of the Board's order, and uncertainty could also arise over the precise description of the lands that will be affected by the proposed project.

The power of the Board to approve the route or location of a proposed transmission or distribution line arises as a necessary incident to its powers under section 92 of the Act to approve a leave to construct order. Section 94 of the Act supports the exercise of such powers by specifically requiring that a general location map be filed by the Applicant with sufficient detail to describe the municipalities, highways, railways, utility lines and navigable waterways that the line will traverse.

The Board may approve a proposed route or location of an electrical transmission or distribution line pursuant to section 92 of the Act either explicitly or by implication. Regardless of the manner in which it does so, the Board will be constrained in approving the route or location as an exercise of public interest discretion by the limitations contained in subsection 96(2) of the Act. Thus, the Board in approving the route or location will be limited to considering matters relating to the price, reliability, or quality of electricity services (or to the promotion of government policy in relation to renewable energy). Matters outside of those specific public interest criteria cannot be considered by the Board. However, such other matters may fall under the jurisdiction of the Minister of the Environment under the *Environmental Assessment Act*.

The process described above is, in fact, how the Board has addressed such issues in the past. In *Dufferin Wind Power Inc.* EB-2012-0365 dated July 5, 2013 the Board

considered conflicting evidence concerning the route of a proposed transmission line. The Board stated:

[The Township of] Melancthon requested that the Board impose conditions relating to visual impacts, other route options, and greater avoidance of wetlands. Ms. Bryenton and Mr. Lyon each raised concerns with various aspects of the routing of the project. However, these matters form part of the REA process and are outside of the jurisdiction of the Board. The Applicant's routing evidence was not impugned by contrary evidence that the Board can consider under section 92 of the Act. (Emphasis added)

The words “the approved route or location” in section 97 means the route or location of the line as determined by the Board in the process of approving a leave to construct application. The discretion of the Board arises as a necessary incident to its powers under section 92 of the Act, and may be exercised explicitly, or by necessary implication, in approving a leave to construct application.

Where the Board is called upon to give effect to the concerns of the municipality in relation to the route or location of a proposed transmission or distribution line under section 92 of the Act the Board may consider the municipality's concerns only to the extent that those concerns raise an issue that is cognizable by the Board under subsection 96(2) of the Act. All other matters relating to route or location would fall to be determined by the Minister of the Environment under the *Environmental Assessment Act*, or the common law.

### **Conclusion**

An applicant holding a FIT contract which seeks leave to construct authority from the Board pursuant to section 92 of the Act must file an application that discloses the proposed route or location of the transmission or distribution line. Where private lands are potentially affected the project proponent must submit proposed land agreements for approval as to form by the Board pursuant to section 97 of the Act. The proponent may subsequently negotiate with private landowners to acquire the land rights that it needs for the fulfillment of the project. In the case of municipal road allowances, an

Applicant is not required to submit a road use or other agreement to the Board under section 97 where it proposes to rely subsequently upon the statutory rights conferred by section 41 of the *Electricity Act*.

Both private landowners and municipalities can make appropriate representations to the Board with respect to the route or location of a proposed line and the Board may consider such representations to the extent that they are relevant to the public interest, as defined in subsection 96(2) of the Act, in deciding whether to grant a leave to construct order pursuant to section 92 of the Act. Issues pertaining to the route or location that fall outside of the scope of the Board's jurisdiction may fall within the jurisdiction of the Minister of the Environment under the environmental assessment process.

***Minority Reasons of Ellen Fry, Board Member,  
with respect to Threshold Question 1***

I concur in the Board's decision on the first threshold question, for the following reasons.

Section 97 provides that

In an application under section...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.

The term "owner of land" is not defined in the Act. The Township is the owner of its road allowances and therefore based on the normal meaning of this term, it is an "owner of land" within the meaning of section 97 of the Act. Since a portion of the Transmission Facilities are proposed to be located on the Township's road allowances, it is clear that the road allowances would be "affected by the approved route or location".

This means that, if section 97 is read on a standalone basis, the Board does not have jurisdiction to grant the Applicant leave to construct under section 97 unless it approves a form of agreement offered by the Applicant to the Township.

Section 41 of the *Electricity Act* also applies to this situation if read on a standalone basis.

Subsection 41(1) provides that:

A transmitter...may over, under or on any public street or highway, construct or install such structures, equipment or other facilities as it considers necessary for the purpose of its transmission...system, including poles and lines.

Subsections 41(2)-(8) provide for a number of associated rights and obligations, including the right under subsection 41(5) to construct etc. without the consent of the landowner and the right under subsection 41(8) to do so without paying any compensation to the landowner. These rights and obligations are established directly by the legislation and therefore do not need to be established by agreement.

Subsection 2(1) of the *Electricity Act* defines “transmitter” as “a person who owns or operates a transmission system”, and “transmission system” as “a system for transmitting electricity...[that] includes any structures, equipment or other things used for that purpose”.

The Applicant will own and operate the Transmission Facilities and therefore is a “transmitter” within the meaning of section 41. “Public street or highway” is not defined by the *Electricity Act*, but it is clear that the road allowance owned by the Township is a public street or highway within the normal meaning of this term.

Accordingly, both section 92-97 of the Act and section 41 of the *Electricity Act* apply to this situation when read on a standalone basis. The question is whether both of them are intended to apply at the same time, or whether one is intended to override the other.

Subsection 41(1) of the *Electricity Act* assists in determining this question. Subsection 41(1) provides that “Subsection (9) does not apply if Section 92 of [the Act] applies”.

In the absence of subsection 41(10), it would be reasonable to conclude that in this situation section 41 of the *Electricity Act*, rather than sections 92-97 of the Act is intended to apply, because section 41 addresses the situation in more specific terms.

However, subsection 41(10) indicates that the Legislature made a decision on how the interplay between section 41 of the *Electricity Act* and sections 92-97 of the Act would work. Subsection 41(10) indicates that where both section 41 and sections 92-97 could apply, the result is to make subsection 41(9) inoperative. If the Legislature had intended either that sections 92-97 would not apply, or that none of section 41 would apply, it would have been expected to say so in subsection 41(10).

Accordingly, the Board needs to give effect to both section 97 and subsections 41(1)-(8) at the same time. The question is how to do so. Based on the plain wording of the sections, the Board considers that there are two important elements:

- 1) The Board cannot approve the Applicant's leave to construct application unless it approves a form of agreement offered by the Applicant to the Township as owner of the road allowances; and
- 2) The form of agreement that is approved must be consistent with the rights and obligations established by subsections 41(1)-(8)

It is for the Applicant to decide what form of agreement it requests the Board to approve. Although subsections 41(1)-(8) establish a code of basic rights and obligations that apply to the situation, the Applicant could decide to submit for the Board's approval a form of agreement that contains additional terms.

The Applicant's submission in this proceeding indicate that in effect the Applicant is offering to the Township and submitting for the Board's approval a form of agreement that contains only the terms contained in subsections 41(1)-(8).

The Board does not consider that it would serve any useful purpose to require the Applicant to offer and submit an actual document embodying the form of agreement, given that this would be an empty agreement.

***Minority Reasons of Ellen Fry, Board Member,  
with respect to Threshold Question 2***

I concur in the Board's decision on the second threshold question, for the following reasons.

All of the parties submit that approval of a route is part of the Board's mandate in an application under section 92. Both the Applicant and Board staff submit that the Board's mandate is to assess the proposed route in terms of the criteria in section 96. Board staff also submits that the Board's process in a section 92 application and the process under the Ministry of the Environment's *Environmental Assessment Act* "should not be significantly out of step as 'the leave to construct would be significantly affected if the Environmental Assessment Terms of Reference did not include the same route.'"

The Board agrees with the parties that the Board's mandate is to assess the route proposed by the Applicant in terms of the criteria in section 96. The Board recognizes that there could be practical difficulties for the Applicant and delay in the approval process if the route submitted for Board approval differed from the route submitted to the Ministry of the Environment. However, the Board considers that any resulting requirement for coordination of the timing of the Board and Ministry processes is for the Applicant to deal with it as it considers appropriate. The Board's responsibility is to consider the route in the section 92 application as it is presented by the Applicant.

An approved route is necessary in order to define the facilities that will be the subject of the Board's approval under section 92, if approval is granted. Without an approved route there would be uncertainty concerning what facilities the Board was approving and also concerning what owners of land would be affected by the proposed route as contemplated by section 97.

Section 94 requires the Applicant to provide information to the Board to enable the Board to fulfill this requirement by showing the route for which it is seeking approval:

An applicant...shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and

navigable waters through, under, over, upon or across which the proposed work is to pass.

Accordingly, the Board considers that the Board has the implicit power to approve the route as a necessary incident to its powers under section 92. Because this is an element of the exercise of the Board's powers under section 92, the Board must follow the criteria in section 96 in considering the route.

### **Form of Hearing**

In its Notice of Application 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. In Procedural Order No. 1 the Board indicated that it will decide whether an oral hearing is required once it has considered the submissions on the preliminary issues. Several parties have requested an oral hearing. The Applicant has objected to these requests. The Board has determined that it will consider this matter at the completion of the discovery phase of this proceeding.

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. Board staff and intervenors who wish information and material from the Applicant that is in addition to the pre-filed evidence filed with the Board, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to the Applicant on or before **February 18, 2014**. Where possible, the questions should specifically reference the pre-filed evidence.
2. The Applicant shall file with the Board and deliver to all intervenors a complete response to each of the interrogatories by **February 28, 2014**.
3. Board staff and intervenors shall, on or before **March 6, 2014**, indicate if it is their intention to file evidence.

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, February 04, 2014**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary