

February 12, 2014

**EMAIL RESS & COURIER**

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

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Dufferin Wind Power Inc. - Application for Authority to Expropriate  
(EB-2013-0268)**

We are counsel to the applicant, Dufferin Wind Power Inc. ("DWPI") in the above-referenced proceeding. We received a copy of a letter filed on February 11, 2014 by counsel to David Coe, Marc Atkinson and Atkinson Farms ("Atkinson and Coe") requesting an adjournment of the oral hearing by approximately one month from its currently scheduled date of February 18, 2014. For the reasons that follow, DWPI strongly opposes this request.

Atkinson and Coe's adjournment request comes just one week prior to the scheduled oral hearing, the timing of which has been established since the issuance of Procedural Order No. 2 on December 16, 2013. DWPI filed its application on July 19, 2013, which is seven months prior to the currently scheduled hearing date. At no point during this proceeding did Atkinson and Coe signal any intention to file written evidence. This is despite numerous opportunities to do so, as follows:

- Mr. Atkinson on behalf of Atkinson Farms requested intervenor status on October 9, 2013, at which time he signaled his intention to argue for the transmission line to be constructed underground on his property. In a letter from his counsel on October 15, 2013 Mr. Atkinson requested intervenor status personally. Mr. Coe requested intervenor status on October 10, 2013. In letters dated October 25, 2013, the Board was informed that counsel had also been retained by each of Atkinson Farms and Mr. Coe. Despite Rule 23.03 of the Board's *Rules of Practice and Procedure*, which requires every letter of intervention to include a statement of the scope of the intervenor's intended participation, none of these letters indicated any intention to file written evidence.
- On October 30, 2013 the Board determined in Procedural Order No. 1 that it would proceed by way of an oral hearing. In response to this finding, Atkinson and Coe did not signal to the Board any intention to file written evidence.

- In Procedural Order No. 2 issued on December 16, 2013, the Board reiterated its intention to proceed by way of an oral hearing and established dates for all procedural steps leading up to the oral hearing on February 18, 2014. This included dates for filing interrogatories on the applicant's pre-filed evidence, responses to interrogatories on the applicant's pre-filed evidence, a draft issues list, submissions on the draft issues list and the January 24, 2014 pre-hearing conference on issues and process. Atkinson and Coe did not request a variance to Procedural Order No. 2 so as to establish a process for the filing of written intervenor evidence and at no time since the issuance of Procedural Order No. 2 did Atkinson and Coe file any request whatsoever or signal any intention to file written evidence.
- Although interrogatories on the applicant's pre-filed evidence were due December 23, 2014, counsel for Atkinson and Coe filed late interrogatories on behalf of his clients on January 6, 2014. This consisted of a single interrogatory question focused exclusively on the issue of whether the transmission line should be constructed underground on the Atkinson and Coe properties. Subsequent to receiving DWPI's interrogatory response on January 14, 2014, there was no indication from Atkinson and Coe of any intention to file written evidence.

It is clear from the record in this proceeding that Atkinson and Coe have known from the outset that their key focus would be on arguing for the transmission line to be constructed underground on their properties. They have known of the date for the oral hearing since mid-December and have had numerous opportunities throughout the proceeding to advise the Board and parties as to their intentions. Atkinson and Coe have nevertheless waited until just one week before the scheduled hearing to make their intentions known. The effect of this tactic on the part of Atkinson and Coe would, if the Board were to grant the adjournment, cause very significant delay to the proceeding and the project, as well as prejudice to DWPI.

In particular, we note that counsel for Atkinson and Coe proposes to produce witness statements and potentially an expert report two weeks before the date of the hearing. Despite being experienced in matters before the Board, counsel's proposal is made without regard for the Board's practice of allowing for discovery of written evidence through an interrogatory process in advance of an oral hearing. As such, if the Board were to accept Atkinson and Coe's proposal then DWPI would be prejudiced by being denied the opportunity to undertake written discovery of the intervenor evidence in advance of the hearing. Alternatively, if the Board were to supplement Atkinson and Coe's proposal by providing such an opportunity for interrogatories on the intervenor evidence, this would prejudice DWPI by further delaying the date of the oral hearing by at least several weeks beyond the delay that Atkinson and Coe have requested.

A delay in the oral hearing by one month (or longer, if the Board were to determine that interrogatories on written intervenor evidence is needed) would also result in very significant financial and scheduling implications for DWPI and its project. In particular, such a delay would either require DWPI to put construction activities on hold while construction crews and specialized equipment remain mobilized on-site, or else would force DWPI to modify its construction plans so as to construct the transmission line in a piecemeal fashion by having to construct other portions of the line and then come back to the Atkinson and Coe properties. This would cause delays and increased construction costs due to the resulting inefficiencies. An adjournment would also extend the total period of time for construction of the project, which will have the effect of increasing construction costs. In addition, a prolonged construction period would have the corollary impact of causing DWPI to either lose revenues or to incur

liquidated damages under its contract with the Ontario Power Authority. Finally, delays in the project caused by the requested adjournment would be expected to have the further impact of significantly increasing DWPI's financing costs for the project.

For the foregoing reasons, DWPI submits that the Board should not grant the adjournment requested by Atkinson and Coe and that the hearing should proceed as scheduled on February 18, 2013. Given the time sensitive nature of this issue, we further request that the Board determine this matter forthwith.

Yours truly,



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cc: Mr. J. Hammond, Dufferin Wind  
Mr. C. Smith, Torys LLP