

March 4, 2014

**EMAIL**

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

Dear Ms. Walli:

**Re: EB-2013-0268**

We are counsel for Dufferin Wind Power Inc., the applicant, in the above-noted matter.

We write in reply to Ms. Bisset's letter of today's date. It is not our intention to engage in a protracted letter writing campaign with Ms. Bisset. However, given the content of her letter we offer this short reply.

We understand Coe and Atkinson to suggest that Mr. Kottelenberg testify at length in chief after which Dufferin would be afforded the opportunity to request an adjournment. The suggestion does not resolve Dufferin's concerns. We say this for the following reasons.

First, it would defeat the intention of the Board as set out in Procedural Order #4 (page 3) to permit parties to seek pre-hearing discovery prior to the oral hearing. Coe and Atkinson were afforded this right in relation to Dufferin's evidence and exercised it.

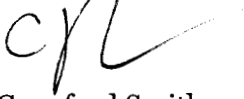
Second, assuming Mr. Kottelenberg is willing or compelled and able to return, the suggestion defeats entirely Dufferin's right to conduct timely, meaningful cross-examination of Mr. Kottelenberg at the qualification stage and, in relation to the substance of his opinion, assuming he is qualified. If for some reason Mr. Kottelenberg cannot return, Dufferin will have no right to cross-examine at all.

Third, it would result in further delays in the proceedings. While it is impossible to say at this stage the length of adjournment which might be necessary (because, of course, we have received no disclosure) given witness availability, the intervening March break, prior hearing commitments and the Board's own schedule, it could be several weeks or more. This prejudices Dufferin substantially in increased project costs. No other party is similarly impacted.

Compliance with the Board's rules ensures fairness to all parties. As the Divisional Court held in

*Westerhof*, "where the expert has not been qualified to give the opinions to be tendered or where the report relied on to advance the opinion does not comply with rule 53.03, it is correct for the trial judge to refuse to admit the evidence" (paragraph 22). Here, there has been no report and one will never be provided. The Board should exclude Mr. Kottelenberg.

Yours truly,

A handwritten signature in black ink, appearing to be 'Crawford Smith', written over the words 'Yours truly,'.

Crawford Smith

CS  
Enclosure

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