



**EB-2014-0139**

**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 Jericho Wind,  
Inc. for an Order or Orders pursuant to section 41(9) of the  
*Electricity Act 1998*, S.O. 1998, c. 15, Schedule A, as  
amended, establishing the location of Jericho Wind, Inc.'s  
distribution facilities within certain road allowances owned  
by Lambton County.

**BEFORE:** Emad Elsayed  
Presiding Member

Ken Quesnelle  
Vice Chair and Member

## **DECISION AND ORDER**

July 17, 2014

### **Decision**

The proposed location of Jericho Wind, Inc.'s ("Jericho") distribution system and associated facilities ("Distribution System") within road allowances owned by Lambton County (the "County"), is approved as detailed later in this Decision and Order. This approval includes any subsequent refinements that are mutually agreed to by Jericho and the County.

## The Application

Jericho filed an application dated March 18, 2014 with the Ontario Energy Board (the “Board”), under subsection 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A, as amended for an order or orders of the Board establishing the location of approximately 26 kilometers of Jericho’s proposed Distribution System within certain public streets, highways and right-of-ways owned by the Corporation of the County. The Board assigned File No. EB-2014-0139 to this application.

Jericho is in the process of developing a 150 megawatt wind farm called Jericho Wind Energy Centre (the “Project”), in the Municipality of Lambton Shores and the Township of Warwick in Lambton County, and in the Municipality of North Middlesex in Middlesex County, Ontario. Jericho’s application for Renewable Energy Approval (“REA”) from the Ontario Ministry of the Environment was received on April 14, 2014. The Project is being developed pursuant to a contract with the Ontario Power Authority under the Feed-in-Tariff program.

## Procedural Steps

The Board issued a Notice of Application and Written Hearing (the “Notice”) on March 31, 2014.

The Board issued Procedural Order No.1 on May 8, 2014, granting intervenor status to the County, and setting a schedule for a round of interrogatories for the participants.

On June 8, 2014, the Board issued Procedural Order No.2 deciding to proceed by way of a written hearing and setting a schedule for submissions by the parties.

On June 16, 2014, Jericho filed its Argument in Chief, followed by the County’s Submission on June 23 and Board staff’s Submission on June 24, all in accordance with the Board order. On June 25, Jericho filed its Reply Submission.

## Board Findings

The primary issues raised in in this proceeding can be grouped into the following three areas:

1. Utilization of Road Allowances vs. Private Lands.
2. Sufficiency of Information.
3. Lack of Alternatives.

Each of these issues is addressed below.

### Utilization of Road Allowances vs. Private Lands

The County takes the position that it would be safer for the public if the Distribution System (note that the County uses the term “transmission infrastructure” in its submission)<sup>1</sup> were to be located on private lands instead of the County-owned road allowances. The County refers in its submission to an opinion by Mr. Jason Cole, Manager of the County’s Public Works Department to that effect<sup>2</sup>. The County also makes reference to potential health and safety issues associated with the construction of the “electrical transmission infrastructure” such as having large construction equipment and workers installing electrical transmission infrastructure in close proximity to the travelled portion of the road allowances<sup>3</sup>.

Board Staff submits that the legislation limits the Board’s role in a Section 41 proceeding to a determination of the location of the proposed distribution facilities within the road allowances. Board staff submits that the Board stated in previous Section 41 proceedings<sup>4</sup> that its role is not to approve or deny the proposed distribution facilities, to consider the merits, prudence or any environmental, health, or economic impacts associated with these facilities, or to examine alternatives to the project. Board staff does not oppose Jericho’s application.

Jericho submits that Section 41 gives distributors like Jericho the right to locate their distribution systems within the road allowances, and that the scope of this proceeding is limited to determining the location of Jericho’s Distribution System within road allowances

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<sup>1</sup> Lambton County’s Submission, June 23, 2014, page 1, section 3

<sup>2</sup> Ibid, section 4

<sup>3</sup> Ibid, page 2, section 5

<sup>4</sup> Board staff Submission, June 24, 2014, page 2

owned by the County<sup>5</sup>. Jericho also clarifies the fact that aspects related to Jericho's transmission infrastructure have already been addressed<sup>6</sup> in the Board's leave to construct decision in EB-2013-0361. Furthermore, Jericho indicates that there is no affidavit evidence in this case to support the County's assertion regarding the safety of the Distribution System<sup>7</sup>. Jericho also confirms that no above ground distribution infrastructure will be located in the road allowances.

The Board agrees with Board Staff and Jericho that the Board's jurisdiction in this proceeding is to determine the location of the proposed Distribution System within the County's road allowances. The Board also agrees that any issues related to the construction of the transmission infrastructure are beyond the scope of this proceeding. Further, the Board notes that the County has not provided any evidence as part of this proceeding to support the assertion that there are safety issues associated with the location of the Distribution System within the road allowances.

### **Sufficiency of Information**

The County submits that the drawings submitted by Jericho in the application were not sufficiently detailed, particularly in relation to the exact horizontal and vertical alignment with respect to existing property lines and roadway features<sup>8</sup>.

Jericho, in its Reply Submission, stated that the mapping and location information filed with the application was sufficiently detailed, and at least as detailed as other similar cases approved by the Board (e.g. EB-2013-0233)<sup>9</sup>. More specifically, Jericho referred to two maps from its application<sup>10</sup> which were provided to County staff as part of finalizing the Road Use Agreement ("RUA") to support its argument that it provided sufficient information to the County. The first map filed as Schedule B11 in the proposed RUA<sup>11</sup> which was also included at Exhibit B, Tab 6, Schedule 1, Appendix B of the application. The second map filed as Schedule B10 in the proposed RUA<sup>12</sup> which was also included at Exhibit B, Tab 6, Schedule 1, Appendix C of the application. These two maps show a

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<sup>5</sup> Jericho's Argument in Chief, June 16, 2014, Part 1.0, page 2, lines 10 -16

<sup>6</sup> Jericho's Reply Submission, June 25, page 3, lines 13 - 15

<sup>7</sup> Ibid, page 3, lines 16 - 20

<sup>8</sup> Lambton County's Submission, June 23, 2014, page 2, section 11

<sup>9</sup> Jericho's Reply Submission, June 25, pages 5 – 6

<sup>10</sup> Ibid, pages 6 - 7

<sup>11</sup> Exhibit B/Tab 4/Schedule 1/Schedule B11 "Jericho Distribution (Collection) Location Map"

<sup>12</sup> Ibid/Schedule B10 "Jericho Distribution (Collection) Perpendicular Cross-Sections"

plan view of the Distribution System and detailed drawings of all road crossings, including minimum depths for Jericho's Distribution System underneath the travelled portion of the road. Jericho submits that the County had the opportunity during the interrogatory process to seek additional details, but did not do so. Jericho also states that, had the County staff required more detailed drawings prior to their recommendation of the RUA, they would have provided that information.

The Board finds that Jericho did provide sufficiently detailed information in support of its application. The Board also agrees that if the County required further specific details about these drawings, it would be the Board's expectation that these details would have been requested during the interrogatory process. The Board's expectation is that Jericho will continue to work cooperatively with the County to address any issues regarding the location details which may emerge going forward.

### **Lack of Alternatives**

The Board notes that the parties reiterated some of the same arguments noted above in support of their respective positions concerning the alleged "lack of alternatives." While acknowledging<sup>13</sup> that the proposed general location of the Distribution System does reflect the work of both the County and Jericho staff, the County reiterated its position that potential hazards could be avoided if the Distribution System were to be located on private lands<sup>14</sup>. The County acknowledged the existence of multiple County staff reports which endorsed the signing of the RUA, but referred to them as "nothing more than the opinion of certain unelected individuals"<sup>15</sup>.

Jericho submitted that, while the proposed RUA was going through a 60-day public comment period, the County Council repeatedly declined to engage Jericho in any relevant technical discussions concerning the Distribution System or the RUA<sup>16</sup>.

The Board reiterates its earlier finding that its jurisdiction in this case is limited to determining the location of the proposed Distribution System within the County's road allowances. During the prolonged discussion period among the parties, the County had

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<sup>13</sup> Lambton County's Submission, June 23, 2014, page 3, section 14

<sup>14</sup> Ibid, page 3, section 15

<sup>15</sup> Ibid page 3, section 18

<sup>16</sup> Jericho's Reply Submission, June 25, pages 8 – 9

the opportunity to suggest other alternatives within the road allowances, but it did not do so. The Board supports the location of the Distribution System as applied for by Jericho.

**THE BOARD ORDERS THAT:**

1. The location of Jericho's Distribution System in the road allowances owned by the County, as described below, is approved.
  - a. The Distribution System shall generally be located in the Road Allowances and the locations listed on Exhibit B, Tab 6, Schedule 1, Appendix A of the application.
  - b. The Distribution System lines shall be more particularly located as shown in the drawings included in Exhibit B, Tab 6, Schedule 1, Appendix B of the application.
  - c. The location aspects of the diagrams shown at Exhibit B, Tab 6, Schedule 1, Appendix C of the application shall be followed in constructing the Distribution System within the Road Allowances.

This order also includes any subsequent refinements to the Distribution System location that are mutually agreed to by Jericho Wind, Inc. and Lambton County.

2. Pursuant to section 30 of the Ontario Energy Board Act, 1998, Jericho Wind, Inc. shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

**ISSUED AT** Toronto on July 17, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary