



EB-2014-0226

IN THE MATTER OF an application by wpd Fairview Wind Incorporated for an Order or Orders pursuant to section 41(9) of the Electricity Act, 1998, S.O. 1998, c. 15, Schedule A establishing a location for the applicant's distribution facilities on public road allowances owned by the Municipality of Clearview, as set out in this application.

PROCEDURAL ORDER NO. 1

October 21, 2014

wpd Fairview Wind Incorporated (the "Applicant") filed an application dated July 22, 2014 with the Ontario Energy Board (the "Board"), under subsection 41(9) of the *Electricity Act, 1998*, c.15, Schedule A (the "Electricity Act") for an order or orders establishing a location for distribution facilities it proposes to locate within certain road allowances owned by the Township of Clearview ("Township") on sections of Fairground Road, through the intersection of Fairgrounds Road and Sideroad 21/22, and on a section of County Road 91.

The Board issued its Notice of Application and Written Hearing (the "Notice") and Letter of Direction to the Applicant on August 1, 2014. The Applicant submitted an affidavit confirming service of the Board's Notice on September 9, 2014.

Requests for intervenor status and cost eligibility were received from each of the Township, Kevin and Gail Elwood ("Elwood"), Don and Lynne Coutts ("Coutts"), Russell and Ruth Marie Bristow ("Bristow"), Wayne Bannerman ("Bannerman") and Earl Gordon McArthur ("McArthur").

Township of Clearview

The Township submitted a request dated August 21, 2014, asking for an extension to allow for its Council to review the application at its scheduled meeting of September 8,

2014, which was granted by the Board. On August 26, 2014, the Board received a letter from the Township requesting intervenor status, for an oral hearing and for cost eligibility.

The Township of Clearview is granted intervenor status. The Township is a municipality and is not eligible for costs in accordance with section 3.05(i) of the Board's *Practice Direction on Cost Awards*.

Elwood, Coutts, Bristow, Bannerman and McArthur

In separate letters dated September 25, 2014 responding to each of the initial letters of Elwood, Coutts, Bristow, Bannerman and McArthur, I described the Board's specific and narrow scope of inquiry for applications such as the one made by the Applicant in the current case and provided further information regarding the Board's processes. I then asked each of Elwood, Coutts, Bristow, Bannerman and McArthur to provide a concise statement as to how each of their interests is affected by the location of the distribution facilities within the Clearview Township road allowances. Responses were to be filed no later than October 7, 2014.

Letters were received from each of Elwood, Coutts, Bristow, Bannerman and McArthur on or before October 7, 2014. Each of the letters acknowledges that the Applicant proposes to locate the facilities in question within road allowances owned by Clearview Township. Each of the letters then cites concerns about:

- (a) The adequacy of the Applicant's application materials; and
- (b) Potential damage to "Built Heritage, Natural Heritage, Archaeological heritage, Water Courses above and below grounds, and features, functions of the "Environment" including any negative effects on values of our property, businesses, abutting lands, and road allowances *[sic]* Clearview Township...".

The letters then go on to request an oral hearing and to provide a non-exhaustive list of issues on which further evidence is required to determine whether the public interest will be properly served with regard to a number of issues in respect of the "transmission lines".

Having now considered the letters of each of Elwood, Coutts, Bristow, Bannerman and McArthur and the concerns cited therein, I deny Elwood, Coutts, Bristow, Bannerman and McArthur intervenor status for the reasons set out below.

In this case, wpd Fairview Wind Incorporated has applied under section 41(9) of the Electricity Act for an order determining the location of distribution facilities within certain Clearview Township road allowances. I emphasize that the facilities are at distribution voltage. This is not an application to construct a transmission line and/or related facilities which would be the subject of a different review by this Board.

This application relates only to the location of distribution facilities within certain road allowances. The relevant statutory sections are provided 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.

41(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.

The Board's jurisdiction in this matter is strictly limited to determining the location of the distribution facilities within the road allowances where there is disagreement. The question for this case is therefore not whether the applicant may locate its distribution facilities within the road allowances, but rather, where specifically within the road allowances the distribution facilities will be located.

The scope of the proceeding, and therefore the Board's jurisdiction, does not include considering:

- (a) whether the facilities should be built at all,
- (b) the construction, maintenance or decommissioning of the facilities,
- (c) consultation related to the construction or location of the facilities,
- (d) the application of any tests with respect to the reliability or quality of electricity service provided by the facilities,
- (e) alternative locations for the facilities,

- (f) any potential environmental impacts (including, Built Heritage, Natural Heritage, Archaeological heritage, Water Courses above and below grounds, effects on property values); or
- (g) any prior, pending or required approvals related to the wind generation project.

With respect to the concerns expressed regarding the adequacy of the Applicant's application materials, by issuing the Notice on August 1, 2014, I found that the Applicant's materials were sufficient to commence the Board's proceeding and to allow any interested party to determine whether and to what extent it may be affected by the application.

The concerns cited by Elwood, Coutts, Bristow, Bannerman and McArthur do not relate to the question of the location of the Applicant's distribution facilities within the Township road allowance. These concerns are therefore not relevant to what the Board must decide in this case.

Form of Hearing

The Applicant requested a written hearing. The Township has requested an oral hearing. The form of hearing will be determined by the Board in a future Procedural Order.

I consider it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. The Township of Clearview shall, on or before **November 4, 2014**, file with the Board and serve on the applicant the Township's proposal for the location of the wpd Fairview Wind Incorporated distribution lines and related facilities within the municipal road allowances and all supporting evidence related to that proposal.
2. Board staff shall request any relevant information and documentation from wpd Fairview Wind Incorporated that is in addition to the evidence already filed, by written interrogatories filed with the Board and served on all parties on or before **October 31, 2014**.

3. The Township of Clearview shall request any relevant information and documentation from wpd Fairview Wind Incorporated that is in addition to the evidence already filed, by written interrogatories filed with the Board and served on all parties on or before **November 4, 2014**.
4. wpd Fairview Wind Incorporated shall file with the Board complete written responses to all interrogatories and serve them on the Township of Clearview and Board staff on or before **November 17, 2014**.
5. Board staff shall request any relevant information and documentation from the Township of Clearview that is in addition to the evidence already filed, by written interrogatories filed with the Board and served on all parties on or before **November 14, 2014**.
6. wpd Fairview Wind Incorporated shall request any relevant information and documentation from the Township of Clearview that is in addition to the evidence already filed, by written interrogatories filed with the Board and served on all parties on or before **November 19, 2014**.
7. The Township of Clearview shall file with the Board complete written responses to all interrogatories and serve them on wpd Fairview Wind Incorporated and Board staff on or before **December 1, 2014**.

All filings to the Board must quote the file number, EB-2014-0226 and be made in searchable / unrestricted PDF format electronically through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD 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
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **October 21, 2014**

ONTARIO ENERGY BOARD

By delegation, before:

Original signed by

Kristi Sebalj
Registrar

APPENDIX "A"

To Procedural Order No. 1

wpd FAIRVIEW WIND INCORPORATED

EB-2014-0226

APPLICANT AND LIST OF INTERVENORS

October 21, 2014

wpd Fairview Wind Inc.

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October 21, 2014

APPLICANT

Rep. and Address for Service

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APPLICANT & LIST OF INTERVENORS

October 21, 2014

INTERVENORS

Rep. and Address for Service

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