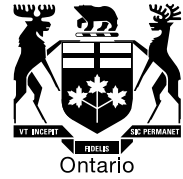


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BY E-MAIL

December 19, 2014

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Board staff Submission
Application by wpd Fairview Wind Energy Inc.
Board File No. EB-2014-0226**

Pursuant to Procedural Order No. 2, please find enclosed Board staff submission in the above noted proceeding.

Sincerely,

Original Signed by

Edik Zwarenstein
Case Manager

c. All parties

Encl.



BOARD STAFF SUBMISSION

EB-2014-0226

December 19, 2014

INTRODUCTION

wpd Fairview Wind Incorporated (“Fairview Wind” or the “Applicant”) has filed an application with the Ontario Energy Board (the “Board”) under subsection 41(9) of the *Electricity Act, 1998*, (the “*Electricity Act*”) for an order or orders of the Board establishing the location of certain distribution facilities within road allowances owned by the Township of Clearview (the “Township”).

The Board issued a Notice of Application on August 1, 2014 and received requests for intervenor status from the Township and from numerous individual applicants. In Procedural Order No. 1 the Registrar of the Board granted only the Township intervenor status.

Fairview Wind is in the process of developing a 16.4 MW wind power generating facility in the vicinity of the Township (the “Project”). In order to deliver electricity from the Project to the provincial transmission grid, Fairview Wind is proposing to construct a 44 kV underground distribution system (“Distribution Facilities”) that will collect power from 2 of its 8 turbines and deliver it along and under Fairgrounds Road, through the intersection of Sideroad 21/22 and the intersection of County Road 91, to a connecting station which ultimately connects with Hydro One Networks Inc.’s Stayner Transformer Station. The only relevant part of the Distribution Facilities in the application is that which is on Fairgrounds Road (“Fairgrounds Collector Line”).

BACKGROUND

Board staff’s review of Fairview Wind’s evidence indicates that it had made several attempts to engage with the Township in order to complete a Road Use Agreement with respect to locating its Distribution Facilities on the road allowances on Fairgrounds Road owned by the Township. The Township declined to approve the Road Use Agreement for stated reasons which include: that it is premature due to ongoing Renewable Environment Approval (REA)

process; that information was not provided regarding deconstruction at the Distribution Facilities' end of life; and delays by the Ministry of the Environment in answering the Township's questions.

Fairview Wind has therefore requested that the Board issue an order pursuant to section 41(9) of the *Electricity Act*, establishing the location of Fairview Wind's Distribution Facilities as proposed in Exhibit C of its Application.

STAFF SUBMISSION

Board staff will address two aspects, namely, the impact of the Renewable Energy Approval process on the Application, and the application of the section 41 process and the Road Use Agreement.

For the reasons set out below, Board staff is of the view that the Applicant's request should be granted.

Applicable Statutory Provisions

Section 41 of the *Electricity Act* states:

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.

The Application has been initiated under section 41(9) of the *Electricity Act*, which states:

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.

Road Use Agreement

The Township submitted a series of questions regarding the proposed Road Use Agreement, and the Applicant declined to respond to all but the first of them on the basis that the Road Use Agreement is not a subject of the Board proceeding and is therefore out of scope. Only interrogatory #10 of the Township's interrogatories relates to the physical aspects of the Fairgrounds Collector Line and that has more to do with the interface and consistency with an adjoining section on County Road 91 than with the details of the Fairgrounds Collector Line.

The Township did not file any evidence with respect to an alternate route or location for the Fairgrounds Collector Line. In response to Board staff Interrogatory #3 the Township state that the applicant

“... has refused to provide information regarding the precise location and details of the facilities (as evident in the response to our interrogetories (sic)) making it unclear as to what it is they are seeking to have approved. It is the Township's understanding *that if a general route is approved, but not a precise location, then the precise location will be a matter for agreement between the Township and the distributor.*” (emphasis added)

It is not entirely clear to Board staff what the meaning of the above emphasized statement is, but it appears consistent with the Township's view that it has not received sufficient information from the Applicant.

In Board staff's view, the Applicant has provided extensive evidence of the proposed route and location for the Distribution Facilities and the Fairgrounds Collector Line in particular.

Renewable Energy Approval Process

In email correspondence dated December 4, 2014 from Michael Wynia, Director of Community Planning and Development / Information and Technology Services at the Township, Mr. Wynia expressed concern about the Board proceeding to hear the Application while a REA process was not concluded.

The Board responded to Mr. Wynia on December 12, 2014 and indicated that the ERA process and the Board's consideration of the Application may occur concurrently and believes that is the most efficient process.

Board staff submits that the Board can issue an order under section 41(9) prior to REA approval or other approvals, if it chooses to, with a condition such as "The Applicant shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project".

- All of which is respectfully submitted -