

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B; and in particular section 99, thereof;

AND IN THE MATTER OF an application by Canadian Renewable Energy Corporation for authority to expropriate interest in certain lands for the purpose of constructing electricity transmission line to connect the wind plant on Wolfe Island in the Township of Frontenac Islands, County of Frontenac, Province of Ontario.

APPLICANT’S ARGUMENT-IN-CHIEF

Nature of the Application

1. The Applicant, Canadian Renewable Energy Corporation (CREC), is seeking an order of the Ontario Energy Board (the Board) under section 99(1) of the *Ontario Energy Board Act, 1998* (the Act) for authority to expropriate an easement over lands owned by Carlyanne Martin and R. Paul Martin Construction Co. Ltd.
2. CREC has withdrawn its application for an easement over lands owned by Globe Realty Holdings Ltd. as a result of having reached a settlement with that landowner.

The Board’s Jurisdiction

3. Pursuant to s. 99(1) of the Act, any person who has leave to construct an electricity transmission line may apply to the Board for authority to expropriate land for a work.
4. Following an oral hearing held in Kingston in September 2007, the Board issued a Decision and Order, EB-2007-0034, dated October 12, 2007, in which the Board granted CREC leave to construct an electricity transmission line (the Transmission Line) that will connect CREC’s Wolfe Island Wind Plant to Hydro One Network Inc.’s transmission grid (the “LTC Order”). A copy of the LTC Order is attached at Tab 3 of CREC’s Pre-Filed Evidence.

5. The Board may make an order under subsection 99(5) of the Act authorizing CREC to expropriate the land if it is of the opinion that it is in the public interest to do so.

Why it is in the Public Interest to Authorize the Expropriation

6. The route of the Transmission Line was previously approved in the EB-2007-0034 proceeding. Certain portions of the approved route for the Transmission Line run under lands owned variously by 1) Carylanne Martin¹ and 2) R. Paul Martin Construction Co. Ltd. (Applicant's Pre-Filed Evidence, p. 3)
7. R. Paul Martin Construction Co. Ltd. and Mr. Paul Martin participated actively as intervenors at the oral hearing in Kingston. Mr. Martin cross-examined the CREC witnesses and provided submissions on the issues of construction and routing impacts of the Transmission Line on the affected properties. In the EB-2007-0034 proceeding the Board found that the approved route was the best alternative from the perspective of reliability and quality of electricity service. (Decision and Order, p. 6)
8. R. Paul Martin Construction Co. Ltd., as represented by Mr. Paul Martin, is the only intervenor in this proceeding. R. Paul Martin Construction Co. Ltd. also represents the interests of Carylanne Martin. Mr. Martin has not raised any issues that are relevant to the issues in this application. The only concerns raised by Mr. Martin relate to routing and compensation, and in Procedural Order No. 1 the Board ruled that issues relating to routing and compensation are not issues in this proceeding.
9. CREC was a successful proponent in the Ontario Government's June 17, 2005 "Request for Proposal for 1000 MW of Renewable Energy" and has entered into a 20-year supply contract with the Ontario Power Authority to construct and operate a 197.8 MW wind plant on Wolfe Island. The Transmission Line will be used to connect the Wolfe Island

¹ CREC's Pre-Filed evidence indicated that the lands were owned by Carylanne Martin in trust, but a more recent title search indicates that title is registered in the name of Carylanne Martin. Carylanne Martin was served with the Notice of Application, and Paul Martin indicated in his letter of April 18, 2008 to the Board that he represents Carylanne Martin.

generation facilities to Hydro One's transmission system. In the EB-2007-0034 proceeding the Board previously found that the need for the Transmission Line was established. (Decision and Order, p. 3)

10. Under CREC's supply contract with the Ontario Power Authority, CREC is contracted to begin delivering electrical power into the Ontario grid as early as October 2008. CREC expects to begin commercial operation of the Wolfe Island Plant in March 2009, and it CREC would like to commence construction of the Transmission Line as soon as possible in order to meet that target date.
11. The requested authority to expropriate is needed in order for CREC to be able to proceed with the construction of the Transmission Line along the route approved by the Board. CREC submits that it is in the public interest for the construction of the Transmission Line to proceed otherwise CREC will not be able to deliver electricity to the provincial transmission grid and meet its supply obligations to the Ontario Power Authority.
12. The proposed expropriation will promote the Board's objectives under s. 1 of the Act to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service and facilitate the maintenance of a financially viable electricity industry because the expropriation is needed to connect the generating capacity from the Wolfe Island Wind Plant to the provincial transmission grid.

The Expropriation Plan

13. Section 9 of the *Expropriations Act* requires that a plan of the land be registered in order for the expropriated land to vest:
 9. (1) Where a proposed expropriation has been approved under this Act or under the Ontario Energy Board Act, 1998, the expropriating authority shall register, within three months after the granting of the approval, in the proper land registry office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority.

- (2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority.
14. As stated in the Pre-Filed Evidence, CREC is seeking approval to expropriate:
- 1) a permanent easement through land owned by Carylanne Martin, having an approximate area of 101 square meters, designated as Part 10 on the draft Reference Plan of Survey prepared by Leslie M. Higginson Surveying Limited bearing File No. KI'N2-10 LMH 27-1, being part of Lot 10, Concession 2, in the City of Kingston (formerly the Geographic Township of Kingston) in the County of Frontenac attached at Tab 6 of the Pre-Filed Evidence; and
 - 2) a permanent easement through land owned by R. Paul Martin Construction Co. Ltd., having an approximate area of 104 square meters, designated as Part 11 on the draft Plan of Survey, prepared by Leslie M. Higginson Surveying Limited bearing File No. KI'N2-10 LMH 27-1, being part of Lot 10, Concession 2, in the City of Kingston (formerly the Geographic Township of Kingston) in the County of Frontenac attached at Tab 6 of the Pre-Filed Evidence.
15. CREC has obtained from Leslie M. Higginson Surveying Limited another plan of survey which it can register pursuant to s. 9(1) of the *Expropriations Act* to show the lands to be expropriated (the Expropriation Plan). A copy of the Expropriation Plan is attached hereto as an Appendix.
16. The land that CREC seeks to expropriate from Carylanne Martin, which was designated as Part 10 on the draft Reference Plan of Survey at Tab 6 of the Pre-Filed Evidence, is designated as Part 1 on the Expropriation Plan.

17. The land that CREC seeks to expropriate from R. Paul Martin Construction Co. Ltd., which was designated as Part 11 on the draft Reference Plan of Survey at Tab 6 of the Pre-Filed Evidence, is designated as Part 2 on the Expropriation Plan.

Order Requested

18. CREC requests an order authorizing it to expropriate
 - 1) a permanent easement through land owned by Carylanne Martin having an approximate area of 101 square meters, designated as Part 1 on the attached Expropriation Plan, and
 - 2) a permanent easement through land owned by R. Paul Martin Construction Co. Ltd., having an approximate area of 104 square meters, designated as Part 2 on the attached Expropriation Plan

(the said Part 1 and Part 2 on the Expropriation Plan being jointly referred to hereinafter as the "Easement Lands") for the surveying, construction, installation, operation, use, inspection, patrol, removal, replacement, alteration, reconstruction, repair, renewal, movement and maintenance of underground cables and wires, conduits, conduit structures, markers, manholes, fixtures, and equipment and all appurtenances thereto as Canadian Renewable Energy Corporation may from time to time deem requisite for the purpose of electric transmission services together with the free and unimpeded right of ingress and egress at any time and at all times over, along, upon, under and through the Easement Lands and over the other lands of the owners of the Easement Lands as are open for passage or not improved with buildings and structures by Canadian Renewable Energy Corporation, its servants, agents, employees, those engaged in its business, contractors, and subcontractors, on foot and/or with vehicles, supplies, machinery and equipment necessary or incidental to the exercise and enjoyment of the rights, privileges and easements transferred.

19. Section 8(3) of the *Expropriations Act* requires the Board as the approving authority² to certify its approval of the expropriation in the form prescribed by Ontario Regulation 363 under the *Expropriations Act*. Pursuant to s. 1(5) of Regulation 363, the Board's certificate of approval may be endorsed on the Expropriation Plan intended for registration. CREC has inscribed the certificate of approval on the Expropriation Plan in the following terms:

Certificate of Approval

The Ontario Energy Board hereby Certifies that approval was given to Canadian Renewable Energy Corporation on the _____ day of _____, 2008, to expropriate a permanent easement through the lands designated as Part 1 and Part 2 on this plan (the Easement Lands) for the surveying, construction, installation, operation, use, inspection, patrol, removal, replacement, alteration, reconstruction, repair, renewal, movement and maintenance of underground cables and wires, conduits, conduit structures, markers, manholes, fixtures, and equipment and all appurtenances thereto as Canadian Renewable Energy Corporation may from time to time deem requisite for the purpose of electric transmission services together with the free and unimpeded right of ingress and egress at any time and at all times over, along, upon, under and through the Easement Lands and over the other lands of the owners of the Easement Lands as are open for passage or not improved with buildings and structures by Canadian Renewable Energy Corporation, its servants, agents, employees, those engaged in its business, contractors, and subcontractors, on foot and/or with vehicles, supplies, machinery and equipment necessary or incidental to the exercise and enjoyment of the rights, privileges and easements transferred.

(Signature of Approving Authority)

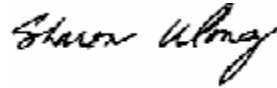
(Name of Approving Authority)

Dated at Toronto, this ____ day of _____, 2008

² The Board is the approving authority pursuant to s. 5(5) of the *Expropriations Act*.

20. CREC requests that the Board authorize the Board Secretary to endorse the certificate of approval on the Expropriation Plan and return it to CREC for registration.

All of which is respectfully submitted,



Sharon S. Wong
Counsel for the Applicant
June 12, 2008