



## CORPORATE SERVICES

July 9, 2013

TO: Interested Parties regarding the Request  
For Easement on the Rail Line

RE: **Dufferin Wind Power Request for Easement  
Update No. 4**

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Further to our letter dated February 13, 2013, I can provide the following update.

### Leave to Construction Application by Dufferin Wind Power

A decision has been made by the Ontario Energy Board dated July 5, 2013, to grant approval to Dufferin Wind Power for a Leave to Construct Application to build a 230 kV transmission line along private property and the County-owned former CP Rail Line.

The County of Dufferin has not granted permission to Dufferin Wind Power to use the former County-owned rail line. The OEB approval does not require the applicant (Dufferin Wind) to have completed agreements with land owners in order to make a decision. A copy of the decision is attached.

### Appeal on the Ministry of Environment Renewal Energy Decision

At the same time, a hearing by Environmental and Land Tribunals Ontario is taking place to hear appeals to a decision by the Ministry of the Environment for a Class 4 wind facility project (Dufferin Wind Power). A preliminary hearing is set for **Monday, July 22 at 10:00 a.m., Grace Tipling Hall, 203 Main Street East, Shelburne**. Anyone can attend this hearing. Also, anyone can ask to be a Party, Participant or Presenter by asking in writing no later than July 18, 2013 at 4:00 p.m. to:

#### Environmental Land Tribunals

Tracee Wessam, Case Coordinator,

Email: [trace.wessam@ontario.ca](mailto:trace.wessam@ontario.ca)

Phone: (416)314-4681

Address: 655 Bay Street, Suite 1500 Toronto ON M5G 1E5

Telephone: Local Number: (416) 212-6349 Fax Number: (416) 314-4506

Toll-Free Number: 1-866-448-2248 Toll Free Fax Number: 1-877-849-2066

Information Email: [ERTTribunalSecretary@ontario.ca](mailto:ERTTribunalSecretary@ontario.ca)

Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca)

## COUNTY OF DUFFERIN

55 Zina Street, Orangeville, ON L9W 1E5 | 519.941.2816 ext. 2500 | [dufferincounty.ca](http://dufferincounty.ca)

Re: Dufferin Wind Power Request for Easement – Update No. 4 – July 9, 2013

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We will keep you apprised of any further developments. If you are getting this notice by regular mail and would prefer getting updates via email, please let us know at [info@dufferincounty.ca](mailto:info@dufferincounty.ca).

Yours very truly,

Pam Hillock, County Clerk

Attachments:

1. Notice from the Environmental and Land Tribunals Ontario dated July 2, 2013
2. Notice of Decision of the Ontario Energy Board dated July 5, 2013

Environment and Land Tribunals  
Ontario  
Environmental Review Tribunal

Tribunaux de l'environnement et de  
l'aménagement du territoire Ontario  
Tribunal de l'environnement



655 Bay Street, Suite 1500  
Toronto ON M5G 1E5  
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July 2, 2013

**NOTICE TO ALL OWNERS OF NEARBY LANDS AND INTERESTED PARTIES:**

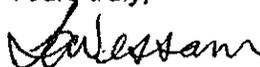
Enclosed is a Notice of Hearing for an appeal before the Environmental Review Tribunal. You are being notified of this hearing because you are an owner of land near the approved renewable energy project or a person who may have an interest in this hearing. For more information, a map of the site(s) is also available on the website of the Approval Holder, Dufferin Wind Power Inc. which can be found at <http://www.dufferinwindpower.ca/Portals/23/Downloads/DWP%20-%20Notice%20of%20Project%20Change%20-%20April%209%202013-%20final.pdf>

Owners of nearby lands and interested parties may seek the opportunity to participate at the Hearing. **You are not required to attend the hearing**, but if you do wish to be involved, there are four ways in which you may do so. They are as follows:

1. You may attend the hearing and observe the proceedings, but not actively participate.
2. You may request the hearing panel to grant you **presenter** status at the hearing. If granted presenter status, you will be able to provide your testimony under oath or solemn affirmation on a given day at the hearing, and be cross-examined by all parties. You may also file written material in addition to your oral presentation.
3. You may request that the Tribunal grant you **participant** status at the hearing. If granted participant status, you will be able to provide your testimony under oath or solemn affirmation on a given day at the hearing, and be cross-examined by all parties. You may also file written material in addition to your oral presentation and make submissions at the beginning and end of the hearing.
4. You may request that the Tribunal grant you **party** status. If granted party status, you will be able to present evidence through witnesses, cross-examine witnesses and make submissions at the beginning and end of the hearing. Parties are often represented by legal counsel. Parties are expected to attend all hearing days. Parties are also subject to the Tribunal's costs rules.

Should you wish to participate in this hearing, you should immediately write, fax or email the Case Coordinator to indicate your intention. You should visit the Tribunal's website to obtain a copy of the Rules of Practice and Practice Directions of the Environmental Review Tribunal and the relevant Guide. The Tribunal's website is located at [www.elto.gov.on.ca](http://www.elto.gov.on.ca). If you do not have Internet access, a copy of the Rules of Practice and Practice Directions and the relevant Guide will be mailed upon request.

Yours truly,

  
Donna Symonds  
Deputy Registrar

Administration Department  
Received

JUL - 8 2013

For Information:

**Environment and Land Tribunals  
Ontario**  
Environmental Review Tribunal

**Tribunaux de l'environnement et de  
l'aménagement du territoire Ontario**  
Tribunal de l'environnement



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**Case Nos.: 13-069 to 13-075**

**Under Rules 130 and 131 of its Rules of Practice, the Environmental Review Tribunal has directed the Approval Holder, Dufferin Wind Power Inc. to give this Notice of Preliminary Hearing and Hearing.**

### **NOTICE OF PRELIMINARY HEARING AND HEARING**

In the matter of appeals by William S. Crysedale filed June 24, 2013, by D&C Vander Zaag Farms Ltd. on June 25, 2013, by Conserve Our Rural Environment on June 25, 2013, by Dennis Sanford on June 25, 2013, by Roselyn Bovaird on June 25, 2013, by John Maguire on June 25, 2013, and by Kathleen Kurtin on June 25, 2013 for a Hearing before the Environmental Review Tribunal pursuant to section 142.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended with respect to Renewable Energy Approval Number 5460-98BPH8 issued by the Director, Ministry of the Environment, on June 10, 2013 to Dufferin Wind Power Inc. under section 47.5 of the *Environmental Protection Act*, regarding the construction, installation, operation, use and retiring of a Class 4 wind facility with a total name plate capacity of 99.1 megawatts at a location described in the Renewable Energy Approval as Dufferin Wind Power Project, SWTS as in MEL3218, Lot 270, Concession 1, and described in the Application for Approval of a Renewable Energy Project as bound by the following roads: the Melancthon-Osprey Townline to the north, the Melancthon-Mulmur Townline to the east, Sideroad 15 in Melancthon to the south and 5<sup>th</sup> Line/6<sup>th</sup> Line northeast/ Sideroad 240/ County Road 2 to the west, in the Township of Melancthon, County of Dufferin, Ontario.

The purpose of the Hearing is for the Tribunal to review the Director's decision and consider only whether engaging in the renewable energy project in accordance with the Renewable Energy Approval will cause serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment. If the Tribunal determines that such harm will be caused, the Tribunal may revoke the Director's decision; by order, direct the Director to take such action as the Tribunal considers appropriate; or alter the Director's decision, for which purpose the Tribunal may substitute its own opinion. If the Tribunal determines that such harm will not be caused, the Tribunal shall confirm the Director's decision.

**Preliminary Hearing:**

A Preliminary Hearing will be conducted by the Hearing Panel on:

Date: **Monday, July 22, 2013**

Time: **10:00 a.m.**

Location: **Grace Tipling Hall, Theatre  
203 Main Street East  
Shelburne, Ontario**

The purpose of the Preliminary Hearing will be to rule on requests from groups and individuals for Party, Participant or Presenter status, to identify the issues to be considered at the main Hearing and to deal with any preliminary matters that may be raised by Parties, Participants and Presenters.

**How to Participate:**

Any person who wishes to participate in this Hearing as a Party, Participant or Presenter should provide their request in writing (preferably by email) to the Case Coordinator **by 4:00 p.m. no later than July 18, 2013** stating what status they are seeking; their interest in the proceeding; a statement of the issues, facts and submissions relevant to the appeal that they wish to present; and whether their participation is likely to make a relevant contribution to the Tribunal's determination of whether engaging in the renewable energy project in accordance with the approval will cause serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment. If a written request is not received by the required deadline, the Tribunal may refuse the request.

**Main Hearing:**

The hearing of evidence in this appeal will commence on:

Date: **Tuesday, August 20, 2013**

Time: **10:00 a.m.**

Location: **Grace Tipling Hall, Theatre  
203 Main Street East  
Shelburne, Ontario**

and will continue, if necessary, on dates to be finalized at the Preliminary Hearing.

**TAKE NOTICE** that the Preliminary Hearing and Hearing dates are **peremptory** to all Parties, Participants and Presenters. If you do not attend at the Preliminary Hearing and identify yourself to the Tribunal, the Environmental Review Tribunal may proceed in your absence and you will not receive any further notice in these proceedings. The Tribunal may make orders with respect to the conduct of the proceeding which will be binding on all present and future Parties, Participants and Presenters.

## Tribunal Services

There will be no reporting services provided by the Environmental Review Tribunal for the Hearing. If Parties consider that they require a transcript of the proceedings they may obtain such service at their own expense.

We are committed to providing the highest quality of service to the public. This includes a commitment to providing an inclusive and accessible environment in which all members of the public have equal access to its services and are treated with dignity and respect. If you have any needs with respect to accessing the Tribunal's services, please contact us as soon as possible.

If you require service in French, please advise the Tribunal as soon as you receive this letter. Si vous avez besoin de services en français, veuillez contacter le Tribunal de l'environnement quand vous recevrez cette lettre.

For more information, please review the *Environmental Protection Act*, the Rules of Practice and Practice Directions of the Environmental Review Tribunal, and "A Guide to Appeals under section 142.1 of the *Environmental Protection Act*", which are available on the Tribunal's website at [www.elto.gov.on.ca](http://www.elto.gov.on.ca).

DATED at TORONTO, this 2<sup>nd</sup> day of July, 2013.

  
for: Donna Symonds  
Deputy Registrar

### Information Contact:

**Tracee Wessam**  
Case Coordinator  
Environmental Review Tribunal  
655 Bay Street, Suite 1500  
Toronto, Ontario M5G 1E5  
Case Coordinator's email: [tracee.wessam@ontario.ca](mailto:tracee.wessam@ontario.ca)  
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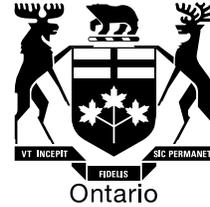
**Schedule of Events for Appeal Numbers 13-069/13-070/13-071/13-072/13-073/13-074/13-075  
Crysdale v. MOE**

June 10, 2013	June 25, 2013		July 3, 2013	July 9, 2013	July 16, 2013	July 18, 2013
	15 days after notice of decision		Within 8 days after Appeal expiry date	Within 14 days after Director receives Appeal Notice	Within 3 weeks after Appeal expiry date	At least 4 days before the Preliminary Hearing
Notice of decision on renewable energy project posted on Environmental Registry	Appeal expiry date		Notice Issued: Preliminary Hearing, Continuation of Preliminary Hearing and Hearing dates	Initial Disclosure: Director gives to Appellant and files with Tribunal material relevant to the statutory test from public consultation on renewable energy approval application	Disclosure: Exchange among Parties of relevant existing documents within Parties' possession, control or power (except privileged documents), and exchange, and filing of existing lists of witnesses, summary of intended evidence relevant to the subject matter of the appeal and a statement of the issues and material facts to be relied on by the Parties in responding to Appellant's issues	Request for Status: Written request to Tribunal to be added as Party, Participant and Presenter (must set out status sought, how test is met and statement of the issues and material facts)  The Tribunal will subsequently forward the request to the Parties or direct the requestor to do so.

July 19, 2013	July 22, 2013	July 30, 2013	Aug 2, 2013	Aug 13, 2013	Aug 16, 2013	Aug 20, 2013	December 24, 2013
At least 1 day before the Preliminary Hearing	4 weeks After Appeal expiry date	Within 5 weeks after Appeal expiry date	Within 5.5 Weeks after Appeal expiry Date	At least 7 days Before the Hearing	At least 4 days before the Hearing	8 weeks after Appeal expiry date	Within 6 months after Tribunal receives Appeal Notice
Response to status request: By Appellant, Director and Approval holder	Preliminary Hearing to: Determine Party, Participant, Presenter Status, define issues, hear preliminary motions	Mediation (if applicable)	Additional Disclosure: Exchange among Parties and filing of additional documents, lists of additional intended witnesses, witness statements for all witnesses and resumes of expert witnesses, to be relied on at the Hearing.  If any Party wishes to file reply witness statements, they must exchange and file them by: <b>August 9, 2013.</b>	Issues and facts still in dispute: Filing by Parties of material, list of facts and issues still in dispute	Continuation of the Preliminary Hearing: To finalize issues and witness lists; issue further directions, if appropriate	Date of Hearing	Release of Tribunal's Decision (as required by the <i>Environmental Protection Act</i> )

Ontario Energy  
Board

Commission de l'énergie  
de l'Ontario



**EB-2012-0365**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S. O. 1998, c.15, Schedule B (the "Act");

**AND IN THE MATTER OF** an application by Dufferin Wind  
Power Inc. for an Order granting leave to construct a new  
transmission line and associated facilities.

**BEFORE:** Cynthia Chaplin  
Presiding Member and Vice Chair

Peter Noonan  
Member

**DECISION AND ORDER**

**July 5, 2013**

## SUMMARY OF APPLICATION AND PROCEEDING

On September 21, 2012, Dufferin Wind Power Inc., (“DWPI”) applied under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act, 1998* (the “Act”) seeking an order of the Board for leave to construct approximately 47 km of single circuit 230 kilovolt (“kV”) electricity transmission line and associated facilities (the “Project”). DWPI also applied for an order approving the forms of easement agreements provided in the application, and an order approving the construction of certain transmission facilities upon, under, or over a highway, utility line, or ditch. The Board assigned File No. EB-2012-0365 to the application.

DWPI is a registered New Brunswick corporation, jointly owned by Longyuan Canada Renewables Ltd. and Farm Owned Power (Melancthon) Ltd.<sup>1</sup> DWPI has entered into a 20-year feed-in-tariff (“FIT”) contract with the Ontario Power Authority (the “OPA”) in respect of the sale of electricity from the Dufferin Wind Farm which is planned to be constructed and operated in the County of Dufferin. The purpose of the Project is to connect the Dufferin Wind Farm to the IESO-controlled grid. The Project involves the construction of: a 34.5 kV/230 kV intermediate transformer station at the Dufferin Wind Farm site; a 230 kV switching station adjacent to Hydro One Networks Inc.’s (“Hydro One”) existing Orangeville Transformer Station; approximately 47 km of a primarily overhead 230 kV three phase single circuit transmission line running from the wind farm site to the switching station; and a 100 m 230 kV interconnection that will connect the switching station to the Orangeville Transformer Station. Under the FIT contract, the date for commercial operation is January 30, 2014.

The Board issued a Notice of Application and Written Hearing on October 16, 2012 and DWPI served and published the Notice as directed. The Board granted intervenor status to the following parties: the Independent Electricity System Operator (“IESO”), the Corporation of the County of Dufferin (the “County”), the Township of Melancthon (“Melancthon”), Conserve our Rural Environment (“CORE”), The Highland Companies

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<sup>1</sup> Dufferin Wind Power Inc. is a Canadian corporation established May 17, 2011 under the laws of the Province of New Brunswick and has its headquarters in Toronto, Ontario. The company’s majority shareholder is Longyuan Canada Renewables Ltd. which is another Canadian corporation established under the laws of the Province of New Brunswick. Farm Owned Power (Melancthon) Ltd. is the minority shareholder. Longyuan Canada Renewables Ltd. is 100% owned by Hero Asia Investment Limited which in turn is 100% owned by China Longyuan Power Group Corporation Limited which is 68% owned by China Guodian Group Corporation. That corporation is, in turn, owned 100% by the Government of the People’s Republic of China. China Longyuan Power Group Corporation Limited constructs, manages and operates wind generation facilities and is according to the evidence the second largest wind energy operator in the world.

("Highland"), Harvey J. Lyon, and Lori Bryenton. The Board granted cost eligibility to Highland, Mr. Lyon and Ms. Bryenton. The Board also granted observer status to several parties and accepted letters of comment from local residents and public bodies.

The Board proceeded by way of a written hearing. On May 2, 2013, the record of the proceeding was completed with the applicant filing its reply submissions. Appendix A to this Decision provides further detail on procedural matters.

For the reasons set out below, the Board finds the construction of the proposed Project to be in the public interest and will grant leave to carry out the work, subject to the Conditions of Approval attached to this Decision.

### **THE BOARD'S JURISDICTION**

The application has been brought under section 92 of the Act. That provision forms part of a series of provisions that both empower and limit the Board in its consideration of this type of application. The Board's power to grant an applicant leave to construct transmission facilities arises from subsection 92(1) of the Act which states:

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

In discharging its duties in this proceeding the Board is also bound by the provisions of section 96 of the Act which states:

96. (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board shall only consider the following when, under subsection 1, it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the government of Ontario the promotion of the use of renewable energy resources.

The Board has been given a mandate to consider the public interest in applications arising under section 92 of the Act and the factors to be considered have been identified.

As a result of these provisions, many aspects of any transmission application, including the environmental impacts which result from the transmission project, the health risks of the transmission project, and the aesthetic impacts of the transmission project are outside the Board's jurisdiction. All of those matters are determined by the Government of Ontario through the REA process administered by the Ministry of the Environment and are not matters upon which the Board can express any findings or opinions. The Board also has no jurisdiction regarding the need for, or location of, the generation facilities associated with any transmission application.

The Act also gives the Board responsibilities for certain other matters, such as approval of the forms of land agreements to be offered to landowners whose lands are affected by the approved route or location of a proposed transmission project. Section 97 of the Act states that:

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

Finally, under section 101 of the Act the Board is empowered, subsequent to its grant of leave to construct the work, to authorize the construction of a transmission line upon, under or over a highway, utility line or ditch.

In considering this application, the Board has examined the impact of the Project using the framework established in section 96(2). First, we review the impact of the Project on reliability, quality and price of electricity, and the promotion of renewable energy sources. Then, we review land matters and the proposed forms of agreement. Last, we address the Letters of Comment.

## EVIDENCE RELATED TO THE BOARD'S FRAMEWORK

### Transmission System: Reliability and Quality of Electricity Service

The applicant has indicated that it will not be a licensed transmitter and seeks only to convey the generation capacity from the Dufferin Wind Farm to the IESO-controlled grid.

#### System Impact Assessment

As required by the *Filing Requirements for Transmission and Distribution Applications* (the "*Filing Requirements*") concerning leave to construct proceedings, DWPI filed a final System Impact Assessment Report ("SIA Report").

System Impact Assessments are conducted by the IESO to assess whether a proposed connection to the IESO-controlled grid would have an adverse impact on the reliability of the integrated power system and whether the IESO should issue a notice of approval or disapproval of the proposed connection under Chapter 4, section 6 of the Market Rules. The SIA Report is a technical document which is intended to provide a detailed review of the components of the proposal, and its impacts on system operating voltage, system operating flexibility, and the implications for other connections to deliver and withdraw power from the transmission system.

The SIA Report, dated August 31, 2012, concluded that the connection of this Project will not adversely impact reliability. The IESO issued a Notification of Conditional Approval of Connection, adding that final approval will be granted upon successful completion of the IESO Market Entry process. The IESO's report also noted that Hydro One will have to undertake some minor upgrades at the interconnection point.

#### Customer Impact Assessment

As required by the *Filing Requirements*, the applicant filed a final Customer Impact Assessment Report ("CIA") conducted by Hydro One in respect of the Project. The CIA study is designed to assess the implications of the Project for other customers of the transmission system. Hydro One issued a Final CIA Report on August 31, 2012, confirming that the Project is not expected to have any adverse impacts on Hydro One's transmission customers.

Board staff submitted that in accordance with the Board's general practice, approval of the leave to construct application should be conditional on the applicant complying with all the requirements of the IESO and Hydro One as outlined in the SIA and CIA, and include other provisions that are normally envisaged.

CORE argued that based on the number of impediments DWPI has experienced to date, its commercial viability is not guaranteed. Any interruptions to service as a result of operational or financial difficulties on DWPI's part will impact the interests of consumers with respect to reliability and quality of electricity.

In its reply submissions, the applicant did not object to any of the conclusions and recommendations contained in the SIA and CIA reports.

### **Cost Responsibility and Transmission Rates Impact**

DWPI submitted that it will own, construct and operate the applied-for transmission facilities and will bear all associated project costs, including costs incurred by the upstream transmitter. DWPI indicated in its reply submissions that costs will not be passed on to consumers through the Uniform Transmission Rates. No party disputed the claim that the Project will not impact transmission rates in Ontario.

### **Government Policy and Promotion of Renewable Energy Sources**

DWPI holds a 20-year FIT contract with the OPA in respect of the sale of the electricity to be generated at the Dufferin Wind Farm. The Project is designed to satisfy DWPI's contractual obligations with the OPA and falls within the larger framework of the *Green Energy and Green Economy Act, 2009*.

CORE submitted that although the cost of this Project will be borne by DWPI, the costs of adding wind power to the IESO-controlled grid will ultimately be borne by consumers through increased rates.

## **POSITION OF THE PARTIES AND DECISION**

### **Overview**

DWPI's evidence is that the proposed facilities will be constructed to meet with the approval of the IESO, which has determined in the SIA that there will be no diminution in

the reliability of the network as a result of the construction of this Project. There is no evidence to suggest that the quality of electrical service to Ontario consumers will be negatively impacted and the CIA Final Report supports a conclusion that no negative impacts on the quality of service will occur as a result of this Project.

DWPI will bear the financial and commercial risks of the Project, including the entire cost of the construction and operation of the Project. Therefore, consumers will not pay for any portion of the project through the transmission rates that they pay as part of their electricity bill.

The Board concludes that there will not be any adverse impacts on consumers with respect to the price, reliability, or quality of electricity service. The Board is also of the view that its leave to construct order should be appropriately conditioned to require the applicant to conform to the requirements set out by the IESO and Hydro One in the SIA and the CIA.

The generation source associated with the Project is a form of renewable energy, and therefore, in accordance with section 96(2) of the Act, the Board is required to consider, in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. In its final argument CORE suggested that the Board has a responsibility to consider whether solar or bio-energy projects are a preferable form of renewable energy, and that the Board should exercise a type of gatekeeper function with respect to the evolution of the use of renewable energy sources in the Ontario energy market. However, it is the Board's view that the promotion of the use of renewable energy sources under section 96(2) of the Act does not vest the Board with a gatekeeper function, and therefore it would not be appropriate for the Board to consider whether solar or bio-energy projects are preferable to wind projects, as CORE suggested.

The Board concludes that approval of the application for leave to construct is in the public interest as that term is defined in the Act.

### **Land Matters and the Form of Easement Agreements**

The project will be entirely located within the County of Dufferin, and will affect privately held land, as well as municipal, Crown, and County lands. DWPI has indicated that the Project will involve permanent and temporary land rights for the construction of the transmission infrastructure and for access to the lands during construction. The applicant

has identified in its pre-filed evidence all properties affected by the proposed route and further apprised the Board of the status of negotiations.

A portion of the proposed transmission line will traverse a former railway branch line now maintained by the County of Dufferin as a rail corridor for a distance of approximately 31.2 km. The County has expressed several concerns about the applicant's desired use of the rail corridor.

The remaining 15.6 km of the proposed transmission line are located on private lands. DWPI indicated that along the 15.6 km segment, with the exception of 110 m located within a municipal right-of-way, it has secured transmission easements or leases. In the case of the 110 m segment, DWPI indicated that it intends to rely upon its statutory rights pursuant to section 41 of the *Electricity Act, 1998* to site its transmission facilities within the right-of-way.

In accordance with Section 97 of the Act, the Board must be satisfied that DWPI either has or will offer each owner affected by the proposed route or location an agreement in a form approved by the Board. DWPI has submitted several draft forms of land agreements for approval by the Board.

In its submission Board staff addressed land rights, in particular the County lands, noting that an applicant is not required to obtain all necessary land rights as a prerequisite to the approval of a leave to construct application. Staff also noted that a party that is granted leave to construct but cannot secure the rights necessary to build the approved transmission facilities can bring an expropriation application to the Board pursuant to section 99 of the Act.

CORE opposed the application for approval of the land agreements stating that it would be inappropriate for the Board to approve them. First, CORE submitted that it would be premature to approve the land agreements due to a lack of finality concerning the ultimate configuration of the facilities. Second, CORE argued that approval of the land agreements could put those parties who have not yet entered into a land agreement with the applicant at a disadvantage with respect to future negotiations. Third, CORE argued that the independent legal advice clause has not been drafted with appropriate care resulting in inaccuracies in form and content, including the lack of a requirement for the landlord to seek independent legal advice, and that the applicant adduced no evidence to show that these forms of agreement reflect the industry standard.

In its final argument, the County of Dufferin acknowledged that it was not taking a position regarding any issue except those pertaining to the use of lands within the rail corridor. With respect to the location of the transmission line, the County restated its position in favour of an underground line. The County also highlighted the fact that the lands in the rail corridor do not constitute a public street or highway, and as such do not fall under section 41 of the *Electricity Act, 1998*. Therefore, DWPI will be required to enter into a mutually acceptable land use agreement with the County or, failing that, obtain an expropriation order to permit its use of those lands. The County requested that the Board include several conditions to its order, including: an obligation on DWPI to comply with certain laws, such as the Line Fences Act; a requirement that the transmission line be placed underground and avoid the Town of Shelburne; and a requirement that the design of the transmission line allow future contemplated uses of the rail corridor without prejudice.

The County also requested several variations in the form of land agreement that the applicant proposes to offer to it with respect to the rail corridor lands. First, the County is concerned that the period of time in which the lands will be encumbered considerably exceeds the period during which the FIT contract will apply. The term of the easement agreement which the applicant proposes is 45 years, while the FIT contract held by the applicant has a term of only 20 years. The County proposed that the easement be limited to the life of the contract plus an appropriate period for decommissioning, suggesting that a 23-year easement should suffice. DWPI suggested that, should the FIT contract not be renewed at its expiry, the transmission facilities could be utilized in an alternative service configuration.

Second, the County expressed concerns about the potential environmental liabilities that may be present in respect of the rail corridor owing to its prior use as a railway branch line right of way. Although DWPI proposes to accept responsibility for any hazardous materials which are placed on the rail corridor land as a result of the operations by DWPI, the County believes that DWPI should also accept responsibility for prior environmental contaminants that are disturbed by the construction or operation of the proposed transmission facilities. The County has expressed the view that such contaminants would otherwise lie undisturbed in the soil in the absence of disruption and therefore it is fair that the actor which causes disturbance of the contaminants should be responsible for the clean-up. DWPI does not agree with this contention.

Third, the County has suggested that a consultation committee be struck including the applicant, municipalities and users of the corridor to discuss any issues that arise with

respect to conflicts between the public use of the rail corridor and its use by the applicant. While not rejecting the approach suggested by the County, DWPI is not prepared to commit to such a course of action at the present time and is unwilling to accept a condition in any order that may be issued by the Board concerning such a public liaison committee.

### **Board Findings**

Melancthon requested that approval of the application should be conditional upon DWPI securing easements or other instruments in relation to the lands required for the Project. The Board notes that land rights do not have to be in place prior to the grant of leave to construct provided that any authority granted by the Board is appropriately conditioned. The Board will therefore impose an appropriate condition in its leave to construct order to ensure that land rights are acquired by DWPI.

The Board finds that the proposed land agreements are acceptable. The Board does not accept the contention of CORE that landowners will be disadvantaged by the grant of approval in form with respect to the draft agreements. On the contrary, approval of the draft form of the agreements may provide landowners with additional assurance that those terms will not be unilaterally changed by the applicant.

Although the County requested that the appropriate term of the agreement in respect of the rail corridor lands should match the projected economic life of the facilities, the Board believes that it is reasonable for the term for a land easement agreement to match the physical life of the asset, as its future economic potential cannot be accurately forecast at this point in time. In this regard, the 45-year term proposed by DWPI in the land agreement to be submitted to the County with respect to the rail corridor lands is acceptable.

Nor will the Board require the applicant to establish a public consultation committee as suggested by the County of Dufferin. The purpose of a consultation committee would be to provide a forum for the discussion of any issues relating to public convenience or public safety as it pertains to the operations of DWPI in the public's use of the rail corridor. While the proposal for a consultation committee is a commendable suggestion and is worthy of consideration by the applicant and other parties, the Board believes that this matter is best addressed through negotiations between the parties.

Similarly, the Board will not impose a condition that the applicant pay for any remediation of disturbed soil on the rail corridor that results from the construction or other activities of DWPI on the rail corridor. Conceptually, the Board agrees with the contention of the County that DWPI should be responsible for any costs incurred by the County of Dufferin as a result of the disturbance of contaminated soils on the rail corridor caused by the construction or other activities of the applicant. Those are public lands that have been devoted to public purposes, and if the activities of the applicant are the cause of additional costs being incurred by the County it may be appropriate for such costs to be borne by the applicant. However, the Board notes that the applicant and the County are engaged in negotiations and both have access to sophisticated resources. The Board concludes that it would be best left to the parties in these particular circumstances to negotiate a mutually satisfactory arrangement with respect to this matter.

The County of Dufferin also requested that the applicant be compelled to comply with the Line Fences Act of Ontario. However, the Board is of the view that it is appropriate, and consistent with its past practice, that any leave to construct order be appropriately conditioned to require the applicant to comply with all applicable laws.

CORE raised concerns about the provision of independent legal advice to landowners who are asked by the applicant to sign agreements relating to land. In the view of the Board, to the extent that such questions involve professional legal ethics, they are best left to the Law Society of Upper Canada, which is the professional licensing body established by the Legislature to govern the legal profession in Ontario.

Melancthon requested that the Board impose conditions relating to visual impacts, other route options, and greater avoidance of wetlands. Ms. Bryenton and Mr. Lyon each raised concerns with various aspects of the routing of the project. However, these matters form part of the REA process and are outside of the jurisdiction of the Board. The applicant's routing evidence was not impugned by contrary evidence that the Board can consider under section 92 of the Act.

### **Letters of Comment**

The Board received several letters of comment from local residents and public bodies. The Township of Amaranth, the Town of Mono, and the Town of Shelburne also made comments to the Board. The Town of Mono supported DWPI's application, but most of the others did not.

Several residents expressed their wish to see underground infrastructure built rather than the current overhead design. Many of the letters also raised issues related to health concerns, stray voltage, visual impacts, the reduction in property values, and the opportunity cost for the local tourism industry if the rail corridor is affected. The Township of Amaranth expressed its opposition to the use of the rail corridor and asked the Board to deny this application or to require DWPI to bury the transmission line for the entirety of its length in the Township of Amaranth. Visual impacts, the health and safety of adjacent residents and users of the rail corridor were cited as key considerations. The Town of Shelburne objected to the transmission line going through the Town, citing health concerns and land-use implications for future planned residential development along the corridor.

Several letters of comment raised an issue concerning the burying of the transmission line. However, that is not a matter that falls under the jurisdiction of the Board unless it engages questions of reliability, which are not engaged in this case as evidenced by the conclusions of the IESO in the SIA Report. Rather, in the context of this application, that matter falls to be determined within the REA process administered by the Ministry of the Environment. The other concerns raised with respect to health and visual impacts of the Project are also appropriate matters for the REA process.

## **Conclusion**

Having considered all of the relevant evidence related to the application, the Board finds the proposed project will be in the public interest and approves the application subject to conditions. The Board also grants its approval pursuant to section 97 of the Act for the proposed land agreements that were submitted by DWPI. Finally, pursuant to section 101 of the Act, the Board approves the crossings of the transmission line and the other intersecting facilities as shown on Drawing Nos. 1248-P001-S01 to S15 on file with the Board.

## **THE BOARD ORDERS THAT:**

1. Pursuant to section 92 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, Dufferin Wind Power Inc. is granted leave to construct an electricity transmission line and related facilities as described in the application at paragraph 2 and in accordance with the contents of this Decision and Order, and subject to the Conditions of Approval attached as Appendix B to this Order.

2. Each of Highland Companies, Harvey J. Lyon and Lori Bryenton shall file with the Board no later than **July 15, 2013** its cost claim in accordance with the Board's Practice Direction on Costs Awards.
3. Dufferin Wind Power Inc. may object to the cost claims no later than **July 22, 2013** by filing its submission with the Board and delivering a copy to the relevant party claiming costs.
4. If an objection to the cost claim of any party is filed by Dufferin Wind Power Inc., the party claiming costs will have until **July 29, 2013** to make a reply submission to the Board, with a copy to Dufferin Wind Power Inc.
5. Dufferin Wind Power Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number EB-2012-0365, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may e-mail your document 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  
Tel: 1-877-632-2727 (toll free)  
Fax: 416-440-7656

**ISSUED** at Toronto, July 5, 2013

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**  
**TO DECISION AND ORDER**  
**BOARD FILE NO. EB-2012-0365**  
**DATED JULY 5, 2013**

**PROCEDURAL DETAILS**

**Procedural Details Re.  
Dufferin Wind Power Inc. (“DWPI” or the “applicant”)  
Transmission Line and Related transmission facilities (the “Project”)  
EB-2012-0365**

DWPI submitted the application on September 21, 2012. The Board issued the Notice of Application and Written Hearing on October 16, 2012; DWPI served and published the Notice as directed by the Board.

In response to the Notice, the following parties requested and were granted intervenor status: the Independent Electricity System Operator (“IESO”), the Corporation of the County of Dufferin (the “County”), the Township of Melancthon, Conserve our Rural Environment (“CORE”), The Highland Companies (“Highland”), Harvey J. Lyon, and Lori Bryenton. Pursuant to their request, the Board also granted the latter three intervenors cost eligibility. The following parties requested and were granted observer status: Roy Thomas, Roselyn and Birks Bovaird, and Phil Anderson. The Board also received several letters of comment from local residents and public bodies including: the Township of Amaranth, the Town of Mono, and the Town of Shelburne.

On November 23, 2012, DWPI filed a letter and documentation informing the Board that certain sections of its application required amendment due in part to a change in the proposed location of some of its transmission facilities, namely the switching station.

On December 4, 2012, the Board issued Procedural Order No. 1 which specified the dates for Board staff and intervenor interrogatories, and for DWPI’s responses to these interrogatories. The Board also concluded in Procedural Order No. 1 that the route proposed in DWPI’s original application was not materially affected by the changes described in DWPI’s letter of November 23, 2012. As a result, the Notice was not changed or re-served. The Board however required DWPI to provide proof of appropriate notification of the change to the Ministry of the Environment.

Due to a technological malfunction, and the subsequent asymmetric delivery of Procedural Order No. 1, Procedural Order No. 2 was issued on December 14, 2012, establishing a renewed schedule for the discovery phase. Interrogatory responses were received as specified in Procedural Order No. 2.

On February 5, 2013 the Board issued Procedural Order No. 3 which dealt chiefly with the filing of additional information relative to DWPI as a corporation and the issue of whether an oral hearing was necessary.

A Decision on the form of hearing along with Procedural Order No. 4 was issued on March 19, 2013. The Board concluded that the proceeding would be conducted in writing. Procedural Order No. 4 also outlined the schedule for the filing of submissions from the applicant, Board staff and intervenors. The schedule for submissions was amended on March 27, 2013 by way of Procedural Order No. 5 to reflect a request for additional time made by DWPI following certain developments surrounding the applied-for facilities.

On March 28, 2013, DWPI filed a letter and documentation informing the Board that an amendment to its application is required to provide for a routing change (the "Route Amendment"). DWPI submitted the changes to its application.

On April 3, 2013, the Board received a letter from CORE in which it requested that the Board provide intervenors with an opportunity to pose interrogatories that stem from the Route Amendment. In a letter to the Board dated April 3, 2013, DWPI objected to CORE's request for further discovery, arguing that the changes contemplated by the Route Amendment were not material.

The Board concluded in Procedural Order No. 6, issued on April 4, 2013, that additional discovery related to the Route Amendment was necessary. The Board however did not reissue a Notice as it concluded that the changes were not material and did not affect any new landowners. Procedural Order No. 6 set out the schedule for the submissions of additional interrogatories and responses, and amended the schedule for final submissions. Submissions were received as specified in Procedural Order No. 6, with DWPI filing its reply submissions on May 2, 2013.

On May 21, 2013, the Board received a letter from CORE asking the Board to allow new evidence to be added to the record. In a letter to the Board dated May 24, 2013, DWPI objected to CORE's request to amend the record. The Board determined that the nature of this new evidence pertained to agreements not related to the transmission facilities that are the subject of this application, and as such was outside of the scope of this proceeding. In its letter of May 28, 2013, the Board denied CORE's request to amend the evidentiary record.

**APPENDIX B**  
**TO DECISION AND ORDER**  
**BOARD FILE NO. EB-2012-0365**  
**DATED JULY 5, 2013**

**CONDITIONS OF APPROVAL**

**Conditions of Approval for  
Dufferin Wind Power Inc. (“DWPI” or the “applicant”)  
Transmission Line and Related Transmission Facilities (the “Project”)  
EB-2012-0365**

**Note:**

The Conditions of Approval attached to the Board’s Decision and Order include references to permits and approvals by other organizations, Crown corporations, or Government Ministries that are prerequisites for the successful completion of the facilities that are the subject of this application. Notwithstanding any such references in these Conditions of Approval, the Board is not responsible for ensuring the implementation or operationalization of any of the requirements enumerated in such permits or approvals or the reports associated therewith even where such permits, approvals or associated reports are required, for any reason, to be filed with the Board.

**1. General Requirements**

- a. DWPI shall construct the transmission line and associated transmission facilities as defined in the Decision and Order (the “Project”) in accordance with its the Leave to Construct application, evidence and undertakings, except as modified by the Board’s Decision and Order and by these Conditions of Approval and in accordance with applicable laws, codes and standards.
- b. Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate July 5, 2014 unless construction of the Project has commenced prior to that date.
- c. DWPI shall comply with the requirements of the Renewable Energy Approval and any amendment thereto.
- d. DWPI shall satisfy the Independent Electricity System Operator (“IESO”) requirements as reflected in the System Impact Assessment – Final Addendum Report dated August 31, 2012, and such further and other conditions which may be imposed by the IESO.

- e. DWPI shall satisfy the Hydro One Networks Inc. (“Hydro One”) requirements as reflected in the Final Customer Impact Assessment Report dated August 31, 2012.
- f. DWPI shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicant shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.
- g. DWPI shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board’s request.
- h. DWPI shall obtain all necessary easements and other instruments relating to individual parcels of land before commencing construction of the Project upon those lands.
- i. DWPI shall comply with the laws of Ontario (including the laws of Canada applicable in Ontario).

## **2. Project and Communications Requirements**

- a. The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.
- b. DWPI shall designate a person as Project Manager and shall provide the name of the individual to the Board's designated representative. The Project Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site. The Applicant shall provide a copy of the Order and Conditions of Approval to the Project Manager, within ten (10) days of the Board's Order being issued.

- c. DWPI shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. The Applicant shall submit two (2) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. The Applicant shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.
- d. DWPI shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.
- e. DWPI shall, in conjunction with Hydro One and the IESO, and other parties as required, develop an outage plan for the construction period which shall detail how proposed outages will be managed.
- f. DWPI shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Project construction. This written confirmation shall be provided within one month of the completion of construction.

### **3. Construction Impacts - Reporting Requirements**

- a. Both during and for a period of twelve (12) months after the completion of construction of the Project, DWPI shall maintain a log of all comments and complaints related to construction of the Project. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions. The Applicant shall file two (2) copies of the log with the Board within fifteen (15) months of the completion of construction of the Project.

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