

County to negotiate rail easement

Dufferin County staff will continue negotiating an easement agreement for power line construction on the former rail corridor, but whether or not the line ever gets built could depend on the outcome of Environment Review Tribunal (ERT) hearings which begin Monday with the preliminaries in Shelburne and continue to the main event on Aug. 20.

Dufferin Wind Power (DWP) has Environmental approval (REA) for its 100MW wind farm in Melancthon and for a 230 kv power line. On July 5, it also received Energy Board (OEB) leave to construct the power line along the rail corridor to the Orangeville substation at Shannon Court, Amaranth, where it would connect to the provincial grid.

Construction of the line is of particular concern to Shelburne Council, which has opposed the proposed underground 230kv line from the start.

The council's opposition has largely reflected residential concerns about possible health effects of electromagnetic fields, stray electricity, and the more commonly heard questions of property value impacts and such.

More recently, the council questioned whether the underground line would be deep enough to avoid disruptions to utility services where it would cross roadways.

And still more recently, Rebecca Crump of DWP confirmed that a final decision has yet to be made about how much of the Shelburne portion of the line would be underground.

It had previously been agreed that the underground portion would be through the now-populated part of the town, but there had been consideration for extending that from the Fourth Line through to 30 Sideroad.

It is the issue of the REA that will be argued at the ERT. The decision of the ERT could be subject to a judicial review at Divisional Court, which occurred in Chatham-Kent a couple of years ago.

In the Chatham-Kent case, the court ruled that the ERT had been competent to deal with the approvals.

In any event, DWP is required to have all permits in place for the wind farm before it can build the power line. So negotiations might appear on the surface to be moot, but the county has advice from its lawyers to the effect that it must negotiate or risk expropriation.

Lawyer Scott Stoll of Aird & Berlis LLP has instructed the county that it would have no grounds on which to challenge the Ontario Energy Board's leave to construct a transmission line on the rail corridor.

Mr. Stoll's advice to the county is to negotiate with Dufferin Wind Power on several issues failing which, "If this is not possible we are of the view DWP will apply to the OEB to expropriate the lands necessary for the transmission facilities," he says in a letter presented to county council at its regular meeting last Thursday.

In his letter, Mr. Stoll outlines the various situations in which the OEB decision could be challenged. He opines that the OEB did not "commit an error in law" on which the decision could be appealed to a Divisional Court. As well, he says he finds no "factual error" committed by the OEB on which the county could apply a motion to review and vary the decision.

As a last resort, there can at least in theory be referred to Cabinet.

"Section 34 of the OEB Act permits a person to petition cabinet to have a decision of the OEB changed or reviewed. The use of this section requires the petitioner to convince cabinet that the OEB has in some way erred.

?It is rare for cabinet to intervene in such matters. Based upon the information currently available, we are of the view that any of the challenges described above would have a very low probability of success. Therefore, we do not recommend any of the options for challenging the decision of the OEB.

?DWP still requires access to the rail corridor to complete the construction of the transmission facilities. This will mean either the County and DWP coming to an agreement or DWP applying to expropriate under the OEB Act,? Mr. Stoll says.

By Wes Keller