

# WCO | WIND CONCERNS ONTARIO

April 8, 2014

Office of the Ombudsman Ontario

Bell Trinity Square

483 Bay Street, 10<sup>th</sup> floor, South Tower

Toronto ON M5G 2C9

Dear Mr. Marin:

We are writing as a stakeholder group representing Ontario communities and individual citizens, to express grave concerns with the implementation of the Government of Ontario's Renewable Energy Approval process as regards large-scale or industrial-scale wind power generation projects.

The provincial government recently announced that your office was to take on an expanded role in ensuring transparency of municipal as well as provincial operations. The Renewable Energy Approval process is a good example of a situation where the lack of transparency in a provincial process is placing many municipalities in an awkward situation relative to concerns being raised by their residents.

We have three areas of particular concern.

## **1. Need for transparency and full disclosure**

The *Green Energy Act* is the foundation to a high-profile provincial initiative, yet much of its implementation is taking place in the absence of strong guidelines to ensure the transparency and full disclosure that the province is championing. In this context, we bring attention to the activities of various companies involved in developing renewable energy projects on behalf of the province in various locations across rural Ontario.

We are concerned that corporations who are proponents of power developments are making inappropriate financial proposals to win municipal support for their projects. The most recent example is in the Township of Southgate where Samsung, acting under an undisclosed contractual arrangement with the province, has offered what appears to be an inappropriate inducement for the municipality to become a "Willing Host" for a combined wind turbine and solar power project. This type of offer is not unique to Southgate, as similar proposals have been made to other municipalities.

These activities raise a number of issues related to the province's implementation of the *Green Energy Act*. We think that the following areas would be worth investigation by your office.

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- In the 2013 Throne Speech, the government announced that going forward they would be seeking “Willing Hosts” for renewable energy initiatives. The government provided a standard resolution for municipalities to endorse, but *no rules or guidelines* have been published outlining what behaviours are acceptable by proponents of these projects to obtain these endorsements. Since this program is a high profile government initiative that is causing substantial concerns in rural Ontario, some guidelines for activities by companies seeking municipal support would appear appropriate to ensure that all activities comply with government requirements for transparency.
- Implementation of these projects requires the proponent to sign private leases with landowners. Sales of these leases take place *before* the project is announced in the community—this lack of transparency causes great community concern. It has been reported to us that in some cases, landowners in signing a lease agreement must also agree not to disclose this agreement. And, it has been reported that, sales representatives of wind power development companies make inaccurate statements about neighbours of a prospective leaseholder that are designed to induce the landowner to sign. For example, landowners report being told that since their neighbours have signed, they “might as well sign” as well. Once signed, these agreements have a major impact on the activities on adjoining properties, up to and including disclosure of the potential for a turbine if the property is listed for sale, but at present information on turbine leases is based on informal community communication networks. In our view, Ontario needs a process that provides *full and open disclosure* of these agreements as they are signed—this would address many community concerns.
- The leases used for these power projects vary with the wind power developer but the documents we have seen generally do not offer *full disclosure* of the impact on the landowner and the risks involved in hosting a wind turbine. And, unlike most other contracts, there is no option for the landowner to withdraw from the process, even by paying a reasonable penalty. When landowners change their mind and want out of these contracts, they are threatened with massive damage claims even though the developer may have made only minimal investment in developing the project. Once again, this is an example of companies using tactics that would trigger an investigation by the Ministry of Consumer Services if they were employed by companies in any other endeavour.
- In the case of Southgate, representatives of Samsung announced a proposed wind and solar power generation project at the January 22, 2014 meeting of Southgate Council. This was the first evidence on the public record that an arrangement was under discussion with the Township.
- The public record of the Southgate Council, as an example, indicates that a number of Councillors have declared pecuniary interests that are potentially related to these projects:
  - During the March 5, 2014 meeting, Mayor Brian Milne declared a pecuniary interest when the Council dealt with a motion regarding the solar project;
  - During the January 22 and March 5, 2014 meetings, Councillor Dale Pallister declared a pecuniary interest when the Council dealt with motions regarding the wind project; and

- During the meeting of December 4, 2013, Councillor Pat Franks declared a pecuniary interest on a matter related to a gravel pit.
- Each component of the project was handled by the Council separately; this means that Councillors could vote on the project component where they did not have a conflict even though it was not clear that the Township had the option to proceed with either the wind turbine project or the solar project, in isolation from the other. Since there is no disclosure of leases or suppliers of inputs like gravel to the project, the residents of the community were not in a position to determine who is benefiting from this arrangement.
- The January 22<sup>nd</sup> presentation was followed up by specific proposals regarding the contractual arrangements between Samsung and the Township of Southgate in two Memoranda of Understanding that were not posted on the municipal website until March 20, 2014. (see Appendix A) These appear to be proposals from Samsung; both documents refer in the preamble to an agreement with the Mayor of Southgate, which suggests that actions may have taken place that were *not part of the public Council record*. The topics indicated for discussion in the closed sessions of the Council do not indicate any meetings dealt with these topics. There is no record of who participated in these meetings on behalf of the Township, but Mayor Milne is referenced in both the solar and wind documents proposed by Samsung even though he has declared a pecuniary interest in the solar project.
- The terms of the agreement posted on March 20 appear to include a request by Samsung to the municipality to cooperate by issuing all approvals required for the project in exchange for a payment of \$180,000:

*In connection with the development, construction and operation of the Project, the Developer anticipates requiring the cooperation of the Municipality in several key development activities, including without limitation: (i) the delivery of a support resolution in the form required by the Ontario Power Authority; (ii) the unconditional granting of road use agreement(s); and (iii) miscellaneous permits and approvals including without limitation entrance permits, drainage consents, road crossings, building permits and severance applications (collectively, the "Project Approvals"). In consideration of the granting and due processing by the Municipality of each of the Project Approvals which may be required by the Developer from time to time in connection with the development, construction and operation of the Project, the Developer agrees that it shall make annual fixed payments to the Municipality in the sum of [\$180,000.00 minus Neighbour Fund] (the "Annual Payment") as contributions to the Fund.*

While the Township proposed some changes to the specific wording and the wind agreement was ultimately rejected by the Council, the basic concern is that a company implementing a high profile program fostered by the government, offered inappropriate inducements for a Municipality to expedite approvals for a project. This was a project where the locations of the turbines have not been identified (at least publicly) and where no engineering studies have been released to the public that documents any of the impact of the project on the neighbouring properties. Again, a municipality is being asked to commit to a project even

though *full disclosure* of this project is absent. This lack of transparency made it very difficult for the Southgate Council to deal with community concern about the project. In the end, the Council rejected the wind turbine project along with the proposed inducement for that portion of the project, but the status of the solar project is unclear.

- These offers of payments for municipal cooperation are not unique to the Southgate project. Samsung is also involved in the K2 project in Ashfield-Colborne-Wawanosh where the Township accepted payments to a Community Benefit Fund in exchange for not “passing any resolution or by-law that prevents the Project from proceeding substantially as proposed.” (Section 9.2). An agreement with similar constraints on municipal regulatory action in exchange for payments for to a ‘Community Benefits Fund Agreement’ was proposed by the St. Columban Energy Limited Partnership was proposed to the Municipality of Huron East. When the by-law implementing the agreement came before the Council, it was rejected. Copies of both documents are attached.

We conclude by stating that in the absence of full disclosure of the nature of these projects has the effect of “sterilizing” development, and freezing real estate sales activity, until the precise location of turbines is known. Once an initial draft site plan is released, wind power developers can file revised plans with the MOE without publicly disclosing their proposals for turbine placement. Municipal Building Officials cannot properly advise individuals who come to them asking for Building Permits within the 550-meter set-back of proposed turbines. Municipalities are required to develop 20 year Master Growth Plans for the communities in the absence of information on wind turbine projects that could radically alter the proposals. At the same time, many people are postponing investments in renovating homes close to proposed turbines as they do not know if they will be able to continue to live in the home.

## **2. Implementation of the Renewable Energy Approval process**

As part of the Renewable Energy Approval process, wind power developers are required to submit documents according to Regulation 359/09 to satisfy requirements that they have completed assessments related to wildlife, environmental impact, natural heritage impact, noise studies, and more.

What is becoming clear, however, is that in several instances the documents submitted are either incomplete, inaccurate, or completely absent, and yet the Ministry of the Environment advances the power project in the approval process by saying the documents are “deemed complete,” at which point the project goes to public comment.

We have three significant examples of this:

**Vineland Power/HAF**—in this case, measurements taken by members of the community revealed that four out of five industrial-scale wind turbines were in fact not in compliance with the regulations, and yet had not only proceeded through the process to full approval, they were actually under construction. It appears that the Ministry of the Environment never received a report on the

setbacks of the turbine locations, and yet “deemed complete” the documentation, and approved the project. At present, property owners affected by the non-compliant turbines are being served with a letter to request information to contribute to an amendment process, but the Ministry of the Environment has stated that it has no plans to alter the design of the project. One asks, what is the point of regulation and process if compliance seems to be optional?

**East Oxford**—Documents submitted to the Ministry of the Environment for the Gunn’s Hill wind power generation project by developer Prowind have been “deemed complete” and the project has undergone the public comment process. The community group associated with this project has filed a 26-page document with the Ministry detailing serious errors and omissions. For example, the required plan for response during emergencies was a template report from a U.S.-based wind power project and related to completely different equipment. As well, the developer made reference to requests for information on such topics as impact of the wind turbine locations on aviation safety, specifically emergency services capability, but in fact had no information to meet the requirements. This project has been in development for more than four years. The documents are not “complete” and this group is now considering legal action. We have attached the comments document from the community group.

**Amherst Island**—The citizens’ group here has already sought legal counsel related to the documentation for the wind power project proposed, and again, has clear evidence that requirements have not been met, incredibly on such serious issues as emergency response protocols, which are important to public safety. For example, the community group discovered in its audit that the power developer’s consultant had never even visited the site where an at-risk species of butterfly is known to visit as part of seasonal migration. And yet, this project continues to proceed through the approval process.

### **3. Operations of the Environmental Review Tribunal Process**

Communities are particularly frustrated by the procedures of the Environmental Review Tribunals that represent the only appeal process available for REA decisions. In general, the process is seen as secretive and the preserve of highly paid lawyers acting on behalf of the Ministry of the Environment and the wind companies.

Here’s how it appears to work: after the first round of public meetings that take place in the community near the project under appeal, the process retreats to Toronto where the proceedings continue. While the process is technically open and interested parties may participate by conference call, the times and dates of the hearings are not published and even when interested citizens obtain the information, they find that the times have changed for the convenience of the participants. When concerned citizens try to attend a hearing in Toronto, the rooms provided are barely large enough to accommodate the lawyers and the witnesses. Very little capacity is provided for a general audience. From the perspective of the citizens and local media, these procedures mean that the process is far from open and transparent.

It has also become apparent that, if a citizen who cannot afford legal support tries to challenge a REA decision, the lawyers for the MOE and the wind companies challenge many of the witnesses the citizen wishes to call. When there is no lawyer to respond to these motions with technical arguments, these challenges are frequently accepted by the presiding officers of the tribunal, **even though the same witnesses have been qualified at other ERT hearings**. The Tribunal officers verbally accept these motions without documenting their reasoning until long after the evidence phase of the Tribunal is complete; challenging the ruling is irrelevant as it is too late to present additional evidence. In theory, any citizen can challenge a REA decision via the appeal but in reality, there is no source of even basic funding to support presentation of the concerns of Ontario citizens and municipalities.

As the umbrella group representing Ontario citizens who have concerns with these developments in their communities, we urgently request that your office examine and investigate these issues.

Our members are stakeholders affected by the implementation of the government's push for renewable power generation through the development of large wind turbine projects on rural communities. They are looking for the government to make good on their promises of an open and transparent process as it relates to decision-making regarding these projects.

Thank you,

Jane Wilson

President

On behalf of the Board of Directors and membership

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