

DWPI has 'No Comment?' at tribunal hearing

At a preliminary hearing by Ontario's Environmental Review Tribunal held Tuesday, Dufferin Wind Power Inc. (DWPI) lawyers refused to explain why the corporation, which has erected 316 transmission-line poles between its wind farm and Hydro One's Orangeville Transformer Station will not make mitigation plans public as requested by Melancthon Council and residents near the right-of-way.

Citizen concerns arising from pole bore holes extending into the local aquifers, possibly allowing for ground water contamination, and fears that the pentachlorophenol (penta), a wood preservative coating the entire length of the poles, may travel into surrounding wells, prompted Green Party candidate Karren Wallace to file for the hearing as a private citizen.

The panel for the preliminary hearing, held at Centre Dufferin Recreation Complex in Shelburne, included Dirk VanderBent, Vice Chair of the Environmental Review Tribunal, and Tribunal member Justin Duncan.

The Tribunal is an independent body that hears public appeals under the Environmental Protection Act. Also present were Sylvia Davies, lawyer for the Director of the Ministry of the Environment and Climate Control (MOECC) and lawyer John Terry plus an additional lawyer for DWPI. The hearing was to confirm procedural directions for the main hearing to be held in the new year.

Ms. Wallace had said previously that her objection was based on DWPI's mitigation plan for transmission lines never having been formally approved. The transmission poles, located alongside the County-owned rail corridor, will carry power from 49 new turbines in Melancthon to the transformer station near Dufferin 109 and the 3rd Line of Amaranth.

Ms. Wallace looked at the issue of possible health risks posed by DWPI penta-covered transmission pole holes, many surrounded by water, some constructed in wetlands, and others near manure piles, 'Walkerton had one conduit for contamination,' she said. 'We now have 316.'

She felt that the amendments to DWPI's Renewable Energy Approval (REA), deemed 'insignificant' to the environment by the Environmental Board Review, could be potentially harmful. In response to citizen concerns in Melancthon, MOECC representative Gary Tomlinson stated in an earlier email, 'There is a small but nonetheless actual potential for surface water to travel to and possibly into the fractured limestone bedrock. That scenario is certainly concerning.'

Ms. Wallace presented a formal request to the Environmental Review Tribunal for a hearing regarding the Amendment to REA No. 5460-98BPH8 held by Dufferin Wind Power Inc. She views the process for requesting a hearing and being a party 'tipped against the average citizen,' as plaintiffs are expected to hire and pay for experts. 'Protecting our water should be the responsibility of our government,' she said, 'and the burden of proof should be on the proponent.'

Depending on the outcome of a case in London, where farmers have brought a constitutional challenge to a Divisional Court ruling against a lawsuit alleging annoyance from wind turbines, Ms. Wallace may get her wish. Ontario's environmental law places an onus on complainants to show 'serious harm' to their health to stop the approval of a project.

Julian Falconer, lawyer for a family who say life will be intolerable on their farm if a wind-farm development is approved, stated that under Section 7 of the Charter of Rights, which protects security of the person, 'governments must not impose a reasonable prospect of serious harm on their citizens.'

The farm families argue that the standard should be a 'reasonable prospect' of serious harm, stating they have a right to be free from unremitting annoyance caused by wind turbines. A Health Canada study released earlier this fall stated that community annoyance from turbines has been linked to several health issues, including high blood pressure, sleep concerns, dizziness and headaches. Ms. Wallace is seeking a Tribunal adjournment until the London case decision, now in deliberation, is heard.

Despite numerous complaints about DWPI from both Shelburne and Melancthon councils, elected officials followed the advice of

municipal lawyers and none were present to observe proceedings at the preliminary hearing as Ms. Wallace faced off alone against the two lawyers from DWPI and the lawyer for the Ministry of the Environment.

Vice Chair VanderBent moved proceedings into Chambers so the parties could address each other directly rather than through him as required in the hearing procedure. Ms. Wallace, who objected to the move, later said she respects the Tribunal's direction and assistance, but was very much against going behind closed doors, as there has been a decided lack of transparency in this project.

As a result of the discussions, motions were brought forth by both DWPI and Ms. Wallace, who said she would be putting forth a motion asking for adjournment until the London decision; requesting a site visit to the four turbines with the most concerns regarding mitigation; and requesting disclosure of DWPI mitigation plans to the public.

DWPI lawyer John Terry said the corporation would be moving to dismiss the appeal on the basis that it is not within the jurisdiction of the Tribunal. Asked to elaborate, he replied, "No comment." When asked why DWPI would not reveal mitigation plans in the interest of good public relations rather than create further public suspicion, he replied again, "No comment."