

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: November 19, 2015

CASE NO.:

15-037

PROCEEDING COMMENCED UNDER section 142.1(2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

| | |
|-------------------------------|--|
| Appellant: | SLWP Opposition Corp. |
| Approval Holder: | Settlers Landing Nominee Ltd. |
| Respondent: | Director, Ministry of the Environment and Climate Change |
| Subject of appeal: | Renewable Energy Approval for Settlers Landing Wind Park |
| Reference No.: | 8992-9TVSKD |
| Property Address/Description: | 510 Telecom Road Part of Lots 7-9, Concession 3 |
| Municipality: | City of Kawartha Lakes |
| ERT Case No.: | 15-037 |
| ERT Case Name: | SLWP Opposition Corp. v. Ontario (Environment and Climate Change) |
| Heard: | September 9, 10, 11 and October 22, 2015 in Pontypool, Ontario, and in writing |

APPEARANCES:

Parties

Counsel/Representative⁺

SLWP Opposition Corp.

Graham Andrews

Director, Ministry of the Environment and Climate Change

Nadine Harris and Katie Clements

Settlers Landing Nominee Ltd.

Dennis Mahony, John Terry and Grant Worden

Participants

City of Kawartha Lakes

Robyn Carlson

Save the Oak Ridges Moraine Coalition Cindy Sutch⁺

Presenters

Jane Zednik Self-represented

Monica McCarthy Self-represented

ORDER DELIVERED BY JUSTIN DUNCAN AND HEATHER GIBBS

Background

[1] This Order by the Environmental Review Tribunal (“Tribunal”) relates to procedural directions regarding the issue of remedy under s. 145.2.1(4) of the *Environmental Protection Act* (“EPA”).

[2] The Director, Ministry of the Environment and Climate Change (“MOECC”) issued Renewable Energy Approval No. 8992-9TVSKD (the “REA”) to Settlers Landing Nominee Ltd. (the “Approval Holder”), granting approval for the construction, installation, operation, use and retiring of a Class 4 wind facility with a total name plate capacity of 10 megawatts (the “Project”).

[3] On May 22, 2015, SLWP Opposition Corp. (the “Appellant”) appealed the REA to the Tribunal on the grounds that the Project will cause serious harm to human health and serious and irreversible harm to plant life, animal life or the natural environment.

[4] The Tribunal held the hearing in Pontypool, Ontario on September 9, 10, 11 and October 22, 2015. Further evidence was filed by the parties in writing on November 9, 2015. Also on November 9, 2015 (as confirmed in a written order dated November 12, 2015) the Tribunal adjourned the hearing under Ontario Regulation 359/09, s. 59(2)1.ii, for 14 days such that the statutory deadline for issuing a decision in this appeal is currently December 7, 2015.

[5] The Tribunal finds that engaging in the Project in accordance with the REA will cause serious and irreversible harm to plant life, animal life or the natural environment as set out in s. 145.2.1(2)(b) of the *EPA*. Specifically, the Tribunal finds that construction and decommissioning of turbines 3 and 5, and the access roads to turbines 2, 3 and 5, will cause such harm to a significant woodland identified as Woodland 11, including the habitat it represents.

[6] The Tribunal finds that the Appellant has not satisfied the test laid out in s. 145.2.1(2)(b) of the *EPA* with respect to the other issues raised under the environmental ground; specifically, serious and irreversible harm to water resources or to grassland bird habitat.

[7] The Tribunal finds that the Appellant has not satisfied the test laid out in s. 145.2.1(2)(a) of the *EPA* respecting the other ground of appeal; that is, serious harm to human health.

[8] Full reasons for the Tribunal's above findings will follow.

[9] Consistent with the Ontario Court of Appeal decision in *Prince Edward County Field Naturalists v. Ostrander Point GP Inc.*, 2015 ONCA 269 (CanLII), the Tribunal is providing a separate opportunity for the parties and participants to address the appropriate remedy and the Tribunal's remedial jurisdiction in this case under *EPA* s. 145.2.1(4), which provides:

145.2.1 (4) If the Tribunal determines that engaging in the renewable energy project in accordance with the renewable energy approval will cause harm referred to in clause (2) (a) or (b), the Tribunal may,

- (a) revoke the decision of the Director;
- (b) by order direct the Director to take such action as the Tribunal considers the Director should take in accordance with this Act and the regulations; or
- (c) alter the decision of the Director, and, for that purpose, the Tribunal may substitute its opinion for that of the Director.

[10] The Tribunal is cognizant of the short time period remaining for the parties in order to provide these submissions, and for the Tribunal to consider and determine the

appropriate remedy, before the statutory time limit for the Tribunal to dispose of the appeal expires: the current deadline is December 7, 2015. The Tribunal, therefore, will conduct a telephone conference call (“TCC”) as soon as possible to discuss the next steps in this proceeding. The Tribunal’s case coordinator will contact the parties and participants to arrange a time for this TCC.

ORDER

[11] The Tribunal’s case coordinator will make arrangements to schedule a TCC to discuss the next steps in this proceeding.

[12] The parties are directed to confer prior to the TCC, and make best efforts to provide the Tribunal with a consent proposal as to the next procedural steps in this matter on the issue of remedy under s. 145.2.1(4) of the *EPA*, including the exchange of written materials and any necessary further adjournment under Ontario Regulation 359/09, s. 59(2).

Procedural Directions Ordered

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

“Heather Gibbs”

HEATHER GIBBS
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-224