



Highly anticipated ERT decision issued for Erickson v Director, Ministry of Environment

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On July 18, 2011, The Environmental Review Tribunal (ERT) issued its highly anticipated decision in [Erickson v Director, Ministry of Environment](#). The ERT found that the applicant in this case did not meet the burden of showing that the project will, more likely than not, cause serious harm to human health. However, the decision is by no means a conclusive endorsement of the safety of wind turbines.

The high-profile appeal alleged that Suncor's Kent Breeze Wind Project (Project) posed negative human health risks as approved by the Minister of the Environment (MOE) under Ontario Regulation 359/09 (REA). Over 17 days between February 1 and May 26, 2011 the ERT heard testimony of leading experts from around the world on the potential health effects of wind turbines.

The Project in question is a 20 MW Class 4 Wind Facility consisting of eight wind turbine generators in the Chatham-Kent region. On November 10, 2010, the MOE issued an REA to the Project under section 47.5 of the Environmental Protection Act (EPA). Shortly afterwards, that decision was appealed by Katie Erickson and the Chatham-Kent Wind Action Group. The appeal alleged that the Project posed negative human health risks including unsafe exposure to low frequency noise and shadow flicker. Additionally, the applicants raised concerns associated with the adverse visual impact of turbines, the negative risks of ice-throw and turbine failure.

In a detailed 223-page decision the ERT found that the applicants had failed to demonstrate that the Project will, more likely than not, cause serious harm to human health. However, the ERT explicitly acknowledged the risks and uncertainties associated with wind turbines and noted that the science behind the health effects of wind farms is in its infancy and is neither exhaustive nor conclusive. The ERT observed that continued research will resolve some of these concerns.

The ERT also noted that the question is not simply whether wind farms will cause serious harm to people, but is a question of degree: "what protections, such as permissible noise levels or setback distances, are appropriate to protect human health"? In this regard, the decision appears to find the REA regulations sufficient in the context of Kent Breeze Project. However, the ERT refused to confirm the adequacy of the REA process more generally. As such, while Erickson may at first blush appear as a victory for the renewable energy developers, the debate may be far from over.

The applicants will have until August 18, 2011 to appeal the ERT decision to the Divisional Court on a question of law.

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