

AIRD & BERLIS LLP

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July 21, 2011

BY COURIER, EMAIL AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2329
Toronto, ON M4P 1 E4

Dear Ms. Walli:

**Re: Trout Creek Wind Power Inc.
Board File No: EB-2011-0209**

We are counsel to Trout Creek Wind Power Inc. ("Trout Creek").

Pursuant to Procedural Order No. 1, we enclose the Responses of Trout Creek to the Interrogatories of Board Staff and Hydro One Networks Inc.

A copy of the Interrogatory Responses will be filed through RESS today.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll
SAS/ct

Enclosures

10172871.1

ONTARIO ENERGY BOARD

IN THE MATTER OF THE *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Trout Creek Wind Power Inc. pursuant to section 74(1)(b) of the *Ontario Energy Board Act, 1998* to amend Hydro One Networks Inc.'s Electricity Distribution Licence ED-2003-0043 to exempt Hydro One from sections 6.2.4.1(e)(i) and 6.2.18(a) of the Distribution System Code with respect to Trout Creek Wind Farm (Hydro One Connection No. 12,780).

INTERROGATORY RESPONSES OF THE APPLICANT

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Counsel for the Applicant

BOARD STAFF INTERROGATORY NO. 1

1. **Reference: Trout Creek Wind Power Inc.'s ("Trout Creek" or "Applicant") Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 1, Lines 31-32 and Page 2, Lines 1-2.**

The Applicant states:

On May 12, 2011, Trout Creek received an e-mail from Hydro One requiring the execution of the Connection Cost Agreement (the "CCA") and payment of \$3,402,574.64 prior to 4:00p.m. on May 26, 2011. Prepaying such an amount, over three years before COD is not consistent with the typical project development cycle...

Questions:

- 1.1 Please describe "the typical project development cycle".
- 1.2 At what stage of a typical development cycle of a wind project with characteristics similar to Trout Creek Wind Farm, Project No. 12,780 (the "Project"), the Connection Cost Deposit ("CCD") payment is normally made?
- 1.3 Please confirm that wind generation projects are **normally not** subject to the delays experienced by the Project. If this cannot be confirmed please explain why a special CCD rule should be made for the Project?

RESPONSE:

- 1.1 The typical project development cycle on private land has 9 stages:
 1. Preliminary Resource Assessment
 2. Land Registration
 3. Transmission Application
 4. Formal Wind Resource Assessment
 5. Financing
 6. Engineering
 7. Environmental Permitting
 8. Building Permit
 9. Leave to Construct

The typical project development cycle on Crown Land has 12 stages:

1. Preliminary Resource Assessment
2. Bid for Crown Land
3. Transmission Application
4. First Nations and Stakeholder Review by MNR
5. Granting of Applicant of record status
6. Environmental Review for Meteorological Tower installation
7. Formal Wind Resource Assessment

8. Environmental Screening
 9. Financing
 10. Engineering
 11. Building Permit
 12. Leave to Construct
- 1.2 Normally the CCD would be made during the Engineering stage, after completion of the formal wind resource assessment and financing. Prior to this stage, the project is not sufficiently developed to expend large amounts of capital without the understanding that there is sufficient wind resources and certain design work has been completed.
- 1.3 The progress of the environmental review and permitting for normal projects on private land is under the direct control of the developer. In our experience, this is a period of about 18 months. Prior to the Renewable Energy Approval (“REA”), this would be for the preparation and filing of the environmental screening report or environmental assessment. With the REA completing the necessary studies, plans and consultation will take approximately 18 months.

However, on Crown land the EA component is not under direct control of the developer but by the Ministry of Natural Resources (“MNR”) working together with the Ministry of the Environment.

On Crown land there are additional requirements, such as First Nations consultation and an environmental review, prior to being allowed to place a meteorological (“MET”) tower (something not required on private land) as well as an environmental assessment for the final wind farm. This means double the amount of work and also adds about 24 months to the development cycle. It should also be noted that during the course of this Project, the new REA rules had not yet been established at the time of being granted the land and there have been significantly implementation issues with the REA. As such, this Project is in a relatively unique situation.

BOARD STAFF INTERROGATORY NO. 2

2. Reference:

- **Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 3, Lines 18-19**

The Applicant states: "Trout Creek has not been able to officially launch the REA process because it has not been granted Applicant of Record status".

- **Applicant's Pre-filed Evidence, Exhibit B, Tab 1 Schedule 1, Paragraph 5**

Mr. Schneider states: "Trout Creek received applicant of record status on March 7th, 2011 ..."

Questions:

- 2.1 Please clarify this discrepancy in the evidence. Specifically, please confirm whether Trout Creek received the "Applicant of Record" status on March 7, 2011.
- 2.2 If the response to 2.1 is yes, has the applicant officially launched the REA process? If not, why not?

RESPONSE:

- 2.1 Yes, Trout Creek was granted Applicant of Record status after a 24-month process by the Ministry of Natural Resources ("MNR"). This process was considerably longer than intended by the MNR policy. Like many approvals dealing with environmental issues, the delay in the approval can result in a much longer delay as critical study periods are missed and the developer must wait for the next available period. That is precisely the circumstances that occurred. Given the date, we had missed the critical spring window.
- 2.2 Applicant of Record status requires payment of a further \$20,000 deposit to the MNR. Because the economic feasibility and our ability to proceed with the project is directly related to the outcome of the OEB's decision on the distribution connection matter, we anticipate launching the REA process for the Fall Migration Window starting September [2011] subject to a favourable ruling by the Board.

BOARD STAFF INTERROGATORY NO. 3

3. Reference: Applicant's Pre-filed Evidence, Exhibit B, Tab 1 Schedule 1, Paragraph 10

Mr. Schneider states:

Schneider cannot secure the Deposit at this stage of the development of the Project because the Project has not progressed sufficiently through the MNR site release procedure. Schneider does not have a site control agreement which is a requirement normally used as a collateral for a loan or investment for relevant development expenditures or deposits.

Questions:

- 3.1 Please provide the date by which the Applicant expects to have the site control agreement referred to by Mr. Schneider in his affidavit?
- 3.2 Please confirm that the Applicant can use the site control agreement, once available, as collateral for a loan to make the full CCD payment. If this cannot be confirmed, please explain why not.

RESPONSE:

- 3.1 The site control agreement with the MNR is anticipated to be granted upon completion of the REA process. We estimate this to be approximately 18 to 20 months from September 1, 2011.
- 3.2 Yes, we can confirm that we can use the site control agreement as collateral for financing/loan purposes.

BOARD STAFF INTERROGATORY NO. 4

- 4. Reference: Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 6, Lines 15-16.**

The Applicant states: "In general, to obtain debt financing, the **waterpower** developer will need to have obtained..." [Emphasis added]

Questions:

- 4.1 Please confirm that in the above statement, reference to "waterpower" should be replaced with "windpower".

RESPONSE:

- 4.1 Confirmed. The reference to "waterpower" should be replaced with "windpower".

BOARD STAFF INTERROGATORY NO. 5

5. Reference:

- **Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 6, Lines 22-26**

The Applicant states:

Mr. Schneider, in his affidavit Exhibit B, Tab 1 Schedule 1, confirmed the delays in the MNR process do not permit Trout Creek to obtain funding and therefore are unable provide the full CCD payment at this specific time as required by the provisions of the DSC.

- **Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 6, Lines 15-21.**

Questions:

- 5.1 Please confirm that the Applicant is unable to make the full CCD payment required by Hydro One at this time because of its inability to obtain funding at this stage of the project development.
- 5.2 Please indicate whether specific objections have been raised by potential lenders as to why credit will not be extended to allow payment of the CCD at this time? If so, please provide full particulars, including documentation which would support the Applicant's position.
- 5.3 Please provide evidence that would demonstrate that lenders are unwilling to provide any project financing for the Project until the conditions listed one page 6, Exhibit A, Tab 2 of Trout Creek's pre-filed evidence are satisfied.
- 5.4 Please provide the date by which the Applicant expects to obtain debt financing.

RESPONSE:

- 5.1 We confirm that we are unable to make the full CCD payment required by Hydro One at this time because of our inability to obtain funding due to the early stage of this project.
- 5.2 Financing at the project stage is normally done as a secured loan or convertible debenture. The underlying land agreement serves as security and a lien is registered against the land. Furthermore, without confirmation of the wind regime, we have no basis for valuation, feasibility and debt service coverage ratios with a lender.
- 5.3 Please find attached a letter from one of our lenders of record, Investeco Capital, confirming the requirement.
- 5.4 We anticipate to be in a position to secure full non-recourse project financing on or about May 2013, upon being able to provide all required due diligence items.

July 21, 2011

Ontario Energy Board
2300 Yonge Street
Toronto, Ontario, Canada
M4P 1E4

RE: EB-2011-02-09

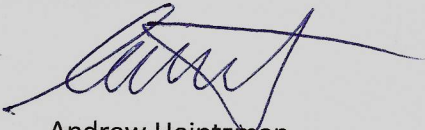
Dear Sirs,

This is to confirm that Investeco Capital Corp. has been a lender of record to Schneider Power Inc. in relation to its development of wind projects in the Province of Ontario.

We further confirm that in relation to our past loans to Schneider Power, in order for us to provide project debt financing we have requested a security interest in both the land rights and all respective projects rights and permits. More specifically we have needed to be able to register a lien on the land/easement and file for a registration under the Personal Property Security Act (Canada). We have done this on the basis that without land control in the form of freehold ownership, lease or an easement and lack of specific building and environmental permits these registrations cannot be made.

Should you have any questions, please do not hesitate to contact me at 416-304-1750 ext. 398.

Sincerely,



Andrew Heintzman
President
Investeco Capital Corp.

BOARD STAFF INTERROGATORY NO. 6

6. Reference:

- **Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 2, Page 3, lines 24-27.**

The Applicant states:

It should be noted that these dates under the FIT Contract will be extended by 18 months as a result of *Force Majeure* applications to OPA. It is significant to note that OPA have recognized the significance of these delays which are acknowledged to be beyond the control of the Applicant. Therefore, the Applicant expects the new MDCO will be October 13th, 2014.

- **Applicant's Pre-filed Evidence, Exhibit A, Tab 2, Schedule 1, Page 5, Paragraph 17.**

The Applicant states:

The Ontario Power Authority has recognized 6 months of delay under the *Force Majeure* provisions of the FIT Contract. Further, the Ontario Power Authority has extended the Milestone Date for Commercial Operation for an additional 12 months as a result of other concerns with the development of renewable energy projects.

Questions:

- 6.1 Please confirm that the Ontario Power Authority (the "OPA") has recognized **only** 6 months of delay under the *Force Majeure* provisions of the FIT Contract with respect to the Project as a result of Trout Creek's *Force Majeure* claims submitted to the OPA.
- 6.2 Please confirm that the 12 month extension to the Milestone Date for Commercial Operation ("MDCO") was not specific to the Project (i.e. it was applicable to all renewable energy projects under FIT contracts with the OPA.)
- 6.3 Assuming the statements in items 6.1 and 6.2 are confirmed, does the Applicant agree that it would be more appropriate for the Applicant to seek an amendment to Hydro One's licence to reflect a six-month exemption from the applicable sections of the Distribution System Code (the "DSC") consistent with the delay recognized by the OPA under the *Force Majeure* provisions of the FIT contract?

6.3.1 If you agree, please state so.

6.3.2 If you disagree, please explain why you disagree and why (aside from consideration of the 6 months delay recognized by the OPA) this Project be treated differently knowing that, except for certain waterpower projects, all other renewable projects under FIT contracts with OPA have to make the CCD their MDCO was extended by 12 months.

RESPONSE:

6.1 Correct. Trout Creek would note that it had applied to the OPA for a second period of *Force Majeure*. This second period was withdrawn following the issuance of the blanket extension by the OPA. Trout Creek believes that but for the blanket extension it would have been provided a second period of *Force Majeure*.

6.2 Correct. See 6.1.

6.3 No, we do not agree. The ultimate determinant of feasibility is the wind assessment and being able to secure the underlying land contract with the requisite permits. What delays the process is that the MNR requires an Environmental Screening ("ES") to be completed to install a MET tower on Crown Land; and before a land control agreement can be signed. This is separate from the REA process that needs to be completed for the actual wind project. There are two significant delays that occur. The ES requires about 12 months of work to complete, at which point in time we install the met tower, from which we need another 12 months to complete the wind study. Only then can we proceed with the land agreement and commence with the debt financing which takes another 12 months in the current economic environment. In relation to our project, the ES work would need to be completed by March 2012 before we can install a met tower and commence the REA work. The earliest we anticipate installing a met tower is March 2012, at which point in time we need to gather 12 months of data to March 2013. Concurrently to the wind monitoring, we need 18 months for completion of the REA approval process. Commencement of debt financing would only be possible by no earlier than September 2013.

In comparison, for a project on private land, the land control is the first document that is executed, followed by the wind testing and REA processes which can run concurrently to each other. As such we would already be in possession of 18 months of wind data because we would have been able to install the tower in the Spring 2010 and have a land control agreement. If this project were on private land, the timelines of the *Distribution System Code* and our development timeline would be in sync, and there would not be a requirement to ask for an amendment.

Please also note that subsequent to the blanket extension granted by the OPA, Trout Creek had submitted an additional *Force Majeure* claim in relation to the Crown Land delay which the parties agreed to rescind given the OPA's announcement of the blanket extension.

HYDRO ONE NETWORKS INC. INTERROGATORY NO. 1

Under Exhibit A, Tab 2 , Schedule 2, Page 3 of 7:

“Therefore, the Applicant expects the new MDCO will be October 13th, 2014.”

Under Exhibit A, Tab 2, Schedule 1, page 3, the proposed permanent relief includes:

4. The balance of the total estimated cost, as estimated by Hydro One based upon the best available information, shall be paid by the proponent to Hydro One no later than 30 days after the proponent notifies Hydro One that it is proceeding to construction.
5. Hydro One and the proponent shall **mutually agree upon** an in-service date that is no later than 2 years after Hydro One receives the balance referenced in paragraph 4, above, subject to the following: in cases where a transmission upgrade or new transmission facilities are required, Hydro One and the proponent may agree to an in-service date that is later than two years after Hydro One receives the balance referenced in paragraph 4, above. **(emphasis added)**

Based upon TCW’s CCA application, the in-service date is March 31st, 2014, which is materially different than the expected MDCO in the subject application. At what time will TCW be seeking mutual agreement with Hydro One on an in-service date consistent with the proposed MDCO?

RESPONSE:

The MDCO is October 27th, 2014. Trout Creek Wind interprets a “date consistent with the proposed MDCO” to mean the completion of the Hydro One work on or before MDCO. Trout Creek Wind will be seeking a final agreement with Hydro One that is consistent with the timeline specified in our request for relief. We believe this to be 12 months prior to our new proposed MDCO on or about September 27, 2013.

HYDRO ONE NETWORKS INC. INTERROGATORY NO. 2

Reference: DSC section 6.2.18(e)

The connection cost agreement should include, [among other things] the following:

...

e. A requirement that the mutually agreed upon in-service date is no later than 5 years for water power projects or 3 years for all other types of projects from the initial date of application for connection or in accordance with the timelines in an executed OPA contract”.

Since TCW's original CIA application date to Hydro One was May 27th, 2010, the 3-year deadline for MDCO per the DSC would be on or about May 27th, 2013. The proposed MDCO in the exemption application is approximately 18 months later.

Please confirm that the OPA has agreed to, through a revised contract, an MDCO of on or about October 13th, 2014.

RESPONSE:

The new MDCO is October 27th, 2014.

HYDRO ONE NETWORKS INC. INTERROGATORY NO. 3

Reference: Exhibit A, Tab 2, Schedule 1, Page 2 and page 3 of 7

Please explain the basis for recommending, in item 2 under Permanent Relief, that an additional deposit in the amount of 30% of the total estimated cost, would be paid no later than “4 months after the proponent notifies Hydro One that it has completed the Renewable Energy Approval”.

Specifically,

- (i) What are the various approvals necessary for this TCW’s project?
- (ii) Why does TCW propose “Renewable Energy Approval” completion as the trigger-date leading to the second (30%) payment, which is different from the arrangement in the OWA exemption (“6 months after the proponent notifies Hydro One that it has issued its statement of completion under the earlier of the Waterpower Class Environmental Assessment and the equivalent environmental assessment process under the Canadian Environmental Assessment Act.”)?
- (iii) Why is a period of 4 months recommended?

RESPONSE:

- (i) The list of approvals include:
 - (1) Environmental Screening for access to Crown Land
 - (2) Renewable energy approvals (“REA”) for wind project.
 - (3) Municipal approvals for transmission right of ways.
 - (4) Site Plan Agreement with Municipality
 - (5) Municipal Building Permit
- (ii) TCW cannot speak to the OWA’s reasons for the choice of its date. Waterpower uses the Waterpower Class Environmental Assessment process and does not use the Renewable Energy Approval which is used for wind projects. These processes are similar but not quite the same. Also, the design (site specific custom equipment) of a waterpower facility and the duration of construction of the facility we understand for waterpower (approx. 18 to 24 months) are significantly different than a wind project.
- (iii) TCW chose the proposed timing to ensure that a significant commitment to the project was made at the outset to permit Hydro One to have money for the attendance at meetings and very early design work. The second instalment timeline was chosen so that TCW would have sufficient time to secure the requisite site plan approval and building permits from the municipal bodies which cannot be commenced until the REA approval has been received.

HYDRO ONE NETWORKS INC. INTERROGATORY NO. 4

Reference: Exhibit A, Tab 2, Schedule 1, Page 2 and page 3 of 7

Please explain the basis for recommending, in item 4 under Permanent Relief, that the balance of the total estimated cost be paid no later than 30 days after the proponent notifies Hydro One that it is proceeding to construction.

What are the reasons that this clause deviates from the corresponding clause in the OWA decision, which refers to certain construction approval permits?

RESPONSE:

We cannot comment on the OWA process; however we do know that the OWA is subject to the Waterpower Class Environmental Assessment process whose timelines differ from the REA process for wind projects (which requires less municipal involvement post approvals).

HYDRO ONE NETWORKS INC. INTERROGATORY NO. 5

Reference: Exhibit A, Tab 2, Schedule 1, Page 2 and Page 3 of 7

Please confirm that failure or inability to provide the requisite notifications to Hydro One in ample time for the project to meet its expected or contracted in-service dates is the responsibility of the proponent and not of Hydro One.

RESPONSE:

Confirmed.

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