

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 Varna Wind, Inc. for an order or orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* granting leave to construct transmission facilities in the Municipalities of Bluewater and Huron East.

Reply Evidence of Varna Wind, Inc.

1. This evidence is in reply to the evidence filed by Heather and Gerhard Ritzema (“the **Ritzemas**”), including the evidence in chief filed on March 27, 2013 and the responses to Interrogatories filed on April 24, 2013 (collectively, the “**Ritzema evidence**”).
2. .As noted in paragraph 20 of the Application, “Sections of the Transmission Line will be constructed within Municipal rights-of-way, and the remaining section will be built on easements acquired from private land owners.” The Application proposes to construct a transmission line along the route illustrated at Appendix B. That route follows the road allowance relating to Centennial Road, which is in the municipality of Huron East (the “**Municipality**”).
3. However, the Ritzema evidence indicates Centennial Road does not follow the original road allowance. Instead, near the intersection with Division Line, Centennial Road deviates from the original road allowance and veers north. This is illustrated in Exhibit A to the Interrogatories of the Applicant to the Ritzema, which is attached as Schedule 1 to this evidence for convenience.
4. It also appears from the Ritzema evidence that at least a portion of land in the original road allowance is used for agricultural purposes.

5. The consequence is that a small portion of the route (defined below as the “Deviation Area”) may have to be accommodated in light of its current use. This is a relatively small portion of the transmission line, i.e., approximately 200 meters of a 23 kilometer line.
6. In summary, and as described in greater detail below, the Applicant is prepared to build the transmission line along the original route, i.e., along the road allowance. However, if the Ritzemas prefer, and subject to confirmation of information from the Municipality, the Applicant is prepared to alter the route to follow the actual route of Centennial Road. Once the Ritzema’s preference and the Municipality’s information are provided, the accommodation should be fairly straight forward and certainly manageable within the current schedule for this proceeding. The Applicant will therefore work with the Ritzemas and the Municipality to obtain further information. The Applicant will provide a final proposed route with respect to this portion of the Transmission Line by the time for filing interrogatory responses, i.e., May 27, 2013.

The Ritzema Land and the Deviation Road

The Ritzema Land

7. The map filed by the Applicant showing the proposed location of the transmission line in the vicinity of the Ritzema land showed the transmission line as being located within the road allowance for Centennial Road, which was established by the original Crown survey of the area, according to the records of the Land Registry Office for the Land Titles Division of Huron (the “**LRO**”).
8. The LRO records also indicated that the lands owned by Ritzema (PIN 41280-0037 (LT), Lot 26 and part of Lot 27, Concession 5, London Road Survey Tuckersmith, Municipality of Huron East, registered owner Gerhard Niklaas Ritzema, herein the “**Ritzema land**”), lie immediately north-east of the corner of Centennial Road and Division Line.
9. However, the Ritzema evidence indicates that where Centennial Road approaches Division Line from the west, Centennial Road begins to deviate from a straight westerly line and from within the location of the road allowance for Centennial Road, as established by the original Crown survey of the area, with the travelled portion of such

road (in this evidence, the “**Deviation Road**”) veering to the northwest over the Ritzema land and intersecting with Division Line, approximately 200 meters, north of the intersection of where Centennial Road continues west of Division Line. The Applicant’s and Ritzema’s evidence are in concurrence that the map at Schedule 1, which shows the approximate course of the Deviation Road over the Ritzema land.

10. With regard to the land (the “**Deviation Area**”) comprising that portion of original road allowance for Centennial Road as it approaches the east side of Division Road, which is not used as a travelled road by virtue of the Deviation Road veering north over the Ritzema land, the records of the LRO show such Deviation Area to be legally in the name of The Corporation of the Township of Tuckersmith, being the predecessor of The Corporation of the Municipality of Huron East (the “**Municipality**”).
11. Notwithstanding legal ownership of the Deviation Area, as disclosed by the records of the LRO, Ritzema evidence states that the Ritzemas claims ownership of the Deviation Area, with a portion of the Deviation Area being farmed with the consent of Ritzemas by the owners of the land lying immediately south-east of the corner of Centennial Road and Division Line (PIN 41277-0005 (LT), which includes part of Lot 25, Centennial 5, London Road Survey Tuckersmith, registered owners James Robert Cooper and Elizabeth Anne Cooper, herein the “**Cooper land**”). Accordingly, it appears from the Ritzema evidence that a portion of the Deviation Area is in the possession of and farmed by the owners of the Cooper land.

The Deviation Road

12. As indicated, Centennial Road now veers north from the original road allowance. By interrogatories filed on April 10, 2013, the Applicant requested the Ritzemas to obtain certain information from the Municipality as to facts relating to, amongst other things, the status, establishment and specifications of the Deviation Road and the Municipality’s understanding of what interests affect the Deviation Area. The Ritzema evidence indicates that the Municipality has not responded to such request for information. The Applicant intends to obtain this information from the Municipality on a voluntary basis. However, if necessary, the Applicant also reserves its right to request the Board to direct

the Municipality to provide this evidence pursuant to s. 21 of the *OEB Act, 1998* and/or Rule 28 of the Board's *Rules of Practice and Procedure*.

13. In any event, from the Ritzema evidence, it appears that the Deviation Road has been long established as the travelled and maintained road, with the Deviation Area being subject to interests of either the owner of the Ritzema lands, the owner of the Cooper lands, or both. The Ritzema evidence further suggests that the Deviation Road has been in existence and used as a highway for a significant period of time that pre-dates the current owner of the Ritzema land and his immediate predecessor in title (Ritzema responses to interrogatories filed April 24, 2013, no. 5 at page 2).
14. Subject to information that may be provided by the Municipality with regard to the Deviation Road and Deviation Area, and based on the Ritzema evidence, the Deviation Road appears to be a highway for purposes of Section 41 of the *Electricity Act*. However, the extent and area of road allowance and specifications must be confirmed by the Municipality.

The Proposed Accommodation

15. As indicated, only a small portion of the route is affected by this evidence: approximately 200 meters of a 23 kilometer line.
16. Subject to information that may be provided by the Municipality with regard to the Deviation Road and Deviation Area, and subject to the preference of the Ritzemas, the Applicant is prepared to amend its application to change its route from the existing road allowance (which is within the Deviation Area) to the Deviation Road. This changed route will follow the Deviation Road as illustrated in Schedule 1. If the Ritzema's prefer the currently proposed route, the Applicant is prepared to proceed in that way as well.
17. The Applicant therefore seeks to accommodate the preference of the Ritzemas. However, such accommodation must take place within the current schedule of the hearing and the process. The Applicant will therefore attempt to directly contact the Ritzemas and the Municipality for further information. The Applicant will provide a final

proposed route with respect to this portion of the Transmission Line by the time for filing interrogatory responses, i.e., May 27, 2013.

F Filed: 2013-05-08
EB-2012-0442
Varna Wind Reply Evidence
on Ritzema Evidence
Schedule 1
Pages: 2

Schedule 1



PIN: 412810101
BLW1327

SURVEY TUCKERSMITH;
MUNICIPALITY OF HURON EAST

PIN: 412810102

ROAD SURVEY TUCKERSMITH
AS IN TC12296; MUNICIPALITY
OF HURON EAST

PIN: 412810103
BLW1329

SURVEY TUCKERSMITH AS IN
R327491; S/T EXECUTION 98-0197,
IF ENFORCEABLE; MUNICIPALITY
OF HURON EAST

PIN: 412760053
BLW1330

ROAD SURVEY TUCKERSMITH;
MUNICIPALITY OF HURON EAST

PIN: 412800037
BLW1315, BLW1316

RITZEMA, GERHARD NIKLAAS;
LT 26 CON 5 LONDON ROAD SURVEY
TUCKERSMITH; PT LT 27 CON 5 LONDON
ROAD SURVEY TUCKERSMITH AS IN
R331779; MUNICIPALITY OF HURON EAST


CENTENNIAL ROAD

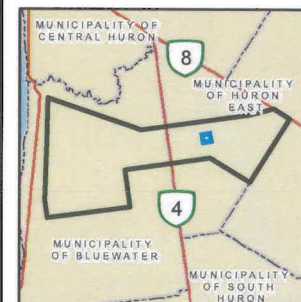
PIN: 412770005

RDAL SURVEY & LT 25 CON 5 LONDON ROAD
SURVEY TUCKERSMITH AS CLOSED BY
HC8892 AND PART LOT 25, CON 5 LONDON
ROAD SURVEY TUCKERSMITH AS IN
R190351 SAVE & EXCEPT PART 1, PLAN
22R-16 31; MUNICIPALITY OF HURON EAST

**Bluewater
Map of Property
BLW1315, BLW1316**

Legend

-  Adjacent Property Boundary
-  Property Boundary
-  Road



0 50 100
Metres
1:4,000

Date: April 1, 2013
Projection: NAD 1983 UTM Zone 17N
Sources: Parcel Data from First Base Solutions,
Imagery from NextEra Energy Resources,
Ontario Ministry of Natural Resources
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