

Ontario Energy Board
P.O. Box 2319
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2300 Yonge Street
Toronto, Ontario M4P 1E4

November 8, 2013

RECEIVED

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Attn: Mr. John Pickernell,
Assistant Board Secretary

ONTARIO ENERGY BOARD
OFFICE OF THE BOARD SECRETARY

RE: wpd White Pines Wind Incorporated Leave to Construct
Application EB-2013-0339

Dear Sir,

Thank you for your letter of October 11, 2013 wherein the Board has acknowledged receipt of my preliminary comments regarding Leave to Construct Application EB-2013-0339.

I would also like to thank you for advising within your October 11, 2013 letter that the Board is not able to consider comments which relate to issues beyond the authority of the Board; and furthermore for confirming that in the matter of environmental issues the Board would rely upon the Ministry of the Environment to be the authority with respect to the Renewable Energy Approval process. This certainly has some significance with respect to my concerns as will be outlined herein.

Based upon the premise that the Board will only consider matters within the authority of the Board; and in the absence of Renewable Energy Approval for the subject project, it is my contention that the proponent's application for Leave to Construct is premature and should have no standing with; or be considered by the Board at this time. In this regard I have appended hereto a document titled "**Written Submission of Ray Ford, November 8, 2013**" which I would appreciate being included in, and forming part of the public record for the public hearing to be convened regarding this Leave to Construct application.

Also, your October 11, 2013 letter did not provide a response to my inquiry "...as to whether I will be permitted to submit comments at a later date on this matter following resolution of the issued (sic) raised with the current REA application..." as included in my original October 10, 2013 email submission.

Furthermore, after careful consideration of the above issues, I must advise that I have copied the Honourable Bob Chiarelli, Minister of Energy with this letter to advise the Minister and his Office of the following:

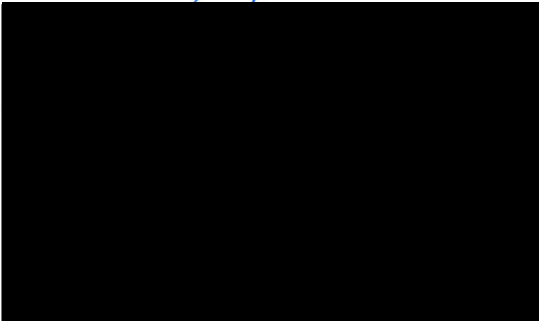
- 1) That in the absence of a Renewable Energy Approval authorization for the subject project, it is my opinion that the Board would not be acting in the public

interest in the consideration of this Leave to Construct application for the reasons set out in the attached Written Submission; and,

- 2) Secondly, to ensure that a response is provided to my question regarding my ability to submit comments at a later date after the Ministry of the Environment has issued Renewable Energy Approval for the project.

I would respectfully request an acknowledgement of this letter from the Ontario Energy Board. Thank you for your consideration and attention to the matter.

Yours truly,



Attachment

cc: Honourable Bob Chiarelli, Minister of Energy
Todd Smith, MPP Prince Edward - Hastings

IN THE MATTER OF the Ontario Energy Board Act,
S.O.1998, as amended (the OEB Act);

AND IN THE MATTER OF an application by wpd
White Pines Wind Inc. for an Order or Orders
granting Leave to Construct a new 69 kV
transmission line and associated facilities in Prince
Edward County, Ontario.

Written Submission of Ray Ford, November 8, 2013

A) wpd White Pines Wind Inc.'s Standing Within the OEB Act

1. Section 92(1) of the OEB Act prohibits a "person" from constructing electricity transmission lines or electricity distribution lines without first obtaining from the Board an order granting leave to construct.
2. Section 3 of the OEB Act defines a "distributor" as "a **person** (emphasis added) who owns or operates a distribution system".
3. Section 3 of the OEB Act defines a "distribution system" as "...a system for distributing electricity....".
4. wpd White Pines Wind Inc. (wpd) has filed with the Ministry of the Environment an application for Renewable Energy Approval (REA).

Proponent's Application, Exhibit B, Tab 2, Schedule 1, Page 3, lines 20 to 23.

5. The status of wpd's REA application was confirmed by the Ministry of the Environment on October 8, 2013 as "undergoing a completeness check to ensure that all documentation as required by O.Reg. 359/09 has been included".

Attachment 1, page 2, lines 13 to 15

6. The Ministry of the Environment has confirmed that "the determination of completeness of a REA application does not constitute approval."

Attachment 1, page 2, lines 16 and 17

7. The status of the Ministry of the Environment's "review of the White Pines Wind Farm's REA application can be monitored" on the Ministry of the Environment's web site.

Attachment 1, page 3, lines 1 to 3

8. A review of the status of wpd's REA application as currently listed on the Ministry of the Environment's web site (November 8, 2013) notes the status of wpd's REA submission as "Received and screening for completeness".

9. It is clear and uncontested that wpd has not received final Renewable Energy Approval from the Ministry of the Environment.
10. Renewable Energy Approval is required before wpd can proceed to construction and implementation of the subject renewable energy project.

Proponent's Application, Exhibit B, Tab 2, Schedule 1, Page 3, lines 10 and 11.

11. It is respectfully submitted that unless and until Renewable Energy Approval is granted by the Ministry of the Environment, wpd will not have approval or authorization to proceed to construction with the electricity generating devices so contemplated by wpd's REA application. In the absence of being able to construct electricity generating devices, it is clear and uncontested that it is not possible for wpd to generate or produce electricity.
12. It is respectfully submitted that in the absence being able to generate or produce electricity, there can be no electricity available for transmission and/or distribution.
13. If there is no electricity available for transmission and/or distribution, it is respectfully submitted that wpd cannot be considered a "distributor" within the definition and meaning of the OEB Act; and furthermore cannot be considered a "person" who owns or operates a distribution system within the definition and meaning of the OEB Act.
14. Section 92 of the OEB Act does not bestow rights upon an entity that has applied for (but not yet received) REA that would authorize construction of a renewable energy generation facility.
15. Therefore it is respectfully submitted that unless and until such time as wpd receives a Renewable Energy Approval, wpd cannot be considered a "person" who owns or operates a distribution system under the meaning of the OEB Act (to which Section 92(1) would apply).
16. Therefore it is respectfully suggested that wpd can have no standing under the OEB Act until such time as Renewable Energy Approval is granted.
17. It is respectfully submitted that the Ontario Energy Board has no jurisdiction to consider an application for an Order or Orders under Section 92(1) of the OEB Act with respect to a party that has no standing under the Act
18. On the basis that wpd has no standing under that OEB Act and that the Ontario Energy Board has no jurisdiction to consider application(s) by persons with no standing under the OEB Act, it stands to reason that the Application by wpd to the Ontario Energy Board for an Order or Orders under Section 92(1) of the OEB Act must be rejected. Therefore, it is respectfully requested that the Board reject the current application by wpd for an Order or Orders for leave to construct.

B) Route Map

1. Section 94 of the OEB Act requires an applicant for an order granting leave under the subject part of the OEB Act to file with the Application a map showing the general location of the proposed work, etc.
2. wpd White Pines Wind Inc. (wpd) has filed with the Ministry of the Environment an application for Renewable Energy Approval (REA).

Proponent's Application, Exhibit B, Tab 2, Schedule 1, Page 3, lines 20 to 23.

3. wpd's REA application includes an "Interconnection Line" which is described in the wpd's Application to the OEB as "*the project modification addendum to its REA application*"* and is subsequently referred to as a "Transmission Line" and/or "Transmission Project" in wpd's Application.

* Proponent's Application, Exhibit B, Tab 2, Schedule 1, Page 4, lines 1 to 3.

4. The "Transmission Line" and/or "Transmission Project" is the subject of the Application for which a route map is to be filed with the Board in accordance with Section 94 of the OEB Act.
5. wpd's REA application has not been approved by the Ministry of the Environment (Ministry) who are responsible for issuing REA authorizations under the Green Energy Act; nor has the Ministry initiated a review of wpd's application.

Attachment 1, page 2, lines 13 to 15

6. The "Interconnection Line" described and included in wpd's REA application, and subsequently referred to as a "Transmission Line" and/or "Transmission Project" in this OEB Act Application (and hereinafter collectively referred to as "Transmission Line project), may at some point in time be reviewed by the Ministry in accordance with the Ministry's REA technical review process.
7. With respect to wpd's REA application the Ministry has advised that "Adjustments may be made to the project to incorporate local knowledge and/or to avoid and/or mitigate environmental impacts."

Attachment 1, page 2, lines 2 and 3

8. The Transmission Line project requires environmental review and study for which a report or reports are to be prepared in accordance with O. Reg. 359/09 and other Applicable Law. The Transmission Line project documentation is subject to review by the Ministry in accordance with the Ministry's REA technical review process. It therefore stands to reason that adjustments may have to be made to the Transmission Line project to incorporate local knowledge and/or to avoid and/or mitigate environmental impacts as determined in preparation of the project reports and/or as a result of the Ministry's review of the REA application.

9. It therefore stands to reason that a location or route for the proposed Transmission Line project cannot be established with any reasonable certainty until the Ministry has completed a technical review of wpd's REA application.
10. Therefore in the absence of a REA it is respectfully submitted that it is not possible to produce a map showing the general location of the proposed work and/or location of the Transmission Line project.
11. It is respectfully submitted that in the absence of being able to provide a map showing the general location of the proposed work, wpd cannot be in a position so as to be compliant with Section 94 of the OEB Act.
12. On the basis that wpd cannot be in a position to be compliant with Section 94 of the OEB Act, it stands to reason that the Application by wpd to the Ontario Energy Board for an Order or Orders under Section 92(1) of the Act is incomplete and must be rejected. Therefore, it is respectfully requested that the Board reject the current application by wpd for an Order or Orders for leave to construct.

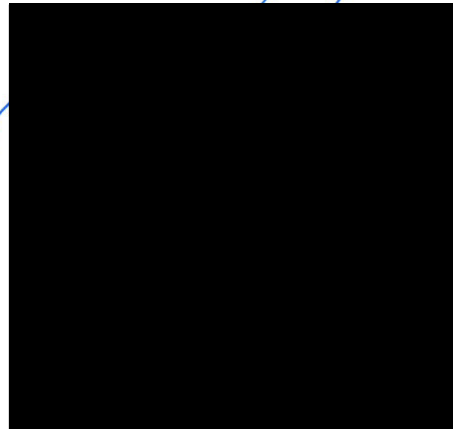
C) Public Interest

1. Part VI of the Ontario Energy Board Act bestows upon persons granted leave to construct special privileges such as the ability to apply for leave to expropriate under Section 99 of the Act; the right to enter onto lands not owned by the person granted leave to construct as described in Section 98 of the Act; and the right to construct crossings with leave under Section 101 of the Act, as examples.
2. It is respectfully suggested that these special privileges represent significant and substantial incursions upon the exclusive rights of property owners and municipal corporations and can restrict, control or interfere with the rights and enjoyment vested in the owner(s) of the property.
3. As well established in law, special privileges granted under statutory authority must be strictly construed.
4. As well established in law in Ontario, statutes that restrict, control or interfere with the rights normally vested in the owner of property must be strictly construed.
5. It therefore stands to reason, and is respectfully submitted, that the Ontario Energy Board is restricted in law to narrowly construe the application and interpretations of the provisions as enacted within the OEB Act.
6. It is respectfully submitted that in consideration of the special privileges which are bestowed unto parties granted leave to construct under the OEB Act, that failure to narrowly construe and/or interpret the provisions of the OEB Act could be viewed as not acting in the interest of both public and private property owners.

7. It is the contention and assertion of the undersigned that in consideration of the special privileges available under the OEB Act, the Board owes the public a duty of care in the consideration and application of the OEB Act and therefore the Board would not be acting in the public interest if an Application for Order or Orders for leave to construct is considered and/or granted by the Board in respect of an entity who is not a person or distributor of electricity.
8. As already established, wpd is neither a generator nor producer of electricity; nor can wpd be considered a person or distributor under the OEB Act.

Paragraphs A)13 and A)15 above

9. Therefore it is the contention and assertion of the undersigned that the Board would not be acting in the public interest in the consideration of an Application by wpd for an Order or Orders for leave to construct.
10. Therefore it is respectfully suggested that in respect of the matter of acting in the public interest the Board has no alternative but to dismiss and/or reject the Application by wpd.
11. Therefore in the matter of acting in the public interest, the undersigned respectfully requests the Board to reject the Application by wpd for Order or Orders for leave to construct.



**Ministry of
the Environment**

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Integration Branch

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l'Environnement**

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Télééc.: 416 314-8452



October 8, 2013

Mr. Ray Ford
[REDACTED]

Dear Mr. Ford:

- 1 Thank you for your September 25, 2013 e-mail regarding the White Pines Wind Farm proposed
- 2 by wpd Canada Inc. in Prince Edward County.
- 3 From your letter, I understand that you have reviewed documentation concerning the proposed White Pines Wind Farm on the proponent's website and you point out that the documentation has been modified. As such, you suggest that this information be made available for public consultation.
- 7 As noted in our July 30, 2013 correspondence with you, the documents submitted to the ministry as part of the REA application may differ from the documents you originally reviewed.
- 9 In order to explain, I would like to provide you with more detail with respect to the timing of the generation of reports. Please note that the generation of reports spans the pre-application phase of the REA process. For instance, a draft Project Description Report may be completed at a very early stage so that Aboriginal consultation can commence. On the other hand, the Consultation Report can only be finalized following the final public meeting, near the end of the pre-application phase. It is the applicant's responsibility to determine the optimal timing for the completion of reports. However, O. Reg. 359/09 does have some requirements for making such reports available to the public.
- 17 During the pre-application phase, consultation is a critical component of the REA process, as it ensures people are notified about projects and provided an opportunity to provide feedback and information to the applicant. Members of the public, Aboriginal communities, municipalities and other stakeholders are encouraged to review the project proposal and contact the proponent directly to discuss their concerns. This provides the proponent the opportunity to learn about local issues and concerns and make changes to the proposal prior to submission. These
- 23 submissions are included in the Consultation Report.

- 2 -

- 1 During the pre-application phase, additional studies may be required as new information comes
2 to light. Adjustments may be made to the project to incorporate local knowledge and/or to avoid
3 and/or mitigate environmental impacts. For example, if changes to turbine locations are
proposed, additional noise reports may be required. It is also notable that the archaeological
assessment process can include between 1 and 4 stages, with increasing levels of investigation
as the presence and significance of archaeological resources is clarified.
- 7 The REA process is applicant-driven. When all consultation and report requirements have been
completed and the applicant has determined that the project will meet all the setback and
prohibition requirements of O. Reg. 359/09, the applicant may submit an application for a REA
to the MOE. Reports may be updated and altered throughout the pre-application phase.
- 11 As you are aware, the application for the White Pines Wind Farm has been submitted to the
12 ministry. Since our previous correspondence with you, the status of our review of the REA
13 application for this project has not changed; the REA application for the White Pines Wind Farm
14 is undergoing a completeness check to ensure that all documentation as required by O. Reg.
15 359/09 has been included.
- 16 I would like to clarify that the determination of completeness of a REA application does not
constitute approval. The completeness check ensures that all required documents and impact
assessments have been included with an application so that a technical review can commence.
When reviewing an application for completeness the ministry may request additional information
from the applicant. The ministry would not request the applicant to consult on this additional
information unless it was deemed significant. If there were significant information deficiencies in
the application the ministry would deem the application incomplete and return it to the applicant.
- 23 When applications are deemed complete, proponents are required to post the final versions of
all documents submitted as part of the REA application on their website. These are the same
documents examined by the MOE in detail during the technical review phase of the REA
process, depending on the type of submission.
- 27 During the technical review, members of the public are provided the opportunity to review the
final REA application (available on the proponent's website) and submit comments about the
project proposal directly to the MOE through the Environmental Bill of Rights (EBR) Registry
(www.ebr.gov.on.ca) for a minimum 30 day period. All comments received through the EBR
Registry are considered prior to making a decision.
- 32 Should the application be deemed complete, please be assured that it will be reviewed by a
team of inter-ministerial experts that includes project evaluators, engineers, scientists and
technical experts from the Ministry of the Environment, the Ministry of Tourism, Culture and
Sport, and the Ministry of Natural Resources. The review team: ensures the application satisfies
all regulatory requirements; reviews all submitted reports, including the Consultation Report;
and, considers all comments submitted to the ministry prior to making a decision on the
application.
- 39 Should the application be deemed complete, we would encourage you to submit your comments
online, directly to the MOE. The comments from the Environmental Registry will be considered
41 by the MOE in making a decision about project approval.

- 3 -

- 1 The status of the ministry's review of the White Pines Wind Farm's REA application can be
- 2 monitored at the following website:
- 3 www.ene.gov.on.ca/environment/en/subject/renewable_energy/projects/index.htm
- 4 Thank you again for your participation in the REA process.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Doris Dumais". The signature is fluid and cursive, with the first name "Doris" and last name "Dumais" clearly distinguishable.

Doris Dumais
Director
Environmental Approvals Access and Service Integration Branch