

# STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9  
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Patrick G. Duffy  
Direct: (416) 869-5257  
E-mail: pduffy@stikeman.com

**BY E-MAIL & RESS**  
(boardsec@ontarioenergyboard.ca)

January 17, 2014  
File No. 129316-1017

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: wpd White Pines Wind Incorporated ("wpd")  
Application for Leave to Construct Transmission Facilities  
EB-2013-0339**

We write in response to the letter of January 10, 2014 from Wayne Fairbrother on behalf of the Corporation of the County of Prince Edward.

The County has requested that the Board commence receive evidence and make a determination under subsection 41(9) of the *Electricity Act, 1998*. Section 41 provides transmitters and distributors with access to and a right to install infrastructure under any public street or highway. However, subsection 41(10) of the *Electricity Act, 1998* provides that procedure provided for in subsection 41(9) "does not apply if section 92 of the *Ontario Energy Board Act, 1998* applies." Therefore, the Board does not have jurisdiction to receive evidence or make determinations in relation to section 41 as part of this proceeding.

As noted in the application, wpd has met with the County to discuss the transmission and intends to continue discussions while this application before the Board. Section 101 of the *Ontario Energy Board Act, 1998* provides a procedure for a party who has obtained leave to construct to apply "for authority to construct a work upon, under or over a highway" and provides the Board with authority to set appropriate conditions. In the event that leave to construct is granted, and wpd is unable to reach an agreement with the County to access the municipal road allowances, it would commence an application before the Board under section 101 for the authority to construct the transmission line under the municipal road

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allowances. wpd submits that is the appropriate forum in which to deal with any issues related to the conditions for access to the County's municipal road allowances.

Yours truly,

A handwritten signature in black ink, appearing to read "PD - 1/17".

Patrick G. Duffy

/il

c.c.: D. Wayne Fairbrother, *Templeman Menninga LLP*  
Jesse Long, *wpd Canada Corporation*  
Ingrid Minott, *Stikeman Elliott LLP*