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

February 4, 2014
File No. 129316-1017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th 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 email of January 25, 2014 from Wayne Fairbrother on behalf of the Corporation of the County of Prince Edward (the "**County**") in which Mr. Fairbrother asserts the Board cannot grant the application until it is satisfied that a landowner agreement will be offered to the County under section 97 of the *Ontario Energy Board Act, 1998*.

The County's position is legally incorrect. A landowner's agreement under section 97 is not needed for public streets and highways because section 41 of the *Electricity Act, 1998* grants a transmitter a *right* to access public streets and highways. Subsection 41(5) provides that a transmitter "does not require the consent of the owner of or any other person having an interest in the street or highway" to exercise its right of access. The very purpose of section 41 of the *Electricity Act, 1998* would be undercut if the Board were to require an agreement with the landowner for the use of public streets and highways by a transmitter.

wpd also disagrees with the County's allegation that wpd's application is premature. wpd met with the County in April 2012 as noted by Mr. Fairbrother and requested a further meeting with the County to discuss routing and a road use agreement in May 2013. wpd followed up with calls when the County was unresponsive to this request. The date of filing for the application in September 2013 was dictated by the project's projected timelines and the Board's service standard for leave to construct applications. There is no requirement for a road use agreement to

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be negotiated prior to the filing of a section 92 application. Following the filing of the leave to construct application, wpd offered to continue discussions with the County. As noted in our letter of January 17, 2014, if the County and wpd are unable to negotiate a road use agreement, then wpd would have recourse to an application under section 101 of the *Ontario Energy Board Act, 1998*.

Finally, wpd reiterates that the scope of this proceeding is strictly limited to the two factors listed in subsection 96(2) of *Ontario Energy Board Act, 1998*. In wpd's view, the matters raised by the County are outside of the scope of subsection 96(2). The Board must ensure that any parties granted intervenor status confine their evidence and representations to matters within the Board's jurisdiction.

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*