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File No. T996178

February 26, 2014

BY FAX AND EMAIL

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Kristen Walli, Board Secretary

Dear Ms. Walli:

Re: File No. EB-2013-0442
Applicant: Wpd Sumac Ridge Incorporated

We are the legal counsel to the City of Kawartha Lakes (the “City”). Today, the City became aware that wpd Sumac Ridge Incorporated (the “Applicant”) filed an application dated December 20th, 2013 with the Ontario Energy Board (the “Board”), under subsection 41(4) of the *Electricity Act*, for orders of the Ontario Energy Board (the “Board”) establishing the location of the Applicant’s proposed distribution facilities within an unassumed portion of Gray Road, and an unassumed road allowance, known as ‘Wild Turkey Road.’

Both the unassumed portion of Gray Road and the unassumed ‘Wild Turkey Road’ are held by the City, which has a direct legal and proprietary interest in the outcome of the Application. The Board, in its Letter of Direction, dated January 27th, 2014 specifically required that the Applicant serve the Notice of Application (“Notice”) on the City Clerk either personally or by registered mail.

The City has confirmed that it did not receive Notice. Neither the Clerk’s Department, nor any other City Department received formal Notice. We therefore object to the Board considering submissions or making any determination on the application until such time as the Notice has been served in accordance with the Board’s direction.

The failure to serve Notice is particularly egregious since the City has been in discussion with wpd since April 2013, and the yet the City only learned of the Notice of Application through other third parties.

As it had not been previously aware of the Application, the City has not had an opportunity to conduct a review of it. However, the following constitute the City's preliminary comments:

1. The Applicant wrote to the City requesting to initiate an application process for a distribution line beneath Gray Road on or about April, 2013. No mention was made at the time of plans to locate the distribution line with 'Wild Turkey Road' as well.
2. The distribution line was for the Sumac Ridge Wind Farm, which at that time had not received approval under O.Reg. 359/09. The City correctly responded that any such approval at the time was premature. The Sumac Ridge Wind Farm did not receive Ministry of the Environment approval until December, 2013. That approval is now under appeal by third parties.
3. Subsequent to receiving Ministry of the Environment approval, the Applicant did not take any steps to submit an application for a permit to occupy either Gray Road or Wild Turkey Road for the purposes of a distribution line.
4. The Applicant has provided no details to the City of the proposed location of the distribution line within Gray Road or Wild Turkey Road.
5. Section 41 of the *Electricity Act* permits distributors and transmitters to occupy public streets or highways for the purposes of the establishing distribution or transmission lines. An unassumed road allowance and therefore not a public street or highway at law. Therefore, it is not clear that s. 41 gives the Applicant authority to seek to locate a distribution line within Wild Turkey Road and the unassumed portion of Gray Road..

At this time the City reserves its rights to object to any crossing of Gray Road or Wild Turkey Road until it has had an opportunity to consider whether s.41 of the *Electricity Act* applies to unassumed road allowances.

If the City determines that s.41 of the *Electricity Act* applies to unassumed road allowances, and the locations of the turbines and distribution lines are as shown in the Notice, The City would be prepared to acknowledge the jurisdiction of the Board to grant access to Gray Road and Wild Turkey Road for the limited purpose of permitting the crossing by underground distribution lines. However, the City submits that it should be a condition of any permission being granted that:

1. Detailed engineering drawings and plans be provided to the City in respect of the road crossings.
2. The road crossings be completed in accordance with municipal requirements for any such road crossings.
3. The Applicant be responsible for restoration of any damage to property to its pre-existing condition.

4. The Applicant be responsible for the cost of maintenance caused by or resulting from the road crossing, and that any unpaid costs incurred by the municipality be recoverable in the same fashion as municipal taxes.
5. Such permission does not otherwise constitute consent to the use of either of the roads, or to any other work to be done to the roads, for any purpose other than the for any purpose other than the crossing of the road by the transmission line.

In addition, as the City was not served with Notice and therefore has not had an opportunity to conduct a review of the Application, it further reserves its rights to (1) provide additional comments within 30 days of the date it is served Notice in accordance with the Letter of Direction; and (2) seek intervenor status within 10 days of the date it is served Notice in accordance with the Letter of Direction.

Should the Board have any questions with respect to the contents of the letter, please do not hesitate to contact the undersigned.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP



Harry Dahme

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