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BY EMAIL

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March 19, 2014

File No.: 129316-1002

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

Attention: Mr. John Pickernell,
Acting Manager, Applications Administration

Dear Sir:

**Re: wpd Sumac Ridge Incorporated's Application under section 41 (9) of the
Electricity Act
Board File No. EB-2013-0442**

We write in response to the Board's request of March 13, 2014 directed to Jesse Long of the Applicant wpd Sumac Ridge Incorporated ("wpd").

wpd fully intends to pursue this application. Service of the application has been delayed because of difficulties that wpd encountered in identifying the owners and operators of all utilities along or crossing the route of the proposed distribution facilities. There is no readily available source for this information and the local municipality has demonstrated through its past conduct that it will not provide any assistance to the proponents of wind power projects. Consequently, wpd is required to use a utility locator to identify the proper parties for service. These efforts have been hampered by winter weather conditions. wpd anticipates completing this work in the next two weeks.

wpd made a decision not to serve any of the interested parties until it had a comprehensive list for service that included all utilities with infrastructure located along or crossing the proposed route. In light of the Board's request, wpd will proceed to serve all interested parties known to it at this time and will serve additional parties identified by the utility locator, if any, once that work has been completed.

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wpd understood that the application would not proceed prior to the completion of service on all parties and at no time suggested that submissions be heard or a determination made until that step had been completed. An affidavit of service will be filed with the Board once all parties identified in the Letter of Direction have been served. We request that the Board refrain from putting the matter in abeyance while wpd completes service of the application.

With respect to the allegations made by the City of Kawartha Lakes in its letter of February 26, 2014, it is inaccurate for the City to claim that it was unaware of this application and only learned out it through third parties. wpd made repeated attempts to meet with the City to discuss this matter throughout 2013 and advised that it would commence an application under section 41 of the *Electricity Act*, 1998 if an agreement could not be reached. The City refused to meet or even return the phone calls of wpd, making this application necessary. It should come as no surprise to the City. I also personally informed the City's counsel, Mr. Harry Dahme, that this application had been filed with the Board during a discussion on this matter in early February 2014.

In its letter, the City asserts that Wild Turkey Road and portions of Gray Road are unassumed road allowances that do not qualify as a public street or highway at law. This is not accurate. Section 26 of the *Municipal Act*, 2001 provides that existing highways as of December 31, 2002 and road allowances (whether assumed or unassumed) qualify as highways.

What constitutes highway

26. The following are highways unless they have been closed:

1. All highways that existed on December 31, 2002.
2. All highways established by by-law of a municipality on or after January 1, 2003.
3. All highways transferred to a municipality under the *Public Transportation and Highway Improvement Act*.
4. All road allowances made by the Crown surveyors that are located in municipalities.
5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

The status of a road allowance as "unassumed" refers to the fact that the municipality has not assumed the obligation for maintenance under section 44 of the *Municipal Act*, 2001. It does not affect the road's legal status as a highway or the public's right to utilize the highway. There is long established legal precedent in

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Ontario that the public has a right to use road allowances unless that right is extinguished by the proper procedures.

The City also identifies conditions of access that it requests be imposed by the Board. This submission is based on a misunderstanding of the Board's jurisdiction in this application. Subsection 41(1) grants a distributor the right to utilize a public street or highway for its infrastructure, including poles and lines. Subsections 41(3) to (8) set out specific conditions for access. The Board's role in an application under subsection 41(9) is to determine "[t]he location of any structures, equipment or facilities" in the case of a disagreement. The *Act* does not provide the Board with the jurisdiction to impose additional conditions on a distributor's statutory right of access.

Yours truly,

A handwritten signature in black ink, appearing to read 'PD-117'.

Patrick Duffy

PGD/il

c.c.: Harry Dahme, *Gowling Lafleur Henderson LLP*

Jesse Long, *wpd Canada Corporation*

Ingrid Minott, *Stikeman Elliott LLP*