

Friday, July-21-14
File No. EB-2014-0226

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Yonge-Eglington Centre
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms. Walli

Re: wpd Fairview Wind Incorporated – New application for an order to determine the location of distribution facilities within Road Allowances

On behalf of wpd Fairview Wind Incorporated, I enclose two copies of the wpd Fairview's Application under Section 41(9) of the *Electricity Act* to determine the location of wpd Fairview's distribution within certain road allowances located in the Township of Clearview, Ontario.

In accordance with Board Staff's previous direction, a searchable PDF copy of the application has also been filed electronically through RESS

Yours Truly,

Jaclyn D'Angelo

EXHIBIT LIST

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IN THE MATTER of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, (the “**OEB Act**”);

AND IN THE MATTER of an Application by wpd Fairview Wind Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant’s distribution facilities on public road owned by the Municipality of Clearview Township, Ontario, as set out in this application.

APPLICATION

The Applicant wpd Fairview Wind Incorporated (“**wpd Fairview**” or the “**Applicant**”) is a New Brunswick corporation with its headquarters located in Mississauga, Ontario. wpd Fairview is developing the Fairview renewable wind energy development project (the “**Fairview Wind Project**” or the “**Wind Project**”) in Clearview Township, Ontario (the “**Municipality**”).

wpd Fairview hereby applies to the Ontario Energy Board (the “**OEB**” or the “**Board**”) pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A (the “*Electricity Act*”) for an order or orders establishing a location for wpd Fairview’s distribution facilities to run beneath a portion of Fairgrounds Road and including a portion through the intersection of Sideroad 21/22 and Fairgrounds Road (the “**Clearview Township Road Allowances**”), more particularly described in Exhibit C, Tab 1, Schedule 1.

wpd Fairview requests that the Board expedite its hearing of this Application in accordance with sections 2.10 and 7.01 of the Board’s *Rules of Practice and Procedure* because as the sole owner of the Clearview Township Road Allowances, the Municipality is the only person or entity directly affected by this Application.

The Applicant also requests that the Board, in hearing this Application, be guided by its mandate, under section 1(1)(5) of the OEB Act, to “promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the

Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate connection of renewable energy generation facilities.”

The individuals named below are the authorized representatives of the Applicant for the purpose of serving documents on the Applicant throughout this proceeding:

The Applicant:

wpd Fairview Wind Incorporated
2233 Argentia Road
Suite 102
Mississauga ON L5N 2X7

Attention: Jesse Long (58647L)

Attention: Ian MacRae

Attention: Jaclyn D'Angelo

Tel: (905) 813-8400

Fax: (905) 813-7487

Email: Jesse@wpd-canada.ca

Email: Ian@wpd-canada.ca

Email: Jaclyn@wpd-canada.ca

Additional written evidence, as required, may be filed in support of this Application and may be amended from time to time prior to the Board's final decision.

The Applicant requests that the Board proceed by way of written hearing, pursuant to section 34.01 of the Board's *Rules of Practice and Procedure*.

1 DATED at Toronto, Ontario, this 21st day of July, 2014

2

wpd Fairview Wind

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Incorporated

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Jesse Long

1 to the Switching Station, the Applicant will run a 44 kV collector lines underground beneath
2 County Road 91 east approximately 0.5 km to the Switching station on the property
3 hosting Turbine 5 (the “**County Rd 91 Collector Line**”). To convey the electricity generated
4 by the Wind Project to the Independent Electricity System Operator (“**IESO**”) controlled
5 grid, the Applicant intends to construct a 44 kV electrical power distribution line (the
6 “**Distribution Line**”) to connect to an existing overhead local distribution system located
7 along County Road 91 and running to Hydro One Network Inc.’s (“**HONI**”) Stayner
8 Transmission Station, which is in turn connected to the IESO-controlled grid. As such, wpd
9 Fairview is a distributor as defined in the *Electricity Act*.

10 The Fairgrounds Collector Line, County Rd 91 Collector Line, Distribution Line and its
11 associated facilities are collectively referred to in this Application as the “**Distribution**
12 **System**”. The Distribution System is more particularly described in Exhibit C, Tab 1,
13 Schedule 1.

14 **Statutory Rights of Distributors**

15 The Applicant intends to locate certain facilities associated with the Distribution System
16 within the Clearview Township Road Allowances, as particularly described in Exhibit C,
17 Tab 1, Schedule 3. Pursuant to section 41(1) and 41(5) of the *Electricity Act* and the Board’s
18 Decision and Order in EB-2010-0253 (the “**Grey Highlands Decision**”),¹ as a distributor,
19 wpd Fairview may construct or install distribution facilities over, under or on any public
20 streets or highways without the consent of the owner of, or any other person having an
21 interest in, such streets or highways.

22 As set out in Exhibit D, Tab 1, Schedule 4, a balance of environmental, social, technical and
23 economic considerations have resulted in wpd Fairview’s decision to locate the Distribution
24 System within the Clearview Township Road Allowances. However, as detailed in Exhibit
25 D, Tab 1, Schedule 2, the Municipality has effectively refused to engage in discussions with

¹ Decision and Order in EB-2010-0253 dated January 12, 2011 (the “**Grey Highlands Decision**”)

1 the Applicant regarding the location of the Distribution System within the Clearview
2 Township Road Allowances.

3 **Request for Agreement to Occupy the Road Allowances**

4 Given the Applicant's statutory right to locate the Distribution System within the Road
5 Allowances, the only outstanding issue with respect to wpd Fairview's use of the Road
6 Allowances is the precise location of the Distribution System within the Clearview
7 Township Road Allowances.

8 Although under no statutory obligation to do so, the Applicant reached out to the
9 Municipality to commence the negotiation process for an agreement to occupy and engage
10 in certain construction activities within the Road Allowances related to the Distribution
11 System, and begin negotiations regarding the terms of a road use agreement pertaining to
12 the Applicant's use of the Road Allowances.

13 With respect to the Distribution Line and the County Rd 91 Collector Line, the Applicant
14 has engaged in the negotiation process with the Simcoe County and anticipates that the
15 Applicant and the County can reach an Agreement.

16 With respect to Fairgrounds Collector Line in the Clearview Township Road Allowances,
17 which is the subject of this Application, the Municipality has continuously deferred the
18 Applicant's requests to meet on the basis that the Applicant's request was premature. The
19 Municipality has effectively refused to engage with the Applicant with respect to the precise
20 location of the Distribution System within the Clearview Township Road Allowances. The
21 Municipality has continuously rebuffed the Applicant's efforts to engage in discussion
22 about the Distribution system details. As a result of the Municipality's conduct, the
23 Applicant has not obtained a permit or agreement to occupy the Road Allowances, and has
24 been unable to reach an agreement with the Municipality regarding the location of the
25 Distribution System within the Road Allowances. The Municipality's response to the

1 Applicant's attempts to engage in discussions between the parties is more particularly
2 described in Exhibit D, Tab 1, Schedule 2.

3 **The Proposed Road Use Agreement**

4 In anticipation of discussions with the Municipality regarding the location of the
5 Distribution System within the Clearview Township Road Allowances, the Applicant
6 prepared a proposed road use agreement (the "**Road Use Agreement**") to facilitate
7 negotiations with the Municipality and to document the rights and obligations of the parties
8 regarding the location of the Distribution System within the Road Allowances.

9 Pursuant to the terms of the proposed Road Use Agreement, the Municipality would affirm
10 the Applicant's right to use the Road Allowances for the Distribution System and agree to
11 the location of the Distribution System within the Road Allowances. In exchange, the
12 Applicant would provide certain protections to the Municipality, including security to
13 guarantee the Applicant's performance of its obligations under the proposed Road Use
14 Agreement. The terms of the proposed Road Use Agreement are consistent with a
15 distributor's obligations under section 41 of the *Electricity Act*. The provisions are discussed
16 in greater detail in Exhibit D, Tab 1, Schedule 3.

17 **Potential Impacts**

18 The Applicant's use of the Road Allowances will not prejudice the Municipality. In
19 particular, in its Renewable Energy Application, wpd Fairview identified and developed
20 mitigation measures for all the significant environmental effects of the Wind Project,
21 including the Distribution System.

22 However, as detailed in Exhibit D, Tab 1, Schedule 2, the Municipality's delay or failure to
23 enter into a road use agreement with wpd Fairview could cause significant prejudice to the
24 Applicant in the form of increased costs caused by construction delays, and could affect the
25 Applicant's ability to meet certain milestones with respect to its FIT Contract.

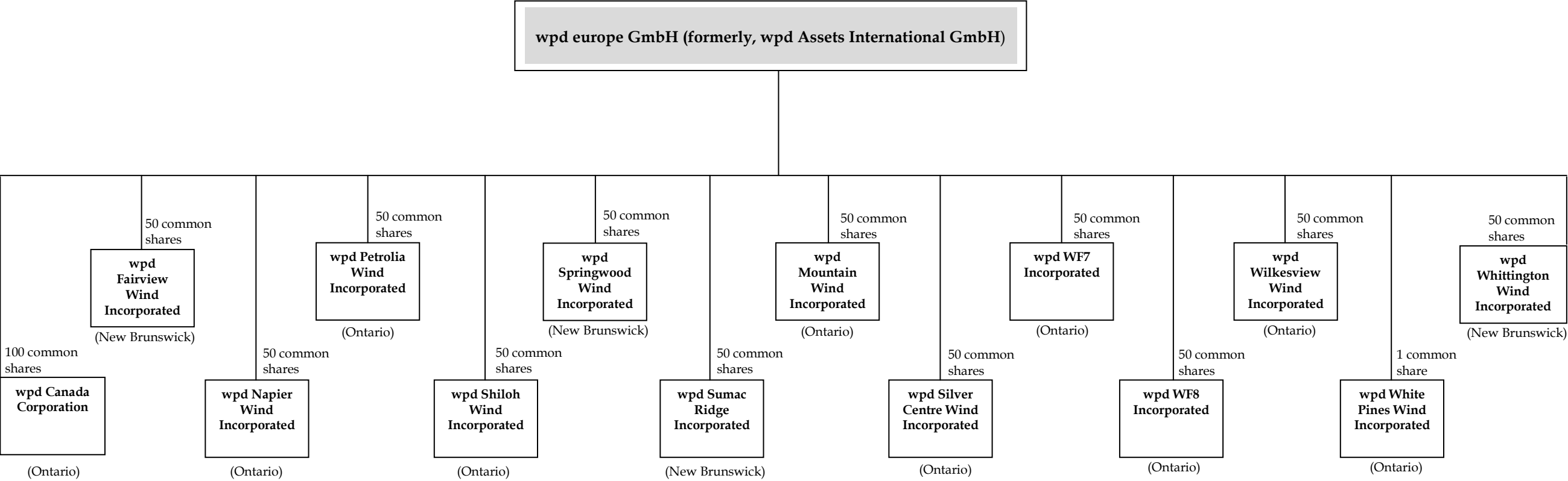
1 **The Board's Authority to Determine the Location of the Distribution System**

2 Pursuant to section 41(9) of the *Electricity Act*, in the event of any disagreement, the Board
3 may determine the location of the structures, equipment or facilities pertaining to a
4 distribution system that a distributor intends to construct on any street or highway. In this
5 case, because the Applicant and the Municipality have been unable to agree on its precise
6 location, the Board may determine the location of the Distribution System within the Road
7 Allowances.

8 In the Grey Highlands Decision, the Board acknowledged that the scope of its authority
9 with respect to an application under section 41(9) of the OEB Act is limited to the
10 determination of the location of the proposed distribution facilities. Further in its Decision
11 and Order in respect of EB-2013-0233 (the "**Grey County Decision**"),² the Board confirmed
12 that the *Electricity Act* does not require an applicant to obtain any applicable regulatory
13 approval prior to seeking relief under section 41(9). Accordingly, in this Application, the
14 Board's determination of whether to grant the relief requested does not involve a
15 consideration of whether the Wind Project has received the required regulatory approval.

² Decision and Order in EB-2013-0233 dated November 7, 2013

CORPORATE STRUCTURE CHART
EXHIBIT B
TAB 3
SCHEDULE 2



1 **PROJECT DESCRIPTION**

2 Pursuant to the *Green Energy and Green Economy Act, 2009*, the Minister of Energy directed
3 the Ontario Power Authority (the “OPA”) to develop the FIT Program to procure energy
4 from renewable sources to further the Government of Ontario’s commitment to increase the
5 renewable energy capacity of Ontario’s energy supply mix.

6 In May 2010, the Applicant was awarded a contract with the OPA under the FIT Program to
7 develop the Fairview Wind Project in the Clearview Township, Ontario, which will
8 contribute to increasing Ontario’s renewable energy supply.

9 **The Fairview Wind Project**

10 The Wind Project will consist of eight SENVION MM92-2.05 MW wind turbine generators
11 owned and operated by the Applicant and will contribute 16.4 MW of renewable energy to
12 Ontario’s electricity grid. The Wind Project, including the wind turbine generators,
13 switching station, access roads, temporary work and storage locations, will be located on
14 privately owned lands. The Wind Project will require upgrades to existing municipal
15 intersections and construction of new private access roads to the wind turbine sites.

16 A Map showing the proposed layout of the Fairview Ridge Wind Project is included at
17 Appendix “A” Exhibit C, Tab 1, Schedule 2.

18 **The Distribution System**

19 To facilitate the transportation of electricity generated by the Wind Project to Ontario’s
20 energy supply mix, the Applicant intends to construct the Distribution System to convey
21 electricity from the Wind Project to HONI’s distribution system, which is in turn connected
22 to the IESO-controlled grid. In an effort to mitigate the potential environment impacts of
23 alternate routing, along with other social, technical and economic considerations, the
24 Applicant has chosen to locate portions of the Distribution System in the Road Allowances

1 in order to convey the electricity generated by the Wind Project to HONI's distribution
2 system.

3 A step up, pad mounted transformer will be located at the base of each turbine to transform
4 the electrical voltage generated by the turbines to 44 kV, making the electricity generated by
5 each wind turbine suitable for connection to HONI's distribution system. 44 kV
6 underground collector lines (the "Collector Lines") will deliver the transformed electricity
7 from each turbine to a switching station located near Turbine 5 on County Road 91(the
8 "Switching Station"). The Fairgrounds Collector Line will deliver the transformed
9 electricity from Turbines 2 & 7 to Fairgrounds Road and travel north approximately 2 km
10 crossing through the intersection of Fairgrounds Road and Sideroad 21/22, before turning
11 west on County Road 91 and onto the property hosting the Switching station near Turbine
12 5; the 44 kV County Rd 91 Collector Line for Turbines 1,3,4,5,6,8 will travel on County Road
13 91 east approximately 0.5 km to the Switching station near Turbine 5.

14 The Distribution Line will be located overhead and will travel approximately 45 m North
15 from the Switching Station on private property where it will connect the electricity
16 generated by the Wind Project to the existing overhead local distribution system located
17 along County Road 91 and running East to HONI's Stayner Transmission Station, which is
18 in turn connected to the IESO-controlled grid.

19 The Collector Lines will likely require drilling, trenching and the excavation of substrate. All
20 materials removed will be used to backfill after the lines have been installed and inspected.
21 The Switching Station will be approximately 30 m by 30 m and will consist of an area
22 enclosed by a chain link fence accessed by a single lane driveway and the Switching Station
23 equipment.

24 The Applicant has secured rights on certain privately owned property on which the wind
25 turbines, access roads, and a portion of the Distribution System will be located.

1 The Distribution System will be designed and built in accordance with the Electrical Safety
2 Authority standards.

3 A map depicting the proposed layout of the Distribution System within the Road
4 Allowances is included at Appendix "B" to Exhibit C, Tab 1, Schedule 2. A map of the Wind
5 Project is included at Appendix "A" to Exhibit C, Tab 1, Schedule 2. A single line diagram
6 showing the proposed layout of the Distribution System is included at Exhibit C, Tab 1,
7 Schedule 4. A cross-sectional diagram included at Appendix "C" to Exhibit C, Tab 1,
8 Schedule 2 shows the approximate location where the Applicant intends to position the
9 facilities associated with the Distribution System within the Road Allowances.

MAPS AND CROSS SECTIONS
EXHIBIT C
TAB 1
SCHEDULE 2

1. Appendix "A" - Map of Fairview Wind Project
2. Appendix "B" - Map of Distribution System
3. Appendix "C" - Cross Sectional Diagram of Distribution System

Map of Fairview Wind Project
Appendix “A”
to
EXHIBIT C
TAB 1
SCHEDULE 2

Location Map wpd Fairview Wind Incorporated Proposed 44kV Distribution System







TOWNSHIP
OF CLEARVIEW

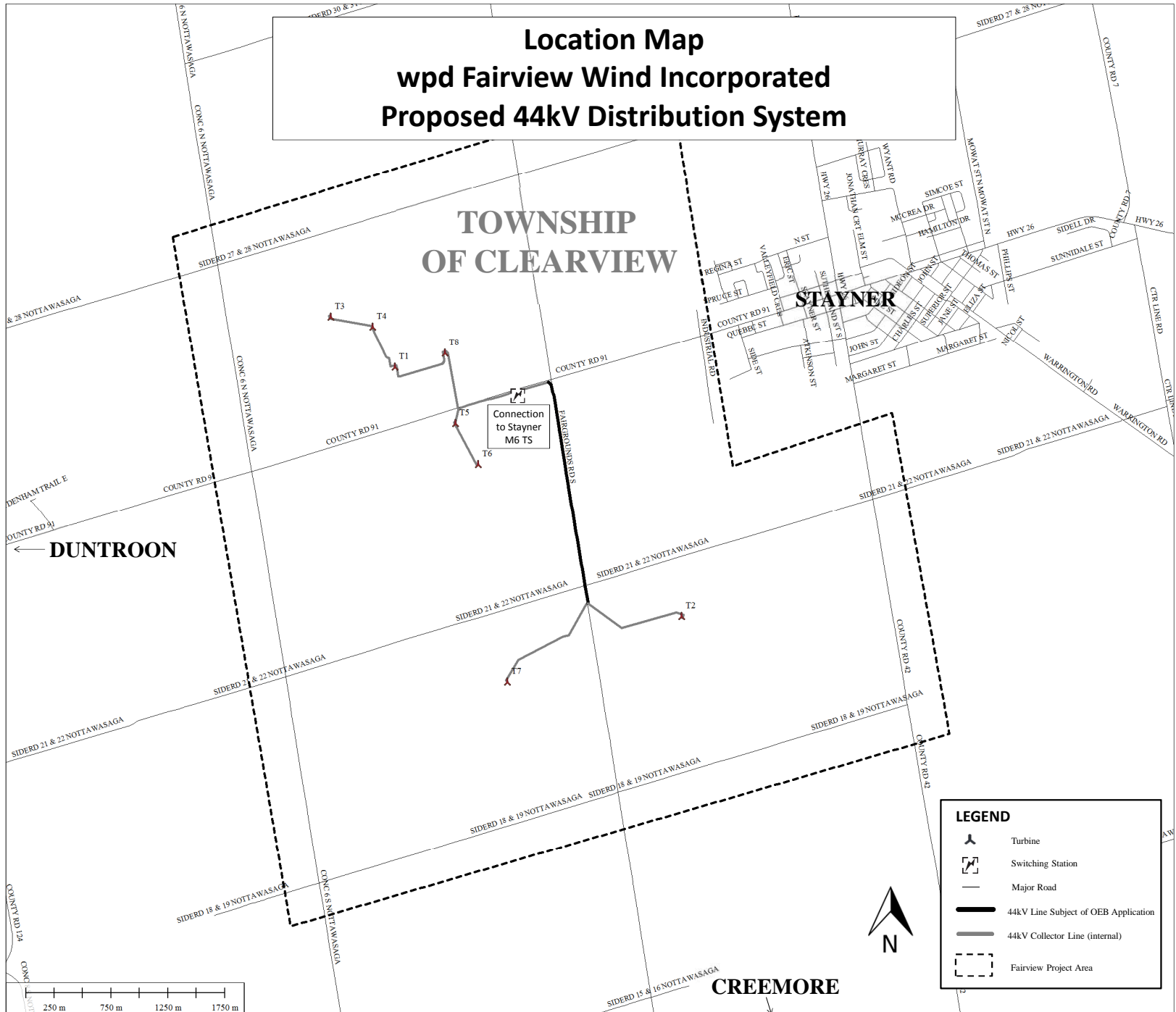
STAYNER

DUNTROON

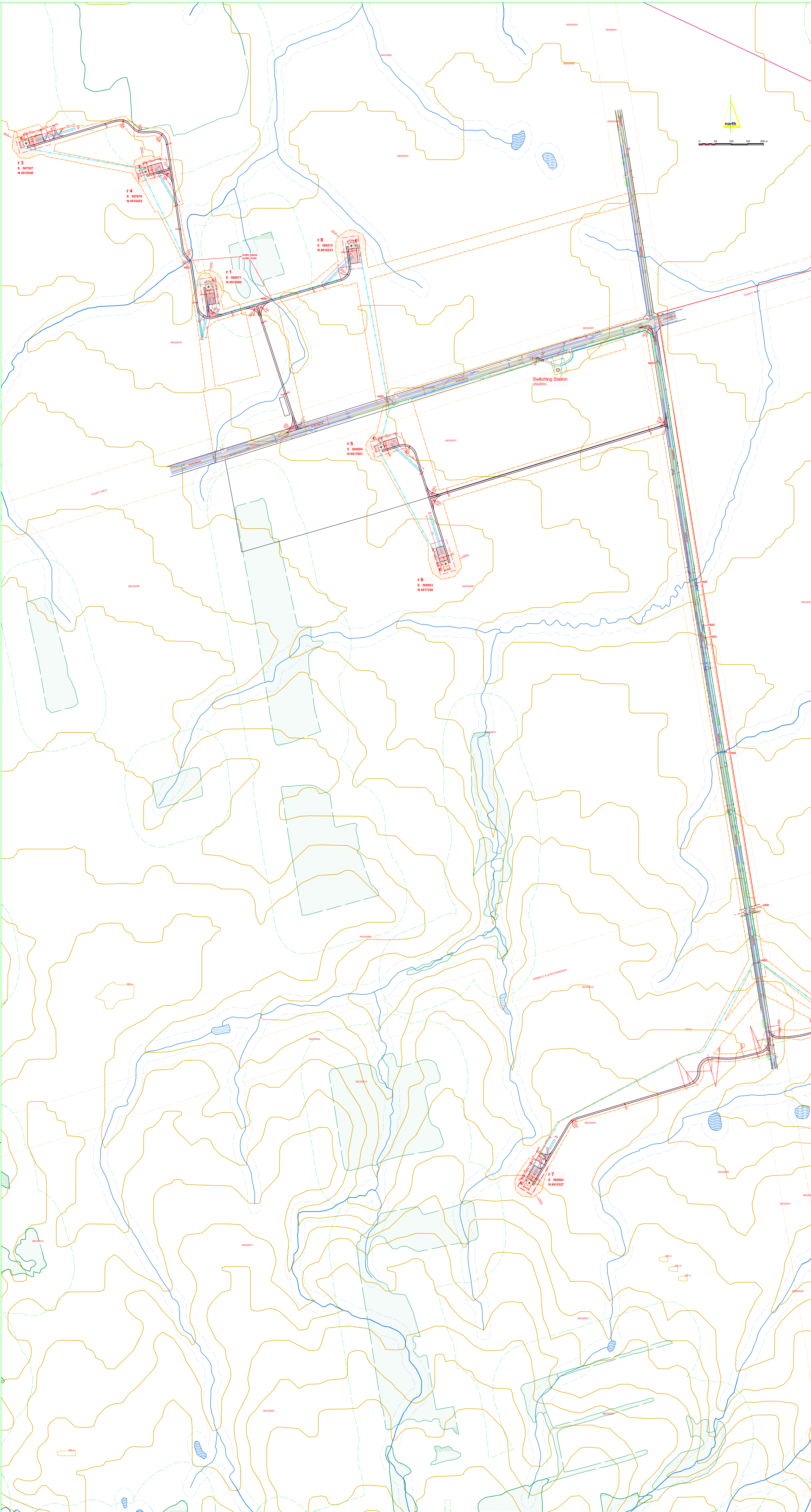
CREEMORE

LEGEND

-  Turbine
-  Switching Station
-  Major Road
-  44kV Line Subject of OEB Application
-  44kV Collector Line (internal)
-  Fairview Project Area



Map of Distribution
System
Appendix “B”
to
EXHIBIT C
TAB 1
SCHEDULE 2



LEGEND

- Foundations, WTG internal transformer
- Rotor diameter
- WTG number
- Crane pad
- New or modified road
- New road temporary
- Existing road
- Boom assembly area
- Laydown area 50m x 100m
- Arch area
- Overhead line
- Internal cable route underground
- Horizontal directional drilling
- Conduit
- Wooded area
- Waterbody
- Watercourse
- Switching Station

Windturbine model:

SENVION MM 92

Hub height: 100,0 m

Rotor diameter: 92,5 m

Coordinate system:

UTM NAD83 format, Zone 17

Revision	Modifications	Date	Name drawer
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All measurements have to be controlled responsibly and have to be verified during the construction.
Any discrepancies have to be announced to the construction site management without any delay!

Project title:

FAIRVIEW WIND FARM

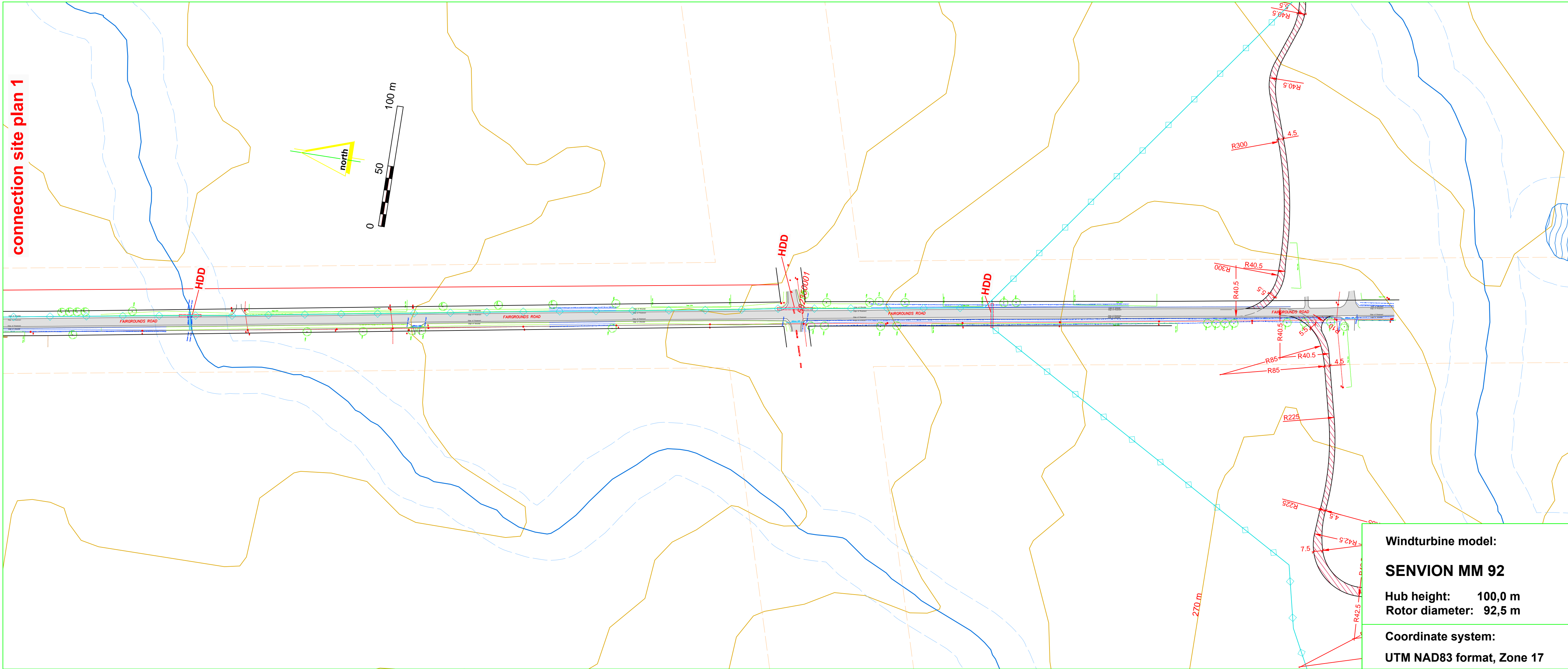
Drawing title:

**CONCEPT DRAWING
SITE PLAN**

drawn by:	25.09.2013	Name:	A. Tielmann	Drawing number:	FAIR_S_V01
verified by:				Replacement for:	
issued by:					

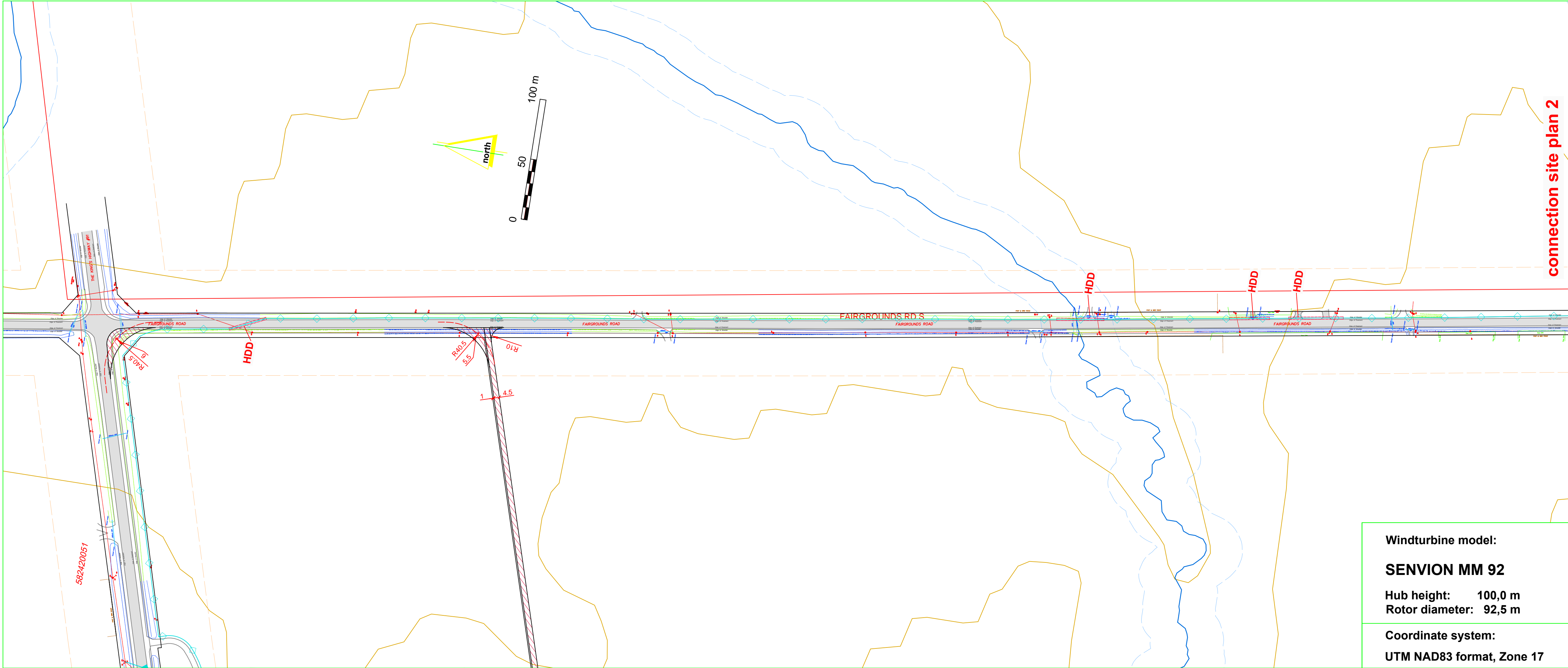
Plan development:	Date:	03.04.2014
Signature:		

Scale:	1 : 4,000	Content of the table:	Site Plan
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LEGEND	
	Foundations, WTG internal transformer
	Rotor diameter
	WTG number
	Crane pad
	New or modified road
	New road temporary
	Existing road
	Boom assembly area
	Laydown area 50m x 100m
	Overhead line
	Internal cable route underground
	Horizontal directional drilling
	Conduit
	Wooded area
	Waterbody
	Watercourse
	Switching Station

Revision	Modifications	Date	Name drawer
All measurements have to be controlled responsibly and have to be verified during the construction. Any discrepancies have to be announced to the construction site management without any delay!			
Project title: FAIRVIEW WIND FARM			
Drawing title: CONCEPT DRAWING SITE PLAN 1 - 'FAIRGROUNDS ROAD'			
	Date:	Name:	Drawing number:
drawn by:	01.04.2014	A. Tielmann	FAIR_S1-FAIRGROUNDS_V01
verified by:			Replacment for:
issued by:			
Plan development:		Date: 01.04.2014	
<i>wpd Canada Corp.</i> 2233 Argenta Road, Suite 102 Mississauga, Ontario L5N 2X7 (p) 905-813-8400 (c) 416-560-3365 (toll free) 1-888-712-2401 (f) 905-813-7487 http://www.wpd-canada.ca		Signature: 	
Scale: 1 : 2.000		Content of the table: Site Plan 1 - 'Fairgrounds Road'	



LEGEND

Foundations, WTG internal transformer

Rotor diameter

WTG number

Crane pad

New or modified road

New road temporary

Existing road

Boom assembly area

Laydown area 50m x 100m

Overhead line

Internal cable route underground

Horizontal directional drilling

Conduit

Wooded area

Waterbody

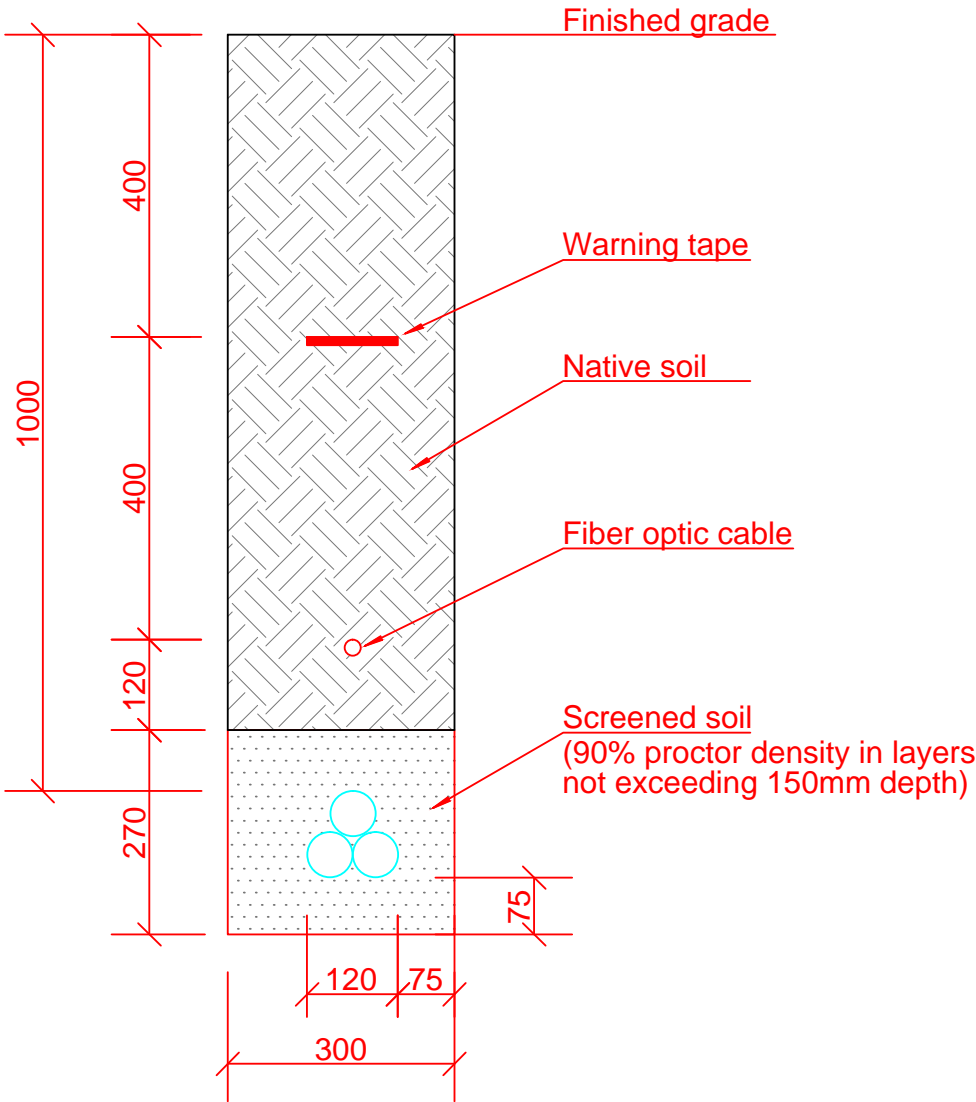
Watercourse

Switching Station

Revision	Modifications	Date	Name drawer
All measurements have to be controlled responsibly and have to be verified during the construction. Any discrepancies have to be announced to the construction site management without any delay!			
Project title: FAIRVIEW WIND FARM			
Drawing title: CONCEPT DRAWING SITE PLAN 1 - 'FAIRGROUNDS ROAD'			
	Date:	Name:	Drawing number:
drawn by:	01.04.2014	A. Tielmann	FAIR_S1-FAIRGROUNDS_V01
verified by:			Replacment for:
issued by:			
Plan development:		Date: 01.04.2014	
<i>wpd Canada Corp.</i> 2233 Argenta Road, Suite 102 Mississauga, Ontario L5N 2X7 (p) 905-813-8400 (c) 416-560-3365 (toll free) 1-888-712-2401 (f) 905-813-7487 http://www.wpd-canada.ca		Signature: 	
Scale: 1 : 2.000		Content of the table: Site Plan 1 - 'Fairgrounds Road'	

Cross Sectional Diagram of Distribution Line
Appendix "C"
to
EXHIBIT C
TAB 1
SCHEDULE 2

Section for single circuit



typical underground supply and
fiber optic cables run layout.

Notes:

1. Cable trench width min. 300 mm for max supply cable size of 1000 kcmil.
2. Full mechanical excavation only.
(No human labor in the trench).

9			
8			
7			
6			
5			
4			
3			
2			
1			
Revision	Modifications	Date	Name

This is a preliminary drawing and is not to be used for construction.

FAIRVIEW
WIND FARM

concept:
Typical trench installation
44 kV underground cable

	Date	Name	File name:
drawn by:	10.09.2013	DaPr	
verified by:	10.09.2013	GB	Substitute for:
issued by:			

Plan development:
wpd Canada Corp.
2233 Argentia Road, Suite 102
Mississauga, Ontario
L5N 2X7
(p) 905-813-8400
(toll free) 1-888-712-2401
(f) 905-813-7487
<http://www.wpd-canada.ca>

Signature:

Date: 10.09.2013



Scale:	Format:	Content of the table:
1:10	A3	cable trench

List of Road Allowances
EXHIBIT C
TAB 1
SCHEDULE 3

1 LIST OF ROAD ALLOWANCES WITHIN WHICH THE DISTRIBUTION SYSTEM
2 WILL BE LOCATED

3 The Fairgrounds Collector Line, which is the subject of the Application, will be located on
4 Fairgrounds Road between Sideroad 18/19 and County Road 91, and including a crossing
5 through the intersection of Fairgrounds Road and Sideroad 21/21.

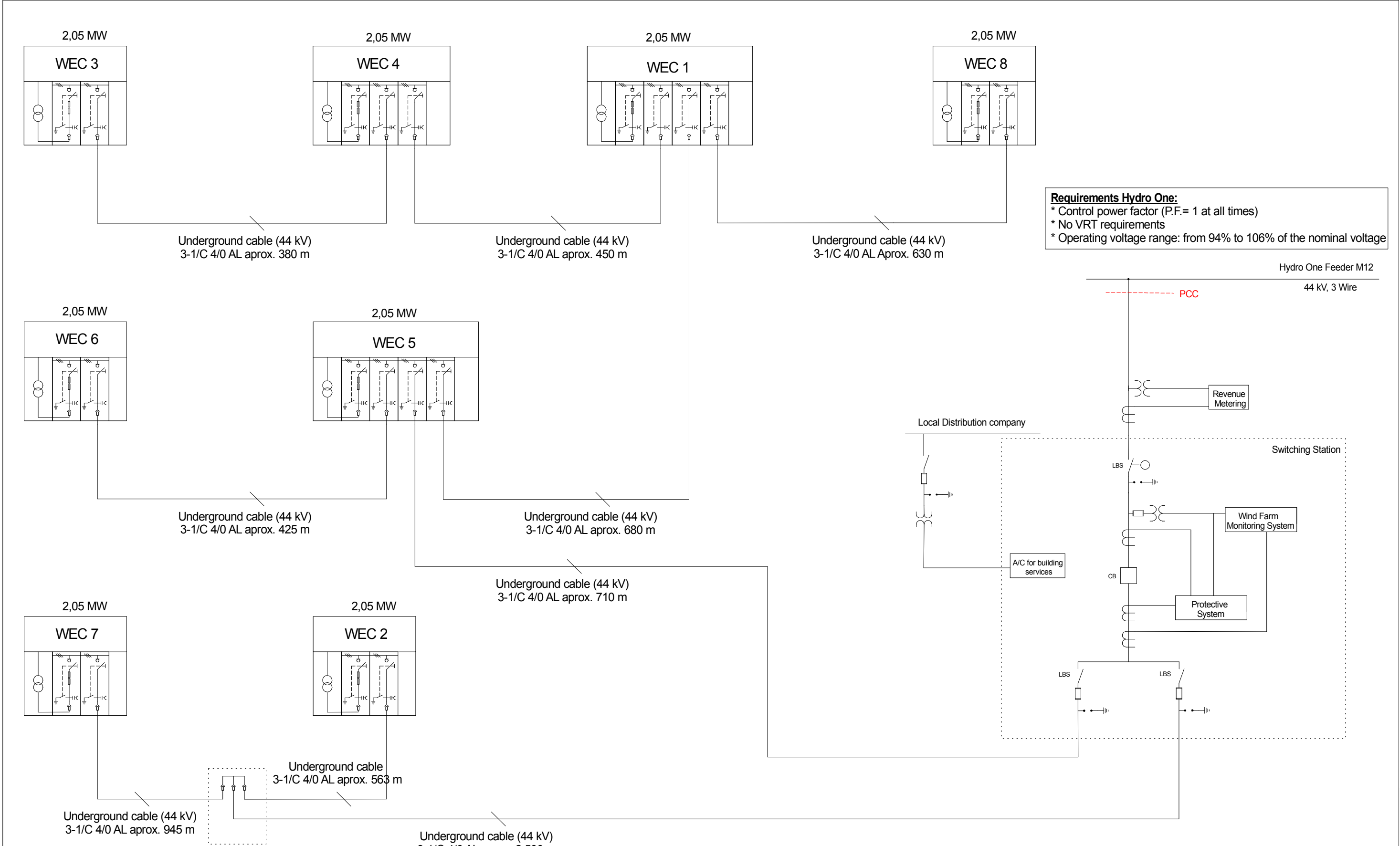
6 The Distribution Line and County Rd 91 Collector Line will be located on County Road 91
7 between Concession 6 and Fairgrounds Road.

Single Line Drawings of Distribution System

EXHIBIT C



TAB 1

SCHEDULE 3



Requirements Hydro One:
* Control power factor (P.F.= 1 at all times)
* No VRT requirements
* Operating voltage range: from 94% to 106% of the nominal voltage

DG Interface Tranformer Data:
Rating: 2,250 kVA
Phases: 3
Reactance, X (p.u. on 2,250 kVA base): 0.06 p.u.
Resistance, R (p.u. on 2,250 kVA base): 0.002 p.u.
Winding connection and Voltage: Delta (44 kV) / Star (0.575 kV)

Scale: n/a					Date	Name	WF Fairview Installed Capacity: 16,4 MW 8 x Repower MM92 /2,050 MW	
					20.07.11	G.Barrio		
					 wpd infrastruktur GmbH Flößerstraße 60 74321 Bietigheim-Bissingen www.wpd.de		Simplified Single Line Diagram	
C	Revision Lengths	30.01.12	GB	 wpd think energy				
B	Mod. CB and LBS	27.10.11	GB	T.: +49 (0) 7142 77 81 81 F.: +49 (0) 7142 77 81 99				
A	Draft	20.07.11	GB					
REV	Revision	Date	Name	Origin:	Substitute for:			

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1 **STATUTORY RIGHTS OF DISTRIBUTORS**

2 The Applicant has elected to locate the power lines and other facilities associated with the
3 Distribution System within the Road Allowances pursuant to the statutory rights of
4 distributors under section 41 of the *Electricity Act*. Pursuant to section 41(1) of the *Electricity*
5 *Act*:

6 A transmitter or distributor may, over, under or on any public
7 street or highway, construct or install such structures,
8 equipment and other facilities as it considers necessary for the
9 purpose of its transmission or distribution system, including
10 poles and lines.

11 Further, section 41(5) of the *Electricity Act* provides that the installation of such structures
12 and associated facilities does not require the consent of the owner or any other person
13 having an interest in such street or highway, in this case the Municipality. Under section 2
14 of the *Electricity Act*, a distributor is defined as “a person who owns or operates a
15 distribution system.” A distribution system is defined as “a system for distributing
16 electricity, and includes any structures, equipment or other things used for that purpose” at
17 voltages of 50 kV or less.

18 As detailed in Exhibit C, Tab 1, Schedule 1, a portion of the Fairview Wind Project will
19 consist of a 44 kV underground Distribution System to connect and convey the electricity
20 generated from the wind turbines to HONI’s distribution system, which in turn connects to
21 the IESO-Controlled grid. wpd Fairview’s Distribution System is accordingly a “distribution
22 system” within the meaning of the *Electricity Act* and wpd Fairview is a distributor for the
23 purposes of the Act. As a distributor, wpd Fairview has a right to locate the Distribution
24 System within the Road Allowances and is not required to obtain the Municipality’s
25 consent. The only issue that remains to be determined is the precise location of the
26 Distribution System within the Clearview Township Road Allowances.

27 Pursuant to section 4.0.1(1)(d) of Ontario Regulation 161/99 made under the OEB Act, a
28 distributor will not be required to obtain or hold a distribution license under section 57(a) of

1 the OEB Act where, as will be the case here, the distributor distributes electricity for a price
2 no greater than that required to recover all reasonable costs with respect to a distribution
3 system that it owns or operates, if the distributor is a generator and distributes electricity
4 solely for the purpose of conveying it into the IESO-controlled grid. Although wpd Fairview
5 will not require a license from the Board in respect of the Distribution System, this will not
6 affect wpd Fairview's status as a "distributor" for the purposes of the *Electricity Act*.

1 **EFFORTS TO OBTAIN AN AGREEMENT TO OCCUPY ROAD ALLOWANCES**

2 The Applicant is a distributor of electricity under the *Electricity Act*. With respect to the
3 Distribution Line and the County Rd 91 Collector Line, due to the applicable Road
4 Allowances being located in, owned and controlled by the County of Simcoe, the Applicant
5 engaged the County and continues in discussions regarding the precise location of the
6 Distribution System within the Road Allowances and, resultantly, these road allowances are
7 not the subject of this application.

8 With respect to the Fairgrounds Collector Line, due to the applicable road allowances being
9 located in, owned and controlled by the Municipality, the Applicant attempted to engage
10 the Municipality in discussions regarding the precise location of the Distribution System
11 within the Clearview Township Road Allowances by initiating the process for an agreement
12 to occupy and complete work within the Clearview Township Road Allowances. Although
13 it is under no statutory obligation to do so, as is standard practice in Ontario, the Applicant
14 intended to engage with the Municipality to negotiate the terms of the Road Use Agreement
15 to define the parties' rights and responsibilities with respect to the location of the
16 Distribution System with the Clearview Township Road Allowances. A discussion of the
17 terms of proposed Road Use Agreement is included at Exhibit D, Tab 1, Schedule 3.

18 Despite the Applicant's efforts, the Municipality has rebuffed efforts to schedule a meeting
19 regarding establishing locations for infrastructure on the basis that the request for an
20 application was premature. The Municipality failed to respond constructively and has
21 expressed no specific concerns regarding the location of the Distribution System within the
22 Clearview Township Road Allowances. Due to the Municipality's failure to respond to the
23 Applicant's overtures the parties are unable to reach an agreement regarding the location of
24 the Distribution System within the Clearview Township Road Allowances.

1 The following is a chronological account of the events that have transpired to date resulting
2 in the inability of the parties to reach an agreement regarding the location of the
3 Distribution System within the Clearview Township Road Allowances:

- 4 • On January 14, 2013, Josh Vaidhyan, an Engineer of the Applicant, wrote to the
5 Municipality to follow up on materials sent as part of the ongoing consultation
6 efforts and to set a meeting to determine the details of the location of the 44 kv
7 Distribution Line within the Road Allowances and Road Access for a portion of
8 Fairgrounds Road in relation to the Fairview Wind Project. A copy of the Applicant's
9 Email is included at Appendix "A" to Exhibit D, Tab 1, Schedule 2;
10
- 11 • On February 11, 2013, the Municipality responded to the Applicant's Email and
12 denied the Applicant's request to set a date for the discussions on the "engineering
13 requirements related to this project" on the basis that wpd Fairview's request was
14 premature pending the outcome of discussions with the approval authority for the
15 REA(the "MOE" or Ministry of the Environment); A copy of the Municipality's
16 response is included at Appendix "A" to Exhibit D, Tab 1, Schedule 2;
17
- 18 • On March 13, 2013, the Applicant wrote to the Municipality to follow up on the
19 status of the Municipality's discussions with the Approval Authority and to set a
20 date to meet to discuss use of the Road Allowances and Engineering requirements
21 related to the Fairview wind project. On March 22, 2013, the Municipality responded
22 and deferred meeting with the Applicant prior to the discussion with the Approval
23 authority. A copy of the Applicant's Email and the Municipality's response is
24 included at Appendix "B" to Exhibit D, Tab 1, Schedule 2;
25
- 26 • On April 3, 2013, the Applicant wrote to the Municipality to follow up on the status
27 of the Municipality's discussions with the Approval Authority and to set a date to
28 meet to discuss use of the Road Allowances and Engineering requirements related to

1 the Fairview wind project. On April 9, 2013, the Municipality responded and
2 deferred meeting with the Applicant prior to the discussion with the Approval
3 authority. A copy of the Applicant's Email and the Municipality's response is
4 included at Appendix "C" to Exhibit D, Tab 1, Schedule 2;

- 5
- 6 • On June 11, 2013, the Applicant wrote the Municipality to inform the Municipal staff
7 that design work would need to be commenced at this stage and to again request a
8 meeting on permitting, road use and line designs. On June 12, 2013, the Municipality
9 responded again that at this time it would be premature to meet given outstanding
10 information from the Ministry and, without providing input on any designs,
11 objected to the development of designs. A copy of the Applicant's Email and the
12 Municipality's response is included at Appendix "D" to Exhibit D, Tab 1, Schedule 2;

- 13
- 14 • On June 14, 2013, the Applicant followed up to explain that design work would
15 commence, however, the Applicant would traditionally seek input and agreement
16 from the municipality and continues to desire such if a meeting could be set. The
17 Applicant further offers that it is willing to discuss capacity funding for processing
18 costs, if the Municipality requires it in connection with discussions in advance of
19 REA. On June 20, 2013, the Municipality responds and re-iterates its continued
20 reluctance to enter discussions on engineering and infrastructure design on
21 municipal lands. A copy of the Applicant's Email and the Municipality's response is
22 included at Appendix "D" to Exhibit D, Tab 1, Schedule 2;

- 23
- 24 • On September 13, 2013, the Applicant followed up on its request for a meeting based
25 on information that the MOE had recently met with the Municipality. On September
26 17, 2013, the Municipality responds that it is still in process of obtaining responses
27 from the MOE to concerns raised at meeting but will also be preparing a report for
28 council. Defers meeting on technical details of the project, now pending the report to

1 council from meeting with MOE. A copy of the Applicant's Email and the
2 Municipality's response is included at Appendix "D" to Exhibit D, Tab 1, Schedule 2;

3
4 • On December 10, 2013, the Applicant, as part of an update that that project
5 application for an REA had been deemed complete and was being posted to the EBR,
6 re-iterated its request for a meeting with the Municipality. A copy of the Applicant's
7 Email is included at Appendix "E" to Exhibit D, Tab 1, Schedule 2;

8
9 • On December 18, 2013, Municipality indicated that it would decline further efforts at
10 consultation or meetings due to the decision of the MOE, the Approval Authority, to
11 deem the project complete contrary to its objections. A copy of the Municipality's
12 response is included at Appendix "E" to Exhibit D, Tab 1, Schedule 2;

13
14 • On February 27, 2014, the Applicant followed up with the Township to request a
15 meeting. On May 22, 2014, following a productive discussion with Simcoe County to
16 update and further determine requirements for use of Right of Ways in the County,
17 the Applicant followed up again with the Municipality. On June 20, 2014, the
18 Municipality responded, returning to their previous position, that at this time it
19 would be premature to meet given outstanding concerns and responses from the
20 Ministry. A copy of the Applicant's Emails and the Municipality's response are
21 included at Appendix "F" to Exhibit D, Tab 1, Schedule 2;

22 The Municipality has effectively refused to engage the Applicant in discussions
23 regarding the location of the Distribution System within the Clearview Township Road
24 Allowances despite the fact that the Applicant is a distributor for the purposes of the
25 *Electricity Act*. Notwithstanding wpd Fairview's good faith efforts to work with the
26 Municipality, the parties are unable to reach an agreement regarding the location of the
27 Distribution System within the Clearview Township Road Allowances.

APPENDIX “A”
to
EXHIBIT D
TAB 1
SCHEDULE 2

Joshua Vaidhyan

From: Michael Wynia <mwynia@clearview.ca>
Sent: Monday, February 11, 2013 9:14 AM
To: Joshua Vaidhyan; shawna.peddle@stantec.com
Cc: Amy Cann; smckenzie@clearview.ca; bcampbell@clearview.ca
Subject: RE: Follow-up to meeting request_wpd Canada

Mr. Vaidhyan,

Further to your email, correspondence, and recent discussions we advise that we have received the information provided but have not commented upon its adequacy. We have provided our concerns to both the applicant and the approval body and our concerns stand unaltered at this time.

We have also requested information regarding this project and the approvals process from the approval authority and have yet to receive any reply. In the absence of any reply we are hesitant to provide any further comments or proceed with the balance of pre-consultation.

As you are aware the municipality has significant concerns regarding this proposal. We have not had any acknowledgement of, let alone a response to those concerns, from the approval authority. Once we do receive a reply to our concerns and requests for information we may be able to consider such information and advise Council further with respect to the current municipal position regarding this project. Following that process we can consider the merit of any discussions regarding engineering requirements related to this project.

Regards,

Michael Wynia, MCIP, RPP
Director of Planning, Development and Information Services

From: Joshua Vaidhyan [<mailto:Joshua@wpd-canada.ca>]
Sent: January 14, 2013 5:11 PM
To: Michael Wynia
Subject: Follow-up to meeting request_wpd Canada

Hello Michael:

I wanted to follow-up on your correspondence of October 23, 2012 regarding our request to meet and discuss public road access for our Fairview Wind Farm.

Your letter mentioned outstanding information you required prior to meeting, and as I understand from my colleague, Valerie, she forwarded the requested information to Amy Cann on November 15, 2012. Having not received any follow-up requests, I trust that this information was satisfactory. I would hope we could arrange a meeting within the month to continue discussions regarding the engineering requirements related to the project.

Regards,

Joshua Vaidhyan
Site Engineer, wpd Canada Corporation



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2233 Argentia Road, Suite 102

Mississauga, Ontario

L5N 2X7

(p) 905-813-8400, Ext. 156

(toll free) 1-888-712-2401, Ext. 156

(f) 905-813-7487

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APPENDIX “B”
to
EXHIBIT D
TAB 1
SCHEDULE 2

Joshua Vaidhyan

From: Michael Wynia <mwynia@clearview.ca>
Sent: Friday, March 22, 2013 9:24 AM
To: Joshua Vaidhyan
Cc: Amy Cann
Subject: RE: Request to meet (Fairview Wind Farm)_wpd Canada

Hi Joshua,

Unfortunately we have not been able to discuss the issues with MOE. They have not responded to our emails other than with a telephone message. I returned their message and followed up with a further email, but we have not yet connected.

It would be most appropriate to have that discussion with the MOE prior to meeting.

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Joshua Vaidhyan [<mailto:Joshua@wpd-canada.ca>]
Sent: March 13, 2013 1:48 PM
To: Michael Wynia
Cc: Paul Deol
Subject: Request to meet (Fairview Wind Farm)_wpd Canada

Hi Michael,

I wanted to touch base with you regarding setting up a meeting to discuss the next steps for our Fairview Wind Farm Project. I understand the MOE has contacted you recently regarding the issues that you had raised, so I wanted to follow up to see where we are at and determine if we can discuss further meeting dates.

Regards,

Joshua Vaidhyan
Site Engineer, wpd Canada Corporation



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APPENDIX "C"
to
EXHIBIT D
TAB 1
SCHEDULE 2

Joshua Vaidhyan

From: Michael Wynia <mwynia@clearview.ca>
Sent: Tuesday, April 09, 2013 11:41 AM
To: Joshua Vaidhyan
Cc: Amy Cann
Subject: RE: Meeting request (Fairview Wind farm)_wpd Canada

Hello Joshua,

You are correct in indicating that we are awaiting a series of clarifications and information from the MOE and would prefer to complete that prior to further consultation with wpd.

You are also correct in stating that Ms Dumais has attempted to contact me. She left one phone message which I returned and followed up with in an email request (attaching previous emails). I have not heard anything further from Ms Dumais and I will therefore again email her with respect to your request.

Regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Joshua Vaidhyan [<mailto:joshua@wpd-canada.ca>]
Sent: April 3, 2013 10:42 AM
To: 'Michael Wynia'
Subject: Meeting request (Fairview Wind farm)_wpd Canada

Hi Michael,

I wanted to follow-up on our request to meet.

I understand you have engaged in some discussion with the MOE but have requested further information regarding project related items. In speaking with the MOE, I understand that Doris Dumais has been attempting to reach you to further discuss your questions/comments, but at this time is unable to reach you. Since this meeting is crucial for us to maintain our project timelines, I hope we can schedule a meeting in the interim as you work with the MOE to resolve any remaining comments/concerns.

Regards,

Joshua Vaidhyan

Site Engineer, wind Projects



wpd Canada
2233 Argentia Road, Suite 102
Mississauga, ON L5N 2X7

T 905-813-8400 ext. 156

1-888-712-2401 ext. 156

F 905-813-7487

joshua@wpd-canada.ca

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APPENDIX “D”
to
EXHIBIT D
TAB 1
SCHEDULE 2

Ian MacRae

Subject: Technical meeting request re. Fairview Wind project_wpd Canada

From: Michael Wynia [<mailto:mwynia@clearview.ca>]

Sent: September-17-13 8:39 AM

To: Ian MacRae

Cc: acann@clearview.ca

Subject: RE: Technical meeting request re. Fairview Wind project_wpd Canada

Good morning Mr. MacRae,

Yes we did have a meeting with representative of the MOE and we are in the process of providing some additional information for their consideration. They will also be forwarding some further information to us. We will then prepare a further report to Council which we anticipate occurring in November. As part of this process we will also be contacting you with regard to some of the issues discussed with MOE. We hope to do this in the near future when we have received and reviewed the information from the MOE. As the matters discussed relate to some of the more fundamental concerns we have raised, we believe this information and a report to Council are required before a technical meeting regarding implementation of the project.

Regards,

Michael Wynia, MCIP, RPP

Director of Community Planning and Development &

Technology and Information Services, Township of Clearview

705.428.6238 ext 240 mwynia@clearview.ca

From: Ian MacRae [<mailto:ian@wpd-canada.ca>]

Sent: September 13, 2013 3:51 PM

To: Michael Wynia; Joshua Vaidhyan

Cc: 'Ken Ferguson'; 'Alicia Savage'; 'Scott McKleod'; 'Doris Dumais'; Khlaire Parré; 'Sue McKenzie'

Subject: RE: Technical meeting request re. Fairview Wind project_wpd Canada

Dear Mr. Wynia:

I was pleased to hear that you have recently met with representatives of the Ministry of Environment to discuss your concerns related to our proposed Fairview Wind project. Given your preference to have a meeting with MOE before meeting with us, and it has now been held, I am proposing that we now meet in order to discuss issues such as permitting, roads agreements, line designs and other municipal issues related to our project. We are open to other suggestions of course, but could I suggest we meet next Friday, September 20th at 1-3pm or Wednesday, September 25th at 1pm. We would be OK to meet here, or at your offices. Please let me know if either of these meeting dates will work; if not, please propose alternatives. We look forward to meeting with you.

Regards,

Ian MacRae

President



wpd Canada
2233 Argentia Road, Suite 102
Mississauga, ON L5N 2X7

T 905-813-8400 ext. 111

1-888-712-2401 ext. 111

F 905-813-7487

ian@wpd-canada.ca

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From: Michael Wynia [<mailto:mwynia@clearview.ca>]

Sent: June-20-13 2:56 PM

To: Ian MacRae; Joshua Vaidhyan

Cc: 'Ken Ferguson'; 'Alicia Savage'; 'Scott McKleod'; 'Doris Dumais'; Khlaire Parré; 'Sue McKenzie'

Subject: RE: Technical meeting request re. Fairview Wind project_wpd Canada

Importance: High

Dear Mr. MacRae

In your response you suggest that we have concerns with the Green Energy Act. While the municipality does have some concerns with the legislation and how it is being implemented, the more pertinent issue on this file is that we have outstanding concerns with regard to this particular project and its proposed design. Many of those concerns deal with the fundamental appropriateness of the project and/or proposed turbine locations. Our reluctance to enter into detailed discussions regarding the civil engineering and design of infrastructure on municipal lands has nothing to do with our concerns about the legislation; it has to do with our concerns regarding this project and the impacts of the turbines. As an example, the proposed location of the turbines has a potential to impact our municipal airport. You may be aware that this very same concern has recently resulted in a requirement to decommission turbines at another location in Ontario.

Therefore, while concerns with the legislation may not preclude a discussion on project implementation, concerns regarding the project and its design, including the location of turbines, would be a reasonable issue with respect to the municipality approving or making determination on any detailed civil engineering.

Should this project receive an approval from the Province, and subject to an appeal of such approval, you will also require various municipal approvals and the municipality would be in a position to discuss the associated design and requirements. It is quite a normal process to undertake detailed design after the fundamentals of the appropriateness of a project and its preliminary design are fully vetted. This makes the most efficient use of everyone's resources and does not result in the perception, real or otherwise, that the approval of a project is a forgone conclusion.

The municipality has not refused to meet in an effort to discuss concerns regarding this project. Unfortunately our requests for clarification from the Province have not yielded any progress with regard to addressing or even exploring the concerns of the municipality. We are well aware that the Provincial approvals process allows the Province to

unilaterally approve a project even without municipal consultation being completed, especially if there is some suggestion that the municipality is unreasonably not participating in such pre-consultation. It should however be abundantly clear that the municipality has not taken such an unreasonable approach. We have expressed our concerns with regard to this project and requested additional information and clarifications including from the review and approval authority. Regrettably there does not appear to be a willingness to have a dialogue regarding those issues and requests, let alone any attempt to address what we believe are valid concerns with respect to the proposed siting of turbines.

We would very much like to move forward with meaningful consultation for the appropriate stages of this project, but seem unable to have that process continue at no lack of effort on our part. If there is any intention to suggest that the municipality is inappropriately withholding on pre-consultation and a desire to have the Province issue approvals without the completion of pre-consultation please indicate so directly. As stated we would dispute such an assertion. If you do wish to continue to have a meaningful dialogue regarding this project, we respectfully suggest that a meeting with the Province on our concerns be facilitated and that we direct our attention to the more fundamental concerns prior to discussing detailed design and implementation.

As stated in my previous correspondence, your concerns will be brought to the attention of Council.

Regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview
705.428.6238 ext 240 mwynia@clearview.ca*

From: Ian MacRae [<mailto:ian@wpd-canada.ca>]

Sent: June 14, 2013 1:55 PM

To: 'Michael Wynia'; Joshua Vaidhyan

Cc: Ken Ferguson (kferguson@clearview.ca); Alicia Savage (asavage@clearview.ca); Scott McKleod (smcleod@clearview.ca); Doris Dumais (doris.dumais@ontario.ca); Khlaire Parré; Sue McKenzie

Subject: RE: Technical meeting request re. Fairview Wind project_wpd Canada

Dear Mr. Wynia:

Thank you for your quick response to the letter dated June 11 from our engineer Josh Vaidhyan. I would like to reassure you that the purpose of the letter was simply to keep you in the loop regarding our requirement to move forward with the detailed design work of our line on the public right of ways.

As you are aware, our project has not received an REA from the MOE, and if it is not approved it will not be built. Having said this, our contractual obligations with the Ontario Power Authority and others does not allow us to wait until a decision is made before planning for the potential construction phase of the project. We realize there is a cost and risk to us in proceeding at this point, however we simply have to move forward with the civil engineering process now in order to keep our current schedules on track.

We do know that the municipality has concerns with the Green Energy Act and is seeking clarification from the Ministry of the Environment. However, this should not preclude the municipality from entering into discussion on civil engineering issues, knowing that any potential agreement will not be implemented if we do not receive MOE approval for the project. Again, if the project is not approved, then it will not be built.

As you know, developers such as ourselves have legal access to right of ways for certain infrastructure placement, but it is traditional to seek the municipalities input and agreement on the design characteristics. If processing costs are a factor for the municipality, we would be more than happy to discuss a capacity funding agreement, which other municipalities have sought in similar circumstances.

I would like to reiterate that we would very much look forward to working with the municipality in a constructive and mutually beneficial way.

Sincerely,

Ian MacRae

Ian MacRae

President

wpd Canada
2233 Argentinia Road, Suite 102
Mississauga, ON L5N 2X7

T 905-813-8400 ext. 111
1-888-712-2401 ext. 111

F 905-813-7484
ian@wpd-canada.ca
www.wpd-canada.ca

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From: Michael Wynia [<mailto:mwynia@clearview.ca>]

Sent: June-12-13 7:34 AM

To: Joshua Vaidhyan

Cc: Ken Ferguson (kferguson@clearview.ca); Alicia Savage (asavage@clearview.ca); Scott McKleod (smcleod@clearview.ca); Doris Dumais (doris.dumais@ontario.ca); Ian MacRae; Khlaire Parré; Sue McKenzie

Subject: Re: Technical meeting request re. Fairview Wind project_wpd Canada

Mr. Vaidhyan,

As you know we have not refused to meet. Instead we have repeatedly indicated that such a meeting would be premature given the information we have requested from the Ministry. We have made numerous request for information all without any reply. We understand that your application remains incomplete. We have serious and fundamental concerns with your proposal and have sought the opportunity to discuss those concerns all with no response to us from the approval authority.

It is our position that undertaking detailed implementation discussions on a project with which we have fundamental concerns would be highly premature and prejudicial.

If you intend to work with us, it may be beneficial if you could utilize your capacity with the approval authority to arrange for a discussion with an appropriate representative to allow us to review some of our concerns.

Suggesting that you will unilaterally proceed with design of infrastructure on our roads simply on the basis that we have been unable to respond to your needs because of a lack of response to our concerns does not, in my opinion, suggest a willingness to work with us. It would also appear highly presumptuous with respect to determinations of a determination of a complete application and a determination on project approval. As you are no doubt aware, public criticisms of these projects often include the perception that approvals for these projects is a matter of course. Your correspondence would lend some credence to this perception.

Again, we are more than willing to meet after we have had the opportunity to discuss our concerns with the Ministry. It would not be appropriate to do so in advance of an opportunity to do so. We also object to a unilateral decision to proceed to design of infrastructure on our roads and will accept no responsibility for the consequences of you making a decision to do so.

Your correspondence will be brought forward to Council at the next opportunity for their information.

Regards,

Michael Wynia, MCIP, RPP
Director of Community Planning and Development,
Clearview Township

On 2013-06-11, at 2:36 PM, Joshua Vaidhyan <joshua@wpd-canada.ca> wrote:

Hi Michael,

In regards to the correspondence that we've had over the past – months, I wanted to revisit the meeting proposal in an effort for both wpd and Clearview Township to work together during the post REA submission stage while we await MOE's decision on approval. Based on the timelines needed to meet OPA and vendor commitments, should the Project be approved, it is difficult for us to wait any longer with respect to the issues we wanted to discuss regarding permitting, roads agreements, line designs etc. At this stage we intend to proceed with doing the detailed and advanced design work including the determination of the location of line work within the Townships roads (Fairgrounds). We value the townships input, hence our attempts to work with you since October 2012, but simply cannot wait any longer to move forward, if you continue to choose not to meet with us. At this time we will be proceed with a design based on the information we have available to us. If you alter your decision to meet with us, we'd be happy to receive any input the Township might have.

Regards

<image002.png>Joshua Vaidhyan
Site Engineer, wind Projects

<image003.png>

wpd Canada
2233 Argentia Road, Suite 102

Mississauga, ON L5N 2X7

T 905-813-8400 ext. 156
1-888-712-2401 ext. 156

F 905-813-7487
joshua@wpd-canada.ca
www.wpd-canada.ca

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APPENDIX “E”
to
EXHIBIT D
TAB 1
SCHEDULE 2

Joshua Vaidhyan

From: Michael Wynia <mwynia@clearview.ca>
Sent: Wednesday, December 18, 2013 2:55 PM
To: Jennifer Ng
Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie; Paul Deol; Joshua Vaidhyan
Subject: RE: Fairview Wind Project REA Reports
Importance: High

Good afternoon Ms Ng,

This is in response to your email below and correspondence received from your office on December 12, 2013, dated December 11, 2013.

In your email below you advised that you would be forwarding the most current reports as provided to the Ministry on August 31, 2012. We have not yet received those reports. We had also requested that you provide a copy of the application as submitted at that time. We have also not received this information.

On December 12 we did receive a single copy of the Consultation Report (an obviously incomplete report perhaps better to have been labelled as "Draft" with respect to the fact that you and the Ministry have acknowledged that municipal consultation is ongoing) and an updated Letter from the Ministry of Tourism, Culture and Sport. The cover letter to this submission requested that this binder be placed in our Stayner library. I did attend those offices and found that they received an identical binder and letter on December 14, 2013.

In note that the cover letter instructed us to place the updated Ministry letter in a binder entitled "*Fairview Wind Project; Renewable Energy Approvals Reports*". Unfortunately, neither to Stayner library, nor our offices have such a binder. Both of these locations have binders entitled "*Draft Renewable Energy Approval Reports*". In reviewing your web site today, and in accordance with your email below, it is apparent that there is an updated set of documents, but that updated set of documents is not available in our offices or the Stayner library. The public will therefore not have access to those updated documents at either location, further compounding an already problematic EBR posting.

Thank you very much for acknowledging that the municipal consultation process was incomplete and recognizing that we were still in consultation with the MOE on the matter which has yet to respond to an information request sent some weeks ago. We also thank you for acknowledging that we continued to make the appropriate efforts to undertake appropriate municipal consultation.

With respect to continuing that very essential process of municipal consultation, we, as has been the case in the past, continue to await the production of information which will assist in our review of the proposal. We have advised the Ministry that we think it is entirely inappropriate and premature to have deemed the application incomplete given our clearly apparent mutual efforts to complete the municipal consultation process. We have yet to receive a response to our concerns in this regard. We do not believe it appropriate to continue such consultation under the very problematic cloud of the Ministry's premature decision with respect to the complete application and the resulting EBR posting which has seriously prejudiced appropriate participation in the approvals process. The ongoing issues with respect to the availability of documents for public review only serves to further compound this serious issue.

We therefore must regretfully decline the opportunity to continue our mutual efforts at conducting a meaningful municipal consultation until such time as the Ministry retracts its decision regarding the status of the application and removes the premature EBR posting. Once we receive the information requested and have the opportunity to review it, we would appreciate the opportunity to meet to discuss a variety of outstanding issues and concerns to which you would then be able to respond. Following the completion of the municipal consultation, a process recognized as integral

to an objective approvals process, we believe the Ministry could then more appropriately make the determination of a complete application and repost the instrument in the EBR registry. The public would then have access to a fulsome consultation process which also allows you the opportunity to address the outstanding issues as part of the material open for public review.

Regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview
705.428.6238 ext 240 mwynia@clearview.ca*

From: Jennifer Ng [mailto:Jennifer@wpd-canada.ca]

Sent: December 10, 2013 2:36 PM

To: Michael Wynia

Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie; Paul Deol; Joshua Vaidhyan

Subject: RE: Fairview Wind Project REA Reports

Good afternoon Mr. Wynia!

Thanks for your e-mail, requesting further clarification in regards to the REA Reports.

By "most current", we mean we are providing you with a copy of the reports that were submitted to the Ministry of the Environment on August 31, 2012, that were to be assessed for completeness. The Approval process and technical review are to occur after the application has been deemed complete, and comments and questions are invited via the EBR posting.

As you may be aware, the application consists of many reports that often consist of large PDF files. In an effort to improve website accessibility, wpd is in the process of ensuring all files are web optimized to improve download times and public access. I apologize this may take a few days, and we appreciate your patience in this matter. I would be happy to send a follow-up e-mail once these reports are fully posted, if you like.

In regards to the EBR posting: the Ministry of Environment has already extended an additional 15 days from the regular 45 day comment period to a total of 60 days to accommodate the holidays, and to provide people the time to review our reports and provide their comments to the Director via the Environmental Registry posting. We will be making these reports available for physical review at three separate locations, and as mentioned we are well underway in making our reports available via our website.

Please rest assured that the summary of consultation efforts in the Consultation Report are by no means an indication that our consultation efforts are somehow "complete". We continue to be very amenable to working closely with Clearview Township, and to address your questions and comments as they arise. Once more, I apologize if I had given the impression that consultation was now finished. We are simply providing the Consultation Report as submitted as part of our REA application.

As a further note to consultation: as of 2011, wpd has made multiple efforts to connect and work with Clearview Township, and we appreciate your personal participation thus far to make sure we receive the feedback we need to ensure we're able to address the comments and questions from the municipality. While we have made a few requests to meet with your Township to discuss various aspects of the project, including potential public road access matters, we understand that the municipality was consulting with the MOE during these times.

In September, you indicated that Clearview Township has had an opportunity to meet with the MOE. As a result, wpd would like to once more extend an invitation to meet with the municipality. Would any of the following dates work for you?

December 16, 2013 (Monday) in the afternoon around 2pm

December 17, 2013 (Tuesday) all day

December 18, 2013 (Wednesday) all day

If these dates are not ideal, perhaps you could provide us with a few different days that would work best for you and your staff, and we can move forward from there.

I hope this information helps, Mr. Wynia – wpd looks forward to speaking with you once more.



Jennifer Ng

Renewable Energy Approvals (REA) Assistant



wpd Canada
2233 Argentia Road, Suite 102
Mississauga, ON L5N 2X7

T 905-813-8400 ext. 121
1-888-712-2401

F 905-813-7487

Jennifer@wpd-canada.ca

www.wpd-canada.ca

Disclaimer

www.wpd.de/disclaimer.html

From: Michael Wynia [<mailto:mwynia@clearview.ca>]

Sent: Friday, December 06, 2013 3:25 PM

To: Jennifer Ng

Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie

Subject: RE: Fairview Wind Project REA Reports

Importance: High

Good afternoon Ms Ng,

In your reply, you have indicated that you will be sending the “most current” REA Reports. Can you please provide a clarification with respect to this terminology.

As part of our effort to continue the municipal consultation process, we had requested, from the Ministry, a copy of the REA materials as submitted to the Ministry for approval. They failed to respond to our request for this information for a number of weeks and responded only yesterday by indicating that the application was deemed to be complete in the absence of completing municipal consultation, and then suggested that the requested information would be available through the EBR posting which was not the case.

I note that the EBR posting which initiated the public review period, provided no documentation other than referring to your web site, which as you have acknowledged is not updated. The time period allotted for public comment is 60 days, unfortunately over a holiday period, and you have indicated that the Ministry has allotted you ten days to update the information, thereby effectively significantly shortening the amount of time the public has to review your information and comment on your application.

In your email you also indicate that you will be providing an extensive summary of consultations including municipal consultation. As you are aware we have not completed the municipal consultation process as there are a number of matters which we still wished to review with you and the Ministry. In fact, the information we had requested from the Ministry, which they did not provide, was part of that ongoing effort. As we have also advised the Ministry, the municipality was in no position to complete Part B of the municipal consultation form because of deficiencies in the information provided by the applicant in Part A of that form. We had hoped to address those deficiencies with you as part of the continued municipal consultation process.

We hope to be able to further discuss our concerns with you and the Ministry through the appropriate completion of the municipal consultation process and are awaiting a response from the Ministry in this regard. In the interim, if you could please clarify what was meant by the term "most current" REA reports, that would be of assistance. As we discussed, we would also appreciate you forwarding a copy of the REA application as submitted to the Ministry.

Thank you and regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Jennifer Ng [<mailto:Jennifer@wpd-canada.ca>]
Sent: December 6, 2013 2:29 PM
To: Michael Wynia
Cc: fairviewproject; Khlaire Parré
Subject: Re: Fairview Wind Project REA Reports

Good afternoon M. Wynia;

I just wanted to send a follow-up e-mail, and let you know that we will be sending you the most current REA Reports. The website is also in the process of being updated and will be completed within the 10 days allotted by the MOE from the time of deemed complete.

As per your inquiry, the Consultation Report, which provides an extensive summary of public, agency, aboriginal, and municipal consultation, is also included. A CD with all these reports will be mailed to you later today.

If you require any more information, please do not hesitate to let me know.

Thank you very much, Michael, and have a great weekend!

Jennifer@wpd-canada.ca
www.wpd-canada.ca

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APPENDIX “F”
to
EXHIBIT D
TAB 1
SCHEDULE 2

Joshua Vaidhyan

From: Michael Wynia <mwynia@clearview.ca>
Sent: Friday, June 20, 2014 11:04 AM
To: Paul Deol
Cc: Joshua Vaidhyan; Mayor Ken Ferguson; Sue McKenzie; Agatha.GarciaWright@ontario.ca; Sarah.Raetsen@ontario.ca
Subject: RE: Meeting Request - Fairview

Hello Paul,

Unfortunately we are not in a position to meet as there continue to be outstanding concerns as well as information requests. We continue to await a response from MOE on a number of critical matters with respect to this file. We also understand that there is to be a further EBR posting on recent significant amendments to the propose project and will be making further comments at an appropriate time relative to that matter. Discussing matters of detailed implementation would be entirely premature at this point.

Regards,

Michael Wynia, MCIP, RPP
Director of Community Planning and Development/
Information and Technology Services

From: Paul Deol [<mailto:paul@wpd-canada.ca>]
Sent: May 22, 2014 10:17 AM
To: Michael Wynia
Cc: Joshua Vaidhyan; Mayor Ken Ferguson; Sue McKenzie; Agatha.GarciaWright@ontario.ca; Sarah.Raetsen@ontario.ca
Subject: RE: Meeting Request - Fairview

Hello Michael,

Just wanted to follow up again. We recently had a meeting with the county to discuss the cable routing along County Road 91, and were wondering if you would be free sometime in early June for a meeting to discuss the electrical infrastructure in connection with Fairgrounds Road?

Thanks,

Paul Deol
Project Engineer

From: Paul Deol
Sent: Thursday, February 27, 2014 3:32 PM
To: mwynia@clearview.ca
Cc: Joshua Vaidhyan; 'kferguson@clearview.ca'; 'smckenzie@clearview.ca'; 'Agatha.GarciaWright@ontario.ca'; 'Sarah.Raetsen@ontario.ca'
Subject: Meeting Request - Fairview

Hello Michael,

I am writing to request a meeting to discuss the cable line routing along Fairgrounds Road for the Fairview Wind Project. In order to preserve our timelines for this project, we will be submitting our proposed routing to the OEB in the next few weeks. It would be beneficial for all parties involved if we could come to an agreement with the municipality prior to submitting this design, which is best done in person. Would you be available sometime during the week of March 17th to have such a meeting? We would be happy to come meet you in your offices.

Regards,

Paul Deol

Project Engineer



wpd Canada
2233 Argentia Road, Suite 102
Mississauga, ON L5N 2X7

T 905-813-8400 ext. 116
1-888-712-2401 ext. 116

C 905-813-8400 ext. 211

F 905-813-7487

paul@wpd-canada.ca

www.wpd-canada.ca

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PROPOSED ROAD USE AGREEMENT

The only outstanding issue with respect to the Applicant's use of the Clearview Township Road Allowances is the location of the Distribution System within the Road Allowances. In this regard, and in anticipation of entering into discussions with the Municipality, the Applicant prepared a proposed Road Use Agreement to facilitate negotiations with the Municipality regarding the location of the Distribution System within the Clearview Township Road Allowances and to document the right and obligations of the parties with respect to same.

Pursuant to the terms of the proposed Road Use Agreement, the Municipality would affirm the Applicant's right to use the Clearview Township Road Allowances for the Distribution System and agree to the location of the Distribution System within the Road Allowances. In exchange, the Applicant would provide certain protections to the Municipality, including security to guarantee the Applicant's performance of its obligations under the proposed Road Use Agreement. The terms of the Road Use Agreement are consistent with a distributor's obligations under section 41 of the *Electricity Act*.

In addition, the Applicant would perform all work associated with the location of the Distribution Facilities within the Clearview Township Road Allowances at its own expense and in accordance with good engineering practices. The Applicant would also use commercially reasonable efforts to complete all work associated with the location of the Distribution System within the Clearview Township Road Allowances in a manner that avoids unnecessary adverse impacts on public use of the Road Allowances. Attached as Appendix "A" to Exhibit D, Tab 1, Schedule 3 is a copy of the proposed Road Use Agreement.

Proposed Road Use Agreement
APPENDIX "A"
to
EXHIBIT D
TAB 1
SCHEDULE 3

THIS ROAD USE AGREEMENT (the "**Agreement**") made as of this ____ day of _____,
____ ("Effective Date"),

BETWEEN:

[•]
hereinafter referred to as the "**Township**"

OF THE FIRST PART

- AND -

[PROONENT]
hereinafter referred to as the "**Proponent**"

OF THE SECOND PART

WHEREAS the Proponent is developing an approximately • megawatt commercial wind energy project known as the • Wind Project (the "**Wind Project**") located in • (the "**Township**") pursuant to a Power Purchase Agreement dated • (the "**Power Purchase Agreement**"), between the Ontario Power Authority and the Proponent;

AND WHEREAS the Proponent wishes to make use of certain Road Allowances, as hereinafter defined, to make deliveries of materials and components to, and to allow for the construction, operation, repair, maintenance and decommissioning of the Wind Project;

AND WHEREAS the Proponent may wish to temporarily reconstruct or realign certain portions of the Road Allowances to permit delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles;

AND WHEREAS the Proponent also wishes to install, repair, maintain and operate Electrical Infrastructure, as hereinafter defined, over, across, along, within or under certain Road Allowances, pursuant to its statutory rights under the *Electricity Act, 1998*;

AND WHEREAS the Proponent also wishes to connect access roads from Wind Project turbines and other infrastructure to the Road Allowances to permit ongoing access to the wind turbines and other infrastructure during Wind Project operations;

NOW THEREFORE IN CONSIDERATION of the undertakings and agreements hereinafter expressed by the Parties, the Township and the Proponent mutually covenant and agree as follows:

1. Interpretation

1.1. In this Agreement:

- (a) **“Abandon”** shall have the meaning set out in Section 10.1 and **“Abandonment”** shall have the corresponding meaning;
- (b) **“Applicable Law”** means all present or future applicable laws, statutes, regulations, treaties, judgements and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on a Party in the context of this Agreement;
- (c) **“Commercial Operation Date”** means the Commercial Operation Date as defined in the Power Purchase Agreement;
- (d) **“Deliveries”** is defined as transporting materials, components and equipment, including overweight or over-size cargoes, across or along Road Allowances to provide for the construction, maintenance, repair, replacement, relocation or removal of material, components and equipment for the Wind Project;
- (e) **“Effective Date”** is defined at the top of page 1 herein;
- (f) **“Electrical Infrastructure”** means infrastructure for the transmission and distribution of electricity, including a line or lines of towers or poles, and wires or cables (whether above ground or buried), for the transmission or distribution of electrical energy, and all foundations, footings, cross arms, ground grid and other appliances, facilities and fixtures for use in connection therewith including without limitation, switching stations, vaults and junction boxes (whether above or below ground), manholes, handholes, conduit, fiber optics, cables, wires, lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduit, fiber optics, cables, wires and lines;
- (g) **“Electrical Work”** is defined as installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating or removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project;
- (h) **“Emergency”** shall mean a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure;
- (i) **“Entrance Work”** is defined as constructing and maintaining Entrances to private wind turbine access roads and switching stations;

- (j) **"Entrances"** means points of access across and through the Road Allowances to be constructed by the Proponent, as applicable, from the travelled portion of the Road Allowances connecting to certain access roads in and upon adjacent lands that lead to Wind Project turbines and other infrastructure;
- (k) **"Installation Work"** means Road Work and other work involving or incidental to the installation, construction, enlargement, relocation or removal of Electrical Infrastructure and Entrances including, without limitation, widening or upgrades to the Road Allowances or Entrances;
- (l) **"Permits"** means, collectively, the [insert applicable permits].
- (m) **"Plans"** is defined as detailed plans that identify the location, size, elevation and scope of the Installation Work within the Road Allowance and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law;
- (n) **"Public Authority"** means any governmental, federal, provincial, regional, municipal or local body having authority over the Township, the Proponent, the Wind Project, the Electrical Infrastructure or the Road Allowances;
- (o) **"Repair Work"** means work involving the maintenance, repair or replacement of installed Electrical Infrastructure and Entrances that does not cause the location, elevation, position, layout or route of the Electrical Infrastructure or Entrance to materially change;
- (p) **"Road Allowances"** means public rights of way, highways, streets, sidewalks, walkways, driveways, ditches and boulevards and the allowances therefor, including those shown on the map attached as Schedule "A" hereto, and including the Entrances and unopened road allowances, all owned by or managed under the legal jurisdiction of the Township, and **"Road Allowance"** means one of the Road Allowances, as applicable in the context of this Agreement;
- (q) **"Road Work"** is defined as temporarily reconstructing or re-aligning road sections, turns and intersections on the Road Allowances to permit the passage of overweight or over-size cargoes;
- (r) **"Secured Party"** or **"Secured Parties"** is defined as a party or parties which from time to time provides financing to the Proponent in respect of the development, construction or operation of the Wind Project or the Work, as determined by the Proponent in its sole discretion;
- (s) **"Traffic Effects"** is defined as temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances;

- (t) **"Tree Work"** is defined as cutting, trimming or removing trees or bushes growing in the Road Allowances; and
 - (u) **"Work"** means, collectively, Deliveries, Road Work, Entrance Work, Installation Work, Tree Work, Repair Work and Electrical Work as defined herein.
- 1.2. The following schedule is attached to this Agreement and forms an integral part of this Agreement:
- Schedule "A" - Plan showing Road Allowances expected to be required for the Wind Project.
- Schedule "B" – Schedule of Permit Fees
- 1.3. Nothing contained in this Agreement shall abrogate or prejudice any rights held by either Party under Applicable Law including but not limited to the *Ontario Energy Board Act, 1998*, the *Municipal Act, 2001*, the *Green Energy Act, 2009* and the *Electricity Act, 1998*, as amended.

2. Grant and Transfer of Easement

- 2.1. The Township hereby grants and transfers to the Proponent the non-exclusive right and easement to enter upon and use the Road Allowances with such persons, vehicles, equipment and machinery as may be necessary for purposes of:
- (a) Deliveries, Road Work, Installation Work, Repair Work and Tree Work;
 - (b) Entrance Work, provided that the Proponent first acquires at its own expense any property rights to private lands required for the Entrance Work, and use of such Entrances; and
 - (c) Electrical Work.
- 2.2. This Agreement shall become effective as of the Effective Date and, unless earlier terminated, shall remain in effect until the earlier of (i) the date upon which the Wind Project has been fully decommissioned and all necessary reclamation and restoration has been completed; and (ii) the date which is thirty (30) years following the Effective Date (the **"Expiry Date"**). Provided that the Proponent is not then in material default of any of its covenants and obligations pursuant to this Agreement and further provided that the Wind Project or a project utilizing all or substantially all of the assets or properties comprising the Wind Project continues in operation, the Proponent shall be entitled to extend the term of this Agreement for a further period of twenty (20) years commencing on the original Expiry Date, provided that the Proponent shall provide to the Township not less than ninety (90) days' written notice of its intention to so extend prior to such Expiry Date.
- 2.3. Subject to Section 6.10 of this Agreement, the Township reserves its right to enter upon and use the Road Allowances for its own municipal purposes and to grant and

transfer rights to third parties to enter upon and use the Road Allowances to construct, operate, maintain, alter, repair or relocate infrastructure, and to modify the Road Allowances, provided that such entry, use, grant or transfer will not adversely affect the Work, the Wind Project or the exercise of the Proponent's rights under this Agreement. The Township shall not be required to give prior Notice to the Proponent of the exercise of the foregoing rights, except that it will give the Proponent [24] hours' notice (i) if the Township intends to construct, operate, alter, repair or relocate infrastructure, or modify the Road Allowances within [2 meters] of the Electrical Infrastructure; or (ii) if the Proponent has previously notified the Township that it requires access or use of the applicable area of the Road Allowance at such time (including, without limitation, for maintenance or construction work).

- 2.4. The Township agrees that the fees to be charged to the Proponent for any Permits and approvals to be issued by the Township in connection with the Work, including the [list Permits], are set forth in Schedule "B" to this Agreement and the Township warrants that such fees do not exceed the usual and customary fees that are generally applicable to the public.
- 2.5. The Township represents and warrants that:
- (a) it has legal and beneficial title to the Road Allowances and full power and authority to grant the rights over the Road Allowances in the manner set out in this Agreement;
 - (b) the execution and delivery of this Agreement by the Township will not result in a material breach of any other agreement to which the Township is a party and no rights, interests or privileges have been granted in respect of the Road Allowances by the Township which will or could adversely affect the rights, interests or privileges granted to the Proponent hereunder;
 - (c) it has obtained the full and unconditional due authorization for the execution and delivery of this Agreement by all required resolutions and other required municipal approvals;
 - (d) it shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to the Township in the Road Allowances during the term of this Agreement, save and except where such adverse interest arises as a result of the act, omission, negligence or wilful misconduct of the Proponent or those for whom it is in law responsible; and
 - (e) the Permits are the only permits, approvals, consents, or authority within the jurisdiction of the Township required in connection with the Work and the fees set forth in Schedule "B" attached hereto are the only fees payable by the Proponent in connection with the Permits.
- 2.6. The Township agrees, in the event it decides to permanently close or dispose of any Road Allowance which may affect the interests of the Proponent, or any part of a Road

Allowance, to give the Proponent reasonable advance written notice of such proposed closing or disposal and to grant and transfer to the Proponent, at no cost to the Proponent and prior to the proposed closure or disposal of the applicable Road Allowance, such further easements and rights-of-way, in registrable form and in priority to any encumbrances adversely affecting the rights and interests of the Proponent hereunder, over that part of the Road Allowance closed or disposed of, sufficient to allow the Proponent to preserve any part of the Electrical Infrastructure in its then existing location, to enter upon such closed or disposed of Road Allowance to perform Work and to gain access to the Wind Project on the terms and conditions set out in this Agreement.

- 2.7. In the event that the Township decides to dispose of any Road Allowance or part thereof which may affect the interests of the Proponent, the Township agrees to require the transferee or assignee of such Road Allowance, as a condition precedent to the transfer or assignment, to agree in writing with the Proponent, in a form acceptable to the Proponent acting reasonably, to be bound by the terms of this Agreement and to assume the Township's obligations hereunder from and after the date of the transfer or assignment.

3. Conditions Precedent to Commencement of Work

- 3.1. Prior to the commencement of any Work, the Proponent shall arrange for and maintain commercial general liability insurance satisfactory to the Township, acting reasonably, for the joint benefit of the Proponent and the Township as an additional insured. The Proponent will indemnify and hold harmless the Township from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Township may incur or suffer as a consequence of personal injury, including death, and property damages arising out of the negligent performance of the Work or the wilful misconduct of Proponent or those for whom it is in law responsible. The commercial general liability insurance shall provide, at a minimum, limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate at the commencement of the term hereof. This policy will contain a cross liability and severability of interest clause and provide for a minimum of thirty (30) days' notice of alteration or cancellation of said policy. The Proponent shall provide the Township with a Certificate of Insurance evidencing the required insurance prior to the commencement of Work and, from time to time, upon reasonable request by the Township provide proof that the premiums of such insurance have been paid and that such insurance is in full force and effect.
- 3.2. Prior to the commencement of any Work, the Proponent shall document, by means of video recording or another means satisfactory to the Township acting reasonably, the then-existing condition of all Road Allowances and structures that the Proponent expects will or may be used for or subject to such Work, and both Parties shall receive a complete copy of such document.
- 3.3. Immediately following the Commercial Operation Date, if repairs are made to the Road Allowance as required by Section 4.5, and also at a date no earlier than twelve

(12) months following the Commercial Operation Date, the Proponent shall prepare post-construction condition surveys, conducted in substantially the same manner as outlined in Section 3.2 and both Parties shall receive a complete copy of such document.

- 3.4. Prior to the commencement of any Work, the Proponent shall provide security in favour of the Township in the amount of [●] to guarantee the Proponent's performance of its obligations under Sections 4.4 and 4.5 hereof. The Township shall have the right to draw upon the security for the purpose of making repairs to the Road Allowances if the Proponent has failed to meet its obligations in Sections 4.4 and 4.5 of this Agreement. The Township shall refund or release any undrawn security to the Proponent within 30 days after the later of (i) the delivery of the post condition survey referenced in Section 3.3 hereof and (ii) the completion of any required repair work. The Parties agree that the security may be in the form of a letter of credit issued by a Canadian chartered bank, a performance bond, or other security acceptable to the Township acting reasonably.
- 3.5. Where the Township deems it preferable that the repair work be incorporated into a larger restoration or reconstruction project to be undertaken by the Township, notice and written specifications of the extent and expected costs of such larger project shall be provided to the Proponent by the Township. The costs of the repair work shall be agreed upon by the Parties, each acting reasonably. The Parties agree that such cost will not exceed the reasonable expected cost of such work to the Proponent had the repair work not been incorporated into the larger restoration or reconstruction project. Upon written approval of such work and costs by the Proponent, (i) the Proponent shall pay the agreed costs to the Township within thirty (30) days of such agreement, whereupon the Proponent shall have no further responsibility for such repair work and the Proponent shall be deemed to be released from its obligations under Sections 4.4 and 4.5 with respect to such repair work.

4. Work Generally

- 4.1. Notwithstanding and without limiting any other term hereof, the Proponent agrees and undertakes that it will perform the Work at its own expense in accordance with and compliance with good engineering practices, any applicable Plans approved by the Township, this Agreement and Applicable Law.
- 4.2. The Proponent further agrees to use commercially reasonable efforts to undertake and complete all Work so as to avoid unnecessary adverse impacts on public use of the Road Allowances.
- 4.3. Notwithstanding and without limiting any other term hereof, the Parties acknowledge that the Work from time to time may require Traffic Effects. The Proponent agrees to:
 - (a) give five (5) days' notice of anticipated Traffic Effects to the Township and affected residents and to coordinate with the Township and local emergency services to

minimize and mitigate any adverse impacts of the Traffic Effects and to ensure public safety; and

- (b) use commercially reasonable efforts to maintain adequate public access to and use of the Road Allowances while Work is in progress and to remove the Traffic Effects as soon as reasonably possible following the completion of the Work.
- 4.4. The Proponent further agrees that, in the event that it becomes necessary to break, remove, or otherwise pierce the existing surface of any of the Road Allowances or any other municipal lands to undertake any Work, the Proponent will in all cases repair, reinstate and restore such surface to the same or better condition than that which existed prior to the commencement of such Work.
- 4.5. The Proponent shall be responsible for the repair, to the satisfaction of the Township acting reasonably, of any damage to the travelled portion of Road Allowances caused by the Proponents use in connection with the development and construction of the Project, reasonable wear and tear excepted. No later than thirty (30) days following the Commercial Operation Date, the Township will compare the condition of the travelled portion of the Road Allowances to the condition of the Road Allowance as at the commencement of the Work (as documented in accordance with Section 3.2), and will inform the Proponent whether the Township, acting reasonably, considers any repairs to be required. Any repairs undertaken shall restore the road surface to the same or better condition than that which existed immediately prior to the Proponent's use of the Road Allowances as provided in this Agreement, reasonable wear and tear excepted. The Proponent shall, provided that the weather and weather-related conditions permit, complete these repairs within thirty (30) days of being notified by the Township of the need for such repairs. The Proponent shall be deemed to be released of all of its obligations pursuant to Section 4.4 and this Section 4.5 on the date which is six (6) months following the Commercial Operation Date, save and except for any specific tasks or obligations of which the Township, acting reasonably, has provided specific written notice to the Proponent prior to such date.
- 4.6. The Proponent agrees to make commercially reasonable efforts to rely on the Township road maintenance staff to implement measures to mitigate the Traffic Effects pursuant to Section 4.3 of this Agreement and to repair, reinstate and restore the Road Allowances pursuant to Section 4.4 of this Agreement, and the Proponent agrees to reimburse the Township for the reasonable, actual and verifiable costs of any such work conducted by the Township staff, including the Township staff and supervisory time, materials and contracted services, provided that the Proponent, acting reasonably, shall have pre-approved in writing the quantum of any such costs prior to the performance of such work by the Township.
- 4.7. The Township acknowledges receiving a copy of the Proponent's Fire Safety and Emergency Plan and agrees to cooperate with the Proponent in the implementation of this plan in the event of an Emergency involving the Electrical Infrastructure or the Work.

- 4.8. Notwithstanding any other provision of this Agreement, in the event of any Emergency involving the Work or Electrical Infrastructure, the Proponent shall notify the local emergency services immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the Emergency, including such Work in and to the Electrical Infrastructure or the Road Allowances as may be required. The Proponent shall be responsible for any Work in respect of the Electrical Infrastructure associated with such Emergencies howsoever caused, without prejudice to its right to claim indemnity from the Township or from any third party for costs and expenses incurred in connection therewith by reason of the fault or negligence of the Township or any third party, as the case may be.
- 4.9. Notwithstanding the foregoing, the Proponent shall not be required to carry out and shall not be responsible for any costs associated with any maintenance, repairs or restoration of the Road Allowances other than as set out in this Agreement.

5. Installation Work

- 5.1. Prior to the commencement of Installation Work, the Proponent shall file detailed Plans with the Township not less than thirty (30) days prior to commencement of such Installation Work.
- 5.2. The Township, acting reasonably and with diligence, shall review the Plans within fifteen (15) days of receipt of the Plans from the Proponent and either approve the Plans or advise the Proponent in writing of any modifications or amendments to the Plans that the Township may seek and the reasons therefor. During its review of the Plans the Township shall be entitled to take into consideration any specific municipal or engineering interests affected by the Plans. If the Township fails to respond to the Proponent with its approval or any requested modifications or amendments to the Plans within such fifteen (15) day period, the Township shall be deemed to have approved the Plans.
- 5.3. The Proponent shall not proceed with the Installation Work before receiving:
 - (a) written approval of the Plans from the Township, which approval shall not be unreasonably delayed, conditioned or withheld; and
 - (b) approval to proceed with the Installation Work from any other Public Authority having jurisdiction over the Installation Work, to the extent that Applicable Law requires such approval prior to the commencement of Installation Work.
- 5.4. Prior to commencing Installation Work, the Proponent agrees to notify any other person, entity or body operating, to the knowledge of the Proponent, any equipment, installations, utilities or other facilities within the Road Allowances or in the immediate vicinity of the Road Allowances where Installation Work is to be conducted, of the details of the anticipated Installation Work, and consult with such other party so as to minimize the potential interference with or damage to such

existing equipment, installations, utilities, and other facilities by the said Installation Work and so as to maintain the integrity and security thereof.

- 5.5. The Proponent further agrees to commence, perform and complete the Installation Work in accordance with the Plans for such Installation Work approved by the Township in all material respects.
- 5.6. In the event that physical features of the Road Allowances or other obstacles or circumstances frustrate the ability of the Proponent to complete the Installation Work in compliance in all material respects with the Plans approved by the Township, or render compliance in all material respects with the Plans commercially unreasonable, the Proponent agrees to revise the relevant Plans and submit such revised Plans for review by the Township. The Township agrees to expedite the review of such revised Plans and shall not unreasonably condition or withhold its approval of such revised Plans.
- 5.7. The Proponent agrees to deposit as-built drawings and plans with the Township within one hundred eighty (180) days after the Commercial Operation Date showing the location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances and the location and specifications of any Entrances constructed pursuant to this Agreement.

6. Electrical Work

- 6.1. The Proponent is currently planning to install Electrical Infrastructure within the Road Allowances identified in Schedule "A" and the Township agrees that such Road Allowances shall be available for Electrical Infrastructure, subject to the Township's approval of specific Plans as provided in Section 5.
- 6.2. Without limiting the generality of Section 5.6, the Parties acknowledge and agree that the Proponent, when undertaking the Electrical Work, will install Electrical Infrastructure below-grade within the Road Allowances except where the Proponent in consultation with the Township identifies environmental, topographical or other features, obstacles, or circumstances that, in the opinion of the Proponent acting reasonably, require the installation of poles or other above-grade Electrical Infrastructure to permit the transmission of electricity over, around or across such feature or obstacle. Any Plans submitted by the Proponent in connection with Electrical Work shall identify the locations in which the Proponent proposes to install above-grade Electrical Infrastructure and shall set out the reasons therefor.
- 6.3. The Proponent further agrees to make commercially and technically reasonable efforts to install the Electrical Infrastructure:
 - (a) in appropriate locations between the outer limit of the travelled portion of the relevant Road Allowance and the property line of the Road Allowance (excepting road crossings);

- (b) at appropriate depths and/or elevations within the relevant Road Allowance so as to avoid conflicts with other existing infrastructure; and
 - (c) in consistent locations within the Road Allowances such that the number of road crossings is minimized.
- 6.4. The Proponent acknowledges and agrees that its rights under this Agreement to install Electrical Infrastructure over, along, across, within or under the Road Allowances are subject to the following rights:
- (a) the right of free use of the Road Allowances by all persons or parties otherwise entitled to such use;
 - (b) the rights of the owners of the properties adjoining any relevant Road Allowance to full access to and egress from their properties and adjacent rights-of-way, highways, streets or walkways and the consequential right of such persons or parties to construct crossings and approaches from their properties to any such right-of-way, highway, street, or walkway, subject to any necessary approvals from Public Authorities; and
 - (c) the rights and privileges that the Township may have previously granted to any other person or party to such Road Allowance or lands.
- 6.5. The Proponent agrees at its sole expense to:
- (a) mark the location of Electrical Infrastructure installed by the Proponent within the Road Allowances with appropriate markings, the approximate location of such markings being identified in Schedule "A";
 - (b) **[participate in the "Ontario One Call" system to facilitate ongoing notice to the public of the location of the Electrical Infrastructure; and]**
 - (c) upon request of the Township through its officials or authorized agents, or otherwise, properly and accurately identify the location of any Electrical Infrastructure within the Township, such reports to identify the depth of the relevant portion of the Electrical Infrastructure, such request to be made in writing to the Proponent with advance notice of ten (10) business days prior to the Township or a third party commencing work that may conflict with the Electrical Infrastructure.
- 6.6. The Parties agree and acknowledge that the Proponent shall from time to time be entitled to relocate installed Electrical Infrastructure or Entrances on its own initiative by complying with the terms of this Agreement respecting Installation Work, with the necessary modifications.
- 6.7. In the event that the Township, acting reasonably and with diligence, deems it necessary for the Township or the Township's agents or contractors to modify or change the location of any part of the installed Electrical Infrastructure or Entrances (the "**Relocation**"), the required Installation Work shall be conducted by the

Proponent, within a reasonable period of time of the Township's written request therefore, in accordance with the terms of this Agreement respecting Installation Work, and subject to Sections 6.9, the Township shall reimburse the Proponent 100% of its costs of such modifications or relocations during the initial ten (10) years after the date that the Township has approved the applicable Plan pursuant to Section 5.3 and one-half (50%) of its costs of such modifications or relocations for the remainder of the term of this Agreement.

- 6.8. If the provisions of Section 6.7 are triggered as a result of the Township's compliance with a legislative requirement, Ministerial order or other law or order of a body which has the ability to force the Township to act, then each Party shall bear fifty percent (50%) of the costs of the alteration or relocation of the installed Electrical Infrastructure system.
- 6.9. Where any part of the installed Electrical Infrastructure relocated in accordance with Section 6.8 is located on a bridge, viaduct or similar structure, the Proponent shall modify or relocate that part of the Electrical Infrastructure at its sole expense.
- 6.10. In the event that the Township, acting reasonably and with diligence, deems it necessary that installed Electrical Infrastructure or Entrances be modified or relocated by a third party ("**Third Party Work**"), the required Installation Work shall be conducted by the Proponent in accordance with the terms of this Agreement respecting Installation Work, and the full costs of such Installation Work shall be borne solely by the third party. Notwithstanding the foregoing, the Township agrees that it will not permit such Third Party Work, without the approval of the Proponent, if such Third Party Work would adversely affect the Work, the Wind Project or the exercise of the Proponent's rights under this Agreement. The Township agrees to give the Proponent sixty (60) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of the Proponent's Installation Work and indemnify the Proponent against all claims and liabilities arising from the required Installation Work as a condition precedent to any grant, permit or approval from the Township for the Third Party Work.
- 6.11. Notwithstanding anything to the contrary contained herein, the Township agrees to obtain the Proponent's prior approval to any relocation or modification of the Proponent's Electrical Infrastructure under this Article 6 if and to the extent the effect of such relocation or modification would, in the Proponent's opinion acting reasonably, require the Proponent to use overground wires rather than underground wires.

7. Repair Work

- 7.1. The Proponent shall be entitled to conduct Repair Work without prior approval of the Township provided that:
 - (a) all Repair Work complies with the requirements of Sections 4 and 9 of this Agreement; and

- (b) except in cases of Emergency, the Proponent gives at least five (5) days' notice to the Township that Repair Work will occur if such Repair Work
 - (i) will have or is likely to have Traffic Effects;
 - (ii) will involve or is likely to involve Tree Work as defined hereinafter; or
 - (iii) could present a danger to public health and safety.

8. Entrances and Entrance Work

- 8.1. Subject to the limitation in Section 8.2 below, the Township agrees to clear snow from and otherwise maintain and repair the Road Allowances identified in Schedule "A" so as to permit adequate vehicular access from the Road Allowances to the Entrances to access roads leading to Wind Project infrastructure.
- 8.2. To the extent that the Township as of the Effective Date does not routinely clear snow from or otherwise maintain adequate vehicular access to and from Road Allowances not identified in Schedule "A", the Township is not obliged to begin doing so unless and until the Parties acting reasonably agree in writing on reasonable compensation to be paid by the Proponent to the Township for undertaking such additional snow clearance and maintenance work. Upon reaching such an agreement, Schedule "A" hereto shall be amended to identify the additional Road Allowances that the Township agrees to maintain pursuant to Section 8.1 of this Agreement.

9. Tree Work

- 9.1. In the event that the Proponent, acting reasonably, deems it necessary for purposes of undertaking and completing Work, to cut, trim or remove trees or bushes growing in the Road Allowances, the Proponent shall be entitled to conduct the necessary Tree Work provided the Proponent makes reasonable efforts to minimize the amount of Tree Work. In the event that trees are removed from within the Road Allowances, the Proponent agrees, at its sole expense, to remove the tree stump to a level below grade and to restore and remediate the surface of the Road Allowance in accordance with Section 4.4 of this Agreement.
- 9.2. In the event that Tree Work involves removal of trees from the Road Allowance, the Proponent shall offer, in writing, to the adjacent landowner to replace, at the Proponent's sole expense, such trees within [500] meters of the location of the existing tree, unless otherwise mutually agreed by the adjacent landowner and the Proponent, in accordance with the following protocol:
 - (a) Trees below 7.5 cm dbh (diameter at breast height) will not be replaced;
 - (b) Trees 7.5 cm dbh or greater but less than 15 cm dbh will be replaced at a ratio of two (2) trees for each tree removed;

- (c) Trees 15 cm dbh or greater but less than 30 cm dbh will be replaced at a ratio of three (3) trees for each tree removed; and
 - (d) Trees greater than 30 cm dbh will be replaced at a ratio of five (5) trees for each tree removed.
- 9.3. Written offers to replace trees pursuant to Section 9.2 of this Agreement shall include a schedule of available tree species, and landowners receiving such offers shall be entitled to select from this schedule the tree species or mix of tree species that they wish to receive as replacement trees.
- 9.4. In the event that an affected landowner does not wish to receive replacement trees, the Proponent may, in its sole discretion, offer such trees to other neighbouring landowners or may cooperate with the Township to find suitable alternative locations for such trees within the Township.

10. Abandonment and Decommissioning of Electrical Infrastructure

- 10.1. The Parties agree that the Proponent may from time to time during the Term of this Agreement, permanently discontinue the use of ("Abandon") all or any part of the Electrical Infrastructure. The Proponent shall give written notice of any Abandonment to the Township within sixty (60) days of such Abandonment, specifying the part of the Electrical Infrastructure that has been Abandoned.
- 10.2. If the Proponent Abandons any part or all of the Electrical Infrastructure, the Proponent shall have the right to remove such part of its Electrical Infrastructure as has been Abandoned, but if the Proponent does not remove the Electrical Infrastructure that has been Abandoned, the Proponent shall deactivate all Abandoned Electrical Infrastructure and certify to the Township that such Electrical Infrastructure has been deactivated within sixty (60) days of its Abandonment. If the location of any such Abandoned Electrical Infrastructure interferes with the location of any construction, alteration, work or improvement undertaken by the Township, the Township may remove and dispose of so much of the Abandoned and deactivated part of the Electrical Infrastructure as the Township may require for such purposes and neither Party shall have recourse against the other for any loss, expense or damages occasioned thereby.
- 10.3. If the Proponent Abandons part of its Electrical Infrastructure affixed to a bridge, viaduct or structure, the Proponent shall, at its sole expense, remove that part of its Electrical Infrastructure.
- 10.4. Within one hundred and eighty (180) days after the Proponent Abandons any Electrical Infrastructure, the Proponent shall consult with the Township in good faith to come to an agreement with respect to removing such Electrical Infrastructure or leaving it in place within the Road Allowances. The Parties agree that the principles for decommissioning articulated in the Decommissioning Report prepared for the Proponent's "Renewable Energy Approval" application for the Project will generally

apply to Electrical Infrastructure within Road Allowances. Notwithstanding the foregoing, the Township agrees that any Abandoned Electrical Infrastructure buried at a depth of more than three (3) feet below the surface may be left in place. Any Abandoned Electrical Infrastructure that is finally left in place upon the completion of decommissioning shall become the property of the Township.

11. Assignment

- 11.1. The Proponent may not assign this Agreement without the written consent of the Township, which shall not be unreasonably withheld, except that no consent shall be required for the Proponent to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Electrical Infrastructure or the Wind Project. The Township acknowledges that a change in control of the Proponent shall not be considered an assignment by the Proponent of this Agreement or of any of the Proponent's rights and obligations under this Agreement.
- 11.2. For greater certainty, the Proponent shall from time to time during the term of this Agreement be entitled to assign this Agreement and all of its rights hereunder without the consent of the Township to any Secured Party as security for the Proponent's obligations to such Secured Parties, which shall be further entitled to assign this Agreement and the Proponent's rights thereunder in connection with an enforcement of their security. The Township hereby agrees to execute and deliver an Acknowledgement and Consent Agreement in favour of any applicable Secured Party or assignee thereof, in a form acceptable to the Township, acting reasonably.
- 11.3. The Proponent shall be entitled, with the written consent of the Township, which may not be unreasonably delayed, withheld or conditioned, to assign this Agreement to a transferee of the Wind Project other than an affiliated or successor company, and the Proponent shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with the Township, in a form acceptable to the assignee and the Township, both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.

12. Default

- 12.1. If a Party commits a breach of or omits to materially comply with any of the provisions of this Agreement (the "**Defaulting Party**"), the other Party (the "**Complainant**") may give the Defaulting Party notice in writing specifying the breach complained of and, if the Party intends to terminate the Agreement, indicating the intention of the Complainant to terminate this Agreement unless the Defaulting Party shall have remedied the breach within the period mentioned in the notice, which period shall be not less than sixty (60) days. If the Defaulting Party shall have within such notice period commenced to remedy the breach and has diligently pursued the remedying thereof, the Defaulting Party shall be allowed one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach. After the

expiration of the later of the applicable periods, the Complainant may elect to terminate this Agreement or to remedy the breach, in which case the Defaulting Party shall be liable for reimbursing to the Complainant the reasonable costs of completing said remedy.

12.2. Notwithstanding any expiry or termination of this Agreement in accordance with Sections 2.2, 12.1 or otherwise, such expiry or termination shall not derogate from the Proponent's rights under Applicable Law, including the Proponent's statutory right under the *Electricity Act, 1998* to construct and install Electrical Infrastructure over, under or on any public street or highway in the Township deemed necessary by the Proponent for the purpose of its transmission or distribution system.

12.3. Whenever, and to the extent that a Party will be unable to fulfill or will be delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of:

- (a) strikes;
- (b) lock-outs;
- (c) war or acts of military authority;
- (d) rebellion or civil commotion;
- (e) material, energy, or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) flood, wind, water, earthquake, or other casualty;
- (h) changes in Applicable Law not wholly or mainly within the control of the affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, license or similar permission granted to the Proponent or the Wind Project;
- (i) any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or the financial condition of the affected Party); or,
- (j) acts of God,
(in each case a "**Force Majeure**")

not caused by the default or act of or omission by that Party and not avoidable by the exercise of reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed.

13. Dispute Resolution

- 13.1. In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a "**Dispute**") then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the "**Arbitration Notice**") requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
- 13.2. The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties or, if the Parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice, then either Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the matter to be decided.
- 13.3. The arbitration shall be conducted in English and shall take place in ● or another place mutually agreed upon by the Parties.
- 13.4. The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.
- 13.5. Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

14. Further Assurances

- 14.1. Each of the Parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

15. Liability

- 15.1. The Proponent hereby acknowledges that its performance of the Work and operation of the Electrical Infrastructure and Wind Project is entirely at its own risk and the Township shall in no way and in no circumstances be responsible or liable to the Proponent, its contractors, agents, or customers for any damage or losses in consequence thereof, regardless of how such damage or loss was suffered or incurred, other than damage or loss arising out of the negligence of, intentional misconduct of, or a breach of this Agreement by the Township, anyone directly or indirectly

employed by the Township or anyone for whose acts the Township is in law responsible.

- 15.2. The Proponent will indemnify and save harmless the Township from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Township may incur or suffer as a consequence of or in connection with the placing, maintenance, operation or repair of the Electrical Infrastructure or any part thereof by the Proponent, except to the extent that such claims, liabilities, losses, costs, damages or other expenses result from the Township's fault or negligence.

16. Notice

- 16.1. All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery by courier or by facsimile addressed or sent as set out below or to such other address or facsimile number as may from time to time be the subject of a notice:

To the Township:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

With a copy to:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

To the Proponent:

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

With a copy to:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

- 16.2. Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile

with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

17. Governing Law

17.1. This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

18. Miscellaneous

- 18.1. This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.
- 18.2. This Agreement and the rights granted hereunder are and shall be of the same force and effect, to all intents and purposes, as a covenant running with the Road Allowances and these presents, including all of the covenants and conditions herein contained, shall extend, be binding upon and enure to the benefit of the Township and the Proponent, and their respective successors and permitted assigns, as the case may be. The Parties hereby acknowledge and agree that the purpose of the rights granted herein is for the transmission or distribution of electricity within the meaning of the *Electricity Act, 1998*.
- 18.3. Each obligation of the Parties contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.
- 18.4. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
- 18.5. Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise provided herein.
- 18.6. No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

[MUNICIPALITY]

Name:
Title

Name:
Title:

[PROPONENT]

Name:
Title:

SCHEDULE "A"

Plan showing Road Allowances expected to be required for the Wind Project

"A" - 1

SCHEDULE "B"

The Permits

Permit	Requirements	Fee

"B" - 1

POTENTIAL IMPACTS

In determining that the Clearview Township Road Allowances are the most viable option for the location of the Distribution System, the Applicant has attempted to mitigate any potential prejudice to the Municipality, including by taking the following measures:

- The Applicant engaged in extensive government and public consultation regarding the Fairview Wind Project, including the Distribution System, through the Renewable Energy Approval process.
- The Applicant's Renewable Energy Application identified and developed mitigation measures for all the significant environmental effects of the Wind Project
- Prior to beginning construction activities, a Construction Environmental Management Plan, and a Construction Emergency Response and Communications Plan will be in place to minimize any potentially harmful construction and environmental effects of the Wind Project. The installation of the Distribution System within the Road Allowances will involve good site practices and procedures, including specification regarding disposal of excavated material, sediment control, dust control and soil compaction control.
- Under the proposed Road Use Agreement wpd Fairview would have provided the Municipality with certain protections to guarantee wpd Fairview's obligations under the proposed Road Use Agreement, including security that the Municipality would have the right to draw upon for the purpose of making repairs to the Road Allowances should wpd Fairview fail to meet its obligations. In addition, all installation and construction activities would have been undertaken at the Applicant's sole expense.

1 In light of these measures, there is no significant prejudice to the Municipality regarding the
2 Applicant's proposed location of the Distribution System within the Clearview Township
3 Road Allowances.

4 Should the Municipality continue to refuse to engage with the Applicant regarding the
5 proposed location of the Distribution System within the Clearview Township Road
6 Allowances, the Applicant could suffer irreparable harm, including increased equipment
7 storage fees, lost revenue and inability to meet the milestones provided for in the
8 Applicant's FIT Contract.

1 **THE BOARD’S AUTHORITY TO DETERMINE THE LOCATION OF THE**
2 **DISTRIBUTION SYSTEM**

3 As noted in Exhibit D, Tab 1, Schedule 1, above, pursuant to section 41(1) of the *Electricity*
4 *Act* a distributor may install power lines and other facilities associated with a distribution
5 system on public streets or highways. Where a distributor and the owner of a public street
6 or highway cannot agree regarding the precise location of the distribution facilities within
7 such public street or highway, pursuant to section 41(9) of the *Electricity Act*, the Board has
8 the authority to determine the location of the distribution facilities. Section 41(9) provides:

9 The location of any structures, equipment or facilities
10 constructed or installed under subsection (1) shall be agreed
11 on by the transmitter or distributor and the owner of the street
12 or highway, and in case of disagreement shall be determined
13 by the Board.

14 In this case, given that the Municipality has refused to engage with the Applicant, the
15 parties cannot agree regarding the location of the Distribution System within the Clearview
16 Township Road Allowances. The Board may determine the location of the Distribution
17 System within the Road Allowances.

18 In the Grey Highland’s Decision, the Board acknowledged that the scope of its authority
19 with respect to an application under section 41(9) of the OEB Act is limited to the
20 determination of the location of the proposed distribution facilities, stating:

21 The [*Electricity Act*] limits the Board’s role in this proceeding
22 to a determination of the location of [the] proposed
23 Distribution Facilities within the Road Allowances. Given the
24 legislative restriction on the Board’s jurisdiction, it is not the
25 Board’s role in this proceeding to approve or deny the Project
26 or the Distribution Facilities, to consider the merits, prudence
27 or any environmental health or economic impacts associated
28 with it or to consider alternatives to the project such as routes
29 for the Distribution Facilities that are outside of the prescribed
30 Road Allowances. Also, it is not within the Board’s jurisdiction

1 in this proceeding to consider any aspect of [the] proposed
2 wind generation facilities.¹

3 Further, as the Board noted in the Grey County Decision, “the [*Electricity Act*] does not
4 require that all necessary approvals, such as the [renewable energy approval] be obtained
5 prior to granting an application under subsection 41(9).”²

6 Accordingly, in this Application, the Board’s determination of whether to grant the relief
7 requested does not involve a consideration of matters that are covered by other regulatory
8 processes, including wpd Fairview’s Renewable Energy Application. Copies of the Grey
9 Highlands decision and the Grey County Decision are included at Appendix “A” to Exhibit
10 D, Tab 1, Schedule 5 and Appendix “B” to Exhibit D, Tab 1, Schedule 5, respectively

11 wpd Fairview requests that the Board issue and order pursuant to section 41(9) of the
12 *Electricity Act* providing that the Distribution System shall be located in the Clearview
13 Township Road Allowances as reflected in the single line diagram included at Appendix
14 “B” to Exhibit C, Tab 1, Schedule 2.

¹ Grey Highlands Decision, para. 9

² Grey County Decision, p.6

Decision and Order EB-2010-0253
APPENDIX “A”
to
EXHIBIT D
TAB 1
SCHEDULE 5



EB-2010-0253

IN THE MATTER OF the *Electricity Act, 1998* as amended
(the "*Electricity Act*");

AND IN THE MATTER OF an application by Plateau Wind
Inc. for an order or orders pursuant to section 41(9) of the
Electricity Act establishing the location of Plateau Wind
Inc.'s distribution facilities within certain road allowances
owned by the Municipality of Grey Highlands.

BEFORE: Paul Sommerville
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

INTRODUCTION

- [1] Plateau Wind Inc. ("Plateau" or the "Applicant") filed an application dated July 30, 2010 (the "Application") with the Ontario Energy Board (the "Board") under subsection 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A, as amended (the "*Electricity Act*") for an order or orders of the Board establishing the location of Plateau's proposed distribution facilities within road allowances owned by the Municipality of Grey Highlands ("Grey Highlands"). The Board assigned File No. EB-2010-0253 to the application.
- [2] Plateau is in the business of developing wind energy generation projects and the associated distribution facilities in Ontario. Plateau is the corporate entity created to hold and operate the generation and distribution assets of the Plateau Wind Energy Project in Grey County and Dufferin County, Ontario.

- [3] Plateau plans to develop the Plateau Wind Energy Project (the "Project") which will involve eighteen GE 1.5 megawatt ("MW") wind turbine generators, together having a nominal nameplate capacity of 27 MW. Twelve of the wind turbine generators are relevant to this Application, eleven of which will be located in Grey Highlands and one of which will be located in Melancthon Township (collectively referred to as the "Turbines"). In total, the Turbines will have a nominal nameplate capacity of 18 MW. Plateau has entered into a feed-in tariff contract with the Ontario Power Authority for the Project.
- [4] As part of the Project, Plateau plans to construct 44 kilovolt ("kV") overhead and underground electrical distribution facilities to transport the electricity generated from the Turbines to the existing local distribution system of Hydro One Networks Inc. ("HONI") and ultimately to the IESO-controlled grid. Plateau would like to locate certain portions of the electrical distribution facilities (the "Distribution Facilities") within road allowances owned by Grey Highlands (the "Road Allowances").
- [5] Because Plateau and Grey Highlands have not been able to reach an agreement with respect to the location of the Distribution Facilities, Plateau requested that the Board issue an order or orders, pursuant to section 41(9) of the *Electricity Act*, determining the location of Plateau's Distribution Facilities within the Road Allowances.
- [6] In support of the Application, Plateau filed a brief of documents which included descriptions of Plateau's proposed Distribution Facilities, list of municipal road allowances proposed for location of the Distribution Facilities, maps showing the road allowances, a copy of the proposed road use agreement and other relevant project documents (collectively the "pre-filed evidence").

THE PROCEEDING

- [7] The Board has proceeded with this application by way of a written hearing. The procedural steps followed are outlined below:
- | | |
|--|-------------------|
| - Application filed | July 30, 2010 |
| - Notice of Application Issued | August 19, 2010 |
| - The Board issued its Procedural Order No. 1 | October 29, 2010 |
| - Plateau filed its submission | November 8, 2010 |
| - Grey Highlands and Board staff filed their submissions | November 29, 2010 |
| - Plateau filed its reply submission | December 6, 2010 |

Grey Highlands was granted intervenor status and ten parties were granted observer status in this proceeding.

THE LEGISLATION

- [8] The Board's authority in this proceeding is derived from section 41 of the *Electricity Act* which states as follows:

Subsection 41. (1)

A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines. 1998, c. 15, Sched. A, s. 41 (1).

Subsection 41. (9)

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board. 1998, c. 15, Sched. A, s. 41 (9).

SCOPE OF PROCEEDING

- [9] The above-noted legislation limits the Board's role in this proceeding to a determination of the location of Plateau's proposed Distribution Facilities within the Road Allowances. Given the legislative restriction on the Board's jurisdiction, it is not the Board's role in this proceeding to approve or deny the Project or the Distribution Facilities, to consider the merits, prudence or any environmental, health or economic impacts associated with it or to consider alternatives to the project such as routes for the Distribution Facilities that are outside of the prescribed Road Allowances. Also, it is not within the Board's jurisdiction in this proceeding to consider any aspect of Plateau's proposed wind generation facilities.

EVIDENCE AND SUBMISSIONS

Plateau's Evidence and Submissions

Some key elements of Plateau's evidence and submissions are outlined below:

- [10] During 2008-2009, Plateau carried out an Environmental Assessment for the Project. The final Environmental Assessment report and a Notice of Completion were made publicly available for review and comment from June 12, 2009 to July 11, 2009. On April 14, 2010, Plateau publicly filed its Statement of Completion of the Environmental Assessment after the Ministry of the Environment rejected all requests to elevate the Project to an environmental review/individual environmental assessment.
- [11] Plateau submitted that a balance of environmental, social, technical and economic considerations impacted Plateau's decision on the location of the Turbines and therefore on the location of the Distribution Facilities. An excerpt from the Pre-Filed Evidence which lists the Road Allowances is attached to this Decision and Order as Appendix "A".
- [12] Plateau submitted that the only outstanding issue with respect to Plateau's use of the Road Allowances is the location of the Distribution Facilities within the Road Allowances. In this regard, Plateau undertook to negotiate a standard road use agreement with Grey Highlands.
- [13] According to Plateau's evidence, as a result of the above-noted negotiations, Plateau, the Municipal Staff of Grey Highlands (the "Municipal Staff") and Grey Highlands' legal counsel reached a mutually acceptable agreement with respect to the location, construction, operation and maintenance of the Distribution Facilities within the Road Allowances (the "Proposed Road Use Agreement").
- [14] In negotiating the Proposed Road Use Agreement, Plateau asserted that it addressed the concerns of the Municipal Staff regarding the routing of the Distribution Facilities. In addition, under the Proposed Road Use Agreement, Plateau indicated that it planned to confer certain monetary and non-monetary benefits on and provide numerous protections to Grey Highlands.
- [15] The evidence indicates that on May 17, 2010, the Municipal Staff issued Report PL.10.34 recommending a form of the Proposed Road Use Agreement to the Grey Highlands Committee of the Whole.
- [16] The evidence further indicates that in a letter dated June 24, 2010 to the Grey Highlands Mayor and Members of Council, the Grey Highlands Chief Administrative Officer recommended that the Proposed Road Use Agreement be approved by Grey Highlands Council (the "CAO Recommendation").

- [17] On June 28, 2010, the Grey Highlands Council rejected the CAO Recommendation. As a result, because Plateau and Grey Highlands could not reach an agreement with respect to the location of the distribution facilities, Plateau filed the Application with the Board for an order or orders, pursuant to section 41(9) of the *Electricity Act*, establishing the location of Plateau's Distribution Facilities within the Road Allowances.
- [18] Plateau stated that it has chosen to route certain power lines, poles and other facilities associated with the Distribution System within the Road Allowances pursuant to the statutory right of distributors under section 41(1) of the *Electricity Act*.
- [19] Plateau submitted that the Distribution Facilities as well as other 44 kV electrical facilities which transport the electricity generated from the Turbines to the existing 44 kV local distribution system of HONI, and ultimately to the IESO-controlled grid, is a "distribution system" and that Plateau is a "distributor" as defined in the *Electricity Act*¹. As such, Plateau submitted that it is a distributor and is entitled to the rights of distributors under section 41 of the *Electricity Act*, including the right, under the circumstances, to bring this Application pursuant to Section 41(9) of the *Electricity Act*.
- [20] Plateau submitted that section 4.0.1(1) (d) of O. Reg. 161/99 under the *Ontario Energy Board Act* exempts from the licensing requirements those distributors that distribute electricity for a price no greater than that required to recover all reasonable costs with respect to a distribution system owned or operated by a distributor that is also a generator and that distributes electricity solely for conveying it to the IESO-controlled grid.
- [21] Plateau also submitted that because of the limited scope of section 41(9) and because the two parties have been unable to reach an agreement on the location of the Distribution Facilities within the Road allowances, the only issue before the Board is determining that location.

¹ The *Electricity Act* definitions are as follows:

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;
"distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;
"distributor" means a person who owns or operates a distribution system.

- [22] An excerpt from Plateau's submissions which describes the proposed location of the Distribution Facilities within the Road Allowances is attached as Appendix "B" to this Decision and Order.

Grey Highlands' Submissions

Some key elements of Grey Highlands' submissions are outlined below:

- [23] Grey Highlands stated that the Project is a "renewable energy generation facility" as that term is defined under the *Electricity Act* and Ontario Regulation 160/99 and, as such, it is afforded no rights under section 41 of the *Electricity Act*. Accordingly, Grey Highlands submits that the Board has no authority or jurisdiction to make a determination under subsection 41(9) of the *Electricity Act* as the Applicant is neither a transmitter nor distributor of electricity.
- [24] Grey Highlands submitted that the rights bestowed under section 41 of the *Electricity Act* represent a special privilege granted to transmitters and distributors and "Where special privileges are granted under statutory authority, the legislation granting such special privilege must be strictly construed."²
- [25] Grey Highlands submitted that, based on section 2 (1) of the *Electricity Act* and sections 1(4) and 1(5) of Ontario Regulation 160/99, any distribution line or lines under 50 kilometres in length that convey electricity from a renewable energy generation facility to a distribution system are not components of a distribution system, but rather are components of the "renewable energy generation facility". Grey Highlands further submitted that :
- a number or combination of distribution lines are not a "distribution system" as defined in the *Electricity Act* if they are components of a "renewable energy generation facility";
 - the defined terms "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive.

² Paragraph 7 of Grey Highlands' submission dated November 25, 2010.

- [26] Furthermore, Grey Highlands stated that Section 57 of the *Ontario Energy Board Act* requires all transmitters, distributors and generators to hold a licence issued under authority of that Act.
- [27] Grey Highlands asserted that, if the distribution lines associated with a "renewable energy generation facility" constituted a "distribution system" as defined in the *Electricity Act*, Plateau would be required to be licensed as a distributor under section 57 of the *Ontario Energy Board Act*.
- [28] Grey Highlands further asserted that the Applicant's submission concerning the applicability of subsection 4.0.1(1) (d) of Ontario Regulation 161/99 is erroneous because the Applicant is not in the business of generating electricity and supplying it to the ISEO-controlled grid on a "non-profit basis".
- [29] In its submission Grey Highlands also stated that:
- based on Section 26 of the *Electricity Act*, if the Applicant is a distributor then the Applicant is required to provide access to the distribution lines to "consumers" and the Applicant's evidence does not indicate or identify that consumers will have access to the distribution lines;
 - the Applicant's own description of its proposal indicates that it will deliver electricity to the HONI distribution system and not consumers; and
 - the Applicant does not have a Conditions of Service³ document because it has no intentions of distributing electricity to consumers and because it is not a "distributor".

Board Staff Submissions

Some key elements of Board staff's submissions are outlined below:

- [30] Board staff submitted that, in its view, based on the *Electricity Act* definitions of "distribute", "distribution system" and "distributor", the distribution component of the Applicant's proposed facilities does qualify as a distribution system and that the Applicant is a distributor and therefore has standing to bring an application under section 41 of the *Electricity Act*.

³ A document required under Section 2.4.1 of the Distribution System Code.

- [31] Board staff further submitted that Plateau's Distribution System would be exempt, under Section 4.0.1 (d) of Ontario Regulation 161/99, from the licence requirement of section 57(a) of the *OEB Act* because the Distribution System would transport electricity from its generation facilities to the Hydro One distribution system and ultimately to the IESO-controlled grid, and no other use of the Distribution System has been identified by Plateau.

Plateau's Reply Submissions

Some key elements of Plateau's reply submission are outlined below:

- [32] Plateau disagrees with Grey Highlands submission that no aspect of the Project meets the definition of "distributor" under the *Electricity Act* and that Plateau therefore cannot take advantage of the rights afforded to distributors under the section 41 of the *Electricity Act*. Plateau repeated that it clearly was a distributor, as that term is defined in the *Electricity Act* and that; consequently, as a distributor, it is entitled to the rights afforded to distributors under section 41 of the *Electricity Act*.
- [33] Plateau reiterated its submissions in chief that, under section 4.0.1(1) (d) of Ontario Regulation 161/99, it is exempt from the distribution licensing requirement in section 57(a) of the *OEB Act*. It added that it is irrelevant that it will profit from the sale of generated electricity since section 4.0.1(1)(d) only requires that the generated electricity be **distributed** at a price no greater than that required to recover all reasonable costs in order for the licensing exemption to apply.
- [34] Plateau stated that it disagrees with Grey Highlands' assertion that being a "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive terms. Plateau further stated that there is nothing in Section 57 of the *OEB Act* that suggests that there is such mutual exclusivity.
- [35] Plateau further states that the wording of section 4.01(1) (d) of Ontario Regulation 161/99 clearly demonstrates that a person can be both a distributor and a generator and that the exemption applies to a "distributor" that is also a "generator" and distributes electricity solely for the purpose of conveying it to the IESO controlled grid.

- [36] Plateau submitted that the enactment of the *Green Energy and Green Economy Act, 2009* (the "*Green Energy Act*") amended section 1(1) of the *OEB Act* to require the Board, in carrying out its responsibilities under the *OEB Act* or any other legislation in relation to electricity, to be guided by the objective of promoting "the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities." Plateau further stated that the Board must therefore be guided by this objective, among others, in deciding the Application.
- [37] Plateau submitted that the sections in the *Power Corporation Act* and the *Public Utilities Act* that Grey Highlands referenced have been repealed and pertain to a former regulatory regime that is no longer in place.

BOARD FINDINGS

- [38] Given the Board's limited jurisdiction in this proceeding, there are two decisions that need to be made. The first is a determination of whether Plateau is a "distributor" for the purposes of Section 41 of the *Electricity Act*. If so, the second determination is where should the location of Plateau's distribution facilities within Grey Highlands' road allowances be, given that the parties are not able to reach an agreement.
- [39] The Board agrees with Plateau's and Board staff's submissions to the effect that the Distribution Facilities, as well as other 44 kV electrical facilities which transport the electricity generated from the Turbines to the existing 44 kV local distribution system of HONI and ultimately to the IESO-controlled grid, are a "distribution system" as defined in the *Electricity Act*.
- [40] The Board disagrees with Grey Highlands' submission that the defined terms "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive since there is nothing in the applicable legislation that would support such an interpretation. Indeed, when the words of the Statute and the Regulation are given their plain meaning, it is evident to the Board that the Legislature intended them to operate precisely as Plateau suggests they should. As the owner of the distribution system that is intended to transport the generated electricity to the IESO, Plateau is a distributor, but one

which has the benefit of the licensing exemption contained in Ontario Regulation 161/99.

- [41] The Board accepts Plateau's and Board staff's submissions that, as the owner or operator of the distribution system, Plateau is a distributor as defined in the *Electricity Act*.
- [42] Accordingly, the Board finds that, as a distributor, Plateau is entitled to bring an application under section 41 of the *Electricity Act* and is entitled to the relief the Board may grant on such an application.
- [43] Since the evidence indicates that Plateau and Grey Highlands could not agree on the location of Plateau's distribution facilities within Grey Highlands' road allowances, it is the Board's role to determine the location of the Distribution Facilities in accordance with section 41 (9) of the *Electricity Act*.
- [44] The Board notes Plateau's evidence that, during the course of negotiations between Plateau and the Municipal Staff regarding a road use agreement, the two parties had reached a mutually acceptable agreement with respect to the location, construction, operation and maintenance of the Distribution Facilities within the Road Allowances (the "Proposed Road Use Agreement") and that the Proposed Road Use Agreement was subsequently rejected by the Grey Highlands Council without apparent explanation.
- [45] The Board also notes that Grey Highlands' submissions focused on Plateau's status as a distributor, its rights under section 41 of the *Electricity Act* and the Board's authority or jurisdiction to make a determination under subsection 41(9) of the *Electricity Act*, but made no submissions regarding any alternative or preferred location for the Distribution Facilities within the Road Allowances.
- [46] In terms of determining the location of the Distribution Facilities, the Board has therefore considered the only evidence provided in this proceeding with respect to proposed location for the Distribution Facilities and that evidence has been provided by Plateau.
- [47] In the absence of any competing proposal, the Board accepts Plateau's proposed location of the Distribution Facilities within the Road allowances in Grey Highlands.
- [48] Furthermore, the Board agrees with Plateau's and Board staff's submissions that Plateau is exempt from the requirement for a distributor licence under Section

4.0.1 (d) of Ontario Regulation 161/99. Contrary to the assertion of Grey Highlands, the fact that Plateau does not require a licence does not imply that they are not a distributor. In the Board's view the Regulation giving rise to the exemption could not be clearer. It specifically contemplates that the "distributor" can be a generator, and that the exemption applies to such a distributor when it distributes electricity "solely for the purpose of conveying it into the IESO-controlled grid." This language really renders the Municipality's argument on this point untenable.

- [49] The Board notes that there were a number of interested parties that were granted observer status and took an active role in terms of providing comments regarding various aspects of the Project. Some of the observer comments regarding Plateau's status as a distributor are addressed in the above findings. Other observer concerns were related to health effects, aesthetic impact of the Project and the Turbines as well as the impact on property values. These concerns are not within the scope of this proceeding (see paragraph [9] above) and were not considered by the Board in arriving at this decision.

THE BOARD ORDERS THAT:

- The location of Plateau's Distribution Facilities within the Road Allowances shall be as described in Appendix "A" and Appendix "B" to this Decision and Order except for any changes that are mutually agreed to between Plateau Wind Inc. and the Municipality of Grey Highlands.

DATED at Toronto, January 12, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

TO

DECISION AND ORDER

BOARD FILE NO. EB-2010-0253

DATED: January 12, 2011

EXCERPT FROM PRE-FILED EVIDENCE

(Exhibit B, Tab 3, Schedule 1, Page 6)

**LIST OF MUNICIPAL ROAD ALLOWANCES WITHIN WHICH THE
DISTRIBUTION SYSTEM WILL BE LOCATED**

- 1 210 Sideroad Road (also known as Melancthon-Artemesia Townline), between Provincial Highway No. 10 and East Back Line.
PIN: 37265-0133(LT)
- 2 East Back Line from 210 Sideroad Road to Melancthon Artemesia Townline.
PIN: 37265-0136(LT) and 37265-0134(LT)
- 3 Melancthon Artemesia Townline from East Back Line to Road 41A.
PIN: 34151-0029(LT)
- 4 Melancthon Osprey Townline from Road 41A to the access road to Turbine #3.
PIN: 37260-0052(LT)
- 5 Road 41A, from the Melancthon Artemesia Townline to South Line B Road.
PIN: 37260-0199(LT)
- 6 South Line 'B' Road from Road 41 A to Grey County Road 2.
PIN: 37260-0198(LT)
- 7 Centre Line A Road from County Road 2 westerly to Turbine #6 entrance.
PIN: 37260-0125(LT)
- 8 Centre Line A Road from County Road 2 easterly to Turbines #10 and #12 road entrance.
PIN: 37260-0125(LT)

APPENDIX "B"

TO

DECISION AND ORDER

BOARD FILE NO. EB-2010-0253

DATED: January 12, 2011

EXCERPT FROM PLATEAU'S WRITTEN

SUBMISSIONS DATED NOVEMBER 8, 2010

(Tab 2, Pages 7-9)

1 located over, on or near traveled or untraveled sections of the Road Allowances. The
2 hearing does not concern which Road Allowances that Plateau has chosen to use

3 **3.0 PROPOSED LOCATION OF THE DISTRIBUTION SYSTEM WITHIN**
4 **THE ROAD ALLOWANCES**

5 Plateau proposes that the location of the Distribution System within the Road Allowances
6 should be as follows:

- 7 • The Distribution System facilities shall generally be located 1.0-1.5 metres from
8 the abutting property line, provided this location is reasonable and meets all
9 applicable safety standards.⁹ A cross-sectional drawing included at Appendix C
10 shows the approximate location of where Plateau proposes to position the poles
11 and other Distribution System facilities within the Road Allowances. As
12 discussed below, this proposal accords with the terms of the proposed road use
13 agreement between Plateau and Grey Highlands.¹⁰
- 14 • Where practicable and with certain exceptions, the Distribution System facilities
15 that Plateau will construct, maintain or install shall not be located under the
16 existing or contemplated traveled portion of any of the Road Allowances.¹¹
17 Rather, Plateau will locate these facilities adjacent to such existing or
18 contemplated traveled portion of such Road Allowances. As discussed below, this
19 proposal accords with the terms of the proposed road use agreement between
20 Plateau and Grey Highlands.¹²

21 In addition to proposing this location for the Distribution System within the Road
22 Allowances, Plateau requests that the Board, pursuant to its authority under section 23(1)
23 of the OEB Act, include the following conditions in its Order:

⁹ For example, once the detailed engineering process is completed, Plateau may be required to slightly deviate from the 1.0-1.5 metre setback to minimize the need for tree cutting, road crossings and guy anchors on private properties, as well as to accommodate the flow of the ditch drainage

¹⁰ See Exhibit B, Tab 4, Schedule 1, Page 5 of the Application

¹¹ Exemptions include certain underground road crossings that allow the Distribution System to follow the existing FORT poles in order to minimize the need to place poles on both sides of the Road Allowances

¹² See Exhibit B, Tab 4, Schedule 1, Page 5 of the Application

- 1 • Plateau shall acknowledge that the rights to use the Road Allowances are not
2 exclusive rights. In addition, Grey Highland is not precluded from entering into
3 the Road Allowances for its own municipal purposes, and Grey Highlands has no
4 obligation to notify Plateau of such entry provided it does not adversely affect the
5 Distribution System.
- 6 • In constructing or decommissioning the Distribution System within the Road
7 Allowances (the "Work"), Plateau shall use all due care and diligence to prevent,
8 among other things, any unnecessary or unavoidable interference with the
9 travelled portion of any Road Allowance or with any traffic thereon.
- 10 • Prior to the commencement of any Work, Plateau shall file plans with Grey
11 Highlands and/or the Saugeen Valley Conservation Authority detailing the Work.
12 Plateau will undertake the Work in accordance with those plans.¹³
- 13 • Within 30 days of the completion of any construction Work, Plateau shall deposit
14 with Grey Highlands as-constructed plans detailing the location and specifications
15 of any installed infrastructure, including any distribution lines and poles.
- 16 • Plateau shall undertake and complete any Work requiring a permit from Grey
17 Highlands within the time specified in such permit, provided such time is
18 reasonable. Plateau shall also complete such Work so as not to cause unnecessary
19 nuisance or damage to Grey Highlands or any other user of the Road Allowance
20 where the Work is conducted.
- 21 • Prior to the commencement of any Work, Plateau shall obtain any necessary
22 approval of any federal, provincial, county or municipal government or agency.
23 Plateau shall also notify any other person or body operating any equipment,
24 installations, utilities or other facilities within the Road Allowances about the
25 details of the Work, including where it is to be conducted.
- 26 • In the event that it becomes necessary to break, remove, or otherwise pierce the
27 existing surface of any of the Road Allowances to undertake the Work, Plateau
28 shall, in so far as is practical, at its own expense, repair, reinstate, restore, or
29 remediate such surface to the same or better condition than existed prior to the
30 commencement of such Work.¹⁴
- 31 • Subject to section 41 of the OEB Act, if Plateau wishes to relocate any of the
32 Distribution System facilities previously installed, placed or constructed in the

¹³ This condition is in accordance with Section 41 (7) of the Electricity Act, which states: "If a transmitter or distributor exercises a power or entry under this section, it shall, (a) provide reasonable notice of the entry to the owner or other person having authority over the street or highway . . ."

¹⁴ This condition is in accordance with Section 41 (7) of the Electricity Act, which states: "If a transmitter or distributor exercises a power or entry under this section, it shall, . . . (b) in so far as is practicable, restore the street or highway to its original condition; and (c) provide compensation for any damages caused by the entry."

1 Road Allowances, it shall notify Grey Highlands in writing of its intent to do so.
2 and Grey Highlands shall not unreasonably withhold its consent to such
3 relocation.

4 Notably, none of these requested terms or conditions vary from those already enshrined
5 in the standard road use agreement (the "Proposed Road Use Agreement") that Plateau
6 negotiated with the Municipal Staff of Grey Highlands (the "Municipal Staff") and Grey
7 Highlands' legal counsel.¹⁵ In the negotiations, the parties reached a mutually acceptable
8 agreement with respect to the location, construction, operation and maintenance of the
9 Distribution System within the Road Allowances.¹⁶ In particular, under the Proposed
10 Road Use Agreement, Grey Highlands would have affirmed Plateau's statutory right to
11 use the Road Allowances for the Distribution System and agreed to the location of the
12 Distribution System. In exchange, Plateau would have conferred certain benefits on and
13 provided numerous protections to Grey Highlands. A copy of the Proposed Road Use
14 Agreement is attached at Appendix D.

15 In addition, none of the requested terms and conditions vary substantially from the terms
16 and conditions contained in the agreement between Plateau and Melancthon, which
17 Melancthon Council has already approved, regarding the location of seven turbines and
18 the associated distribution facilities in its jurisdiction.¹⁷ One of these turbines is the
19 Turbine in Melancthon that is part of the Plateau I and II siting area, and some of the
20 distribution facilities will be located on the Melancthon side of some of the Road
21 Allowances that are jointly owned by Melancthon and Grey Highlands

¹⁵ For a summary of those terms and conditions, see Exhibit B, Tab 4, Schedule 1, Pages 4-7 of the Application.

¹⁶ See Exhibit B, Tab 4, Schedule 1, Pages 1-2 of the Application.

¹⁷ See Exhibit B, Tab 4, Schedule 1, Pages 2-3 of the Application.

Decision and Order EB0201300233

APPENDIX “B”

to

EXHIBIT D

TAB 1

SCHEDULE 5

Ontario Energy Board

Commission de l'énergie
de l'Ontario



EB-2013-0233

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by East Durham
Wind, Inc. for an Order or Orders pursuant to subsection
41(9) of the *Electricity Act 1998*, S.O. 1998, c. 15, Schedule
A, as amended, establishing the location of East Durham
Wind Inc.'s distribution facilities within certain road
allowances owned by the Municipality of West Grey.

BEFORE: Emad Elsayed
Presiding Member

Ellen Fry
Member

DECISION AND ORDER

November 7, 2013

DECISION

The location of East Durham's distribution system on road allowances owned by the Municipality of West Grey ("the Municipality") is approved as described in this Decision and Order.

BACKGROUND

East Durham Wind, Inc., ("East Durham") filed an application dated June 14, 2013 with the Ontario Energy Board (the "Board"), under subsection 41(9) of the *Electricity Act, 1998, S.O. 1998, c. 15, Schedule A*, (the "Act") for an order or orders of the Board establishing the location of approximately 9.1 kilometers of East Durham's proposed distribution system within certain public streets, highways and right-of-ways owned by the Municipality in Grey County, Ontario.

The Board issued a Notice of Application and Written Hearing on July 9, 2013. The Municipality and Karen and Syd Parkin (the "Parkins") requested and were granted intervenor status. The Board also received letters of comment from a number of local residents.

The Parkins submitted evidence. The Parkins and Board staff submitted interrogatories on East Durham's evidence. No party filed interrogatories on the evidence submitted by the Parkins. East Durham provided responses to all interrogatories.

East Durham filed its argument-in-chief on September 4, 2013. The Board received submissions from the Municipality and the Parkins. East Durham filed its reply submission on September 19, 2013.

On October 2, 2013, the Board issued a letter requiring East Durham to provide a more complete response to Board staff interrogatory no. 2(ii) by providing the analysis and supporting documentation that underpins its determination that it is appropriate to locate its facilities 1-4 meters from abutting property lines. The letter also asked East Durham to confirm the accuracy of a map provided as part of East Durham's argument-in-chief.

East Durham submitted its response on both matters on October 4, 2013. The Parkins submitted their comments on Oct 7, 2013.

THE APPLICATION

East Durham has entered into a Feed-in-Tariff contract with the Ontario Power Authority and is in the process of developing a wind generation facility, called the East Durham Wind Energy Centre (the "Project") in the Municipality. The Project will have a total generation capacity of up to 23 MW and includes generation and distribution assets.

As part of the Project, East Durham is proposing to construct an underground distribution system to transmit power generated by the wind turbines to the distribution system of Hydro One Networks Inc. ("Hydro One") for delivery ultimately to the IESO-controlled grid. Specifically, East Durham is proposing to construct 28.3 kilometers of underground 34.5 kV distribution lines on private and public lands, which will convey power from each of the turbines to a transformer substation. From that point, an overhead 44 kV line will convey the electricity to Hydro One's distribution system. The components of East Durham's proposed distribution system are collectively referred to in this Decision and Order as the "Distribution System".

East Durham proposes to locate approximately 9.1 kilometers of the underground portion of the Distribution System on road allowances that are owned by the Municipality. The road allowances at issue are referred to in this Decision and Order as the "Road Allowances".

Subsections 41(1) and 41(9) of the Act provide as follows:

41. (1) A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

41. (9) The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.

East Durham submits that it is a "distributor" within the meaning of subsection 2(1) of the Act. Accordingly, East Durham submits that it has the right to install facilities for the purpose of the Distribution System under "any public street or highway" pursuant to subsection 41(1) of the Act.

East Durham submits that it has been unsuccessful in its attempts to agree with the Municipality on the location of the portion of the Distribution System that would be on the Road Allowances. The Municipality does not dispute this. East Durham also submits that neither the Municipality nor any other party in this proceeding has proposed an alternate location. This is not disputed. Accordingly, East Durham is applying to the Board under subsection 41(9) for a determination of the location of the portion of the Distribution System that would be installed under the Road Allowances as described below.

- The Distribution System shall generally be located in the Road Allowances listed on Exhibit B, Tab 6, Schedule 1, Appendix A, as shown in the drawings included in Exhibit B, Tab 6, Schedule 1, Appendix B (and updated in section 2.0 of East Durham's argument-in-chief and in response to the Board's letter dated October 2, 2013).
- Where practicable, and where it meets all applicable engineering, environmental and health and safety standards, the Distribution System lines shall be located 1-4 meters from the abutting property line.
- Where practicable, and where they meet all applicable engineering, environmental and health and safety standards, the diagrams shown at Exhibit B, Tab 6, Schedule 1, Appendices C and D shall be followed in constructing the Distribution System within the Road Allowances.¹

The submissions of the Municipality and the Parkins regarding the various issues are described under Board Findings. Board staff declined to file a submission.

SCOPE OF THE BOARD'S JURISDICTION

As indicated above, the Board's authority in this proceeding is derived from section 41 of the Act.

Subsection 41(9) limits the scope of this proceeding to a determination of the location of the applicable portion of the Distribution System within the Road Allowances.

As indicated above, the Board received a number of letters of comment from local residents. These letters dealt with the location of the Project's wind turbines and their

¹ Pre-filed evidence of East Durham, Ex B/Tab 6/Schedule 1

impact on property values, health, and aesthetics. They also dealt with the Ontario Government's renewable energy policy in general and broad environmental issues.

Given the scope of subsection 41(9), it is not the Board's role in this proceeding to decide whether the Project should be approved, consider issues relating to wind turbines or renewable energy policy generally, or consider alternatives to the Project such as routes for the Distribution System that are outside of the Road Allowances. Accordingly, the concerns in the letters of comment described above are not within the scope of this proceeding.

BOARD FINDINGS

Is The Applicant a Distributor?

The Municipality submitted that the application should be denied because East Durham is not a "distributor" within the meaning of section 41. It submitted that this is the case because East Durham does not own or operate a distribution system and that, until it receives its Renewable Energy Approval ("REA") from the Ministry of the Environment ("MOE"), it will not have the authority to do so. Distinguishing this case from the Board's Decision in the Plateau case², the Municipality submitted that Plateau, at the time of its application, had received MOE approval to construct and operate its "renewable energy generation facilities" which also authorized Plateau to construct, own and operate a distribution system.

In response, East Durham submitted that the Act does not require all necessary approvals to be in place prior to being able to access the rights afforded to a distributor under section 41.

Concerning the Plateau case, East Durham submitted that whether or not Plateau had certain approvals in place at the time of its section 41 application was not cited as a basis for the Decision. East Durham also referred to the Board's more recent Wainfleet Decision³. In that case, according to East Durham, the Board granted the section 41 application prior to Wainfleet having received the REA for its project. East Durham further submitted that the Board's Decision and Order in that case was not made conditional on receipt of the REA.

² EB-2010-0253

³ EB-2013-0031

The Board agrees with East Durham that the Act does not require that all necessary approvals, such as the REA, be obtained prior to granting an application under subsection 41(9). Accordingly, the Board does not consider that there is any relevant basis to distinguish this application from the applications in the Plateau and Wainfleet cases, in which the applicants were considered to be "distributors". The Board notes, however, that in order to proceed with construction of the Distribution System, East Durham will need to obtain all legally required permits and other approvals.

Proposed Location of the Distribution System

East Durham has provided maps that identify the starting and ending points of the various segments of the Distribution System within Road Allowances. Further, the table at section 2.0 of East Durham's argument-in-chief provides the length and location (i.e. western side of the Road Allowance) of each segment. Concerning the proposed setback of the Distribution System as indicated above, East Durham has proposed that, where practicable, and where it meets all applicable engineering, environmental and health and safety standards, the Distribution System lines shall be located 1-4metres from the abutting property line.

The Municipality submitted that East Durham's application should be denied because East Durham had not provided the "location" of the proposed lines within the Road Allowances. The Municipality submitted that what East Durham provided was not actual locations but merely "guidelines" for determining locations. Although the Municipality acknowledged that East Durham had refined its general description of the proposed locations in its argument-in-chief, it maintained that these locations were not sufficiently precise. The Municipality submitted that it is not its duty to propose locations, and that it should be East Durham who must propose locations.

East Durham submitted that it has proposed a "narrow corridor" which provides the best balance of environmental, social, technical and economic considerations. East Durham also submitted that, given that the Board will be determining the location of the Distribution System in this proceeding prior to the start of construction, the approved location must allow for some reasonable flexibility to ensure that East Durham can address any engineering, environmental, health and safety or other practical challenges that may arise during construction.

East Durham also submitted that in its view section 41 does not require the identification of a "precise" or "exact" location. Section 41, according to East Durham, only states that the "location" shall be agreed upon by the transmitter or distributor and the owner. East Durham argued that this wording makes it a mutual obligation on the distributor and the owner of the Road Allowance. East Durham also submitted that the Municipality, by its own admission, had refused to provide feedback to help refine the proposed locations. East Durham submitted that if the Municipality had provided comments regarding the location and any existing infrastructure in the area, it would have enabled East Durham to further refine the proposed locations.

The Board issued a letter to East Durham, dated October 2, 2013, requesting additional information to support East Durham's proposed 1-4 meter location parameter. East Durham responded, by letter dated October 4, 2013. East Durham provided examples of municipalities and counties in the vicinity of the Municipality that have adopted policies regarding the location of underground infrastructure that are consistent with the considerations described by East Durham. This included a policy issued by the County of Grey, in which the Municipality is located, titled, Policy for Utility Place on Grey County Rights of Ways.

East Durham also submitted that, as part of its REA application, it undertook various studies in the project area, such as the Natural Heritage Assessment, the Water Assessment, and Archeological Assessment and consulted all stakeholders in keeping with the requirements in Ontario Regulation 359/09. Following these studies and others, East Durham states that its initial proposal was refined and revisions were incorporated where appropriate, to ensure that the proposed location represents the best balance of environmental, social, technical and economic considerations.

The Parkins submitted that the additional information filed by East Durham did not support the request for a 1-4 meter corridor. The Parkins submitted that the requirement for a 1.5 meter setback in the Municipality of Lambton Shores was for overhead utility lines and not underground lines. The Parkins, submitted that although in their view the Municipality would likely not agree, a 1 meter setback from street line would be acceptable to them. The Parkins recommendation was based on the Municipality of Lambton Shores' Infrastructure Design Guidelines and Construction Standards, dated January 2002.

While section 41 requires that the Board determine a "location" under the road allowance, the Board agrees with East Durham that this wording does not require a precise location. The Board considers that the mapping and location information provided by East Durham is sufficient to determine the location for the purpose of this application.

The Board accepts the evidence of East Durham that it is appropriate to locate the Distribution System lines 1-4 meters from the abutting property line. The Board considers, however, that this location could probably have been refined further if there had been more communication between East Durham and the Municipality. The Board encourages East Durham and the Municipality to consult during construction to address any issues or concerns about the precise location that may arise. As indicated below, the Board has made provision in its decision for any agreement reached as a result of such consultation.

Stray Voltage

The Municipality and the Parkins have raised concerns about the possibility that the Distribution System will cause stray voltage problems. The Parkins filed a copy of a Private Member's Bill concerning stray voltage and the Ontario *Green Energy Act*. East Durham argued that wind turbines do not cause stray voltage. East Durham further argued that Hydro One oversees stray voltage issues and has developed a protocol to proactively test for stray voltage and mitigate any concerns at no cost to the landowner. East Durham stated that it will assist any concerned landowner in the Project area in this process with Hydro One.

East Durham also argued there is no nexus between the evidence filed by the Parkins concerning stray voltage generally and the issue before the Board in this proceeding (i.e. where portions of the Distribution System should be located within the Road Allowances). East Durham submitted that the Parkins have not filed any evidence suggesting that East Durham's Distribution System in particular will cause stray voltage or that, if so, the proposed location of a portion of the Distribution System in the Road Allowances is such that stray voltage would cause an adverse impact.

The Board agrees with East Durham that the evidence does not indicate that the portion of the Distribution System proposed to be located in the Road Allowances would necessarily cause stray voltage, or if so, that the proposed location in the Road Allowances would cause an adverse impact due to stray voltage. The Board also notes

that section 4.7 and Appendix H of the Board's *Distribution System Code* sets out the investigation procedures related to stray voltage.

THE BOARD ORDERS THAT:

1. The location of East Durham's Distribution System on Road Allowances owned by the Municipality is approved as follows:
 - a. The Distribution System shall be located in the Road Allowances listed on Exhibit B, Tab 6, Schedule 1, Appendix A, as shown in the drawings included in Exhibit B, Tab 6, Schedule 1, Appendix B (and updated in section 2.0 of East Durham's argument-in-chief and in response to the Board's letter dated October 2, 2013).
 - b. The Distribution System lines shall be located 1-4 meters from the abutting property line unless otherwise agreed between East Durham and the Municipality.
 - c. The diagrams shown at Exhibit B, Tab 6, Schedule 1, Appendices C and D shall be followed in constructing the Distribution System within the Road Allowances.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, November 7, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary