

**IN THE MATTER OF an application by wpd White Pines Wind Incorporated for an order pursuant to Section 92 of the Ontario Energy Board Act, 1988 granting leave to construct transmission facilities to connect a wind generation project to the Ontario transmission system in Prince Edward County
EB-2013-0339**

ARGUMENT/SUBMISSIONS OF THE COUNTY OF PRINCE EDWARD

OVERVIEW

The essence of the Argument/Submissions herein respectfully submitted on behalf of the Municipal Corporation of the County of Prince Edward, is that the approval of the Application of Wpd White Pines Wind Incorporated in the above noted matter is premature at this time and should not be granted at this time. The Applicant should be required to address the matters identified in the evidence of the County and raised in this Argument before consideration is given by the Board to approval of the Application.

A. APPLICATION IS PREMATURE AND SHOULD NOT BE APPROVED AT THIS TIME

1. It is premature for the Application of Wpd White Pines Wind Incorporated [herein referred to as “the Applicant”] to be approved by the Ontario Energy Board [”herein referred to as “the OEB”] at this time for the following reasons: (i) the Applicant has failed to have any meaningful discussions or negotiations with the Municipal Corporation of the County of Prince Edward

[hereinafter referred to as “ the County”] which is the road authority for the municipal roads upon which the proposed transmission lines are to be located; (ii) subsequent to the preliminary, inadequate and only meeting between the Applicant and the County, the proposed transmission route has been changed by the Applicant and there have been no meetings or discussions with respect to the substance of the proposed change; (iii) the Applicant has proposed that the transmission lines will be buried underground and not placed on poles however the Applicant has failed to undertake adequate investigations as to whether the transmission lines can in fact be buried underground due to the prevalence of limestone bedrock in Prince Edward County; and (iv) the Applicant has not taken into account that the transmission lines are proposed to be laid beneath “forced roads” which have irregular and varying widths and boundaries which have not been surveyed or determined.

2. Accordingly, the OEB should defer making a decision until the Applicant has satisfactorily addressed the above noted matters which make the Application premature.

(i) **LACK OF MEANINGFUL DISCUSSIONS AND NEGOTIATIONS WITH ROAD AUTHORITY**

3. The Applicant states in Exhibit F, Tab 1, Schedule 1, Page 2 of its Application that it is “negotiating with the municipality for a lease or license agreement charting the terms under which the municipality will permit the construction and operation of the portions of the transmission line that will be located within the municipal road allowance.”

4. As attested to in the Affidavit of Robert McAuley, there was only one meeting and it was very preliminary in nature. In fact, the Applicant has had no meaningful discussions or negotiations with the County notwithstanding the fact that the County has confirmed its desire to have additional meetings subject to the provision by the Applicant of more substantive information regarding the proposed transmission lines within the County road network.
5. The one and only meeting between the Applicant and the County regarding the transmission line took place on March 15, 2013. At that meeting the only information that was provided by the Applicant was very preliminary in nature. At the scale that was provided it was difficult, if not impossible, for the County to review the drawings with any precision and provide any meaningful comments. Accordingly the County specifically requested more detailed information before having another meeting. No additional or revised reports or documentation have ever been presented to the County.

(ii) **APPLICANT HAS CHANGED THE PROPOSED TRANSMISSION ROUTE WITHOUT ANY DISCUSSION OR MEETINGS WITH ROAD AUTHORITY**

6. After the Application was filed with the Ontario Energy Board later that year in the fall of 2013, the Applicant, in response to an inquiry from the County, acknowledged that the proposed transmission route had changed.
7. No meetings or discussions between the Applicant and the County with respect to the revised route have been held.

8. It is not possible for the County and the Applicant to have meaningful discussions or negotiations in the absence of adequate or up-to-date information.
9. The County is left in the position of being unable to provide meaningful input to the OEB due to the failure of the Applicant to provide sufficient information to the County.
10. The Applicant ought not to be able to obtain the requested approval from the OEB in the absence of proper disclosure and discussions with the municipal road authority.

(iii) APPLICANT PROPOSES TO BURY TRANSMISSION LINES IN BEDROCK WHERE OTHER UTILITY PROVIDERS HAVE BEEN UNABLE TO DO SO

11. The County explicitly raised the concern to the Applicant that, given the prevalence of limestone bedrock in Prince Edward County, other utility providers have been unable to bury their wire infrastructure underground. The Applicant has not undertaken an investigation in this regard notwithstanding the County's concern in this respect.
12. The Applicant, in response to this concern, acknowledged in its response to Interrogatories that if the transmission line cannot be buried due to the presence of bedrock or for other reasons, the Applicant will have to modify its Application. This demonstrates that the Applicant has not completed its due diligence in submitting its preferred route for the transmission line. The Application is premature.

(iv) **APPLICANT HAS FAILED TO INVESTIGATE WIDTH OF
“FORCED ROADS” TO CONFIRM THAT ALL PERMISSIONS
HAVE BEEN OBTAINED**

13. The County identified in March of 2013 that the Applicant’s proposal to lay transmission lines within “forced roads” requires careful investigation to determine the legal limits of such roads.
14. Forced roads are municipal roads that have NOT been laid out in accordance with surveys, rather such roads have been created by “historical usage”. Thus, forced roads [unlike typical municipal roads] have irregular and varying widths, resulting in unconfirmed and varying boundaries between municipal and private ownership.
15. In its response to Interrogatories, the Applicant indicates that it would be pleased to discuss the matter of the boundaries of the “forced roads” with the County in a subsequent meeting. This is not an adequate or satisfactory response and demonstrates the Applicant has not considered whether in fact the transmission lines can be laid within those portions of the “forced roads” that are actually owned by the Municipality. Due to the irregular and varying widths of forced roads, the Applicant may require further permissions from private landowners. This demonstrates that the Applicant cannot be certain that it has acquired agreements with all affected landowners with respect to its proposed transmission route as there can be no certainty with respect to the limits of the private property and the municipal property. In our submission, this is compelling evidence that the Applicant has not completed the required due diligence to assure the OEB or the County that it has the legal authority to

place the transmission line within these forced roads as proposed. The Application is premature.

B. APPROVAL OF THE APPLICATION AT THIS TIME IS PREJUDICIAL TO THE COUNTY

16. The failure of the Applicant to provide a sufficient level of information regarding the proposed transmission route has seriously disadvantaged and prejudiced the County in providing important comments, evidence and information to the OEB as part of the OEB's decision-making process.
17. The Applicant suggests that some of the missing information will be provided after the OEB decision is rendered. Providing such information after an approval is a seriously flawed approach and severely limits the ability of the OEB to make a proper decision when it does not have all relevant facts and evidence from all affected landowners.
18. It is respectfully submitted that the OEB cannot make an informed decision as to the appropriateness of the proposed transmission line before it has detailed comments and informed submissions from the County as the municipal road authority.

C. APPLICANT HAS FAILED TO MEET THE STATUTORY REQUIREMENTS OF THE ONTARIO ENERGY BOARD ACT

19. *Section 97 of the Ontario Energy Board Act* [hereinafter referred to as "the Act"] provides that in an application under Section 92 of the Act: "leave to construct shall not be granted until the applicant satisfies the Board that it has

offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board”.

20. The Applicant has not offered to the County, as the municipal road authority and thus an owner of land affected by the Applicant’s proposed route, any form of agreement whatsoever. Nor have there been any meaningful discussions to date to suggest what the terms of such an agreement might contain.

21. The Applicant has failed to offer the County any agreement and there is no reasonable expectation that at this stage, due to the incomplete and premature nature of the Application, it can offer to the County an agreement that properly addresses the legitimate and fundamental concerns of the County.

22. ***Section 96 (2) of the Act:*** Once an application is determined by the OEB to be complete and not premature, the Board is to consider whether the construction of the proposed work is in the public interest having reference to the matters enunciated in Section 96 (2) of the Act.

23. The uncontradicted evidence is that the County has serious concerns with the proposal by the Applicant to use the County’s bridges to “hang” the transmission cables. The concerns include, but are not limited to, effects on the bridge’s structural integrity, damage to the bridge over time, premature wear, relocation/replacement hurdles/costs caused by the presence of third party infrastructure, risks associated with high voltage transmission cables on a public bridge and the potential for vandalism.

24. The negative financial impacts upon the County of the proposed transmission route were not examined or considered by the Applicant. Consequently the

County in their Interrogatories requested that the Applicant provide a full structural, future life cycle and future maintenance cost impacts analysis of the bridges along the intended transmission and collector lines route. In reply to the County's Interrogatories, the Applicant responded: "This matter is outside the scope of the Board's jurisdiction under section 96 of the Act. However, wpd is willing to discuss this issue as part of the negotiations surrounding the terms of the road use agreement." The absence of this important information seriously disadvantages and prejudices the County in providing important information to the OEB as it relates to the issue of costs and the interests of its ratepayers [i.e. consumers] with respect to prices and the reliability and quality of electrical service as required by Section 96 (2) of the Act.

25. In addition, the County has concerns in allowing the County's roads to be used for the proposed transmission and collector cables. Underground installation is proposed, yet that does not negate impacts on road infrastructure with negative financial impacts upon the County. Consequently the County in their Interrogatories requested the Applicant to conduct a full structural, future life cycle and future maintenance cost impacts analysis of the municipal roads along the intended transmission and collector lines route to determine any future financial impacts on the County arising from the installation, operation, repair, maintenance and decommissioning of the proposed transmission and collector cables. The Applicant has failed to provide any of the foregoing information. The absence of this important information seriously disadvantages and prejudices the County in providing input and evidence to the OEB as it relates to the issue of costs and the interests of its ratepayers [i.e. consumers] with respect to prices and the reliability and quality of electrical service as required by Section 96 (2) of the Act.

D. CONCLUSION

26. In conclusion, it is respectfully submitted that the Applicant has an obligation to submit to the OEB an Application and seek a decision thereon only after full disclosure of the details of the revised Application has been made to the affected owners of land and in particular the municipal road authority, and reasonable efforts have been made to address the concerns of the municipal road authority through a road use agreement. A decision on this Application ought not to be rendered until the Applicant has done so.

27. The Applicant has totally failed to make reasonable efforts to provide the County with information with respect to the County's legitimate concerns and to engage in meaningful discussions with respect to same. Accordingly the Applicant should not receive an approval from the OEB at this time.

Respectfully submitted.

Templeman Menninga LLP

Solicitors for the Corporation of the County of Prince Edward