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By Email

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Ontario Energy Board
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Attn: Kirsten Walli, Board Secretary

Dear Ms Walli :

**Re: Wpd White Pines Wind Incorporated – County of Prince Edward
Board File No. EB-2013-0339**

We acknowledge receipt of the Board's Staff Submission in the above noted case. We are writing to the Board and the parties to express a serious concern that has been made apparent by the submissions from Board Staff.

At page 6 of the Board Staff Submission, reference is made to a recent OEB decision [EB-2013-0203]. Based on our reading of that OEB decision, it appears that the majority of the panel in that case was of the view that a transmission company does not have to satisfy the Board that it has offered or will offer an agreement to a municipality before leave to construct is granted by the Board. Respectfully, this finding seems to disregard what we believe to be a clear condition precedent in Section 97 of the OEBA. As such, we respectfully submit that little or no weight should be placed on the ruling in that case.

The submission from Board staff in this case quotes from that recent Board decision [EB-2013-0203] and states that "in the case of municipal road allowances, an Applicant is not required to

submit a road use or other agreement to the Board under section 97 where it proposes to rely subsequently upon the statutory rights conferred by section 41 of the Electricity Act”.

The serious concern that we have with this statement is that it creates the perception that there are other remedies available to the County in this matter whereas the reality is that the County of Prince Edward is statutorily prohibited from asking for a determination under s. 41(9) of the Electricity Act, as that provision is rendered inoperative by section 41(10) of the Electricity Act when an application is made under s. 92 of the OEBA.

The result is that a municipality, such as the County of Prince Edward, appears to be left with no remedy for seeking an independent adjudication and a determination in circumstances where an agreement regarding use of municipal road allowance for a transmission line cannot be reached on reasonable terms acceptable to the municipality as the road authority.

We respectfully submit that this cannot be a proper or fair interpretation of the interaction between the Electricity Act and the OEBA. In our view, a fair and proper reading of both statutes indicates a clear intent to create the opportunity for a tribunal to become involved where an agreement cannot be reached between an applicant and the municipality.

We have clearly stated in our submissions filed with the Board and the parties that it is premature to render a decision with respect to the wpd application at this time. A direction from the Board requiring the applicant to engage in meaningful discussions and negotiations with the County is, in our respectful view, an appropriate course of action at this time.

Respectfully submitted

Yours very truly,
Templeman Menninga LLP



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DWF:pjo
Enc.