

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5580

E-mail: iminott@stikeman.com

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August 22, 2014
File No.: 129316.1017

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

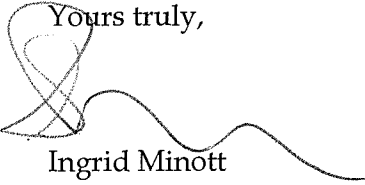
Dear Ms. Walli:

**Re: wpd White Pines Wind Incorporated (the "Applicant")
EB-2013-0339**

We are the solicitors of the Applicant, enclosed please find the Applicant's Reply Submissions. Two (2) hard copies will follow by courier shortly.

Should you have any questions, please do not hesitate to contact me.

Yours truly,



Ingrid Minott

IM/dl
Encl.

cc: All Participants

TORONTO
MONTRÉAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

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 White Pines Wind Incorporated for an Order or Orders granting Leave to Construct a new 69 kV transmission line and Associated facilities in Prince Edward County, Ontario.

APPLICANT’S REPLY SUBMISSIONS

BACKGROUND

wpd White Pines Wind Incorporated (“**wpd White Pines**” or the “**Applicant**”) filed an application with the Ontario Energy Board (the “**Board**”) on September 18, 2013 under section 92 and 96 of the OEB Act (the “**Application**”) for leave to construct 28 km of 69 kV underground electricity transmission facilities. The Applicant filed submissions regarding the Board’s approval of the Application on August 6, 2014. On August 13, 2014, Board staff and intervenors filed their submissions in respect of the Application.

These brief written submissions are prepared by the Applicant in reply to the submissions filed by the County of Prince Edward (the “**County**”) and the Alliance to Protect Prince Edward County (“**APPEC**”), intervenors in the proceedings.

REPLY TO THE SUBMISSIONS OF THE COUNTY OF PRINCE EDWARD

Negotiation of a Road Use Agreement

Contrary to the County’s submissions, there is no requirement for a road use agreement to be negotiated as a prerequisite to the Board’s approval of an Application under section 92(2) and 96 of the OEB Act. While section 97 of the OEB Act provides the Board with discretion to approve the form of agreements offered to affected landowners, in its Decision on Threshold Questions and Procedural Order No. 2 in respect of EB-2013-0203, filed by Niagara Region Wind Corporation, the Board expressly stated that “[i]n the case of municipal road allowances an Applicant is not required to submit a road use or other

1 agreement to the Board under section 97 where it proposes to rely subsequently upon the
2 statutory rights conferred by section 41 of the *Electricity Act*.”¹

3 In any event, the Applicant submits that the County cannot rely on the lack of meaningful
4 discussions and negotiations with the Applicant regarding the terms of a road use
5 agreement as a basis for the Board to deny approval of the Application where the County
6 has admittedly imposed conditions on the ability of the Applicant and the County to engage
7 in those discussions. As noted in its submissions, the County is only prepared to engage in
8 discussions with the Applicant “subject to the provision by the Applicant of more
9 substantive information regarding the proposed transmission lines within the County road
10 network.”² As noted in its Argument in Chief, the Applicant is open to continuing
11 discussions with the County. However, in the event that the parties are unable to reach an
12 agreement, the Applicant will rely on the rights and remedies provided to a transmitter
13 under section 41 of the *Electricity Act, 1998* and Section 101 of the OEB Act.

14 **Discussions Regarding Changes to the Transmission Line**

15 As noted in its Application, the Applicant held a public meeting on April 29, 2013 to provide
16 the general public and interested stakeholders, including the County, with information
17 regarding the changes to the Transmission Line. At this meeting, the Applicant solicited
18 feedback regarding the changes to the Transmission Line. The County, like all interested
19 stakeholders, therefore had an opportunity to hear from the Applicant and to provide
20 comments with respect to the revised route.

21 Further, as stated above, the County cannot rely on the lack of discussions and meetings
22 with the Applicant regarding the revised route for the Transmission Line where the County
23 has consistently rejected the Applicant’s attempts to initiate discussions by imposing
24 conditions on the parties’ ability to engage in any discussion.

25 **Limestone Bedrock, Forced Roads and Bridge Crossings**

¹ Decision on Threshold Questions and Procedural Order No. 2 in respect of the EB-2013-0203 dated February 4, 2014, pp. 12-13 (“NRWC Decision”)

² Argument/Submissions of the County of Prince Edward filed August 13, 2014, para. 4

1 In approving the route or location of an electricity transmission facility, the Board is
2 constrained by the limitations contained in subsection 96(2) of the OEB Act. As noted by the
3 Board in the NRWC Decision, the "Board in approving the route or location will be limited
4 to considering matters relating to the price, reliability, or quality of electricity services (or to
5 the promotion of government policy in relation to renewable energy). Matters outside of
6 those specific public interest criteria cannot be considered by the Board."³ Further, in the
7 Board's Decision and Order regarding an application filed by K2 Wind Ontario Limited
8 Partnership, the Board stated that "[g]iven the focus established by subsection 96(2), issues
9 concerning, for example, the environmental, health, land valuation and aesthetics of the
10 Transmission Facilities are not within the scope of the Board's jurisdiction."⁴

11 In its submissions, the County has raised concerns about the feasibility of burying the
12 Transmission Line underground due to the prevalence of bedrock in Prince Edward
13 County. The County also raises concerns regarding the Applicant's proposal to mount the
14 Transmission Line to the sides of two existing bridges and concerns regarding the
15 boundaries of forced roads in Prince Edward County. The Applicant submits that issues
16 concerning bedrock, forced roads and bridge crossings are construction details and do not
17 directly relate to the price, reliability or quality of electricity service or the promotion of the
18 government's policy and are accordingly, beyond the scope of the Board's jurisdiction under
19 section 96(2) of the OEB Act. These construction details will be determined by the Applicant
20 at a later date prior to construction of the Transmission Line. The Applicant will also consult
21 with the County regarding any permits required to mount the Transmission Line to the
22 bridges.

23 **Prejudice to the County**

24 The Applicant submits that the County has not demonstrated that it will be prejudiced by
25 the Board's approval of the Application. The Applicant has repeatedly sought to engage the
26 County in discussions regarding the Transmission Line and the negotiation of a road use
27 agreement. Furthermore, as noted above, the Applicant intends to continue to engage the

³ NRWC Decision, *supra* note 1, p. 11

⁴ K2 Wind Ontario Limited Partnership (Re), 2013 LNONOEB 4 at para. 15 (the "K2 Wind Decision")

County in discussions if leave to construct is granted. As such, the County will have further occasions to raise its legitimate concerns. The Applicant will only resort to its rights under section 41 of the *Electricity Act, 1998* and section 101 of the OEB Act if the parties are unable to reach an agreement. In any event, the Applicant submits that the question of whether or not the County will be prejudiced by the Board's approval of an electricity transmission facility is not an appropriate consideration by the Board under section 96(2) of the OEB Act.

REPLY TO THE SUBMISSIONS OF THE ALLIANCE TO PROTECT PRINCE EDWARD COUNTY

Project Location Description and Route Map

As noted, in response 1(a) of the Applicant's Response to APPEC's Interrogatories and as acknowledged by APPEC in its submissions, to comply with the requirements of section 94 of the OEB Act, an applicant need only provide a "general location map" of the proposed transmission line to identify the municipalities, highways, railways, utility lines and navigable waterways that the line will traverse.⁵ In asserting that the Project Location Description and Route Map contained in the Application is deficient, APPEC does not suggest that it is unable to identify the municipality and highways that the Transmission Line will traverse. Indeed, APPEC's submissions and interrogatories regarding Maypul Layn Road and Crowes Road indicate that APPEC is well aware of the Transmission Line route. Contrary to APPEC's assertions, the Applicant submits that the Project Location Description and maps included in the Application comply with the requirements of section 94 of the OEB Act.

Transmission Line Route

As stated above, the Transmission Line Route is clearly identified on the maps included in the Application. APPEC's request for information regarding the Milford Black Creek Valley Provincially Significant ANSI solicits environmental and construction information, and attempts to raise matters outside the scope of the proceedings. Concerns regarding the

⁵ Applicant's Response to Interrogatories filed April 2, 2014, p. 8; APPEC's Submissions filed August 13, 2014, response 1(a), p. 2

1 Milford Black Creek Valley Provincially Significant ANSI do not directly relate to the price,
2 reliability or quality of electricity service or the promotion of the government's policy, and
3 are accordingly beyond the scope of the Board's jurisdiction under section 96(2) of the OEB
4 Act.

5 **Construction of the Transmission Line**

6 Contrary to APPEC's assertion, the Applicant has provided information on the type of
7 Transmission Line it proposes to construct. In response 2(d) of the Applicant's Response to
8 APPEC's Interrogatories, the Applicant stated that it intends to use TRXLPE underground
9 insulated cable for the Transmission Line and that the cable will meet the minimum rating
10 requirements for 69 kV or higher.⁶

11 In response 2(l) of the Applicant's Response to APPEC's Interrogatories, the Applicant
12 stated that it would address public safety concerns regarding the Transmission Line by
13 complying with various codes and regulations, including the Ontario Electrical Safety Code
14 and Ontario One Call. The Applicant further stated that it would bury a ribbon
15 underground to alert future workers in the area of the Transmission Line.⁷

16 APPEC's assertions regarding the construction plans, construction schedule and culvert
17 installation do not directly relate to the price, reliability or quality of electricity service or the
18 promotion of the government's policy, and are accordingly beyond the scope of the Board's
19 jurisdiction under section 96(2) of the OEB Act. In the K2 Wind Decision, the Board stated
20 that in assessing any impact that a transmission facility "may have on reliability and quality
21 of electricity service, the Board starts from the premise that the [facility] exists as presented
22 in the application[.]"⁸ Inquiries into construction plans are therefore not appropriate.

23 **Reliability and Quality of Electricity Service**

24 The delay in providing the Board with an amend SIA and amended CIA does not preclude
25 the Board from exercising its discretion to approve the Application. As stated in the

⁶ Applicant's Response to Interrogatories filed April 2, 2014, response 2(d), pp. 11-12

⁷ Applicant's Response to Interrogatories filed April 2, 2014, response 2(1), p. 12

⁸ K2 Wind Decision, *supra* note 4, para. 15

1 Applicant's submissions, the Applicant anticipates that the amended SIA will conclude that
2 the connection of the White Pines Wind Project will have no material adverse impact on the
3 reliability of electricity service. In addition, should an amended CIA be required, the
4 Applicant will comply with the reasonable connection requirements contained in the
5 amended CIA. The Applicant therefore requests that the Board approve the Application and
6 impose a condition requiring the Applicant to obtain the amended SIA and amended CIA, if
7 one is required, and comply with the reasonable conditions contained therein.

8 **Consultation**

9 Contrary to APPEC's assertions, the Applicant submits that it engaged in extensive
10 consultation regarding the Transmission Project. The Applicant's consultation efforts are
11 detailed in the Interconnection Line Consultation Report included at Exhibit G, Tab 1,
12 Schedule 5 of the Application. APPEC's assertions regarding the Applicant's consultation
13 efforts are inconsistent and should not be considered by the Board in its review of the
14 Application. On the one hand, APPEC states that there was a "lack of consultation with
15 stakeholders and affected parties;" on the other hand, it states that to the best of its
16 knowledge "no recommendations and mitigations from interested parties and affected
17 stakeholders" have been implemented. These statements are not reconcilable. APPEC
18 identifies the fact that the Applicant did not "redirect the route of the line to avoid Maypul
19 Layn Road" as evidence that the Applicant's consultation efforts were deficient. However,
20 as noted in the Application, various alternative routes were considered and the Applicant
21 determined that the Preferred Route was the most viable. The Applicant submits that there
22 is no requirement that it implement all recommendations received from interested parties
23 and affected stakeholders as part of its consultation efforts.

24 **CONCLUSION**

25 The approval of the Transmission Project is in the public interest and will not adversely
26 affect the reliability and quality of electricity service in the province. Furthermore, approval
27 of the Transmission Project is consistent with the Ontario government's promotion of the
28 use of renewable energy sources and will assist Ontario with achieving its renewable energy

- 1 objectives. The Applicant reiterates its request that the Board, pursuant to section 92 and 96
- 2 of the OEB Act, approve this Application for leave to construct the Transmission Project.

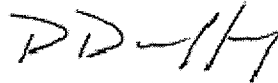
ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, Ontario, this 22nd day of August, 2014

wpd White Pines Wind Inc.

by its counsel

Stikeman Elliott LLP

A handwritten signature in black ink, appearing to read "PD-117", is written over a horizontal line.

Patrick Duffy