

# 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

Ingrid Minott  
Direct: (416) 869-5580  
E-mail: iminott@stikeman.com

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August 25, 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")  
Application For Leave to Construct Transmission Facilities  
Board File No. EB - 2013-0339**

We write further to the letter of D. Wayne Fairbrother, solicitor for the County of Prince Edward (the "**County**"), dated August 22, 2014 and the letter of the Ontario Energy Board (the "**Board**") dated the same day, which extended the deadline for the Applicant to file its reply submissions in this proceeding to August 25, 2014.

As the Applicant stated in its Argument in Chief, in *Conserve Our Rural Environment (Core) Inc. v. Dufferin Wind Power Inc.*, the Divisional Court confirmed that when considering the agreements to be offered to affected landowners, the Board does not become involved in the detailed negotiations between a landowner and the applicant. Instead, the Board merely "approves a standard form of agreement in the context of the application in which it has been filed."<sup>1</sup> In the Board's decision dated February 4, 2014 in EB-2013-0203, the Board stated that "[i]n 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*."

There is no reason for the Board to revisit its decision in EB-2013-0203. In its submissions, the County continues to misconstrue the rights granted to the

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<sup>1</sup> *Conserve Our Rural Environment (Core) Inc. v. Dufferin Wind Power Inc.*, 2013 CarswellOnt 16412 at para. 12 (Div. Ct.)

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Applicant by section 41. The Applicant has a right to access public streets and highways under section 41 and can exercise that right *without the consent of the municipality*. A road use agreement is desirable in that it provides greater specificity around the terms of access, but the signing of a road use agreement with the municipality is not required nor is it a prerequisite for access to a roadway. Accordingly, when considering a section 41 application, the Board does not set the terms of a road use agreement as Mr. Fairbrother appears to assume. The Board's role in a section 41 application is limited to identifying the location of the facilities – a function which is obviously not needed where the location of the facilities has been determined through a leave to construct application.

Furthermore, even if the Board were to revisit its decision in EB-2013-0203, it would have no authority to insert itself in the negotiations between the Applicant and the County under section 97. As the Divisional Court stated in *CORE*, the Board's role is not to become involved in detailed negotiations between a landowner and the applicant. The completion of landowner agreements is not a prerequisite to the granting of leave to construct.

Yours truly,



Ingrid Minott

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cc. All Participants