

Eric K. Gillespie  
Direct Tel: 416.703.6362  
Email: [egillespie@gillespielaw.ca](mailto:egillespie@gillespielaw.ca)

October 31, 2014

**Delivered via Email**

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON  
M4P 1E4  
[boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

Dear Ms. Walli:

**Re: wpd White Pines Wind Incorporated Application for Leave to Construct Transmission Facilities, Ontario Energy Board File Number EB-2013-0339 and Environmental Registry Number 012-1279**

We are the solicitors for the Alliance to Protect Prince Edward County (APPEC), an intervenor in the proceedings for this application. APPEC has made known its position during the proceedings that wpd White Pines is in contravention of the *Electricity Act*, 1998 (the “Act”). The Director, Environmental Approvals Branch, Ministry of the Environment and Climate Change (the “Director” and the “Ministry”) has responded in this matter. While APPEC appreciates the Director’s efforts to clarify the Ministry’s position, APPEC’s position remains unchanged. We would therefore appreciate clarification from the Board on this matter.

APPEC's position, as stated previously, is that the transmission line in the White Pines renewable energy generation facility exceeds 50 kilometres and that wpd White Pines is therefore in contravention of the *Act*.<sup>1</sup> However, even if the Board does not find that the total length of the transmission line in this facility exceeds 50 kilometres wpd White Pines would still not be in compliance with the *Act*. According to the Director, the renewable energy approval

---

<sup>1</sup> Letter dated April 21, 2014 from E. Gillespie to Hon. Bob Chiarelli, Minister of Energy ; Hon. Jim Bradley, Minister of the Environment ; Kirsten Walli, Board Secretary, Ontario Energy Board ; Sarah Paul, Director, Environmental Approvals Access and Service Integration Branch, Ministry of the Environment and Climate Change.

application for the White Pines Wind Project indicates that the total length of distribution lines (34.5 kV) is 43 km and the total length of transmission lines (69 kV) is 28 km. For the purposes of defining “renewable energy generation facility” in the *Act* O. Reg. 160/99 subsection 4(1) prescribes, among other things, *transmission or distribution lines of less than 50 kilometres in length* that are associated with or ancillary to a renewable energy generation facility.

APPEC understands that the Board is the proper authority to provide clarification. The Board's authority to make determinations on such matters is set out in the *Act* as follows: “the definitions of “distribute”, “distribution system”, “distributor”, “transmission system”, “transmit” and “transmitter” in subsection (1) are subject to any determination made under section 84 of the *Ontario Energy Board Act, 1998, c. 15, Sched. A, s. 2 (2).*”

#### Transmission line associated with or ancillary to wpd White Pines

The Director clarifies the Ministry's position that the transmission line in the White Pines renewable energy generation facility is “separate and distinct” from the distribution lines as follows:

The ministry understands that the distribution lines for the wind facility will be used to distribute electricity within the facility. . .The ministry also understands that a transmission line will be used to transmit electricity from the facility to the IESO-controlled grid. In other words, a 69 kV “interconnection line” will connect the substation near Turbine 7 to a substation to be built near the Picton Transformer Station on County Road 5.<sup>2</sup>

The Ministry distinguishes between distribution and transmission lines in the White Pines renewable energy generation facility by pointing to the separate and distinct functions of each. It seems to appear to the Ministry that distribution lines will be used to distribute electricity *within the facility* and that the transmission line will be used to transmit electricity *from the facility* to the IESO-controlled grid. This would imply that the transmission line is separate from the White Pines renewable energy generation facility which is not the case: the renewable energy approval application includes the 69 kV interconnection line. As such, electricity generated by the wind turbines *will be transmitted within* the White Pines renewable energy generation facility and from the facility to the IESO grid. Subsection 5(2) of the *Act* applies in this case and further clarifies subsection 4(1) as follows: “A transmission line is associated with or ancillary to a renewable energy generation facility if the line is used to transmit electricity within the facility or from the facility to the IESO-controlled grid.” In its function as an

---

<sup>2</sup> Letter dated July 7, 2014 from Agatha Garcia-Wright, Environmental Approvals Branch, Ministry of the Environment and Climate Change to E. Gillespie.

interconnection line the 69 kV transmission line is ancillary to the White Pines renewable generation facility, not separate and distinct from the facility.

The only persuasive explanation the Director provides that the 34.5 kV line is, in fact, a distribution line is found in subsection 2(1) of the *Act* where “distribute” and “transmit” are defined as follows:

“distribute”, with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less

“transmit”, with respect to electricity, means to convey electricity at voltages of more than 50 kilovolts

While these definitions are set out in the *Act*, it is worth noting that exceptions have been made. In 2005, for example, Canadian Hydro Developers Inc. (CHDI) argued before the Board that the distribution assets (specifically the 34.5 kV line required to connect the Melancthon Grey Wind renewable energy generation facility to the IESO) served the same function as a transmission system. As pointed out by CHDI:

(T)he distribution assets does (sic) not serve any end-use customers. Rather, it's only purpose and function is to connect the new generation facility to the IESO-controlled grid. As such the line serves the same function as a transmission system. As a transmitter, the need for a transmission licence (sic) is exempted under O. Reg. 161/99.<sup>3</sup>

The Board agreed with CHDI stating in its an order: “the distribution assets required to connect the generation facility to the IESO-controlled grid are deemed as part of a transmission system”.

It appears that the definitions of “distribute” and “transmit” are inconsistently applied by the Ministry. Recently the East Durham Wind Energy Centre was issued an REA in spite of project documentation indicating 28.3 km of 34.5 kV (“collector”) lines and a 30 kilometre 44 kV distribution line from the transformer substation to Hydro One. With over 50 kilometres of lines with voltages less than 50 kV this renewable energy generation facility would appear to be in contravention of subsection 4(1), which prescribes transmission or distribution lines of less than 50 kilometres in length. The Ministry, therefore, must have considered that the 34.5 kV

---

<sup>3</sup> Decision and Order, EB 2005-0231, May 2, 2005

line would be used to transmit electricity within the East Durham renewable wind energy generation facility.

APPEC does not find the Director's explanations compelling for the reasons given above. It appears to APPEC that wpd White Pines intends to connect the White Pines renewable energy generation facility directly into the IESO-controlled grid. As such subsection 5(2) applies in this case and further clarifies subsection 4(1) as noted above.

We would appreciate clarification from the Board on its authority in this matter and, if the Board finds that it has authority in this matter, a determination of this issue. Specifically, does the Board agree with the Ministry's position that the 34.5 kV line in the wpd White Pines project is a distribution line rather than a line used for the transmission of electricity and, if so, how does the Board regard distribution lines for renewable energy generation facilities in terms of a "transmitter's transmission system".

#### Definition of "renewable energy generation facility"

A renewable energy generation facility is defined in subsection 4(1) of *O. Reg. 160/99*:

*For the purposes of the definition of "renewable energy generation facility" in the Act, the following associated or ancillary equipment, systems and technologies are prescribed:*

1. Transmission or distribution lines of less than 50 kilometres in length that are associated with or ancillary to a renewable energy generation facility.
2. Transformer stations or distribution stations that are associated with or ancillary to a renewable energy generation facility.
3. Any transportation systems that are associated with or ancillary to the provision of access to a renewable energy generation facility, during the construction, installation, use, operation, changing or retiring of a renewable energy generation facility. *O. Reg. 328/09, s. 1 (2).*

For the purposes of defining a "renewable energy generation facility" subsection 4(1) is explicit in prescribing lines of less than 50 kilometres in length that are associated with or ancillary to a renewable energy generation facility. With 71 kilometres of electricity lines the White Pines renewable energy generation facility is in contravention of the *Act*, whether the line is or is not a transmission line.

The Ministry, however, has a different understanding of subsection 4(1) based on its interpretation that subsection 4(1) prescribes transmission **and / or** distribution lines of less than 50 kilometres or less:

It is the Ministry's position that the limit of 50 km applies separately in respect of each type of line (transmission or distribution) in order for them to be considered part of the facility.<sup>4</sup>

Consequently the Ministry contends that subsection 4(1) prescribes electricity lines up to 100 km on a per project basis on provision that the transmission line length is less than 50 km and the distribution line length is less than 50 km. It appears that the ministry is adding the word "and" into subsection 4(1) and there is no justification to do so.

We appreciate the Board's consideration and further clarification of the matters raised herein. In view of their serious nature we respectfully request that the Board reserve making a decision on the wpd White Pines application until these matters are resolved.

Yours very truly,

**ERIC K. GILLESPIE**  
**PROFESSIONAL CORPORATION**



**Eric K. Gillespie**  
EKG/ga

cc I. Minott, Stikeman Elliott LLP, Lawyers for wpd White Pines Wind Inc.

S. Paul, Director, Environmental Approvals Access and Service Integration Branch, Ministry of the Environment

---

<sup>4</sup> Letter dated May 14, 2014 from Sarah Paul, Director, Environmental Approvals Access and Service Integration Branch, Ministry of the Environment and Climate Change to E. Gillespie