



CLEARVIEW

December 18, 2014

Ms. Kristen Walli,
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Subject: **wpd Fairview Wind Incorporated EB-2014-0226**

Attached, in accordance with the Board's Procedural Order No. 2, dated December 2, 2014, please find the Township's arguments and submissions with respect to the above matter.

Two paper copies are attached and the attachment has also been emailed by the Board and the applicant's solicitors.

Should you require any additional information, please contact me.

Regards,

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IN THE MATTER of an application by wpd Fairview Wind Incorporated for an Order or Orders pursuant to section 41(9) of the Electricity Act, 1998, S.O. 1998, c. 15, Schedule A, establishing the location for the applicant's distribution facilities on public road allowances owned by the Corporation of the Township of Clearview.

1 **Introduction**

2 wpd Fairview Wind Incorporated ("**wpd Fairview**" or the "**applicant**") filed an
3 application with the Ontario Energy Board (the "**OEB**" or the "**Board**") on July 22,
4 2014 (the "**application**") for an order or orders under subsection 41(9) of the
5 Electricity Act, 1998 establishing a location for the Fairgrounds Collector Line
6 (defined in the applicants brief), which it proposes to locate within certain public
7 rights-of-way, streets and highways owned by the Corporation of the Township of
8 Clearview (the "**Township**" or the "**municipality**").

9 These written submissions are prepared in accordance with Procedural Order No. 2
10 dated December 2, 2014, wherein the Board established a timeline for filing of
11 submissions related to the Application. They are also, in part, filed in accordance
12 with further direction from Board staff to the Township as set out in
13 correspondence to the Township dated December 12, 2014.

14 **The Applicant is Not a Distributor or Transmitter for the Purposes of the**
15 **Electricity Act**

16 The applicant in its materials has provided a Corporate Structure Chart (Exhibit B,
17 Tab 3, Schedule 2). In this chart wpd Fairview Wind Incorporated (New
18 Brunswick), the applicant, is shown to be a subsidiary of wpd Europe GmbH.
19 wpd Canada Corporation (Ontario), is a separate entity also a subsidiary of wpd
20 Europe GmbH, but not a subsidiary of wpd Fairview Wind Incorporated (New
21 Brunswick). Similarly, wpd wpd Fairview Wind Incorporated (New Brunswick) is
22 not a subsidiary of wpd Canada Corporation (Ontario).

wpd Canada Corporation (Ontario) and wpd Fairview Wind Incorporated (New Brunswick) are separate applicants, not one-in-the-same.

Under section 41 of the *Electricity Act, 1998*, a transmitter or distributor may construct, install and maintain facilities for the purpose of its transmission or distribution system.

Section 2 of the *Electricity Act* provides a definition a distributor:

““distributor” means a person who owns or operates a distribution system”

Section 2 of the *Electricity Act* provides a definition of a transmitter:

““transmitter” means a person who owns or operates a transmission system”

The applicant for these proceedings is wpd Fairview Wind Incorporated, the same applicant proposing the generation and distribution project under the Renewable Energy Approval (“**REA**”) process.

There is no evidence to show that wpd Fairview Wind Incorporated currently owns or operates a distribution or transmitter system independent of that proposed through the REA process. There is likewise no evidence to show that wpd Fairview Wind Incorporated has a service area and is authorized by a licence to distribute electricity. Additionally, there is no evidence that the applicant, wpd Fairview Wind Incorporated (New Brunswick) has a Feed-in Tarriff Contract with the Ontario Power Authority. There is evidence that wpd Canada Corporation (Ontario) has a Feed-in Tarriff Contract (**Tab 1**).

In the absence of evidence to the contrary, wpd Fairview Wind Incorporated is neither a generator nor a distributor, nor a transmitter for the purposes of the *Electricity Act*. Similarly, wpd Fairview Wind Incorporated, in the absence of a Feed-In Tarriff Contract with the Ontario Power Authority, also does not have the potential to be a generator, distributor or transmitter.

While the Board has determined that an applicant need not require all approvals, including a REA, in order to seek an order under Section 41(9) of the *Electricity Act*, it is not clear that the Board should issue an approval for an applicant that does not have a contract with the Ontario Power Authority and so cannot be a generator, distributor or transmitter of electricity.

Requests for Meetings in Context of REA Municipal Consultation Process

The application to the OEB set out in Appendices the record of requests to meet with the municipality. Those efforts are set out and summarized from the perspective of the applicant in Tab1, Schedule 2, of their application.

It is the municipality's position that those efforts all took place in the context of the REA process, not a separate and distinct process for the purposes of a subsequent application to the OEB.

In response to the chronological account, set out in the applicant's application, we note the following:

- i. The January 14, 2013, discussion was prompted by an email from the applicant which makes no reference to discussions outside the REA process. The municipality's response is clearly framed in reference to the REA process.
- ii. The February 11, 2013, discussion was prompted by an email from the applicant which references ongoing discussions between the Township and MOE with respect to the REA process and the municipality's response is again clearly framed in reference to the REA process.
- iii. The March 13, 2013, discussion again references ongoing discussions with the MOE with respect to the REA process as does the municipality's response which indicates a continued failure of the MOE to respond in a timely fashion.
- iv. The April 3, 2013, discussion again references REA processes and the ongoing attempts to clarify information with respect to that process.
- v. The June 11, 2013, discussion again makes reference to the REA process and the municipality's response is again clearly in the framework of the REA process.
- vi. The June 14, 2013, discussion is initiated with correspondence which acknowledges the municipality's efforts and concerns with respect to the REA process, and makes reference to the desire to proceed with engineering for the works. The applicants request indicates that there is a desire to proceed with design, however there is no indication that the applicant is seeking approvals and entering into an agreement with the municipality for

1 such purpose. The municipality's response is again framed entirely within
2 the context of the REA process.

3 vii. The December 10, 2013, discussion is initiated by the applicant entirely
4 within the context of the REA process as is the municipality's response.

5 viii. The December 18, 2013, discussion is initiated by the applicant is again
6 framed entirely in the context of the REA process. The applicant's
7 submission suggests that the municipality refused to meet on the basis of the
8 MOE deeming the project to complete despite the municipality's objections.
9 This is not the case. While the municipality does take issue with the
10 decision, this is based on the fundamental concerns with respect to the
11 municipal consultation process which the applicant itself acknowledged as
12 being incomplete and ongoing.

13 ix. The February 27, 2014, request is the first request by the applicant to come
14 to an agreement with respect to road infrastructure matters and a further
15 request in May 22, 2014, makes again only a general reference to meeting to
16 discuss the location of infrastructure. Once again the municipal response is
17 framed entirely within the context of the REA process. The municipality
18 also makes reference to the fact that the proposed design is to be the subject
19 of an EBR posting under the REA process and that the municipality would
20 be making comments on the project through that process.

21 In each of these instances the municipality has clearly responded entirely within
22 the context and framework of the REA process. From the municipality's
23 perspective each of the requests were made in relation to the municipal
24 consultation requirements related to the REA process. It is the municipality's
25 position that the applicant did not communicate clearly and directly that the
26 intended discussions were entirely separate from the ongoing issues with respect to
27 municipal consultation through the REA process and at no time did the applicant
28 indicate that the delay in discussions would initiate a separate process with respect
29 to an OEB application.

30 The municipality held the belief throughout the entire discussions regarding this
31 matter that the requests for consultation related to the municipal consultation
32 process stipulated through the REA process and, due to fundamental flaws related
33 to the REA process and the inability to obtain appropriate clarifications and

1 response from the MOE, the municipality deemed those discussions to be
2 premature.

3 In the applicant's email of February 27, 2014, (Tab1, Schedule 2 of the application
4 brief) the applicant requests a meeting, for the first time, on their revised project
5 layout. At the very same time they indicate an intention to submit the proposed
6 routing to the OEB. This is the first request by the applicant to consult on the
7 revised layout and the first time for the municipality to view the proposed layout,
8 yet the applicant is already making reference to its intention to file with the OEB.
9 Furthermore, this request and the proposal to proceed to the OEB came prior to an
10 Environmental Registry posting. A single request to meet on a revised design made
11 prior to any public review of that submission, and made in the context of a
12 continuing failure to carry out proper municipal consultation under a prescribed
13 and regulated REA municipal consultation process, does not, in the municipality's
14 opinion, constitute sufficient grounds to launch an OEB application. Instead it
15 would suggest a potential to avoid remedying an applicant's deficiencies in the
16 REA process by-passing them through the utilization of section 41(9) of the
17 *Electricity Act*.

18 **Relevance of the REA Process to the OEB Hearing**

19 The Township recognizes that the Board may make a ruling despite a lack of
20 approval for the project under the REA process. Although the municipality is
21 concerned that such an approach is not efficient and needlessly results in
22 significant public expenditures being put at risk as a result of possible subsequent
23 additional changes to the proposed location of infrastructure or even the failure to
24 obtain additional approvals, for the purposes of these proceedings, the municipality
25 is not taking the position that the Board cannot establish the location of the
26 infrastructure in the road allowance prior to a REA decision on the project.

27 The municipality is asserting that the applicant's failure to meet requirements
28 under the REA process is however relevant to whether or not there is in fact
29 appropriate cause to seek a determination of the Board under section 41(9) of the
30 *Electricity Act*. It is the municipality's position that the applicant's failure to meet
31 the prescribed requirements of the regulatory requirements of the REA process,
32 thereby preventing the municipality from carrying out proper consultation on road
33 matters under that process, should not allow the applicant to by-pass the

requirements of the REA process by availing itself instead of section 41(9) of the *Electricity Act* which was not intended to serve that function. Section 41(9) was not established to set aside, or render meaningless, appropriate and meaningful municipal consultation under the REA process with regard to the utilization of road allowances.

The clarification that the subject discussions and requests for meetings fall under the REA process is also important as it relates directly to the reasoning for the municipality's decision to consider those discussions as premature.

In accordance with *Ontario Regulation 359/09* of the *Environmental Protection Act, R.S.O. 1990*, the applicant for a Renewable Energy Approval must complete a Consultation Form and submit this form to municipalities and local authorities. The purpose of this form, amongst other matters, includes detailed consultation with respect to Project Roads (**Tab 2**). This mandated Consultation Form provides the statutory method by which the municipality can:

- i. Provide comment on the project location with respect to infrastructure and servicing;
- ii. Provide comment on the proposed project's plans respecting proposed road access;
- iii. Identify any issues and provide recommendations with respect to road access;
- iv. Provide comment on any proposed Traffic Management Plans;
- v. Identify any issues and provide recommendations with respect to the proposed Traffic Management Plans;
- vi. Identify and issues and recommendations with respect to any Easements or Restrictive Covenants associated with the Project location;
- vii. Identify any issues and recommendations with respect to the proposed rehabilitation of any temporary disturbance areas and any municipal or local authority infrastructure that could be damaged during construction;
- viii. Identify any issues and recommendations with respect to the proposed location of fire hydrants and connections to existing drainage, water works and sanitary sewers;
- ix. Identify any issues and recommendations with respect to the proposed location of buried kiosks and above-grade utility vaults; and,

- x. Identify any issues and recommendations with respect to the proposed location of existing and proposed gas and electricity lines and connections.

The Consultation Form thereby provides the appropriate manner by which the municipality can comment fully and comprehensively on the project including the use of municipal road allowances for project infrastructure.

The Township of Clearview was provided with such a Consultation Form with respect to the Fairview Wind Project. The applicant is required to complete Part A of the consultation form. The applicant is listed as wpd Canada Corporation, Business Identification Number 8115 4090 0001 (**Tab 3**).

The Township of Clearview has not received a Consultation Form in accordance with Ontario Regulation 359/09 of the *Environmental Protection Act* from wpd Fairview Wind Incorporated, also the applicant for these proceedings.

In addition to the fact that the Consultation Form was provided by a different applicant, there are significant inadequacies in the Consultation Form and materials provided with the Consultation Form with respect to the location and nature of the project. The project described by the Consultation Form and that currently proposed by a different applicant in these proceedings, is substantially different with respect to the location of turbines and proposed infrastructure. The Consultation Form provided by a different applicant to these proceedings, does not depict the current:

- i. Layout of the Distribution System within the Road Allowances as included in the applicants Appendix "B" to Exhibit C, Tab 1, Schedule 2;
- ii. Map of the Wind Project included as Appendix "A" to Exhibit C, Tab 1, Schedule 2; or,
- iii. The approximate location where the Applicant intends to position the facilities associated with the Distribution System within the Road Allowances at Exhibit C, Tab 1, Schedule 2.

The applicant must complete Part A of the Consultation Form. The municipality may not alter any part of Part A in order to correct inaccurate or inadequate information. The applicant is responsible for making any alterations or corrections to Part A of the Consultation Form.

1 The fundamental importance of the Consultation Form, a process required by
2 regulation, is set out by the Province in its publication Frequently Asked Questions
3 – Renewable Energy Approval (**Tab 4**):

4 “The ministry recognizes the importance of local decision making with
5 respect to specific matters related to municipal land, services and
6 information.

7 A proponent of a renewable energy project will have to consult with local
8 municipalities prior to applying for a Renewable Energy Approval.

9 The ministry has developed a template for this consultation, which the
10 proponent will use to relay project specific matters raised by the
11 municipality. This document is to be submitted to the ministry as part of the
12 application.

13 The renewable energy approval process would ensure transparency of
14 decision making and provide opportunity for municipal engagement in the
15 process.”

16 The importance of consultation and the use of the municipal consultation form is
17 further set out in the publication “Guide, Provincial Approvals for Renewable
18 Energy Projects” (**Tab 4**) which states:

19 “Municipal consultation is mandatory for all projects requiring an REA,
20 except for small wind projects (see page 40).

21 Consultation with the municipality (or municipalities) in which the facility
22 would be located is required to take place at least 90 days before submitting
23 an REA application.

24 The Ministry of Environment provides applicants with a form that outlines
25 what needs to be addressed with municipal officials. The form requests
26 municipal feedback on matters related to:

- 27 • Municipal services and infrastructure (such as proposed road access)
- 28 • The rehabilitation of areas disturbed and/or municipal infrastructure
- 29 damaged during construction
- 30 • Emergency management procedures/safety protocols related to
- 31 ongoing management of the facility

1 If the applicant is not able to provide all of the required information, the
2 complete submission must explain why. In addition, the applicant must
3 describe and document efforts to address any issues raised during municipal
4 consultation.”

5 The Ontario Ministry of the Environment and Climate Change and wpd Fairview
6 Wind Incorporated were informed of the failure to provide the Township of
7 Clearview with a correct Consultation Form as required by Ontario Regulation
8 359/09, and wpd Fairview Wind Incorporated failed to provide the municipality
9 with an appropriate Consultation Form by which it could be appropriately
10 consulted with respect to road matters. The Township of Clearview has indicated
11 to the Ontario Ministry of Environment and Climate Change and wpd Fairview
12 Wind Incorporated that it would be unduly prejudiced by the failure of the
13 applicant to provide a corrected Consultation Form (**Tab 5**). Those issues remain
14 outstanding at this time.

15 The applicant, despite full knowledge of the inadequacies of the Consultation Form
16 (again, the manner prescribed by regulation for consultation with the municipality
17 on road matters), failed to take action to correct those deficiencies thereby
18 preventing the Township of Clearview from appropriately considering and
19 commenting upon the location of the infrastructure in the municipal road
20 allowance. The municipal Consultation Form when properly completed, by the
21 appropriate applicant, offers the opportunity for the municipality to address matters
22 with respect to the utilization of its road allowances.

23 Had the applicant undertaken the effort to correct the Consultation Form, the
24 municipality could have proceeded with review of the matters related to the use of
25 road allowances in the format and process set out by the Province of Ontario. In
26 the alternative, the applicant could have indicated a counter position to the
27 municipality and/or indicated very explicitly that, notwithstanding the REA
28 process, the applicant was seeking an approval of the location of distribution
29 facilities pursuant to the *Electricity Act* as a separate and distinct process. This
30 would have alerted the municipality to the applicant’s position and that the matters
31 to be discussed were outside of the REA process and allowed the municipality to
32 consider the request in that framework.

1 Although the applicant sets out attempts to discuss matters related to infrastructure
2 and the project many of those communications pre-date the re-design of the project
3 and its subsequent re-posting on the Environmental Registry through the REA
4 process. The applicant initiated its appeal to the OEB prior to this posting and
5 very shortly after submitting a new design to the municipality while also initiating
6 a revised design through the REA process. Again, the applicant had opportunity to
7 inform the municipality that it sought input and approval for this new design
8 outside the REA process and prior to the Environmental Registry posting when the
9 municipality provided its response to a request to meet.

10 While it is the Township's position that by-passing the requirements of the REA
11 process regarding municipal consultation on road matters is not what was intended
12 by section 41(9) of the *Electricity Act*, the applicant should more have explicitly
13 alerted the municipality to its intentions to by-pass the REA process on road
14 consultation for a newly submitted project design and instead proceed with
15 consultation outside of that process.

16 As set out in the applicants Argument in Chief and Brief of Authorities, the Board
17 is not able to consider alternative routes outside of the proposed road allowances.
18 The consideration of alternative routes most appropriately takes place through the
19 mandated municipal consultation under the REA process. This process relies
20 upon the Consultation Form. The failure of the applicant to provide a proper
21 Consultation Form (by the correct applicant and with the correct project
22 information) has prevented the municipality from being able to properly address
23 this matter.

24 As further set out in the applicants Argument in Chief and Brief of Authorities, the
25 Board does not have authority to vary the conditions under which an applicant is
26 permitted access to a road allowance or impose additional terms of access on an
27 application under subsection 41(9) of the *Electricity Act*. The manner in which the
28 municipality can set out appropriate conditions and considerations with respect to
29 the utilization of its road infrastructure is through the prescribed consultation
30 process under REA. The applicant's failure to provide an appropriate Consultation
31 Form has prevented the municipality from addressing its valid concerns regarding
32 potential environmental, social, technical and economic impacts.

Under the REA process and completion of a properly submitted Consultation Form, the municipality would have had an opportunity to address concerns such as:

- i. Life expectancy of the project and timing of decommissioning and, by extension, life expectancy of the road works and timing of decommissioning of same;
- ii. Liability for decommissioning of the infrastructure and the associated costs of road repairs;
- iii. Agreements which may be required with Emergency Services for construction, operation and decommissioning of the infrastructure;
- iv. Public protection regarding costs incurred by the Township (i.e. public) in decommissioning of the works;
- v. Documentation of culvert conditions and haul route conditions;
- vi. Provision of post-construction surveys to document the location of infrastructure;
- vii. The provision of security deposits to protect public infrastructure investment;
- viii. The liabilities and public risk and expenditures related to mitigation of traffic effects during construction, operation, maintenance and decommissioning;
- ix. The provision of traffic control plans;
- x. The implementation of public safety traffic control plans during construction and decommissioning;
- xi. The provision of appropriate "As Built Drawings" to document the location of infrastructure;
- xii. The exact location of infrastructure with respect to offset from property lines, and depth and location of infrastructure;
- xiii. The proper indemnification of a public body from the actions of a private company utilizing public assets; and,
- xiv. The jurisdiction of the municipality with respect to road use agreements.

1 The applicant has frustrated the municipality's ability to appropriately deal with
2 these matters by not providing an appropriate Consultation Form through the REA
3 process and has through an application under section 41(9) of the *Electricity Act*
4 sought to remedy the failure the failure to meet the requirements of a regulatory
5 process by by-passing it.

6 **No Disagreement for the Purposes of Section 41(9) of the Electricity Act**

7 Section 41(9) gives the Board authority to set aside the normal role of the road
8 authority and so is an extraordinary measure. Its intent is to allow the Board to
9 make a ruling on the location of infrastructure where there is a clear disagreement
10 thereby serving one of the key purposes of the Act set out in section 1(g): "to
11 promote economic efficiency and sustainability in generation, transmission,
12 distribution and sale of electricity".

13 In order for an applicant to avail itself of section 41(9) of the Electricity Act and
14 completely set aside the concerns of the road authority, the municipality asserts
15 that there should be an impelling argument with respect to the inability to reach an
16 agreement upon the location of infrastructure. The applicant should demonstrate
17 that they took every reasonable measure to reach such an agreement and
18 presumably the road authority should be demonstrated to be completely obstructive
19 and unreasonable with respect to reaching such agreement.

20 These situations do not exist. The municipality has not refused to reach an
21 agreement. The municipality has not categorically denied access to the road
22 allowance for the purposes of construction, installation and maintenance of the
23 infrastructure. The municipality, very reasonably, and in accordance with
24 prescribed processes, requested that the applicant provide appropriate submissions
25 to allow it the municipality to complete the prescribed municipal consultation
26 process. The applicant did not do everything reasonably expected of it in order to
27 reach an agreement with the Township of Clearview. Despite being fully aware of
28 the municipalities concerns with respect to the municipal consultation process and
29 the prescribed Consultation Form, the applicant made absolutely no attempt to
30 correct such deficiencies. Additionally, despite the fact that the municipality on
31 each and every occasion responded as if the requests pertained to the REA
32 consultation process, the applicant choose not to make it clear that the failure to

1 meet was being considered as a disagreement with respect to the process set out
2 under the *Electricity Act*.

3 While the applicant has suggested an urgency to the matter, at no time did the
4 applicant supply the Township with any information to substantiate such urgency
5 thereby offering the municipality an opportunity to re-consider its position in the
6 face of a clear and impending deadline.

7 The correspondence between the applicant and Township clearly sets out the fact
8 that the applicant's own actions, or inactions, resulted in a delay with respect to the
9 ability of the municipality and the applicant to reach an agreement.

10 If the Board were to find that an applicant could seek to utilize section 41(9) of the
11 *Electricity Act* despite its own actions leading to the circumstances where an
12 agreement cannot be reached, this would provide a path for any applicant to
13 effectively construct a disagreement and thereby by-pass appropriate and due
14 process in negotiating in good faith with a responsible road authority.

15 It is the Township's position that section 41(9) is not being utilized by the
16 applicant on a consistent basis. The project infrastructure also requires the
17 utilization of road allowances of the County of Simcoe as set out in the applicant's
18 materials. The applicant has itself acknowledged that it has not reached an
19 agreement with the County of Simcoe. It anticipates reaching an agreement with
20 the County.

21 Section 41(9) is not intended to be utilized where an applicant has and anticipation
22 of the outcome of discussions concerning an agreement and yet that is exactly the
23 proposition put before the Board in these proceedings. The municipality has never
24 indicated that an agreement could not possibly be achieved. The municipality has
25 made a reasonable request for appropriate information and due process. Only the
26 applicant has made an assumption that an agreement is not achievable.

27 The municipality does not view an applicant's unfounded anticipation of the
28 potential to reach an agreement, particularly where the applicant can easily remedy
29 the issues delaying such an agreement, as a reasonable justification to set aside the
30 responsibilities and the authority of the municipality with respect to the utilization
31 of its road allowances.

32 **Timing of Decision Not a Valid Reason**

1 The timing of a decision has also been argued by the applicant as a compelling
2 reason to move forward through Section 41(9). This is not a valid consideration.
3 The applicant has had a considerable amount of time to correct the deficiencies in
4 the municipal consultation process that it created and negotiate with municipality.
5 The applicant launched an application to the OEB seeking approval of the location
6 of infrastructure within the public road system prior to the Environmental Registry
7 posting detailing the proposed infrastructure as part of a modification to that
8 project. The applicant is thereby asserting that the municipality should have made
9 a decision regarding the location of project infrastructure in the public road system
10 prior to public notification and comment regarding that same infrastructure through
11 a provincially prescribed process providing public information and consultation
12 regarding those same matters. The applicant is suggesting that the municipality
13 should have made a determination and entered into an agreement on the location of
14 proposed infrastructure prior to public notification and consultation regarding that
15 same infrastructure, a premise that violates the transparency and due public process
16 that is intended to be a fundamental component of the REA and the Environmental
17 Registry processes.

18 The applicant has not obtained a REA approval and at no time has the applicant
19 disclosed the particulars of any deadline by which the project must be achieved.
20 The applicant has not disclosed to the municipality, or the Board, that there is a
21 critical timeline in which all matters must be approved and that any delay in
22 reaching an agreement with the municipality would jeopardize the project. It is the
23 municipality's assertion that generalized statements about the urgency of the
24 matter from the applicant are not sufficient cause to utilize section 41(9). If there
25 is a critical matter of urgency which makes reaching an agreement with the
26 Township, and for that matter the County of Simcoe, critically important or, in the
27 alternative, set aside the legitimate concerns of the municipality and the proper
28 consultation through the REA process, there should be an onus on the applicant to
29 clearly identify the deadlines and consequences of not achieving those deadlines.
30 Again, this application has been made only on the anticipation that the applicant
31 cannot reach an agreement with the municipality. If the delay in reaching a
32 potential agreement is a concern, it is questionable whether that would be sufficient
33 cause for the utilization of section 41(9), and surely the applicant should then
34 demonstrate with suitable evidence that there is no reasonable prospect of reaching
35 an agreement by the identified deadline. In this application, there is no evidence of

1 such a deadline, nor is there any evidence that the applicant has no prospect of
2 being able to reach an agreement. Indeed, if there is any cause for concern in this
3 regard, it arises from the applicants own action or inactions with respect to
4 carrying out proper municipal consultation and providing adequate information to
5 the municipality to enable proper municipal consideration of reaching an
6 agreement on the matter.

7 **Contrary to the Applicant's Assertions, the Municipality Has Expressed**
8 **Concerns with Respect to Location of the Infrastructure**

9 The applicant asserts in its Argument in Chief that the Township has refused to
10 engage in discussions with the applicant and has therefore not expressed any
11 concerns regarding the location of the Fairgrounds collector line. The fact that the
12 municipality deferred meeting requests for very specific and compelling reasons
13 does not in itself lead to a reasonable conclusion that the municipality has no
14 concerns with the location of the Fairgrounds collector line.

15 The applicant further asserts in its Argument in Chief that the Township has not
16 proposed an alternative location for the Fairgrounds Collector Line within the
17 Road Allowance and did not ask any interrogatories regarding the proposed
18 location of the Fairgrounds Collector Line within the Road Allowance. In fact, the
19 municipality, in its interrogatories set out that it could not comment with respect to
20 an alternative location as such consideration would depend upon the response to
21 the interrogatories submitted by the Township. As the applicant responded to
22 those interrogatories by suggesting that the matters put forward the municipality in
23 its consideration of this issue were beyond the scope of the proceedings, and so
24 offered no further response, the municipality was prevented from further
25 addressing the issue of an alternative location.

26 The municipality's interrogatories also clearly set out matters that both indirectly
27 and directly question the location of the Fairground Collector Line. In fact,
28 specific questions as to location are set out in interrogatories 10.1, 10.2, 10.3 and
29 10.4 to which the applicant responded to as being outside the scope of the
30 proceedings. That is, the applicant has indicated that the proposed depth and
31 location of the Fairground Collector Line are outside the scope of these
32 proceedings.

The Applicant Has Not Sought Any Clarifications as to Concerns Regarding Location and Has Failed to Respond to the Interrogatories of the Township Leaving the Board in a Position of Insufficient Information Regarding Possible Concerns with the Proposed Location

While the municipality has in fact addressed the matter of location of the infrastructure in its interrogatories and requested specific information to address any potential issues regarding the location of the proposed infrastructure, the applicant has not done so with respect to any potential municipal concerns.

The applicant filed no interrogatories despite this being an opportunity to identify any concerns or input the municipality may have with respect to the location of infrastructure in the road allowance. The applicant alleges that it had an interest in municipal input and consultation, yet has not made any requests for information which could have a bearing on the determination of whether or not the location of infrastructure in the road allowance is appropriate relevant to any municipal factors and determinations which could have an implication on such infrastructure.

As a result of the failure of the applicant to respond to the interrogatories of the Township, and the failure of the applicant to seek critical information through the interrogatories, the Board is left with no information from a municipal perspective on the appropriateness of the proposed location of the infrastructure and any municipal considerations that may be relevant to that decision.

Summary

The municipality has a valid interest in the location of proposed infrastructure in the road allowance it manages.

The municipality has not refused to reach an agreement. The municipality has instead consistently requested an appropriate consultation process to provide such information and the applicant has failed to respond to that reasonable request. This application has been launched prematurely only on an anticipation of not reaching an agreement and on the unproven suggestion of a timing issue. Absolutely no evidence has been put forward that there is a legitimate timing issue. Absolutely no evidence has been put forward that there is no reasonable prospect of reaching an agreement within the timeframe established by an unidentified pending deadline. There is no evidence that there is a disagreement on location, instead

1 there is evidence that the municipality has not been provided the appropriate
2 opportunity to review the proponent's request in the manner prescribed by the
3 Province. The applicant can easily remedy such matters and so the timing of
4 reaching an agreement is directly related to the actions or inactions of the
5 applicant.

6 The municipality does dispute the status of the applicant with respect to the
7 proceedings before the Board. There is no evidence before the Board that the
8 applicant has a FIT contract.

9 The municipality has very clearly outlined the problem it faces with respect to
10 reaching an agreement and properly completing consultation in the manner
11 prescribed by the Province of Ontario. The issue preventing the municipality from
12 doing so is in the power of the applicant to correct, and the applicant has made no
13 effort to do so.

14 The applicant has not made request to meet independently of the REA process and
15 initiated a hearing request before the OEB only very shortly after completing a
16 significant redesign of proposed works and well before a posting through the
17 Environmental Registry.

18 The applicant has not responded to the information requests of the municipality
19 which could lead to a resolution of the issue. The applicant has not requested
20 information from the municipality through the OEB process which would provide
21 information with respect to any municipal concerns and by continuing to fail in
22 responding to very clearly set out municipal concerns has created a situation in
23 which the Board has not information available to it with respect to potential
24 municipal issues which may affect the location determination.

25 **Order Sought**

26 The Township request that the Board, pursuant to subsection 41(9) of the
27 Electricity Act, 1998, dismiss the applicant's request to issue an order or orders
28 establishing the location of the Fairgrounds Collector Line within the Road
29 Allowance.

30 The Township of Clearview has not refused to reach an agreement with the
31 applicant and has set out to the applicant the reason for its inability to complete
32 consultation on the matter of utilization of the road allowance in accordance with

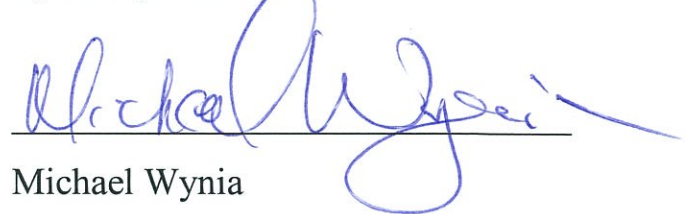
1 the provincially prescribed process. The applicant on achieving a FIT contract will
2 have the opportunity to appropriately consult the municipality and not require
3 reliance upon section 41(9) which is an extraordinary measure that, in the opinion
4 of the Township, is not warranted by the circumstances of this application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, Ontario, this 18th day of December, 2014

**The Corporation of the Township
of Clearview**

By its representative



Michael Wynia

Director of Community Planning and
Development

Tab 1 wpd Canada (Ontario) FIT Contract



Ontario Power Authority

FEED-IN TARIFF CONTRACT (FIT CONTRACT)


Version 1.3.0 (March 9, 2010)

1. **CONTRACT IDENTIFICATION #** F-000672-WIN-130-601
2. **FIT REFERENCE #** FIT-FH2MR54
3. **CONTRACT DATE** May 3, 2010
4. **SUPPLIER** wpd Canada Corp.
5. **SUPPLIER'S ADDRESS**
405 Britannia Road East
Suite 214
Mississauga ON L4Z3E6
Canada

Contact Person: Khlaire Parre

Fax: (905) 712-9565
Phone: (905) 712-2400
Email: khlaire@wpd-Canada.ca
6. **SUPPLIER INFORMATION** Not a Non-Resident of Canada
7. **RENEWABLE FUEL** Wind (On-Shore)
8. **CONTRACT CAPACITY** 18400 kW
9. **INCREMENTAL PROJECT** No
10. **GROSS NAMEPLATE CAPACITY** 18400 kW
11. **CONTRACT PRICE** 13.5 ¢/kWh
Peak Performance Factor does not apply
12. (a) **ABORIGINAL PRICE ADDER (as of the Contract Date)** 0.00 ¢/kWh
Aboriginal Participation Level (if applicable)
___ %

(b) **COMMUNITY PRICE ADDER (as of the Contract Date)** 0.00 ¢/kWh
Community Participation Level (if applicable)
___ %

13. PERCENTAGE ESCALATED 20 %
14. MINIMUM REQUIRED DOMESTIC CONTENT LEVEL 50 %
15. BASE DATE September 30, 2009
16. AUTOMATIC NTP FACILITY No
17. LOCATION: Municipal Address: 

Legal Description:



- | | | | |
|---|-----------------------|--------------------------------------|-----------------------|
| 18. IMPACT ASSESSMENT PRIORITY START TIME | June 1, 2010
17:00 | IMPACT ASSESSMENT PRIORITY STOP TIME | June 1, 2010
18:00 |
|---|-----------------------|--------------------------------------|-----------------------|
-
19. CONNECTION POINT Distribution System - LDC: Hydro One Networks Inc.
20. HOST FACILITY (IF APPLICABLE) Name:
Municipal Address:
Legal Description:
-
21. FIT RULES Applicable version: Version 1.3

22. INCORPORATED
SCHEDULES,
APPENDICES AND
EXHIBITS

FIT Contract Execution Instructions
FIT Contract Offer Notice
Schedule 1 - General Terms and Conditions, Version 1.3
Exhibit A - Technology-Specific Provisions, Type 9: Wind (on-shore)
Exhibit B - Metering and Settlement, Type 3 A
Exhibit C - Form of Irrevocable Standby Letter of Credit
Exhibit D - Domestic Content, Version 1.3
Exhibit E - Arbitration Provisions Applicable to Sections 1.7, 1.8, 2.10 & 12.2
Exhibit F - Form of Supplier Certificate re: Commercial Operation
Exhibit G - Form of Independent Engineer Certificate re: Commercial Operation
Exhibit H - Form of Secured Lender Consent and Acknowledgement
Schedule 2 - Special Terms and Conditions, Version 1.3
Appendix 1 - Standard Definitions, Version 1.3
Anticipated Notice To Proceed (NTP) Request Date Form

For valuable consideration, the OPA and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this FIT Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 22 above (the "Agreement"). Each of the OPA and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

IN WITNESS OF WHICH, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

wpd Canada Corp.

ONTARIO POWER AUTHORITY

By: [Signature]
Name: IAN MACRAE
Title: President

By: [Signature]
Name: Michael Killeavy
Title: Director, Contract Management
Electricity Resources
I have authority to bind the corporation.

By: [Signature]
Name: ARVID HERSE
Title: Vice-President
I/We have authority to bind the corporation.

Tab 2 Municipal Consultation Form



Ministry of the Environment

**Renewable Energy Approval
Consultation Form: municipalities, local authorities
ss. 18(2) Ontario Regulation 359/09**

Ce formulaire est disponible en français

**PART A: TO BE COMPLETED BY THE APPLICANT BEFORE SUBMITTING TO
MUNICIPALITY OR LOCAL AUTHORITY**

Section 1 - Project Description

1.1 - Renewable Energy Project

Project Name (Project identifier to be used as a reference in correspondence)

Project Location

Same as Applicant Physical Address? ☐ Yes ☐ No (If no, please provide site address information below)

Civic Address- Street Information (includes street number, name, type and direction)

Unit Identifier (i.e. apartment number)

Survey Address (Not required if Street Information is provided)

Lot and Conc.:

used to indicate location within a subdivided township and consists of a lot number and a concession number.

Part and Reference:

used to indicate location within unorganized territory, and consists of a part and a reference plan number indicating the location within that plan. Attach copy of the plan.

Lot

Conc.

Part

Reference Plan

Location Information (includes any additional information to clarify physical location)(e.g. municipality, ward/ township)

Geo Reference (e.g. southwest corner of property)

Map Datum

Zone

Accuracy Estimate

Geo Referencing Method

UTM Easting

UTM Northing

Project Phasing (outline construction, operation and decommissioning activities)

1.2 - Environmental Context

Describe any negative environmental effects that may result from engaging in the project (consider construction, operation and decommissioning activities.)

Propose early avoidance/prevention/mitigation concepts and measures.

1.3 - Renewable Energy Generation Facility

Type of Facility / Operation (select all that apply & complete all appropriate sections)

☐ Wind Facility (Land Based)

☐ Wind Facility (Off-Shore)

☐ Biogas Facility (Anaerobic Digesters)

☐ Biomass Facility (Thermal Treatment)

☐ Biofuel Facility

☐ Solar Photo Voltaic Facility

☐ Other Describe :

☐ Class (if applicable) :

Name Plate Capacity

Expected Generation

Service Area

Total Area of Site (hectares)

Provide a description of the facilities equipment or technology that will be used to convert the renewable energy source or any other energy source to electricity.

1.4 - Renewable Energy Generation Activities

Describe the activities that will be engaged in as part of the renewable energy project

Section 2 - Supporting Documents

2.1 - Requirement	Name of Draft documents distributed for consultation	Date available to Municipal or Local Authority Contact
DRAFT Project Description Report		
DRAFT Design and Operations Report		
DRAFT Construction Plan Report		
DRAFT Decommissioning Plan Report		
List of other Documents		

Location where written draft reports can be obtained for public inspection (physical location for viewing and the applicants project website if one is available):

Section 3 – Applicant Address and Contact Information

3.1 - Applicant Information (Owner of project/facility)				
Applicant Name (legal name of individual or organization as evidenced by legal documents)			Business Identification Number	
Business Name (the name under which the entity is operating or trading - also referred to as trade name)			<input type="checkbox"/> same as Applicant Name	
Civic Address- Street information (includes street number, name, type and direction)			Unit Identifier (i.e. apartment number)	
Survey Address (Not required if Street Information is provided)				
Lot and Conc.: used to indicate location within a subdivided township and consists of a lot number and a concession number. Lot Conc.		Part and Reference: used to indicate location within an unsubdivided township or unsurveyed territory, and consists of a part and a reference plan number indicating the location within that plan. Attach copy of the plan. Part Reference Plan		
Municipality	County/District	Province/State	Country	Postal Code

PART B: TO BE COMPLETED BY THE MUNICIPALITY OR LOCAL AUTHORITY

Section 4 - Municipal or Local Authority Contact Information (check the one that applies)

Local Municipality <i>(include each local municipality in which project location is situated)</i>					
Name of Municipality	Address	Phone	Clerk's Name	Clerk's Phone/Fax <input type="checkbox"/> Yes <input type="checkbox"/> No	E-Mail Address
Upper Tier Municipality <i>(include each upper tier municipality in which project location is situated)</i>					
Name of Municipality	Address	Phone	Clerk's name	Clerk's Phone/Fax <input type="checkbox"/> Yes <input type="checkbox"/> No	E-Mail Address
Local roads area <i>(include each local roads area in which project location is situated)</i>					
Name of local roads board	Address	Phone	Secretary-treasurer's Name	Secretary-treasurer's Phone/Fax <input type="checkbox"/> Yes <input type="checkbox"/> No	E-Mail Address
Board Area <i>(include each board area in which project location is situated)</i>					
Name of Local Service Board	Address	Phone	Secretary's name	Secretary's Phone/Fax <input type="checkbox"/> Yes <input type="checkbox"/> No	E-Mail Address

Section 5: Consultation Requirement

5.1 - Project Location	Provide comment on the project location with respect to infrastructure and servicing.
5.2 - Project Roads	Provide comment on the proposed project's plans respecting proposed road access.
Identify any issues and provide recommendations with respect to road access	
Provide comment on any proposed Traffic Management Plans	
Identify any issues and provide recommendations with respect to the proposed Traffic Management Plans	

5.3 – Municipal or Local authority Service Connections

Provide comment on the proposed project plans related to the location of and type of municipal service connections, other than roads.

Identify any issues and provide recommendations with respect to the type of municipal service connections, other than roads.

5.4 – Facility Other

Identify any issues and recommendations with respect to the proposed landscaping design for the facility

Provide comment on the proposed project plans for emergency management procedures / safety protocols.

Identify any issues and recommendations with respect to the proposed emergency management procedures / safety protocols.

Identify any issues and recommendations with respect to any Easements or Restrictive Covenants associated with the Project Location

5.5 Project Construction

Identify any issues and recommendations with respect to the proposed rehabilitation of any temporary disturbance areas and any municipal or local authority infrastructure that could be damaged during construction.

Identify any issues and recommendations with respect to the proposed location of fire hydrants and connections to existing drainage, water works and sanitary sewers

Identify any issues and recommendations with respect to the proposed location of buried kiosks and above-grade utility vaults

Identify any issues and recommendations with respect to the proposed location of existing and proposed gas and electricity lines and connections

Provide comment on the proposed project plans with respect to Building Code permits and licenses.

Identify any issues and recommendations related to the identification of any significant natural features and water bodies within the municipality or territory.

Identify any issues and recommendations related to the identification any archaeological resource or heritage resource.

**Tab 3 Municipal Consultation Form Submitted to
Township of Clearview**

PART A: TO BE COMPLETED BY THE APPLICANT BEFORE SUBMITTING TO MUNICIPALITY OR LOCAL AUTHORITY

Section 1 - Project Description

1.1 - Renewable Energy Project

Project Name (Project identifier to be used as a reference in correspondence)

Fairview Wind Project

Project Location

Same as Applicant Physical Address? ☐ Yes ☐ No (If no, please provide site address information below)

Civic Address- Street information (includes street number, name, type and direction)

Unit Identifier (i.e. apartment number)

1457 Fairgrounds Road South, Stayner, ON, L0M 1S0

N/A

Survey Address (Not required if Street Information is provided)

Lot and Conc.:
used to indicate location within a subdivided township
and consists of a lot number and a concession
number.

Part and Reference:
used to indicate location within unorganized territory, and consists of a part and a reference plan
number indicating the location within that plan. Attach copy of the plan.

Lot

Conc.

Part

Reference Plan

Location Information (includes any additional information to clarify physical location)(e.g. municipality, ward/ township)

Geo Reference (e.g. southwest corner of property)

Map Datum	Zone	Accuracy Estimate	Geo Referencing Method	UTM Easting	UTM Northing
NAD 83	17	+/- 60cm	aerial Imagery from the Ministry of Natural Resources	690737	4890646

Project Phasing (outline construction, operation and decommissioning activities)

Please see Draft Project Description Report, Draft Construction Plan Report, Draft Design and Operations Report, and Draft Decommissioning Report.

1.2 - Environmental Context

Describe any negative environmental effects that may result from engaging in the project (consider construction, operation and decommissioning activities.)

Please see Draft Project Description Report, Draft Construction Plan Report, Draft Design and Operations Report, and Draft Decommissioning Report.

Propose early avoidance/prevention/mitigation concepts and measures.

Please see Draft Project Description Report, Draft Construction Plan Report, Draft Design and Operations Report, and Draft Decommissioning Report.

1.3 - Renewable Energy Generation Facility

Type of Facility / Operation (select all that apply & complete all appropriate sections)

<input checked="" type="checkbox"/> Wind Facility (Land Based)	<input type="checkbox"/> Biofuel Facility
<input type="checkbox"/> Wind Facility (Off-Shore)	<input type="checkbox"/> Solar Photo Voltaic Facility
<input type="checkbox"/> Biogas Facility (Anaerobic Digesters)	<input type="checkbox"/> Other Describe :
<input type="checkbox"/> Biomass Facility (Thermal Treatment)	<input type="checkbox"/> Class (if applicable) :

Name Plate Capacity	Expected Generation	Service Area	Total Area of Site (hectares)
Maximum Contract: 18.4MW	39,954.8 MWh/yr	Stayner TS	677.08

Provide a description of the facilities equipment or technology that will be used to convert the renewable energy source or any other energy source to electricity.

Please see Draft Project Description Report, Draft Construction Plan Report, Draft Design and Operations Report, and Draft Decommissioning Report.

1.4 - Renewable Energy Generation Activities

Describe the activities that will be engaged in as part of the renewable energy project

Please see Draft Project Description Report, Draft Construction Plan Report, Draft Design and Operations Report, and Draft Decommissioning Report.

Section 2 - Supporting Documents

2.1 - Requirement	Name of Draft documents distributed for consultation	Date available to Municipal or Local Authority Contact
DRAFT Project Description Report	Draft Fairview Wind Project Project Description Report	November 2011
DRAFT Design and Operations Report	Draft Fairview Wind Project Design and Operations Report	November 2011
DRAFT Construction Plan Report	Draft Fairview Wind Project Construction Plan Report	November 2011
DRAFT Decommissioning Plan Report	Draft Fairview Wind Project Decommissioning Plan Report	November 2011
List of other Documents		

Location where written draft reports can be obtained for public inspection (physical location for viewing and the applicants project website if one is available):
Réports available at Staynor Public Library, 201 Huron St. Staynor ON and at Clearview Township Administration Centre
217 Gideon St. Staynor ON. Also available online at <http://canada.wpd.de/ca/projects/in-canada/fairview.html>

Section 3 – Applicant Address and Contact Information

3.1 - Applicant Information (Owner of project/facility)				
Applicant Name (legal name of individual or organization as evidenced by legal documents)			Business Identification Number	
wpd Canada Corporation			8115 4090 0001	
Business Name (the name under which the entity is operating or trading - also referred to as trade name)			<input checked="" type="checkbox"/> same as Applicant Name	
Civic Address- Street information (includes street number, name, type and direction)			Unit Identifier (i.e. apartment number)	
2233 Argentia Rd. Mississauga, ON, L5N 2X7			Suite 102	
Survey Address (Not required if Street Information is provided)				
Lot and Conc.: used to indicate location within a subdivided township and consists of a lot number and a concession number.		Part and Reference: used to indicate location within an unsubdivided township or unsurveyed territory, and consists of a part and a reference plan number indicating the location within that plan. Attach copy of the plan.		
Lot	Conc.	Part	Reference Plan	
Municipality	County/District	Province/State	Country	Postal Code

PART B: TO BE COMPLETED BY THE MUNICIPALITY OR LOCAL AUTHORITY

Section 4 - Municipal or Local Authority Contact Information (check the one that applies)

Local Municipality (include each local municipality in which project location is situated)						<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of Municipality	Address	Phone	Clerk's Name	Clerk's Phone/Fax	E-Mail Address		
Upper Tier Municipality (include each upper tier municipality in which project location is situated)						<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of Municipality	Address	Phone	Clerk's name	Clerk's Phone/Fax	E-Mail Address		
Local roads area (include each local roads area in which project location is situated)						<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of local roads board	Address	Phone	Secretary-treasurer's Name	Secretary-treasurer's Phone/Fax	E-Mail Address		
Board Area (include each board area in which project location is situated)						<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of Local Service Board	Address	Phone	Secretary's name	Secretary's Phone/Fax	E-Mail Address		

Section 5: Consultation Requirement

5.1 - Project Location
Provide comment on the project location with respect to infrastructure and servicing.
5.2 - Project Roads
Provide comment on the proposed project's plans respecting proposed road access.
Identify any issues and provide recommendations with respect to road access
Provide comment on any proposed Traffic Management Plans
Identify any issues and provide recommendations with respect to the proposed Traffic Management Plans

5.3 – Municipal or Local authority Service Connections

Provide comment on the proposed project plans related to the location of and type of municipal service connections, other than roads.

Identify any issues and provide recommendations with respect to the type of municipal service connections, other than roads.

5.4 – Facility Other

Identify any issues and recommendations with respect to the proposed landscaping design for the facility

Provide comment on the proposed project plans for emergency management procedures / safety protocols.

Identify any issues and recommendations with respect to the proposed emergency management procedures / safety protocols.

Identify any issues and recommendations with respect to any Easements or Restrictive Covenants associated with the Project Location

5.5 Project Construction

Identify any issues and recommendations with respect to the proposed rehabilitation of any temporary disturbance areas and any municipal or local authority infrastructure that could be damaged during construction.

Identify any issues and recommendations with respect to the proposed location of fire hydrants and connections to existing drainage, water works and sanitary sewers

Identify any issues and recommendations with respect to the proposed location of buried kiosks and above-grade utility vaults

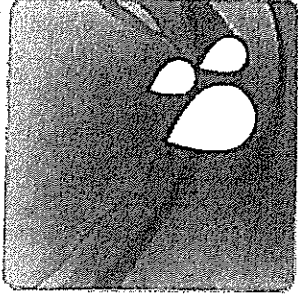
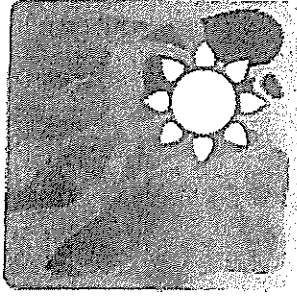
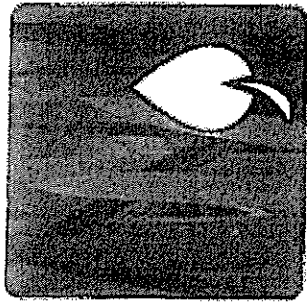
Identify any issues and recommendations with respect to the proposed location of existing and proposed gas and electricity lines and connections

Provide comment on the proposed project plans with respect to Building Code permits and licenses.

Identify any issues and recommendations related to the identification of any significant natural features and water bodies within the municipality or territory.

Identify any issues and recommendations related to the identification any archaeological resource or heritage resource.

Tab 4 Provincial Material Related to Municipal Consultation Form



GUIDE

Provincial approvals for **Renewable Energy Projects**





While these two meetings are the minimum requirements set out in the REA regulation, applicants are encouraged to hold additional meetings with the local community throughout the project design and study period. These additional meetings are to ensure the community understands that the requirements set out under the regulations are being met, how potential impacts will be mitigated and to raise awareness about the benefits of the project. All projects for which an REA application has been submitted will be posted

on the Environmental Registry for public comment by the Ministry of the Environment at the time of application and upon the issuance of a final decision.

Consulting with municipalities

Municipal consultation is mandatory for all projects requiring an REA, except for small wind projects (see page 40).

Consultation with the municipality (or municipalities) in which the facility would be located is required to take place at least 90 days before submitting an REA application.

The Ministry of the Environment provides applicants with a form that outlines what needs to be addressed with municipal officials. The form requests municipal feedback on matters related to:

- * Municipal services and infrastructure (such as the proposed road access)
- * The rehabilitation of areas disturbed and/or municipal infrastructure damaged during construction
- * Emergency management procedures/safety protocols related to the ongoing management of the facility

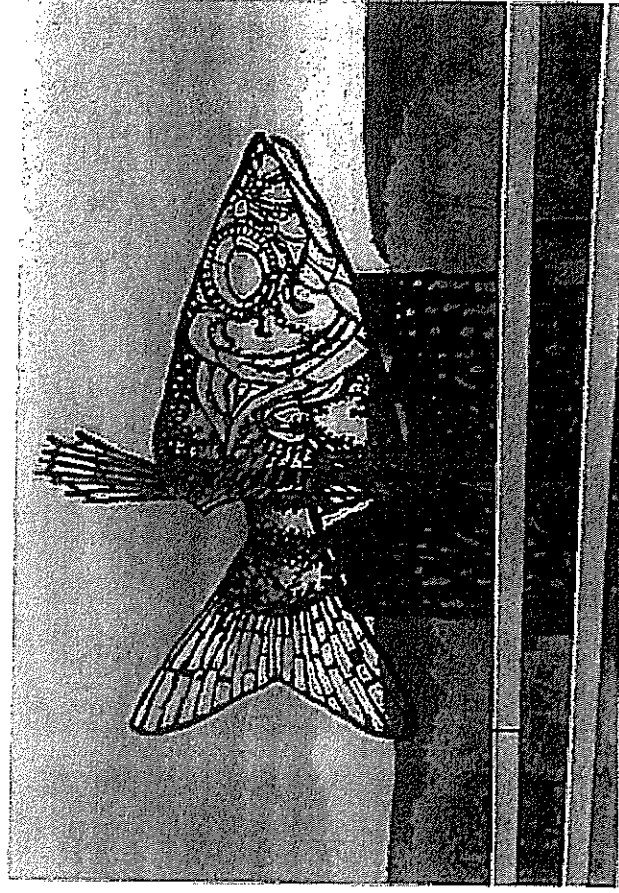
If the applicant is not able to provide all of the required information, the complete submission must explain why. In addition, the applicant must describe and document efforts to address any issues raised during municipal consultation.

Consulting with Aboriginal communities

Aboriginal consultation is mandatory for applicants of projects requiring an REA, except for small wind projects (see page 40). The nature of the consultation will vary depending on the project.

The applicant must contact the Ministry of the Environment for a list of Aboriginal communities that must be notified regarding the proposed project. The Ministry of the Environment will give the applicant, on behalf of the Crown, a list of communities that may have a potential interest in the environmental effects of the project or Aboriginal or treaty rights that may be affected by it. If a project is to be located on Crown land, this list will reflect what was already required by the Ministry of Natural Resources as part of the site release process.

The applicant is then encouraged to draw up and carry out a consultation plan. This includes giving notice and project information to Aboriginal communities early in the planning process and making best efforts to meet with them. The applicant must document the results of all consultation they conduct. The documentation is also required to outline any potential adverse effects on Aboriginal or treaty rights identified by the community and the measures proposed to address them.



Frequently Asked Questions – Renewable Energy Approval

Why does the ministry believe a setback of 550 metres for wind turbines is a safe distance?

- The minimum setback for wind projects of 550 metres will ensure noise levels do not exceed 40 decibels at buildings used by people, such as a residence. Forty decibels is approximately the noise level experienced in a quiet office or library.
- The setbacks rise with the number of turbines and the sound level rating of selected turbines. For example, a turbine with a sound power level of 106 decibels has to meet a setback of 950 metres from the nearest receptor.
- We're confident that the science around 550 meters is sound. We used the most conservative modelling available nationally and internationally, and our experiences in Ontario and that of other jurisdictions supports this.
- Going forward, the Ministry of the Environment will develop the science to monitor and measure low frequency noise, as currently there are no established and accepted protocols. In the future, wind farm operators may be required, through conditions of the Renewable Energy Approval, to monitor and address perceptible low frequency noise once acceptable protocols for doing so have been established

Will renewable energy development be permitted in wetlands and other ecologically sensitive areas?

- Protecting significant natural features such as wetlands and the hydrologic functions they support are important to this government.
- The REA establishes clear rules to continue to protect significant natural features and sensitive water bodies so that renewable energy project applicants know they must protect these important features and the hydrologic functions they support.
- Renewable energy facilities will not be permitted in provincially significant wetlands in Southern Ontario or coastal wetlands.
- In some instances a renewable energy facility may be permitted within 120 metres of provincially significant wetlands, but only if an environmental impact study demonstrates the ability to mitigate negative effects and is confirmed by the MNR.

How will species at risk, birds and bats be protected?

- The ministry is committed to ensuring that renewable energy projects are protective of the natural environment.
- Existing rules under MNR's Endangered Species Act will remain. Applicants must obtain a permit under the Endangered Species Act from MNR should their project have the potential to negatively affect a species or habitat protected under the Act.
- As part of the REA for most project types, a study of the potential impacts on wildlife habitat must be completed to the satisfaction of the MNR.
- The proposed process integrates existing study requirements with provincial standards to ensure the natural environment is protected.

How will the environment be protected now that the Environmental Assessment Act powers have been removed?

- The new process integrates existing previous study requirements with provincial standards to ensure the natural environment is protected.
- The Renewable Energy Approval process ensures transparent decision making and provides opportunity for public participation in the process.
- The new process replaces what was largely a proponent driven environmental assessment framework and replaces it with clear provincial rules and requirements.

How will the new approval process be any faster than the existing process?

- The ministry has introduced a streamlined approvals process and a service guarantee that bring with them greater certainty for developers who follow the rules.

How will I be consulted if there's a project in my community?

- The renewable energy approval process ensures transparent decision making and provides opportunity for public participation in the process.
- Applicants must provide written notice to all adjacent land owners, as well as public notice within a 120 metre radius of the proposed renewable energy generation facility at a preliminary stage of the project planning, and post at least two consecutive notices in a local newspaper.
- For most projects, applicants must also consult with local municipalities on specific matters related to municipal land, infrastructure, services and information and will be required to post a notice in a local newspaper of general circulation within the municipality where the project is located.
- Once ready to submit the application for Ministry of the Environment review, the applicant will be required to hold at least two community consultation meeting to discuss the project and its potential local impact.
- Any required studies must be made available for public review 60 days prior to the date of the second or final community consultation meeting.
- Municipal input is an important part of the REA process, and through a transparent decision making process local concerns can be addressed in a timely manner.

How will Aboriginal communities be consulted and the impacts on their rights considered as part of the approval?

- Aboriginal consultation will be mandatory for the applicant as part of the regulatory requirements for a Renewable Energy Approval.
- While the Crown will delegate certain procedural aspects of consultation to an applicant, the duty to consult rests with the Crown. The Crown will work to ensure that the duty to consult is fulfilled prior to a project being eligible for approval.
- During this process, aboriginal communities will have an opportunity to raise issues and concerns with the applicant and the ministry.
- If the applicant has not already appropriately considered impacts on Aboriginal and treaty rights, the Director can direct them to go back and consult before accepting their application for review.
- The Director will also consider the impacts of a project on aboriginal and treaty rights when setting conditions in the renewable energy approval.

What role will municipalities have in siting wind turbine projects?

- The ministry recognizes the importance of local decision making with respect to specific matters related to municipal land, services and information.
- A proponent of a renewable energy project will have to consult with local municipalities prior to applying for a Renewable Energy Approval.
- The ministry has developed a template for this consultation, which the proponent will use to relay project specific matters raised by the municipality. This document is to be submitted to the ministry as part of the application.
- The renewable energy approval process would ensure transparency of decision making and provide opportunity for municipal engagement in the process.

How do I know if my project needs approval?

- **Wind power** facility projects over three kW will require a Renewable Energy Approval (REA). The requirements that must be met to obtain a REA vary depending on the project's output (mW). For wind facilities generating between three and 50 kW, known as small wind projects, requirements are simplified and there are no mandatory setbacks. Facilities mounted on buildings may require building permits. For further information, contact the local building permit department.
- **Solar power** facility projects that are roof-top or wall-mounted solar facilities are exempt from a Renewable Energy Approval. Any ground-mounted solar facility capable of producing over 10 kW will require a REA. Ten kW is the average energy requirements of five to 10 households and uses a surface area of about 55 square metres.

- **Bio-energy** power facility projects must use biogas or biomass source material as defined under the Electricity Act. Bio-energy projects that are located on a farm and are already subject to an approved Nutrient Management Strategy under the Nutrient Management Act are exempt from obtaining a Renewable Energy Approval.
- **Water power** facility projects do not require a Renewable Energy Approval. The Water Power Class Environmental Assessment dated October 2008 is the source document for understanding the rules governing the development of water power projects. Water power projects must also obtain the existing permits and approvals from the Ministry of the Environment and Ministry of Natural Resources.
- For more information on renewable energy generation projects, and what is required for approvals, please contact the **Renewable Energy Facilitation Office** at REFO@ontario.ca or 1-877-440-REFO(7336) or (416) 212-6582.

As a developer do I have to send multiple applications to different ministries to get my project approved?

- The Ministry of the Environment now has a single approval. The process integrates existing study requirements with provincial standards to ensure the natural environment is protected.
- The Ministry of Natural Resources will continue to issue its approvals under its existing legislation but in a fashion that is coordinated with the Renewable Energy Approval providing clear guidance to help proponents through the process.
- Though multiple approvals are being issued based on experience and mandates of various ministries there will still be a one-window approach for renewable energy project approvals through a facilitator's office.

What happens to wind and other renewable energy projects that are part way through the current approval process?

- It is proposed that projects currently holding all required approvals for their facility, such as a Certificate of Approval, will not require a Renewable Energy Approval and will not be subject to the new rules, unless or until an amendment to the Certificate of Approval is required.
- The ministry recognizes that there are projects where substantial work has been done to date but yet all final approvals have not been obtained.
- Projects that have an Ontario Power Authority contract and have issued a notice of Completion at the time of the regulation's proclamation continue with EA process and apply for a Certificate of Approval. These projects, however, must comply with the 550 metre minimum noise setback and the new property and road setbacks will apply.
- Some projects – such as solar and biogas/biomass – do not require an environmental approval under the current rules, but will require a REA under the new rules. If these projects have an OPA contract and would have not been prohibited under municipal zoning prior to proclamation, they will be able to apply for a Certificate of Approval instead of a Renewable Energy Approval.

- It is proposed that where projects that have ministry approvals (e.g., a Permit to Take Water or Certificate of Approval) will not be required to get a Renewable Energy Approval unless there is a need for a change to the approval or permit.

What if I have a question about the application? Is there someone that I can contact for more information/assistance?

- For more information, please contact the Renewable Energy Facilitation Office (REFO) by email: REFO@ontario.ca, or by telephone: 1-877-440-REFO(7336) or (416) 212-6582

Tab 5 Correspondence Related to Municipal Consultation Form

Michael Wynia

From: Michael Wynia
Sent: Thursday, December 5, 2013 10:42 AM
To: Santos, Narren (ENE)
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Sue McKenzie
Subject: RE: Follow up to our meeting regarding Fairview

Importance: High

Good morning Narren,

I did receive your telephone message and subsequent email below in which you indicate you left a message but did not elaborate upon its content.

As you may recall, my inquiry was with respect to our efforts to complete the municipal consultation process on this file. We had indicated that we were preparing further information for the Ministry and the applicant and we wished to obtain a copy of the REA application as submitted to your offices for this purpose.

I was somewhat shocked that, in a response to our request for information related to the completion of municipal consultation, the reply was that the application had been deemed to be complete and that the application was to be posted on the EBR and that this is where we could find a copy of the application.

It is my understanding that municipal consultation must be completed and must form part of the REA application. Clearly, municipal consultation was not complete and was ongoing.

In April of this year as a follow up to some of our research we requested that wpd Canada provide us with the report concerning municipal consultation that was to form part of the application. Despite the fact that this report would presumably contain communications between us and wpd, they declined to provide that information and indicated that it would only be made available when the application was deemed to be complete. They have not yet provided us with the alleged completed municipal consultation report. We have also reviewed the EBR posting and that information is also not available on either the EBR posting site or the wpd web site for which a link is provided in the EBR posting site. In fact, the wpd site does not even contain information indicating that the application has been declared complete.

We are aware that the Ministry does have the ability to accept and declare an application as complete in the absence of the completion of municipal allocation where the municipality refuses or frustrates the process of consultation. We cannot imagine that to be the case in this particular instance as we have had absolutely no communication from the Ministry suggesting that this was the case; indeed, quite to the contrary, we have been in ongoing communication with respect to trying to complete such consultation, including our as yet to be responded to request for a copy of the REA application as submitted to your offices.

In reviewing our files we examined the municipal consultation form provided to us by wpd for this project. We note that the municipality has not completed the form due to the ongoing review of information and the preparation of our final comments. As an aside we also note that we would have had a technical issue in regard to completing the form as the Project location information, which is to be completed by the applicant rather than the municipality, is far from adequate in describing the actual location of the project.

At this point we must therefore express a serious concern with, and objection to, the declaration of the wpd Fairview Windfarm being deemed complete as:

- The municipal consultation had not been completed;
- We have been provided with no information from either the Ministry or the proponent with respect to the alleged completion of the municipal consultation;
- We have no correspondence indicating that the municipality had in any way inappropriately frustrated or delayed the consultation process and, to the contrary, have communication openly acknowledging that it was continuing;
- We have been frustrated by the Ministry and wpd in our attempt to complete consultation by a refusal to provide information until such time as the application is deemed complete; and,
- We have been provided with a technically inadequate Renewable Energy Approval consultation form by the applicant.

Our original request was for a copy of the REA application as submitted to the Ministry. In your telephone message you suggest that it would be available as a consequence of deeming the application complete and that it can be obtained from the EBR posting. We had requested this information some time ago to assist with the completion of the consultation process. As it was apparently to be publicly posted in any event, we are not sure why it could not have been provided to the municipality when originally requested. The same applies to our request for the alleged documentation of municipal consultation which wpd refused to provide until their application was deemed to be complete. As indicated we have reviewed the EBR posting and, contrary to your direction, the application is not available in its full format and content as submitted to the Ministry.

We find that we are now seriously prejudiced by the process undertaken and our reasonable ability to provide appropriate municipal consultation on a project which has serious implications to our residents and community. We request that you provide the originally requested REA application information. We also respectfully request that you repeal your decision to deem the application complete, or that you provide a clear explanation for why the application has been deemed to be complete in the absence of completed municipal consultation despite our outstanding requests for information and concerns, so that we can consider our request on your decision to declare the application complete.

As this matter is now extremely time sensitive, particular while occurring over the holiday season, and we need to provide a report to our Council on this matter, a response would be appreciated in as timely a manner as possible.

Thank you,

Michael Wynia, MClP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Santos, Narren (ENE) [mailto:Narren.Santos@ontario.ca]

Sent: December 3, 2013 4:23 PM

To: Michael Wynia

Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE)

Subject: RE: Follow up to our meeting regarding Fairview

Good afternoon Mr. Wynia:

This is a follow up and to let you know that I left you a detailed voice message this afternoon regarding Fairview. Should you have any questions. Please let me know.

Regards,

From: Michael Wynia [<mailto:mwynia@clearview.ca>]
Sent: December 03, 2013 9:59 AM
To: Santos, Narren (ENE)
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE)
Subject: RE: Follow up to our meeting regarding Fairview

Good morning Narren,

Further to my email below we are preparing further comments for submission but we wish to confirm some information and it would therefore be of assistance to have a copy of the REA application. If you could forward us a copy of the application that would be most helpful.

Regards,

Michael Wynia, MCIP, RPP
*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Michael Wynia
Sent: November 11, 2013 10:22 AM
To: 'Santos, Narren (ENE)'
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE)
Subject: RE: Follow up to our meeting regarding Fairview

Hello Narren,

We hope to provide our further comments in the near future. Amy Cann whom has been working on this file with me is on a temporary leave, however I will attempt to consolidate our comments in the near future and forward something to both you and the applicants.

In this regard, it appears that we do not have a copy of the REA application which would be helpful in providing our further comments on the project. Would it be possible for you to forward a copy of the application to us.

Thank you,

Michael Wynia, MCIP, RPP
*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Santos, Narren (ENE) [<mailto:Narren.Santos@ontario.ca>]
Sent: November 7, 2013 9:21 AM
To: Michael Wynia
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Amy Cann
Subject: RE: Follow up to our meeting regarding Fairview

Good Morning Mr. Wynia:

Thank you for your follow up e-mail dated October 29th. We look forward to receiving your comments regarding your concerns about the Fairview Wind Farm. We would also encourage you to raise your concerns with the proponent. At this time, the ministry is still conducting the screening for completeness of the REA application and anticipate making a decision in the near future.

Regards,
Narren

Narren Santos | Senior Program Support Coordinator | Service Integration | Environmental Approvals Access and Service Integration
Branch I Ministry of the Environment
2 St. Clair Ave W, 12a Floor Toronto, Ontario, M4V 1L5 | Phone: 416-314-8442 | narren.santos@ontario.ca

From: Michael Wynia [<mailto:mwynia@clearview.ca>]
Sent: October 29, 2013 2:26 PM
To: Santos, Narren (ENE)
Cc: Dumais, Doris (ENE); Rudzki, Kristina (ENE); Amy Cann
Subject: RE: Follow up to our meeting regarding Fairview

Thank you Narren,

We are currently reviewing this and other information including a report authorized by Council last week regarding our heritage landscape program. We hope to have further comments to you and the applicant regarding this file in the near future. We hope to have a meeting regarding some additional information for the heritage landscape aspect within the next couple of weeks and this will allow us to better outline this concern and comprehensively outline our outstanding issues.

Regards,

Michael Wynia, MCIP, RPP
*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Santos, Narren (ENE) [<mailto:Narren.Santos@ontario.ca>]
Sent: October 11, 2013 1:48 PM
To: Michael Wynia
Cc: Dumais, Doris (ENE); Rudzki, Kristina (ENE)
Subject: Follow up to our meeting regarding Fairview

Good afternoon Mr. Wynia:

On behalf of Doris Dumais, please find below our follow up to our August 22nd meeting regarding the Fairview Wind Farm.

Regards,
Narren Santos

Dear Mr. Wynia:

I would like to thank you again for taking the time to meet with us on August 22nd and for relating your questions and concerns about the proposed Fairview Wind Farm.

During our meeting, there were a few follow up items, I would like to address:

- **Notification:** As discussed, my staff will notify you, prior to making a decision whether to deem the application complete. Ministry staff are still screening the application for the Fairview Wind Farm Project.
- **Consultation:** I have also informed wpd Canada that Clearview Township is interested in further in-depth dialogue with the proponents of the Fairview Wind Farm.
- **Financial Assurance:** For your reference enclosed is the MOE's Financial Assurance Guide. Please note that the MOE does not require financial assurance for wind turbine projects as part of the REA process since it has been determined that the monetary value of the (recovered) wind turbine equipment would be sufficient to cover the cost of decommissioning and restoring the project land.
- **Birds & Bats Conditions:** Below is an example of the conditions typically included in an REA for wind projects related to birds and bats. This condition is developed on a project-specific basis by the Ministry of Natural Resources.

Should you have further questions or comments, please do not hesitate to contact us.

Regards,
Doris Dumais

POST-CONSTRUCTION MONITORING – SIGNIFICANT WILDLIFE HABITAT

I3. The Company shall implement the post-construction monitoring described in the Environmental Effects Monitoring Plan and the Environmental Impact Study, described in Condition I1, including the following:

- (1) Disturbance Monitoring for Area Sensitive Species: Forest Birds Habitat (Feature 1);
- (2) Bird and Bat mortality monitoring.

POST CONSTRUCTION MONITORING - BIRD AND BAT MONITORING

THRESHOLDS AND MITIGATION

I4. The Company shall contact the Ministry of Natural Resources and the Director if any of the following bird and bat mortality thresholds, as stated in the Environmental Effects Monitoring Plan for the _____ Wind Project described in Condition I1, are reached or exceeded:

- (1) # bats per turbine per year;
- (2) # birds per turbine per year at individual turbines or turbine groups;
- (3) # Raptors per wind power project per year.
- (4) # or more birds at any one turbine during a single monitoring survey; or

- (5) # or more birds (including raptors) at multiple turbines during a single monitoring survey.
- I5. If the bat mortality threshold described in Condition I4 (1) is reached or exceeded, the Company shall:
- (1) implement operational mitigation measures consistent with those described in the Ministry of Natural Resources publication entitled "Bats and Bat Habitats: Guidelines for Wind Power Projects" dated July 2011, or in an amended version of the publication;
 - (2) increase cut-in speed to 5.5 m/s or feather wind turbine blades when wind speeds are below 5.5 m/s between sunset and sunrise, from July 15 to September 30 at all turbines, for the operating life of the Facility; and
 - (3) implement an additional three (3) years of effectiveness monitoring.
- I6. If the bat mortality threshold described in Condition I4 (1) is reached or exceeded after operational mitigation is implemented in accordance with Condition I7, the Company shall prepare and implement a contingency plan, in consultation with the Ministry of Natural Resources, to address mitigation actions which shall include additional mitigation and scoped monitoring requirements.
- I7. If either of the bird mortality thresholds described in Conditions I4 (2) or I4 (3) is reached or exceeded for turbines located within 120 metres of bird significant wildlife habitat, or if disturbance effects are realized at bird significant wildlife habitat within 120 metres of turbine(s) while monitoring is being implemented in accordance with Conditions I4 or I5, the Company shall implement immediate mitigation actions as described in the Environmental Impact Study and Environmental Effects Monitoring Plan described in Condition I1, and an additional three (3) years of effectiveness monitoring.
- I8. If either of the bird mortality thresholds described in Conditions I4 (2) or I4 (3) is reached or exceeded for turbines located outside 120 metres of bird significant wildlife habitat, the Company shall conduct two (2) years of subsequent scoped mortality monitoring and cause and effects monitoring. Following the completion of scoped monitoring, the Company shall implement operational mitigation for the operating life of the Facility, and effectiveness monitoring at individual turbines, for the first three (3) years following the implementation of mitigation.
- I9. If either of the bird mortality thresholds described in Conditions I4 (4) or I4 (5) is reached or exceeded, the Company shall prepare and implement a contingency plan to address immediate mitigation actions which shall include:
- (1) periodic shut-down of select turbines;
 - (2) blade feathering at specific times of year; or
 - (3) an alternate plan agreed to between the Company and the Ministry of Natural Resources.
- I10. If either of the bird mortality thresholds described in Conditions I4 (2) or I4 (3) is reached or exceeded while monitoring is being implemented in accordance with Conditions I7 or I8, or if either of the bird mortality thresholds described in Conditions I4 (4) or I4 (5) is reached or

exceeded after mitigation is implemented in accordance with Condition I9, the Company shall contact the Ministry of Natural Resources and prepare and implement an appropriate response plan that shall include some or all of the following mitigation measures:

- (1) increased reporting frequency to identify potential threshold exceedance;
- (2) additional behavioural studies to determine factors affecting mortality rates;
- (3) periodic shut-down of select turbines;
- (4) blade feathering at specific times of year; or
- (5) an alternate plan agreed to between the Company and the Ministry of Natural Resources.

REPORTING AND REVIEW OF RESULTS

- I11. The Company shall report, in writing, the results of the post-construction disturbance monitoring described in Condition I3, to the Ministry of Natural Resources for two (2) years on an annual basis and within three (3) months of the end of each calendar year in which the monitoring took place, with the exception of the following:
- (1) if disturbance effects are realized at bird significant wildlife habitat within 120 metres of turbines while monitoring is being implemented in accordance with Condition I3, the Company shall report disturbance effects to the Ministry of Natural Resources for the additional three (3) years of effectiveness monitoring described in Condition I7, on an annual basis and within three (3) months of completing the effectiveness monitoring for each year.
- I12. The Company shall report, in writing, bird and bat mortality levels to the Ministry of Natural Resources for three (3) years on an annual basis and within three (3) months of the conclusion of the November mortality monitoring, with the exception of the following:
- (1) if either of the bird mortality thresholds described in Conditions I4 (4) or I4 (5) is reached or exceeded, the Company shall report the mortality event to the Ministry of Natural Resources within 48 hours of observation;
 - (2) for any and all mortality of species at risk (including a species listed on the Species at Risk in Ontario list as Extirpated, Endangered or Threatened under the provincial *Endangered Species Act, 2007*) that occurs, the Company shall report the mortality to the Ministry of Natural Resources within 24 hours of observation or the next business day;
 - (3) if the bat mortality threshold described in Condition I4 (1) is reached or exceeded, the Company shall report mortality levels to the Ministry of Natural Resources for the additional three (3) years of monitoring described in Condition I5, on an annual basis and within three (3) months of the conclusion of the October mortality monitoring for each year;
 - (4) if either of the bird mortality thresholds described in Conditions I4 (2) or I4 (3) is reached or exceeded for turbines located within 120 metres of bird significant wildlife habitat, the Company shall report mortality levels to the Ministry of Natural Resources for the additional three (3) years of effectiveness monitoring described in Condition I7,

on an annual basis and within (3) months of the conclusion of the November mortality monitoring for each year;

- (5) if either of the bird mortality thresholds described in Conditions I4 (2) or I4 (3) is reached or exceeded for turbines located outside 120 metres of bird significant wildlife habitat, the Company shall report mortality levels to the Ministry of Natural Resources for the additional two (2) years of cause and effects monitoring described in Condition I8, on an annual basis and within three (3) months of the conclusion of the November mortality monitoring for each year; and
- (6) if the Company implements operational mitigation following cause and effects monitoring in accordance with Condition I8, the Company shall report mortality levels to the Ministry of Natural Resources for the three (3) years of subsequent effectiveness monitoring described in Condition I8, on an annual basis and within three (3) months of the conclusion of the November mortality monitoring for each year.

Michael Wynia

From: Michael Wynia
Sent: Friday, December 6, 2013 3:25 PM
To: Jennifer Ng
Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie
Subject: RE: Fairview Wind Project REA Reports
Importance: High

Good afternoon Ms Ng,

In your reply, you have indicated that you will be sending the "most current" REA Reports. Can you please provide a clarification with respect to this terminology.

As part of our effort to continue the municipal consultation process, we had requested, from the Ministry, a copy of the REA materials as submitted to the Ministry for approval. They failed to respond to our request for this information for a number of weeks and responded only yesterday by indicating that the application was deemed to be complete in the absence of completing municipal consultation, and then suggested that the requested information would be available through the EBR posting which was not the case.

I note that the EBR posting which initiated the public review period, provided no documentation other than referring to your web site, which as you have acknowledged is not updated. The time period allotted for public comment is 60 days, unfortunately over a holiday period, and you have indicated that the Ministry has allotted you ten days to update the information, thereby effectively significantly shortening the amount of time the public has to review your information and comment on your application.

In your email you also indicate that you will be providing an extensive summary of consultations including municipal consultation. As you are aware we have not completed the municipal consultation process as there are a number of matters which we still wished to review with you and the Ministry. In fact, the information we had requested from the Ministry, which they did not provide, was part of that ongoing effort. As we have also advised the Ministry, the municipality was in no position to complete Part B of the municipal consultation form because of deficiencies in the information provided by the applicant in Part A of that form. We had hoped to address those deficiencies with you as part of the continued municipal consultation process.

We hope to be able to further discuss our concerns with you and the Ministry through the appropriate completion of the municipal consultation process and are awaiting a response from the Ministry in this regard. In the interim, if you could please clarify what was meant by the term "most current" REA reports, that would be of assistance. As we discussed, we would also appreciate you forwarding a copy of the REA application as submitted to the Ministry.

Thank you and regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Jennifer Ng [mailto:Jennifer@wpd-canada.ca]
Sent: December 6, 2013 2:29 PM

To: Michael Wynia
Cc: fairviewproject; Khlaire Parré
Subject: Re: Fairview Wind Project REA Reports

Good afternoon M. Wynia;

I just wanted to send a follow-up e-mail, and let you know that we will be sending you the most current REA Reports. The website is also in the process of being updated and will be completed within the 10 days allotted by the MOE from the time of deemed complete.

As per your inquiry, the Consultation Report, which provides an extensive summary of public, agency, aboriginal, and municipal consultation, is also included. A CD with all these reports will be mailed to you later today.

If you require any more information, please do not hesitate to let me know.

Thank you very much, Michael, and have a great weekend!

Jennifer Ng
Renewable Energy Approvals (REA) Assistant



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Disclaimer
www.wpd.de/disclaimer.html

Michael Wynia

From: Michael Wynia
Sent: Wednesday, December 18, 2013 2:55 PM
To: Jennifer Ng
Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie; Paul Deol; Joshua Vaidhyan
Subject: RE: Fairview Wind Project REA Reports
Importance: High

Good afternoon Ms Ng,

This is in response to your email below and correspondence received from your office on December 12, 2013, dated December 11, 2013.

In your email below you advised that you would be forwarding the most current reports as provided to the Ministry on August 31, 2012. We have not yet received those reports. We had also requested that you provide a copy of the application as submitted at that time. We have also not received this information.

On December 12 we did receive a single copy of the Consultation Report (an obviously incomplete report perhaps better to have been labelled as "Draft" with respect to the fact that you and the Ministry have acknowledged that municipal consultation is ongoing) and an updated Letter from the Ministry of Tourism, Culture and Sport. The cover letter to this submission requested that this binder be placed in our Stayner library. I did attend those offices and found that they received an identical binder and letter on December 14, 2013.

In note that the cover letter instructed us to place the updated Ministry letter in a binder entitled "*Fairview Wind Project; Renewable Energy Approvals Reports*". Unfortunately, neither to Stayner library, nor our offices have such a binder. Both of these locations have binders entitled "*Draft Renewable Energy Approval Reports*". In reviewing your web site today, and in accordance with your email below, it is apparent that there is an updated set of documents, but that updated set of documents is not available in our offices or the Stayner library. The public will therefore not have access to those updated documents at either location, further compounding an already problematic EBR posting.

Thank you very much for acknowledging that the municipal consultation process was incomplete and recognizing that we were still in consultation with the MOE on the matter which has yet to respond to an information request sent some weeks ago. We also thank you for acknowledging that we continued to make the appropriate efforts to undertake appropriate municipal consultation.

With respect to continuing that very essential process of municipal consultation, we, as has been the case in the past, continue to await the production of information which will assist in our review of the proposal. We have advised the Ministry that we think it is entirely inappropriate and premature to have deemed the application incomplete given our clearly apparent mutual efforts to complete the municipal consultation process. We have yet to receive a response to our concerns in this regard. We do not believe it appropriate to continue such consultation under the very problematic cloud of the Ministry's premature decision with respect to the complete application and the resulting EBR posting which has seriously prejudiced appropriate participation in the approvals process. The ongoing issues with respect to the availability of documents for public review only serves to further compound this serious issue.

We therefore must regretfully decline the opportunity to continue our mutual efforts at conducting a meaningful municipal consultation until such time as the Ministry retracts its decision regarding the status of the application and removes the premature EBR posting. Once we receive the information requested and have the opportunity to review it,

we would appreciate the opportunity to meet to discuss a variety of outstanding issues and concerns to which you would then be able to respond. Following the completion of the municipal consultation, a process recognized as integral to an objective approvals process, we believe the Ministry could then more appropriately make the determination of a complete application and repost the instrument in the EBR registry. The public would then have access to a fulsome consultation process which also allows you the opportunity to address the outstanding issues as part of the material open for public review.

Regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Jennifer Ng [mailto:Jennifer@wpd-canada.ca]

Sent: December 10, 2013 2:36 PM

To: Michael Wynia

Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie; Paul Deol; Joshua Vaidhyan

Subject: RE: Fairview Wind Project REA Reports

Good afternoon Mr. Wynia!

Thanks for your e-mail, requesting further clarification in regards to the REA Reports.

By "most current", we mean we are providing you with a copy of the reports that were submitted to the Ministry of the Environment on August 31, 2012, that were to be assessed for completeness. The Approval process and technical review are to occur after the application has been deemed complete, and comments and questions are invited via the EBR posting.

As you may be aware, the application consists of many reports that often consist of large PDF files. In an effort to improve website accessibility, wpd is in the process of ensuring all files are web optimized to improve download times and public access. I apologize this may take a few days, and we appreciate your patience in this matter. I would be happy to send a follow-up e-mail once these reports are fully posted, if you like.

In regards to the EBR posting: the Ministry of Environment has already extended an additional 15 days from the regular 45 day comment period to a total of 60 days to accommodate the holidays, and to provide people the time to review our reports and provide their comments to the Director via the Environmental Registry posting. We will be making these reports available for physical review at three separate locations, and as mentioned we are well underway in making our reports available via our website.

Please rest assured that the summary of consultation efforts in the Consultation Report are by no means an indication that our consultation efforts are somehow "complete". We continue to be very amenable to working closely with Clearview Township, and to address your questions and comments as they arise. Once more, I apologize if I had given the impression that consultation was now finished. We are simply providing the Consultation Report as submitted as part of our REA application.

As a further note to consultation: as of 2011, wpd has made multiple efforts to connect and work with Clearview Township, and we appreciate your personal participation thus far to make sure we receive the feedback we need to ensure we're able to address the comments and questions from the municipality. While we have made a few requests to meet with your Township to discuss various aspects of the project, including potential public road access matters, we understand that the municipality was consulting with the MOE during these times.

In September, you indicated that Clearview Township has had an opportunity to meet with the MOE. As a result, wpd would like to once more extend an invitation to meet with the municipality. Would any of the following dates work for you?

December 16, 2013 (Monday) in the afternoon around 2pm
December 17, 2013 (Tuesday) all day
December 18, 2013 (Wednesday) all day

If these dates are not ideal, perhaps you could provide us with a few different days that would work best for you and your staff, and we can move forward from there.

I hope this information helps, Mr. Wynia – wpd looks forward to speaking with you once more.



Jennifer Ng

Renewable Energy Approvals (REA) Assistant



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Jennifer@wpd-canada.ca

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www.wpd.de/disclaimer.html

From: Michael Wynia [<mailto:mwynia@clearview.ca>]

Sent: Friday, December 06, 2013 3:25 PM

To: Jennifer Ng

Cc: fairviewproject; Khlaire Parré; Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Santos, Narren (ENE); Sue McKenzie

Subject: RE: Fairview Wind Project REA Reports

Importance: High

Good afternoon Ms Ng,

In your reply, you have indicated that you will be sending the "most current" REA Reports. Can you please provide a clarification with respect to this terminology.

As part of our effort to continue the municipal consultation process, we had requested, from the Ministry, a copy of the REA materials as submitted to the Ministry for approval. They failed to respond to our request for this information for a number of weeks and responded only yesterday by indicating that the application was deemed to be complete in the absence of completing municipal consultation, and then suggested that the requested information would be available through the EBR posting which was not the case.

I note that the EBR posting which initiated the public review period, provided no documentation other than referring to your web site, which as you have acknowledged is not updated. The time period allotted for public comment is 60 days, unfortunately over a holiday period, and you have indicated that the Ministry has allotted you ten days to update the information, thereby effectively significantly shortening the amount of time the public has to review your information and comment on your application.

In your email you also indicate that you will be providing an extensive summary of consultations including municipal consultation. As you are aware we have not completed the municipal consultation process as there are a number of matters which we still wished to review with you and the Ministry. In fact, the information we had requested from the Ministry, which they did not provide, was part of that ongoing effort. As we have also advised the Ministry, the municipality was in no position to complete Part B of the municipal consultation form because of deficiencies in the information provided by the applicant in Part A of that form. We had hoped to address those deficiencies with you as part of the continued municipal consultation process.

We hope to be able to further discuss our concerns with you and the Ministry through the appropriate completion of the municipal consultation process and are awaiting a response from the Ministry in this regard. In the interim, if you could please clarify what was meant by the term "most current" REA reports, that would be of assistance. As we discussed, we would also appreciate you forwarding a copy of the REA application as submitted to the Ministry.

Thank you and regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Jennifer Ng [<mailto:Jennifer@wpd-canada.ca>]

Sent: December 6, 2013 2:29 PM

To: Michael Wynia

Cc: fairviewproject; Khlaire Parré

Subject: Re: Fairview Wind Project REA Reports

Good afternoon M. Wynia;

I just wanted to send a follow-up e-mail, and let you know that we will be sending you the most current REA Reports. The website is also in the process of being updated and will be completed within the 10 days allotted by the MOE from the time of deemed complete.

As per your inquiry, the Consultation Report, which provides an extensive summary of public, agency, aboriginal, and municipal consultation, is also included. A CD with all these reports will be mailed to you later today.

If you require any more information, please do not hesitate to let me know.

Thank you very much, Michael, and have a great weekend!



Jennifer Ng
Renewable Energy Approvals (REA) Assistant



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Michael Wynia

From: Michael Wynia
Sent: Wednesday, December 18, 2013 3:25 PM
To: Santos, Narren (ENE)
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Sue McKenzie
Subject: RE: RE: Follow up to our meeting regarding Fairview

Importance: High

Good afternoon Narren,

We have not as yet received a reply to our previous emails, nor have we received the information we requested from your offices some time ago. While you suggested we would be in a position to receive this information from wpd as a result of the EBR posting, one which we find extremely problematic and prejudicial, we have not received the information from that source either.

Further compounding our increasing list of concerns, today we informed wpd that they have not provided the appropriate reports at our offices and at our Stayner library with respect to the availability of current information for the public in commenting on the EBR posting. While we maintain our position that the EBR posting is premature, the process is being further compromised by a lack of appropriate information to the public.

The proponent has openly acknowledged that the municipal consultation process was ongoing and incomplete. They have also acknowledged that the municipality was acting entirely in good faith, even making the comment that they appreciate the participation thus far to make sure they receive the feedback they need.

The public should be entitled to review a completed municipal consultation report which fully outlines the concerns of the host municipality and fairly provides the proponent an opportunity to address those concerns. This process, and the public's access to that very critical information, has been truncated by a premature EBR posting. Aside from many other problems, the public will now clearly not have the opportunity to consider municipal consultation comments and the proponent's responses in formulating their comments on the EBR posting. When both the host municipality and the proponent have acknowledged that this critical exchange of information has not taken place, it is clearly inappropriate to have initiated a final public review period on the application. This compromises not only the municipality's ability to properly participate, but also the public's, and for that matter the proponent's.

As this is an extremely time sensitive matter, and one with significant consequences to all parties, we again respectfully request that you reconsider your determination to initiate the EBR review process. We also request that you either provide the information we have requested or further encourage the proponent to do so.

Regards,

Michael Wynia, MCIP, RPP

*Director of Community Planning and Development &
Technology and Information Services, Township of Clearview*
705.428.6238 ext 240 mwynia@clearview.ca

From: Michael Wynia
Sent: December 6, 2013 12:10 PM
To: 'Santos, Narren (ENE)'
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Sue McKenzie

Subject: RE: Follow up to our meeting regarding Fairview
Importance: High

Good morning Narren,

Further to my email of December 5, 2013, set out below, I checked the EBR website and the linked wpd site again today and I see that the project continues to be posted as an active instrument despite our concerns about the declaration of a complete application and the failure to complete municipal consultation.

As you know we have had ongoing correspondence outlining our attempts to complete consultation and continue to have an outstanding request for information from your offices in order to do so. In my prior correspondence I noted that the municipality was not even in a position to complete the mandatory municipal consultation form due to technical errors in that form. Aside from the already noted major deficiency and errors in the description of the project location, the name plate capacity and the applicant name are also different. It is the applicants responsibility to provide the municipality with the consultation form and to complete Part A. We had anticipated that, as we completed municipal consultation including further discussions with the applicant, the applicant could have remedied this deficiency by providing an appropriate new form.

Instead of allowing us to work with the applicant through the consultation process and review our outstanding concerns, as well as allowing the applicant to respond and provide the necessary revised submissions, the Ministry has prematurely deemed the application to be complete and initiated a 60 day "running clock" over a holiday period which severely prejudices our ability to properly participate in this process.

As an aside I note that I received a phone call very shortly after I sent you the email of December 5, from a representative of wpd. She informed me that the Ministry had indicated that we would like a copy of the REA submission and asked if it would be acceptable to forward this as a digital copy. I indicated that would be acceptable, but would like to ensure that it included the REA application as submitted as well as the municipal consultation summary (which as you know we consider incomplete). I requested that they forward a confirmation email of our discussion to document the matter but have not yet received same. I find it somewhat problematic to see that apparently the Ministry can initiate a response to our request from the applicant in a few hours after the application is declared complete, but could not respond over a period of weeks before the application was declared complete. We were aware of your desire to continue your review of the application and the time sensitivity thereof and yet when we requested information on November 11, 2013, we received no response. When we reiterated our request on December 3, we received a voicemail indicating that the application had been deemed complete and that the information we requested would be available on the EBR posting (which it was and still is not). Within hours of our response the applicant, whom was not a party to our communication, contacted us to provide the outstanding information (yet to be received).

I note that while it would be of assistance to finally get the information we requested some time ago, it does in no way address the fact that the application is not complete since municipal consultation has not been completed. Hopefully the REA submission clarifies some significant technical discrepancies and deficiencies in the background reports that we had hoped to address as part of continuing municipal consultation. This in fact raises another critical issue with the premature EBR posting. The EBR posting indicates that documents provided for enhancing public consultation are available from the proponents web site. Both yesterday and today that web site contained flawed information regarding the status of the project and the documentation. That web site continued to provide reports with serious technical flaws including the very location of the project! The web site also indicates that the public can review documentation regarding the project in our offices. This same documentation contains serious flaws including the same serious inaccuracies in the description of the location of the project. We are very concerned that the public in being directed to our facilities to review information in order to participate in a time sensitive EBR process is going to be reviewing inaccurate information.

We respectfully reiterate our request that the Ministry retract its decision with respect to the completeness of the project; allow the municipal consultation process to be fully completed; and, allow the applicant the ability to correct

fundamental flaws in its documentation and so properly inform the public and agencies of its project so that it can be properly reviewed and commented upon.

Regards,

Michael Wynia, MCIP, RPP

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From: Michael Wynia
Sent: December 5, 2013 10:42 AM
To: 'Santos, Narren (ENE)'
Cc: Garcia-Wright, Agatha (ENE); Rudzki, Kristina (ENE); Sue McKenzie
Subject: RE: Follow up to our meeting regarding Fairview
Importance: High

Good morning Narren,

I did receive your telephone message and subsequent email below in which you indicate you left a message but did not elaborate upon its content.

As you may recall, my inquiry was with respect to our efforts to complete the municipal consultation process on this file. We had indicated that we were preparing further information for the Ministry and the applicant and we wished to obtain a copy of the REA application as submitted to your offices for this purpose.

I was somewhat shocked that, in a response to our request for information related to the completion of municipal consultation, the reply was that the application had been deemed to be complete and that the application was to be posted on the EBR and that this is where we could find a copy of the application.

It is my understanding that municipal consultation must be completed and must form part of the REA application. Clearly, municipal consultation was not complete and was ongoing.

In April of this year as a follow up to some of our research we requested that wpd Canada provide us with the report concerning municipal consultation that was to form part of the application. Despite the fact that this report would presumably contain communications between us and wpd, they declined to provide that information and indicated that it would only be made available when the application was deemed to be complete. They have not yet provided us with the alleged completed municipal consultation report. We have also reviewed the EBR posting and that information is also not available on either the EBR posting site or the wpd web site for which a link is provided in the EBR posting site. In fact, the wpd site does not even contain information indicating that the application has been declared complete.

We are aware that the Ministry does have the ability to accept and declare an application as complete in the absence of the completion of municipal allocation where the municipality refuses or frustrates the process of consultation. We cannot imagine that to be the case in this particular instance as we have had absolutely no communication from the Ministry suggesting that this was the case; indeed, quite to the contrary, we have been in ongoing communication with respect to trying to complete such consultation, including our as yet to be responded to request for a copy of the REA application as submitted to your offices.

In reviewing our files we examined the municipal consultation form provided to us by wpd for this project. We note that the municipality has not completed the form due to the ongoing review of information and the preparation of our final comments. As an aside we also note that we would have had a technical issue in regard to completing the form as the

Project location information, which is to be completed by the applicant rather than the municipality, is far from adequate in describing the actual location of the project.

At this point we must therefore express a serious concern with, and objection to, the declaration of the wpd Fairview Windfarm being deemed complete as:

- The municipal consultation had not been completed;
- We have been provided with no information from either the Ministry or the proponent with respect to the alleged completion of the municipal consultation;
- We have no correspondence indicating that the municipality had in any way inappropriately frustrated or delayed the consultation process and, to the contrary, have communication openly acknowledging that it was continuing;
- We have been frustrated by the Ministry and wpd in our attempt to complete consultation by a refusal to provide information until such time as the application is deemed complete; and,
- We have been provided with a technically inadequate Renewable Energy Approval consultation form by the applicant.

Our original request was for a copy of the REA application as submitted to the Ministry. In your telephone message you suggest that it would be available as a consequence of deeming the application complete and that it can be obtained from the EBR posting. We had requested this information some time ago to assist with the completion of the consultation process. As it was apparently to be publicly posted in any event, we are not sure why it could not have been provided to the municipality when originally requested. The same applies to our request for the alleged documentation of municipal consultation which wpd refused to provide until their application was deemed to be complete. As indicated we have reviewed the EBR posting and, contrary to your direction, the application is not available in its full format and content as submitted to the Ministry.

We find that we are now seriously prejudiced by the process undertaken and our reasonable ability to provide appropriate municipal consultation on a project which has serious implications to our residents and community. We request that you provide the originally requested REA application information. We also respectfully request that you repeal your decision to deem the application complete, or that you provide a clear explanation for why the application has been deemed to be complete in the absence of completed municipal consultation despite our outstanding requests for information and concerns, so that we can consider our request on your decision to declare the application complete.

As this matter is now extremely time sensitive, particular while occurring over the holiday season, and we need to provide a report to our Council on this matter, a response would be appreciated in as timely a manner as possible.

Thank you,

Michael Wynia, MCIP, RPP
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Technology and Information Services, Township of Clearview
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