

February 9, 2015

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Windlectric Inc. - Application for Leave to Construct Transmission Facilities
(EB-2014-0300)**

We are counsel to Windlectric Inc. ("Windlectric") in respect of its application for leave to construct transmission facilities (EB-2014-0300). We are writing in response to the February 6, 2015 letter from the Association to Protect Amherst Island (the "APAI"), as well as to raise our concerns with the APAI's lack of respect for the procedural requirements and timelines established by the Board in this proceeding.

Windlectric acknowledges that the APAI is not an experienced intervenor before the Board and, as such, has been very tolerant of the APAI's late filings and inconsistent service of documents on the Applicant and its counsel. However, throughout this proceeding the APAI has demonstrated a pattern of delays and disregard for the timelines established by the Board. The APAI's request for intervenor status was over one week late; the APAI's request for an oral hearing was one month late and many of its members also filed late requests for an oral hearing; the APAI has continued to file numerous documents as evidence well after the date by which such materials were required to have been filed; and the APAI has requested a one week extension for filing responses to interrogatories. Although the Board has already granted the APAI its requested one week extension without having heard from the Applicant, Windlectric wishes to express its concern that the APAI's lack of respect for the Board's timelines prejudices the applicant and disrupts the efficient conduct of the proceeding.

In Procedural Order No. 2, the Board required intervenors wishing to file evidence to file such evidence with the Board and copy to all parties on or before January 19, 2015. The APAI filed 48 documents as of that date. Subsequent to the Board's deadline, the APAI filed:

- 15 documents on January 25, 2015
- 3 documents on January 26, 2015
- 3 documents on January 28, 2015
- 5 documents on January 29, 2015
- 4 documents on February 2, 2015

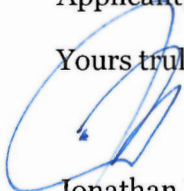
In addition to these documents being filed late, the vast majority of the materials filed both before and after January 19, 2015 are, in Windlectric's view, either not proper evidence or are not relevant to the proceeding, having regard to the scope of the Board's jurisdiction described in both the Notice of Application and Procedural Order No. 1. We ask that the Board take these factors into account in considering and weighing the evidence that has been filed by APAI, as well as any further materials that the APAI may try to file as evidence in the future. We also note that Windlectric expects to make detailed submissions on the relevance of the APAI's evidence during the argument phase of the proceeding.

On January 29, 2015, in accordance with Procedural Order No. 2, Windlectric filed its interrogatories on the APAI's evidence that had been filed as of that date. In total, Windlectric made a single, two-part request relating to a discrete matter. In addition, Board staff filed three interrogatories comprising a total of 14 questions and requests. Nearly a week before responses were due, the APAI requested a one-week extension for filing its responses. As this request was filed (and granted) well before the February 12, 2015 deadline, it is not clear that the APAI has made reasonable efforts to meet the established timelines. Moreover, the burden of responding to the small number of interrogatories received by the APAI is not onerous and the two weeks that the Board initially provided for APAI to file its responses was, in Windlectric's view, more than adequate.

It is also our observation that several of the interrogatories posed by Board staff ask for information that the APAI is not reasonably in a position to provide. Based on the APAI's comment in its February 6, 2015 letter that "the information in many cases is not readily available", it appears that this is a factor that has contributed to the APAI's delays. For example, Board staff interrogatories ask the APAI whether construction of a permanent dock is critical to construction of the proposed transmission facilities, to provide "a credible schedule" for the project, and whether any of the FIT contracts awarded by the OPA have been cancelled for reason of failing to meet a contractual in-service date. It is not clear why Board staff expects the APAI to have this type of information available and it is unreasonable for the proceeding to be delayed so as to provide the APAI with additional time to seek or produce such information. Where the APAI does not have the information readily available, the APAI should indicate this as its response consistent with Rule 27.02 of the Board's *Rules of Practice and Procedure*. We ask the Board to instruct the APAI in this regard.

Given the APAI's prior disregard for the filing deadlines established by the Board, we further request that the Board take steps to ensure that the APAI respects future timelines established by the Board in this proceeding and that further delays, including the resulting prejudice to the Applicant, be avoided.

Yours truly,



Jonathan Myers

Tel 416.865.7532
jmyers@torys.com

cc: Mr. A. Tsopelas, Windlectric Inc.