



**association to protect
AMHERST ISLAND**

Without prejudice to all our rights

Feb.12, 2015

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

File No. EB-2014-0300

Attn: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Windlectric Inc. Proposed Amherst Island Wind Energy Project

**APAI Letter: Request for Clarification on the Forms of the Landowner Agreements
Associated with the Substation and Island Transmission Line**

APAI is raising the following critical issues now, in the event that they do impact on the evidentiary record and the content of APAI's Response to the Interrogatories which are due on Feb. 20, 2015. Please advise if there is a more appropriate time to request clarification on the points below.

APAI believes that consideration of the details of the draft amendment to the form of the land agreement associated with the Project Substation is critical to APAI's argument and the Board's decision with respect to Windlectric's Application.

Board Staff¹ asked:

What is the status of the amendment to the land use agreement that was to be executed with the landowner in regards to the Project Substation.

Windlectric responded:

The draft amendment has been revised to address concerns raised by the landowner but has not yet been executed.

¹ Exhibit B; Tab 1; Schedule 3; Responses to Board Staff Interrogatories, P. 2 of 3

Although there have been questions regarding the substation, APAI is still not clear on the following:

- It appears that the form of agreement for the Project Substation is not included in the application. The form of the Land Agreement contained in Appendix D² is a form for a Temporary Easement Option.
- APAI requests that the most recent versions of the form of the land agreements associated with the substation and associated overhead transmission lines be filed with the Board.

In addition, APAI requests clarification as to the meaning of Clause 15 within the above-mentioned Appendix D - Form of Temporary Easement Option Agreement associated with the substation/overhead transmission lines.

Acknowledging that APAI has not sought a legal opinion, it appears that this clause is contrary to APAI's understanding of the proponent's responsibilities with respect to decommissioning and to the decommissioning reports submitted to the Ministry of the Environment as part of Windlectric's REA application.

Clause 15 reads as follows:

*15. The Transferee shall have the right to abandon the electric transmission facilities, or any part thereof, during the term of this Easement and Right-of-Way. Furthermore, the Transferee shall have the right to remove the electric transmission facilities, or any part thereof, whether active or not, which may be located beneath the surface of the Easement Lands, but nothing contained herein shall require the Transferee so to do. Notwithstanding the foregoing, any such abandonment shall at all times comply with all prevailing laws and regulations.*³ Source: Windlectric Application for Leave to Construct Transmission Facilities;

Additional evidence on the general question of decommissioning can be found in Windlectric's Response⁴ to APAI Interrogatory #4 as follows:

APAI Question 2 :

How will the costs of decommissioning be paid for?

Windlectric Response:

Decommissioning costs will be the responsibility of the Applicant, or the owner of the transmission facilities if the Applicant is not the owner of the facilities at such time that the facilities require decommissioning. [Emphasis added]

² Exhibit E; Tab 1; Schedule 2; Appendix D; Form of Temporary Easement Option Agreement; Appendix A to Option Agreement; Schedule to Paper Registration; p.4 (or p.206 of 290)

³ Exhibit E; Tab1; Schedule 2; Forms of Land Agreements; Appendix D: Form of Temporary Easement Option Agreement; Appendix A to Option Agreement; Schedule to Paper Registration; p. 4 or P. 206 of 290

⁴ Exhibit B; Tab 1;Schedule 4; Windlectric Responses to APAI Interrogatories; P.12-13.

APAI Question 3:

Will Windlectric assure the OEB, the provincial government and Loyalist Township that it will decommission the transmission project by posting a letter of credit in an amount sufficient to cover the complete cost of decommissioning the transmission facilities, with the ability of Loyalist Township to draw on the Letter of Credit should the project be sold or terminated for any reason?

Windlectric Response:

*No, the Applicant will not provide a letter of credit as suggested by APAI. The Applicant anticipates that it will have obligations in respect of decommissioning as part of its Renewable Energy Approval that will be issued by the Ministry of the Environment. **In addition, the Applicant has obligations in respect of decommissioning as with each of the landowners with whom it has entered into a land agreement.** [Emphasis added]*

APAI believes it would be helpful if Windlectric's Decommissioning Report was part of the record.

APAI respectfully requests the Board's guidance in resolving these issues and indulgence in responding to these matters.

Yours truly,

Original signed by:

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cc: Parties