

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant's distribution facilities on public road allowances owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

FINAL SUBMISSION OF THE INTERVENOR, DR. E. SALMON

1. This submission on the part of the Intervenor is in two parts with Part One addressing the arguments of wpd Sumac Ridge Incorporated (the "Applicant") and Part Two demonstrating the various negative impacts that will occur as a result of construction of a distribution line along the unopened road allowance Gray Road can be eliminated and safe and efficient energy delivery can still be provided. Part Two also addresses the application before the Ontario Energy Board (the "Board") regarding the unopened road allowance Wild Turkey Road and the Applicant's plan to construct an underground line across this road allowance.

PART ONE: RESPONSE TO THE ARGUMENT-IN-CHIEF OF THE APPLICANT

Prematurity

2. The intention of the Applicant stated on page one in the argument in chief submission is:

*“To transport electricity generated by turbine 5 to the collector substation, the Applicant intends to run an underground 44 kV collector line (approximately 20 metres long) beneath Wild Turkey Road to turbine 4 (the "WRT Collector Line"). To convey the electricity generated by the Wind Project to the Independent Electricity System Operator ("IESO") controlled grid, the Applicant intends to construct a 44 kV three phase aboveground electrical power distribution line, approximately 1750 metres long (the "**Distribution Line**"), to connect to an existing local distribution system located along Highway 35, and running to Hydro One Networks Inc.'s ("**HONI**") Wilson Transmission Station, which is in turn connected to the IESO-controlled grid. The Distribution Line will consist of a series of 40 inch wood poles, guy wires, anchors and stub poles as required.”*

3. On page 2, the Applicant states:

*“The Applicant has been unable to engage Kawartha Lakes in discussions regarding the terms of a road use agreement pertaining to the Applicant's use of a portion of Gray Road and Wild Turkey Road (the "**Road Allowances**") for the Distribution System. Kawartha Lakes rebuffed the Applicant's efforts to initiate discussions on the basis that the Applicant's request for a permit to occupy the Road Allowances was premature, and has effectively refused to engage with the Applicant with respect to determining the location of the Distribution System within the Road Allowances.”*

4. The Applicant applied to the City of Kawartha Lakes for a road use agreement for both unopened road allowances Wild Turkey and Gray Road *one day* after the comment period for the Sumac Ridge project EBR posting closed and well before a decision was rendered by the MOECC regarding the approval of the Renewable Energy Application.
5. The Applicant filed an application for the distribution line with the Board a mere seven days after the Sumac Ridge project was given a Renewable Energy Approval (“REA”) and before the deadline to appeal that approval. Neither the public nor the City of Kawartha Lakes was made aware of this application before the Board. The REA for the Sumac Ridge project was appealed. In the interim, the Applicant initiated a Municipal Class (B) Environmental Assessment after being advised by the City of Kawartha Lakes that they were not authorized to do so. The City of Kawartha Lakes was taken unawares by this aggressive, unheard of plan by a private company to initiate a municipal class environmental assessment without the consent or collaboration of the affected municipality. The MCEA initiated by the Applicant¹ included proposed road alterations and road accesses involving both unopened road allowances Wild Turkey Road and Gray Road.
6. The Applicant received 145 comments from 88 individuals during the initial MCEA process. The Applicant’s MCEA was declared invalid by the Minister of Environment and Climate Change.²

¹ Wpd Class MCEA <http://www.municipalea2014.ca/>

² Wpd Class MCEA <http://www.municipalea2014.ca/>

7. The Applicant has not been forthcoming with the City of Kawartha Lakes. Contrary to the contention made on page 7 of its evidence in chief submission that the Applicant has been acting in 'good faith' with the City of Kawartha Lakes, the undertaking of a MCEA without the consent or knowledge of the municipality suggests the opposite.
8. The Applicant issued an inflammatory press release on May 22, 2013. This press release was issued without the knowledge or consultation with the City of Kawartha Lakes and before the announcement of the REA for the Sumac Ridge project. It should be noted that the press release indicated the Applicant's intent was to bury the transmission line along Gray Road, contrary to the application now before the Board which includes an overhead line.

For immediate release Wednesday, May 22, 2013

Kawartha Lakes decision could force expensive Ontario Energy Board Process

Mississauga -- A refusal by Kawartha Lakes Land Management Committee to enter into discussion on the placement of collector lines with wind project developer, wpd Canada, could force the company to ask the Ontario Energy Board (OEB) to settle the matter. wpd is looking to build a portion of their proposed electrical collector line underground on an un-assumed road near the project site. The OEB is the independent Crown Corporation tasked with regulating the province's electricity and natural gas sectors... wpd Canada, the developer of the Sumac Ridge Wind Farm in the former Township of Manvers, has proposed to install part of the collector lines for the project - lines which link the turbines and carry electricity produced by the turbines to the project's transformer substation -- under portions of Gray Road. As part of the pre-construction planning, wpd has begun the permitting process for the work to proceed should the project be granted approval by the Ministry of the Environment. A letter dated April 22, 2013 from the City of Kawartha Lakes Planning Department denies wpd's request, due to Council's opposition to the project.

9. The Applicant states in its Argument in Chief that the City of Kawartha Lakes rebuffed the Applicant and “*refused to engage with the Applicant with respect to determining the location of the Distribution System within the Road Allowances*”³

10. The City of Kawartha Lakes stated that the application was premature.

“On Monday (May 27), Mr. Taylor confirmed by email what happened after the City received wpd's application for a permit.

"Staff reviewed the request through the City's Land Management Committee, and subsequently advised wpd that the application was premature. wpd has not received any Renewable Energy Approval (REA) from the Province to date. The City has since been in receipt of follow up correspondence from wpd challenging the City's position, dated May 22, 2013. We have referred this correspondence to our solicitor to obtain a legal opinion." ⁴

11. The Applicant has significantly changed the plans for the distribution line along the unopened road allowance Gray Road from initial discussions with the City of Kawartha Lakes which included a distribution line running below ground through the centre of the entire length of the road allowance to an above ground line strung along hydro poles along the south side in the application currently before the Ontario Energy Board. In light of the significant change to and position of the distribution line along the unopened road allowance Gray Road, it appears the City of Kawartha Lakes position stating that the road user agreement was premature, was proper.

12. The Applicant states that, “*To transport electricity generated by turbine 5 to the collector substation, the Applicant 20 intends to run an underground 44 kV collector line*

³ Applicant's Argument-in-Chief and Brief of Authorities, p. 1, line 19

⁴ <http://www.mykawartha.com/news-story/3846800-wind-energy-company-threatens-to-take-its-case-to-ontario-energy-board-to-move-sumac-ridge-wind-farm/>

(approximately 20 metres long) beneath Wild Turkey Road to turbine 4 (the "WRT Collector Line").⁵

13. In 2014, the survey firm of Coe Fisher Cameron discovered information that indicates the width and location of the unopened road allowance of Wild Turkey Road, which is part of this application before the Board, is not what it appears. The survey found that location of Wild Turkey Road does not accurately reflect the road allowance location.⁶ This means the Applicant's plans regarding underground cabling across the unopened road allowance Wild Turkey Road contained in the application before the Board are not accurate. This supports the City of Kawartha Lakes' original position that this application before the Board is premature.

Unopened Road Allowances

14. On page 2, lines 21 to 26 in the argument in chief, the Applicant states,

The Applicant is accordingly relying on its statutory right under section 41 of the Electricity Act, 1998 to utilize the Road Allowances without the consent of the owner.'

15. Section 41 of the *Electricity Act* (the "Act") refers to opened, maintained public streets or highways, not unopened, unassumed road allowances such as Gray Road and Wild Turkey Road.

"A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities

⁵ Applicant's Argument-in-Chief and Brief of Authorities, p. 1

⁶ Witness Statement of Herman Wimmlebacher, Evidence of the Intervenor, EB 2013-0442
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/464413/view/Tab%209_Witness%20Statement%20of%20Herman%20Wimmelbacher_Salmon_IntrvEVD_wpd%20Sumac_20150126.PDF

as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

No consent required

(5) The exercise of powers under subsections (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway. 1998, c. 15, Sched. A, s. 41 (5).⁷

16. The Applicant also states:

“No expropriation compensation is payable by a project proponent to a municipality for its use of the road allowance.

In effect, section 41 of the Electricity Act provides a form of statutory appropriation of the road allowance for a compatible public use. It is a statutory alternative to expropriation where a proponent of an electrical transmission or distribution line wishes to avail itself of the use of a municipal road allowance.”⁸

17. The Ontario Highway Traffic Act defines a highway as:

*“**highway**” means any place or way, including any structure forming part thereof, which or any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles, with or without fee or charge therefor, and includes all the space between the boundary lines thereof; but does not include any area designed or intended, and primarily used, for the parking of vehicles and the necessary passageways thereon; (« route »)*

18. Section 41 of the Act applies to opened public streets and highways, not a historic unopened, unassumed and unmaintained road allowance such as Gray Road. The Applicant states expropriation is justified if the plan is “*a compatible public use*”. The current public use of the unopened road allowance Gray Road is as a historic wild natural recreational trail. Road alteration, permanent removal of all the trees and natural vegetation along a 1.75 km stretch along the south side of the allowance and installing mechanical infrastructure that poses threats both to public safety and the environment is

⁷ Section 41, Ontario Electricity Act, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98e15_e.htm#BK85

⁸ Applicant's Argument-in-Chief and Brief of Authorities, p. 3, lines 7 to 13.

not a 'compatible public use'. The case footnoted by the Applicant as Tab 1 in the argument in chief, Niagara Wind Corporation, EB 2013-0203, is in reference to an opened and maintained road allowance, a situation clearly distinguishable from the present Application. Gray Road and Wild Turkey are both unopened, unassumed unmaintained road allowances.

19. On, the Applicant states⁹ that under subsection 41(9) of the Act the Board has the authority to determine the location of the Distribution System within the road allowances where the applicant and the municipality cannot agree upon the location that this be determined by the Board. Given that both Gray Road and Wild Turkey Road allowances are unopened, unassumed and unmaintained, a further supporting case cited by the Applicant, *East Durham Wind, Inc.*¹⁰, is likewise in reference to opened and maintained road allowances and is clearly distinguishable.

Alternative Routes

20. The argument for approval submitted by East Durham Wind lies on the fact that no alternative route was proposed. "*East Durham also submits that neither the Municipality nor any other party in this proceeding has proposed an alternate location.*"¹¹

⁹ Applicant's Argument-in-Chief and Brief of Authorities, p. 3, lines 14 to 15.

¹⁰ Applicant's Argument-in-Chief and Brief of Authorities, Tab 2, East Durham Wind, Inc., November 7, 2013, EB-2013-0233

¹¹ *East Durham Wind, Inc.*, Applicant's Argument-in-Chief and Brief of Authorities
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/416023/view/dec_order_East%20Durham_20131107.PDF

21. Unlike the East Durham Wind application, an alternative route is proposed for a distribution line in the Application currently before the Board.
22. The Applicant ¹² quotes the East Durham Wind decision that it is not the role of the Board to consider alternatives. However, in that situation the ultimate decision was made because no alternative route was presented by any party.
23. There is a viable alternative distribution route being proposed for this Application, one that will avoid the environmental, social, economic and cultural harm that will be inflicted by construction and installation of the distribution line route submitted by the Applicant. If the Board turns down this Application, the Applicant will have the opportunity to consider the alternate route; one that will not face community opposition or opposition by the City of Kawartha Lakes. The East Durham Wind case cited by the Applicant indicates that a “Municipality or any other Party” might propose an alternate location.
24. The Applicant states “*that to make an order under subsection 41(9), the Board must be satisfied the applicant has discharged its burden of proof to demonstrate the proposed location of the facilities within the road allowance is "appropriate"*”.¹³
25. Hundreds of residents have made it clear in numerous written submissions to various government agencies on all levels, federal, provincial and municipal that the location of the facilities proposed by the Applicant are not appropriate. In addition, the Intervenor has provided evidence that the alteration of the unopened road allowances Gray Road and

¹² Applicant's Argument-in-Chief and Brief of Authorities, p. 4, lines 1-6.

¹³ Applicant's Argument-in-Chief and Brief of Authorities, p. 4, lines 7-12.

Wild Turkey is not appropriate for a variety of reasons, which are dealt with in Part Two of this submission.

26. Furthermore, the Applicant states “*the Board is not required to identify the "precise" or "exact" location of the distribution facilities - the specification of a reasonable range within the road allowance is considered sufficient (e.g. a 3 metre-wide corridor was considered appropriate by the Board in East Durham).*” As has been stated, the East Durham Wind decision was based on opened municipal road allowances and public roads; roadways not dominated by mature trees or natural native vegetation. The unique, historic, tree canopied, unopened road allowances such as Gray Road and Wild Turkey Road are not comparable to the road allowances cited in the East Durham decision. In addition, it has been pointed out by the Applicant that a cleared 3 metre wide corridor along the 1.76 km length of Gray Road will have significant negative environmental, social and economic consequences.
27. Evidence provided by the Intervenor clearly and thoroughly contradicts the assertion made by the Applicant ¹⁴ that, “*The proposed location of the Distribution System within the Road Allowances is the best balance of various environmental, social, technical and economic considerations.*”
28. The Applicant states that “*the Kawartha Lakes has not proposed an alternative location for the Distribution System and elected not to participate in these proceedings.*” ¹⁵ The City of Kawartha Lakes has not proposed an alternative location because the municipality

¹⁴ Applicant's Argument-in-Chief and Brief of Authorities, p. 5, lines 5-6.

¹⁵ Applicant's Argument-in-Chief and Brief of Authorities, p. 5, line 9.

has stated multiple times that the Application was premature. Requests by the City of Kawartha Lakes for additional information from the Applicant regarding construction of facilities including a request for a hydrogeological report have gone unanswered. The City of Kawartha Lakes has been participating in these proceedings. There are over a dozen submissions posted on the web page for this case; the latest correspondence to the OEB is dated February 24th, 2015.

Incorrect Calculations

29. The Applicant states:

*“While the intervenor, Elizabeth Salmon, has suggested an alternate route that would utilize Highway 7A, this proposal is not feasible because it would require the Applicant to utilize almost 3 kilometres of additional lines, which would result in increased line losses. Further, the route proposed by the Mrs. Salmon would require significantly more construction along busy stretches of Highway 7A and 35, including in two school zones.”*¹⁶

30. The calculation that the alternative would utilize almost 3 km of additional lines which would result in increased line losses is incorrect. The Intervenor has pointed out that there would only be an additional 1.3 km of line. The Applicant has not provided evidence as to how much energy will be lost and the significance of that loss. There is 103,600 km of distribution lines in Ontario. A study on distribution loss presented to the Board indicates that energy loss along distribution lines accounts for 1.18% per annum.¹⁷ The line loss will be negligible.

¹⁶ Applicant's Argument-in-Chief and Brief of Authorities, p. 5, lines 10-14.

¹⁷ Hydro One Distribution Loss Analysis, Executive Summary Kinetrics produced for the OEB – Distribution Line Loss, April 17, 2005.

http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2007-0681/Exhibit%20A/Tab_15_Schedule_3_Distribution_Line_Losses_Study.pdf

31. The drawing provided by the Applicant indicates the 44 kV overhead transmission line will be on 40 inch diameter, 40 foot poles with 6 feet buried, (hence 34 feet tall) and using 4/0 ACSR conductors (although one drawing says 3/0 ACSR conductors).
32. It is assumed 4/0 ACSR (6 bare aluminum conductors with 1 steel core reinforcement twisted together) with a total bundle diameter of about 0.563 inches per conductor will be used.
33. 4/0 ACSR has a current carrying capacity of 357 amps. In this 3 phase application the maximum current will be about 135 amps ($44 \text{ kV} \times 135 \text{ amps} \times 1.73 = 10.2 \text{ MW}$ assuming a unity power factor).
34. The resistance of 4/0 ACSR for AC at 75C is listed at 0.119 ohms per 1000 ft.
35. For a total run of 5 km (16,500 ft) the loss per phase will be about $(135 \text{ amps} \times 135 \text{ amps} \times 0.119 \text{ ohms} \times 16.5) = 36,300 \text{ watts}$. Accordingly, the total loss for 3 conductors will be around 100,000 watts out of the 10,000,000 watts transmitted or approximately 1 %.
36. Using the Applicant's assertion that the alternative will require almost 3 km of additional line, a loss on a 2 km (6600 ft) preferred line of about $(135 \text{ amps} \times 135 \text{ amps} \times 0.119 \text{ ohms} \times 6.6)$ would result in a loss of approximately 14,300 watts. The total loss for 3 conductors will be around 43,000 watts out of the 10,000,000 watts transmitted or approximately 0.4%. As the Intervenor has indicated the route difference would be only 1.3 km, the line loss would be even further diminished.
37. The Applicant has not stated that the alternative is not workable but rather argues that this alternative route would mean "*construction along busy stretches of Highway 7A and 35,*

including in two school zones” inferring without any proof that during a time of temporary construction there may be the threat of harm to children.

38. There is only one school zone for the two elementary schools. Being rural schools, the children are bussed to the facilities so there would be no interaction with any temporary construction site. Hydro poles and lines are routinely installed or upgraded throughout both rural and urban areas with no notable harm to children or other local residents.
39. As pointed out by the Intervenor in her evidence, the developer of the adjacent Snowy Ridge wind project, a similar sized industrial wind energy project has already installed overhead poles along Hwy 7A within existing road easements for a distance of 6.5 km, which involves construction along the same busy stretch of Hwy 7A the includes the school zone with no ill effects.
40. The Applicant has not provided any evidence that harm will befall school children by construction methods used in the installation of hydro poles or upgrades to existing poles. An internet search failed to provide a single documented case of injury or death caused during the installation of hydro poles in a school zone in Canada. However, there is much documentation to be found of harm, injury and death to children and adults as the result of adulteration of surface water and ground water sources, as found along the unopened road allowance Gray Road, as well as death and injury caused by collisions with hydro poles by snowmobile riders, such as those who use Gray Road. There are multiple advantages of not using the unopened road allowance Gray Road, which are outlined in Part Two of this submission.

41. The Intervenor disputes the Applicant's assertion¹⁸ that there is no evidence before the Board regarding suitable alternatives for locating the Distribution System within the Road Allowances. A feasible alternative of using existing road allowances along Highway 7A and Highway 35 has been proposed. The developer of the adjacent Snowy Ridge wind energy project is using Highway 7A (albeit in a different direction) for a distribution line. This clearly demonstrates the suitability of this route for a distribution line.
42. The Applicant has not clearly discharged the burden of proof to demonstrate that the proposed location of the Distribution System within the Road Allowance is appropriate.

PART TWO – ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL

BENEFIT & SAFE RELIABLE ENERGY TRANSMISSION

Removal of Vegetation

43. The Applicant indicates that:

*Construction Environmental Management Plan and a Construction Emergency Response and Communications Plan that will ensure good site practices and minimize any impact to the City, the local community, the natural environment and other existing infrastructure and features. As a result, the proposed location of the Distribution System will not prejudice Kawartha Lakes.*¹⁹

44. The removal of three metres of mature trees and other natural vegetation along a distance of 1750 metres on Gray Road, a historically long-used recreational trail and unopened road allowance to accommodate industrial infrastructure will not result in a minimal impact on this natural area as indicated by the Applicant. The large-scale clearance of

¹⁸ Applicant's Argument-in-Chief and Brief of Authorities, p. 5, lines 15-19.

¹⁹ Applicant's Argument-in-Chief and Brief of Authorities, p. 6, lines 23-27.

natural vegetation will drastically and permanently alter features over an extensive area and will have a significant negative environmental, economic and cultural impact on the community.

45. Furthermore, the Applicant has not made its intention to clear a three metre corridor along the south side of the unopened road allowance for a distance of 1.75 km as stated in this Application before the Board, known to the public, First Nations or the City of Kawartha Lakes in the last five years since it received a FIT contract in April of 2010. The Applicant has, over the last five years, made statements contradictory to this application as to the location of the proposed distribution line along Gray Road, including stating several times that it would be buried underground.

Groundwater

46. The Applicant has indicated to the Ontario Ministry of Transportation that “*that there is wetland and species at risk issues should Gray Road be extended to provide access to the site*”.²⁰ The Applicant’s Water Report and Environmental Impact Assessment indicates that there is no mitigation for one area of Gray Road and that work has to be completed as quickly as possible without listing a time frame in order to avoid serious harm to the road allowance:

9.1.3 Seepage Areas

“It will not be feasible to mitigate sediment entrainment into the seep at S3 using standard methods because it is located directly within Gray Road.”
²¹

²⁰ Ortech Memo to the MTO, August 10, 2011, Road Access, Sumac Ridge Project

²¹Sumac Ridge NRSI Water Assessment and Environmental Impact Study, page 37,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8_WR_EIS_20120301_Web.pdf

47. It has been acknowledged that groundwater levels are at the surface along Gray Road:

*Starting from Highway 35 and moving east, the first 300 metres of the assessment area contained flat to gently undulating terrain covered with long grasses, brush and small trees. There was water on the surface of 70% of this survey area.*²²

48. The vegetation along the unopened road allowance, Gray Road, consists of many mature trees, some over one hundred years of age. This vegetation plays an important role in the cyclic behaviour of the complex hydrology found within and surrounding the unopened road allowance which includes seeps, artesian springs, a wetland area, trout-bearing tributaries of Pigeon Creek headwaters and a large pond.
49. The Applicant has not provided any specific reasons or evidence as to what constitutes a “Construction Emergency Response” to the public, First Nations or the City of Kawartha Lakes. The contamination and/or alteration of Oak Ridges Moraine-sourced ground and surface water will create an emergency situation that will encompass an area well beyond the confines of the unopened road allowance, Gray Road, and well beyond the capabilities of a Construction Emergency Response.
50. The Applicant also states that “*Communications Plan will ensure good site practices*”. The Applicant failed to contact one of the landowners, Peter Hoefelmayr, who will be directly affected if the Application before the Board is approved, even though Mr. Hoefelmayr did make a submission of objection to the Board. Clearance of vegetation along the unopened road allowance will remove a windbreak that protects Mr. Hoefelmayr’s crop fields, and will invite trespassers to the lands containing the large

²² Section 5.2.10 Main Feeder Line Along Grey Road, Timmins Martelle Heritage Consultants Inc., Stage 2 Archaeological Assessment, Sumac Ridge Wind Farm, Manvers Township, City of Kawartha Lakes, ON

pond. Members of the public, First Nations and the City of Kawartha Lakes have indicated that good communication practices have not been employed on the part of the Applicant.

Community Dialogue

51. The Applicant has stated that:

*wpd welcomes ongoing dialog with the community members, Aboriginal communities and government agencies as its goal is developing a project that is environmentally sound and respects local values.*²³

*... demonstrate that wpd is committed to the well-being of the communities within which it works.*²⁴

52. If the Applicant wishes to demonstrate that it is committed to the well-being of the communities within which it works, opting for an alternative route and leaving the unopened road allowance, Gray Road, in its current state will accomplish this goal. Hundreds of people have voiced their objection to the drastic alteration of the unopened road allowance, Gray Road.

53. This is evident in the 2874 submissions posted regarding the Sumac Ridge project, the 5000 letters of petition and hundreds of emails sent to the Ontario government, as well as the almost 100 submissions posted on the website in response to this application.

²³wpd Canada Sumac Ridge First Public Meeting Panels
http://canada.wpd.de/uploads/tx_projectdownloads/Information_Panels_Final_Sumac_Ridge_POH1.pdf

²⁴Wpd Canada Sumac Ridge Consultation report, Section 2.1,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_13_CR_20120601_Web.pdf

54. The City of Kawartha Lakes most recent communication to the Board on February 24th, 2015 indicates Gray Road is used as recreational trail.²⁵

Alternative Route and Community Benefits

55. There is a feasible alternative route, as demonstrated by the developer of the adjacent similar sized Snowy Ridge wind facility using this route. Using the alternative route will eliminate the negative social, environmental and economic impacts as a result of the alteration of Gray Road and will provide multiple benefits.
56. Distribution routes are often found on private lands. The Applicant refers to the Wainfleet wind project at Tab 5 in support of its Argument-in-Chief. That project includes distribution systems on private lands: *[t]he applicant proposes to install the distribution system underground upon private and public lands in the township and Niagara Region.*²⁶
57. The Applicant has a lease with participating landowners including the landowner where Turbine 1 and 3 and the connecting access road will be constructed. That lease, which is registered on title, states the Applicant “*has the right to use the Site and Equipment for the purposes of a wind turbine and any other purposes as incidental thereto.*”²⁷

²⁵ COKL correspondence to the OEB February 24th, 2015, Case Number EB 2013-0442
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/467316/view/City%20of%20Kawartha%20Lakes_Ltr_additional%20info_wpd%20Sumac%20Ridge_20150224.PDF

²⁶ <http://www.wellandtribune.ca/2013/03/14/wainfleet-wind-energy-applies-for-distribution-facilities>

²⁷ IPC Lease, Grant Of Lease, Section 2, Site Lease, Grant of Lease, Section iii, Tab A

58. As visible in the following map the alternate distribution route (in yellow) will avoid the natural features found along the unopened road allowance Gray Road.



59. The benefits to the community if the distribution line is **not constructed along the unopened road allowance Gray Road** include the following:
- Complex hydrologic features that provide habitat for wildlife and drinking water for many local residents and beyond will remain undisturbed. The threat of water contamination and unintended changes to the myriad water features including tributaries of Pigeon Creek, a wetland, seeps, artesian springs, a pond and Oak Ridges Moraine groundwater sources will have been eliminated. While the Applicant has stated that *“the Board does not consider matters regarding the environmental impact of the construction of distribution facilities”*²⁸, the retention of the environmental integrity of this historic unopened road allowance is vital to

²⁸ Applicant's Argument-in-Chief and Brief of Authorities, p. 3, lines 22-23.

the economic, social and physical well-being of the local community, the natural environment and other existing infrastructure and features.

- b. Vegetation that provides multiple benefits will be retained. Environment Canada has estimated that *“[o]n average, one tree produces nearly 260 pounds of oxygen each year. Two mature trees can provide enough oxygen for a family of four.”*
 - i. The Applicant has indicated the plan is to create a three metre clearance zone along the 1750 m length of the south side of the road allowance, Gray Road. If an alternative route is used by the Applicant, this means hundreds of trees, some over one hundred years old and hundreds of other native plants and shrubs will continue to provide environmental as well as social, cultural and physical benefits for a wide community.
 - ii. Trees combat the greenhouse effect. Trees absorb CO₂, removing and storing the carbon while releasing the oxygen back into the air. In one year, an acre of mature trees absorbs the amount of CO₂ produced as one driving a car 26,000 miles.
 - iii. Trees clean the air. Trees absorb odors and pollutant gases (nitrogen oxides, ammonia, sulfur dioxide and ozone) and filter particulates out of the air by trapping them on their leaves and bark.
 - iv. Trees provide oxygen. In one year an acre of mature trees can provide enough oxygen for 18 people.

- v. Trees save water and moderate the atmosphere. The shade created by trees slows water evaporation from the ground. As trees transpire, they increase atmospheric moisture.
- vi. Trees help prevent water pollution. Trees reduce runoff by breaking rainfall thus allowing the water to flow down the trunk and into the earth below the tree to be taken up by the root system. This prevents pollutants entering into water bodies. Trees roots act like a sponge which filters water naturally and uses it to recharge groundwater supplies. On hillsides and slopes such as found along Gray Road, the trees slow runoff and hold soil in place.
- vii. Trees are teachers. They provide creative and spiritual inspiration and improve the quality of life for a community. There are many mature trees along Gray Road; some over one hundred years old.
- viii. Trees add unity to a landscape. The trees along Gray Road are a landmark. They muffle sound from nearby Highway 35 and create an eye-soothing canopy of green. The trees absorb dust and wind and reduce glare.
- ix. Trees provide a canopy and habitat for wildlife. Local residents are well aware of the rich and varied and abundant wildlife that use the treed road allowance as movement corridor and as habitat.

- x. The 3 m cleared zone will not be replanted, so there will be a permanent loss of the tree canopy and habitat found within the hedgerows along the south side of the unopened road allowance Gray Road.
- c. First Nations peoples would be able to continue to hunt and harvest food along the unopened road allowance Gray Road which is their right under Treaty 20. There are several plant varieties within the road allowance proposed to be cleared by the Applicant that provide medicinal extracts including yew and club moss, dogwood for example as well as food items such as the native Canada plum, wild grapes and wild heirloom apple trees.
- d. Hazards to humans will be minimized and/or eliminated. As the Intervenor has indicated previously, hydro poles present a serious safety hazard to snowmobilers.²⁹ Collisions with hydro poles can result in injury or death.
- e. Hazards to migratory waterfowl will be eliminated. Waterfowl colliding with transmission lines is well documented. One study by Janss and Ferrer (1998) found no difference between collisions on distribution and transmission lines, which suggests that the collision rates at distribution lines should not be overlooked.³⁰ The lines not only cause direct mortality of birds, they can also cripple individuals, which can result in delayed and inhumane deaths. A large

²⁹ Response of the Intervenor to Board Interrogatories, p. 7, para. 22, http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/466291/view/ESalmon_IRR_BdStaff_wpd%20Sumac%20Ridge_20150217.PDF.

³⁰ Avian mortalities due to transmission line collisions: a review of current estimates and field methods with an emphasis on applications to the Canadian electric network *Sébastien Rioux, Jean-Pierre L. Savard and Alyssa A. Gerick* <http://www.ace-eco.org/vol8/iss2/art7/>

pond located only 45 m south of the Gray Road allowance is used every year as staging area by various species of waterfowl during spring and fall migration.

This environmental hazard has not been dealt with by the MOECC since the Applicant indicated previously the distribution line would be buried below ground along the road allowance Gray Road.

- f. The need to maintain emergency access to the currently unopened road allowance Gray Road will be eliminated. In order to maintain the distribution line proposed in this application and have emergency access, the now unopened, unmaintained road allowance Gray Road will have to be continually maintained at an unknown financial and liability cost.
- g. Gray Road trail will not need to be widened and altered. The unopened, unmaintained road allowance Gray Road will be able to remain in its original condition. Safety concerns regarding increased vehicular traffic not possible previously, the possibility of encouraging illegal activities because the unopened road allowance it is a dead-end, and opening the area to illegal dumping as a result of road widening will be eliminated. Retaining the road in its original condition as a trail which is inaccessible to vehicular traffic, in combination with not removing the vegetation along the 1.75 km length of the south side of the road allowance which acts as privacy screen will not extend an invitation to trespassing on private lands that widening and clearing will do.

- h. Gray Road will once again be enjoyed by all manner of recreational users. It will continue to function as part of a much larger extensive recreational trail system. It will continue to be enjoyed for decades to come and will continue to support all manner of wildlife.

Conclusions

60. The Intervenor has provided much evidence that negates the Applicant's statement that *"the proposed location of the Distribution System within the Road Allowances is the best balance of various environmental, social, technical and economic consideration"*.³¹ The best balance for the community is to leave Gray Road in its present state.
61. Many people have expressed their desire for the retention of the unopened, unmaintained road allowance known as Gray Road trail. The MOECC received a record number of submissions (2874) posted to the EBR, all but one, arguing for the retention of Gray Road in its present form. The City of Kawartha Lakes supports the retention of this road allowance as a recreational trail.
62. The Intervenor respectfully requests that the Board deny the Application for a distribution line along the unopened road allowance Gray Road.
63. There is an alternative.

³¹ Applicant's Argument-in-Chief and Brief of Authorities, p. 5, lines 5-6.

64. The Environmental Review Tribunal acknowledged the Municipality's jurisdiction over unopened road allowances.³²
65. Furthermore, the Tribunal found that if Wild Turkey Road was upgraded and opened for access to the site, there is a risk that this construction activity will be close enough to the location of the species at risk Butternut that it could be damaged directly by construction equipment, or indirectly by having its roots damaged.³³

The Intervenor also respectfully requests that the Application for an underground crossing under the unopened road allowance Wild Turkey Road be deferred until it is determined what further steps will be taken as result of the new information about the location and width of the road allowance uncovered by Mr. Herman Wimmelbacher working on behalf of the survey firm Coe Fisher Cameron.



Gray Road

³² *Cham Shan Temple v. Ontario (Minister of the Environment)*, ERT Case Nos. 13-140/13-141/13-142, February 19, 2015, Final Submissions of the Intervenor, Tab 2, p. 173, para. 468.

³³ *Cham Shan Temple v. Ontario (Minister of the Environment)*, ERT Case Nos. 13-140/13-141/13-142, February 19, 2015, Final Submissions of the Intervenor, Tab 2, p. 137, para. 469.



66. All of which is respectfully submitted on behalf of the Intervenor.

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