

March 16, 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). In accordance with Procedural Order No. 3 issued on February 24, 2015, Windlectric's Argument-in-Chief is attached hereto.

Yours truly,



Jonathan Myers

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cc: Mr. A. Tsopelas, Windlectric Inc.
Intervenors

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

AND IN THE MATTER OF an application by Windlectric Inc. for an Order or Orders pursuant to sections 92, 97 and 101 of the Act granting leave to construct transmission facilities in Loyalist Township in the County of Lennox and Addington.

APPLICANT'S ARGUMENT-IN-CHIEF

March 16, 2015

A. INTRODUCTION

1. These submissions are filed on behalf of Windlectric Inc. (“**Windlectric**” or the “**Applicant**”) in connection with its application to the Ontario Energy Board (the “**Board**”) dated September 19, 2014 (the “**Application**”) seeking leave to construct under Section 92 of the *Ontario Energy Board Act* (the “**OEB Act**”) for an electricity transmission line and related facilities that will serve the Amherst Island Wind Energy Project (the “**Generation Project**”) in Loyalist Township, in the County of Lennox and Addington, Ontario.
2. The Applicant also seeks Board approval under Section 97 of the OEB Act for the forms of land agreements that have been offered to landowners affected by the proposed transmission facility locations and routing, as well as for an order under Section 101 of the OEB Act approving the construction of transmission facilities upon, under or over a highway, utility line or ditch.
3. Through its pre-filed evidence and interrogatory responses, Windlectric has provided detailed, comprehensive and specific information in support of the Application. Windlectric’s evidence is responsive to all aspects of the Board’s *Filing Requirements for Electricity Transmission Applications* (as amended July 31, 2014) (the “**Filing**

Requirements”). Moreover, Windlectric’s evidence demonstrates that the public interest test for leave to construct under Section 96(2) of the OEB Act has been met, and that the proposed transmission facility locations and routing are appropriate. Accordingly, the Applicant submits that leave to construct the proposed transmission facilities should be granted for the following reasons:

- (a) the interests of consumers with respect to prices are protected as the costs of the proposed transmission facilities, including their interconnection to the grid, will be borne entirely by the Applicant and will not be passed onto consumers through electricity transmission rates;
- (b) based upon the Independent Electricity System Operator’s (“**IESO**”) System Impact Assessment (“**SIA**”) report, the connection of the Generation Project to the IESO-controlled grid by means of the proposed transmission facilities will not have a material adverse impact on the reliability of the integrated power system;
- (c) based upon the Hydro One Networks Inc. (“**Hydro One**”) Customer Impact Assessment (“**CIA**”) report, the connection of the Generation Project to the Hydro One transmission system by means of the proposed transmission facilities will not have any adverse impact on Hydro One’s transmission customers in the relevant area;
- (d) the proposed transmission facilities are required to convey electricity from the Applicant’s Generation Project, which is a renewable energy generation facility, to the IESO-controlled grid and is thereby consistent with the Province of Ontario’s policy of promoting renewable energy; and
- (e) the locations of the proposed substation and switching station, as well as the routing for the proposed transmission line, are on the consent of the relevant private landowners and, in respect of the two road crossings, the Applicant has a statutory right to enter onto and locate its proposed transmission facilities in or across the public road rights-of-way.

B. APPLICATION

4. In the Application, Windlectric has sought leave to construct electricity transmission facilities comprised of:
 - (a) a substation located on Part Lots 31, 32 and 33, Concession 1, on Amherst Island in Loyalist Township, in the County of Lennox and Addington, at which power from the 34.5 kV collection system associated with the Generation Project will be transformed from 34.5 kV to 115 kV by means of one 115/34.5 kV, 50/67/84 MVA transformer (the “**Project Substation**”);
 - (b) an approximately 5.9 km single circuit 115 kV transmission line, including overhead, underground and submarine segments, connecting the Project Substation to the Switching Station (described below) (the “**Transmission Line**”); and
 - (c) a 115 kV switching station located on Part Lots 23, 24 and 25, Concession 1, in Loyalist Township in the County of Lennox and Addington, adjacent to the existing Hydro One circuit Q6S (the “**Switching Station**”).
5. The Project Substation, the Transmission Line and the Switching Station (together, the “**Proposed Transmission Facilities**”) will be used solely for the purpose of conveying electricity generated by the Generation Project to the Hydro One transmission system, which forms part of the IESO-controlled grid.
6. The Generation Project, which is related to but is not the subject of the Application, is a planned 75 MW wind generation facility on Amherst Island in Loyalist Township, in the County of Lennox and Addington. The Applicant has a 20-year contract with the IESO (formerly the Ontario Power Authority) for the Generation Project under the Feed-in Tariff (“**FIT**”) Program.
7. As Windlectric will be both a transmitter and a generator and will be transmitting electricity only for the purpose of conveying electricity to the IESO-controlled grid, the Applicant relies on the exemption from the requirement to obtain a transmission license

as set out in Section 4.0.2(1)(d) of *Ontario Regulation 161/99* under the OEB Act, but will seek a generation license upon receiving Notice to Proceed under its FIT Contract.

C. LEGISLATIVE FRAMEWORK

8. The Application is brought under Section 92(1) of the *OEB Act*, which provides that:

“No person shall construct, expand or reinforce an electricity transmission line . . . or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.”

9. Section 96 of the *OEB Act* sets out the relevant test for an application under Section 92:

(1) If, after considering an application under section . . . 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board **shall only** consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line . . . or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. (*emphasis added*)

10. The Board’s jurisdiction in considering Windlectric’s Application for leave to construct the Proposed Transmission Facilities is therefore limited to the application of the public interest test set out in Section 96(2), namely to a consideration of the interests of consumers with respect to prices, the interests of consumers with respect to the reliability and quality of electricity service, and the promotion of the use of renewable energy sources consistent with government policy. The Board’s jurisdiction on the Application is also limited to the Proposed Transmission Facilities. The related Generation Project and its 34.5 kV collector system are beyond the scope of the proceeding.

11. The Board has acknowledged and clarified the limited scope of its review at several points during the proceeding. For instance, in the Notice of Application, the Board ensured that potential parties were made aware that the Board would only consider the three issues specified in Section 96 of the OEB Act and that the Board will not address other factors such as environmental, health, aesthetics or property value impacts.¹ In Procedural Order No. 1, the Board reiterated that its review would be limited to a consideration of the three aspects under Section 96 of the OEB Act and stated that it “has no authority under the law to review, consider or adjudicate upon issues related to the wind farm, the government of Ontario’s renewable energy policy or on any issues that might be broadly described as “environmental” or “land use” issues.”²
12. Moreover, in prior proceedings under Section 92 of the OEB Act, the Board has further clarified that concerns relating to such matters as land use, land valuation, electromagnetic fields, the intermittent nature of wind generation, the quality of consultations under the Renewable Energy Approval process and impacts on electricity prices in general are also all outside the scope of the Board’s jurisdiction on an application for leave to construct.³
13. Based on the foregoing, the focus of the Board’s inquiry in this proceeding is on whether the Proposed Transmission Facilities satisfy the narrow public interest test established under Section 96(2) of the OEB Act. These public interest considerations are considered below.

D. PUBLIC INTEREST CONSIDERATIONS

14. The public interest considerations addressed in this part include those aspects that are relevant to the test prescribed under Section 96(2) of the OEB Act or which are otherwise identified as being of interest to the Board through the Filing Requirements. These include project need, the interests of consumers with respect to prices, the interests of consumers with respect to reliability and quality of electricity service, the promotion of

¹ Notice of Application, EB-2014-0300, published October 31, 2014.

² Procedural Order No. 1, EB-2014-0300, dated November 26, 2014, p. 2.

³ Procedural Order No. 1, EB-2013-0361, dated November 25, 2013, p. 2; Procedural Order No. 2, EB-2013-0361, dated January 27, 2014, p. 2.

renewables consistent with government policy, facility routing and location, as well as land matters.

(a) *Project Need*

15. Although “project need” is not expressly listed in Section 96(2) of the *OEB Act* as a consideration for the Board, in circumstances where the applicant is seeking to recover its project costs through transmission rates the Board will typically consider whether the additional costs to ratepayers are justified by the need for the project. In such circumstances, the Board will also consider the various routing alternatives to ensure that the selected route is the most cost effective from a ratepayer perspective. In the present Application, as noted, all of the costs of the Proposed Transmission Facilities are being paid for by the Applicant. In Section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board is typically satisfied as to the need for the transmission facilities where there is evidence of a power purchase agreement with the Ontario Power Authority (now the IESO).⁴ This is consistent with Section 4.4.2.3 of the Filing Requirements. Windlectric’s evidence confirms that it was awarded a FIT Contract for the Generation Project from the Ontario Power Authority.⁵ Windlectric continues to be fully committed to developing, constructing, owning and operating the Generation Project pursuant to the FIT Contract.

(b) *Interests of Consumers with Respect to Prices*

16. Section 96(2) of the *OEB Act* requires the Board, in applying the public interest test, to consider the interests of consumers with respect to prices. The *Electricity Act* defines “consumer” to mean a person who uses, for the person’s own consumption, electricity that the person did not generate.⁶ The Proposed Transmission Facilities will not directly serve any “consumers”. Rather, the facilities will be used only to convey electricity from the Applicant’s Generation Project to the Hydro One transmission system which forms

⁴ See, for example, Grand Renewable Wind LP, Decision and Order dated December 8, 2011 at pp. 11-12 (EB-2011-0063), South Kent Wind LP, Decision and Order dated October 11, 2011 at pp. 3-4 (EB-2011-0217), McLean’s Mountain Wind LP, Decision and Order dated June 28, 2012 at p. 5 (EB-2011-0394), and Summerhaven Wind LP, Decision and Order dated November 11, 2011 at p. 3 (EB-2011-0027).

⁵ Exhibit B, Tab 3, Schedule 1.

⁶ *Electricity Act*, 1998, s. 2(1).

part of the IESO-controlled grid. As indicated in the Application at Exhibit B, Tab 2, Schedule 1, p. 7, the costs of constructing and operating the Proposed Transmission Facilities will be borne entirely by the Applicant. These costs will not be passed on to consumers through transmission rates but rather will be paid for by Windlectric. Moreover, the pricing available under the FIT Contract is standardized and does not vary based on the particular transmission or interconnection costs that an individual supplier incurs for purposes of its generation facility.

17. In making a determination with respect to the interests of consumers with respect to prices in the context of an application for leave to construct transmission facilities that will connect a renewable generation facility to the provincial grid, the Board has previously found that its review will be limited to the cost of connecting the renewable generation facility to the provincial transmission system and that a review of the actual cost of the power generated is outside the scope of the Board's jurisdiction.⁷ As such, the Proposed Transmission Facilities will not have an impact on prices in Ontario.

(c) *Interests of Consumers with Respect to Reliability and Quality of Electricity Service*

18. As noted above, the Proposed Transmission Facilities will not directly serve any "consumers". The only potential impacts on the interests of consumers with respect to reliability and quality of electricity service would, therefore, be as a result of impacts from the Proposed Transmission Facilities on Hydro One's transmission system or the IESO-controlled grid, which in turn directly and indirectly serve consumers. Any such potential impacts have been considered through the IESO's SIA process and Hydro One's CIA process and will be addressed through Windlectric's compliance with the requirements set out in the final SIA report and the final CIA report, as well as through ongoing compliance with the terms of the connection agreement that will eventually govern the relationship between Windlectric and Hydro One, and which will be based on the Board's prescribed form of connection agreement.

⁷ Ontario Energy Board, Decision and Order re Bornish Wind LP, Kerwood Wind Inc. and Jericho Wind Inc. (EB-2013-0040/0041), dated November 12, 2013, p. 5.

19. The IESO issued an SIA Final Report in respect of the Generation Project on April 18, 2012.⁸ In the SIA Final Report, the IESO concludes that the proposed connection, by means of the Proposed Transmission Facilities and subject to the requirements specified in the SIA Final Report, is expected to have no material adverse impacts on the reliability of the integrated power system.⁹ The SIA Final Report was issued together with a Notification of Conditional Approval of Connection Proposal.¹⁰
20. Hydro One issued a CIA Final Report dated April 16, 2012 in respect of the Generation Project.¹¹ In the CIA Final Report, Hydro One concludes that the proposed connection, by means of the Proposed Transmission Facilities and subject to the requirements specified in the CIA Final Report, will not have any adverse impact on existing Hydro One customers in the area.¹²
21. In response to Board Staff Interrogatory #1(viii), the APAI suggested that the SIA and CIA may require updates because there have been certain other generation facilities that have gone into service since the dates that these reports were issued. As indicated by the Applicant in response to APAI Interrogatory #2(1), it has been Windlectric's understanding that no such updates are required. This is because the Notice of Conditional Approval of Connection Proposal, provided at Exhibit F, Tab 1, Schedule 2, states that re-assessment is only required where there has been a material change to the proposed connection, which is not the case. It is also Windlectric's understanding that when the IESO and Hydro One prepare SIAs and CIAs for proposed connection facilities, they do so based on assumptions about what other facilities, including generation facilities, will be connected to the system. As such, where Windlectric's SIA and CIA do not contemplate the presence of certain other generation facilities being connected in the area, the SIAs and CIAs prepared for those other generation facilities will have assumed the presence of Windlectric's Generation Project.

⁸ Exhibit H, Tab 2, Schedule 1.

⁹ Exhibit F, Tab 1, Schedule 3, p. 4.

¹⁰ Exhibit F, Tab 1, Schedule 2.

¹¹ Exhibit G, Tab 1, Schedule 2.

¹² Exhibit G, Tab 1, Schedule 2, p. 6.

22. Notwithstanding the Applicant's response to APAI Interrogatory #2(1), the Board issued a letter on March 9, 2015 requesting that Windlectric provide either updated SIA and CIA reports or letters from the IESO and Hydro One confirming that the existing reports, as filed, remain accurate despite the passage of time. Although the necessary requests were immediately made to each of the IESO and Hydro One on March 9, 2015 and Windlectric has conveyed the urgency of these requests, Windlectric has not received the letters or updated reports as of the date of this submission. Given the timing of the Board's request for these materials, it is Windlectric's view that this should not affect the timelines for submissions established by the Board. Windlectric will file the letters or updated reports promptly upon the materials being received. In the unlikely circumstance that the materials are still not available at such time that the Board is otherwise ready to render its decision in this proceeding, leave to construct could be granted on the condition that Windlectric file such letters or updated reports, as applicable.
23. Windlectric also wishes to address the concerns raised by APAI relating to the potential impacts of the Proposed Transmission Facilities on the supply of electricity to Amherst Island.¹³ In response, Windlectric has clarified that the Proposed Transmission Facilities will have no impact on the supply of electricity to Amherst Island because the proposed facilities will not be electrically connected directly to the distribution system that serves the island. Rather, the Proposed Transmission Facilities will be radially connected to Hydro One's transmission system at a point of interconnection on the mainland. As such, any potential impacts on the supply of electricity to Amherst Island would have been considered and identified through the CIA and/or SIA process.¹⁴

(d) *Promotion of Renewables Consistent with Government Policy*

24. The Government of Ontario enacted the *Green Energy and Green Economy Act, 2009* to increase renewable energy generation and promote the creation of clean energy jobs. Under this legislation, the Minister of Energy directed the Ontario Power Authority to develop the FIT Program to procure energy from renewable energy sources. The procurement of renewable energy in Ontario is guided by *Ontario's Long-Term Energy*

¹³ See APAI Interrogatory #8.

¹⁴ Windlectric Response to APAI Interrogatory #8, Exhibit B, Tab 1, Schedule 4, December 15, 2014.

Plan (the “**LTEP**”). Under the 2010 LTEP, the Government of Ontario committed to putting in place 10,700 MW of non-hydro renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. Under the 2013 LTEP, the Government of Ontario reiterated its commitment to renewable energy and has targeted capacity of 10,700 MW of non-hydro renewable capacity by 2021 and total renewable capacity of 20,000 MW by 2025. The FIT Program has been the centerpiece of the Government’s strategy for achieving this renewable energy target to date. The Government’s efforts to increase renewable energy generation have also been closely tied to the Government’s commitment to phasing out coal generation in Ontario. The Province of Ontario made this commitment for purposes of reducing Ontario’s carbon emissions and its impact on climate change, as well as for reducing local and regional air pollution and related health impacts.¹⁵

25. The Applicant entered into a 20-year contract with the Ontario Power Authority for its wind energy generation facility under the FIT Program in February 2011 (the “**FIT Contract**”).¹⁶ Windlectric’s Generation Project will further the Government of Ontario’s objective of increasing the amount of renewable energy generation that forms part of Ontario’s energy supply mix. In particular, the Generation Project will contribute approximately 75 MW of renewable energy generation capacity towards this objective. The Proposed Transmission Facilities are required to convey the electricity generated by this facility to the IESO-controlled grid so as to enable the Applicant to realize this objective, consistent with the Province’s renewable energy policies.

(e) Facility Routing and Location

26. As discussed in Exhibit C, Tab 1, Schedule 1 of the pre-filed evidence, the Project Substation will be located on Part Lots 31, 32 and 33, Concession 1 in Loyalist Township, which is approximately 1.3 km southwest of the town of Stella on Amherst Island. The location of the Project Substation was determined based on its proximity to the wind turbines associated with the Generation Project, which minimizes losses on the

¹⁵ See *Ontario’s Long-Term Energy Plan*, 2010, p. 3 at http://www.energy.gov.on.ca/docs/en/MEI_LTEP_en.pdf. See also *Achieving Balance, Ontario’s Long-Term Energy Plan*, 2013, p. 30 at http://www.energy.gov.on.ca/docs/LTEP_2013_English_WEB.pdf

¹⁶ Exhibit B, Tab 3, Schedule 1, p. 1.

collection system, as well as to facilitate a relatively short path to the submarine cable landing point on the island and, ultimately, to the point of interconnection on the mainland.¹⁷ The location of the Project Substation is shown in Figures 3(b) and 4(c) of Exhibit C, Tab 2, Schedule 1.

27. The Switching Station will be located on Part Lots 23, 24 and 25, Concession 1 in Loyalist Township, which is a former industrial property situated to the west of Jim Snow Drive, between Bath Road/Hwy 33 and Taylor Kidd Blvd. The location of the Switching Station was determined based on its proximity to the point of interconnection on Hydro One's transmission system.¹⁸ The location of the Switching Station is shown in Figures 3(a) and 4(a) of Exhibit C, Tab 2, Schedule 1.
28. The routing for the Transmission Line runs northeast from the Project Substation along private properties for approximately 400 m, then north for approximately 500 m to the point where it crosses Front Road and then proceeds for a further 250 m north towards the shoreline. At the shoreline, riser structures will transition the overhead line into a submarine cable. The submarine cable will run for approximately 4.2 km in a northeast direction along a specific route to a point on the mainland that is approximately 500 m west of the intersection of Bath Road/Hwy 33 and Jim Snow Drive. From this landing point on the mainland, the Transmission Line will continue underground for approximately 550 m north, crossing Bath Road/Hwy 33 and terminating at the Switching Station.¹⁹ The location and proposed routing for the Transmission Line is shown in Figures 3 and 4 of Exhibit C, Tab 2, Schedule 1.
29. As described in Exhibit C, Tab 1, Schedule 1, beginning at p. 4, the proposed routing for the Transmission Line was determined by first identifying a suitable point of interconnection on Hydro One's circuit Q6S. Based on the point of interconnection, Windlectric then identified a mainland position for the submarine cable landing point, which was on a property with a willing host and which had suitable marine topography

¹⁷ Exhibit C, Tab 1, Schedule 1, p. 2.

¹⁸ Exhibit C, Tab 1, Schedule 1, p. 4.

¹⁹ Exhibit C, Tab 1, Schedule 1, pp. 2-3.

with a gradual slope in the lakebed leading to the shore. Similar criteria were applied for purposes of identifying an island position for the submarine cable landing point.

30. Upon determining suitable locations for the cable landing points, routing for the submarine segment was a matter of identifying the most direct route between these two points, having regard for marine topographical features and the location of existing utilities running along the lakebed in the area. Based on these considerations, Windlectric selected the specific submarine cable routing that is shown in Exhibit C, Tab 2, Schedule 1 at Figures 4(b). The routing for the underground portion of the Transmission Line on the mainland was selected as it is the most direct route between the mainland cable landing point and the point of interconnection and runs along an existing access road on the relevant properties which are under common ownership.²⁰ The routing for the overhead portion of the Transmission Line on the island was selected because it allows for the line to be situated on properties with landowners that are willing hosts and with whom the Applicant has already entered into option agreements for the necessary land rights. Moreover, the routing for this segment avoids the need to run the Transmission Line along municipal roads and has just one perpendicular road crossing.²¹
31. In its response to Board Staff Interrogatory #1(viii), APAI has suggested that there is a discrepancy between the location of the Project Substation as indicated in the Application and the location of the Project Substation as indicated in certain archaeological reports prepared as part of the Renewable Energy Approval process. In particular, APAI notes that the archaeological reports indicate that the corresponding archaeological survey work for the area around the Project Substation was carried out on Lots 33-36, whereas the present Application describes the location of the Project Substation as being on Lots 31, 32 and 33. To clarify, there is no discrepancy. While the proper legal description of the relevant property requires the Applicant to reference each of Lots 31, 32 and 33 in the present Application because these lots are under common ownership, it is clear from the map in Exhibit C, Tab 2, Schedule 1, Figure 3(b) that the Project Substation and Transmission Line will only be situated on the portion of the subject property known as

²⁰ Exhibit C, Tab 1, Schedule 1, p. 5.

²¹ Exhibit C, Tab 1, Schedule 1, p. 5.

Lot 33. As Lot 33 was included in the relevant archaeological reports, there is no discrepancy.

32. APAI has also raised a concern with the proposed locations for two particular poles along the overhead portion of the line, namely poles 9 and 11. In particular, in its response to Board Staff Interrogatory #1(viii), APAI notes a discrepancy between the locations of these particular poles as depicted in the map at Figure 4(c) of Exhibit C, Tab 2, Schedule 1, and the locations of these poles based on APAI's mapping of pole locations using the coordinates shown in the notes in the bottom right-hand corner of Figure 4(c). Windlectric has confirmed with its engineering consultants that the locations of poles 9 and 11 are correctly shown in the map, but that there was a typographical error in the 'northing' coordinates listed for these two poles. To correct this minor error, Windlectric has attached hereto at **Schedule 'A'** a revised version of Exhibit C, Tab 2, Schedule 1, Figure 4(c) with the correct 'northing' coordinates for poles 9 and 11.
33. Based on the foregoing, the routing and locations of the Proposed Transmission Facilities are appropriate should therefore be approved.

(f) Land Matters and Forms of Land Agreements

34. As part of the Application, Windlectric seeks an order pursuant to Section 97 of the OEB Act. Section 97 provides that, in an application under Section 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. The forms of land agreements for which the Applicant seeks approval are provided in Exhibit E, Tab 1, Schedule 2.
35. As described in Exhibit E, Tab 1, Schedule 1, Windlectric has entered into an option to lease the relevant property that will support the Switching Station, as well as any ancillary buildings, equipment and cables required in that location.²² This is the same option to lease that applies to the underground portion of the Transmission Line on the

²² Exhibit E, Tab 1, Schedule 1, p. 3.

mainland as there is a single landowner in respect of the two properties. The relevant form of agreement is provided in Appendix A of Exhibit E, Tab 1, Schedule 2.

36. With respect to the submarine portion of the Transmission Line, the necessary land rights will be acquired through applications for a Work Permit and eventually a Land Use Permit from the Ministry of Natural Resources. Once construction is complete and an as-built survey can be completed, Windlectric will then obtain a Crown Lease from the Ministry of Natural resources for the submarine cable corridor.²³
37. With respect to the overhead portion of the Transmission Line on Amherst Island, this portion of the route will run along four privately owned properties. Windlectric has entered into options to lease or easement options with the relevant landowners, as well as options for the associated temporary working rights.²⁴ The relevant forms of agreement are provided in Appendices C and D of Exhibit E, Tab 1, Schedule 2.
38. Windlectric has also entered into an option to lease the relevant property upon which the Project Substation will be situated. The relevant form of agreement for this property is found in Appendix B of Exhibit E, Tab 1, Schedule 2. In its evidence, the Applicant acknowledged that this particular option to lease requires an amendment to reflect the final project design²⁵ and confirmed in response to Board Staff Interrogatory #2 that the amendment had not yet been executed. While the Applicant remains confident that the amendment will be executed soon, the current status of this item has not changed. The Applicant understands and acknowledges that leave to construct is typically conditional upon a proponent obtaining all necessary land rights for construction of the relevant facilities. As such, the fact that the amendment has not yet been finalized is not material.
39. In a February 12, 2015 letter, the APAI raised certain concerns relating to land matters for the Project Substation. In addition to its concern about the amendment to the option agreement not having been executed, which as noted above is not material, APAI suggested that the form of agreement for the Project Substation was not filed as part of

²³ Exhibit E, Tab 1, Schedule 1, p. 2.

²⁴ Exhibit E, Tab 1, Schedule 1, p. 2.

²⁵ Exhibit E, Tab 1, Schedule 1, p. 1.

the Application and asked for “the most recent versions of the form of the land agreements associated with the substation and associated overhead transmission lines.”

40. Regarding the APAI’s concern with the form of agreement for the Project Substation, we note that APAI referenced Exhibit E, Tab 1, Schedule 2, Appendix D which is a Temporary Easement Option. This was not the correct reference. Rather, the form of agreement for the Project Substation property is found in Exhibit E, Tab 1, Schedule 2 at Appendix B and is a Form of Lease Option Agreement. The APAI’s concerns with Clause 15 of Appendix D, as described in the letter, are therefore moot.
41. Regarding the APAI’s requests for more recent versions of the forms of land agreements, we note that Section 97 does not require an applicant to file copies of the actual agreements as negotiated with particular landowners but only the forms of agreements offered to or to be offered to affected landowners. The Board has previously explained that under Section 97 it “approves a standard form agreement which represents the initial offering to the affected landowner. Once the Board is satisfied with the standard form agreement . . . the parties are free to negotiate whatever terms they believe to be necessary to protect their specific interests. The Board does not become involved in the detailed negotiation of the clauses in the agreements between one landowner and the Applicant.”²⁶ As such, there are no “more recent” forms of land agreement to be filed.
42. The underground portion of the Transmission Line will cross Bath Road/Highway 33, for which the relevant authority is the Ontario Ministry of Transportation. As explained in Exhibit E, Tab 1, Schedule 1 at p. 3, Windlectric has statutory rights to cross the road with its facilities and to enter into the road for construction and maintenance purposes pursuant to Section 41 of the *Electricity Act*. In addition, Windlectric has sought approval from the Board pursuant to Section 101 of the OEB Act to construct portions of the Proposed Transmission Facilities upon, under or over a highway, utility line or ditch. Moreover, Windlectric will obtain an Encroachment Permit from the Ministry of Transportation in respect of this crossing.

²⁶ EB-2006-0305, Decision and Order dated June 1, 2007.

43. The overhead portion of the Transmission Line will require one overhead crossing of Front Road, which is owned by Loyalist Township. As is the case with the Bath Road/Hwy 33 crossing described above, Windlectric has statutory rights to cross Front Road with its facilities and to enter into the road for construction and maintenance purposes pursuant to Section 41 of the *Electricity Act*. In addition, Windlectric has sought approval from the Board pursuant to Section 101 of the OEB Act to construct portions of the Proposed Transmission Facilities upon, under or over a highway, utility line or ditch.
44. Windlectric has also noted its intention to negotiate a road use agreement with Loyalist Township which would relate, in part, to the crossing of Front Road. As there is no requirement that Windlectric enter into such road use agreement and Windlectric has the necessary rights under Section 41 of the *Electricity Act*, the fact that the road use agreement has not been finalized is not material to this proceeding. Nevertheless, the Applicant wishes to address certain comments relating to the road use agreement that have been raised in connection with Applicant Interrogatory #1 on APAI's evidence, as follows.
45. In its evidence, APAI filed a January 16, 2015 letter in which the Chief Administrative Officer of the Township confirmed the APAI's assertion that there has been no development on the Draft Road Use Agreement since January 2013. Windlectric filed an interrogatory, the preamble of which summarized various developments that have taken place since January 2013 with respect to the negotiation of a road use agreement. Among these developments, Windlectric noted its understanding that there were two closed meetings of the Township Council during which this matter was believed to have been considered. The interrogatory asked APAI to obtain confirmation from the Township's Chief Administrative Officer ("CAO") as to the accuracy of the preamble and to provide clarification as to the basis for the CAO's confirmation in the January 16, 2015 letter.
46. In its response, APAI did not provide any confirmation or clarification from the CAO whatsoever. Rather, APAI provided a response that included a lengthy discussion of matters that were neither relevant nor responsive to the interrogatory. Attached to its

response was a copy of a February 11, 2015 letter from the Mayor of Loyalist Township wherein the Township refused to confirm any aspect of the preamble.

47. Windlectric's only purpose for its interrogatory to APAI was to correct the record relating to APAI's false assertion that there have been no developments relating to the negotiation of a road use agreement with the Township since January 2013. Neither the response from APAI, nor the February 11, 2015 letter from the Township's Mayor, comment on the various developments that are itemized in the preamble other than to raise concerns relating to Windlectric's understanding about the closed meetings of the Township Council. With respect to the subject matter of those closed meetings, the Applicant notes that the Township's published minutes from its April 14, 2014 meeting state that "Council met in Closed Session to discuss matters regarding Algonquin/Windlectric and solicitor advice".²⁷ While a final road use agreement is not required for the Board to grant leave to construct, the Board should take it from this evidence that the Applicant nevertheless has and continues to make reasonable efforts to finalize a road use agreement with the Township.

E. OTHER CONSIDERATIONS

(a) Letters of Comment

48. Approximately 25 letters of comment, as well as numerous observer status request letters, have been filed in this proceeding. Many of the letters are from individuals that are affiliated with APAI. The Applicant has undertaken a detailed review of the letters and has thoroughly considered the comments that have been filed. Based on its review, Windlectric has found that the issues raised are duplicative of issues raised by APAI as an active intervenor and/or which are outside the scope of the Board's jurisdiction in this proceeding. As such, the concerns have generally been addressed elsewhere during the proceeding or they are not relevant. To assist the Board, a summary of the main issues raised, as identified through Windlectric's detailed review of the letters, is provided in **Schedule 'B'** attached hereto.

²⁷ Loyalist Township, Minutes of Meeting, April 14, 2014, Section 2014.6.4: "Rise and Report from Closed Session", p. 1, <https://loyalist.civicweb.net/Documents/DocumentList.aspx?ID=61803>

(b) *APAI Evidence*

49. APAI has filed a significant volume of material during this proceeding, as evidence, as interrogatory responses and in the form of correspondence. The Applicant's concerns with respect to APAI's general disregard for the timelines and procedural requirements established by the Board in filing its materials have already been brought to the Board's attention, as set out in Windlectric's letter of February 9, 2015. In that letter, Windlectric commented that the vast majority of the materials filed by APAI are either not proper evidence or are not relevant to the proceeding. The materials filed by APAI demonstrate a range of concerns that are similar to those raised in letters of comment (as listed in Schedule 'B' hereto) and which have either been addressed during the course of the proceeding, including in these submissions, or which are not relevant. Notably, in making its determination in Procedural Order No. 3 that no oral hearing is required, the Board found that most of the evidence that has been submitted by APAI concerns matters that are outside the Board's mandate in this proceeding, as established by Sections 92 and 96 of the OEB Act.²⁸

(c) *Construction Schedule*

50. Windlectric described its construction and in-service schedule in Exhibit B, Tab 2, Schedule 1 of the pre-filed evidence. Windlectric stated its intention to commence construction of the Proposed Transmission Facilities in the summer of 2015, subject to receipt of its Renewable Energy Approval ("**REA**") and other necessary permits and approvals. As indicated, construction was expected to take 8-12 months such that the facility would be ready for service by approximately Spring 2016.²⁹ The Applicant provided clarification in response to certain scheduling concerns raised in APAI Interrogatory #1. Given that the REA has not yet been issued and that APAI has already signaled its intention to appeal the REA to the Environmental Review Tribunal,³⁰ Windlectric acknowledges that construction will not likely commence as planned.

²⁸ Procedural Order No. 3, EB-2014-0300, dated February 24, 2015, pp. 4-5.

²⁹ Exhibit B, Tab 2, Schedule 1, p. 6.

³⁰ APAI, Cover Letter for Intervenor Evidence, January 19, 2015, p. 4.

51. Although construction of the Proposed Transmission Facilities is still expected to take approximately 9 months, it is not expected to commence until the first quarter of 2016, upon completion of dock construction. This schedule would enable project commissioning to be carried out in the fourth quarter of 2016 and commercial operation of the Generation Project to be achieved by the end of 2016. These updated estimates remain subject to the timing of other necessary permits and approvals.
52. Under its FIT Contract, Windlectric has a Milestone Date for Commercial Operation of late February 2014. From such date, the standard terms of the FIT Contract permit Commercial Operation to be achieved up to 18 months following the Milestone Date. In addition, the FIT Contract permits up to 24 months of Force Majeure. As such, Windlectric has until as late as August 2017 to achieve Commercial Operation and, as noted, its current expectation is that Commercial Operation can be achieved by the end of 2016.
53. Although the APAI has raised concerns with Windlectric's project schedule, particularly in response to Board Staff Interrogatory #1(iv), those concerns are based on a number of unreasonable assumptions. Moreover, as noted in Windlectric's letter dated February 9, 2015, it is the Applicant and not the APAI that is in the best position to establish a credible project schedule. The Applicant's project schedule is based on its extensive development work and consultation with contractors and members of its project team. As such, the Board should give no weight to the project schedule provided by APAI in response to Board Staff Interrogatory #1(iv). Examples of the unreasonable assumptions made by the APAI in developing its version of the project schedule for purposes of Board Staff Interrogatory #1(iv) include:
- that dock construction would take from October 2015 to early May 2016, for a total of over 7 months.³¹ Under Windlectric's project schedule, which it has developed based on input from its marine construction contractors, dock construction is expected to take approximately 3 months, from November 2015 to January 2016;
 - that there will be a total of 115 days of Force Majeure, which does not account for all delays experienced under the REA process or which are anticipated as a result

³¹ APAI, Response to Board Staff Interrogatory #1(iv), Project Schedule, Line 5.

of the APAI's planned appeal to the Environmental Review Tribunal.³² As indicated above, the FIT Contract permits up to 24 months of Force Majeure;

- that construction of the Proposed Transmission Facilities will take one full year, from July 2015 to July 2016.³³ Under Windlectric's current project schedule, construction of the Proposed Transmission Facilities will take approximately 9 months from February 2016 to November 2016; and
- that construction of the Generation Project will take from early May 2016 to mid-September 2017, for a total of over 16 months, commencing largely upon completion of construction for the Proposed Transmission Facilities.³⁴ Under Windlectric's current project schedule, Generation Project construction is expected to run from March 2016 to November 2016, for a total of approximately 8 months concurrent with construction of the Proposed Transmission Facilities.

54. Based on the foregoing, there are no issues with Windlectric's project schedule that have bearing on the Board's ability to grant leave to construct in this proceeding. Moreover, Windlectric expects that it will be in a position to commence construction of the Proposed Transmission Facilities within 12 months of the Board's decision, which is the standard timeframe provided by the Board in granting leave to construct.

(d) Decommissioning

55. APAI has raised concerns during the proceeding with respect to decommissioning. In the Applicant's view, the issue of decommissioning is not related to the Board's mandate in considering an application under Section 92 of the OEB Act. Rather, as described in a November 27, 2013 letter from the Ministry of the Environment to APAI which was filed by APAI on February 23, 2015, "as part of the REA application, applicants are required to prepare a Decommissioning Plan Report ("DPR") that describes how the applicant proposes to restore the project location to a clean and safe condition. At minimum, the DPR must describe procedures for dismantling or demolishing components of the facility; activities related to the restoration of the land and water to bring the site into a

³² APAI Response to Board Staff Interrogatory #1(iv), Project Schedule, Line 3.

³³ APAI Response to Board Staff Interrogatory #1(iv), Project Schedule, Line 7.

³⁴ APAI Response to Board Staff Interrogatory #1(iv), Project Schedule, Line 8.

condition consistent with probable future use; and procedures for managing excess materials and waste.”³⁵

56. Nevertheless, the Applicant notes that in response to APAI Interrogatory #4 Windlectric has confirmed that the costs of decommissioning the transmission facilities 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 transmission facilities require decommissioning). Windlectric further explained that it expects to have decommissioning obligations as part of its Renewable Energy Approval and that it will have decommissioning obligations pursuant to its land agreements.
57. In particular, Renewable Energy Approvals typically include obligations to decommission at the end of a project’s life in accordance with the Decommissioning Plan Report that is submitted as part of the approvals process. There is also typically an obligation to review the Decommissioning Plan Report at least 6 months prior to retiring the project to ensure it remains accurate and aligned with best management practices for the decommissioning of such facilities. Moreover, the Ministry of the Environment’s Director will have the authority to provide direction as may be needed at the time of decommissioning. In addition to obligations under the Renewable Energy Approval, Windlectric has further decommissioning commitments under its land agreements as with the directly affected landowners on whose property the Proposed Transmission Facilities will be situated.

F. CONCLUSIONS

58. The construction and operation of the Proposed Transmission Facilities will not affect the interests of consumers with respect to prices because the facilities will be paid for entirely by the Applicant and will not be recovered through transmission rates in Ontario. The Proposed Transmission Facilities are also consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.

³⁵ Letter from A. Garcia-Wright, Ministry of the Environment, to P. Large, APAI, dated November 27, 2013. Filed by APAI in February 20, 2015, 5:07 pm email from P. Large and served on parties by February 23, 2015 11:43 am email from L. Kilpatrick.

59. Through the impact assessments undertaken by Hydro One and the IESO, the Applicant has demonstrated that the Proposed Transmission Facilities will not adversely impact the interests of consumers with respect to reliability or the quality of electricity service.
60. The Applicant has also demonstrated that the routing and locations for the Proposed Transmission Facilities are appropriate. As such, for the reasons set out herein, we respectfully request that the Board grant to Windlectric leave to construct the Proposed Transmission Facilities pursuant to Section 92 of the OEB Act, along with such other relief as requested in the Application and as set out herein.

All of which is respectfully submitted this 16th day of March, 2015.

WINDLECTRIC INC.

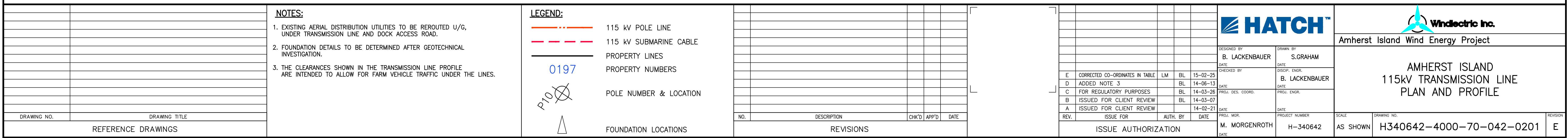
By its counsel
Torys LLP



Jonathan Myers

SCHEDULE 'A'

Corrected Figure 4(c) - Exhibit C, Tab 2, Schedule 1



SCHEDULE 'B'

Summary of Issues Raised in Letters of Comment

	ISSUES RAISED IN LETTERS OF COMMENT
1.	Electricity prices
2.	Economic viability of the generation project
3.	Provincial energy policy
4.	Intermittent nature of wind generation
5.	Human health and safety impacts from turbines, transmission facilities, and their construction
6.	Proximity of turbines and transmission infrastructure to school and residences
7.	Impacts of project generally on heritage structures on the island
8.	Impacts of project generally on the rural character of the island
9.	Impacts on the groundwater supply on the island
10.	Environmental impacts (including impacts of turbines on birds and owls, aesthetic impacts from transmission and generation facilities, noise, dust, biodiversity, species at risk, spills)
11.	Impacts on property values and 'saleability'
12.	Impacts on island tourism
13.	Impacts of submarine cable on ferry traffic, boating, fishing and recreational activities
14.	Impacts on roads and traffic, including emergency response services to the island
15.	Impacts on the island's power supply
16.	Cement batching plant and related environmental approval
17.	Corporate structure of Windlectric Inc. including relationship to Algonquin Power, staffing, resources, experience, liability
18.	Ability to implement construction schedule relative to half-load restrictions, nesting and fish spawning seasonal restrictions, and road use agreement
19.	Discrepancies as between pole height/design information and project schedule in leave to construct application as compared to renewable energy approval documentation
20.	Preference for underground transmission lines on island