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April 2, 2015

VIA RESS, EMAIL AND COURIER

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

Dear Ms. Walli:

**Re: Niagara Region Wind Corporation
Board File No. EB-2014-0298
Interrogatory Responses to Board Staff IRs**

We are counsel to Niagara Region Wind Corporation (the "Applicant") in the above-noted proceeding. Please find enclosed the Applicant's Responses to Board Staff Interrogatories.

Please note that two schedules attached to the Interrogatory Responses are being filed on a confidential basis according to the Board's *Practice Direction on Confidential Filings*.

Yours truly,

McCarthy Tétrault LLP

Per:

Signed in the original

Héloïse Apestéguy-Reux
Associate

HA/djk
Enclosure

ONTARIO ENERGY BOARD

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 Niagara Region Wind
Corporation for an order under section 41(9) of the *Electricity Act*,
1998, S.O. 1998, c. 15, Sch. B. (the "Application")

**NIAGARA REGION WIND CORPORATION (THE "APPLICANT") RESPONSES
TO BOARD STAFF INTERROGATORIES**

Interrogatory 1:

Ref: Road Allowances

- (a) Please provide a listing of the all the road allowances sought by Niagara Region Wind Corporation (NRWC), in the form that was in Appendix A of the OEB's Decision and Order EB-2010-0253 dated January 12, 2011.***
- (b) Also, please provide an expanded list of the road allowances as requested in the previous question, with an additional column to indicate whether the distribution line will be underground or overhead.***
- (c) Please confirm that there is no other affected municipality for the road allowances sought by NRWC for the distribution facilities described in this application.***
- (d) Has NRWC at any time provided the planned distribution route to the Municipality of Wainfleet (Wainfleet)?***
- (e) Has NRWC located utilities and other obstacles which have to be avoided along the route of the distribution lines?***
- (f) What construction methods does NRWC propose to use to ensure integrity of other utilities in the roadway is not affected?***

ANSWER 1:

- a) See Schedule "A". Appendix "1" of Schedule "A" lists the coordinates of the road allowances required. Coordinates are listed for approximately every hundred metres of road allowance required.
- b) See Schedule "A".
- c) Confirmed.

- d) Yes, at a meeting on May 21, 2014 with Municipality of Wainfleet ("Wainfleet") staff, the Applicant presented Wainfleet staff with the location drawings showing the proposed location of distribution routes. See meeting minutes of May 21, 2014, point no. 8, attached at Schedule "B" hereto. Moreover, in a September 16, 2014 letter to Wainfleet filed as Appendix 1 of the Application, the Applicant provided Wainfleet with the location drawings for the planned distribution route.
- e) The Applicant has visually located utilities and other obstacles which have to be avoided along the route of the distribution line. The Applicant notes that Wainfleet has advised that there is no municipal infrastructure (i.e., stormwater drains, water service, etc.) within the road allowances needed for distribution infrastructure (see meeting minutes of May 21, 2014, point no. 9, attached at Schedule "B" hereto). It is anticipated that Ontario One Call will be used during construction.
- f) Final detailed design has not been completed; however, the anticipated design will be in accordance with Ontario building codes and municipal codes and permits that are applicable.

Interrogatory 2:

Ref: Appendix 1/ Schedule A

Preamble: At the above reference, NRWC provided location maps that identify the sections along municipal streets and highways owned by the Wainfleet that it proposes to locate approximately 6 kilometres of overhead and underground distribution lines. For each road allowance listed in response to Interrogatory No. 1, please also provide the requested information.

- (a) Please describe in detail (such as number of poles, location of the poles, height of the poles, the minimum, maximum and average distance between the poles, length (in metres) of the portions of the distribution system segments to be overhead and underground, etc.) the distribution facilities that are proposed to be located on each road allowance listed in response to Interrogatory No. 1 and which are indicated in the location maps.***
- (b) At what distance from the existing property lines are the poles for the overhead line to be situated? How was this distance determined and why is it an appropriate distance?***
- (c) Were the locations of the facilities noted in the location drawings determined in consultation with Wainfleet staff?***
- (d) Were the location drawings provided to Wainfleet for comment/input? What has Wainfleet's response been?***
- (e) With respect to the facilities that are to be located along each public road, please provide maps and detailed engineering drawings (such as cross sectional drawings and layout) that clearly identify the location of the distribution facilities (such as location of poles, conductors) and other relevant locational information (such as the location of other utility infrastructure).***

ANSWER 2:

- a) The question is not applicable, as distribution lines will be underground.
- b) The question is not applicable, as distribution lines will be underground.
- c) and d) Wainfleet staff was presented with the location drawings when the Applicant met with Wainfleet on May 21, 2014 (see point 8 of Minutes of May 21, 2014 meeting at Schedule "B"). Wainfleet staff provided comments in respect of collector lines at this meeting (see point 8 of Minutes of May 21, 2014 meeting at Schedule "B").
- e) Detailed engineering drawings cannot be provide at this time as detailed engineering has not been completed. However, please see Schedule "C" for a drawing which shows a typical cross section.

Interrogatory 3:

Ref: Unopened Road Allowances

Preamble: According to the location maps, NRWC has indicated that portions of the proposed distribution system are to be on unopened road allowances in Wainfleet.

- (a) Please confirm that the above statement is correct.***
(b) What is NRWC's view on the unopened road allowances and what is contemplated as public street or high under section 41 of the Electricity Act? Specifically, is it NRWC's position that the OEB has jurisdiction under section 41 of the Act on unopened road allowances? Please provide evidence, if applicable, supporting NRWC's position.

ANSWER 3:

- a) Confirmed.
b) Section 41 of the *Electricity Act* sets out a comprehensive set of rights of access to public streets and highways pursuant to which a distributor or transmitter's rights of access to and installation on public streets or highways are prescribed by legislation.

The terms "highway" and "street" are not defined in the *Electricity Act, 1998*. The main sources of statutory law defining roads and highways in Ontario are the *Municipal Act, 2001* (Ontario) and the *Public Transportation and Highway Improvement Act* (Ontario). Under the latter statute, a highway is defined to include "a common and public highway." Under Section 26 of the *Municipal Act, 2001* (Ontario), clause 1 of such Section 26 identifies "highways" as being highways that existed on December 31, 2002. Under the *Municipal Act* in effect on December 31, 2002, common and public highways included allowances for roads made by Crown surveyors. The unopened road allowances that are shown as being proposed for the location of proposed electrical infrastructure in the Application are as follows:

- On page 14 of the Application, the relevant portion of unopened road allowance is the southerly extension of Sideroad 42 as it extends south of Concession 6 Road.
- On page 17 of the Application, the relevant portions of unopened road allowance is a portion of Concession 1 Road and the southerly extension of Sideroad 32 as such sideroad extends south from Concession 1.

Sideroad 42, Concession 1 Road and Sideroad 32 are all road allowances that were established in the original Crown survey of the Township of Wainfleet. Given the absence of a definition of "highway" in the *Electricity Act*, it is an acceptable and established interpretive principle to look to the definition of such term in other statutes, and so with such unopened road allowances being "highways" for purposes of both the *Municipal Act, 2001* and the *Public Transportation and Highway Improvement Act*, it is clear and well established law that these particular road allowances are "highways" for

purposes of the *Electricity Act*, and therefore the OEB has jurisdiction under s. 41 of the *Electricity Act* in respect of these unopened road allowances.

Interrogatory 4:

Ref: Renewable Energy Approval

Preamble: NRW indicated that Wainfleet would not communicate with NRW in respect of a road use agreement until NRW had been granted a Renewable Energy Approval (REA) for the Niagara Region Wind Farm.

- (a) Has there been any appeal of the decision and if so, when was it appealed and what was concluded, or in the opinion of NRW, is an appeal still expected?***
- (b) In NRW's view, if there is a successful appeal will it impact the location of the distribution facilities that are the subject of this application?***
- (c) Please provide the most up-to-date Construction Schedule for the complete project. Please identify the date when construction of the facilities (that are the subject of this application) are planned to commence.***
- (d) What are the risks and ramifications if construction of the proposed facilities is delayed?***

ANSWER 4:

- a) The Applicant's REA is currently under appeal before the Environmental Review Tribunal. A decision in respect of the appeal is expected the third week of May 2015.
- b) The Applicant does not anticipate that the location of the Applicant's distribution facilities will be an issue addressed in the appeal of its REA.
- c) An up-to-date construction schedule is not available at the time of this filing but will be provided to the Board as soon as possible.
- d) As the Applicant holds a FIT Contract with the Independent Electricity System Operator (as successor by amalgamation to the Ontario Power Authority), the Applicant must adhere to the timelines of the FIT Contract. Accordingly, delays in the construction of the proposed facilities could pose significant risks to the Applicant.

Interrogatory 5:

Ref: Negotiations with Wainfleet

Preamble: NRWC stated that it had exchanged drafts of a road use agreement but had not reached an agreement at the time (of filing of the application). NRWC noted that Wainfleet did not raise issues with respect to the location of the distribution facilities.

- (a) Please provide copies of the described communication above regarding the exchange of draft road use agreements and communication supporting Wainfleet not raising any issues with respect to the location of the distribution facilities.***
- (b) Please provide an update of any communications with Wainfleet which are not already described in the application. Please provide copies of this communication, if any.***

ANSWER 5:

- a) Please see Schedule "D" for copies of communications regarding the exchange of draft road use agreements. In respect of Wainfleet not raising issues with respect to the location of the distribution facilities, please see minutes of May 21, 2014 meeting, point no. 8, attached at Schedule "B".
- b) As described in the Application, Wainfleet is no longer objecting to communications with the Applicant regarding a road use agreement ("RUA"). The Applicant has exchanged drafts of a RUA with Wainfleet.

More specifically:

1. On November 25, 2014, the Applicant contacted Wainfleet to begin negotiations on the RUA and recirculated the template RUA that was originally sent to Wainfleet on April 25, 2013.
2. On December 4, 2014, Wainfleet's counsel circulated a revised draft RUA.
3. On January 7, 2015, the Applicant's counsel circulated a revised draft RUA.
4. On February 11, 2015, Wainfleet's counsel circulated a revised draft RUA.
5. On March 9, 2015, the Applicant's counsel circulated a revised draft RUA.
6. On March 27, 2015, lawyers for NRWC and Wainfleet held a conference call to settle the form of RUA.

Please see Schedule "D" for copies of communications.

SCHEDULE “A”

LIST OF MUNICIPAL ROAD ALLOWANCES WITHIN WHICH THE DISTRIBUTION SYSTEM WILL BE LOCATED

- | | | |
|----|---|-------------|
| 1. | Creek Road (see appendix “1” to this Schedule for coordinates of road allowance needed). | Underground |
| 2. | Sideroad 42 (see appendix “1” to this Schedule for coordinates of road allowance needed) from Creek Road to Concession 6 Road. | Underground |
| 3. | Concession 6 Road from Sideroad 42 to Unopened Road allowance south of Concession 6 Road (southerly extension of Sideroad 42) (see appendix “1” to this Schedule for coordinates of road allowance needed). | Underground |
| 4. | Unopened Road allowance south of Concession 6 Road (southerly extension of Sideroad 42) (see appendix “1” to this Schedule for coordinates of road allowance needed). | Underground |
| 5. | Townline Dunnville Wainfleet (Wainfleet Dunnville Townline Road) from Jenny Jump Road to Booker Road (see appendix “1” to this Schedule for coordinates of road allowance needed). | Underground |
| 6. | Unopened Road allowance along Concession 1 Road and southerly extension of Sideroad 32 as such sideroad extends south from Concession 1 (see appendix “1” to this Schedule for coordinates of road allowance needed). | Underground |

APPENDIX “1”

(see attached Excel spreadsheet of coordinates)

Coordinates along Wainfleet ROW with proposed collector line for Niagara Region Wind Farm

02-Apr-15

Road	Easting	Northing	Intersection
Creek Road	622548.5	4761396.7	
Creek Road	622643.6	4761427.8	
Creek Road	622740.1	4761459.3	
Creek Road	622835.2	4761490.3	
Creek Road	622930.3	4761521.2	
Creek Road	622471.8	4761362.8	
Creek Road / Sideroad 42	623041.9	4761557.6	yes
Sideroad 42	623053.4	4761478.1	
Sideroad 42	623059.1	4761378.3	
Sideroad 42	623064.9	4761278.4	
Sideroad 42	623070.7	4761178.6	
Sideroad 42	623076.4	4761078.8	
Sideroad 42	623082.2	4760978.9	
Sideroad 42	623087.9	4760879.1	
Sideroad 42	623093.7	4760779.3	
Sideroad 42	623099.5	4760679.4	
Sideroad 42	623105.2	4760579.6	
Sideroad 42	623111.0	4760479.8	
Sideroad 42	623116.7	4760379.9	
Sideroad 42	623122.1	4760280.1	
Sideroad 42	623127.4	4760180.2	
Sideroad 42	623132.7	4760080.4	
Sideroad 42	623137.9	4759980.5	
Sideroad 42	623143.2	4759880.6	
Sideroad 42	623148.5	4759780.8	
Sideroad 42	623153.8	4759680.9	
Sideroad 42 / Concession 6	623155.9	4759640.6	yes
Concession 6	623036.8	4759619.2	
Concession 6 / Unopened Road Allowance	622939.9	4759614.6	yes
Unopened Road Allowance	622945.8	4759485.8	
Unopened Road Allowance	622950.3	4759385.9	
Unopened Road Allowance	622954.8	4759286.0	
Unopened Road Allowance	622959.4	4759186.1	
Unopened Road Allowance	622963.9	4759086.2	
Unopened Road Allowance	622968.5	4758986.3	
Unopened Road Allowance	622973.0	4758885.7	
Jenny Jump Road/Townline Dunnville Wainfleet	623501.1	4754632.5	yes
Townline Dunnville Wainfleet	623553.5	4754547.3	
Townline Dunnville Wainfleet	623605.9	4754462.1	
Townline Dunnville Wainfleet	623658.3	4754376.9	
Townline Dunnville Wainfleet	623710.7	4754291.8	
Townline Dunnville Wainfleet	623763.0	4754206.6	
Townline Dunnville Wainfleet	623815.4	4754121.4	

Townline Dunnville Wainfleet	623867.8	4754036.2
Townline Dunnville Wainfleet	623920.2	4753951.1
Townline Dunnville Wainfleet	623972.7	4753865.9
Townline Dunnville Wainfleet / Hendershot Road	624025.2	4753780.8 yes
Townline Dunnville Wainfleet	624078.2	4753696.0
Townline Dunnville Wainfleet	624131.2	4753611.3
Townline Dunnville Wainfleet	624238.3	4753442.3
Townline Dunnville Wainfleet	624291.8	4753357.9
Townline Dunnville Wainfleet	624345.4	4753273.5
Townline Dunnville Wainfleet / Bell Road	624207.8	4753483.6 yes
Townline Dunnville Wainfleet / Booker Road	624408.1	4753174.7 yes
Unopened Road Allowance	627609.0	4749261.8
Unopened Road Allowance	627605.1	4749361.7
Unopened Road Allowance	627601.1	4749461.6
Unopened Road Allowance	627597.2	4749561.5
Unopened Road Allowance	627593.3	4749661.5
Unopened Road Allowance	627602.7	4749189.8
Unopened Road Allowance	627706.3	4749750.4
Unopened Road Allowance	627773.2	4749771.7
Unopened Road Allowance	627590.0	4749745.0

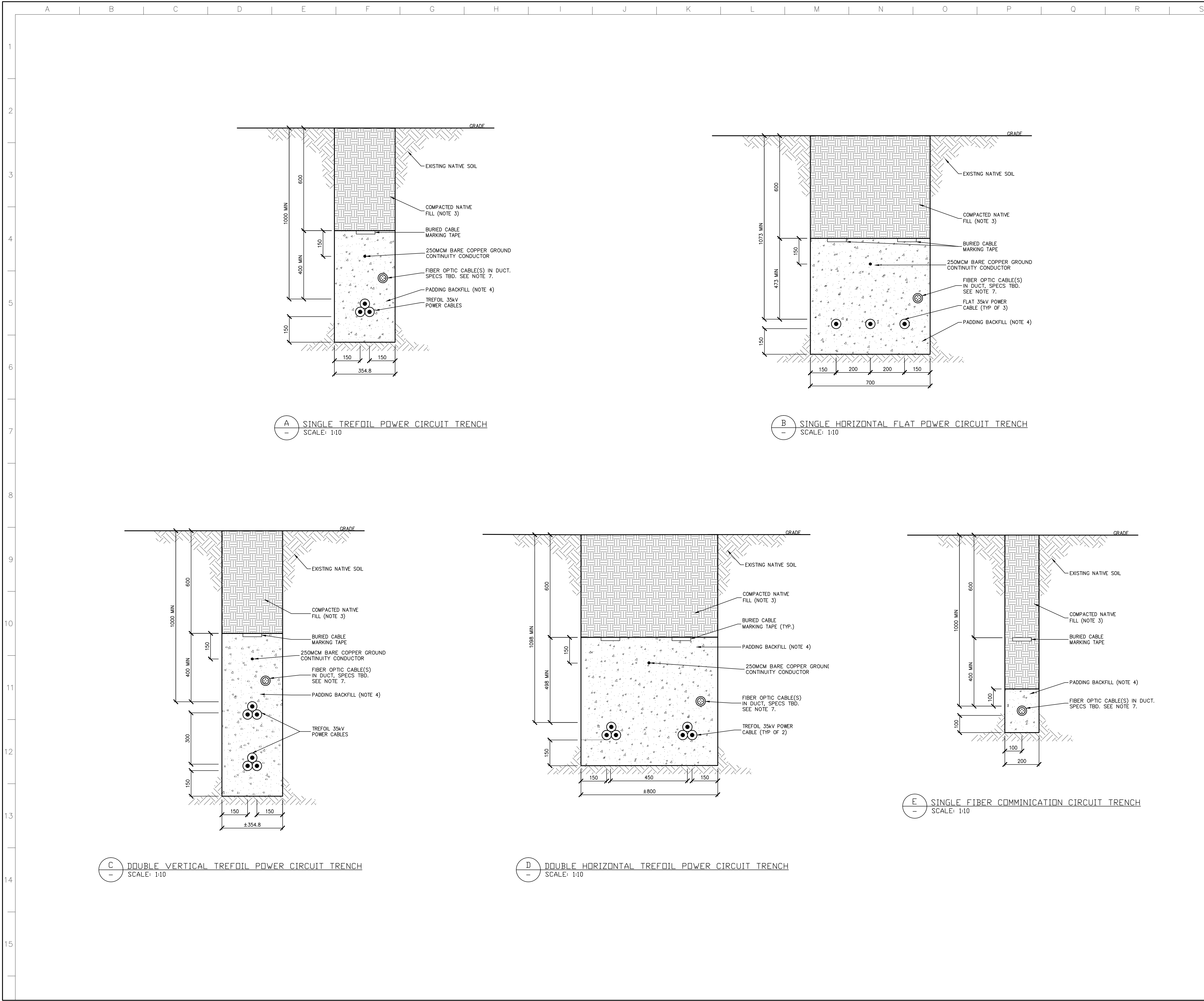
SCHEDULE “B”

(Filed pursuant to the Board’s Practice Direction on Confidential Filings)

SCHEDULE "C"

DRAWING

\\cd1004-d01\Work_Group\013356\active\133560000\42_Drawing\02_Design\42_NC-SC-E-ID-501-503.dwg
2014/05/15 11:31 AM By: Munoz, Jordan



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Notes

- ALL DIMENSIONS SHOWN ARE IN MILLIMETERS UNLESS OTHERWISE NOTED.
- ALL UNDERGROUND CABLES SHALL BE SEPARATED FROM ALL OTHER EXISTING UTILITIES RUNNING IN PARALLEL BY A MINIMUM OF 1.0m CENTERLINE TO CENTERLINE UNLESS OTHERWISE INDICATED BY SPECIFIC UTILITY CLEARANCE REQUIREMENTS.
- NATIVE BACKFILL SHALL BE FREE OF LARGE ROCKS, CINDERS, LARGE OR SHARPLY ANGULAR SUBSTANCES AND CORROSIVE MATERIAL.
- PADDING BACKFILL MATERIAL SHALL BE SCREENED SAND WITH MAXIMUM PARTICLE SIZE OF 4.75mm OR SCREENED EARTH, INSTALLED BOTH BELOW AND ABOVE CABLES.
- UNLESS OTHERWISE NOTED, ALL MATERIALS SHALL BE BACKFILLED IN LAYERS AND COMPACTED TO 90% S.P.D., 95% S.P.D. FOR ROAD CROSSINGS, AND 90% S.P.D. FOR FARM FIELD AREAS.
- INSTALLATION METHODS ARE TO BE IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS TO MAINTAIN TREFOIL CONFIGURATION.
- MINIMUM 150mm CLEARANCE REQUIRED BETWEEN FIBER OPTIC CABLES AND POWER CABLES.
- CROSS-BONDING AND TRANSPOSITION TRENCH DETAILS TO BE PREPARED IN DETAILED DESIGN STAGE.

Legend

- 35kV POWER CABLE
- COMPACTED NATIVE FILL (NOTE 3)
- PADDING BACKFILL (NOTE 4)
- EXISTING NATIVE SOIL

No.	Reference Drawing	DWG. No.	Revision
A	ISSUED FOR TENDER	BD	AG
Revision		AG	MB
		14.05.14	YY.MM.DD

Designed by Signature YY.MM.DD Checked by Signature YY.MM.DD Approved by Signature YY.MM.DD

Permit-Seal

PRELIMINARY
NOT FOR CONSTRUCTION

Client

NIAGARA REGION WIND CORPORATION
277 Lakeshore Road East, Suite 211, Oakville, ON

Project

NIAGARA REGION WIND FARM
230MW
Niagara Region and Haldimand County, Ontario

Title

34.5kV COLLECTOR SYSTEM
CABLE TRENCH DETAILS

Project No.

133560006

Scale

AS NOTED

Drawing No.

Sheet

Revision

NC/SC-E-ID-501

1 of 1

A

SCHEDULE “D”

(Filed pursuant to the Board’s Practice Direction on Confidential Filings)