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August 2, 2016

**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: EB-2016-0196 – Application for leave to construct amending the relief requested in EB-2013-0203**

On March 14, 2016 and April 1, 2016, the Applicants in the above-noted application filed motions requesting variance of EB-2013-0203, an order granting leave to construct (the “Vary Motions”). The Vary Motions were filed so that the transmission route could be altered to accommodate requirements of the local municipality (the Municipality of West Lincoln) and the Ministry of Transportation.

Although the Board’s filing guidelines in regards to leave to construct applications provide that when a proponent obtains approvals after the LTC process, changes to the LTC may be required, including a change in route<sup>1</sup>, the Applicants understand that the Board does not have a process set out for changes in a route approved in a leave to construct.

On June 17, 2016, the Applicants filed the current application. Given the time that had passed since the Vary Motions were applied for (4.5 and 4 months from today’s date), the current application (the “Application”) requested that the Board proceed with this application on an expedited basis. The reasons for this request are addressed in the Application and are summarized in the Applicants’ letter to the Board dated July 11, 2016.

On July 13, 2016, the Board issued Procedural Order No. 1 (“PO 1”) which ordered that the Applicants serve PO 1 and the first 14 pages of the Application on the three landowners who rely on access through the unopened road allowance upon which a portion of the Smithville Bypass is proposed to access their property (the “Three Landowners”).

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<sup>1</sup> See s. 4.2.2, Filing Requirements For Electricity Transmission Applications, Chapter 4, Applications under Section 92 of the Ontario Energy Board Act, available at <http://www.ontarioenergyboard.ca/oeb/ Documents/Regulatory/OEB Filing Req Tx Applications Ch4 201407 31.pdf>

Further to PO 1, the Applicants served the Three Landowners on July 15, 2016. The Three Landowners were requested to file any written submissions on the Application within ten days.

On July 27, 2016, two of the Three Landowners filed submissions on the Application.

The Applicants have reviewed the submissions filed by Roger and Irene Martin and have generally been made aware of type of non-confidential matters raised in the submissions of Ms. Elaine Pavao.

The Applicants submit that the two landowners' submissions do not raise matters which demonstrate that there will be a material adverse affect on the Three Landowners. The Three Landowners will continue to be able to utilize the road allowance to access their property and will continue to be able to do so during and after construction.

More specifically, Roger and Irene Martin's submissions raise issues related to notice, proximity of houses, congestion due to large vehicles, and appearance of the road allowance. The matter of notice is addressed below on page 3. On the other matters listed, the Applicants submit that the matters described by Roger and Irene Martin are not distinguishable from the impact to any landowner adjacent to a road allowance on which a transmission line is being built. Specifically, the houses along the unopened road allowance (also known as South Grimsby Road 6) are not closer to the road allowance where the transmission line will be located than, for example, the houses on South Grimby Road 5 along the original transmission line route. On the matter of congestion due to large vehicles, it is not uncommon for a road to be shut down entirely (i.e. for a "road closure" to take place) due to the construction of a transmission line. The Applicants have committed to ensuring that those along the unopened road allowance continue to be able to access their property using the unopened road allowance / South Grimsby Road 6. In regards to the appearance of the road allowance, the Smithville Bypass proposes to have a transmission line along the South Grimsby 6 Road allowance, just as the road allowance on South Grimsby Road 5 would have a transmission line along it pursuant to the original route. In sum, the matters described in Roger and Irene Martin's submissions do not demonstrate a material adverse affect.

In regards to the submissions of Ms. Elaine Pavao, the types of non-confidential matters raised in the submissions of Ms. Pavao of which the Applicants have been made aware relate for the most part to issues that have been determined by the Renewable Energy Approval process.<sup>2</sup>

Moreover, the Applicants submit that materiality should be addressed in the context of the decision that the Board has to make, that is, the question of material adverse affect must be considered in relation to the Board's criteria in section 96(2) of the OEB Act. None of the issues raised in the submissions filed by two of the Three Landowners fall within the Board's jurisdiction in a leave to construct proceeding. As the Board indicated in the Notice of Application of EB-2013-0203<sup>3</sup> and further stated in Procedural Order No. 1 of EB-2013-0203 dated November 1, 2013<sup>4</sup>, section 96(2) of the OEB Act "provides the criteria that the Board

<sup>2</sup> The Applicants also note that Ms. Pavao has communicated with the Municipality of West Lincoln via emails and one or more letters, and the Municipality has discussed Ms. Pavao's concerns with Ms. Pavao.

<sup>3</sup> See Notice of Application page 1, available at [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/405406/view/NOA\\_NRWC\\_LTR\\_Completed\\_20130806.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/405406/view/NOA_NRWC_LTR_Completed_20130806.PDF)

<sup>4</sup> See page 2 of Procedural Order No. 1 in EB-2013-0203 dated November 1, 2013 and available at [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/415409/view/PO1\\_NRWP\\_2013\\_1101.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/415409/view/PO1_NRWP_2013_1101.PDF)

must consider in determining whether the proposed Transmission Facilities are in the public interest. Section 96(2) sets out the following criteria:

*96 (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 electricity distribution 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.*

The scope of this hearing is also defined by section 97 of the Act which requires the Board to approve the form of agreement that has been or will be offered to land owners:

*97 In an application under section 90, 91 or 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.” (emphasis added)*

Section 97 above applies to directly affected landowners, that is, landowners who will have infrastructure on their property. The Three Landowners are not directly affected landowners, as the transmission line route is planned to run on the road allowance which is adjacent to their property. While the Three Landowners would not have required notice of the leave to construct proceeding pursuant to the EB-2013-0203 letter of direction<sup>5</sup>, the Applicants understand based on PO 1 that the Board sought submissions from the Three Landowners in order to ensure that the Three Landowners would not be materially adversely affected in regards to their use of the road allowance. As set out above, the Three Landowners will be able to continue to use the road allowance to access their property and the submissions filed by the two landowners do not raise issues in this regard.

The Board has therefore now been able to hear and review the submissions filed by the two of the Three Landowners who chose to file submissions. As shown above, the submissions do not demonstrate material adverse impact and do not raise matters within the Board’s jurisdiction in a leave to construct proceeding. As detailed below, the project is now past project timelines and therefore the Applicants request that the Board make a decision on the Application.

### ***Information for Board regarding status of construction***

In regards to the status of construction (in light of references made to construction in Roger and Irene Martin’s submissions), the Applicants advise that they are not constructing a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts. The Applicants have begun excavation and preparing the road allowance for the construction of a transmission line. As stated in the Application, the Applicants are party to a road use agreement with the Municipality of West Lincoln pursuant to which the Municipality of

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<sup>5</sup> See pages 1 and 2 of letter of direction available at [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/402317/view/LOD\\_NOAWH\\_NR\\_WC\\_20130705.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/402317/view/LOD_NOAWH_NR_WC_20130705.PDF)

West Lincoln has granted permission for the Smithville Bypass along its road allowances.

***Request for a decision as soon as possible***

The Applicants are now in a situation where each day that they do not receive a decision from the Board on this Application is causing a day of delay for the project. As previously noted, the Applicants face extremely tight timelines in regards to the completion of the transmission line. In other words, the Applicants need to complete the transmission line in order to connect the Niagara Region Wind Farm to the electricity transmission grid.

In light of the above, the Applicants respectfully request that the Board issue a decision as soon as possible in regards to the Application.

In the alternative, the Applicants have reviewed PO 1 and note that the Board does not appear to indicate any further matter to consider in regards to the Highway 3 Bypass. Consequently, at a minimum, the Applicants request that the Board issue a decision on the Highway 3 Bypass.

Please contact the undersigned if you have any questions in regards to the foregoing.

Sincerely,

*Signed in the original*

George Vegh

Cc: Peter Ascherl, Counsel to FWRN LP and NR Capital General Partnership  
Gael Gravenor, Enercon  
Chris Carter, CAO, West Lincoln  
Paul Nunes, Corridor Management Officer, Ontario Ministry of Transportation  
Hydro One (regulatory affairs)  
IESO (regulatory affairs)