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August 11, 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 July 13, 2016 in the above-noted proceeding, 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”).

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 provided comments in regards to those submission on August 2, 2016.

In regards to the letter submissions of Ms. Elaine Pavao, the Applicants’ counsel is in receipt of Ms. Pavao’s letter and attachments dated July 25, 2016 (received by the Board July 27, 2016). The letter and attachments raise the following matters: concerns regarding electromagnetic fields; the REA process including questions relating to wildlife; and property values.¹

The Applicants submit that the above-noted matters do not raise issues which are within the Board’s jurisdiction in a leave to construct proceeding. The question of material adverse affect 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

¹ In regards to the letter filed as Appendix A of the submissions filed by Ms. Pavao, the Applicants confirm that this letter was sent to the Municipality of West Lincoln and can advise that the Municipality of West Lincoln spoke with Ms. Pavao in response to the letter.

section 96(2) of the OEB Act.²

In regards to the concerns raised by Ms. Pavao regarding pre-construction activities, the Applicants have been responding to each concern raised by landowners as these concerns have come up. For example, calcium was placed on the ground and related activities undertaken to control dust. Portable toilets were located close to pre-construction activities so that these can be used by workers. Moreover, the Applicants can advise that the road used by the Three Landowners to access their properties will be returned to its initial condition or a better condition, as required by the Road Use Agreement that the Applicants have with the Municipality of West Lincoln.

In addition, the Applicants advise that pre-construction activities are being undertaken in accordance with best construction practices and pursuant to the requirements of the Occupational Health and Safety Act and its regulations for construction projects. The Occupational Health and Safety Act is enforced by the Ministry of Labour. The Applicants are agreeable to a condition of approval which requires the Applicants to conduct pre-construction and construction in accordance with the Occupational Health and Safety Act and its regulations for construction projects.

The Applicants are also agreeable to another condition of approval which requires the Applicants to note each concern raised by the Three Landowners during pre-construction and

² As the Board indicated in the Notice of Application of EB-2013-0203 (See Notice of Application page 1, available at http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/405406/view/NOA_NRWC_LTR_Compiled_20130806.PDF) and further stated in Procedural Order No. 1 of EB-2013-0203 dated November 1, 2013 (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_20131101.PDF) section 96(2) of the OEB Act "provides the criteria that the Board 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. The letter of direction in the original leave to construct proceeding EB-2013-0203 required service of the leave to construct application notice to directly affected landowners, with the following definition of lands directly affected: "Lands are directly affected if an interest in the lands is required on either a temporary or permanent basis for the construction and/or operation of the proposed 115 kilovolt electricity transmission line and related facilities." (See page 1 of letter of direction available at http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/402317/view/LOD_NOAWH_NRWC_20130705.PDF)

construction and how the concern was addressed by the Applicants, and to file this report with the Board.

Request for a decision as soon as possible

The Applicants submit that the two landowners of the Three Landowners who filed submissions have made their points as outlined in their letters and the Board has considered these points. As noted above, the points raised by the two landowners are not issues which are within the Board's jurisdiction in a leave to construct proceeding. Therefore, there is nothing to be gained by further procedure or a hearing.

Moreover, the Board has given the Three Landowners the opportunity to be heard and in so doing, has given more participatory opportunities to the Three Landowners than the Three Landowners would have had in the context of the original application for leave to construct, had the transmission line route originally been proposed to run along South Grimsby Road 6 / the unopened road allowance. In other words, the Applicants submit that the Board has gone above and beyond what was required in the original application for leave to construct.

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 and must 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)