



association to protect
AMHERST ISLAND

Without prejudice to all our rights

June 27, 2017

Ontario Energy Board
P.O. Box 2319
2300 Young St, 27th Floor
Toronto, Ontario, M4P 1E4

File No. EB-2014-0300

Attn: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Windlectric Inc. Proposed Amherst Island Wind Energy Project – APAI Comments on Windlectric's May 31, 2017 deadline for starting construction on the Transmission Facilities

One of the key conditions of the OEB's approval of the leave to construct and the vary order is that the proponent have all the permits and approvals in place before commencing construction.

"The OEB's approval remains contingent on Windlectric obtaining its REA and all other necessary permits and approvals. Windlectric has received its REA and must obtain other necessary permits and approvals before commencing construction." (OEB, June 14, 2017; Pg.3)

APAI submits that the OEB's Approval EB-2014-0300 expired on May 31, 2017. Windlectric Inc. did not meet the condition of the OEB approval by failing to obtain all necessary permits and approvals. Windlectric was therefore not in a position to start construction of the transmission facilities on May 31, 2017.

APAI believes that the following permits/approvals are outstanding:

1. Roads Use Agreement, Operations Plan & Pre-Construction Study: Windlectric Inc. and Loyalist Township have entered into arbitration concerning the Roads Use Agreement. In addition, the ownership of road allowances is being contested in the courts. (Attachment #1- Letter from Loyalist Township to Algonquin Power, June 5, 2017)

2. The Roads Use Agreement with Lennox-Addington County has not been finalized.
(Attachment 2 – email from Mr. Chris Wagar, Lennox-Addington County to Ms. Debbie Barrett)
3. Windlectric has not secured the necessary approvals from the MTO Carrier Safety and Enforcement Branch (CSEB) for the transportation of oversized loads. (Attachment 3 – Letter from Ministry of Transportation to Sean Fairfield April 24, 2017)
4. Stage 2 Archaeological Assessment, reporting and clearance required from the Ministry of Tourism, Culture and Sport on recreational access road adjacent to the mainland project dock site.

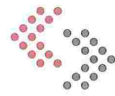
If Windlectric Inc. claims they started construction of the transmission facilities by May 31, 2017, it is APAI's position that Windlectric is in violation of the conditions of the OEB approval.

Yours truly,

Laurie Kilpatrick
OEB Intervenor: Association to Protect Amherst Island

cc. Michèle LeLay
Debbie Barrett

Attachment #1 - [Letter from Loyalist Township's solicitor to Algonquin Power's solicitor](#) responding to the Notice of



Cunningham Swan
LAWYERS

Tony E. Fleming
Direct Line: 613.546.8096
E-mail: tfleming@cswan.com
LSUC Certified Specialist in Municipal Law
(Local Government / Land Use Planning)

June 5, 2017

Robert Staley
Bennett Jones LLP
3400 One First Canadian Place,
PO Box 130
Toronto, ON
M5X 1A4

Dear Mr. Staley:

RE: Amherst Island Wind Project – Operations Plan

Loyalist Township asked that we prepare a letter in response to your recent correspondence and Notice of Arbitration with respect to the Operations Plan. We have instructions to represent the Township at the arbitration and will provide our selection of arbitrator to you this week.

It is unfortunate that your client feels there is no alternative to arbitration in this matter. As you are aware, the Township has been requesting a number of key pieces of information throughout the process that, had Algonquin/Windlectric (the "Firm") made available, could possibly have avoided the situation the Firm finds itself in with respect to timing.

The Township has consistently advised your client that its mandate is to protect the public interest, including minimizing impacts to Township residents, protecting and maintaining municipal infrastructure, preserving Amherst Island heritage, and ensuring effective emergency response is available, particularly in the construction phase of the project. It is through this lens that the Township has reviewed and evaluated Firm documentation throughout the process.

There is no dispute that the Firm submitted a number of draft versions of the Operations Plan. The number of iterations of the plan however speaks primarily to the inadequacy of those plans and the continued reluctance to address the issues identified by the Township. The Township has communicated on a number of occasions that in order to meaningfully evaluate the Operations Plan it must contain sufficient detail to permit an assessment to occur.

CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM LLP

SMITH ROBINSON BUILDING, SUITE 300 - 27 PRINCESS ST., KINGSTON ON K7L 1A3 TEL: 613-544-0211 FAX: 613-542-9814 WEBSITE: WWW.CSWAN.COM

The Firm has corrected a number of identified deficiencies, but the plan that it requested be submitted to Council still has significant deficiencies which should have been addressed in advance of submitting it for final approval, which was communicated to your client a number of times.

As an example, the Firm chose not to accept prior Township offers to meet in advance of submitting the first draft of the Operations Plan and instead submitted the first draft on October 14, 2016 without prior consultation. As a result, the Plan was grossly short of basic details and suffered from a fundamental lack of appreciation for, or comprehension of, the municipality's sphere of responsibility. Key details the Plan not addressed included school and bus operations, emergency response impacts and operational considerations such as winter control. We further note that prior to October of 2016 the Firm had not consulted with a number of key stakeholders such as the School Board. The Township communicated that this draft did not contain the basic level of information required to even be considered a first draft of the operations plan.

Following submission of the first draft, Township staff met with representatives of the Firm on November 21, 2016. At this meeting the Firm attended without an agenda and appeared unprepared to answer questions about the fundamental underpinnings needed to draft an operations plan.

The most recent draft of the Operations Plan still inadequately deals with the roads. Specifically, the Firm has not identified the extent of the road allowance available along all proposed construction routes. The Township identified the need for a legal survey to establish road widths as early as 2013. Most recently, the Township confirmed that a legal survey would be required on March 9, 2016 (AECOM memo). On August 24, 2016 Township staff again advised of the need for a legal survey at a meeting with Windlectric to discuss various aspects of the Project. Staff also mentioned the need for a legal survey in comments on the three versions of the Operations Plan and in comments on the Pre-construction Study.

Notwithstanding the repeatedly raised concern over the extent of the forced road widths, your client has never prepared a legal survey. Instead the Firm purports to rely on construction drawings that do not appear to properly establish the legal limits of the roads and in any event have a variance of plus or minus .3m.

It is not acceptable to the Township or private land owners to undertake a construction process with this level of uncertainty.

The extent of the forced roads is now a matter before the courts and both of our clients will need to argue the exact nature of the forced roads on the island, as well as the extent of the road allowance owned by/under the jurisdiction of the Township to defend the Application brought by Martin Hauschild. Had your client undertaken proper surveys, much if not all of this

issue would have been resolved and the Operations Plan could be properly evaluated by the Township. Without a complete understanding of the limit of the Township roads many aspects of the proposed Operations Plans and traffic management cannot be adequately evaluated.

The Operations Plan also importantly does not have the necessary details about the width and capacity of the roads to be used. This information is critical to assessing the merit of the proposed construction work and detours proposed in the Operations Plan.

We understand from correspondence submitted by Jeff Norman dated May 29, 2017 that, "Windlectric nevertheless remains prepared to have discussions with Staff in the next couple of days, or after arbitration is commenced, with a view to narrowing issues separating Windlectric and the Township." This comment was made in the context of expressing Mr. Norman's view that no amount of negotiation could avoid arbitration.

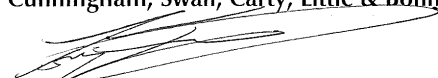
The Township has always been, and continues to be, willing to discuss and resolve all outstanding issues related to the Operations Plan. Township Staff are prepared to meet with your clients to establish what issues cannot be resolved without arbitration.

We also note that the Firm appears to be requesting that Council amend its noise by-law and grant a number of other requests that would require amendments to other township by-laws or decisions of Council. These matters are not subject to the road use Agreement and need to be addressed separately. Simply referring in the Operations Plan to the desire to have Council make certain decisions does not make the request part of the Operations Plan that can be subject to arbitration. This will need to be part of our discussions as to what matters are properly part of the arbitration.

I suggest that the Township provide a list of those elements of the Operations Plan that are NOT properly part of the Operations Plan as a means to begin the process of scoping the issues to be arbitrated. Based on this initial list we can identify which issues might be capable of resolution and establish a process to develop a final issues list.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.

TEF:kj

copy to: Robert Maddocks, CAO

Attachment #2

E-mail from Lennox-Addington County Re: Update on Proposed Road Use Agreement with Windlectric Inc. to Debbie Barrett (APAI)

From: Chris Wagar <cwagar@lennox-addington.on.ca>
Date: Thu, Jun 8, 2017 at 9:03 AM
Subject: RE: Proposed Amherst Island Wind Project - Road Use Agreement with the County
To: Deborah Barrett <justdebbbarrett@gmail.com>
Cc: Jim Klaver <jklaver@lennox-addington.on.ca>

Deborah,

We have reviewed the Road Use Agreement and have no further comments on the portion that we have reviewed. This said, we are still waiting for Windlectric to submit the appendices that are to be included in this agreement. So no real change from my last email.

Thanks
Chris

From: Deborah Barrett [<mailto:justdebbbarrett@gmail.com>]
Sent: Wednesday, June 07, 2017 5:28 AM
To: Chris Wagar <cwagar@lennox-addington.on.ca>
Cc: Jim Klaver <jklaver@lennox-addington.on.ca>
Subject: Re: Proposed Amherst Island Wind Project - Road Use Agreement with the County

Hi Chris

Can you please give me a quick update on the status of the proposed Roads Use Agreement with Windlectric Inc./Algonquin Power for the Amherst Island Wind project? I have been monitoring County Council agendas but have not seen a staff report. Will there also be a staff report concerning the proposed Highway 401 interchange modifications and Highway 33, County Road 4 and County Road 6 modifications requiring MTO approval? According to the most recent schedule Windlectric intends to begin construction of the mainland dock in July and the remainder of the project on the Island in September 2017.

As you may be aware Windlectric Inc. has served Notice of Commencement of Arbitration concerning the Operations Plan to Loyalist Township.
Thank you
Deb
Deborah Barrett

Attachment #3 – Highway Improvements: Letter from Ministry of Transportation to Windlectric Inc.

From: "Tay, Louis (MTO)" <Louis.Tay@ontario.ca>
Date: April 24, 2017 at 5:14:15 PM EDT
To: Sean Fairfield <Sean.Fairfield@algonquinpower.com>
Cc: Jim Klaver <jklaver@lennox-addington.on.ca>, "dthompson@loyalist.ca" <dthompson@loyalist.ca>, "David Mori (David.Mori@algonquinpower.com)" <David.Mori@algonquinpower.com>, "Pacheco, LLoyd (MTO)" <LLoyd.Pacheco@ontario.ca>
Subject: Amherst Island Wind Project - Highway Improvements response letter

Hello Sean,

Please see the attached letter and attachment regarding the need to follow the permit process for oversized deliveries with MTO's Carrier Safety and Enforcement Branch.

If you have any questions, feel free to contact me.

Louis Tay, P.Eng.
Head Corridor Management Section
Ministry of Transportation
Eastern Region

Ministry of Transportation
Corridor Management Section
347 Preston Street
Ottawa, Ontario K1S 3J4
Tel.: 613-748-5280
Fax: 613-748-5297
Louis.Tay@ontario.ca

Ministère des Transports
Section de gestion des couloirs routiers
347 rue Preston
Ottawa (Ontario) K1S 3J4
Tél.: 613-748-5280
Télééc: 613-748-5297



April 24, 2017

Sean Fairfield
Algonquin Power Co.
354 Davis Road
Oakville, Ontario
L6J 2X1

Dear Mr. Fairfield:

The ministry has recently received a preliminary submission from your consultant, Stantec, with plans detailing proposed turning movements for turbine components at the following locations:

- Highway 401 / Country Road 6 interchange (E-N/S ramp)
- Highway 401 / County Road 4 interchange (E-N/S ramp)
- Highway 33 / Country Road 4 intersection

As noted by MTO numerous times previously (see attached table), Algonquin Power needs to secure approvals from the MTO Carrier Safety and Enforcement Branch (CSEB) for the transportation of oversized loads by highway prior to discussing highway improvement requirements with regional ministry staff.

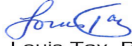
I am aware that turning assessments were carried out to gather information about potential delivery routes; however, I would like to draw your attention to the attached memo and Gantt chart that was provided to you previously. Specifically, the memo states that a proponent should first demonstrate the requirement to make the intended move on the province's highways in the form of a Project Justification and that other means of transportation must be thoroughly investigated.

I also noted in the minutes of the March 28, 2017 meeting with Lennox and Addington County and MTO staff that construction is scheduled to commence in September 2017. Please take notice of the attached *Project Activity Gantt Chart – Transportation of Superloads in Ontario* that suggests scheduling 27 weeks duration from the Project Justification phase to the Start of Move.

I have confirmed with the CSEB staff that they have only recently received Traffic Management Plans for the three load types from Siemens. Due to the length of the approval process, I am notifying you that you must start this process immediately for all proposed superload deliveries. Regional Corridor Management staff will be working in coordination with CSEB to approve the proposed routes including the review of any necessary highway improvements. This review, however, cannot precede the application for delivery of oversized loads. Please contact: Robert Monster, Weight and Load Engineer of CSEB at (905) 704-2518 or Eric Beaulieu of the same office (800-387-7736 x 2301).

I strongly suggest you take the appropriate action in order to maintain your project schedule. If you have any questions regarding the above, please contact me directly.

Yours truly,



Louis Tay, P.Eng.
Head, Corridor Management

cc. Jim Klaver, L & A County
David Thompson, Loyalist Township
David Mori, Algonquin Power Co
Lloyd Pacheco, Corridor Management Planner

attachment

Ministry of Transportation

Carrier Safety and Enforcement Branch

3rd Floor, 301 St. Paul Street
St. Catharines ON L2R 7R4
Tel.: 905-704-2519
Fax: 905 704-2545
robert.barsalou@ontario.ca

Ministère des transports

Direction de la sécurité des transporteurs et
de l'application des lois

3^e étage, 301, rue St. Paul
St. Catharines ON L2R 7R4
Tél.: 905-704-2519
Téléc.: 905 704-2545
robert.barsalou@ontario.ca



July 5, 2010

To whom it may concern:

Re: Transportation of Superloads in Ontario

Under Ministry policies governing the transportation of excessively overweight and/or over-dimensional loads in Ontario, the proponent(s) of the move must satisfy a number of criteria designed to protect the province's infrastructure as well as ensure the safety of the motoring public. By enlarge, loads in excess of 120,000 kg in gross vehicle weight; 6 metres in width intended to travel on 2 lane highways or 7 metres in width on multilane highways; and 45 metres in length are considered superloads for the purposes of this document.

In order to expedite the overall process, proponents should first demonstrate the requirements to make the intended move on the province's highways. This should be documented in the form of a Project Justification, and would ordinarily include, but not limit it to the following:

- Alternate means of transportation must have been thoroughly investigated (i.e., rail, water or possibly air) and documentation outlining why these methods are not being pursued is to be provided along with support material (where available).
- Detailed description of load including engineering drawing where applicable - illustrating the construction of the item indicating why the item cannot be reduced down in size or weight.
- Detailed description of the project the item is intended for, including - construction schedule, consequences of late delivery, economic benefits associated with the project and any other relevant information that may assist in the overall assessment of the project and this move.

Upon receipt of this material, an executive committee consisting of the Regional Manager(s) - Drivers & Vehicles, the Weight & Load Engineer, and the Director, Carrier Safety and Enforcement Branch, will meet to deliberate the necessity of permitting the move. At that time, additional information or representation by proponents of the move may be required.

Upon satisfactory justification of the project, the proponent will then be instructed to provide additional documentation as applicable below:



Project Activity Gantt Chart - Transportation of Superloads in Ontario

Suggested Task Sequence and Duration in Weeks

