

June 29, 2017

**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) – Response to APAI re Start of Construction**

We are counsel to Windlectric Inc. (“Windlectric”) in respect of its application for leave to construct transmission facilities in EB-2014-0300. The following is in response to a letter filed by the Association to Protect Amherst Island (“APAI”) on June 27, 2017.

Background

On December 10, 2015 the Ontario Energy Board (the “Board”) issued a Decision and Order granting Windlectric leave to construct its proposed transmission facilities (the “Decision and Order”). The Decision and Order required Windlectric to commence construction within 12 months. On November 15, 2016 Windlectric filed a request to extend the date by which construction of the transmission facilities had to commence, from December 10, 2016 to May 31, 2017. On December 8, 2016 the Board approved Windlectric’s request and varied the Decision and Order without a hearing (the “Extension Order”). On June 14, 2017 the Board issued a letter indicating that there were typographical errors in the Extension Order and issued a corrected version confirming the amended commence construction date as May 31, 2017.

Neither the Decision and Order, nor the Extension Order, include a requirement to provide notice of construction commencement to the Board. However, in response to an inquiry from Board staff in early June 2017, counsel for Windlectric advised that construction of the project had commenced with the pouring of foundations at the switching station on the mainland portion of the project on or just prior to May 24, 2017, thereby meeting the Board’s condition.

APAI Letter

On June 27, 2017 APAI filed a letter with the Board arguing that Windlectric is in breach of the Decision and Order, as amended by the Extension Order, on the basis that it failed to obtain all

necessary permits and approvals, and was therefore not in a position to start construction prior to May 31, 2017. To support its argument, APAI lists four particular items that it believes to be outstanding and provides related documents.

#### Windlectric's Response

APAI's letter and argument are flawed in several respects, as follows, and should therefore be disregarded by the Board.

First, APAI incorrectly asserts that the leave to construct is conditional on Windlectric having "all the permits and approvals in place before commencing construction." Neither the Decision and Order nor the Extension Order included this condition. Rather, at p. 16 of the Decision and Order, after concluding that leave to construct is granted, the Board states:

*The OEB notes that Windlectric is responsible for obtaining all necessary approvals, permits, licences, certificates, land agreements, connection agreements and easement rights required to construct, operate and maintain the Proposed Transmission Facilities.*

*The OEB's Decision is subject to conditions set out in the Order below.*

Although the conditions that follow require construction to be commenced within 12 months, they do not say anything with respect to other permits or approvals. While Windlectric is required by the Decision and Order to commence construction within a specified time, and required by law to obtain all permits and approvals that are otherwise required to construct, operate and maintain the transmission facilities, Windlectric is not required to have obtained all permits and approvals for all stages of construction, operation and maintenance prior to the specified construction commencement date.

Such a condition would be beyond the Board's jurisdiction. It would prevent the lawful commencement of construction activities for which other regulatory authorities have issued permits and approvals until the permits and approvals for all other construction, operation and maintenance activities were in hand, as determined by the Board. The Board does not have the power to do this. Moreover, such an interpretation would lead to absurd results. Clearly the Board did not intend to prevent Windlectric from commencing construction until it obtains all of the permits and approvals it needs or will in future need to construct *and* to operate and maintain the transmission facilities.

The Board's note in the Decision and Order regarding other permits and approvals simply affirms the fact that Windlectric, despite obtaining leave to construct from the Board, is still required by law to obtain all applicable permits and approvals that it otherwise requires for the transmission project. The timing of such other permits and approvals depends on when they are required by applicable law for the particular construction, operation and maintenance activities that require authorization. For example, if a permit is needed to transport an oversized load, then that permit will be required prior to transporting the relevant oversized load. Not having a permit for a specific activity does not hold up the entire project.

Second, APAI lists four items as being permits or approvals that it believes to be outstanding. As described below, none of the listed items are relevant to or supportive of APAI's argument.

The first two items in the list are not permits or approvals but, rather, relate to commercial agreements known as road use agreements. Windlectric has already executed a road use agreement with the Township, and is working to finalize such an agreement with the County. APAI also refers to the Operations Plan and the Pre-Construction Study, which are elements contemplated under the road use agreement with the Township that remain subject to final resolution. Neither of these documents constitute necessary permits or approvals for purposes of the Decision and Order, nor have they needed to be in place for any of the construction activities carried out to date. Similarly, none of the construction activities to date have required an executed road use agreement with the County to be in place.

The third item in the list concerns permits for the transportation of oversized loads. There has been no need to transport oversized loads for purposes of constructing transmission facilities to date. Primarily, such permits will be required for transporting components associated with the generation facilities, which are unrelated to the Board's Decision and Order granting leave to construct. In the later stages of station construction, there may be a need for oversized load permits for purposes of transporting the main power transformer.

The fourth item in the list pertains to a temporary access road for recreational purposes being built on Township land. This temporary access road is not required to construct, operate or maintain the approved transmission facilities and is not situated on lands that were the subject of the leave to construct application.

Even if there are permits or approvals that are needed for certain aspects of the construction of the transmission facilities, those permits or approvals would only be needed by such time as may be required for the activity being authorized by those particular permits or approvals. The Decision and Order does not cause such approvals to be required any sooner.

Windlectric commenced construction prior to May 31, 2017 and met the commence construction condition of the Decision and Order, as varied by the Extension Order. Windlectric has obtained or will obtain all permits and approvals it otherwise requires for the construction, operation and maintenance of the transmission facilities by such time as is required by applicable laws. Windlectric has not and will not undertake any activities in connection with the project that are not authorized by applicable permits and approvals.

Yours truly,



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cc: Mr. J. Stewart, Windlectric Inc.  
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