LEGISLATIVE BACKGROUND

WOLFE ISLAND WIND PROJECT
TECHNICAL APPENDIX F

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1.0 Federal Legislation and Regulations

1.1 CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 1992

The intention of the Canadian Environmental Assessment Act ("CEAA") is to promote sustainable development by conserving and enhancing environmental quality while encouraging and promoting economic development by integrating environmental factors into planning and decision-making.

Typically, an environmental assessment is required under the CEAA if a federal agency is the proponent, provides funding, has administration of federal lands, or issues a permit or approval.

The Canadian Environmental Assessment Agency ("CEA Agency") determines if the *Canadian Environmental Assessment Act* ("CEAA") applies to a project, and follows a four-step review process for environmental studies conducted under its jurisdiction.

In the case of the Wolfe Island Wind Project, the confirmed Responsible Authorities ("RA") are Natural Resources Canada ("NRCan") and Correctional Services Canada ("CSC").

Step 1: Does CEAA Apply?

The CEAA requires federal authorities to undertake environmental assessments of projects when they are proponents, or when they are proposing to take one of the following actions that would enable a project to proceed, in whole or in part, by:

- Providing some form of financial assistance to the project
- Having the administration of federal lands and selling, leasing, or otherwise disposing of those lands or any interest in those lands
- Issuing a permit, license, authorization, or other regulatory approval listed in the Law List Regulations.

By applying for the financial incentives provided under the ecoENERGY for Renewable Power Program, and by requiring the administration of federal land to carry out the project, a proponent who is proposing the construction of an inland wind farm triggers the need for a federal EIS under the CEAA. As administrators of the ecoENERGY for Renewable Power Program, NRCan has been designated as an RA for the Project. Since CREC requires CSC land for routing of the mainland transmission line, CSC has also been designated as an RA for the Project.

Once it is determined that the CEAA is applicable, the next step is to identify the type of study required.

Step 2: Identification of Study Type

There are two general types of studies identified under CEAA: *Self-Directed* and *Public Review*. Approximately 95% of self-directed EAs conducted under CEAA are screenings. In a screening study, the RA, in conjunction with other Federal Authorities ("FA"), determines the scope of the study, manages the EA process, and ensures the proponent prepares an appropriate screening study. Screening studies are typically undertaken for smaller-scale projects with minor, predictable, and mitigable environmental effects. The Project has been assessed as a screening study and requires the preparation of an Environmental Impact Statement ("EIS").

Step 3: RA Determination

The RA's determination concerns the likelihood of significant adverse environmental effects. The three determination options available to the RA are:

- The project is not likely to cause significant adverse environmental effects. Following this determination, the RA may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part.
- The project is likely to cause significant adverse environmental effects that cannot be justified. Following this determination, the RA may not exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part.
- It is uncertain whether the project is likely to cause significant adverse environmental effects, or the project is likely to cause significant adverse environmental effects that may be justifiable or public concerns warrant referral to a mediator or review panel. Following any of these determinations, the RA must refer the project to the federal Minister of the Environment for a referral to a mediator or review panel.

Step 4: Review and Determination

The decision options for an RA following a review panel or mediation are as follows; the project is:

- Not likely to cause significant adverse environmental effects or the project is likely to cause significant adverse environmental effects that can be justified in the circumstances. Following this determination, the RA may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part, or
- Likely to cause significant adverse environmental effects that cannot be justified. Following this determination, the RA may not exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part.

1.2 CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

The goal of the *Canadian Environmental Protection Act* ("CEPA") is to contribute to sustainable development through pollution prevention and to protect the environment, human life, and health from the risks associated with toxic substances. CEPA also recognizes the contribution of pollution prevention and the management and control of toxic substances and hazardous waste to reducing threats to Canada's ecosystems and biological diversity. The Act acknowledges the need to control and manage pollutants and wastes deemed harmful to human health or the environment under the Act. The Act also recognizes the necessity of virtually eliminating persistent substances that remain in the environment for extended periods of time before breaking down and substances that that bioaccumulate within living organisms. Health Canada works in partnership with Environment Canada ("EC") to assess potentially toxic substances and to develop regulations to control toxic substances.

1.3 FISHERIES ACT, 1985

The federal Minister of Fisheries and Oceans has the legislative responsibility for the administration and enforcement of the *Fisheries Act*. The Minister reports annually to Parliament on the administration and enforcement of fish habitat protection and pollution prevention provisions of the *Fisheries Act*. However, in 1978, the Prime Minister assigned to the Minister of the Environment responsibility for administration and enforcement of subsection 36(3) [formerly subsection 33(2)] of the *Fisheries Act*, which deals with the deposit of deleterious substances into water frequented by fish. Then, in 1985, in order to help ensure coordination, a Memorandum of Understanding between the Department of Fisheries and Oceans ("DFO") and EC was signed, outlining the responsibilities of both departments for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

A key component of the Fisheries Act is section 35(1) which states "No person shall carry out any work or undertaking that results in the harmful alteration, disruption, or destruction of fish habitat." Section 35(1) allows the DFO to implement policies which prevent loss of or harm to fish habitat through development.

The Project must provide assurance to the DFO that no harmful alteration, disruption, or destruction ("HADD") of fish habitat will occur when transmission lines, submarine cables, or access roads cross watercourses or waterbodies. If HADD may occur, effects can be mitigated or compensated for according to DFO's No Net Loss of the productive capacity of habitats ("NNL") principle. However, construction cannot begin until the proponent applies for and receives HADD authorization from the DFO.

1.4 MIGRATORY BIRDS CONVENTION ACT, 1994

The *Migratory Bird Convention Act* exists to protect and conserve migratory birds and their nests. The *Act* implements the 1916 treaty between Canada and the United States, in which the two countries agree to adopt a coordinated system to protect migratory birds from indiscriminate harvesting and destruction. The Parksville Protocol, an amendment to the Convention, came into force on 07 October 1999, and enables effective actions to be taken to improve the conservation of migratory birds. The federal Minister of the Environment has the legislative responsibility for the administration and enforcement of the act.

1.5 NAVIGABLE WATERS PROTECTION ACT, 1985

The *Navigable Waters Protection Act* ensures that the public's common law right to navigate waterbodies is balanced with the need to cross waterbodies with bridges, dams, transmission facilities, and dump or excavate material, or carry out any activity that may interfere with navigation.

If a proponent may substantially interfere with navigation, an application for approval must be submitted to Transport Canada's Navigable Waters Protection Program. The approval may set out additional mitigation and protection measures necessary to reduce or eliminate effects on navigation.

The *Navigable Waters Protection Act* can trigger the CEAA in the event that an approval is required from Transport Canada.

1.6 SPECIES AT RISK ACT, 2002

The *Species at Risk Act* was designed to meet one of Canada's key commitments under the international Convention on Biological Diversity, and is under the jurisdiction of the federal Minister of the Environment. The goal of this Act is to prevent endangered or threatened wildlife from becoming extinct or lost from the wild and to help in the recovery of these species. It is also intended to manage species of special concern and to prevent them from becoming endangered or threatened. Providing a framework for actions across Canada to ensure the survival of wildlife species and the protection of our natural heritage, the *Species at Risk Act* sets out the process for determining recovery and protection actions. It also identifies ways governments, organizations, and individuals can work together, and establishes penalties for failure to obey the law.

Stewardship is an essential part of the cooperative process entrenched in this Act. It brings together landowners, conservationists, governments, and other partners to protect species and habitat. Under the *Species at Risk Act*, stewardship is the first response to protecting the habitats of at-risk species.

1.7 CANADA WILDLIFE ACT, 1985

The *Canada Wildlife Act* provides the authority for the acquisition of lands by the federal Minister of the Environment for the purposes of wildlife research, conservation, and interpretation. This Act also provides for the establishment of protected marine areas. The Minister may enter into an agreement with any province/territory for wildlife research, conservation, and interpretation, including measures to protect any wildlife in danger of extinction. National Wildlife Areas are created and managed pursuant to regulations made under this Act. Designation as a National Wildlife Area helps ensure that lands of national importance are protected.

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2.0 Provincial Legislation and Regulations

2.1 ENERGY COMPETITION ACT, S.O. 1998, C.15

The *Energy Competition Act* ("ECA") is aimed at establishing a deregulated market for the supply of electricity and continuing the deregulation of the natural gas supply market. The ultimate goal was the creation of a competitive market in both industries. To achieve this in the electricity sector, the former Ontario Hydro monopoly was replaced by several business entities including two distinct commercial companies, Ontario Power Generation ("OPG") and Hydro One Networks Inc. ("Hydro One"), along with one Crown Corporation, the Independent Electricity System Operator ("IESO"). All three entities operate independently of one another.

OPG has taken responsibility for the generation of electricity, while Hydro One owns and maintains transmission and distribution wires. Under the ECA, the Ontario Energy Board ("OEB") has varying degrees of regulatory authority over all three corporations as well as the province's municipal electric utilities. This represents a significantly expanded mandate for the OEB in the electricity sector from that in place before the passage of ECA.

The OEB has some joint duties with the IESO, largely because the latter can itself be a source of anticompetitive behaviour unless accountable and transparent systems are fully in place and enforced. The strengthened OEB is also mandated to regulate investments in the expansion of the transmission grid. In this regard, it is to work with the IESO to ensure that adequate transmission capacity is developed, both to maintain reliability and to promote the growth of competition. The OEB now regulates the province's local wire business and all local distribution companies, and is responsible for ensuring that the distribution companies fulfill their obligations to connect and serve their customers.

2.2 ONTARIO ENERGY BOARD ACT, S.O. 1998, C.15

The OEB, a regulatory agency of the Ontario Government, is an independent, quasi-judicial tribunal created originally by the *Ontario Energy Board Act* and now empowered under the *Energy Competition Act, 1998*. As part of its mandate the OEB licenses all market participants in the electricity sector, including the IESO, generators, transmitters, distributors, wholesalers, and electricity retailers. Under Section 57 of the OEB Act a generator's license is required from the OEB in order to generate or purchase electricity for on-site use or for sale to an IESO-administered market in Ontario. Applications are reviewed by the OEB and decisions are passed through the Energy Licensing and Application Branch.

Under Section 80 and 81 of the OEB Act, no transmitter or distributor may construct a generation facility, transmission or distribution system in Ontario unless it has first given

notice of its proposal to do so to the Board and the Board. The Board must also grant a Leave to Construct under Section 92 of the OEB Act prior to the construction, expansion or reinforcement of an electricity transmission line or an electricity distribution line or making an interconnection in the provincial grid.

2.3 ONTARIO ENVIRONMENTAL ASSESSMENT ACT, R.S.O. 1990, C.E.18

The Ontario Environmental Assessment Act ("OEAA") and associated regulations determine which projects must complete an EA in Ontario. The primary legislative instrument under the OEEA that deals with EA requirements for electricity projects is O. Reg 116/01.

2.3.1 Ontario Regulation 116/01 – Electricity Projects

The *Electric Projects Regulation* ("O. Reg. 116/01") has adapted the OEAA to ensure that the environmental effects of new private and public sector electricity projects are assessed. O. Reg 116/01 and the associated "Guide to Environmental Assessment Requirements for Electricity Projects ("EA Guide") sets out the Environmental Screening Process ("ESP") as a proponent driven, self-assessment process. The proponent is responsible for determining if the Project falls within the ESP and when to formally commence the process. The proponent is also responsible for determining the time required to adequately conduct the ESP and when to publicly release Project documentation and/or solicit comments from stakeholders.

New electricity projects are classified into one of three categories under O. Reg. 116/01:

- Category A: projects that are expected to have minimal potential environmental effects and do not require approval under the Ontario Environmental Assessment Act.
- Category B: projects that have potential environmental effects that can probably be mitigated but require approval through the ESP.
- Category C: projects that have known potentially significant environmental effects and require the preparation of an individual environmental assessment under the Ontario Environmental Assessment Act.

All projects subject to the ESP require proponents to apply a series of screening criteria to identify the potential environmental effects of the project. An environmental review is required if potential concerns raised during the screening stage dictate a need for additional, detailed studies. The proponent may choose to carry out an Environmental Review if potentially significant environmental effects or public issues arise that require more detailed study and assessment.

Based on the MOE's categorization of electricity projects, wind power facilities under 200 megawatts ("MW") in generating capacity are classified as Category B projects and are subject to approval under the ESP. Stakeholder consultation, coupled with the results of the screening criteria checklist, has determined that detailed studies and assessment need to be carried out for this Project and necessitate an environmental review. This EA has been prepared to address the need for greater scrutiny of potential environmental effects and is classified as an Environmental Review Report (ERR).

2.3.2 Ministry of Natural Resources Resource Stewardship Class EA

The Project requires a work permit from the MNR, issued under the *Public Lands Act*, for the construction of the submarine transmission cable. A Land Use Permit, also issued under the *Public Lands Act* by the MNR, is also required as a form of tenure for placement of the cable.

Typically, the requirements of MNR's Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects ("MNR Class EA") must be satisfied before issuance of a work permit or land use permit. The MNR Class EA ensures that the MNR, its partners, and disposition applicants meet the requirements of the EAA by considering the potential environmental effects of proposed projects. Provided that the process set out in the MNR Class EA is followed, projects and activities included in the Class EA, including the issuance of a work permit, do not require formal review and approval under the EAA.

However, section 2.6.2 of the MNR Class EA provides that projects subject to the ESP are not subject to the MNR screening criteria. Proponents are still required to fulfill their EAA requirements under the ESP before going to the MNR to apply for dispositions such as work permits.

2.3.3 Ministry of Transportation Class EA

The MTO, like the MNR, has an approved Class EA process to ensure that projects and activities related to provincial transportation facilities are undertaken in an environmentally-responsible manner and that they meet the requirements of the EAA. Provided that the process set out in the MTO's Class Environmental Assessment for Provincial Transportation Facilities ("MTO Class EA") is followed, no additional EAA approvals are required.

Project-related activities that will utilize provincial transportation facilities (i.e., provincial highways / freeways and ferryboat dock / terminals) are expected to be limited to normal use for the transportation of goods and people. These activities and associated permits are categorized as "Group D Projects" under the MTO Class EA. Group D Projects are approved under the EAA and do not require any additional project-specific EAA approvals.

Minor improvements to existing provincial transportation facilities are categorized in the MTO Class EA as "Group C Projects". These projects are subject to a general planning and design process within the MTO Class EA and must take environmental protection into account. In the event that the Project requires minor improvements to existing provincial transportation facilities, such as those that cause minor widening of the "footprint" of the existing ferry dock/terminal, Canadian Hydro will fulfill MTO Class EA requirements through completion of the ESP and subsequent preparation of this EA.

2.4 PLANNING ACT, R.S.O. 1990 C.P.13

The *Planning Act* (1997) regulates land-use planning and is administered by the Ministry of Municipal Affairs and Housing and municipal governments. The Provincial Policy Statement ("PPS"), implemented under the *Planning Act* does not supersede or take precedence over other provincial legislative requirements. However, where the *Planning Act* governs projects, proponents must demonstrate that there will be no negative effects on the natural features or ecological functions for identified environmental features.

2.4.1 Provincial Policy Statement, 2005

The 2005 Provincial Policy Statement ("PPS") provides policy direction on matters of provincial interest related to land-use planning and development. As a key part of Ontario's policy-led planning system, the PPS sets the policy foundation for regulating the development and use of land. The PPS is issued under the authority of Section 3 of the Planning Act and requires that decisions affecting planning matters "shall be consistent with" policy statements issued under the Act.

The PPS (2005) contains three key sections related to renewable energy facilities (including wind energy):

- Section 1.1.5 Rural Areas in Territory without Municipal Organization: The focus of development activity shall be activities and land uses related to the management or use of resources and resource-based recreational activities.
- Section 1.7.1 Long-Term Economic Prosperity: should be supported by…providing opportunities for increased energy generation, supply, and conservation, including alternative energy systems and renewable energy systems
- Section 1.8 Energy and Air Quality: planning authorities shall support energy efficiency and improved air quality through land-use and development patterns which…promote design and orientation which maximize the use of alternative or renewable energy, such as solar and wind energy…(1.8.1 e); and increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs, and the use of renewable energy systems and alternative energy systems…(1.8.2).

2.5 ENVIRONMENTAL PROTECTION ACT, R.S.O. 1990, C.E.19

The *Environmental Protection Act* "(EPA") provides for the protection and conservation of the natural environment so that projects do not cause unacceptable effects to air, water, or land. Section 9 of the EPA requires the proponent to obtain a Certificate of Approval ("C of A") – Air for noise emissions resulting from the Project. An application for a C of A (Air) for the Project will be prepared and submitted to the Ministry of the Environment ("MOE") for approval. The potential for emissions to result in nuisance noise is determined by comparing the environmental noise levels contributed by the Project at offsite sensitive receptors (i.e., residential units, hospitals, and schools) to the applicable guidelines. An environmental noise model, used to predicted offsite sound levels, assists with this comparison.

2.6 HERITAGE ACT, R.S.O. 1990 C.0.18

The Ontario *Heritage Act* came into force in 1975. Its purpose is to give municipalities and the provincial government powers to preserve the heritage of Ontario. The primary focus of this Act is the protection of heritage buildings and archaeological sites. The legislation also mandates the Ontario Heritage Foundation, a Crown agency, and the Conservation Review Board, a tribunal that hears objections to municipal and provincial decisions under the Act. The Ministry of Culture recently updated the Ontario *Heritage Act* as part of the *Government Efficiency Act*, which received Royal Assent on November 26, 2002. In 2005, the Government of Ontario passed a comprehensive amendment to the *Heritage Act.* The amendment, and associated regulations:

- Allow local municipalities to prohibit demolition or removal of heritage properties,
- Enable local municipalities to list cultural heritage properties,
- Set standard criteria for designating heritage properties
- Simplify the process for designating a heritage property, and allows designation by-laws to be appealed
- Provide enhanced protection for heritage conservation districts
- Provide new provincial powers (such as enabling the Minister of Culture to designate cultural heritage properties of provincial significance)
- Provide better protection for marine and archaeological sites.

2.7 ONTARIO REGULATION 97/04: DEVELOPMENT, INTERFERENCE WITH WETLANDS, AND ALTERATIONS TO SHORELINES AND WATERCOURSES

Under the Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation, Conservation Authorities have the authority to prohibit, regulate, or provide permission for interfering in any way with a watercourse or wetland. Conservation Authorities also have the authority to prohibit, regulate, or provide permission for development if flooding, erosion, dynamic beaches, pollution, or conservation of land may be affected.

Construction, reconstruction, or significant changes to structures, site grading, and temporary or permanent placement of material may require a permit or approval from the local Conservation Authority prior to undertaking any site alteration activities, construction, or renovation work if the activity occurs in a regulated area. Regulated areas are defined under the Regulation as ravines, valleys, steep slopes, wetlands, watercourses, and shorelines.

2.8 SYSTEM IMPACT AND CUSTOMER IMPACT ASSESSMENTS

The Independent Electricity System Operator ("IESO") is a non-profit, regulated corporation established by the ECA. It is independent of industry and is managed in the interest of all parties involved in the power industry, including consumers. The IESO controls the safe and reliable operation of the bulk of the electrical power system in Ontario, balancing the demand for, and supply of, industrial and residential electricity. In addition, the IESO is leading the drive to a competitive, deregulated electricity marketplace in Ontario, under the direction of the Ministry of Energy.

The IESO requires proponents of new or renewed generation facilities to undertake a Connection Assessment and Approval ("CAA") before the facility can connect to the provincial transmission system. Part of the approval process includes submission of a System Impact Assessment, which determines the effect of the proposed project on the reliability and capacity of the provincial transmission system.

Hydro One Networks Inc. requires the transmitter (e.g., CREC) to carry out a Customer Impact Assessment ("CIA") to determine the impact of the proposed Project on the supply at the transmitter's interconnection point for all customers in the vicinity of the proposed project. Hydro One, as the operator of Ontario's largest transmission and distribution network to which CREC is connecting its Project, performs (produces) the Customer Impact Assessment and determines if the project meets the necessary requirements to connect to the transmission system.