Bennett Jones LLP

3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716
www.bennettjones.ca

John F. Rook
Direct Line: 416.777.4885
e-mail: rookj@bennettjones.com
File No: 62828.1

December 1, 2008

By Facsimile 416-440-7656
and Ordinary Mail

David Brown
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Mr. Brown:

Re: Transmission Connection Cost Responsibility Review (EB-2008-0003)
Windstream Energy Inc.

We are counsel to Windstream Energy Inc. ("Windstream"), an intervenor registered in the above-captioned consultation process.

We write to provide our comments on the Board's Proposed Amendments to the Transmission System Code that was released on October 29, 2008. We would like to commend the Board for its decision to examine the code and deal with the challenges faced by renewable power generators. We are pleased to have the opportunity to assist the Board in its examination of the current cost responsibility policies for the purpose of facilitating and promoting renewable energy development.

1. Introduction

Windstream was founded in 2002 as Ontario Clean Power, the company that developed the Wolfe Island wind project (acquired by Canadian Hydro Developers in 2005). Windstream continues to develop large-scale renewable energy projects across North America. In Ontario, the company has over 100,000 hectares under crown land wind energy lease applications and other projects on private land. Windstream also has extensive experience in northern Ontario as a result of hydro-electric developments and wind energy projects developed by principals of the company. The company executives have extensive experience in renewable energy development across Canada, the U.S. and internationally.

As a proposed renewable energy generator of electricity, Windstream expects to require connection to Ontario's transmission grid, either as a lone generator or as a generator in a cluster. In

either case, Windstream intends to consider partnerships whereby the partnership could become the licensed transmitter for the connecting facilities. As such, Windstream's interest is that the Transmission System Code ("TSC"), as amended, fosters a "level playing field" for competing transmitters, both existing and new, and that the TSC permit and encourage efficiency in the approval process with respect to construction and operation of prospective enabler facilities.

Windstream is a member of CanWEA and has participated actively in the preparation of comments submitted by CanWEA in respect of the proposed amendments to the TSC. Windstream supports the submissions of CanWEA concerning the proposed amendments to the TSC to implement the "hybrid option".

Submissions made by Windstream herein are intended to indicate some additional concerns and to emphasize some comments made by CanWEA that are of particular interest to Windstream. The comments assume the implementation of the "hybrid option" by the OEB.

2. General comments

Windstream agrees with the Board that, as a principle, enabler lines should be developed in advance to enable the subsequent development of renewable generation resources, and that there should an open and competitive process by which the Board would select the transmitter for a particular enabler facility. In addition, Windstream submits that energy developers should be permitted to promote the enabler lines required by renewable energy resources, and be given opportunities to apply for construction of enabler lines for a particular cluster.

The availability of such open process would ensure that proponents of enabler lines, whether it is a licensed transmitter or a renewable energy developer, can bring a transmission application on a timely basis before the Board for approval. Such open and competitive process will enable the Board to determine the cost effectiveness of an enabler line project.

3. Specific comments

Windstream wishes to make the following specific comments on challenges faced by single generators and new transmitters.

3.1 Unfairness to single generators

Windstream is concerned that, although there is an intention to have generators eventually bear the costs of enabler facilities, the playing field will not be level if a single renewable energy generator, must plan, seek all approvals, self finance and construct the enabler facility, while generators in a cluster are not subject to such upfront costs. A planned large renewable energy "single" generator without an enabling facility may well stand in line, while a cluster of smaller generators goes ahead, even though the latter is no more economically efficient than the former.

Recommendation: The Board should ensure that amendments to the TSC result in a level playing field between single generators and generators in a cluster by revising the definition of a renewable resource cluster to include a single generator (a cluster of one).

3.2 An open process for new transmission licensees

Windstream is currently exploring possibilities for various types of transmission partnerships, whereby the partnership would seek the transmission license. Such prospective partnerships would hold the license to own and operate the enabler facility. The partnership might include other generators and entities that bring finance, engineering, construction and operating support. The partnership may also enter community benefits agreements.

Windstream is concerned that there be a fair process and forum in which to propose alternative enabler facilities in all circumstances; for example, in circumstances in which Windstream may wish to use its partnership's expertise to build and own enabler facilities for a cluster of generators. In this, we assume that the amendments to permit the hybrid option will not preclude transmission development by any capable entity. In considering this, Windstream supports a cluster of generators taking leadership to advocate for a particular enabling transmission solution.

A fair process and forum should ensure that there are no barriers to entry for a new transmission licensee. This includes making sure that incumbents are prohibited from using their transmission utility resources to reduce costs to unfairly win rights to construct, effectively "cross-subsidizing" the construction of the enabler facilities. As well, there should be protections in place to ensure that transmitters, during and after construction of the enabler, cannot accumulate excessive costs and transfer them to each generator in a cluster. A fair system for a new transmission licensee to compete against an incumbent must also ensure that there can be timely progress through all of the necessary approvals.

Recommendation: The Board should ensure that the TSC and the Board's other regulatory instruments (e.g. codes and guidelines) be revised to eliminate barriers to entry for a new transmitter by providing a fair process and forum.

3.3 An open and efficient transmitter designation process

To mitigate some of the risk that a separate new transmitter would face in ownership of an enabler facility, it may be necessary to provide for "approval in principle" to build an enabler facility, or perhaps a "leave to develop" such a facility, i.e. an early permission or "blessing" that would ensure that, after spending development capital (planning and meeting conditions for approval), the project cannot go to a competitor, thereby leaving the first entity's costs stranded. After the "leave to develop", all costs must be backed up under a contract, as the new transmitter does not yet have an approved rate through which to charge the costs incurred. It may also be necessary in some or all circumstances to contract for transmitter cost recovery during the 'approval

in principle" process. In any case, it is not clear which entity, e.g. the IESO, OPA or the OEB, will be a contracting/backstopping party with the transmitter.

The Board has indicated that it intends to implement a transmitter designation process, which would be a new element to the Board's regulatory framework. This process would initially involve a hearing to amend the licence of each currently-licensed transmitter, or to hear the application of the new transmission licensee, to construct a specific enabler facility. The process would also involve a proceeding for each enabler facility in order to determine a designated transmitter and then to direct the designated transmitter to take the necessary steps to develop the enabler facility. Windstream supports both aspects of this transmitter designation process. Such a formal proceeding for each enabler facility will provide a fair process that is "Advocate Led", in which alternative proposals can be brought forward by proponents and compared, and a transmitter proponent from among them approved by the Board as the designated transmitter for the particular enabler facility. This process will also reduce the engineering and environmental assessment cost risks to which an applicant in this process is exposed before receiving an initial approval (designation). This Advocate Led process should provide the opportunity for proponents to bring forward for approval other enablers that meet IPSP objectives or government directives.

It appears to Windstream that the transmitter "designation" process may be effectively the "approval in principle" that is needed. What concerns Windstream is whether designation of a transmitter would or would not preclude other applicants from submitting competing applications for leave to construct. When the Board directs the designated transmitter to take the necessary steps to develop the enabler facility, we assume that one of the first steps is to file an application for leave to construct the facility. If competition can occur in the leave to construct proceeding, just as competition is possible in the designation proceeding, then there is potential for greater dollar amounts to be at significant risk and for process inefficiency. We suggest there is a need for clarification of the designation process and how it and the subsequent leave to construct approval will dovetail.

Recommendation: The OEB should revise the TSC and the Board's other regulatory instruments (e.g. codes and guidelines) to stipulate that the Board will hold a proceeding to designate a transmitter for each enabler facility and direct the transmitter to take the necessary steps to develop the enabler facility. The proceeding will provide the opportunity for competing applications to be brought forward by their transmission proponents.

3.4 Coordination between the transmitter designation process and the generator procurement process

It is not clear how the designation process for an enabler facility is related to the OPA and the IESO procurement processes. Windstream seeks clarification regarding how the OPA's generator procurement process and the OEB process to designate an enabler facility transmitter will be rationalized, and whether under certain circumstances the IESO procurement process may be used to initiate the process to construct enabler facilities. Does the Board anticipate that, in some

circumstances, the OPA or the IESO might enter into a contract for procurement of enabler facilities with a transmitter or transmitter partnership? What effect would such a contract have in the designation process of the Board?

Recommendation: The OEB should provide clarification on how the OPA and IESO procurement processes may relate to the OEB process for designating a transmitter for an enabler facility.

3.5 A streamlined process for enabler lines

In order to streamline the Board's section 92 leave to construct approval, the EA approval by the Environmental Assessment Review Tribunal ("EART"), the Board should consider a joint hearing. There is precedent for a joint hearing between the OEB and the EART (then the Environmental Assessment Board). Windstream recalls a proceeding in the mid 1980s wherein a consolidated hearing was conducted to consider approval of a facilities application, related Ontario Municipal Board approvals and an environmental review in respect of a proposal to construct a compressed natural gas facility near Port Hope. Windstream submits that a similar consolidated hearing approach could serve to streamline the approvals necessary for an enabler facility.

Recommendation: The OEB should revise the TSC and the Board's other regulatory instruments (e.g. codes and guidelines) indicating that the Board may consider a joint proceeding with the Environmental Assessment Review Panel in order to streamline leave to construct, EA approvals, and related Ontario Municipal Board approvals, upon the request of the applicant.

3.6 The Board's consideration of capacity requirements

In section 2(ii) of the CanWEA submission, the Association proposes the following addition to the proposed amendment to section 6.3.14A:

> "The capacity requirements of the associated renewable resource cluster will be determined by the Board as part of a leave to construct proceeding under section 92 of the Ontario Energy Board Act, 1998, or as part of a transmitter selection process."

Windstream notes that section 96(2) of the OEB Act indicates that the Board shall only consider the interests of consumers with respect to prices and the reliability and quality of electricity service in an application under section 92. The capacity requirements impact all these considerations and will be required in determining generator cost responsibility. Therefore, it would be helpful to the Board if consideration of capacity requirements of enabler facilities were explicitly noted in the TSC.

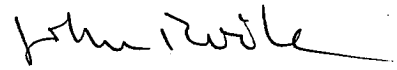
Recommendation: The Board should include the consideration of capacity requirements as part of all leave to construct enabler facility transmission applications and incorporate wording to that effect in the TSC amendments or the amendment of the Board's other regulatory instruments that are applicable to this issue. In section 2(v) of the CanWEA submission, questions are raised as to how the Board proposes to treat future load facilities that connect to an enabler facility. Does load get a free ride on the transmission portion of enabler facilities, or how does one determine and collect an appropriate contribution for the capacity used by a load customer? Will there be mechanisms for refunding connected generators (and any previous load customers) that have effectively contributed too much?

The Board should convene a process where interested parties can explore and the Board can decide how to treat future load facilities that connect to an enabler facility.

Should you have any questions with respect to the above submissions, please feel free to contact the undersigned. We look forward to actively participating in this consultation process.

Yours truly,

BENNETT JONES LLP



John F. Rook
JR/ck