

ASSOCIATION OF CORPORATE COUNSEL

TITLE: Wind Power Development in Canada; Exploring the Issues, Incentives and Opportunities

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PRESENTED BY: ACC Energy Committee

SPONSORED BY: Fraser Milner Casgrain LLP

FACULTY: Wally Braul, Partner, Fraser Milner Casgrain LLP
Helen Newland, Partner, Fraser Milner Casgrain LLP
Ron Stuber, Partner, Fraser Milner Casgrain LLP

MODERATOR: Liz Grisaru

Operator: Welcome to this ACC webcast. Liz, please go ahead.

Liz Grisaru: Thank you. Hello, everybody. This is Liz Grisaru. Welcome to the ACC webcast on wind power development in Canada. My name is Liz Grisaru, as I said. I'm the former General Counsel of a wind power company in the U.S., Noble Environmental Power.

And we have today three terrific presenters from the sponsoring Fraser Milner Casgrain Law Firm, one of the sponsors of this Energy Subcommittee. I'm going to introduce those folks to you.

They are – you will first hear from Wally Braul, who is a Partner in the Firm, and has been in energy, environmental, and aboriginal law for over 20 years. Does a lot of practice in regulatory matters and with particular focus on aboriginal matters in Canada. That's – you'll hear from Wally first.

Then you will also be hearing from another Partner at the Firm, that is Helen Newland, similarly very experienced, out of the energy Practice Group in Toronto. She's had over 20 years of experience as an energy lawyer in both the public and the private sectors, and so brings a complete perspective because of that prior experience.

And we will later hear from another Partner in the Firm, Ron Stuber, who focuses on financing and, again, has been in the energy and infrastructure financing area for many years, both internationally and in Canada.

I would like to just let everybody know, the way we'll be proceeding today is the folks from Fraser Milner will be reviewing a presentation with you. You will have the opportunity to get us your questions, and we'll have some time at the end of the teleconference to get answers to those questions.

If you will type your questions in the screen at the bottom left of your, in the box at the bottom left of your screen, we'll collect them and we will make sure they get answered. If we run out of time the ACC will take care of getting the answers posted, so please be patient with us. If we can't get to everything we will certainly get answers out to everyone, as soon as we can.

And I've also been asked to remind you to fill out the evaluation form, which I believe is also in one of the boxes on your screen. So please do fill that out at the conclusion of the conference and get us your feedback. We appreciate that.

And, with all of that, I think we'll get started, and we'll turn it over to Wally first. Thank you very much.

Wally Braul: Thank you, Liz. Good morning or afternoon, wherever you might be. My name is Wally Braul, and thank you for the opportunity to share our perspectives on Canadian wind power. Helen, Ron, and I are part of our Firm's Energy Practice Group. That Group has – consists of some 30 lawyers across Canada.

As for today's agenda, and perhaps can you move forward to the agenda? Ron Stuber will first provide some general comments on Canadian wind power. We will then focus on power development in two provinces, British Columbia and Ontario. Wind power in these two provinces is expected to grow significantly in coming years. Ron Stuber will then cover project financing and investment considerations and incentives.

So I will now turn it over to Ron Stuber to give us the general picture of Canadian wind power.

Ron Stuber: All right. Thank you very much, Wally.

I think it's fair to say that Canadian – the Canadian wind power market is evolving to be one of the world's largest and fastest growing wind power markets. Wind energy has become the fastest growing renewable energy source in Canada, and it's expected that by 2012 total installed wind generating capacity will be in the region of 5,600 megawatts, and clearly a significant investment will be required to achieve this growth.

If we move to the next slide, you can see that we've got a map of Canada that shows the current installed capacity of wind is 2,239 megawatts. Looking across the country we see that there's been significant development in the east, eastern parts of Canada, notably in Quebec and Ontario, where there have been specifically designed procurement activities directed towards wind.

And catching up with those regions, we have out in the west, in Alberta, and particularly in British Columbia, at the moment we see very little development, but due to the aggressive nature of the policies being introduced in British Columbia, we expect to see a burgeoning growth of wind power in British Columbia.

Now, if we move to – moving to the next slide, this is one put out by (Wind Energy Association), and it shows that as far as potential for wind power in Canada the main factors driving the growth in the market are increasing demand for electricity and due to aging infrastructure and a drive towards clean energy technologies, there is going to be a need to replace and replace generation capacity. All this adds up, as you can see in the bar graph and chart, to a significant projected electricity demand supply gap, which many believe wind can play a very significant role in filling that gap.

Looking at, again, the numbers stretching out, we've got significant investment again here, 185 billion of total investment, which involves not only generation but also building transmission and distribution infrastructure, which leads us to some of the wind power challenges in Canada.

If we move to the next slide, we can see that although there's great potential to recognize that it's really in the infrastructure area that a lot of development needs to occur in order to permit wind development to move forward.

We're dealing with things like congestion and transmission constraints, and notably some of the best resources for wind are away from the centers where the demand is and, therefore, a great deal of transmission infrastructure that needs to be built.

Notwithstanding the fact that often the wind is in more remote areas, we also have to deal with a fairly strong environmental lobby in various provinces and also First Nations, that Wally and Helen will talk about in some more detail. So obviously there can be movements, have the affect of delaying and decreasing cost of some developments. But nevertheless things are moving forward.

And I'd just pass it back to Wally to move forward.

Wally Braul: Thanks, Ron.

Turning to British Columbia, the problems is B.C. has relied heavily on major hydro projects built by it back in the '60s and '70s. It was in a fortunate position of being the net exporter of power for some decades, but now it finds itself as a net importer. It's certainly facing the challenges of, excuse me, aging infrastructure and a growing demand indicates a large expected shortfall.

Given that, what the provincial government has recently released in recent years, adopted a policy shifting towards the use of independent power producers, that is IPPs. Now, the policy also calls for electricity self-sufficiency by 2016. All new electricity generation projects will have a zero net greenhouse gas emissions, and it's called for a significant contribution by cleaner renewable and energy generation.

That should account for some 90% of a total generation, and wind will be a significant portion of that 90%. In British Columbia, at least, there is little or no appetite for nuclear power.

In B.C. there are several government market players, and now it sounds like an oxymoron but these government players are directly involved in the marketplace. The one body is the so-called B.C. Utilities Commission. It is the regulator, but it has little regulatory affect over IPPs, rather it has a strong – it has a major influence on B.C. Hydro and how B.C. Hydro can set rates which in turn affects what its parameters are for negotiations with IPPs.

B.C. Hydro has been the Crown Corporation that has generated the power traditionally, but for a variety of political and technical reasons today it has limited generation plans. B.C. Transmission Corporation is the sister organization of B.C. Hydro, also our Crown corporation, and is responsible for transmission issues. It's the body that IPPs will have to go to, to obtain agreements to feed into the grid.

The fourth organization doesn't have a lot of direct impact on IPPs. That's (Power X), another B.C. Hydro body. It buys and sells power internationally.

Touching a little bit on the B.C. Hydro procurement process, a critical document is the energy purchase agreement, or EPA. A proponent needs an EPA to sell power to B.C. Hydro. On occasion, B.C. Hydro will call, will create – will issue a call for power and select candidates for EPAs. The B.C. Hydro price schedule evolves to respond to IPP concerns, and it has been a subject of considerable debate in British Columbia.

The interconnection agreements with B.C. Transmission Corporation is a precondition to an EPA. The sensitive issues that we see most in terms of negotiations over EPAs pertain to intermittency and long-term price indexing by – imposed by B.C. Hydro.

As for the IPP market, itself, it's expected to generate some 25% to 45% of power in B.C. over the next 20 years.

At present, wind is a small player. It has – three projects have EPAs as a result of a 2006 B.C. Hydro open call. However, many projects are in some form of EPA stage. There are, for example, some 169 applications on Crown land procured by B.C. Hydro, rather IPPs.

The recent call, recent being November of 2008, 19 projects bid into the 2008 energy call set by B.C. Hydro, with a total amount of 8,000 gigawatt hours.

Turning to project development, the key document here is the Crown land policy of 2005. It is essentially a one window approach to land tenure. The Crown and British Columbia owns some 92% of B.C. land base.

The policy covers both generation facilities and transmission lines. It offers up a staged ten-year process where a proponent can obtain certain rights for investigation to move on to development and later on operation.

The policy has a ten-year rent holiday for wind power operations and has the – also provides, sets requirements for security and guarantees for cleanup.

Turning to private lands, that other 8%, that's left to negotiations essentially between the IPP and the landowner, and further application of land use zoning law and planning law on that IPP.

Environmental assessment is a feature of IPP development. There is a trigger point, 50 megawatts. Anything above 50 megawatts is subject to a fairly comprehensive environmental assessment.

A key document in that process is the environmental assessment certificate. That certificate is necessary to obtain later licenses and permits which will – that the IPP needs for operation.

The environmental assessment process tends not to be a formal hearing process, it tends to be a paper review process with fairly strict timelines.

Another defining feature of IPP development in Canada and certainly British Columbia is the matter of First Nation or Indian, aboriginal claims on Crown lands. Aboriginal rights are constitutionally entrenched in Canada and in some cases, I stress some but not all, some cases these aboriginal rights trump, can trump an IPP or any other project for that matter, especially if the project is located on Crown land.

But generally the law, the case law of recent years, states that First Nations do not have the right to veto a project. They certainly have a right to be consulted, the Crown has a duty to consult First Nations if there are potential adverse affects on proven and even asserted rights, rights asserted by the local First Nation.

The Crown might also then have a duty to so "accommodate." That is if there is a breach of a right or a risk to an asserted right, the Crown must attempt to reconcile of the competing interest.

Accommodation usually takes two forms. One is project design or redesign. The other one is economic benefits to local First Nations. What a common feature of IPP development in British Columbia and elsewhere is the entering into of agreements, impact and benefit agreements or other forms of agreement to accommodate the First Nations' concerns.

This is not merely a bilateral process involving the Crown and the First Nation. The industry also engages First Nations. It tends to be a trilateral arrangement where the Crown delegates, some or in fact most of the consultation to industry.

I will now turn it over to Helen Newland to cover the Ontario side of these issues.

Helen Newland: Thank you, Wally. And good morning or good afternoon to everybody online, wherever you are.

My name is Helen Newland, and I practice from Fraser, Milner, Casgrain's Toronto office. We like to consider that Toronto, Ontario is the heartland of Canada, although I'm sure my partners will not agree with me on that.

What you're going to hear from me today is that Ontario is facing a critical shortage of generation capacity. And that critical shortage means that there is enormous opportunity in Ontario for developers and suppliers, investors and lenders, and, yes, also for lawyers, as well, as a result of a very aggressive procurement program that has been put in place by the Government of Ontario.

Now, before I get into details about the procurement process, and that is going to be the focus of my remarks today, I'd like to give you some context and set the stage about Ontario's electricity market and the demand, supply situation we face.

Ontario is Canada's largest province by population and the second largest by total area. It has domestic peak load of approximately 25,000 megawatts and annual sales of about \$12 billion. We have approximately 31,600 megawatts of installed generation and 4,000 megawatts of interconnection capacity.

We, and when I say we, I mean Ontario's competitive electricity market opened on May 1st, 2002. It was followed immediately by hot weather and a tight supply and record high stock prices and this all caused the government of the day to slam the brakes on. Four months later it froze prices for low volume and other designated consumers. The freeze applied to 95% of customers in Ontario and 50% of the Ontario load.

Unfortunately, this situation does continue today. Prices are set under a regulated plan for protected consumers. Those prices are based on actual, the actual cost of power, but it's smoothed over a 12-month period. All other consumers, the other 5% that is, pay the market price.

Now, as you can imagine, the creation of this hybrid market put an enormous damper on the investment climate in Ontario, and this led the government to create this aggressive procurement program.

Just before I get on to describing the procurement program, I just want to take a couple of minutes and talk about the market players in Ontario. We have three transmitters, hydro one by far the largest transmitter. We have Ontario, as to generators, we have Ontario power generation dominates the Ontario generation market. It produces about 90% of power sold in Ontario.

On the distribution side, there are about 72 municipally owned utilities, three investor owned utilities, and, of course, Hydro One which serves mostly rural and remote communities.

And then finally we have the regulators, and I don't intend to get into detail here, but it's – probably you should know about three of these. The Ontario Power Authority has the procurement mandate, and so you're going to hear quite a lot about the Ontario Power Authority in my remarks.

The Ontario Energy Board is the economics regulator. It sets rates for the transmitters and distributors and it licenses generators and market – other market participants.

And, finally, the IESO, the Independent Electricity System operator, is responsible for the day-to-day operation of the grid and for the competitive market.

So let's take a look at the slide ((inaudible)) picture. In Ontario today we are seeing a normal weather peak of about 2,500 megawatts and by 2030 we expect this to grow to about 30,000 megawatts, principally the result of growth in population in southern Ontario.

As to supply mix, you can see here on the wheel, we have about 36% nuclear so we have that serves our base load, and it's expected that that will continue to be the case. Twenty five percent hydro, and the rest we have oil, gas, renewable, and that includes 1.5% wind.

I don't see this on the slide, but our installed capacity today is about 31,600 megawatts, and that's, of course, the totally installed capacity is not our available capacity. And today when I checked on the IESO Web site we had about 2,400 megawatts of available capacity.

So as you can imagine, we have some serious supply challenges in Ontario. There are two reasons for this. Well, let me back-up. The challenge is that we have to replace or refurbish about 80% of our installed generation in the next 20 years, and that's about 25,000 megawatts.

So if you consider that we have about 32,000 megawatts of installed generation, we need to replace 25,000 of that in the next 20 years for two reasons. One is the government's commitment to phase-out the whole generation in the province by the year 2014, that's about 20% of our installed capacity. And the second is our aging nuclear fleet is going to have to be refurbished or replaced in the next 20 years.

Let's move on to power procurement. So when the government has recognized that in the wake of the price freeze, there would have to be serious integrated approach to electricity planning to track investment in the province. It created the Ontario Power Authority. The Ontario Power Authority has a two-part mandate. One is central electricity planning, and the second is the development of procurement processes.

At this time, the Ontario Power Authority develops procurement in accordance with ministerial directives, and that will change once we get an integrated power system plan in place, but at this point there – it is acting in accordance with these directives. There have been 27 directives in the last three years. There have been two significant policy directives. You can see on this slide.

In June of 2006 there was a supply mix directive and the significant aspect of it was it directed the OPA to procure generation such that there would be an increase in renewable capacity to 2,700 megawatts by 2010, a normal 16,000 megawatts by 2025. And we recently had an amendment to that policy directive, directing the OPA to actually establish higher targets for new renewable supply and conservation. All good news for wind developers and others in the business.

Now, this next slide just shows you what the IPA or the OPA expects the picture, the supply picture to look like in 2025, so we see that renewables will be about 13%. I expect that number will actually be higher as a result of the recent amendment to the supply mix direct.

The OPA uses three types of procurement processes – competitive, standard offer, and noncompetitive. Competitive procurement is by far the preferred process, but it's best suited to large megawatt projects. Standard offer process was instituted in late 2006. It was put in place to assist smaller generators, small – and especially renewable generators to overcome barriers to market entry and one of which was having to participate in expensive and complex RFP processes.

And we're very excited about the standard offer process. It is the first of its type in North America, it's patterned after programs that exist in Germany and in Denmark. Now, this slide lists the OPA's principal theme and renewable energy procurement initiative to date.

In terms of competitive procurement processes, we have (Res I), that stands for renewable energy supply at first traunch. That's closed. (Res II) is closed, and is fully subscribed. So let

me see here – (Res III), this was a competitive procurement of up to 500 megawatts. That was called last year. It's now closed and the winners have yet to be announced.

I want to say a few things about the renewable energy standard offer program or (Resop), as we call it. There are almost 1,400 megawatts under contract. The program continues today but is now restricted to smaller projects, less than 10 megawatts. When it first opened, there wasn't that restriction and a lot of the larger generators were coming in and taking advantage of the simplified process to get a contract.

But what's significant about the (Resop) program is it offers a 20-year PPA to qualifying projects, and under the program generators receive 11 cents per kilowatt hour for wind, biomass, and hydro, escalated annually at 20% of CPI. They receive 3.5 cents per kilowatt hour on peak performance payments for biomass and water power, and 42 cents per kilowatt hour for solar with no inflationary increases.

We have a polling slide up on your screen. It asks the question, "Did your company participate in (Res II), (Res III), any of the standard offer programs, or in fact any other Ontario procurements"? Could I ask everyone to take their mouse and just click in their preferred answers?

Well, what we're – what I'm showing is 100% of the people online have clicked D, other Ontario procurements.

And just a few remarks about what the state of affairs is to date, under the OPA's procurement process, we have a total of almost, well, a little over 11,000 megawatts under contract. Of that, almost 10,000 megawatts was competitively procured and 14,000 megawatts was standard offer supply.

The table at the bottom of your slide shows you the break-down in terms of resource types. In terms of wind we have a total of almost 1,250, 1,242 megawatts under contract, of which 471 is in service now and 771 is under development.

In terms of what's coming up for 2009, there will be a combined heat and power procurement for 100 megawatts. We expect to have (Res IV), V, and VI for the total of an additional 1,500 megawatts of renewable supply, and finally a total of 1,850 megawatts of new gas fired generation in and around the Greater Toronto area.

So, as you can see, there's going to be a lot of activity in Ontario in 2009 and beyond, and that means that there is a lot of opportunity in Ontario.

I think in the interest of time, I'm just going to skip over to say a few things about project development in Ontario, and I'm focused on the things that might be unique in Ontario.

The most important point to note with respect to project (citing) is that in Ontario there is no automatic right of expropriation for private investors or for Hydro One. Access and terms must be negotiated and be it with private owners, Crown, the Crown, or First Nations.

The construction of very small projects, less than 2 megawatts, don't require a provincial environmental assessment of any kind. Projects greater than 2 megawatts, including those that require a new interconnection that is 115 KV or less, don't require a full-blown EA, but they do have to carry out an environmental self-assessment.

These types of projects, these self-assessment projects can be bumped up to a full EA either at the instance of the Ministry of Environment, or as a result of a third party request.

And, finally, depending on where your project is located within the province, other EA requirements may apply, including EA's under the federal environmental assessment legislation.

No specific approvals are required in order to construct generation facilities. You are required to be licensed by the Ontario Energy Board. The process to get a license is largely administrative, and there are quite a few IESO authorizations required, if your project is going to be connected to the transmission grid. The IESO process can take up to two years or even beyond, depending on what kind of connection you're looking at and how long your – if you need a new transmission line and whether, how long that line is.

There's nothing particularly unique in Ontario with respect to permitting. You need to be aware that there are three levels of government that you're required to deal with, federal, provincial, and municipal.

We're finding that projects including fairly large projects can get derailed at the municipal level where the (NIMBE) battles are being played out, and recently in Ontario (EPCORE) announced the termination of its OPA contract because it ran into a lot of local opposition, and its project was fairly well advanced.

Finally, you should be aware that you may not be able to get your permits until you demonstrate that you have successfully dealt with stakeholder concerns including First Nations consultation.

Just a few remarks, before I pass this over to Wally, or to Ron, about interconnection. In Ontario the cost of connection facilities are recovered from the connection customers. These costs can be very prohibitive in the remote areas, where there's a lot of wind potential, especially in northern Ontario. Where there's the resource clusters are located very far from the transmission grid, and this represents a serious impediment to development.

A recent, and I mean in the last month or so, Ontario Energy Board rate making proposal identifies a new category of facilities. These are being called enabler facilities. These would connect resource clusters of good renewable potential to the grid.

Under this new proposal, the initial cost of constructing enabler facilities would be rolled into the transmitters, rate base, and borne by all the rate carriers, and then the generators would make a prorate capital contribution when they become connected. The cost of the unsubscribed capacity of the transmission line would continue to be borne by all rate carriers. So we're hoping that this development will spur development in northern Ontario, where there is a lot of wind potential, untapped wind potential.

We have another polling slide here. "Does our company have any energy projects under development in Ontario"? Could you click on the box that pertains to your company?

Oh, 100% of the people online have some project, energy project under development. Very interesting.

I'm now going to pass the baton over to my Partner, Ron Stuber, who is going to speak about project financing.

Ron Stuber: Thank you, Helen.

In terms of project financing, independent power projects certainly lead the way in terms of project financing market around the world, and traditionally power projects and, indeed, wind energy projects have traditionally been financed on a project finance basis in Canada, and we expect that situation to continue.

When we talk about project financing what do we mean? I mean really the key features of project financing include having a project that is legally and economically self-contained or (financed) from the sponsors through a special purpose entity whose only business is the project.

Financing is raised for a specific project or sometimes for portfolio of a projects rather than an established business, and as such lenders are relying on the project's anticipated cash flow rather than historical corporate results. So this is in contrast to corporate finance debt, which primarily lends against the company's balance sheet and projections which are extrapolated from past cash flow and profit records.

Although lenders will take security over all the project assets, the focus with – on project financing is on the cash flow generated by the project and the project contract that the project has, rather than the net realizable value of the assets, themselves.

What are the benefits of project financing? Well, typically, wind energy projects have significant funding requirements and entail risks that are often in excess of what the individual sponsors may be willing to or able to assume.

In that regard, the project finance structure can be appealing to sponsors because it provides the financing that is legally non-recourse or limited recourse to the sponsors. It can achieve off balance sheet accounting treatments and project debt by not showing any borrowings to the project among the sponsors' own borrowings in its consolidated accounts.

Project financing allows for highly leveraged structures, which often means a reduction in the cost of capital by the – having the ability to substitute lower cost tax deductible interest for higher cost taxable returns on equity. And very importantly also enables project risks among project participants to be spread amongst each of those, reducing each risk of loss.

Move on to the commercial. Here we've got a slide that shows the typical Web of contractual arrangements with project entity at the center of the Web. The commercial arrangements for any particular project will vary, depending on the specific nature of the projects.

If we look at this particular slide for a wind energy project, and we can see, as I said, the objective of the project document is to allocate the project risks, in order to create a structure that'll support leveraged capital structure needed to enable project finance.

There'll be typically be equity agreements among the project sponsors that govern the relationship between themselves and also the relationship with the project entity, including importantly from the lender's perspective the obligation of the sponsors to contribute equity funding to the project. Credit and security documents will govern the relationship between the lenders and the project and to the project entity.

Commercial arrangements will be entered into with contractors for construction and operation of the wind energy project, and through these arrangements the project will seek to allocate construction risk, that is the risk that the projects will not reach commercial operations and schedules and but it – and operating risk, which is the risk that the project will not perform as expected and at the cost that has been budgeted for operations.

In the case of wind energy projects in Canada, as Wally and Helen have noted, there'll typically be a long-term electricity purchase agreement with credit worthy provincial government bank entity that will underpin the revenue required to service the project debt.

Also, as has been noted, the project will need to secure all required authorizations and licenses, suitable sites, usually through freehold or leasehold arrangements, and other arrangements for ancillary goods and services, and also comprehensive insurance package.

If we just move on to the process about what's involved in actually negotiating and documenting financing arrangements. The structure for the financing of the project will normally be agreed on and be set forth in a commitment letter from the arranging financiers, that will have attached to it

a financing terms sheet which may vary in detail, depending on the extent to which sponsors wish to try to firm-up arrangements earlier on in the process and developing the project, as opposed to getting commitments based on the more general understanding of what the deal would be, here and the cost efficiency factors depends on which approach you take.

But, in any event, together the commitment letter and the terms sheet, the financing terms sheet will specify the scope of the commitments of the financiers, the loan amounts and terms, use of proceeds, repayment terms and, as I said, an outline of the principal terms of the deal. Once this has been agreed, lenders will conduct their due diligence, detailed due diligence on the project, and then proceed to negotiate the credit and security documents.

Typical features of the credit documents will include representations and warranties by the project entity. Those are mainly there to elicit and verify all information relevant to the project. Covenants from the project entity, which are designed to enable the lenders to monitor closely and regulate the project entity's activities.

Forecasting provisions, which are used in connection with having a base case natural model, again for evaluating and monitoring the performance, the economic performance of the project.

Financial ratios, which are essentially mathematical calculations designed to measure the financial health of the project, and which are tested over set time periods, normally semiannually or annually.

Project financing structures also include fairly detailed project account structures which are effectively secured bank accounts, secured in favor of the lenders, and cash flow waterfall or cascade, that really regulates the inflows of cash to the project entity and the priority of application of those funds towards the costs that the project incurs on an ongoing basis.

Before any financing is advanced there will be a number of commissions precedents that will need to be satisfied in order to permit financial close to take place and, therefore, the initial advance of funds by the lenders to fund construction of the project.

And then on an ongoing basis during the construction period, there will be draw conditions which are designed to regulate the loan draw-downs. And, importantly from both the sponsors and the lenders' perspective, and one of the areas that is rather hard to negotiate in most financing arrangements, is the list of events of default.

So those events that would permit the lenders to exercise their remedies when things go wrong with the project, and those remedies would include stopping additional funding, restricting distribution, cash from the bottom of the cash waterfall to the project sponsors and ultimately if the project can't be worked out, acceleration of loans and enforcement of security.

And speaking about security, like in the types of financing, the security package in a particular finance transaction is there to essentially safeguard the borrower's assets from other creditors if the collateral has to be sold to recover the loans.

However, a notable feature of project finance debt, as opposed to general corporate debt, is that the value of the collateral is typically in the – limited to the extent to which the project can continue to be operated, because lenders typically have little expectation of realizing the full value of the loans if they're simply foreclosing against the assets of the project.

So really the focus of the lenders is having the ability to take control of the project assets and operate the project or sell it to a third party and recover the loans advanced in that manner.

We'll move to slide – now, I'm going to talk a little bit about risk allocation, so we'll skip over that slide.

As far as bank ability is concerned, the finance ability of any particular project, that is really a concept of whether or not a particular project structure, performance, and acceptable basis for limited recourse debt is somewhat of a fluid concept and tends to be fairly project specific.

But in the context of wind power projects, clearly there are some key elements that need to be evaluated and considered to be acceptable to support financing. Clearly, fuel supply is always a key element in any power project financing, and in this case the wind project it's the strength of the wind resource. It's the reliability of the data, and independent verification is invariably a requirement of lenders.

The electricity purchase agreement, which I mentioned previously, is the contract that underpins the revenues of the project and therefore that is obviously a key document. And, again, lenders will be focusing on the credit strengths of the power purchaser, which in Canada tends to not be an issue given that contracts are essentially backed by a government credit ratings.

And also the situations in which the – in which revenues may be curtailed under those projects, so the detailed analysis is done there.

On the environmental side, the environmental attachment certificate is a key milestone in obtaining environmental approvals, so again it's unlikely that projects will be able to attract project financing prior to having its environmental set of certificates.

And of late, and clearly on the construction side, the construction cost side, the boards have fixed price, lump sum turnkey arrangements that typically for power projects, in the context of wind you can see kind of a multi-contracting strategy, where turbine supply has been an issue in terms of availability, although given the recent changes in the economic climate it's expected that turbine supply will be the balance of power between the sponsors and the turbine suppliers may be changing.

I'd like to now move on to talk very briefly about, just wrap-up on a few investment considerations, and incentives that are in Canada.

I think one thing to note an important consideration for any cross border investment in Canada is compliance with Canada's antitrust laws, and these are embodied in a competition act, the purpose of which is to maintain and encourage competition in Canada.

This act provides for a review of certain matters by a constitution tribunal. Reviewable matters include mergers and restrictive trade practices. There are thresholds which are reasonably large in terms of size of parties and size of transaction, and where these thresholds are exceeded there is an ability – well, there's a requirement in order to make a filing before proceeding to get approval.

But in cases where parties believe there won't be any or little or no adverse competitive impacts resulting from the transaction there and the ability to get an advanced ruling certificate from the commissioner certifying that, and that'll obviously smooth the process.

Just skip over income tax, there's a slide there with just some general notes on Canadian income tax.

But as far as incentives in Canada that are relevant for wind power projects, there are a couple of different approaches to this. Basically, on the tax side there are two main incentives across Canada for wind power projects and one is to accelerate having the ability to take advantage of accelerated capital cost allowance, basically, write-off the depreciation which is done through sort of depreciation pools for cost of assets that are entitled to accelerate a depreciation. And those include, you'll see on the slide, wind assets.

The other one that I'll touch on briefly is essentially a double-dip opportunity as far as deductions, and it's called the Canadian renewable and conservation expense. And the way that this generally works is by the issuance of flow through shares by the project entity to investors, and the way in which these work is that the project is able to flow through certain types of expenses out to its shareholders, who in turn may deduct those expenses from their own income.

So in addition to the project being able to get accelerated depreciation on those wind related expenses, there's also an ability to pass-through those expenses to shareholders so that they can take advantage, as well, of reduced tax burden.

There are some quite detailed rules, these are governed by the income tax act in Canada, and it should be noted, though, that these are only available to certain types of companies and it fits fairly well with project development.

And the company must be what is known as a principal business corporation, which means that its primary business is the development of assets within this class that's permitted to take benefit of the expense, and or at least it's reasonable to expect that at least half of the equipment required by the company will be used for that purpose.

Usually you can deduct the full amount in the year that it's incurred. There's also a two-year, and have to be incurred within two years of issuance of the shares, and there's rules that enable some flexibility in terms of when those expenses are incurred within the two-year period.

And notice on this next slide, here, those expenses that are eligible, and some that are not. So it's not all expenses to do with the project that are, in fact, eligible. So you can ...

Liz Grisaru: Ron?

Ron Stuber: Yes.

Liz Grisaru: Ron, it's Liz. I just – I don't mean to interrupt you, but I just wanted to remind folks we're coming close to the end of our hour, and we were hoping to have a little bit of time for questions, so just bear that in mind, if you would?

Ron Stuber: Sure. I'm actually just about to finish, actually, so thanks.

Liz Grisaru: Great.

Ron Stuber: Yes, so just to finish-up on that particular scheme, which is very popular for investment. It should be noted, limited in terms of what assets forward in the expenditure class, and also it's a limit of 50 megawatts, so the larger projects, so generally what people tend to do is develop the first phase of 50 megawatts, which is eligible for this scheme, and then the rest which is just developed on an (all) basis.

I'll just touch briefly on federal renewable incentive, there's a 1 cent a kilowatt hour incentive for up to 10 years on certain qualifying electricity projects in which wind would be included, and that includes the federal investment of \$1.5 billion to support this, and it works out to about 4,000 megawatts that is eligible and it has taken off very well in Canada.

And, otherwise, there are, as we've said, other incentives on a profits by profits basis, basically tax credits and others, and the renewable energy standards in Ontario, and in other provinces where provinces are requiring a certain amount of new capacity to be clean energy and in some cases wind only. So that kind of gives a feel for the landscape on incentives.

So I think I'll wrap-up there, and to allow a few minutes for some questions.

Liz Grisaru: Great. Thanks so much, Ron. And thanks to all the presenters. This is Liz, and I'm wondering if anyone has a question? I want to remind the folks on the call to type their questions in and send them, and we'll pass them on to the presenters.

I don't believe I have any that have come in just yet, so I thought I would throw out one or two of my own. It's very interesting to hear this – the issues facing wind power development in Canada. They are so similar to the things that New York, or rather U.S. developers face, and so I wanted to ask you if there is any way to kind of put a guesstimate around this, as to what do you think the permitting to construction timeline for, say, a 100-megawatt wind project in either of these provinces is?

Helen Newland: I could take a crack at that first from the perspective of Ontario, Liz. I think that you're looking at, at least one to two years and probably more realistically at two years. That's if you don't hit any snags on your environmental assessment process and get bumped up to the full environmental assessment or any snags with respect to your consultation with First Nation or local opposition. If you run into issues on either of those fronts then there will be permits, especially the local municipal permits, you won't be able to get them until you sort things out with your First Nations and with your local municipal authorities and local landowners.

So one to two years, two years being more realistic, and possibly more, and that's – I think I mentioned earlier there was – (EPCORE) had dropped, terminated its contract with the OPA because it did run into significant opposition from local landowners and it was looking at going to the Ontario Municipal Board, and that's at least a one to two-year process.

So hope that answers your question. I don't know, Wally, did you want to add something from B.C.'s perspective?

Wally Braul: Just a very brief note on British Columbia, some proponents stack presets of processes, that is the pursuit of the EPA together with environmental assessment together with First Nation's consultations and that's already three processes right there.

And a fourth process that can be stacked but it makes life very busy for a proponent is what they call concurrent permitting, and that is you don't have to wait for your certificate to start, your permitting process for the operational facilities, that can be done concurrently with environmental assessment, but the timeframe, two years would be a very quick timeframe, it's likely more than that, but some parties do attempt to get everything done within two years.

Liz Grisaru: Right. Well, that's certainly consistent with at least my experience in the States.

And then just one last question?

Wally Braul: Sure.

Liz Grisaru: Market conditions everywhere are terrible, but what do you guys think about the – is it sort of the project finance appetite for wind in Canada these days?

Wally Braul: Quick ... go ahead, Ron?

Ron Stuber: Yes, I'd be happy to give my input, and obviously you can also. In terms of appetite for projects, themselves, I mean we're seeing really these calls for power or clean energy calls, particularly there was one actually just last week in B.C. that are massively oversubscribed.

B.C. Hydro was – put out a call for clean energy up to 5,000 gigawatt hours annually, and it received something like in excess of 70 project proposals which would amount in total to 16,000

gigawatt hours, so over three times the subscribed, and of that 16,000, 8,000 gigawatt hours or half of that was wind, so certainly great interest there.

On the project finance side, we're clearly, I think all projects whether they're for energy infrastructure or wind have been impacted by the lack of liquidity of commercial bank debt in terms of getting deals closed this year. Clearly that's something that's not happening.

However, speaking to bankers, clearly they're looking at 2009 as being a new year and kind of starting afresh and hoping that they'll be able to get back to business. So clearly if infrastructure and energy which are key requirements of western society are going to continue to be provided then and need to be built out then financing will come I believe.

Liz Grisaru: Great. Thanks very much. I think we should wrap at this point, because we've just gone over 1:00.

If anyone has any further questions, Sandy or one of the ACC folks, can they send those in after the conference today?

Female: Yes, they can send them to these e-mail addresses on the screen or they can send them to accwebcast@comparters.com.

Liz Grisaru: OK. Great. Thanks for that. And thanks to all of our presenters from Fraser Milner and to the ACC folks for helping to put this together. Please do complete your survey and we'll thank everyone, again. And let's disconnect.

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