

ASSOCIATION OF CORPORATE COUNSEL

Wind Power and Renewables: Legal Issues Related to the Development of Renewable Energy
Projects
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Presented by ACC's Energy Committee, sponsored by Fraser Milner Casgrain LLP

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(Paul Gonzales): Welcome to the Webcast on wind power and renewables, legal issues related to the development of renewable energy projects in Canada. This is being presented by the Association of Corporate Counsel, the Energy Committee there, and the (Fraser Milner Casgrain) law firm. My name is (Paul Gonzales). I am Senior Counsel with CTS Energy, San Antonio, Texas, Municipal Energy Company.

Today I'd like to before getting started with the presentation orient our audience to features of the Webcast, namely the – an ability to present questions to the panelists. On the lower left of your screen you should have a question and answer box. Please feel free at any time during the presentation to type in your questions to the panelists, and these will be addressed towards the end of the presentation. In addition, there's also a link to an evaluation form. This short form will help us in reviewing these programs and making improvements for the future.

With that we will turn to our panelists from the law firm of (Frasier Milner Casgrain). This firm is based in Canada, but also has a presence in New York City. More than 500 lawyers, and we have three very skilled practitioners joining us. I'll begin in the order of the speakers' presentations today.

(Ron Stuber) is – has a practice that focuses on the development and financing of projects, particularly in the energy and infrastructure sectors. He has extensive international experience advising proponents, lenders and others involved in major projects and transactions. He has spent much of his career in London, England, with major London law firms and advised extensively on energy and infrastructure projects and transactions throughout the U.K., Europe, the Middle East, and Africa. He's based in the Vancouver office of (Frasier Milner Casgrain).

Next we'll have (Joe Palin) who has practice with the Toronto Financial Services Group before moving to the Calgary office in 1996. He's the Manager of the Financial Services Practice section. He has extensive experience in structuring and completing domestic and international financing transactions involving credit facilities of varying complexity and amounts, acting for lenders and lending syndicates and debtors. He also has extensive oil and gas financing and power project-financing experience. His experience includes debt and corporate restructuring, bankruptcy, and insolvency matters.

(Wally Brault) is based in Vancouver. He has over 20 years of experience in environmental law and aboriginal law. He's been recognized by both (Lexpert) and (EuroMoney) legal media groups guide of the world's leading environmental lawyers as one of Canada's leading environmental lawyers. Most of his practice is devoted to regulatory approvals and litigation

in environmental and aboriginal matters, and he's frequently retained to negotiate solutions to complex liability, regulatory, and aboriginal law issues.

Once again, please feel free to use the question and answer box on the screen to present questions to the panelists and we will reserve some time towards the end for responses from the panel.

We will begin with (Ron Stuber).

(Ron Stuber): Thanks, (Paul). On behalf of (Frasier Milner Casgrain), I'd like to thank the ACC for the opportunity to share some of our knowledge of the Canadian renewal energy market. We're a full service Canadian law firm that serves the Canadian energy industry on a national scale. (Wally Braul), (Joe Palin), and I are members of our multi-disciplinary energy group which is comprised of about 70 lawyers across Canada. Our group advises clients involved in domestic and international energy projects and assists in industry participants with corporate and asset acquisitions and disposals in the energy sector. Our aim today is to give you a brief overview of the Canadian renewable energy market and then look at the markets and regulatory regimes of a few of our provinces in a little more detail. We will then conclude with an overview of some investment and tax considerations.

In the time available today we will only give you a brief introduction and a sense of the various issues involved in doing business up here in Canada. We have of course provided our contact details on the last slide of our presentation should anyone have any follow-up questions or need any specific advice.

In terms of the market overview. Looking first at global trends. Worldwide growth in demand for energy, increasing fuel costs, and concerns about climate change are driving a tremendous boom in the developments of projects in Canada's energy sector. In addition to the oil ((inaudible)) development in Alberta, which is attracting world-wide attention, and also renewed interest in conventional oil and gas development in Canada, we are now experiencing significant growth and activity in the Canadian power sector and in particular generation from wind and other renewable resources.

Focusing on wind energy for a minute. From an emerging fuel source 20 years ago, wind energy has mushroomed into a mature and blooming global business. Generation costs have fallen by 50 percent over the last 15 years moving closer to the cost of conventional energy resources. Modern wind turbines have improved dramatically in their power rating, efficiency, and reliability. It's also worth pointing out that the carbon emissions' trading is emerging as the policy option of choice a both the national and provincial level in Canada.

How are these global trends affecting Canada and the U.S. Well, Canada is a net exporter of electricity to the U.S. Mainly due to the availability of low-cost, hydro-electric resources, both countries realize commercial benefits and improved reliability through trade. Growth in electricity demand in Canada and the United States as well as the retirement of environmentally challenged facilities will require increases in generation capacity in both countries. Both the U.S. and Canada project the need to increase generation capacity by approximately 25 percent by 2025 to satisfy increases in demand.

In contrast to the U.S. where coal is still the dominant fuel source for electricity generation, in Canada, hydroelectric power is still the dominant generation technology. However,

interest in wind power, biomass, small hydro, geothermal energy, fuel cells, solar cells, ocean energy, and clean coal as credible sources continue to grow in Canada. The heightened interest reflects concerns about supply adequacy in most jurisdictions, the interest in energy supply diversification, regional concerns about air quality, and overall concern about climate change. Market assessment suggests that wind power, small hydro, and biomass technologies are well established, currently operational, and will continue to have good growth potential in the near – in the near-term and also in the longer term.

As we all know, global warming is increasingly evident throughout Canada and has become an important political issue. Government policy and legislation is changing rapidly to address this issue. Renewable electricity generation is a high priority issue for Canada as demand for power continues to rise, existing infrastructure continues to age and deteriorate, and environmental impacts continue to grow. Canada is a signatory to the Kyoto Protocol and as such must have protocols in place to reduce greenhouse gas emissions to six percent below 1990 levels for the 2008 to 2012 period. However, it remains unclear how or if Canada will meet its Kyoto protocol commitments as limited tangible steps have been taken until recently.

However, late last year our federal government proposed the Clean Air Act which will impose targets for air pollutants and greenhouse gases from key industrial sectors including fossil fuel fired electricity generation. Greenhouse gas reduction targets will be set in consultation with the provinces and the territories and all of affected sectors. Earlier this year the federal government also released a regulatory framework for air emission, which included a plan for reducing greenhouse gas emissions. The plan will be implemented through new regulations enacted under the Canadian Environmental Protection Act. Details

of the federal plan will be provided and draft regulations expected to be issued in the spring of 2008. And the federal regulations themselves are anticipated to come into force in 2010.

To date Alberta is the only Canadian jurisdiction that has put into law a comprehensive greenhouse gas reduction strategy. However, the province of British Columbia recently announced a new energy plan. Highlights include a mandate that all new electricity projects developed in British Columbia have zero net gas green – sorry – net gas greenhouse emissions and a commitment to the development of new technologies and the use of other sources of renewable energy, including waste timber. These announcements are intended to spur investment in clean energy generation. The British Columbia government has also endorsed a new regional goal for reducing greenhouse gas emissions, including a target for that province that is almost twice as ambitious as the one set by California. Details are set out in a statement released last month under the rubric of the Western Climate Initiative, or WCI. This initiative launched earlier this year includes California and five other U.S. states.

We'll move to the next slide. This shows that there's strong integration of U.S. and Canadian electricity networks with a growing interconnection. In fact, we can see that last year net exports of electricity from Canada to the U.S. were in the order of 23,000 gig watt-hours.

The next slide illustrates the relatively recent acceleration in growth of wind power globally. Figures from the Global Wind Energy Council released for 2006, which included wind energy development in more than 70 countries around the world, showed that the year saw the installation of over 15,000 megawatts, taking a total installed wind energy capacity to over 74,000 megawatts. Despite constraints facing supply chains for wind turbines, the

annual market for wind continued to increase at a staggering rate of 32 percent following a record year in 2005 in which the market grew by 41 percent. This development shows that the global wind energy industry is responding fast to the challenge of manufacturing at the required level and manages to deliver sustained growth.

Looking at the next slide, we can see that wind generation in Canada is spread across the entire country and is growing very rapidly. In fact, the wind power potential in Canada is enormous. There are – there are many opportunities across the country and also a number of challenges, mainly involved in infrastructure. However, the Canadian wind power market is evolving to be one of the world's largest and fastest growing power markets – wind power markets. With \$18 billion in wind power investments forecast between 2007 and 2015, Canada is expected to rank in the world's top 10 wind markets. Canada added 784 megawatts in new installed wind capacity in 2006, which was more than double the country's cumulative installed capacity throughout the end of 2005. Building upon its first major year of significant growth in 2006, the Canadian wind market is set for steady and consistent annual megawatt development over the coming decade, expecting to add an average of 1,400 megawatts in new annual capacity through to 2015. This growth is expected to come mainly from the provincial markets of Quebec and Ontario initially and then followed by British Columbia and the other provinces.

I'd like to finish up our (marketer) view by dropping down to the project level and just illustrated a slide with a sample project timeline ((inaudible)) give us an idea of the development steps and the indicative timelines for the developing a renewable energy project in Canada. As you can see, lead-time for – from inception to commercial operation is around three years. And each step requires careful planning and execution.

Now to discuss more about the regulatory framework and markets in each of our provinces in Canada, I will pass the floor over to my colleague (Joe Palin).

(Joe Palin): Thanks, (Ron). And thanks to everyone who has joined us here today.

I'd like to start with a couple of jurisdictional points. And, (Ron), move over to the next slide, please. Thank you. First, the Canadian federal government has jurisdiction over electricity exports and inter-provincial and international transmission regulation. Second, each province has jurisdiction over electricity power generation, transmission and distribution within its provincial boundary. Each provincial government has the power to regulate the price of power and how the – how the price of power is ultimately determined. Each province has its own regulatory bodies that regulate the approval of new generation, transportation and distribution of power in the province. Accordingly, the sponsors of power projects are faced with unique public policy issues and regulatory issues in each jurisdiction in Canada. In the mid 1990s, many of the provinces, including Alberta, Ontario, and Quebec, began the process of restructuring the electric industry in their provinces. As a result of the different deregulation of the electric industry in the different provinces, some provinces have different histories and legacies of major market participants. Some provinces such as Quebec and Ontario continue to (have crown) corporations. Those are crown – those are corporations that are 100 percent owned by the province – and these crown corporations are involved in and even directing the electric industry in the province. Other provinces like Alberta, for example, create public entities to oversee the administration, operation and management of the electricity system. But these public

entities are not owned by the province and are not agents of the province. They are, however, subject to utility board scrutiny.

We'll describe how each of British Columbia, Alberta, Ontario, and Quebec currently approach the regulation and administration of the power industry in these provinces later on in the presentation.

I'm going to take a minute now to – in this part of the presentation to talk about the federal incentive programs. In recent years there have been a number of initiatives by the federal government to encourage the development of wind power and other renewable energy projects. One of the first federal government incentive programs in the renewable energy space was the wind power payment incentive program, or the WPPI program. This program offered a wind power production incentive of \$10 per megawatt hour. The federal government based the production incentive on their estimate that the incentive would cover about half of the price of premium for wind power generation. And I'm not sure exactly if that is still a good estimate given the escalating price of – cost of wind power projects recently. The wind power production incentive payment, or the WPPI, was the creation of the (Paul Martin) liberal government. And on January 23, 2006, the provincial – progressive conservatives won a minority government mandate. The progressive conservative government did not extend the WPPI program when it expired, but instead developed its own program. The new program is labeled the e-Cost Energy For Renewable Power Program, which is basically the same program but just under a different name since it's a different (government). The government has earmarked almost \$1.5 billion to the Eco Energy Program to increase Canada's supply of clean energy electricity from renewables, such as wind, biomass, geothermal, and ocean energy. In order to qualify for the Eco Energy

Program, wind farms have to be commissioned between April 1, 2006, and March 31, 2011. Other renewable power generating technologies must be commissioned between April 1, 2007, and March 31, 2011. Now, the project is considered commissioned when the full capacity of the project is online and it's been approved to operate by an – a professional engineer.

The payment incentive is based on the actual generation. So if you build a lemon you don't get the benefits of the incentive program. There are also some benefits and advantages that the federal government grants to wind farms and other renewable energy projects through the income tax system which we'll discuss later on in the presentation.

As I – as indicated in the previous slides, each province has jurisdiction over generation and transition and distribution within its provincial boundaries. We'll now provide a market overview and a description of the regulator structure in each of the provinces of Quebec, Ontario, Alberta, and British Columbia, which are really the provinces that have seen the majority of the development of independent power projects in Canada. Conveniently we have offices in each of these jurisdictions.

In the Quebec market there is approximately 38,000 megawatts over installed generation capacity. Over 90 percent of the power generation in the province of Quebec is hydroelectric power. Hydro Quebec is the crown corporation that's responsible for the transmission, distribution and principally the generation in the province. Hydro Quebec is comprised of three different divisions. Hydro Quebec Production, the first division, generates electricity and sells it on wholesale markets both inside and outside of Quebec. For the Quebec market, Hydro Quebec Production supplies a heritage pool of about 165

terawatts of power per year, which it is obligated to sell at fixed price. And that's currently at \$2.79 per kilowatt-hour.

The second Hydro Quebec division, Hydro-Québec/TransEnergy, operates the most expansive transmission system in North America. In 1997, Hydro Quebec unbundled its transmission operations and created HQ TransEnergy. HQ TransEnergy offers non-discriminatory access to Quebec's transmission system to all customers in the wholesale market in Northeastern North America.

The third division that Hydro Quebec has is Hydro Quebec Distribution. And it provides for the delivery of electricity from the grid to the Quebec customers. HQ Distribution effectively has exclusive distribution rights to customers in Quebec. Hydro Quebec Distribution also sources the supply of power in excess of 165 terawatts of legacy power that HQ Production supplies by HQ Distribution entering into long-term contracts with independent power producers in Quebec. The current focus of Hydro Quebec distribution is on renewable energy, including wind power.

Finally, there is the (Reggie Del Energie), which is the Economic Regulation Agency in Quebec that is established to regular the cost of transmission of electric power and other electricity services in Quebec. The (Reggie) also approves the construction of infrastructure for the transmission and distribution of electric power.

Turning now to the Quebec IPP market. Hydro Quebec from time to time issues a call for tenders, which is basically a request for proposal or an RFP to develop power projects. If a sponsor wins a bid, the sponsor enters into a power purchase agreement with Hydro Quebec.

The awarding of a PPA to a power project sponsor is not based entirely on economics in the province. Quebec public policy influenced the waiting – influences the weighting of different factors that are considered in awarding a PPA. Hydro Quebec will look at a proposed project to see if it will sustain development in a particular Quebec region. It will also consider other issues such as whether or not a first nation is being affected.

With respect to wind power generation in the province of Quebec, there is currently 322 megawatts of install capacity. In addition to that, there have been two calls for tenders for additional wind power generation in Quebec. The first RFP was for 1,000 megawatts and that has been awarded. Approximately 740 megawatts was awarded to (Carchy) Wind Energy, and that's an enterprise that's owned by TransCanada and Energen. The Wind Energy project is made up of six, separate wind farms. North Wind Power is the other sponsor that was awarded two power purchase agreements totaling approximately 260 megawatts.

The second RFP that was issued by Hydro Quebec is a call for an additional 2,000 megawatts of power. And the submissions for this RFP are due September 18. So there are I think five days left to get your submission in if you're interested in responding to the latest call for power from Hydro Quebec. But don't feel too rushed, because Hydro Quebec has in the past set some precedent for extending the deadlines

Hydro Quebec has stated that its energy strategy is to have 4,000 megawatts of install capacity – installed wind power generation capacity by 2015. This additional capacity will generally be tied to Hydro Quebec establishing additional hydropower projects to balance the transmission grid issues with the wind power generation. This is good news for window

power developers as Quebec has an excellent wind resource potential, and in certain parts of the province it is quite outstanding. By some estimates, Quebec wind farms could generate up to 55,000 megawatts of electricity. Now, this seems like an incredible amount of power generation, and given some of the remote locations where the wind resource is located, certainly not all of this is economic. But there are studies that have shown that within 25 kilometers or 15 miles of existing transmission there may be potential for as much of 4,000 megawatts of wind power generation capacity. As I mentioned, the excellent wind resource is in some cases in remote areas of Quebec. And with the remote areas, it brings along some issues and causes some potential problems. There is oftentimes a limited construction season in these remote locations. And so scheduling becomes critical as equipment deliveries and cranes and crews need to be carefully coordinated. On a relatively recent wind power project that I was working on there, timing was not very well coordinated and deliveries of equipment were delayed. So cranes and crews were sitting idle while they were waiting for equipment to be delivered, which adds to the cost and extends the schedule for these projects, which is not anything anyone wants. So certainly the sponsors need to take into account the remote locations when doing their economic modeling for these projects.

There are other challenges with remote locations as well. And the other – the other problems that we've been experiencing in some of these remote Quebec wind farms are blade and turbine icing issues. So something else to keep in mind.

(Wally), I think now you're going to talk about the sittings of wind farms in Quebec.

(Wally Braul): Thank you. The best wind resources are found on so-called crown land. Crown land is really public land. And in fact a large portion of land in Quebec is crown land.

Quebec has a fairly well established process for sitting and – on crown land. There are a number of tenures available for the outset for various exploration purposes. And there are longer-term tenures available as well at the other end of the spectrum for leases. As for private land, the lands further south, the southern part of Quebec; those are subject to private negotiation. Wind farms are subject to municipal approvals, and those can be controversial at times.

I'll mention in passing, one unique feature in Quebec that's not on this slide, that's the existence of native trees on former crown land in the northern half of Quebec. These trees are very large, in fact, and the size of some small states at least. There are – in treaties – and there are – they've been negotiated in the last 10 to 20 years for the most part. In some cases the generic, environmental and other land use laws do not apply. Are these treaty areas regulatory havens? Perhaps not. But certainly there's certain – there's a lot of flexibility and discretion available to the aboriginal organizations. And in fact I've seen in my own practice in the last five years very business friendly first nation organizations who want to do business with energy organizations.

I'll turn it now back to (Joe), and (Joe) is going to cover – introduce Ontario.

(Joe Palin): Great. So moving west from Quebec is the Ontario power market. Ontario currently has 33,000 megawatts of install capacity, of which 35 percent is nuclear, 24 percent is hydro, 23 percent is coal, and nine percent gas, seven percent oil, and three percent includes small projects such as small hydro projects, land fill, gas and biomass power projects.

Now, Ontario has a hybrid regulated competitive market model. The prices for low volume consumers – that’s residential and small commercial customers – and the MUSH sector – the municipalities, universities, schools and hospitals – are regulated by the Ontario energy board, unless one of the consumers opts to sign a market-based contract. Then it pays the rate that it negotiates in the market-based contract. Higher volume customers pay market-based rates. So this results in the market with the hybrid of regulated fixed prices for the residential, small or commercial customers and the MUSH customers and market prices for other users of power. The Ontario Energy Board, or the OEB, is the provincial regulator that sets the rates for the price of power in the province of Ontario, for residential and small customers, and authorizes the construction of transmission and distribution lines. It also licenses power generation in the province of Ontario.

The Ontario Power Authority, or the OPA, is the entity that was established in 2004 by the province of Ontario to forecast electricity demand and power generation in the medium and long term. The OPA conducts independent planning for electricity generation and transmission for the purpose of maintaining an integrated power system plan for the province. In this role the OPA has the authority to procure generation. It manages both a competitive RFP process and a non-competitive procurement process, and the OPA is the counterparty to the power purchase agreements with independent power generators. The OPA is also directed by the Electricity Restructuring Act of 2004 to facilitate the diversification of the sources of electricity supply and to promote the use of cleaner energy sources and technologies, including alternative energy and renewable energy sources.

Another major market – major market participant in the Ontario power market is Ontario Power Generation, or OPG. OPG is a crown corporation in which the power generation

assets of Ontario Hydro were transferred when the Ontario power market was undergoing its deregulation in 1999. OPG has more than 22,000 megawatts of power generation capacity, including three nukes, 64 hydro generators, and three wind farms. Hydro One is the crown corporation in which the province's transmitted system was transferred at the time of deregulation in 1999. The independent electric system operator, or the IECO, is the wholesale market operator and transmission monitoring entity in Ontario. The IECO balances the supply and demand in Ontario. Well, as you can see from the slide, the Ontario regulatory landscape is fairly crowded. And the complicated Ontario regulatory regime really requires that developers take a strategic approach to launching a power project in Ontario so that it covers all the bases. And we're fortunate to have great depth of experience in negotiating not only the Ontario landscape but also the regulatory regime and landscape in the other provinces where we practice as well.

With respect to the Ontario IPP market. As I mentioned, in Ontario the Ontario Power Authority, or their OPA, is responsible for coordinating the RFP process for new independent power projects. Long-term power piece contracts that are typically 20 years long – and they're awarded by the OPA after it assesses the bids that the OPA receives in the RFP process. There is a significant amount of independent power project investment required in the next 15 years in Ontario. The Ontario government has repeatedly expressed its intention to decommission its coal power plants in a move to cleaner forms of power generation. The initial timelines that were set for decommissioning these coal plants has proven to be really unrealistic. The Ontario power consumption has increased over the past few years and new generation has not been brought on-line fast enough to permit the rapid decommission of the coal plants that was really originally planned. Currently the Ontario power system is struggling to maintain reliability during the peak summer months. So I

don't think that they have really been able to decommission the plants nearly as fast as they had originally planned.

In June of 2006 there was a ministerial directive to increase renewables, including wind power generation, to 2007 megawatts by 2010 and to 15,700 megawatts by 2025. In August 2007 the Ontario provincial government confirmed its intention to procure an additional 500 megawatts of renewable energy by issuing a directive to the OPA to issue an RFP for renewables by the end of the year. However, the Ontario – Ontario is currently in the middle of an election. So if the provincial government changes, the new government may re-examine the procurement additional wind power and other renewable power in Ontario. The election will be over in a few weeks, so we'll have a better idea of whether or not there will be any changes in the direction of the OPA's renewable power procurement plans shortly after that I expect.

Currently, Ontario has 415 megawatts of installed wind power generation capacity with six projects in development totaling another 860 megawatts. There are some estimates that Ontario could economical support up to 8,700 megawatts of wind power generation. However, with some of these – the better wind resource locations in remote areas, power project sponsors will need to be – will need to deal with many of the same construction and operational issues that have been raised and experienced in Quebec.

(Wally), you're now going to discuss environmental and interconnection issues in Ontario.

(Wally Braul): Two or three defining features here. One is that there's an environmental assessment screening process which exempts projects that are less than two megawatts. And this is

probably attractive for the smaller wind power players. We don't see that exemption elsewhere in Canada. Interconnection is a fairly complex piece of business in Ontario. That's what our clients tells us. And then when one compares to other jurisdictions that's born out. The – another – the last thing I'll say about interconnection is that the Ontario Energy Board, one of the many players on a crowded landscape, has fairly aggressive powers that they can use. They can in fact require a system expansion and they can do – order other matters as well. This is the sort of thing we don't see in other jurisdictions. So that defines Ontario to some degree.

I'll touch on in the next some sitting considerations. On private lands, the same problem arises. That is obtaining municipal approvals. Ontario is one jurisdiction that has attempted to rein in municipalities who have tried other effectively prohibit wind farms in their local jurisdictions. So there is some ability to obtain an exemption in the face of a municipal zoning requirement. Crown lands. There's a reasonably workable process on that side of the equation. There is two phases and two sets of tenures, one dealing with exploration and one with development, not until the Quebec system for crown land as well.

(Joe), you're based in Alberta I'll hand it over to you now to talk about – introduce Alberta.

(Joe Palin): Thanks, (Wally). Moving from Ontario west to Alberta and skipping over

Saskatchewan and Manitoba. Alberta has 11,400 megawatts of installed power generation capacity. Of this, 51 percent is coal fired, 37 percent natural gas fired, and six percent of the install capacity is alternative energy based. Alberta is one of the first provinces in Canada to deregulate its power industry and aggressively began to deregulate in the mid 1990s. The Alberta electric system operator manages the spot exchange – the spot market exchange

which sets the hourly pool price. The IECO also administers the transmission system and ensures free access to the transmission system.

Utilities continue to own the transmission lines in Alberta, and they're paid a regulated fee for the transmission of power through the portion of the wires that they own. The Alberta Energy Utilities board, the AEUB, regulates the transmission rates for – transmission rates and terms of service for the customers. The AEUB also approves new facilities construction and ((inaudible)) connection including all electrical generation and transmission facilities in the province of Alberta.

Turning now to the Alberta IPP market. There are – there are no RFPs for power generation facilities in the province of Alberta. Project sponsors must enter into direct sales contracts with power consumers, enter into contracts for differences or sell their power generation on a merchant basis to the Alberta power pool. The cost of transmission in the province of Alberta is paid for entirely by load customers. There is currently approximately 443 megawatts of installed wind power generation capacity in the province and another 240 megawatts of capacity is under construction. There are additional applications for interconnection of another 1,100 megawatts of generation capacity in the advanced stage of the application process with 1,330 megawatts in the early stages of the application process.

Notwithstanding that Alberta has a highly deregulated market, all is not well for wind power in Alberta. In April 2006, the IECO issued a letter saying that after studying the grid reliability issues in Alberta, the Alberta system could only handle 900 megawatts of wind power generation or approximately 10 percent of the demand. The issuance of this letter has been extremely controversial. The wind power industry does generally not accept the

technical basis for the conclusion or the authority of the IECO to put a limit on wind power by saying that only 900 megawatts can be tied in. In addition, this has raised many, many market and ((inaudible)) issues as to who will be allowed to tie in up to the 900 megawatts. The IECO has since emphasized that this is a temporary position and that it's working on solutions to facilitate greater market access of wind power generation in Alberta to the grid.

But you have to remember really that the IECO is not a regulatory authority. It's not an agent of the crown. Its policies are subject to the Alberta Energy Utilities Board scrutiny and there's some question whether the IECO could implement a type of policy that might distort the three market – the free market in electricity in Alberta. Now, that said, the IECO has a duty to keep the grid reliable. So there – it's going to be interesting to see how this all develops. As a practical matter, the IECO seems to be working on ways to find a solution to the issues that it's been – that have been identified. So hopefully the IECO is going to resolve the problems and wind power developers can have the uncertainty that they currently face removed.

(Wally), you're now going to discuss some environmental issues applicable in Alberta.

(Wally Braul): I'll touch on three notable points very briefly and – that apply to Alberta. The wind resource in Alberta's found mostly in the south of the province on private lands, unless the – the situation in Quebec and Ontario. They're not found on crown land. Therefore wind power proponents must obtain local and municipal planning approvals. And that at times can be fairly difficult and controversial. The – another interesting approach taken by Alberta is that the environmental assessment procedures and requirements only apply to transmission

facilities. They do not apply to wind power generation operations. So there's a – there's a line drawn in the sand on the environmental assessment requirements.

Now, I'll pass over to (Ron). (Ron)'s going to introduce the context in British Columbia.

(Ron Stuber): Thanks, (Wally). Moving across to the west to British Columbia. British Columbia is a hydroelectric dominated region making up 80 percent of generation capacity with interconnection to the U.S. Pacific Northwest and Alberta. British Columbia has a generating capacity of over 14,000 megawatts. The British Columbia Utilities Commission, the BCUC, is the independent regulatory agency of the provincial government. The BCUC's primary responsibility is the regulation of the energy utilities to ensure that the rates charged for energy are fair, just and reasonable and that utility operations provide safe, adequate and secure service to customers. The BCUC also supervises contracts between utilities and large suppliers, including independent power projects.

BC Hydro is a traditionally vertically integrated provincial crown corporation and has traditionally serviced most of British Columbia. Since the 1990s, a partial market restructuring has been undertaken that provides for wholesale access to the British Columbia grid. IPPs are encouraged to develop new generation while BC Hydro is generally restricted to improvements at existing plants. In British Columbia, large electricity consumers are able to choose their generation supplier rather than be restricted to supply through their traditional local distributor, which in most cases is BC Hydro.

The transmission, planning, operating and managing components of BC Hydro were spun off with the incorporation of the British Columbia Transmission Corporation, BCTC, in

2003 as a wholly owned crown corporation of the province. In addition, BC Hydro's energy marketing subsidiary, (PowerX), is a buyer and seller of wholesale energy products and services in markets across North America. And it's the largest importer and exporter of electricity in the Pacific Northwest.

Turning to the IPP market in British Columbia. BC Hydro has been a net importer of electricity since 2001, and with demands expected to grow significantly in the next 20 years, BC Hydro anticipates an estimated gap between supply and demand of 25 percent to 45 percent. Therefore, BC Hydro has been active in purchasing electricity from independent power projects. BC Hydro does this by undergoing periodic open tender bids for the supply of electricity. Once BC Hydro and successful bidders have signed an electricity purchase agreement, the agreements must be filed with and approved by the BC Utilities Commission. BC Hydro evaluates tenders based on criteria including availability, reliability of the resource, proven technology, and competitive pricing. The last open tender was the 2006 open call for power which constitute a series of bids by IPPs to supply collective at least 2500 – 2500 gig watt-hours per year to be on-line by the year 2010. In total, 38 contracts were awarded with an average contract term length of 30 years and a production of 7,000 to gig watt-hours per year of electricity by 2010, much more than was initially requested.

The contract include 29 hydro, three wind, two biomass, two waste heat, and two coal biomass projects. The projects range in size from under one megawatt to 200 megawatts. These projects are expected to generate approximately \$3.6 (million) in private sector investment. Now, of the three wind projects that are proceeding, they amount to just over 325 megawatts, which will be a significant increase in install capacity for wind since at the moment there is no install capacity for wind. So this is certainly an area that is expected to

grow significantly. And indeed BC Hydro will be making a further call for power later on this year and market expectations are that this will include significant wind projects. And we should know a bit about this since we're working on a number of those projects.

And I'll turn over now to ((inaudible)) discuss a little bit about interconnection. The timing of this is critical to developing a successful project. And in particular it has to be coordinated with bidding in to obtain a power contract and also ordering turbines and fitting in with the limited construction windows that (Joe) has mentioned relate in other provinces. The same applies to wind and other projects in BC, particularly in the northern parts of British Columbia. The interconnection process in British Columbia requires careful planning since, as I said, location and cost of interconnection are important factors to the success of a project. In British Columbia we now have an open access transmission tariff which has a standard generator interconnection procedure which has streamlined the previous regime. The standard procedures now involve application and study processes of interconnection customers which interconnect their generating facilities to the grid or to make modifications to their existing facilities. Once the application and the study processes are completed, interconnection customers are required to execute a standard generator interconnection agreement with BCTC. This agreement governs the obligations and requirements of BCTC and the interconnection customer as long as the customer's generating facilities are interconnected with BCTC's transmission system.

Now I'd like to pass the floor over to (Wally) who will talk a little bit further about environment and aboriginal issues in British Columbia.

(Wally Braul): While developers turn to interconnection and transmission agreement that (Ron) described, they must also consider environmental assessment. In British Columbia there is a process, and one of the – for environmental assessment, and the threshold issue is whether the project will exceed 50 megawatts. In that case, the project is a so-called reviewable project, which essentially means that no permitting or licensing can happen for that project until there is a certificate – an environmental assessment certificate issued. So the good news behind that is that the environmental assessment process tends to be a paper process to begin with, and then in turn the environmental issues that are identified on the way to getting your certificate are then rolled into and considered in the permitting and licensing. So one shouldn't conclude that there's a separate long and extract – long process involved for licensing and permitting. Most of the environmental issues are identified early on. It's not fully a one-stage – one window approach, but certainly the licensing and permitting is much easier after the fact.

The other key issue that one must face up to as a developer in British Columbia is the environment matter – rather the aboriginal question. Unlike other provinces that we discussed, there is no treaties. And there is – that is many first nations have not entered into an arrangement with the crown which confirms or formalizes the rights that aboriginal groups have. There are many asserted rights across British Columbia and throughout the crown land area. The – as a result of some 20 years of case law, the courts have essentially set down as couple of principles that have to be considered at the outset. One is that the crown, the federal government and the provincial government, must “consult” if the – if the project has a potential adverse effect on asserted first nation rights. So it's a pretty low bar. Once that duty is triggered, then in turn the crown must have these consultations. And the crown in turn as a result of those consultations may conclude that it has to accommodate whether

through project design, economic benefits to the first nation, or mitigation of impacts. They must take some offset measure to accommodate those asserted first nation rights. Does the industry sit by idly and passively watch this consultation and accommodation process? No. The industry usually engages the first nation directly and plays a supportive role in the crown consultations. So this is a big factor for not just wind power proponents but others. We typically get involved with first nation organizations to reach accommodations. An important accommodation is economic development. You know, we are often involved in joint ventures in wind and other projects, allowing for some measure of involvement by the local first nation and that – it goes a long way to resolving the aboriginal issues in British Columbia.

I'll turn now to the next slide and touch briefly on some sitting considerations. This is a fairly straight forward matter in British Columbia. British Columbia has adopted by and large many features of the crown land policies, the tenure arrangements now found in Quebec and Ontario. And so the slide sets out some of the feature and they're fairly straight forward. These no equivalent for private lands – private lands. Access is left to private negotiations.

(Joe), I wondered if you could now turn to the generic investment and tax issues that apply.

(Joe Palin): All right. Well, I'd like to begin this part of the program with some very basic Canadian income tax principles. First of all, resident Canadians are taxed on their world-wide income. So, for example, corporations incorporated in Canada are considered to be residents, and as such those corporations that are incorporated in Canada would be taxed on their world-wide income. Non-residents are generally only taxable on business income in Canada,

employment income in Canada, to the extent they've got any, and gains from Canadian property. Non-residents are also subject to a 25-percent withholding tax on passive income from Canada such as interest and dividends from corporations. But these – this 25 percent is reduced under the U.S.-Canada tax treaty.

Corporate tax rates in Canada are based on a uniform federal tax rate and local provincial tax. The combined federal and provincial tax rates are between 32 and 39 percent in total. In Canada there's also a federal value added tax known as the goods and services tax, or the GST. The GST applies to all – generally to all commodities sold in Canada at the rate of six percent. The GST applies to the purchase and sale of electricity, and as such a power generator would be obligated to collect goods and services tax at the rate of six percent on the power it sells and remit the tax in collects to the receiver general. In addition to the goods and services tax, all provinces except Alberta are – have a retail sales tax that varies from province to province between six percent and 10 percent.

So now we'll turn to some tax based incentives for renewable energy projects in Canada. And taxpayers that are carrying on business in Canada allocate their capital assets to different capital asset pools known as capital cost allowance or CCA pools. The categorization of assets into different CCA pool is prescribed by the Canadian income tax act. Taxpayers are allowed to depreciate the capital property included in each CCA pool and deduct the depreciate against their income. Each CCA pool has a prescribed percentage at which the taxpayer can depreciate the remaining or undepreciated capital cost of the asset in the pool. The Canadian income tax act provides for accelerated depreciation for certain equipment and systems that are used in renewable power generation. Capital properties that can be included in class 43.1 can be depreciated at the rate of 30 percent per year. And for the

capital property that can be included in class 43.2, it can be depreciated at the rate of 50 percent per year. There is a detailed technical manual that the Canada revenue agency has established, and it's required to be used to determine which assets of a power generator can be include in class 43.1 and 43.2. In some cases – and we recommend to our clients that in – in every case that they get an advanced income tax ruling so that the taxpayer can confirm that the proposed allocation is acceptable to the Canada revenue agency and they don't get reassessed later on for including assets in the class 43.1 and 43.2 pools when they ought not to have or when the Canada revenue agency disputes the classification.

In order to qualify for accelerated depreciation, the assets must form a system that produces power from renewable energy sources such as wind, solar and biofuel. Specific wind assets, for example, that are eligible for accelerated depreciation include wind turbines, towers, batteries, and the transmission systems up to the interface with the distribution system or the local utility.

Moving on to the next slide. In addition to the accelerated depreciation on eligible renewable capital property, we have the Canadian Renewable and Conservation Expense, or CRCE. The Canadian Renewable and Conservation Expense is a Canadian federal government program whereby 100 percent of the intangible expenditures for pre-production development of renewable energy expenses can be deducted from a taxpayer's income. The federal government allows full deduction of these expenditures in the years – in the year that they are incurred and permits these expenditures to be carried forward indefinitely. CRCE eligible expenses for wind farms include pre-feasibility and feasibility studies, wind studies, and negotiation and site approval cost, site prep costs incurred in order to transmit power, and the cost of acquiring and installing test wind turbines.

Now, in order to maximize the CRCE deductions, some of the projects that I've been involved in have structured the construction so that the wind farm project is completed in two stages. The test turbine phase is the phase where some test turbines are erected and those are usually limited to less than 10 percent of the overall wind farm. And the other infrastructure is constructed as well. So you've got the turbines, the test turbines up, and you've got the collection system and the other infrastructure.

Phase II would occur after the completion of the phase I work. And the remaining wind turbines would then be tied into the wind farm after the completion of the test period, which is usually between 90 and 180 days. So by actually phasing the construction, you maximize the CRCE deductions that are available for the project.

As I mentioned, the CRCE deduction is available for eligible expenditures. There are certain CRCE ineligible expenses, and some of these include the cost for the acquisition or the use of the land, finance and interest charges and expenses related to administration and management. Now, although the CRCE expense deduction is helpful for established businesses that have income, the CRCE expense deduction is not at all helpful for start-up developers that don't have income to shelter the – shelter with CRCE expense deductions. In order to help startups raise capital, the federal government through the income tax act created a concept of a flow-through share. And a flow-through share is a share of a principal business corporation that's issued under a flow-through share agreement. Under the flow-through share agreement the corporation agrees to incur eligible expenditures such as CRCE expenditures and agrees to renounce or release these expenditures to the holders of the shares. The holders of the flow-through shares are then entitled to deduct the eligible expenditures

such as the CRCE expenditures from any form of income that the flow-through shareholders may have. The corporation is obligated to incur the eligible expenditures within 24 months after the date the flow-through shares are issued so they can't sit on the cash.

Through the issuance of flow-through shares, investors are entitled to claim deductions that would otherwise be available only to the issuer. So really the combination of the CRCE deductions and the flow-through shares provide significant tax advantages to renewable power project developer.

Now, just to recap. In terms of the incentives that are available for wind power and renewable power producers, we have the Eco Energy – Eco Energy for Renewable Power program that provides an incentive in the case of wind farms at the rate of \$10 per megawatt hour. We have accelerated depreciation for class 43.1 and 43.2 assets at the rate of 30 percent and 50 percent respectively. We have CRCE expenditure deductions and we have flow-through share arrangements to flow through the CRCE expenditures to individual shareholders. All of which provide significant incentive to renewable power generation developers in Canada.

That wraps up my comments on the tax based incentive portion of our presentation. I'll now turn the floor back over to (Wally) for some concluding remarks.

(Wally Braul): Thanks, (Joe). I'd like to wrap up with a few observations that I often hear from wind clients. For many, the legal terrain seems, at least at first blush, highly complex and unpredictable. One client, for example, told me that first he wondered how he would work through the black holes of aboriginal law and interconnection agreements. But with some

planning, that client is now doing business and doing well. He sees this as a high risk but high reward game. The one defining features that I see of successful – in successful client is that they strategize from the outset using experienced advice on what works and what doesn't. There is no template in this game. Clients especially value a nuanced understanding of quickly changing the requirements, not just new rules and policies, but what regulators are in fact contemplating for tomorrow. Regulators expectations are changing as we speak, and we try to monitor that as a closely as we possibly can.

From the outset we advise our clients to use an evolving plan, a regulatory action plan, if you will, for getting approval from regulators and increasingly first nations. ((inaudible)) carefully consider any evolving plans, projects can be delayed indefinitely through trial and costly error.

Thanks for listening today. We've enjoyed it very much. There may be time for questions. And of course don't hesitate to contact one of us after today. Over to our moderator, (Paul). Thanks.

(Paul Gonzales): This has been a wealth of information from our panelists from (Fraser Milner and Casgrain) and we appreciate that. It's also a new body of acronyms. At this point there have been no questions presented, but the contact information for our panelists is provided. There are links on the Web page to the firm, (Fraser Milner Casgrain), and to the biographies of each of our panelists as well as a link to the evaluation form. We would like to thank our sponsors at the firm and the Energy Committee of the Association of Corporate Counsel for sponsoring this Webcast and remind everyone to please complete the short evaluation form. At this time you may now disconnect.

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