

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRILLIUM POWER WIND CORPORATION

Plaintiff

- and -

HER MAJESTY THE QUEEN, in right of the
Province of Ontario, as represented by the
Ministry of Natural Resources, the Ministry
of the Environment, and the Ministry of Energy

Defendant

STATEMENT OF CLAIM

(Notice of Proceeding against the Crown dated May 19, 2011)

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING but are unable to pay legal fees, legal aid may be available to you by contacting your local legal aid office.

DATED at Toronto, Ontario, on September 28, 2011.


LOCAL REGISTRAR
393 University Avenue, 10th Floor
Toronto, Ontario. M5G 1E6

TO: MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office - Civil
McMurtry Scott Building
720 Bay Street, 8th Floor
Toronto, Ontario. M5G 2K1

CLAIM

1. The Plaintiff claims:
 - a. Damages for the confiscation of its property and intellectual property, the confiscation of its assets, reimbursement of its costs thrown away, and compensatory damages, in the amount of Two Billion, Two Hundred and Fifty Million Dollars (\$2,250,000,000.00);
 - b. Pre-judgment interest pursuant to the *Courts of Justice Act*;
 - c. Costs of this action on a substantial indemnity basis.
2. The Plaintiff is a corporation incorporated under the laws of the Province of Ontario with its head office at Toronto, Ontario.
3. The Plaintiff originated as Osiris Energy Corporation which was incorporated in May, 2002. Trillium Power is a clean energy developer specifically focussed on offshore wind development. Its principals have been engaged in offshore wind power analysis at several areas in the Great Lakes, including areas southwest and west of Main Duck Island in Lake Ontario since 1996. Trillium Power was incorporated for the express purpose of developing offshore wind electricity production sites within Ontario's Great Lakes.
4. The Defendant Province of Ontario, as represented by its three named Ministries, were directly involved in dealings with the Plaintiff, and the unlawful revocation of the Plaintiff's status as Applicant of Record and exclusive registrant for wind power development on Crown land southwest and west of Main Duck Island, pursuant to the *Green Energy Act*, 2009, and its related statutes and regulations.
5. Trillium Power states that its principals first began exploring the concept of offshore fresh water wind power development in the area near Main Duck Island

in Lake Ontario during 1996, by reviewing wind data from the lighthouse on Main Duck Island, with analytic comparison to mainland Ontario locations.

Concurrently, a review began of the Ministry of Natural Resources Crown Land Regulations, as they then existed, a process which continued through 1999, with updating and strategic analysis for the possibility of seeking Crown leases for wind power electricity generation on offshore sites in Ontario.

6. In 2000, the Plaintiff's principals made proposals to the civilian MNR Policy Advisory Committee to allow the use of Crown land for the development of green energy in Ontario, and promoted the development of financial incentives to promote green energy in Ontario. Those proposals were continued and re-submitted in 2001, which led to the incorporation of Osiris Energy Corporation in 2002, with further financial modelling and wind resource modelling in re-submitted proposals to allow the use of Crown land for the development of green energy through the MNR Policy Advisory Committee.
7. During 2003, Trillium Power made revisions to proposals and re-submissions seeking the development of regulations to promote green energy and to develop financial incentives to promote green energy in Ontario, together with the commencement of a second stage of detailed financial modelling.
8. In March, 2004, the Ministry of Natural Resources issued a Site Release Application Notice, and thereafter in April and May, 2004 Trillium Power (Osiris Energy) made its formal Application to the MNR for the Main Duck Island site, under the MNR Site Release Program. This site was identified by the Plaintiff as TPW1.
9. In May, 2004, the MNR acknowledged receipt of the Plaintiff's Application under File No. WP-2004-47, and further issued confirmation of the process letter and wind testing activities, including the MNR's pre-release screening meeting which took place on August 10, 2004 at MNR offices in Kingston.

10. The Plaintiff continued its process of dealing with MNR following that screening meeting and through the balance of 2004, providing information as requested by MNR. Ultimately in October, 2004, Trillium Power sent payment as requested by MNR for the MNR Site Release and specifically, for the grid cells identified in that Application. MNR confirmed receipt of payment for all of the grid cells which Trillium Power had applied for under the MNR Site Release Program. As well, MNR acknowledged that Trillium Power had selected the MNR's option of a non-competitive process of site selection.
11. In 2005, Trillium Power applied for a second tranche of grid cells adjoining the TPW1 site, under the MNR's 2005 Site Release Program. It supplied the requested information and responses to MNR to meet the requirements to receive a land use permit.
12. In late 2005, Trillium Power engaged independent third party wind analysis of the wind data at the TPW1 site on Main Duck Island, which ultimately led to a meeting in November, 2005 at the Ministry of Energy, confirming the viability of the proposed site which was directly on an offshore bedrock shelf. The identification of, and existence of underwater bedrock at relatively shallow depths in the middle of Lake Ontario, approximately 35 kms. offshore from Kingston, made Trillium Power's proposed wind power development site TPW1 the most desirable offshore wind power generation site within Ontario.
13. In December, 2005, following that meeting at the Ministry of Energy, Trillium Power received a confirmation letter from the MNR advising that it was the Applicant of Record for WP-2004-47 and WP-2005-10. Pursuant to MNR's published policies and procedures, Applicant of Record status granted Trillium Power specific status and process which would ultimately lead to contractual status as a wind power supplier, subject to Trillium Power's compliance with established steps.

14. Throughout 2006, Trillium Power continued discussions and meetings with various parties including the Ministry of Energy, the Ministry of Natural Resources in Kingston, and the Mohawks of the Bay of Quinte. Trillium Power advanced the process of its efforts to seek financing for its proposed offshore wind development.
15. In November, 2006, in the run up to the October, 2007 election, without any prior discussion of issues, the MNR advised Trillium Power that MNR was immediately imposing a unilateral moratorium on offshore wind development to enable it to conclude environmental and social studies for the Great Lakes. No similar moratorium was imposed by states in the United States on their side of The Great Lakes.
16. At a subsequent meeting with MNR seeking to question the basis of the moratorium, Trillium Power was advised that the moratorium was a consequence of the efforts by other Applicants for near-shore wind installations, within sight of land, which were creating political pressure. Throughout this process, Trillium Power encouraged the responsible Ministries to recognize the vast distinction between near-shore power generation and offshore power generation, and that Trillium Power's proposed site raised none of the objections which were being advanced against proposed near-shore locations along the Lake Erie shoreline.
17. In January, 2007, Trillium Power also met with MPP Bruce Crozier at his Queen's Park office, to discuss the moratorium on offshore wind development in The Great Lakes. Crozier had been a strong proponent of the moratorium by reason of public concern regarding near-shore sites in Lake Erie. Crozier advised Trillium Power's representatives that the 2006 moratorium had been imposed in response to public concerns of the near-shore sites, and the impact of opposition in the upcoming 2007 provincial election. Crozier stated that he had no concerns about Trillium Power's offshore sites.

18. Throughout 2007, Trillium Power diligently engaged in activities seeking to establish the important contribution of wind power manufacturing, and the interest of wind power turbine manufacturers to use Ontario as a manufacturing base to supply North American sites. Trillium Power's activities positioned Ontario as the leading North American jurisdiction for offshore wind development. At the request of John Gerretsen, MPP for Kingston and the Islands, Trillium Power initiated discussions with St. Lawrence College to develop better participation in the developing sustainable energy sector.
19. In mid-August 2007, prior to the October provincial election, Trillium Power was approached by a former senior political staffer who had worked in the Office of the Premier, and remained well connected to the Ontario Liberal Party. Trillium Power was advised to stay quiet during the upcoming election regarding the moratorium, as it was the Ontario Government's intention to remove the moratorium after the October election. As a consequence, Trillium Power agreed that it would raise no public objection to the moratorium.
20. Following the provincial election in October, 2007, Trillium Power was advised on January 18, 2008, that the moratorium for offshore wind development in Ontario's Great Lakes had been lifted. Trillium Power immediately proceeded to engage engineering and environmental experts to obtain engineering and environmental reports for further project development with the Government of Ontario and interested investment institutions. The MNR provided Trillium Power with the process outlining payment for the MNR Site Release Program locations under WP-2005-10 and the process for securing the second tranche of the TPW1 site and its Applicant of Record status for that secondary site.
21. In January, 2008, when it lifted the moratorium, the Government of Ontario publicly stated that, amongst various other completed activities, it had completed all analyses of "Lakes Erie, Huron and Ontario including depth, wind speed, and other social and ecological values."

22. In February, 2008, Trillium Power made submissions for additional grid cells for offshore wind sites under the MNR Site Release Program in other offshore areas of Lake Ontario, Lake St. Clair, and Lake Superior. Trillium Power made no application for, nor had any interest in near-shore sites.
23. In Spring, 2008, Trillium Power initiated and engaged in a proposed partnership with St. Lawrence College to partner with them to create the first North American post-secondary institution to provide on-shore and offshore wind technician training for energy jobs, with the expectation of manufacturing wind turbines in Ontario.
24. In June, 2008, Trillium Power initiated a partnership with the First Nations Technical Institute as the first aboriginal agreement in the world for clean energy technology training. In the same month, Trillium Power announced an offshore wind supply chain consortium for Ontario, and hosted 200 invited guests from around the globe who were attending the World Wind Energy Conference in Kingston, attended by the Minister of Natural Resources, Donna Cansfield.
25. In July, 2008, Trillium Power entered into an agreement with Golder Associates, a globally recognized environmental consultancy that has done extensive work for the Government of Ontario to provide a full analysis of environmental services for the TPW1 offshore wind location, and had many meetings with various entities, including the Ontario Ministry of Economic Development and Trade to explore the establishment of offshore wind turbine manufacturing and supply chain in Ontario.
26. In August, 2008, Trillium Power participated in the first meeting of an inter-Ministry Committee that included all relevant Ontario Ministries and Federal Departments with the express intention of moving forward in full force for the development of offshore wind in Ontario. The Inter-Ministry Committee was set

up by the Ontario Government to assist in the prudent acceleration of offshore wind development in Ontario. Trillium Power was, and up to February 11, 2011 remained, the acknowledged industry leader in offshore wind development in The Great Lakes.

27. In September, 2008, the environmental process of avian monitoring was initiated by Golder Associates (bird and bat monitoring) and subsequently, Golder Associates undertook aquatic studies at the TPW1 site. The planning for these studies was approved by both relevant federal departments and Ontario ministries.
28. In December, 2008, the most advanced combination of wind monitoring equipment was installed on Main Duck Island by Trillium Power, with the approval of Parks Canada and the Canadian Coast Guard. The LiDAR and Metmast that were installed by Trillium Power were the first ever in North America, and represented the highest possible level of global best-practice.
29. In 2009, Trillium Power continued its discussions with the Ministry of Energy regarding the important advantages for Ontario by developing its offshore wind potential in the Great Lakes, and received confirmation from MNR confirming Trillium Power's exclusivity for the grid cell applications that comprised the TPW2 site, the Great Lakes Array site, and the Lake Superior Array site. Trillium Power provided expert offshore wind industry data which was considered by the Ministry of Energy and led to the *Green Energy Act* and *Feed-In-Tariff*.
30. In February, 2009, Trillium Power issued a press release, enthusiastically supporting Ontario's *Green Energy and Green Economy Act* which was widely noted in the media. In March, 2009, Trillium Power was invited as a guest of the Minister of Finance and Minister of Economic Development and Trade to be a keynote speaker at the Powering the Future Summit held in Windsor.

31. In April, 2009, Trillium Power was the only Canadian entity invited to present at the Infocast North American Offshore Wind Conference in Washington, D.C., and in the same month, at the invitation of the Italian Government, hosts of the G8, Trillium Power represented Canada's low carbon economy at the G8 Conference in Siracusa, Italy, with Trillium's President and CEO, John Kourtoff, represented Canada, the Ontario *Green Energy Act* legislation, and Ontario's drive for sustainable jobs from the development of its clean energy sector.

32. In May, 2009, the *Green Energy Act* (GEA) was passed into Ontario law, and Trillium Power's President, John Kourtoff, received an invitation from the Minister of Energy to be present in the Gallery at Queen's Park to view its passing. Trillium Power was quoted in the Government of Ontario press release on the passing of the GEA. Subsequently in 2009, Trillium Power continued to advance the TaiWind Consortium to develop clean energy and renewable energy jobs in Ontario and made various presentations regarding the Ontario legislation, including a presentation in June, 2009 to the Great Lakes Commission's Great Lakes Wind Collaborative in Milwaukee, Wisconsin.

33. In July, 2009 and thereafter, Trillium Power received further wind measurement reports on the wind resources at the TPW1 offshore site, providing continuing proof of the uniqueness of Trillium Power's site in the Great Lakes. Reports issued by financial analysts at that time noted Ontario as being in the lead in North America for offshore wind, and specifically noted Trillium Power's projects including TPW1, as the leading driver for developing Ontario's offshore wind sector.

34. As a result of Trillium Power's efforts, Wind Energy Updates' first conference in North America took place in Toronto with Trillium Power's President, John Kourtoff, as keynote speaker and Chair of the conference.

35. In October, 2009, the MNR stated that it had temporarily stopped accepting further applications for proposed wind energy projects, so that it could process the applications currently in progress.
36. In late 2009, Trillium Power began preparing its overview document of offshore wind potential in Ontario's Great Lakes including energy potential, environmental benefits and social and employment benefits. That report, released in January, 2010, was widely noted by both national and international media, showing that the offshore wind sites already applied for in Ontario could generate 20,700 mw of clean, sustainable and affordable power for Ontarians.
37. In January, 2010, Mr. Brad Duguid was appointed Minister of Energy and Infrastructure, following the departure of Minister George Smitherman who had been the architect of the *Green Energy and Green Economy Act*.
38. In February, 2010, Trillium Power issued a media release advising that it had signed a Memorandum of Understanding designating Vestas Offshore as its preferred supplier of turbines for its offshore wind developments, with an aggregate development cost of \$14.8 billion. Also in February, 2010 Trillium Power was the only Canadian entity invited to present at the Infocast Wind Power Finance and Investment Summit in San Diego, California, where it explained and publicized the benefits of the unique Ontario Ministry of Environment six month guaranteed approval timeline.
39. In July, 2010, Trillium Power had its first public open house consultations regarding the TPW1 location in Napanee and subsequently, in Picton, with good public support. Trillium Power had previously met with the Mohawks of the Bay of Quinte to assist their members in participating in the sustainable jobs generated by the development of Trillium Power's TPW1 site and develop a positive model and process of acceptable consultation with aboriginal groups.

40. In July, 2010, Trillium Power presented at Infocast First Fresh Water Conference (Offshore Wind and the Great Lakes) held in Cleveland, Ohio, and subsequently began the process of discussing geo-technical and geo-physical best practices for offshore wind with the Ontario Ministry of Tourism and Culture.
41. In August, 2010, Trillium Power was invited to present before the Great Lakes Legislative Caucus, a twice yearly meeting of U.S. and Canadian Federal, State and Provincial legislators from jurisdictions bordering the Great Lakes. Trillium Power presented Ontario's case, and the importance of cooperation and transmission interconnections beneath the Great Lakes.
42. In August, 2010, the Ministry of the Environment advised that the TPW1 project description had been reviewed and accepted by the Ministry, and that its processing was a high priority for the Ontario Government.
43. In September, 2010, Trillium Power completed its first of several small private equity financings and had meetings with several international entities such as Mainstream Renewable Power and Huaneng, China's largest utility, to discuss their strong interest in offshore wind development in The Great Lakes.
44. In late September and early October, 2010 Trillium Power began engaging in discussions and meetings with Dundee Corporation concerning its possible interest in investing in offshore wind. That process continued into December, 2010, with Dundee and Trillium Power negotiating the broad outlines of an agreement for an investment by Dundee in the Trillium Power offshore wind portfolio. Also in December, 2010, Trillium Power entered into discussions and negotiations with the Independent Electricity System Operator of Ontario (IESO) for a transmission interconnection feasibility study for the TPW1 site, to link the Lennox transmission station with the proposed TPW1 offshore wind farm.

45. In December, 2010, the Conference Board of Canada released its report on the economic benefits of developing offshore wind power in Ontario. That report concluded that developing only 2,000 mw of offshore wind power in Ontario over a fifteen year period would generate at least 6,500 permanent jobs, 62,000 person years of construction employment, lift Ontario's GDP by \$5.5 billion, require capital investment of \$10.44 billion, and generate \$1.16 billion in taxes for the Federal and Ontario governments (excluding corporate taxes).
46. In January, 2011, Trillium Power submitted a request to transfer its TPW1 site to its wholly-owned subsidiary, TPW1 Offshore Wind Inc., in preparation for the proposed financing scheduled to close with Dundee Corporation soon after the transfer was effected. This was done as required by the regulations, and was considered a routine request, since the operating subsidiary was to be wholly-owned by the transferring entity.
47. Also in January, 2011, John Kourtoff, President of Trillium Power was the keynote speaker in London, England at the FIT Forum event at the Canadian High Commission that was arranged by both the Government of Canada and the Government of Ontario, which was followed up with meetings with international media located in the U.K. arranged by Laura Petty at Grayling, the Ontario Government's marketing agents in London, England.
48. On February 9, 2011, Trillium Power provided a courtesy communication to the Office of the Premier of Ontario and on February 10, 2011, Trillium Power also provided a courtesy communication to the office of the Minister of Energy, that Trillium Power intended to close its financing with Dundee Corporation on Friday, February 11, 2011, in order to provide financing to complete the development phase and up to the construction phase, the last step of Trillium Power's requirements under the legislation and regulations. By February 10, 2011, the final closing documents for signing were prepared by the respective solicitors for Trillium Power and Dundee Corporation, for Dundee's investment in TPW1 Offshore Wind Inc.

49. At 2:00 p.m. on February 11, 2011, the Government of Ontario issued a press release stating that offshore wind development would be subject to a moratorium. Subsequently at 2:24 p.m., Trillium Power received an e-mail from the MNR office in Peterborough stating that the Government had released "a decision on offshore wind power" without reference to what the decision actually was, or why it was being made. Links were included in that e-mail to the press release and to the Ontario Environmental Bill of Rights Registry (EBR), with no explanation as to what might be found at the EBR website.
50. As a result of searches at the EBR site, Trillium Power discovered two identical press release announcements from each of the Ministry of Natural Resources and the Ministry of the Environment. Both of those releases contain references to the "cancellation" of all offshore wind site leases, including any sites with Applicant of Record designations.
51. No prior notification was ever made to Trillium Power of the Defendant's decision to cancel or confiscate the offshore development sites. No letters or other communications were subsequently sent to Trillium Power from any of the Ministries involved, and MNR has never proposed to refund the monies paid by Trillium Power to obtain Applicant of Record status.
52. The Plaintiff states, and the fact is that the Defendant's actions were deliberately, purposefully and deceptively characterized to the public of Ontario as a moratorium, whereas what occurred on February 11, 2011 was a complete cancellation and confiscation of property rights, without warning or substantive justification.
53. The damage to Trillium Power by the Government's February 11, 2011 press release was profound and wide reaching. The closing of the financing transaction with Dundee did not occur, by reason of the Crown's confiscation of the very asset which was being financed, and Trillium Power was obliged to

effectively cease its corporate operations and organization, to lay off staff and to cancel contracts with advisors.

54. Trillium Power states that the Defendant's decision to issue the press release on February 11, 2011, was done in bad faith and was specifically a consequence of Trillium Power's prior notification of their scheduled closing of financing with Dundee Corporation, with the intent to stop the process and confiscate Trillium Power's offshore wind power development before it could be financed for approximately \$26 million dollars, to begin construction of its proposed initial site south-west of Main Duck Island, in east Lake Ontario.
55. Ironically, shortly after the Government's announcement, Trillium Power received a preliminary release from the Independent Electricity System Operator of Ontario (IESO) concluding that there was excellent transmission interconnection at Lennox TS, and recommending that TPW1 should connect into the 500 kV Ontario transmission 'backbone'.
56. Trillium Power states that the Defendant's alleged and stated justification for its actions was the asserted need for further scientific studies of fresh water sites for offshore wind power. Trillium Power states that this assertion was groundless, and even if some basis for such further studies existed, which is not the case, such studies would merely require a temporary moratorium during the completion of any further studies, rather than a wholesale confiscation and cancellation of all offshore wind sites in Ontario.
57. In any event, no such studies have been undertaken by the Defendant, and there was never any intention to conduct such studies, but merely to use the requirement of further study as an excuse for the political expediencies of meeting the criticisms of potential voters in swing ridings who oppose near-shore wind power installations in the 2011 provincial election. Further, Trillium Power states that despite pronouncements as proponents of wind energy pursuant to

the *Green Energy Act*, the Ontario Crown and the Ministers of the Ministries represented in this proceeding have decided to destroy offshore wind energy as a source of electrical supply in Ontario.

58. Trillium Power states that the Government's actions were precipitous and high-handed, and constituted bad faith Ministerial decisions for political expediency, with specific concern for geographic areas of the Province completely unrelated to the activities of Trillium Power. Those areas, predominantly near Lake Erie and Lake Huron, constituted ridings which were perceived by the Provincial Government as susceptible to loss in the forthcoming election.
59. Trillium Power states further that the Defendant knew and was well aware that there were no water quality issues relating to offshore wind development in relation to Trillium Power specifically, and in relation to offshore wind generally. Consequently, Trillium Power states and the fact is that the only science involved in the Defendant's February 11, 2011 decision was political science.
60. In July, 2011, Trillium Power was invited to present the status of offshore wind in Ontario and to explain the Government of Ontario's actions against offshore wind at the Infocast Offshore Wind Conference in Dearborn, Michigan. Trillium Power was then advised that a number of U.S. states bordering on the Great Lakes, such as Michigan, Wisconsin and Ohio, were expressing considerable interest in accelerating their proposed U.S. offshore wind installations on the U.S. side of the Great Lakes borders.
61. Trillium Power states further that the Defendant's decision and the cancellation and confiscation in February, 2011 was specifically targeted to stop Trillium Power's offshore wind project in Lake Ontario before Trillium Power had the financial resources to litigate with the Province of Ontario.

62. At the same time, the Defendant has consistently touted its actions, success and plans for green energy development in Ontario as a cornerstone of its policies, while never making public disclosure of its cancellation and confiscation of all offshore wind generation projects and Applicants of Record.
63. Trillium Power states that up to the date of cancellation, February 11, 2011, it had directly expended \$5,297,000.00 in advancing its TPW1 site in Lake Ontario. Trillium Power states that it made this investment based upon the Government's representations, Site Release Programs, and the *Green Energy Act*, and Trillium Power has relied upon those representations to its financial detriment. Trillium Power states that it has been sacrificed solely as a result of political expediency by the Defendant and the Ministers of the respective Ministries named herein.
64. Trillium Power states that the actions of the Defendant entitle it to recover its actual out-of-pocket losses and anticipated future loss of profits on the development of wind energy at the sites in respect of which site applications have been granted.
65. Trillium Power states that the future economic loss to Trillium Power, known to the Defendant or in the reasonable contemplation of the Defendant at the time of cancellation, amounts to \$2.25 billion.
66. Trillium Power states that it had met all criteria stipulated by the Government of Ontario through its agencies and Ministries in a timely manner, and specifically by way of the Ministry of Natural Resources' original documentation with respect to the Site Release Program and subsequent modifications.
67. Trillium Power states that the Defendant and its Ministries named herein have contravened the provisions of the *Green Energy Act*, 2009 and specifically, subsections 5(3) and 5(4). Pursuant to that Act, no restrictions may be imposed

at law that would prevent or restrict an activity with respect to a designated renewable energy project, except a restriction imposed by an Act or Regulation or prescribed By-laws.

68. Moreover, Trillium Power states that the authority of the Lieutenant Governor in Council pursuant to Part IV, Section 16 of the *Green Energy Act* does not apply to the construction of renewable energy sites in either on-shore or offshore locations, and that the Defendant's actions in cancelling offshore wind power were unlawful and without legal authority.
69. Trillium Power further states that the Defendant has contravened the provisions of the *Electricity Act*. No provision is made in that Act for the Defendant to cancel one form of wind power generation (offshore wind) in favour of another form of wind generation (on-shore wind), since the *Electricity Act* places all forms of renewable energy sources in the same category.
70. Trillium Power states that the Defendant is also in contravention of the Ontario *Water Resources Act*, R.S.O. 1990, as the Defendant has no knowledge or indication of any potential water quality issues with respect to wind power from offshore locations, justifying the cancellation and confiscation of the Plaintiff's site to conduct water quality studies or examinations.
71. Trillium Power states further that in all of the documentation and communications from the Ministry of Natural Resources to Trillium Power, the Ministry of Natural Resources represented that Crown land sites once granted may only be withdrawn from a developer or proponent under two conditions; firstly, if the developer or proponent fails to begin wind testing within the prescribed time; and secondly, if the developer or proponent fails to begin the approval process within the prescribed time. Trillium Power states that it undertook all of its activities within the prescribed times, and that Ministry communications sent to Trillium Power, including the authorized transfer from Trillium Power to its wholly-owned

subsidiary, TPW1 Offshore Wind Inc. confirm that its sites were in compliance with the timelines.

72. The Plaintiff states that under Ontario law its renewable energy projects were required to be matters of public record, with publication and dissemination of specific development site data and information, including public open house sessions. The Plaintiff's exclusivity for its chosen sites have been stripped from it without authority or compensation. The Plaintiff's proprietary knowledge, intellectual property and investment have now been made publicly available to potential future proponents of these sites, constituting confiscation by the Defendant, without compensation.
73. Trillium Power states that the Defendant owed it a duty of care as Applicant of Record, in a statutory and regulatory process by which the Defendant knowingly encouraged the pursuit of offshore wind power development at great expense to the Plaintiff. The actions of the Defendant therefore constitute negligent misrepresentation.
74. Trillium Power states further that in the events as described herein the Defendants had no legal authority and were not in the exercise of any statutory power or purpose. The Defendant's February 11, 2011 decision to terminate offshore wind power in Lake Ontario constituted an invalid decision, either made negligently or, in the alternative, made deliberately as a misfeasance in office by the Ministers of the Crown.
75. Trillium Power states further that the Defendant, acting through its Ministers, had actual intent to inflict injury and economic harm upon the Plaintiff, with knowledge of, or reckless indifference to the fact that their conduct was unlawful and that injury would likely occur.

76. Trillium Power states in the alternative to its claim in tort that the statutory provisions pursuant to which it pursued and obtained regulatory authority to pursue offshore wind power development were specifically intended and designed to provide incentives to invest and, as such, an intent to create contractual relations, which were all performed by the Plaintiff. Consequently, Trillium Power states that the invalid actions of the Defendant by cancellation through press release constituted a breach of that contract, done without legal authority or principle. Trillium Power states further that the Defendant's actions were a constructive taking of the Plaintiff's property, which requires compensation for the Plaintiff's economic loss and damage.
77. In the further alternative, Trillium Power states that it is entitled to make this claim against the Defendant on the basis of restitution for the Defendant's unjust enrichment at the expense of the Plaintiff, and the corresponding detriment to the Plaintiff without juristic reason for such enrichment.
78. Trillium Power states further that by reason of the Defendant's conduct, its high-handed and capricious decisions for political expediency, it is entitled to recover its costs on a substantial indemnity scale in these proceedings.
79. The Plaintiff proposes that this action be tried at Toronto, Ontario.

September 28, 2011

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Counsel for the Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in Toronto, Ontario

STATEMENT OF CLAIM

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SERVICE OF A COPY
ADMITTED THIS 18 DAY OF September
Crown Law Office (Civil Law)
MINISTRY OF THE ATTORNEY GENERAL
FOR ONTARIO
Per: *Donna Perle* 11:59am
720 BAY STREET
TORONTO, ONTARIO M7A 2S9