

July 6, 2011

By email, courier and RESS

Kirsten Walli  
Board Secretary  
Ontario Energy Board ("OEB")  
2300 Yonge Street, Suite 2700  
Toronto ON M4P 1E4

Dear Madame:

**Re: EB-2011-0027: Summerhaven Wind, LP ("Summerhaven")  
Procedural Order No. 8**

## **Introduction**

This letter is written with respect to Procedural Order No. 8 (the "Procedural Order"), which ordered Summerhaven to file with the Board its proposed final transmission line design including pole height, conductor locations and other relevant specification to allow Haldimand County Hydro Inc. ("HCHI") to have a final induction study carried out by its consultant Kinectrics no later than July 27, 2011.<sup>1</sup>

As addressed in greater detail below, the Procedural Order has the effect of deciding what are live issues between the parties without Summerhaven having had the opportunity to make submissions on these issues.

Summerhaven therefore respectfully requests that the Board rescind paragraph 3 of the Procedural Order so that the Board can determine these issues after considering Summerhaven's submissions. Summerhaven expects to be able to file its reply submissions (the "Reply Submissions") with the Board by July 27, 2011 as originally proposed.

## **The Issues in this Proceeding**

On June 22, 2011 Board staff and HCHI filed submissions in the above noted matter. Both of these submissions proposed numerous conditions to any leave to construct (LTC) approval granted by the Board.

Many of the proposed conditions put forward by Board staff and HCHI related to HCHI's future

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<sup>1</sup> The language of the Procedural Order is a significant departure from the language in Procedural Order No. 6, which states: "4. Summerhaven Wind LP shall file with the Board any reply submission it has with respect to Intervenor and Board staff submissions no later than Thursday, June 30, 2011."

distribution upgrades. Accordingly, in a letter dated June 29, 2011, Summerhaven requested that the Board grant additional time to submit its Reply Submissions and that HCHI provide the design information related to its future distribution system upgrade including pole locations, pole height, conductor locations and in-service date of upgrades (collectively, the “Additional Information”) so that it could respond to those proposed conditions. Summerhaven further indicated that, if HCHI was not able to provide the Additional Information by the requested date, Summerhaven would make stated assumptions with respect to HCHI’s proposed pole design and rely on these assumptions in drafting their Reply Submission. To be clear, Summerhaven was never proposing that the final design for its proposed transmission line should be addressed in the LTC application. Nor did Summerhaven ever concede that, if it was required to file a final design prior to obtaining LTC that this design would be evaluated by HCHI or its consultants by reference to HCHI’s potential future uses. Finally, Summerhaven did not concede that, if there are potential concerns, that those concerns should be addressed by HCHI or its consultants, as opposed to, for example, Summerhaven committing to mitigation measures. In other words, all of these remain live issues between Board staff, HCHI and Summerhaven and will be addressed in Summerhaven’s Reply Submissions.

### **The Effect of the Order**

Summerhaven respectfully submits that the Procedural Order adopts the position of Board staff in their submissions and determines, without the benefit of the Summerhaven’s Reply Submissions, that a final design is necessary for an LTC approval. The Procedural Order also adopts Board staff’s position that the induction study is necessary and that it should be carried out by Kinectrics, again without the benefit of the Reply Submissions. Summerhaven respectfully submits that it is unfair for the Board to determine substantive issues without Summerhaven having the opportunity to make submissions on these matters.

### **Conclusion**

For the foregoing reasons, Summerhaven requests that the Board rescind paragraph 3 of the Procedural Order so that the Board can determine the live issues between the parties after it has considered Summerhaven’s submissions on those issues.

Yours truly,

McCarthy Tétrault LLP

Per:

***Executed in the original***

Kristyn Annis