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RESS, COURIER & EMAIL

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Applications for Leave to Construct Transmission Facilities - Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (EB-2013-0040) and Kerwood Wind, Inc. (EB-2013-0041)

We are counsel to the Applicants in the above-referenced proceedings. On behalf of the Applicants, we hereby wish to reiterate their preference for a written hearing and to identify several concerns with respect to the various requests to participate in the proceedings that have been filed with the Board pursuant to the Notice of Application and Hearing dated March 11, 2013 (the "Notice").

1. Form of Hearing

In the Notice, the Board indicated its intention to proceed with the hearing of these matters by way of a consolidated, written hearing unless a party files an objection to a written hearing within the specified period and satisfies the Board that an oral hearing is necessary. Objections to the matters proceeding by way of written hearing have been filed, including from municipalities and members of the local community. In the Applicants' view, these objections do not raise compelling reasons for proceeding by way of an oral hearing and none of the objections demonstrate that the issues relevant to the proceeding cannot be thoroughly and adequately considered by way of a written proceeding.

In summary, the submissions received advocating for an oral hearing suggest (1) that the issues are complex and additional evidence is needed for the Board to reach a decision, and (2) that cross-examination would have a high probative value.

In response, the Applicant notes that the Board's interrogatory process provides an opportunity for all parties to seek further information and clarification from the Applicants with respect to matters that are relevant to the Applications and the pre-filed evidence. As to whether cross-examination would have a high probative value, it would be premature to determine this until after the Applicants have an opportunity to respond to written interrogatories concerning areas of the Applications that may be of particular interest to the parties. Without having reviewed

responses to written interrogatories, a determination at this stage in the proceeding would be premature. The Applicants also note that the number of observers and commenters, as suggested in one request, is not relevant to the form of the proceeding since those with observer or commentator status would not be eligible to participate in an oral hearing. Moreover, it is the Applicants' view that the interrogatory process is administratively efficient and procedurally clear for all parties. Accordingly, the Board should at this stage maintain its intended approach of proceeding by way of written hearing.

2. Concerns with Intervention Requests

As of April 2, 2013, which is the first business day following the close of the 10-day period after the publication or service date of the Notice, a total of 22 intervention requests were filed with the Board. The requests were filed by the three relevant municipalities, the IESO, Hydro One Networks Inc., the Middlesex-Lambton Wind Action Group, Inc. ("MLWAG") and sixteen individuals. All of the requests seek intervenor status for purposes of both of the Applications. The Applicants have the following concerns with respect to the intervention requests received.

First, the Board should clarify the level of participation being requested by three individuals, namely Joseph Minton, Maureen Maloney and Brian Warner. Mr. Minton filed both a request for observer status on March 4 and a request for intervenor status on March 23. Ms. Maloney and Mr. Warner filed a joint request for observer status on February 19 and a joint request for intervenor status on March 27.

Second, the Board should clarify the interests in the proceeding of Mr. Stephen Gillespie. Rule 23 of the Board's *Rules of Practice and Procedure* requires a person, in applying for intervenor status, to describe its interest in the proceeding, the grounds for the intervention and to satisfy the Board that they have "a substantial interest" in the proceeding. Mr. Gillespie's intervenor status request does not contain any such information and simply refers to his address. We note that his address is approximately 50 km away from the project site.

Third, the Board should clarify the nature of MLWAG and the interests that it represents. MLWAG's intervenor status request was filed on its behalf by Mr. Harvey Wrightman on February 21, 2013. Subsequent correspondence was filed on March 21, 2013 by Mr. Eric Gillespie, counsel to MLWAG. In its request, MLWAG states that it is an Ontario corporation with three officers and that "there is no membership". The request goes on to state that MLWAG's concerns relate to the impacts of wind projects on local residents and landowners. The intervention of MLWAG raises several concerns:

(a) MLWAG's website and news articles posted thereon include numerous references to MLWAG's "members". This is in contrast to the statement in the intervention request that MLWAG does not have any members. Rule 23.03 of the *Rules of Practice and Procedure* requires every letter of intervention to contain a description of the intervenor and its membership, if any.

(b) If MLWAG does not have any membership, then as a corporation with three unnamed officers it is not clear as to whose interests it actually represents with respect to its stated concern for the impacts of wind projects on local residents and landowners.

(c) There may be duplication between the interests being represented by MLWAG on the one hand, and fifteen of the individual intervenor requests on the other,

which duplication would be both inappropriate and inefficient for the proceeding. To the extent there is any such duplication, the potential cost implications for the Applicants would be unreasonable. To this end, we note that:

(i) fifteen of the intervenor requests received from individuals (consisting of all individuals other than Stephen Gillespie) were filed using identical form letters,

(ii) the language in the form letters describes the issues of concern using language identical to that used in the March 21, 2013 letter from counsel to MLWAG, and

(iii) nearly all of the individual interventions that were served on the Applicants' counsel were sent from an email address belonging to Mr. Harvey Wrightman who, as noted, is the same individual that filed the intervenor status request on behalf of MLWAG.

Fourth, should the Board determine that there is no duplication among the interests being represented and should intervenor status be granted to the fifteen individual intervenors, for purposes of efficiency the Board should nevertheless consider imposing conditions, pursuant to Rule 23.09 of the *Rules of Practice and Procedure*, requiring these intervenors to coordinate their participation and to file interrogatories, submissions and any other materials on a joint basis. Based on these individuals having filed their requests using identical form letters and having served their requests, for the most part, using a common email address and fax number (as shown on the header to each such letter), it is clear that there is already a high degree of coordination among this group. Moreover, the use of the standardized letter and the serving of the letters by Mr. Wrightman rather than by the individuals themselves suggests that some or all of these intervenors may not intend to participate actively in the proceeding on an individual basis, such as by filing argument or interrogatories. If this is the case, it is suggested that observer status or coordination among this group would be more appropriate than granting individual intervenor status to each requestor.

Yours truly,

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cc: Mr. B. Greenhouse, NextEra
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