



EB-2013-0040
EB-2013-0041

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. for an order or orders granting leave to construct a transmission line and transmission facilities;

AND IN THE MATTER OF an application by Kerwood Wind, Inc. for an order or orders granting leave to construct a transmission line and transmission facilities.

PROCEDURAL ORDER NO. 1

April 15, 2013

Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (the “Co-owners”) filed an application with the Ontario Energy Board (the “Board”), dated February 8, 2013, under sections 92, 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B) (the “Act”). The Co-owners have applied for an order of the Board granting leave to construct an electricity transmission line and related facilities for the Bornish Wind Energy Centre, a wind farm generation facility. The Co-owners also plan to utilize the Co-owners’ transmission facilities to serve the Adelaide Wind Energy Centre and the Jericho Wind Energy Centre. Additional transmission facilities related to the Adelaide Wind Energy Centre are described below. Additional transmission facilities related to the Jericho Wind Energy Centre will be the subject of a separate application.

The Co-owners also applied for Board approval of the form of agreements that have been or will be offered to landowners affected by the approved route, and for an order approving the construction of certain transmission facilities upon, under or over a

highway, utility line or ditch. The Board assigned file number EB-2013-0040 to this application.

A separate application under sections 92, 97 and 101 of the Act was filed with the Board by Kerwood Wind, Inc. (“Kerwood”) on February 8, 2013. Kerwood has applied for an order of the Board granting leave to construct an electricity transmission line and related facilities for the Adelaide Wind Energy Centre, a wind farm generation facility, and for approval of the form of agreements that have been or will be offered to landowners affected by the approved route, and for an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch. The Board assigned file number EB-2013-0041 to this application.

The Co-owners and Kerwood are referred to as the Applicants in this procedural order.

In the interest of efficiency, the Board combined the EB-2013-0040 and EB-2013-0041 applications pursuant to the Board’s power under section 21(5) of the Act. The Board issued a Notice of Application and Written Hearing for the combined applications on March 11, 2013.

Participation in the Proceeding and Cost Eligibility

Observer Status

At the close of the period to apply for observer status, the Board had received 34 requests for observer status. Three of the persons applying for observer status have since requested intervenor status and the Board considers that these requests for observer status have been superseded. The Board approves the 31 requests for observer status.

On April 10, 2013, the County of Lambton requested late observer status. The Board approves the request.

Intervenor Status

The Board has received 22 requests for intervenor status. The Board received requests from Hydro One Networks Inc., the Corporation of the County of Middlesex, the Corporation of the Township of Adelaide Metcalfe, the Municipality of North Middlesex

and the Independent Electricity System Operator. No objections were received with respect to these requests. The Board grants intervenor status to these parties.

In a letter filed on April 2, 2013, the Applicants expressed concern with 17 of the requests for intervenor status. The Board has considered the comments of the Applicants and has determined the following:

- The Board invites Stephen Gillespie to provide further information before making a determination on his request for intervenor status. Specifically, the Board wishes to understand whether Mr. Gillespie has a substantial interest in the proceeding and whether he intends to participate actively. It is the Board's expectation that the additional information will be filed by April 22, 2013.
- In response to the Applicants' letter of April 2, 2013, Harvey Wrightman, for Middlesex–Lambton Wind Action Group, Inc. ("MLWAG, Inc."), filed correspondence with the Board clarifying MLWAG, Inc.'s membership and the interests that it represents. The Board has considered the correspondence from MLWAG, Inc. and approves its request for intervenor status.
- Fifteen of the intervenor requests are from individuals who submitted an identical form letter. The issues as identified in the form letter were: the easements required from landowners along the proposed route of the transmission line, the land acquisition agreement that forms part of this Application, the potential impact on residences along the proposed route of the transmission line including those not subject to easements, the proximity of the substation to residential dwellings and the accuracy of the location of the 115 kV power line as depicted in the Application.

As these individuals have substantially the same interests, the Board approves intervenor status for these 15 individuals as a "Group". The Board requires the "Group" to appoint a representative (a member of the "Group" or counsel) to act as a single point of contact for the purpose of this proceeding. The Board requires the "Group" to file the name and contact information (including e-mail address) for its representative with the Board, and deliver a copy to the Applicants and other intervenors by April 22, 2013.

Cost Award Eligibility

MLWAG, Inc. and the 15 individuals requesting intervenor status have requested eligibility for costs awards.

In assessing a party's eligibility for costs, the Board is guided by the Board's *Practice Direction on Cost Awards* (the "Practice Direction"). The Board invites MLWAG, Inc. to provide further information before making a determination on its request for cost award eligibility. Specifically, the Board wishes to understand MLWAG, Inc.'s eligibility with respect to section 3.03 of the Practice Direction:

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
- b) primarily represents a public interest relevant to the Board's mandate; or
- c) is a person with an interest in land that is affected by the process.

In addition, if the officers and/or shareholder of MLWAG, Inc. are basing their claim for cost eligibility on the fact that they are persons with an interest in land that is affected by the process, MLWAG, Inc. is asked to provide evidence of that fact. Any information filed in response would form part of the public record for this proceeding.

It is the Board's expectation that the information supporting MLWAG, Inc.'s request for cost award eligibility will be filed by April 22, 2013.

The Board grants cost eligibility to the "Group" for costs that relate to matters directly within the scope of this proceeding. The scope of the proceeding is described below. The "Group" is also advised to review the Practice Direction for further information about which types of costs are eligible for recovery. For example, costs for counsel and consultants are generally recoverable, but costs for time spent directly by the intervenor are generally not recoverable. The Practice Direction and related forms are available on the Board's website at www.ontarioenergyboard.ca.

A list of currently approved intervenors is attached as Appendix A to this Order. The names of the 15 individuals who requested intervenor status is attached as Appendix B.

Scope of the Board's Jurisdiction

The Board reminds parties that the Act expressly limits the scope of the Board's review of the combined applications. Section 96(2) of the Act provides that in considering the public interest concerning the combined applications the Board can only consider "the interests of consumers with respect to prices and the reliability and quality of electricity service" and, "where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources." The Board also has the jurisdiction to approve the form of agreements with affected landowners pursuant to section 97 of the Act.

Environmental issues are not within the scope of the Board's review, but are considered within the Ministry of the Environment Renewable Energy Approval ("REA") process. Although the Board has no role in the REA process, any approval of this application would ordinarily be conditional on all necessary permits and authorizations being received, including an approved REA.

Issues relating to land-use, land valuation, construction activities, and health and aesthetics are also not within the scope of the Board's jurisdiction.

If parties pursue issues which are beyond the scope of this proceeding, the associated costs will not be eligible for any cost award.

Procedural Matters

In the Notice issued on March 11, 2013, the Board indicated that it intended to proceed by way of a written hearing unless any party satisfied the Board that there was a good reason for not proceeding by way of a written hearing. Several parties have requested an oral hearing. In the letter filed on April 2, 2013, the Applicants argued that the reasons given by the parties for an oral hearing are not compelling and further that none of the requests for an oral hearing demonstrated that the issues relevant to the proceeding cannot be adequately considered by way of a written proceeding. The Applicants also argued that it would be premature to determine whether cross examination would have high probative value until after the interrogatory phase is completed.

The Board is making provision for written interrogatories. The Board will determine if an oral hearing is required after the completion of the interrogatory phase.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Board staff and intervenors who wish information and material from the Applicants in relation to the combined applications that is in addition to the Applicants' pre-filed evidence with the Board, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to the Applicants on or before **May 6, 2013**. Where possible, the questions should specifically reference the pre-filed evidence.
2. The Applicants shall, on or before **May 21, 2013**, file with the Board and deliver to all intervenors a complete response to each of the interrogatories.
3. Board staff and intervenors shall file any evidence on which they plan to rely on or before **May 28, 2013**.
4. Parties seeking information in relation to the evidence filed by Board staff and/or intervenors shall request it by written interrogatories filed with the Board and delivered to the Applicants, and all intervenors on or before **June 7, 2013**.
5. Parties shall file with the Board and deliver to all intervenors a complete response to each of the interrogatories relating to evidence filed on or before **June 21, 2013**.

All filings to the Board must quote the file numbers, EB-2013-0040 and EB-2013-0041, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have

internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

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

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **April 15, 2013**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX "A"

Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc.

and

Kerwood Wind, Inc.

Leave to Construct Applications

Board File No. EB-2013-0040 and EB-2013-0041

LIST OF APPROVED INTERVENORS

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

APPLICANT & LIST OF PARTICIPANTS

April-12-13

APPLICANT

Rep. and Address for Service

**Bornish Wind, LP
Kerwood Wind, Inc.
Jericho Wind, Inc.**

Ben Greenhouse

c/o NextEra Energy Canada, ULC
390 Bay Street, Suite 1720
Toronto, ON M5H 2Y2

Tel: 416-364-9714

Fax: 416-364-2533

ben.greenhouse@nexteraenergy.com

APPLICANT COUNSEL

Jonathan Myers

Torys LLP

79 Wellington St. W.

Suite 3000, Maritime Life Tower

P.O. Box 270, Toronto Dominion Centre

Toronto ON M5K 1N2

Tel: 416-865-7532

Fax: 416-865-7380

jmyers@torys.com

Charles Keizer

Torys LLP

79 Wellington St. W.

Suite 3000, Maritime Life Tower

P.O. Box 270, TD Centre

Toronto ON M5K 1N2

Tel: 416-865-7512

Fax: 416-865-7380

ckeizer@torys.com

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

APPLICANT & LIST OF INTERVENORS

April-12-13

INTERVENORS

Rep. and Address for Service

**Corporation of the County of
Middlesex**

Chris Traini
County Engineer
Corporation of the County of Middlesex
399 Ridout Street North
London ON N6A 2P1
Tel: 519-434-7321
Fax: 519-434-0638
ctraini@county.middlesex.on.ca

Wayne Meagher
County Solicitory / Director
Corporation of the County of Middlesex
399 Ridout St. North
London ON N6A 2P1
Tel: 519-777-7241
Fax: 519-265-7249
wmeagher@middlesex.ca

**Corporation of the Township
of Adelaide Metcalfe**

Fran Urbshott
Administrator / Clerk
Corporation of the Township of Adelaide Metcalfe
2340 Egremont Drive
R.R. #5
Strathroy ON N7G 3H6
Tel: 519-247-3687
Fax: 519-247-3411
fran@adelaidemetcalfe.on.ca

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

APPLICANT & LIST OF INTERVENORS

April-12-13

**Middlesex-Lambton
Wind Action Group, Inc.**

Eric Gillespie
Eric K. Gillespie Professional Corporation
10 King Street East
Suite 600
Toronto ON M5C 1C3
Tel: 416-703-6362
Fax: 416-703-9111
egillespie@gillespielaw.ca

Harvey Wrightman
1503 Napperton Drive
Kerwood ON N0M 2B0
Tel: (519-247-2751
Fax: Not Provided
wrightman@golden.net

Hydro One Networks Inc.

Jamie Waller
Senior Regulatory Coordinator
Hydro One Networks Inc.
483 Bay Street
8th Floor - South Tower
Toronto ON M5G 2P5
Tel: 416-345-6948
Fax: 416-345-5866
Regulatory@hydroone.com

**Independent Electricity
System Operator**

Paula Lukan
Senior Regulatory Analyst
Independent Electricity System Operator
655 Bay Street, Suite 410
Toronto ON M5G 2K4
Tel: 416-506-2831
Fax: 416-506-2847
paula.lukan@ieso.ca

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

APPLICANT & LIST OF INTERVENORS

April-12-13

**Municipality of
North Middlesex**

John Kennedy
Siskinds LLP
680 Waterloo St.
London ON N6A 3V8
Tel: 519-660-7836
Fax: 519-660-7837
john.kennedy@siskinds.com

The "Group" of Intervenors

Information Pending

APPENDIX "B"

Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc.

and

Kerwood Wind, Inc.

Leave to Construct Applications

Board File No. EB-2013-0040 and EB-2013-0041

THE "GROUP" OF INTERVENORS

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

THE "GROUP" OF INTERVENORS

April-12-13

**Maureen Maloney
Brian Warner**
1879 Elginfield Road
RR 2
Parkhill ON N0M 2K0
Tel: (519)294-6897
Fax: Not Provided
maureenmaloney@hotmail.com
bjwarner@execulink.com

Joseph P. Minten
30153 Kerwood Road
Kerwood ON N0M 2B0
Tel: Not Provided
Fax: Not Provided
keysermintens@hotmail.com

Doreen Orrange
9917 Townsend Line
Kerwood ON N0M 2B0
Tel: (519)247-3831
Fax: (519)247-3107
Not Provided

James & Celina Southern
1736 Langan Drive
Kerwood ON N0M 2B0
Tel: (519)247-3622
Fax: Not Provided
Not Provided

Carol Duval
30265 Kerwood Road
Kerwood ON N0M 2B0
Tel: (519)247-9828
Fax: Not Provided
Not Provided

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

THE "GROUP" OF INTERVENORS

April-12-13

Jason & Angela VanderWal
337 Queen Street
Strathroy ON N7G 2J3
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

Jeff & Marilyn Maes
29984 Kerwood Road
Kerwood ON N0M 2B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

Ron Minten
30131 Kerwood Road
Kerwood ON N0M 2B0
Tel: xxx xxx xxxx
Fax: Not Provided

John & Pam Peeters
30094 Kerwood Road
Kerwood ON N0M 2B0
Tel: xxx xxx xxxx
Fax: Not Provided

Tom & Cheryl Kelly
30250 Keyser Road
Kerwood ON N0M 2B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

THE "GROUP" OF INTERVENORS

April-12-13

Pat Nethercott

9446 Townsend Line
RR # 1
Arkona ON N0M 1B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

Robert Nethercott

30824 Kerwood Road
RR# 1
Arkona ON N0M 1B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

Alex & Shirley May

30758 Kerwood Road
RR # 1
Arkona ON N0M 1B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

Doug & Patricia Dawson

2010 Langan Drive
RR # 3
Kerwood ON N0M 2B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided

**Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc.
EB-2013-0040 and EB-2013-0041**

THE "GROUP" OF INTERVENORS

April-12-13

James Nethercott
1228 Ausable Road
RR # 1
Arkona ON N0M 1B0
Tel: xxx xxx xxxx
Fax: Not Provided
Not Provided