

**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.

### **INTERROGATORIES**

- 1) **Reference: p. 185, Proponent's Submission of Evidence, February 11, 2013**  
**Exhibit "B" To Option Agreement**  
**Grantor's Certificate of Independent Legal Advice**

Question - The proponent requires a certificate of independent legal advice (ILA) from the vendor for the land parcel on which the Bornish substation will be built. The easement agreements are registered as a permanent lien against a landowner's property. The proponent did not require an ILA for the easement agreements. According to the evidence filed it had no ILA requirement.

One should note also that the proponent did not require ILA's for the wind turbine option/lease-holders. From the July 24, 2012 meeting of Keyser area residents with Ben Greenhouse, project manager, Mr. Greenhouse said the following regarding ILA's for landowners:

*Resident – So why can you sign one of these (contracts) without an ILA? I don't...*

*Ben Greenhouse - I've already answered your question. I don't know that we have. OK, that's the answer I've made. Look, we've had lots of lawyers look at this who know more about the law than I do, and you know, I'm confident we've done it right. Like I said, we offer to pay for independent legal advice. People take us up on that or not, I don't know how many have or how many haven't.*

From the documents submitted in evidence to this hearing, no ILA was required, nor did the company offer to pay for an ILA save in the case of the property transfer for the Bornish substation. One should note also that the option/lease contracts for wind turbine

sites in the Bornish/ Kerwood/Jericho projects do not contain any offer to pay for an ILA nor do they require an ILA, only that the property owner has had the opportunity to seek legal advice. This is a huge "fairness" gap in the treatment of property owners. Landowners know about this and consequently are resistant to dealing with a company that they see does not deal equally with all landowners.

Will the proponent correct this unequal treatment of landowners?

If not, what reasons does the proponent have for the unequal treatment of landowners?

- 2) In the Bornish Wind Energy Centre Natural Heritage Assessment Addendum II Report, dated February 2013 it states:  
[http://www.nexteraenergycanada.com/pdf/bornish/NHA\\_AddndmIIRprt\\_20130208.PDF](http://www.nexteraenergycanada.com/pdf/bornish/NHA_AddndmIIRprt_20130208.PDF)),

“As a result of new information obtained relating to the potential for significant wildlife habitat within the project area, this Addendum has been prepared to address the presence of a potential bald eagle (*Haliaeetus leucocephalus*) nest site, and the appropriate objectives and any necessary mitigation measures or contingency plans associated with the documentation of this nest. “

The addendum goes on to state: “According to the Draft Ecoregion 7E Criterion Schedule Addendum to the SWHTG (OMNR 2012), the Bald Eagle nest, plus a 400m to 800m zone around the nest is considered to be the Significant Wildlife Habitat.”

Residents can see that the nest is active and has a pair of bald eagles resident within it.

Recorded are these distances from the Bald Eagle Nest (Table 1, p. 10):

Distances from Nest Location (m)

Wind Turbine – 634 m (T3), 741 m (T2)

Access Road – 524 m

Overhead Line – 508 m

Underground Line – 480 m

Supporting Infrastructure – 187 m

The addendum further notes that:

“Project layout will be constructed so that all construction activities will occur at least 200 m from the nest location, and outside of both the primary and secondary habitat zones” (Table 4, p. 20)

“Project layout will be designed so that all infrastructure, except for the transmission line, will be set back from the nest a minimum of 400m.” (Table 4, p. 20)

- a) Please clarify what is meant by the “supporting infrastructure”.
- b) Please explain how the construction of this supporting infrastructure, and the operation of it, will affect the eagles and their habitat.

- c) Please explain how construction of the “supporting infrastructure” will be 200 m away from the Bald Eagle Nest, when the distance in Table 1, page 10 notes it will be 187 m away.
  - d) Explain how the “supporting infrastructure” itself will be set back a minimum of 400m from the nest.
- 3) As recently as the 3<sup>rd</sup> week in March, a landman for CanAcre, J. Forster, informed Joe Minten that the transmission line was now going on the west side of the road over the old Keyser Store (the “Store”), which is part of the Minten property. All but 10 feet of the Store is on the right of way (ROW) of the Kerwood Road. Mr. Forster again pressed Mr. Minten to sign an easement for the property.

What is the exact route of the transmission line from the substation to the Ausable River?

- a) The store also has a flag-pole attached to it. Please provide a detailed engineering solution that takes into account the issue of induced current onto the flag pole and building.
- 4) Landmen representing CanAcre have also continued their efforts to obtain signatures from both Ron and Katherine Minten regarding an easement for the properties they own that abut the Kerwood Road. These lands are used for pasturing the cattle of their organic dairy operation.

If the transmission line is located near the edge of the ROW, there will be an area of induced current affecting both the fence and the ground beneath. From observations of the nearby 115 kV “pump line”, these effects can be seen as far out as 50 feet from the center of the transmission line. This is a well-known effect amongst farmers who own land that has the “pump line” located on it. In a pasture, the boundary of the area of induced current is well-defined. The cattle simply will not graze where they are being electrically shocked. The implications for the Minten dairy operation are greater as they must pasture their cattle as a condition of their contract to be organically certified. There is a significant increase in risk of electrocution from lightning strikes near these high tension lines. Safety, both for humans and animals, is a primary factor of consideration.

Please provide documentation regarding the steps that have been taken to ensure the property owners will not suffer these effects from the transmission line.

- 5) Similarly, the dairy operation of John and Pam Peeters is affected by the proximity of the transmission line to their lands. Although it is not an organic dairy, as a matter of best practices, they too pasture their cattle on land abutting the Kerwood Road ROW. There is an economic impact and safety impact. Safety is a primary factor.

Please provide documentation regarding the steps that have been taken to ensure the property owners will not suffer these effects from the transmission line.

- 6) From the Store to the north, the route of the transmission line is unclear. From information received previously, it appears that it must cross Townsend Line, whose intersection with the Kerwood Road is already congested and complicated by utility poles and houses. It is the site of numerous vehicular accidents. Adding the massive 100 foot tall poles and transmission lines will significantly increase the safety risk to road users and local residents. It would appear that if the transmission line is to go through the area of the intersection, then a complete re-design of the intersection is required. Safety of the installation is a primary factor.

Please provide documentation regarding the steps that have been taken to eliminate any increased risk to road users and local residents arising from the installation of the transmission line at this location.

- 7) From the limited information that has been submitted by the proponent, which do not appear to include detailed engineering drawings, it would appear that 100 foot tall poles are to be used for the transmission line. The construction and operation of such a line will have an enormous physical impact on the adjoining properties, much more than a distribution line. This was apparently recognized by the proponent as the CanAcre landmen continue to seek various property easements from the adjoining landowners in the Keyser area. Joe Minten, Ron Minten and John Peeters have had recent and repeated calls or visits from CanAcre landmen.

Please provide detailed field notes from the proponent and Canacre regarding these solicitations and the easements sought be submitted to this hearing.

- 8) Residents are unclear as to whether the proponent needs easements to construct this line. Please provide exact details regarding the easement requirements for the transmission line as it is proposed. So far, residents have no better knowledge of what the exact proposal is than they did a year ago. With landmen approaching residents and presenting (orally) different opinions, residents are left very confused.
- 9) At a meeting of Keyser area residents with a Nextera rep and two CanAcre landmen held on July 24, 2012, a question was asked about how stray voltage (current) would be handled.

Ben Greenhouse, project manager for NextEra's Kerwood Wind project answered:

*So first off, stray voltage, again I'm not an engineer but lots of questions about this. The lines out here serving houses have ground wires and those wires are supposed to have no voltage on them. They're supposed to be neutral. If voltage gets onto them, they're supposed to send it to ground. Stray voltage occurs when for some reason those ground wires which are supposed to have no voltage end up with a voltage. It can happen in a bunch of ways. The typical way it can happen is if you have wires close by to it or if the wires, so the – for instance if we were to connect into the system out here*

and put more voltage into those existing wires than there currently is, or anyone was to connect in for any reason and put more voltage. That change of use of those existing wires can start a voltage on the ground that's supposed to have none. That flow back into a house or a barn where there's supposed to be no voltage and things that are grounded like a water trough or a water line can actually get a voltage on them and the cow or someone touches it can get a tingle. So that's the problem of stray voltage. The first thing here compared to some other projects in Ontario is that we're not using new wires to feed your house, so we're not changing the pattern on those. And in theory, even if we use the same poles, the separation should be enough to avoid it. In practice, the field from the wires can induce a small voltage on the ground anyway. So there's a couple ways to deal with it. First off the electricity code of Ontario has a mandated voltage that can be supplied on a neutral to a customer. So, if you were to complain to NONI or the OEB that you thought you had stray voltage even today, HONI would have to measure it and they'd have to show, I believe its 0.1V, so that they're not contributing more than 0.1V. whatever it is, it's a certain level. And there were more they'd have to fix it and there's lots of ways to fix it. **They can increase the grounding so that it, before it gets to here it flows down into the ground...** [Emphasis added] and I'm being a little long-winded, but it's an important question. So, even if I wasn't here, that's what would happen. Hydro would have to come out and test. What we have seen in other OEB hearings where we get into the details, typically the utility in the area would be involved in those hearings. They'll ask us to talk about our design and to sort of help them get comfort that they won't be exposed to liability. They don't want to have their customers calling and coming – because if you're HONI and now people are calling you saying “I've got issues “ and they come and measure and it's more than 0.1V and they'll come and ask what are you guys doing? So what we've done in other areas is we've done pre-energization surveys before we energize our line so there's no way we're losing voltage , to see what the existing voltage on the neutral is – because there always is. It's never perfect, there's always the possibility of having some. And then we've done surveys afterwards to see if it has changed. **And then if it has changed, the simplest to fix it is just to hook more grounds on.** [Emphasis added] They don't always ground every pole, it's my understanding, as few poles as needed by the electrical design. But if you put more grounds or better grounds, essentially you have to think of it as water, think of it as a drain. If it does get a voltage it'll drain down. So that's one way.

- a) Please provide a detailed electrical impact study that can be independently reviewed to address this issue, especially as now NextEra alone is responsible for safety issues

relating to the transmission line, after not being permitted any co-location of distribution lines with transmission lines. Residents need the assurance of an independent review. Mr. Greenhouse's suggested fix, "...hook more grounds on," does not inspire confidence. Safety should be done from a precautionary view, not reactive.

**Date:** May 6, 2013

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