

ONTARIO ENERGY BOARD

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 OF THE CORPORATION
THE COUNTY OF MIDDLESEX**

I: INTERROGATORIES TO THE APPLICANTS

A: TRANSMISSION AND CONNECTION LINES: ROUTE, ENGINEERING PRINCIPLES AND LAND RIGHTS

1. Please provide detailed engineering drawings showing the exact location of all poles and other appurtenances proposed to be located within County road allowances for transmission lines, including all material and construction specifications of poles, wires, guying, foundations, trenching, temporary conditions, and any other items related to this infrastructure.

NextEra has informed the County that either it or the Applicants are owners of easement rights adjacent to County the road allowances which in the applications, are proposed to be located nearly exclusively for the transmission and connection lines.

2. Please identify through explanation, drawings and plans, any and all easement rights owned by the Applicants, NextEra or any of NextEra's affiliates which are adjacent to County road allowances. Please identify the PIN, lot, concession number and owner of each easement.
3. Please provide a fulsome explanation and any and all evidence with respect to the nature and scope of easement negotiations engaged in by the Applicants with land owners adjacent to County road allowances.

4. Please provide a fulsome explanation and any and all evidence with respect to the nature and scope of environmental and/or archaeological assessments engaged in by the Applicants in relation to potential routes for transmission and/or connection lines.

In both applications, the Applicants note that final engineering and project planning may require the use of land adjacent to County road allowances and requested for the potential use of adjacent lands. NextEra has informed the County that either it or the Applicants are the owners of easement rights adjacent to County road allowances. Nonetheless, the applications proposed to use County road allowances nearly exclusively for transmission and connection lines.

5. Please provide a fulsome explanation, complete with all evidence, as to why the route provided for in the applications would not make use of easement rights owned by NextEra and/or the Applicants so to minimize negative impact on County taxpayers, rather than proposing a route which eliminates and/or negatively impacts the ability for the County to safely and efficiently move persons and goods through the road system; places limitations/restrictions on the installation of and construction methods for installing utilities; prevents the use of regular maintenance methods, precludes the construction of other utilities; increases the likelihood of future relocation of utilities; and decreases road user safety while increasing County risk?

The County Official Plan prescribes minimum road allowance widths, which have been determined using sound engineering judgment. In some locations in the County, legacy road allowances exist which are less than the prescribed widths for various historical reasons. The applications propose for transmission lines to be located in County road allowances along roadways with less than the prescribed road allowance widths, in some cases, where there is a deficiency of more than ten (10) metres. NextEra and/or the Applicants are the owners of easement rights adjacent to the aforementioned narrow roads.

6. Please provide a fulsome explanation, complete with all evidence, as to why the route provided for in the applications would not make use of easement rights owned by NextEra and/or the Applicants, particularly where the County road allowances are less than the required Official Plan widths, rather than proposing a route which eliminates and/or negatively impacts the ability for the County to safely and efficiently move persons and goods through the road system; places limitations/restrictions on the installation of and construction methods for installing utilities; prevents the use of regular maintenance methods, precludes the construction of other utilities; increases the likelihood of future relocation of utilities, and places the transmission lines so close to the

travelled portion of the road (5 metres or less in some cases) so to decrease road user safety and increase County risk?

7. In the event the answer to 5 and 6 above is related to either timing limitations with respect to negotiations with landowners, archaeological assessments or any other studies, please explain why negotiations, assessments or studies not completed or made a higher priority, given that the connection route is needed by the Applicants to connect the Bornish Wind Energy Centre (“BWEC”), Adelaide Wind Energy Centre (“AWEC”), Jericho Wind Energy Centre (“JWEC”) and possibly Suncor Energy Cedar Point Wind Power Project (“Cedar Point”) and Parkhill Interconnect Transmission Route (“Parkhill”) (hereinafter collectively, the “wind projects”) to the IESO controlled grid.

8. In the event the answer to 5 and 6 above is related to either timing limitations and/or restrictions applicable to being the result of applications made to the Ontario Energy Board, please provide a fulsome answer with respect to what abilities the Ontario Energy Board has to:
 - (a) allow for revisions/amendments to the applications to allow for the use of adjacent easement rights owned by NextEra and/or the Applicants for the transmission line and connection line route;
 - (b) allow for negotiations for private easement rights to continue;
 - (c) allow for necessary studies to be completed prior to construction/installation in order to ensure that the road allowances, which benefit Middlesex County residents are not compromised, due to haste; and
 - (d) allow an amended or re-application to allow the use of adjacent easements?

9. In the event the answer to 5 and 6 above is related to either timing limitations related to negotiations with landowners, archaeological assessments or any other studies and/or is related to the submission of applications to Ontario Energy Board, please explain why in the opinion of the experts of the Applicants, expediency and the private interests of private corporations should take precedence over road user safety, the safe and efficient

movement of persons and goods through the road system, efficient maintenance of road allowances, the sound installation and construction of utilities, and the avoidance of unnecessary and costly future relocation of utilities?

10. In both applications, at Exh B-4-1, pg. 4-5, the Co-owners indicate that they have consulted with Hydro One Networks Inc. (“Hydro One”) with respect to co-location of transmission lines, but that Hydro One would not accommodate their requests. Please provide a summary of all co-location discussions, fully describe the issues and impasse between Hydro One and the Applicants with respect to co-locations and provide an expert engineering opinion as to whether the impasse can be resolved to allow co-location and prevent poles on each side of the travelled portion the roadways.

In EB-2013-0040 Exh B-4-1, the Co-owners identify two areas on Elginfield Road/Nairn Road where the transmission line route is not specified as being within a County road allowance. The reasoning is related to Bell Canada overhead telecommunications facilities and Hydro One distribution facilities.

11. Please identify the extent to which the transmission line route in these locations may avoid cross overs and potentially co-locate, which could prevent poles on each side of the travelled portion the roadway.

In EB-3013-0041 Exh B-4-1, the Applicants identify that the transmission line route at the crossing of the Ausable River is on the opposite side of the travelled portion of the roadway as existing Hydro-One distribution facilities.

12. Please identify the extent to which the transmission line route proposed by the Applicants in these locations can avoid cross overs and can potentially co-locate. Please advise as whether or not the cross over is absolutely necessary and whether or not there is any possibility of co-location, which could prevent poles on each side of the travelled portion the roadway.
13. Please confirm that the scope of the Applicant’s request to use County road allowances for transmission and connection lines includes permission to use, install, construct, maintain and operate electricity transmission lines, connection lines and related appurtenances but excludes the use of the road allowances for stations, structures, facilities and equipment related to power generation?

14. Please provide detailed plans drawn to scale which:
- (i) show the locations of each of the wind projects, the proposed route of transmission and collection lines, the municipal description, legal description and the location of relevant County road allowances, locations where NextEra and/or the Applicants have easement rights; and where the Applicants are required to use private lands for electrical infrastructure;
 - (ii) identify the location, size, elevation and scope of the electrical infrastructure proposed to be located within, on or under County road allowances; and
 - (iii) demonstrate that the electrical infrastructure will comply with applicable safety, technical standards, regulatory standards and applicable law.
15. Please acknowledge or deny that in the event the County were to grant the Applicants permission for County's road allowances to be used, the Applicants' willingness to:
- (a) wherever possible, use existing or private easements, rather than County road allowances for the transmission line and connection line route;
 - (b) wherever possible, minimize the number of road crossings in the transmission line and connection line route;
 - (c) obtain the approval of any federal, provincial, county or municipal government or agency (if any) required in connection with their activities;
 - (d) install all transmission lines above-grade in the location approved by the County Engineer at an appropriate elevation so to avoid conflicts with other existing infrastructure or road maintenance responsibilities of the County;
 - (e) co-locate all transmission lines with existing Hydro-One stand facilities (poles) whenever it is possible and safe to do so, as determined by the Hydro One, its successors or assigns and the County Engineer;

- (f) locate all connection lines below-grade at an appropriate depth so as to avoid conflict with other existing infrastructure and road maintenance responsibilities of the County;
- (g) to minimize the potential interference with and be 100% responsible for damages to all existing equipment, installations, utilities, and other facilities within, on or under County road allowances;
- (h) prior to any installation, placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of any electrical infrastructure over, along, across, within or under County road allowances, obtain written approval from the County Engineer prior to installation, placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of electrical infrastructure;
- (i) ensure that any and all electrical infrastructure installed within, on or under the County road allowances shall at all times remain at least 7.0 metres distance from the outer limit of the travelled portion of the County road;
- (j) apply, obtain and pay for any and all permits, approvals and authorization that County by-laws and/or the County Engineer requires to use the road allowances;
- (k) act in accordance at all times with County and other municipal by-laws, the *Highway Traffic Act*, and all other applicable law;
- (l) arrange, pay for and maintain insurance satisfactory to the County which insures the Applicants, their guarantors, and the County from all claims related to the use of the road allowance for electrical infrastructure;
- (m) release, indemnify, defend and save harmless the County from any and all claims related to the use of the County road allowances for electrical infrastructure and ensure that such indemnity will not be discharged by any change in the existence, structure, constitution, name, control or ownership of the Applicants or any

insolvency, bankruptcy, reorganization or other similar proceeding affecting the Applicants or their assets;

- (n) not to transfer or assign any easements potential rights enjoyed by the Applicants without the written consent of the County;
 - (o) agreeable to making all security deposits required by the County;
 - (p) acknowledge that any easement rights granted by the County would be non-exclusive in the nature and subject to the rights and privileges that the County may grant to other persons on the road allowances; and
 - (q) install, construct, re-construct, inspect, maintain, operate, alter, enlarge, repair, replace, relocate and remove electrical infrastructure and related appurtenances over, along, across, within or under County road allowances at 100% its own expense;
16. Please advise as to whether or not the Applicants will provide any legal compensation to the County to cover legal time of the County Solicitor in drafting and reviewing draft road user agreements?

B: TRANSMISSION LINES AND CONNECTION LINES - CORPORATE RESPONSIBILITY AND REMOVAL OF INFRASTRUCTURE

17. Please acknowledge or deny that in the event the County were to grant the Applicants permission for County's road allowances to be used, the Applicants' willingness to:
- (a) to be 100% responsible for safe deactivation, removal and disposal pursuant to a timeline acceptable to the County when the need for electrical infrastructure has terminated; and
 - (b) to be repair, reinstate and restore the road allowances to the same or better condition to that which existed prior to its activities when the need for the electrical infrastructure has terminated;

The names of the applications under the FIT program with respect to the Bornish Wind Energy Centre (BWEC), Adelaide Wind Energy Centre (AWEC) and Jericho Wind Energy Centre (JWEC) in July 2011 were Bornish Wind LP, Summerhaven Wind, LO and Boulevard

Associates Canada, Inc. The Applicants for BWEC, AWEC and JWEC are Bornish Wind LP, Kerwind Wind, Inc. and Jericho Wind Inc.

18. Please describe the events which transpired to cause the change in applicants.

The applications provide that Bornish Wind, LP is a limited partnership established under the laws of Ontario, and Kerwind Wind, Inc. and Jericho Wind Inc. are corporations established under the laws of the Province of New Brunswick. The applications note that Bornish is a general partner of Bornish Wind GP, Inc., Bornish-Consestogo LP, Inc., NextEra Energy Canada, ULC and NextEra Energy Resources, LLC and NextEra Energy, Inc. The use of the road allowances for transmission lines to supply the wind projects is a joint venture as between these parties, whether those parties own or license the electrical infrastructure. Given the long and complex corporate structure, it unclear as to whether some, any, or all of the aforementioned entities are able to provide sufficient security for the infrastructure proposed to be located on Middlesex County road allowances such that Middlesex County can feel confident that they will be reliable and responsible entities in using its road allowances. While it is understood that corporate responsibility may be a concept that is diametrically opposed for the reasoning behind diversified corporate portfolios, Middlesex County nonetheless expects the joint venturers who wish to share in the benefits which the use of the road allowances would allow to share in the responsibility of being responsible for the covenants made to Middlesex County so that Middlesex County and its taxpayers in potentially allowing road allowances need not worry about risks, such as shell corporations without assets and/or bankruptcy or dissolution of the arm of a corporate portfolio in which it is dealing.

19. Are Bornish Wind GP, Inc., Bornish-Consestogo LP, Inc., NextEra Energy Canada, ULC and NextEra Energy Resources, LLC and NextEra Energy, Inc. willing to act as Indemnifiers to each of their respective road use agreements with the County, thus providing performance guarantees to Middlesex County and its taxpayers?

Suncor Energy Products Inc. ("Suncor") is a proponent of Cedar Point, a proposed renewable energy generation facility in Lambton County. There is a possibility that Cedar Point may connect to the IESO-controlled grid through JWEC transmission facilities.

20. Regardless of whether or not Suncor uses the electrical infrastructure located on Middlesex County road allowances as either an owner or licensee, please confirm whether or not Suncor is prepared to act as Indemnifier to each of their respective road use agreements with the County, thus providing performance guarantee to Middlesex County and its taxpayers?

II: INTERROGATORY TO HYDRO ONE NETWORKS INC.

A: TRANSMISSION AND CONNECTION LINES: ROUTE, ENGINEERING PRINCIPLES AND LAND RIGHTS

21. In both applications, at Exh B-4-1, pg. 4-5, the Co-owners indicate that they have consulted with Hydro One Networks Inc. (“Hydro One”) with respect to co-location of transmission lines, but that Hydro One would not accommodate their requests. Please provide a summary of all co-location discussions, fully describe the issues and impasse between Hydro One and the Applicants with respect to co-locations and provide an expert engineering opinion as to whether the impasse can be resolved to allow co-location and prevent poles on each side of the travelled portion the roadways.

In EB-2013-0040 Exh B-4-1, the Co-owners identify two areas on Elginfield Road/Nairn Road where the transmission line route is not specified as being within a County road allowance. The reasoning is related to Bell Canada overhead telecommunications facilities and Hydro One distribution facilities.

22. Please identify the extent to which the transmission line route in these locations can avoid cross overs and can co-locate. Please advise as whether or not the cross over is absolutely necessary and whether or not there is any possibility of co-location, which could prevent poles on each side of the travelled portion the roadway.

In EB-3013-0041 Exh B-4-1, the Applicants identify that the transmission line route at the crossing of Ausable River is on the opposite side of the travelled portion of the road as existing Hydro-One distribution facilities.

23. Please identify the extent to which the transmission line route in these locations can avoid cross overs and can co-locate. Please advise as whether or not the cross over is absolutely necessary and whether or not there is any possibility of co-location, which could prevent poles on each side of the travelled portion the roadway.

III: INTERROGATORY TO ONTARIO ENERGY BOARD STAFF

A: TRANSMISSION AND CONNECTION LINES – ROUTE, ENGINEERING PRINCIPLES AND LAND RIGHTS

24. In the opinion of Board Staff, does the Ontario Energy Board have the ability to:

- (a) allow for revisions/amendments to the applications to allow for the use of easement rights for the route;
- (b) allow for negotiations for private easement rights to continue;
- (c) allow for necessary studies to be completed prior to construction to ensure that the road allowances are not unnecessarily compromised; and
- (d) to allow a re-application to allow for the use of easements?

May 4, 2013

**THE CORPORATION OF THE
COUNTY OF MIDDLESEX**

Wayne P. Meagher (LSUC#: 56418A)
County Solicitor/Director of Legal Services
Tel: 519.777.7241
Fax: 519.265.7249
wmeagher@middlesex.ca

Counsel for the Intervenor,
Corporation of the County of Middlesex

TO: ONTARIO ENERGY BOARD

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON N4P 1E4

Attention: Board Secretary
Email: Boardsec@oeb.gov.on.ca
Tel: 1.888.632.6273 (Toll free)
Fax: 416.440.7656

AND TO: ALL REGISTERED INTERVENORS

ONTARIO ENERGY BOARD

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 OF THE INTERVENOR,
THE CORPORATION OF THE
COUNTY OF MIDDLESEX**

**THE CORPORATION OF THE
COUNTY OF MIDDLESEX
ADMINISTRATION OFFICES
399 RIDOUT STREET NORTH
LONDON, ON N6A 2P1**

Wayne P. Meagher (LSUC# 56418A)
County Solicitor/Director of Legal Services
Tel: 519.777.7241
Fax: 519.265.7249
wmeagher@middlesex.ca

Counsel for the Intervenor, The Corporation of the
County of Middlesex