

**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.

### **SUBMISSIONS**

1. **Response to Group Interrogatory #1**

The Applicant states, “Moreover, the form of Transmission Easement Option Agreement filed at Exhibit F, Tab 2, Schedule 1, Exhibit B includes, at section 2.3 thereof, an acknowledgement from the Owner that it has had the opportunity to obtain independent legal representation. Finally, it is the policy of the Applicants to offer to pay the costs of landowners in such circumstances obtaining independent legal advice.”

The Applicant states in response to Board Interrogatory # 18(d), “The Applicants have offered and provided compensation to landowners to cover all or part of the legal costs for landowners who wished to have agreements offered to them reviewed by legal counsel. The Applicants continue to be willing to offer and pay for compensation for this purpose.”

These two statements are incorrect. The Group of 15 Intervenors (the “Group”) presents the following as evidence:

A resident on [REDACTED] was engaged in a negotiation for an easement for the 115 kV transmission line from the Jericho Wind Project in the spring of 2012. The resident took an offer agreement and submitted it for review to his lawyer who made several changes to the agreement. The changes were not accepted by the NextEra with the result that no agreement was signed. He later sought to have his legal fees covered as was promised to him by the CanAcre landman. The resident made notes of his meetings, and retained his e-mail correspondence.

The e-mail exchanges are as follows:

**Subject:** Legal Fees  
**Date:** Fri, 27 Jul 2012 10:21:39 -0400  
**From:** Larry Cook [REDACTED]  
**To:** <[daniel.babcock@canacre.com](mailto:daniel.babcock@canacre.com)>

Dan: Greetings, Several times when we were discussing the 115Kv transmission line you mentioned that NextERA would reimburse the legal fees for having an independent legal assessment done. How do I submit the required paperwork for this expense? Thanks Larry Cook [REDACTED]  
 [REDACTED]

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**From:** Larry Cook [REDACTED]  
**Sent:** Tuesday, August 07, 2012 9:57 AM  
**To:** ben.greenhouse@nexteraenergy.com  
**Cc:** daniel.babcock@canacre.com  
**Subject:** Fwd: Legal Fees

Mr. Greenhouse: I understand that you are the manager of the projects which NextEra has in Lambton and Middlesex Counties. Your representative, Mr. Dan Babcock of Canacres, approached us regarding an easement for the transmission line along Elginfield Rd. He indicated that we would be compensated for any legal advice expense, which is encouraged in the contract. I sent Mr. Babcock an email on July 27/12 asking for information on how to complete the necessary paperwork but have not received a reply. Could you advise? Thank you Larry Cook

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**Subject:** RE: Legal Fees  
**Date:** Fri, 10 Aug 2012 09:20:40 -0400  
**From:** "Dan Babcock"  
**To:** "'Larry Cook'",  
**Cc:** "'Brugioni, Allen'"

Larry,

During the conversations that we had on March 24<sup>th</sup>, 2012 and April 16, 2012 regarding NextEra's transmission easement offer, you mentioned that you had your attorney review the easement. As I mentioned during our conversations, NextEra Energy encourages landowners to seek legal review of all easement documents and that they will pay, upon receipt from the owner of an executed agreement, up to a maximum of \$1,500.

I received your request for compensation related to the payment of legal review of NextEra's easement offer. In this case, we do not yet have an executed agreement and, as I mentioned, NextEra does not normally pay legal fees for review of unsigned easements. However, I will bring your request to NextEra's attention and I will look into having compensation paid for your legal review of the transmission easement.

To aid me in this process, please scan/email or fax to me at this number (416)-352-0707 the invoice that you received from your attorney.

I look forward to hearing from you.

Best,

Dan

**From:** Larry Cook  
**Date:** Fri, 10 Aug 2012 11:42:39 -0400  
**To:** Dan Babcock  
**Cc:** ; Brugioni, Allen  
**Subject:** RE: Legal Fees

Dan: On March 24th and April 16th 2012 you did state that NextEra would pay for the ILA but not only if we agreed with and signed the contract. In fact you NEVER said that was the requirement! I too have kept a record of the visits you made and what was said. Of all the times you did visit the last two times were the only times that the ILA reimbursements were ever mentioned.

Larry Cook

**Subject:** Re: Legal Fees  
**Date:** Fri, 10 Aug 2012 16:33:22 +0000  
**From:** "Daniel Babcock" <daniel.babcock@canacre.com>  
**To:** "Larry Cook" [REDACTED]  
**Cc:** ben.greenhouse@nexteraenergy.com, "Brugioni, Allen" <Allen.Brugioni@nexteraenergy.com>  
**Reply-To:** daniel.babcock@canacre.com

Hi Larry,

I apologize for the misunderstanding, please forward the invoice for your legal fees to me.

Best,  
Dan

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Mr. Cook submitted an invoice, but has received neither payment, nor a response. He made this comment about his experience with NextEra:

“Mr. Babcock never even asked for the revision of the contract. He just stated they would pay for the advice. Something else that I think pertinent is that as property owners who did not go looking for the easement but were approached from out of the blue, we have incurred an expense that no one wants to pay for.

It is not as if we were looking to buy a new car. More like a vacuum cleaner salesman going door to door but with much greater ramifications.”

This exchange clearly shows that the Applicant’s policy of paying for the legal costs of prospective contract signees is not always applied. No one else in the Group received any compensation for independent legal advice (“ILA”). Some of the individuals in the Group report a similar offer of compensation **upon signing** an easement agreement.

The Applicant states in response to Board Interrogatory # 18(d) that, “The Applicants have offered and provided compensation to landowners to cover all or part of the legal costs for landowners who wished to have agreements offered to them reviewed by legal counsel. The Applicants continue to be willing to offer and pay for compensation for this purpose.”

The Applicant states in response to Group Interrogatory #1(a) “The Applicants do not agree with the suggestion that there has been unequal treatment of landowners.”

The evidence as it stands is that none of the Group has received compensation for any ILA connected to the easement agreements they were offered. Some members of the Group were offered similar compensation, as documented above, but it was on the condition that an easement contract is executed. The evidence is that the Applicant has insisted that ILA be obtained prior to the sale and transfer of the substation site properties to the Applicant.

Therefore the Group maintains that all property owners have not been treated equally. The Applicant has different standards for different landowners. This is not fair treatment.

2. **Response to Group Interrogatory # 3**

The Applicant states that the location of the transmission line in this instance is contingent on the agreement of HON1 with burying the local distribution lines in this area. If that is not possible, then the transmission line will be on the other side of the road, directly above the old Keyser Store building necessitating an easement agreement with the Mintens, who own this property. The old Keyser Store is the oldest building in the area and is historically significant.

This example, along with the other encroachments on private lands, indicates that a “hearing of necessity” is required.

The Applicant does not provide any engineering details as to how it will eliminate induced current onto the old Keyser Store below the transmission line if the line is so constructed. Safety cannot be negotiated away. The response is insufficient and an appropriate response is required. Once again, the Group is left with no answers and no solutions from the Applicant.

3. **Response to Group Interrogatories # 4 & 5**

The Applicant has not completely answered the question. Stray current can be induced directly into the ground and can be measured there. As was stated in the interrogatory, the 115 kV “pump line” has had this effect ever since it was erected. The two farms are both dairy operations and this above ground pole line will induce current directly into the adjacent pastures. The presence of the fence provides an additional pathway of conduction. A protocol must be established prior to construction to accurately measure the current changes and establish an elimination plan since this will affect animal safety and the ongoing operation of these businesses.

Additionally, the 100 foot tall poles represent an attraction to lightning hazard, making them an additional safety hazard.

The Group requests that the Applicant provide documentation regarding the steps it has taken to ensure the adjacent property owners will not suffer these effects from the transmission line.

4. **Response to Group Interrogatory # 6**

The Group notes that the Applicant has neglected to mention the most relevant document to this issue, namely the Ministry of Transportation Roadside Safety Manual, even though in its responses to the County and the Board, this document is referenced. In this Manual at Section 2.2 “Clear Zone Section”, explanations are given as to how the amount of “clear zone” is required by an automobile leaving the road.

Table 2.2.1 (A) presents the distances for a recommended offsets vs. the “design speed” of the road. The Kerwood Road has a design speed of 100 km/h and so the recommended clear zone is 7 meters.

In its response to the County’s Interrogatory # 6 & 15(i), the Applicant confuses the term “speed limit” with the “design speed” of the road. From this mistake a clear zone distance of 5 meters is stated as sufficient. This figure is incorrect. Table 2.2.1 shows 7 meters for the actual design speed, which is 100 km/h.

The problem in this instance is the size of the obstacle. Poles 30 meters tall and 80 cm in diameter at the base are substantial objects and cannot be compared to local utility poles of 10 meters – 16 meters. Such large size objects are both visually distracting and impair the line of sight.

The pole spacing averages approximately 125 meters along the roadway. There is a total of 75 poles along the 10.8 km to the Bornish substation. Another 82 poles go from the Bornish substation to the Nairn substation. These poles are a major hazard to road user safety.

From the drawings submitted May 23, 2013, seen for the first time by the Group, they note that there will be 3 poles at the SE, SW and NW corners of the Keyser intersection with wires crossing over the Kerwood Road and Townsend Line in two locations. The implications of this are unknown, but this intersection will be more hazardous as a result of this distraction and line of sight impairment. The re-design of the intersection is complicated with multiple parameters. A more in-depth investigation of alternatives needs to be taken, led by the County engineer and designed to his approval.

Pole #15 on the Kerwood Road appears to be placed closer to the roadway than the other poles and represents a hazard within the clear zone. This may have been done to avoid seeking an easement from the adjacent property. Since it is not a tree, the Group requests that this pole can be moved closer to the property line to reduce the hazard.

5. **Graham Schofield writes:**

I live on [REDACTED] on Sunday May 26<sup>th</sup> [2013] there was a serious motorcycle accident, between a motorcycle and a canoe that fell off another vehicle going in the opposite direction, this accident happened within the visible area from my property.

The injuries to the driver of the motorcycle were so bad an air ambulance was dispatched to the scene, the helicopter landed right on Townsend Line, and air lifted the victim to UH [University Hospital] in London, hopefully he will survive his injuries.

If the IWT companies are allowed to use county roads to construct their poles, what will happen in cases such as the above. If the Suncor Adelaide, or Cedar Point projects had been up and running I doubt whether an air ambulance could have landed, due to the closes proximity of proposed turbines.

I live close to the intersection of Townsend Line and Kerwood Road, and myself have witnessed 2 serious accidents at this intersection, one a vehicle was rear ended, and an occupant was hospitalized, the second accident involved and an acquaintance of mine who was T-boned by a vehicle who failed to stop on Kerwood Road at this intersection, again at least two parties were hospitalized with serious injuries. In these accidents no air ambulance was required. But, as in the motorcycle accident, if the Nextera Adelaide and Bornish Projects are allowed to use the County rights of way, or road allowances, then an air ambulance would definitely not be able to land in close proximity, due to the IWT lines/poles, this in itself presents a serious threat to the safety of people using county roadways.

If construction of these poles are allowed then not only do they become another road hazard due to their size, but are also a serious distraction when approaching major county intersections, as well as being eye pollution for not only residents but for tourists who may be using these county roads.

I hope the information above is of value in making our roads safe to use, and safe to access in the case of an emergency situation.

Sincerely

Graham Schofield



6. **Response to Group Interrogatory # 7 & 8**

From review of the documents and drawings filed by the Applicant on May 23, 2013 it is very clear that the transmission lines are mainly placed close to the property lines with adjacent landowners, including those owned by members of the Group.

The Group notes that from these drawings, pole span ranges up to 175 meters. The “slack” or “bag” in the line is 30 meters. This means that the line can potentially blow 30 meters to the side. This distance is close to the standard width of the right of way from

fence line to fence line. It is certain that an aerial easement with the adjacent property owner will be required.

As shown, the line travels along the eastern portion of the Kerwood Road, poles set close to the property line on the curve running up to the intersection with Townsend Line. Pole #15 is within the clear zone and should be moved. It represents a physical hazard and an impairment of the sight-line.

The line appears to cross private property between poles 21 & 22.

Residents continue to be approached for easements. From the submitted drawings, it is clear that the Applicant requires many easement agreements, both aerial and land easements.

The Applicant's response reflects a state of denial. The Applicant should not be allowed to seek multiple easements on a summary basis.

#### 7. **Response to Group Interrogatory #9**

The Applicant's response lacks detail and makes statements that do not inspire confidence. Stray current has been a major concern of the Group. At the July 24, 2012 meeting answers were attempted, but an electrical expert was not present. In any case, at that meeting the proposal was still to co-locate the transmission lines with HON1's distribution lines. Separating the two systems is sensible, but it does not eliminate the problems of electromagnetic induction to the ground. As the Group has stated previously, this phenomena is a feature of the nearby 115 kV "pump line".

Increased grounding is not exemplary; it is expedient. Shunting too much current to the ground will induce problems as it is highly unpredictable as to where the current will end up. Landowners have been seeking answers to this problem since the line was proposed 3 years ago, and today have no better information than they had then.

In its answer to Board interrogatory # 10 (b), the Applicant glibly states, "The grounding study is not yet complete but each pole will have provision for ground rod installation. Ground rods will be installed wherever it is determined to be necessary."

The Applicant further states, "Stray voltage is typically caused by voltages in the neutral (also known as the ground) conductor on distribution lines - the lines that serve houses and farms. Stray voltage can reach homes and farms when a system is improperly grounded.

The Group requests that the issue of stray current addressed prior to approval. The damage to livestock is immediate and devastating. The Applicant states that stray current is a property only of the distribution system. This is incorrect. The Applicant's wind-powered generators are not of constant output and there will be surges. There must be



enough neutral capacity. Will power surges into the ground be rare and/or exceptional events?

There is a high probability of induced current into the ground from the 115 kV line. The Group have seen this effect in the 115 kV “pump line”. Placing the line next to pastures will cause an avoidance response by the cattle in the adjacent area. Running the transmission line over the old Keyser Store poses grave safety concerns for anyone nearby.

Will the Applicant produce the final, determined course for the line?

Will the Applicant produce an electromagnetic study detailing the impacts and compensation measures of this line that we may review and offer comment on?

Assurances are not enough. The Group requests that the Board order further examination, evidence and review as required.

**Date:** June 3, 2013

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Solicitors for the Intervenors,  
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