

**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.

**AFFIDAVIT OF CHRISTOPHER ADAM TRAINI**  
**(sworn June 3, 2013)**

I, Christopher Adam Traini, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the County Engineer with the Corporation of the City of County of Middlesex and have been since 2005. As such, I have knowledge, information and belief of the facts and matters hereinafter deposed to. Where I have been informed of such facts, I have stated the source of those facts and that I do verily believe them to be true.

**The Application**

2. The Applications (hereinafter "The Applications") for leave to construct transmission facilities within the County of Middlesex including transmission lines, poles and appurtenances and the operation and maintenance of such facilities for the purpose of connection of renewable energy generation facilities to the IESO-controlled grid are publicly available at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry).

**Use of Road Allowances**

3. The County of Middlesex prescribes right of way widths and classifies roads as per the terms and policies of the County of Middlesex Official Plan. Attached hereto and marked as Exhibit "A" to this Affidavit is the "County of Middlesex Official Plan Consolidated Version August 2006".

4. Section 2.4.2.1 of the County Official Plan describes the Transportation Hierarchy and classifies roads under County Roads as either arterial or collector. Roads affected by these applications are classified as collector roads (County Road 6 – Kerwood Road, County Road 7 – Elginfield Road) and arterial roads (County Road 17 – Nairn Road).
5. Section 2.4.2.3 of the County Official plan prescribes minimum right of way widths to County Roads. In rural areas, such as those affected by these applications, the prescribed right of way widths are 30 metres for road classified as collectors and 36 metres for roads classified as arterials.
6. Long sections of both County Road 6 – Kerwood Road and County Road 17 – Nairn Road have deficient total right of way widths. Attached hereto and marked as Exhibit “B” to this Affidavit are plans showing the right of way widths of roads affected by these applications.
7. The prescribed widths of right of ways have been determined through engineering standards for road cross sections designating locations within the right of way for road infrastructure and utilities. Attached hereto and marked as Exhibit “C” to this Affidavit is a copy of a drawing showing “Standard Utility Locations – Two Lane Rural – All Design Classes”.
8. Locations for utilities within the right of way as prescribed allows for the distribution of electricity, natural gas, telephone and cable television to residents. It also allows for construction and maintenance activities at a reasonable cost to the taxpayer without interruption to other services by reducing or eliminating the need for relocations. These locations also provide for room for future public infrastructure that delivers water, storm sewers and sanitary sewers to the residents and the public. Consumption space within the right of way for transmission facilities has always been strongly discouraged.
9. An undue hardship will be placed on Middlesex County as the road authority if transmission facilities as described in the application will be permitted by the OEB to be placed within the right of ways of County Roads, especially those with less than the

prescribed right of way widths. This infrastructure will either itself be placed in a less than ideal location or cause other utilities to be placed in non-standard locations. The location of utilities will have a negative effect on future construction and maintenance costs as well as a potential impact on road user safety.

10. The Roadside Safety Manual as published by the Ministry of Transportation of Ontario prescribes 'clear zone width', which is the distance from the parallel travelled lane of the road to a roadside obstacle that would cause major injury or damage in a collision. Attached hereto and marked as Exhibit "D" is Section 2.2 of the Roadside Safety Manual – Clear Zone Policy.

11. The Roadside Safety Manual recommends a clear zone width of a minimum of 7 metres for a road of design speed of 100 km/hr. All County Roads affected by these applications have a design speed of 100 km/hr (or 65 miles/hr). The manual also allows for an operational analysis to justify a reduction in the clear zone to 6 metres where traffic volumes are between 5,999 and 1500 average annual daily traffic, and all roads affected by these applications fall within that range. Attached hereto and marked as Exhibit "E" are the 2011 traffic volumes for Middlesex County Roads. The 5 metre measurement as quoted in the interrogatory response to the County of Middlesex which is filed before the Board by NextEra on page 7 is incorrect.

12. It is my opinion as the County Engineer that any new installation of above ground obstacles such as the proposed poles associated with the transmission lines for the applications being considered should not be allowed any closer than 7.0 metres from the edge of pavement of any County road. This may necessitate the use of easements to ensure no poles are constructed in these areas.

13. County road maintenance staff activities include work that would be in close proximity to the poles and transmission lines as proposed in the applications. There is significant concern with regards to risk to human life while working around high voltage electricity transmission especially with heavy equipment such as dump trucks, tractors and

backhoes. All of this equipment is regularly and typically used for such activities as vegetation management, roadside ditch maintenance, shoulder maintenance and snow plow operations. It is understood that the potential of severe injury or death is much greater for electrical transmission lines than for electrical distribution lines due to the difference in voltages.

14. The location of utilities within the County road allowances is controlled through the County of Middlesex work permit process as prescribed in the County Highway By-Law. Attached hereto and marked as Exhibit "F" to this my Affidavit is By-law #5648 County Highway By-law regulating activities on County Roads.

15. The County of Middlesex enacted this by-law through the delegation of authority granted to municipalities in Ontario under the Municipal Act, and therefore this is a demonstration of government policy.

16. Section 5.4 of the County Highway By-Law gives permission for utility work in accordance with Schedule "B" of the by-law which is terms regarding issuance of a work permit.

17. All utility companies operating within the County of Middlesex including Hydro One, Union Gas, Bell Telephone, Rogers Cable and all other utilities abide by this by-law and undertake a work permit application. Permission is not reasonably withheld providing that the location of services does not preclude installation of other utilities, interfere with normal operation of the road, pose a threat to the safety of road users, create additional hardship to the normal maintenance activities of the County, and other issues of concern including those included in this document.

18. At times road user agreements are utilized to control access and work within County right of ways with regards to utilities. All County staff acted at the appropriate time and in accordance with the directions of County Council, and negotiated in good faith with NextEra staff regarding a potential road user agreement once the leave to construct application was submitted to the Board.

19. There are also concerns from time to time about competing interest for use of County road allowances for the installation of utilities. County staff have and must continue to give priority to utilities that provide a direct benefit or service to adjacent land owners. Transmission facilities by their very definition are constructed for the purpose of transmitting electricity from sources of generation to distribution facilities. Priority has always been granted to distribution of electricity (and other goods) to residents over transmission facilities within road allowances. This has historically be represented by utility companies utilizing cross country routes through easements located within private property, and generally only crossing roads perpendicular to the direction of traffic.

20. The Board should also note that any decision to allow for transmission facilities for the current applications within the right of way of County roads will affect the installation of any future applications that may be planning to use the same route for their transmission facilities. There will be no capacity available within the road allowances affect by these applications for any future transmission facilities and NextEra should be required to demonstrate how it will accommodate the shared use of its transmission lines for other electricity generators currently planned in the same geographical area.

#### **Easements**

21. NextEra has identified the potential for the use of easements either adjacent to the road allowance or across private property for the installation of electrical transmission facilities.

22. No evidence has been provided at any time that NextEra took into account the deficiencies in the widths of the road right of ways when planning the route for transmission lines and facilities.

23. The use of easements running adjacent to the County road right of ways to a minimum width measured to the full prescribed right of way widths as defined in the County Official Plan would allow for the installation of transmission poles at an offset location as

recommended for other above ground utilities, either 13 metres or 16 metres from the centerline of the road.

24. Installation at these locations or locations further from the travelled portion of the road would have a minimum impact on road user safety as the poles would be well clear of the required clear zone width.

25. Installation at these locations or locations further from the travelled portion of the road would provide for capacity within the right of way for other utilities although coordination with Hydro One distribution infrastructure or other aerial lines would need to be carefully planned and controlled.

26. Installation at these locations or locations further from the travelled portion of the road would also allow for more sustainable and dependable electrical transmission line as the need for pole relocations or other construction or maintenance related incidents would be practically eliminated. This would be in accordance with the policies of the OEB to approve projects that provide a dependable source of electricity.

27. Installation at these locations or locations further from the travelled portion of the road would allow for the continuation of normal road maintenance activities by the County without additional costs or risks to our employees. It would also greatly reduce the chance of accidental damage to the transmission infrastructure.

#### **Reasons for Non-use of Easement**

28. NextEra has presented evidence in their submissions and interrogatories for not using easements. In my opinion, its reasoning is not legitimate.

29. Arguments that the use of easements by NextEra are restricted due to timelines of other applications and approvals are self-imposed. The County did not have input or control over the actions of NextEra with regards to the content or timing of these other applications.

30. Critical components of engineering design such as materials and pole design and final locations have not been completed and therefore the potential of causing public harm and potential risk to the dependability of the transmission line is much greater within the narrow road right of ways. The use of easements would allow for more time for NextEra to complete their engineering as the number of potential conflicts with road infrastructure and other current and future utilities would practically be eliminated.

31. If as NextEra claims that additional studies (archaeological, geotechnical, etc.) are required which prevents the use of easement, either the applications should be considered as to be premature or extensions should be granted to allow for the completion of such studies. Claims that these studies cannot be completed due to timelines imposed by approvals outside of the OEB leave to construct application should not be used as justification for non-use of easements.

32. It is my opinion that due to the rural nature and farming use of the lands adjacent to the road allowance to which the proposed easement would apply, there would be little risk of the existence of significant archaeological or geotechnical issues that would prevent the installation of poles. Even if such issues did exist, the current progress of the engineering of the transmission facilities would allow sufficient flexibility for changes to the design to be made in order to avoid these types of issues.

33. It is clear that the potential harm presented through the use of road allowance lands where the right of way is not to the prescribed width as per the County Official plan far outweighs the perceived non-existent harm presented by NextEra for the use of easements.

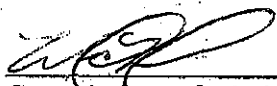
#### **Joint Use of Transmission Facilities**

34. Although NextEra and Hydro One have presented a case arguing against the sharing of poles for co-location of transmission and collection/distribution lines, the County has not be informed as to why an investigation for shared use of transmission facilities between Hydro One and NextEra has not been completed.

35. NextEra should also be required to allow for shared use of their transmission facilities with other independent electricity operators, either present or in the future, who also require transmission in the same geographical area.

36. I make this Affidavit in support of the position of the Intervener, Corporation of the County of Middlesex that easements should be used for the transmission route wherever possible and for no other or improper purpose.

SWORN BEFORE ME at the City of  
London in the Province of Ontario, on  
June 3, 2013.



Commissioner for Taking Affidavits



Christopher Adam Traini

**WAYNE P. MEAGHER**  
BARRISTER, SOLICITOR  
NOTARY PUBLIC, PROVINCE OF ONTARIO

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**CORPORATION OF THE  
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