



Legal Services

Wayne P. Meagher, H.B.A., LL. B., J.D.
County Solicitor/Director of Legal Services

June 13, 2013

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

via email and courier

Attn: Ms. Kirsten Walli
Board Secretary

Dear Ms. Walli:

RE: EB-2013-0040
EB-2013-0041

The Board provided in Procedural Order #4 that it will allow any counsel or consultant for the intervenors who wish to review the confidential material, to do so after signing the Board's Declaration and Undertaking (which can be found at Appendix C of the Practice Direction), and filing it with the Board and serving it on the Applicants.

The issue discussed with the Board and Mr. Myers from May 30th to date, as exemplified in the email dated May 30, 2013 and letter from of Mr. Myers dated June 10, 2013 (attached) has been that while the undersigned is a member of the Law Society of Upper Canada, he cannot declare #2 on the standard form:

"2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in the proceeding"...

for he is in house counsel for the Corporation of the County of Middlesex. The undersigned has served the Applicants and filed with the Board a Declaration and Undertaking with section 2 crossed out.

As noted in the November 30 email and letter dated June 10, 2013 (attached), the undersigned is a member of the Law Society of Upper Canada. As such, the undersigned is subject to the same duties and responsibilities as any retained council. While all legal counsel, including the undersigned owe a duty to their clients to advocate on their behalf, that duty is not absolute. Certain duties, i.e. to abide by the law and to follow court orders trump a lawyers' duty to advocate for their client. Thus, in the event the Board were allow the provision of the information in this instance, the undersigned confirms that he can honour a confidentiality order of the Board.



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The undersigned notes that the request for the information is made for the sole purpose of allowing the undersigned to determine whether or not he has any opinion with respect to the request by the Applicants for confidential treatment of the information. The undersigned is not able to do that if he cannot view the information. The undersigned confirms that he is the only individual in the Legal Department at the County; he can easily firewall himself from the rest of the County with respect to the information; and he can maintain control and the confidentiality of the information both in hard copy and/or electronic form. The undersigned requests for the information to be provided and for two days to be allotted to allow him to determine if he would like to respond to the claim for confidentiality by the Applicants.

Yours Truly,

Wayne

Wayne P. Meagher, H.B.A., LL.B., J.D.
County Solicitor/Director of legal services
Middlesex County
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1

direct line: 519-777-7241
facsimile: 519-265-7249
e-mail: wmeagher@middlesex.ca

cc via email to:

Mr. Jonathan Myers
Torys LLP
79 Wellington St. W.
Suite 3000, Maritime Life Tower
P.O. Box 270, Toronto Dominion Centre
Toronto, ON M5K 1N2

Wayne Meagher

From: Wayne Meagher
Sent: May-30-13 7:57 AM
To: 'Susi Vogt'
Subject: RE: Procedural Order No. 4 for EB-2013-0040 Bornish Wind, LP and EB-2013-0041 Kerwood Wind, Inc.
Attachments: Board Confidentiality Declaration and Undertaking.docx

Ms. Vogt and Mr. Myers,

The Board provided in Procedural Order #4 that it will allow any counsel or consultant for the intervenors who wish to review the confidential material, to do so after signing the Board's Declaration and Undertaking (which can be found at Appendix C of the Practice Direction), and filing it with the Board and serving it on the Applicants.

The issue is that while I am a member of the LSUC, I cannot declare #2 on the standard form:

"2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in the proceeding"...

for I am an employee of the Corporation of the County of Middlesex. While my title is also Director of Legal Services, I am not a director of the Corporation.

Please advise if the Undertaking and Direction re confidentiality without a declaration as to #2 would suffice?

Thanks,

Wayne



Wayne P. Meagher, H.B.A., LL.B., J.D.
County Solicitor/Director of legal services
Middlesex County
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1

direct line and cell: 519-777-7241
facsimile: 519-265-7249
e-mail: wmeagher@middlesex.ca

"Those who are victorious plan effectively and change decisively. They are like a great river that maintains its course but adjusts its flow....They have form but are formless. They are skilled in both planning and adapting and need not fear the result of a thousand battles, for they win in advance defeating those that have already lost."

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From: Susi Vogt [mailto:Susi.Vogt@ontarioenergyboard.ca]

Sent: May-29-13 2:42 PM

To: 'ben.greenhouse@nexteraenergy.com'; 'jmyers@torys.com'; 'ckeizer@torys.com'; 'wrightman@golden.net'; Chris Traini; 'Regulatory@hydroone.com'; Wayne Meagher; 'egillespie@gillespielaw.ca'; 'fran@adelaidemetcalfe.on.ca'; 'john.kennedy@siskinds.com'; 'gandrews@gillespielaw.ca'; tam.wagner@ieso.ca

Subject: Procedural Order No. 4 for EB-2013-0040 Bornish Wind, LP and EB-2013-0041 Kerwood Wind, Inc.

The Board has issued Procedural Order No. 4 for the above noted case.
Board File No. EB-2013-0040 and EB-2013-0041.

Please see attached.
Thank you.

Susi Vogt

Case Administrator

Ontario Energy Board

P.O. Box 2319
2300 Yonge Street
Toronto ON M4P 1E4
☎ 416.440.7603
☎ 416.440.7689
1.888.632.6273

✉ susi.vogt@ontarioenergyboard.ca

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Wayne Meagher

From: Wayne Meagher
Sent: June-10-13 3:56 PM
To: 'Susi Vogt'; jmyers@torys.com
Subject: RE: Procedural Order No. 4 for EB-2013-0040 Bornish Wind, LP and EB-2013-0041 Kerwood Wind, Inc.
Attachments: Letter tO Board, June 10, 2013.pdf; Declaration and Undertaking (endorsed).pdf

To the Board and Mr. Myers,

Please see attached correspondence and Declaration and Undertaking, for filing.

Yours Truly,

Wayne



Wayne P. Meagher, H.B.A., LL.B., J.D.
County Solicitor/Director of legal services

Middlesex County
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1

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From: Susi Vogt [mailto:Susi.Vogt@ontarioenergyboard.ca]
Sent: May-29-13 2:42 PM
To: 'ben.greenhouse@nexteraenergy.com'; 'jmyers@torys.com'; 'ckeizer@torys.com'; 'wrightman@golden.net'; Chris Traini; 'Regulatory@hydroone.com'; Wayne Meagher; 'egillespie@gillespielaw.ca'; 'fran@adelaidemetcalf.on.ca'; 'john.kennedy@siskinds.com'; 'gandrews@gillespielaw.ca'; tam.wagner@ieso.ca
Subject: Procedural Order No. 4 for EB-2013-0040 Bornish Wind, LP and EB-2013-0041 Kerwood Wind, Inc.

The Board has issued Procedural Order No. 4 for the above noted case.
Board File No. EB-2013-0040 and EB-2013-0041.

Please see attached.
Thank you.

Susi Vogt
Case Administrator

Ontario Energy Board

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Legal Services

Wayne P. Meagher, H.B.A., LL. B., J.D.
County Solicitor/Director of Legal Services

June 10, 2013

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

via courier

Attn: Ms. Kirsten Walli
Board Secretary

Dear Ms. Walli:

RE: EB-2013-0040
EB-2013-0041

The Board provided in Procedural Order #4 that it will allow any counsel or consultant for the intervenors who wish to review the confidential material, to do so after signing the Board's Declaration and Undertaking (which can be found at Appendix C of the Practice Direction), and filing it with the Board and serving it on the Applicants.

The issue is that while I am a member of the LSUC, I cannot declare #2 on the standard form:

"2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in the proceeding"...

for I am an employee of the Corporation of the County of Middlesex. While my title is also Director of Legal Services, I am not a director of the Corporation.



Legal Services

Wayne P. Meagher, H.B.A., LL. B., J.D.
County Solicitor/Director of Legal Services

Please find enclosed an original endorsed Declaration and Undertaking.

Yours Truly,

Wayne

A handwritten signature in black ink, appearing to read "Wayne P. Meagher".

Wayne P. Meagher, H.B.A., LL.B., J.D.
County Solicitor/Director of legal services
Middlesex County
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1

direct line: 519-777-7241
facsimile: 519-265-7249
e-mail: wmeagher@middlesex.ca

cc via courier to:

Mr. Jonathan Myers
Torys LLP
79 Wellington St. W.
Suite 3000, Maritime Life Tower
P.O. Box 270, Toronto Dominion Centre
Toronto, ON M5K 1N2

Appendix C

Form of Declaration and Undertaking

EB-[•]2013-0040
EB-2013-0041

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.

DECLARATION AND UNDERTAKING

I, Wayne P. Meagher, am counsel of record or a consultant for The Corporation of the County of Middlesex

DECLARATION

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the "Board") and all Orders of the Board that relate to this proceeding.
2. ~~I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.~~
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information ("Confidential Information").
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

UNDERTAKING

I undertake that:

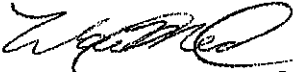
1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
 - (a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
 - (b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
 - (a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
 - (b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this

proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.

8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at London, Ontario this 6th day of June, 2013.

Signature: 
Name: Wayne P. Meagher, County Solicitor/Director of Legal Services (LSUC#: 50418A)
Company/Firm: The Corporation of the County of Middlesex
Address: 3 Administration Offices, 399 Ridout Street North, London, ON N6A 2P1
Telephone: 519.777.7241
Fax: 519.265.7249
E-mail: wmeagher@middlessex.ca



Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

Jonathan Myers
Tel 416.865.7532
jmyers@torys.com

June 10, 2013

EMAIL & COURIER

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

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli

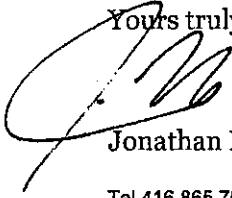
Re: Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. Applications for Leave to Construct Transmission Facilities Board File no. (EB-2013-0040 and EB-2013-0041) - Treatment of Confidential Filings

We are counsel to the Applicants in the above-referenced proceedings. Today we received a copy of a letter, along with a signed Declaration and Undertaking, from Mr. Wayne Meagher, Director of Legal Services for Middlesex County (the "County"), which is an intervenor in the combined proceedings. As acknowledged in the letter, Mr. Meagher has modified the Board's approved form of Declaration and Undertaking so as to remove that portion of the declaration which provides that "I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding." Mr. Meagher has explained that he is an employee of the County.

Section 6 of the Board's *Practice Direction on Confidential Filings* states that, as a general rule, the Board will not accept a Declaration and Undertaking from counsel for a party where such counsel is a director or employee of a party. Section 6 also states that parties to a proceeding will be notified when the Board has accepted a Declaration and Undertaking from a person. Accordingly, the Applicants do not intend to furnish Mr. Meagher with a copy of the confidential filings unless and until such time as the Board determines that it has accepted Mr. Meagher's Declaration and Undertaking in its modified form.

In the Applicant's view, the relevant concerns for the Board will relate to Mr. Meagher's ability to protect the confidential filings from unauthorized access, in both hard copy and electronic form, notwithstanding his employment with County, and whether Mr. Meagher can, in his personal capacity as solicitor to the County maintain control over the confidential documents. Unless the Board can be satisfied that appropriate measures are in place to ensure the necessary physical and electronic separation to protect the confidential documents, and as to Mr. Meagher's personal capacity to retain control over the documents, Mr. Meagher's Declaration and Undertaking should not be accepted.

Yours truly,



Jonathan Myers

Tel 416.865.7532
jmyers@torys.com

cc: Charles Keizer, Torys
Ben Greenhouse, Applicants
Wayne Meagher, Middlesex County