



EB-2013-0040
EB-2013-0041

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.

PROCEDURAL ORDER NO. 5

June 19, 2013

Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (the “Co-owners”) filed an application with the Ontario Energy Board (the “Board”), dated February 8, 2013, under sections 92, 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B) (the “Act”). The Co-owners have applied for an order of the Board granting leave to construct an electricity transmission line and related facilities. The Board assigned file number EB-2013-0040 to this application. A separate application under sections 92, 97 and 101 of the Act was filed by Kerwood Wind, Inc. (“Kerwood”) on February 8, 2013. Kerwood has applied for an order of the Board granting leave to construct an electricity transmission line and related facilities. The Board assigned file number EB-2013-0041 to this application. In the interest of efficiency, the Board combined the EB-2013-0040 and EB-2013-0041 applications pursuant to the Board’s power under section 21(5) of the Act.

On May 23, 2013, the Co-owners and Kerwood (the “Applicants”) filed responses to the interrogatories of Board staff and the intervenors. The Applicants requested confidential

treatment in accordance with the Board's *Practice Direction on Confidential Filings* (the "Practice Direction") for certain information that was requested in two Board staff interrogatories. On May 29, 2013, the Board issued Procedural Order No. 4 which set out a process for the filing of submissions on the Applicants' request for confidential treatment of the two interrogatory responses.

On June 10, 2013, the Board received a Declaration and Undertaking from Mr. Wayne Meagher, County Solicitor and Director of Legal Services for the County of Middlesex. The Declaration and Undertaking was modified by striking paragraph #2, which states:

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.

The Applicants filed correspondence on June 10, 2013 stating that they did not intend to furnish Mr. Meagher with a copy of the confidential filings unless and until such time as the Board has made a determination on the modified Declaration and Undertaking. In the Applicants' view, the Board needs to be satisfied with respect to the "physical and electronic separation to protect the confidential documents" before accepting Mr. Meagher's modified Declaration and Undertaking.

In correspondence filed on June 13, 2013, Mr. Meagher stated that, as a member of the Law Society of Upper Canada, he is subject to the same duties and responsibilities as any retained counsel. Mr. Meagher confirmed that he can honour a confidentiality order of the Board. Mr. Meagher stated 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." Mr. Meagher states that the sole purpose of his request is to determine whether he has any opinion with respect to the Applicants' request for confidential treatment of the information.

The Board's Practice Direction provides that the Board may, in appropriate cases, accept a Declaration and Undertaking from a person who is neither external counsel to, nor a consultant for, a party. The Board finds that Mr. Meagher's letter of June 13, 2013 sets out sufficient reasons as to why he needs access to the confidential information and how he will ensure the information is not shared with other employees of the County of Middlesex.

The Board reminds parties that Persons who are granted access to confidential information should note that the Board considers violations of a Declaration and Undertaking given to the Board to be a matter of very serious concern. Such violations can be, and will continue to be, subject to sanctions imposed by the Board.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. The Applicants shall provide a copy of the two confidential interrogatory responses referenced above to Mr. Wayne Meagher.
2. If Mr. Wayne Meagher wishes to file a submission on the Applicants' request for confidential treatment of the two interrogatory responses, he shall file the submission with the Board and serve the submission to all parties on or before **June 21, 2013**.
3. The Applicants shall file their response, if any, to submissions of Board staff and the intervenors on the Applicants' request for confidential treatment of the two interrogatory responses with the Board and serve it to all parties by **June 25, 2013**.

All filings to the Board must quote the file numbers, EB-2013-0040 and EB-2013-0041, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

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

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **June 19, 2013**

ONTARIO ENERGY BOARD

Original signed by:

Kirsten Walli
Board Secretary