

June 25, 2013

RESS & COURIER

Ontario Energy Board
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Toronto, ON M4P 1E4

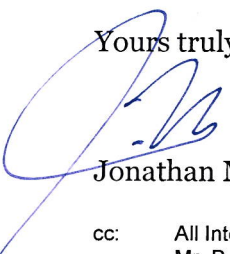
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. -
Applications for Leave to Construct Transmission Facilities (EB-2013-0040,
EB-2013-0041) - Applicant Reply Submission on Confidential Treatment of
Interrogatory Responses**

We are counsel to the Applicants in the above-referenced proceedings. In accordance with Procedural Order No. 5, we hereby enclose the Applicant's reply submission on the confidential treatment of certain interrogatory responses. An electronic copy of the reply submission has been filed on the Board's Regulatory Electronic Submission System and served on all parties.

Yours truly,



Jonathan Myers

cc: All Intervenors
Mr. B. Greenhouse, Bornish Wind, LP
Mr. C. Keizer, Torys LLP

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.

**Applicant Reply Submissions
on Confidential Treatment of Interrogatory Responses**

June 25, 2013

Introduction

In filing responses to the interrogatories of Board staff and intervenors on May 23, 2013, the Applicants requested confidential treatment in accordance with the Board's *Practice Direction on Confidential Filings* for certain information that was requested in Board staff interrogatories #19(b) and #21. The Applicant explained its rationale for such confidential treatment in a May 23, 2013 letter that accompanied the filing of interrogatory responses. Procedural Order No. 4, issued May 29, 2013, set out a process for parties to file submissions on the request for confidential treatment of these two responses.

Submissions were filed by Board staff and Hydro One Networks Inc. ("Hydro One") on June 14, 2013. Procedural Order No. 5, issued June 19, 2013, included a determination by the Board that the modified form of Declaration and Undertaking filed by Mr. Wayne Meagher, County Solicitor and Director of Legal Services for the County of Middlesex, was acceptable. The County subsequently filed its submissions on June 21, 2013.

The following is the Applicant's reply to the submissions filed by each of Board staff, Hydro One and the County in respect of the request for confidential treatment of the two interrogatory responses.

Board Staff Interrogatory #19(b)

Board staff Interrogatory #19(b) requested a copy of the Applicant's Connection and Cost Recovery Agreement ("CCRA") with Hydro One. As indicated by the non-confidential portion of the response filed by the Applicant, the CCRA is commercially sensitive, includes financial information and is required to be treated as confidential in accordance with its terms. On this basis, the Applicant requested confidential treatment of the CCRA in its entirety.

Section 24 of the Standard Terms and Conditions, which are incorporated by reference into the CCRA, states that "Confidential Information" shall at all times be treated as confidential and

shall not be disclosed to any third party directly or indirectly, without the prior written consent of the party that provided the Confidential Information. "Confidential Information" is defined so as to include "the terms of the Agreement and the operations and dealings under the Agreement." There are no exceptions provided in respect of circumstances where Confidential Information is required to be provided in a legal or regulatory proceeding. The Applicant sought and on June 11, 2013 received consent from Hydro One to disclose the CCRA as required for the limited purposes of Procedural Order No. 4 (i.e. on a confidential basis as necessary for parties to file submissions on its confidential treatment).

With the exception of Hydro One, no party filed submissions with respect to the Applicant's request for confidential treatment of the CCRA.

In its submissions, Hydro One explains the principles that it follows in applying redactions to its CCRAs. Hydro One also filed a copy of the CCRA indicating the portions that Hydro One believes should, at a minimum, be redacted based on application of its principles. Hydro One does not oppose the Applicant's request for the CCRA to be treated as confidential in its entirety.

It continues to be the Applicant's submission that the CCRA should be maintained as confidential in its entirety. No party has opposed the Applicant's request for such confidential treatment. Although Hydro One's submissions identify specific information within the CCRA that it requires to be kept confidential, those redactions do not address the full range of the Applicant's concerns with respect to the disclosure of commercially sensitive information, financial information and ensuring compliance with the confidentiality provisions of the CCRA. For example, the redactions proposed by Hydro One would not have the effect of protecting the confidentiality of terms that include various key dates relating to the development of the project and completion of the work, the various risks agreed to between the parties with respect to the completion of the work, financial information concerning the amounts payable and their timelines for payment, as well as detailed technical information concerning the design and construction of the interconnection facilities. The Applicant regards this information as being commercially sensitive. Moreover, as the confidentiality terms of the CCRA do not provide for any exclusion that would permit disclosure of the CCRA without consent even where required by the Board, further consent of Hydro One would be required. Deeming the CCRA to be confidential in its entirety would mitigate the risk to the Applicant of having to obtain such further consent. In addition, the Applicant notes that maintaining the entire CCRA as confidential would address the concerns of both Hydro One and the Applicant.

In the alternative, if the Board determines that it would be more appropriate to place a redacted CCRA on the public record despite there being no objections to the Applicant's request for the entire CCRA to be treated confidentially then, although the Applicant agrees with the redactions proposed by Hydro One, it would be the Applicant's submission that the redactions proposed by Hydro One are alone not sufficient to address the Applicant's concerns with respect to the disclosure of information that is commercially sensitive or financial in nature.

Consequently, the Applicant will, under separate cover, file on a confidential basis with the Board and serve on those parties that have filed a Declaration and Undertaking, copies of the CCRA showing (a) the Applicant's proposed redactions that are in addition to those requested by

Hydro One (which the Applicant supports), and (b) all redactions proposed by Hydro One together with all additional redactions proposed by the Applicant in a single document.

Board Staff Interrogatory #21

Board staff interrogatory #21 is a three-part interrogatory that relates to the potential connection of the planned Suncor Cedar Point Wind Power Project through the planned Jericho Wind, Inc. transmission facilities. The Applicant has requested confidential treatment for each of the three parts of its response, each in their entirety.

With the exception of Board staff and the County, no party filed submissions with respect to the Applicant's request for confidential treatment of its response to Board staff interrogatory #21. Board staff and the County, in their submissions, each note that the Applicant's request for confidential treatment alludes to the possibility that certain portions of the response may not require confidential treatment and that, accordingly, the Applicant should make a redacted version available for the public record instead.

The Applicant has considered these submissions and agrees that certain portions of its response to Board staff interrogatory #21 are not commercially sensitive and therefore do not require confidential treatment. The Applicant will, under separate cover, file on a confidential basis with the Board and serve on those parties that have filed a Declaration and Undertaking, a copy of the response to Board staff interrogatory #21 marked so as to show the Applicant's proposed redactions.

All of which is respectfully submitted this 25th day of June, 2013.

**BORNISH WIND, LP
KERWOOD WIND, INC.
JERICO WIND, INC.**

By its counsel
Torys LLP



Jonathan Myers