



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.

**DECISION AND ORDER ON CONFIDENTIAL FILINGS
AND PROCEDURAL ORDER NO. 7**

July 26, 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.

Request for Confidential Treatment of Interrogatory Responses

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.

Specifically the request for confidential treatment related to the following:

- (i) The appendix to the response to Board staff interrogatory #19(b) which consists of a copy of the Applicants’ Connection and Cost Recovery Agreement (“CCRA”) with Hydro One Networks Inc. (“Hydro One”), the terms of which specify that the agreement itself comprises confidential information (The Applicants requested that the entire document be treated as confidential); and,
- (ii) The response to Board staff interrogatory #21 which includes confidential and commercially sensitive information relating to the arrangements between the Applicants and Suncor Energy Products Inc. (“Suncor”) (The Applicants requested that the entire response be treated as confidential).

As an interim measure, the Board allowed any counsel or consultant for the intervenors who wished 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 Board made provision for submissions and reply submission on whether or not the Board should treat the material as confidential.

Response to Board Staff Interrogatory #19(b)

Hydro One filed a submission on the request for confidential treatment of the CCRA on June 14, 2013. In applying redactions to its CCRAs, Hydro One follows the principles of (1) maintaining the integrity of Hydro One’s tendering process in the event Hydro One elects to contract out certain aspects of the project work and (2) protecting engineering design details that may be sensitive from a system security perspective. A copy of the CCRA which was redacted according to the principles listed above was filed in confidence. Hydro One requested that the Board approve the level of confidentiality reflected in the CCRA with the Applicants.

The Applicants filed a reply submission on June 25, 2013. The Applicants submitted that the entire CCRA should be treated as confidential and noted that there were no submissions filed that specifically objected to the request for the CCRA to be treated as confidential in its entirety. In the event that the Board determined that it would be more appropriate to place a redacted CCRA on the public record, the Applicants submitted that the redactions proposed by Hydro One were insufficient to address the Applicants' concern with respect to information that is commercially sensitive or financial in nature. The Applicants filed, in confidence, a CCRA including all redactions proposed by Hydro One together with additional redactions proposed by the Applicants. No party objected to the redactions proposed by the Applicants.

As a general policy, it is the Board's view that all records should be made available to the public unless there is a need to protect the information. In this case, the Board notes that no party sought full disclosure of the CCRA. However, the Board has received redacted CCRAs filed in confidence by parties to the CCRA, namely Hydro One and the Applicants, for the Board's consideration. While there was no formal process established for subsequent submissions on this matter, a month has elapsed since the Applicants filed their reply submission and the Board has received no further communication from any party to the proceeding.

No party contested the Applicants' confidentiality claim in respect of the CCRA and the Board considers it reasonable to accept the full agreement in confidence and the Applicants' redacted version for filing on the public record.

Response to Board Staff Interrogatory #21

This three-part interrogatory relates to the potential connection of the planned Suncor Energy Cedar Point Wind Power Project through the planned Jericho Wind, Inc. transmission facilities. The entire response was filed in confidence.

Board staff submitted that a copy of the response to Board staff interrogatory #21, in which any information that the Applicants consider confidential and commercially sensitive information was redacted, should be made available on the public record of these proceedings. The Corporation of the County of Middlesex (the "County") submitted that the majority of information contained in the interrogatory response was not commercially sensitive and should be made public. The Applicants considered the submissions and agreed that certain portions of the response are not commercially

sensitive. A copy of the response with the Applicants' proposed redactions was filed in confidence on June 25, 2013.

The Board has reviewed the response to Board staff interrogatory #21 and finds that it is appropriate to afford confidential status to the response. The redacted version of the response to Board staff interrogatory #21, as filed by the Applicants on June 25, 2013, shall be placed on the public record.

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 responses to Board staff interrogatories #19(b) and #21 will be treated as confidential. Following the end of the proceeding, parties in receipt of confidential information shall either return the subject information to the Board for destruction, or destroy the information and execute a Certificate of Destruction. The Certificate of Destruction, that is Appendix D of the Practice Direction, must be filed with the Board.

DATED at Toronto, **July 26, 2013**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary