

September 16, 2013

**RESS, 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 (EB-2013-0040 and EB-2013-0041) (the  
“Applications”) - Request to Amend and Vary Procedural Order No. 8**

We are counsel to Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (the “Applicants”) in the above-referenced proceedings.

The Applicants have reached agreement with the County of Middlesex on forms of road use agreements in respect of each of the Applications (the “Road Use Agreements”) and thereby have received the consent of the County to the use of the applicable road allowances for construction of the transmission facilities. The County has committed to executing the final Road Use Agreements, based on the agreed forms, upon the Board granting leave to construct.

The Applicants will file evidence updating their evidence with respect to routing and the Road Use Agreements on or before September 18, 2013. The evidence will show an updated route delineating specific private easements that may be used as part of the route. All subject lands to be employed have the consent of the landowners through established easements or the Road Use Agreements. In reaching these agreements, the Applicants have addressed all of the County’s outstanding concerns with the proposed transmission facilities to the County’s satisfaction, including with respect to all matters raised by the County during the course of the leave to construct proceedings. It is the Applicants’ understanding that the County does not intend to participate actively in the oral hearing that has been scheduled, nor in the argument phase of the proceeding. The County will by separate letter confirm the foregoing and advise the Board of its intentions with respect to the proceeding.

In Procedural Order No. 8, issued on August 23, 2013 (the “Order”), the Board determined that it will hold an Oral Hearing in London, Ontario commencing on September 25, 2013 with oral argument, submissions and reply submissions to follow on October 7, 2013 in Toronto. In addition, the Board required the Applicants to file any evidence updates no later than

September 18, 2013. The Applicants hereby request that the Board vary the Order to permit a written hearing instead of an oral hearing, as the material issues in the proceeding have now been resolved.

In the Order, the Board stated that it “has determined that it will proceed with an oral hearing as there were numerous requests for an oral hearing from the public, as well as from local governments who have indicated that they will actively pursue their participation in an oral hearing process to pursue the issues that are of concern to them.” Because the Board did not seek submissions from parties following the interrogatory phase on the need for an oral hearing, it is reasonable to conclude that the board relied upon the submissions on the form of hearing made by the Applicant and intervenors at the very outset of the proceeding in March 2013.

Since those submissions were made in March 2013, there have been a number of developments. First, we note that the Board in Procedural Order No. 1 required 15 individual intervenors to participate as a single intervenor group. In regard to the Board’s reference in the Order to there being “numerous requests for an oral hearing from the public”, we note that the 15 individuals having expressed this view are now recognized as a single intervenor in the proceeding. The other public interest intervenor in the proceeding is the Middlesex-Lambton Wind Action Group (“MLWAG”), which did not file interrogatories and has not played an active role in the proceeding to date. Both groups are represented by the same legal counsel.

With respect to local governments recognized in the Order, as noted the Applicants have addressed all of the County’s concerns in the proceeding to date. The County does not intend to participate in the oral hearing that has been scheduled. The other local governments that have intervenor status are the Corporation of the Township of Adelaide Metcalfe and the Municipality of North Middlesex, neither of which has participated actively in the proceeding to date.

Furthermore, we note the correspondence of September 10, 2013 from Hydro One Networks Inc. to Board Staff indicating that it does not intend to cross-examine or present witnesses at the oral hearing. The only other intervenor in the proceeding is the IESO, which has not participated actively.

Based on the foregoing, it appears that the only intervenor that may still want an oral hearing is the Intervenor Group. However, the issues that have been raised by the Intervenor Group, as demonstrated by the interrogatories and evidence it has filed, are either not relevant to the Board’s jurisdiction in the proceeding, have been addressed through the evidence update or are fully addressed in the various interrogatory responses. Given there are few issues remaining in the proceeding and there is extensive evidence on the record in respect of these issues, including the updated evidence, an oral hearing would be of very limited probative value and would be an inefficient use of the Board’s time and resources<sup>1</sup>. Proceeding to written submissions is the most appropriate next step for the combined proceeding in the current circumstance.

Consequently, the Applicants request that the Board amend and vary Procedural Order No. 8 by cancelling the oral hearing and completing the proceeding in writing on the following schedule if possible:

---

<sup>1</sup> McLean’s Mountain Wind LP, Procedural Order No.6, April 24, 2012 (EB-2011-0394); Dufferin Wind Power Inc., Procedural Order No.4, March 19, 2013 (EB-2012-0365).

- Applicants' Argument-in-Chief, September 25, 2013
- Intervenor and Board Staff submissions, October 1, 2013
- Applicants' Reply Submissions, October 4, 2013

Yours truly,

A handwritten signature in black ink, appearing to read 'Charles Reizer', with a long, sweeping horizontal stroke extending to the right.

Tel 416.865.7512  
ckeizer@torys.com

cc: Mr. B. Greenhouse, Applicants  
Intervenors