



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. 9
September 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. The Co-owners and Kerwood (the “Applicants”) requested that the Board proceed by way of written hearing for leave to construct of the

Co-owners' transmission line and transmission facilities and Kerwood's transmission line and transmission facilities (the "projects").

In Procedural Order No. 8, issued on August 23, 2013, the Board made provision for an oral hearing on September 25, 2013 and continuing on September 26, 2013 if necessary. As part of oral hearing planning, Board staff canvassed all parties with respect to cross examination requirements. Despite requesting an oral hearing when requesting intervenor status, the Township of Adelaide Metcalfe, Middlesex Lambton Wind Action Group, Inc., and the Municipality of North Middlesex did not participate actively in the proceeding nor did they respond to Board staff inquiries about the hearing plan. The Independent Electricity System Operator and Hydro One Networks Inc. advised Board staff that they had no cross examination.

The County of Middlesex (the "County") requested an oral hearing on several occasions, however, on September 16, 2013, the County filed correspondence with the Board stating that it had reached agreement with the Applicants regarding the form of road use agreements. The County further stated that it no longer intends to participate actively in the hearing.

The Applicants also filed correspondence with the Board on September 16, 2013 requesting that the Board cancel the oral hearing noting that there have been a number of developments in the proceeding. It is the Applicants' view that most issues have been addressed and that the remaining issues could be addressed by way of written hearing.

In correspondence filed on September 16 and 17, 2013, the Group of Intervenors (the "Group") objected to the Applicants' request to cancel the oral hearing. The Group proposed a witness panel for cross examination on the Group's evidence. The Group also stated that it intended to cross examine the Applicants on the following issues: provision of independent legal advice to property owners, expropriation of lands, the Jericho portion of the current application and stray voltage. The Group stated that, as the Board has already ordered an oral hearing, it would be effective and time efficient to proceed with the oral hearing. Further, the Group noted that it has spent significant time preparing for the oral hearing.

Procedural Order No. 8 provided that the Applicants file any evidence updates on or prior to September 18, 2013. In addition to an evidence update filed on September 18, 2013, the Applicants also responded to the issues on which the Group proposes to cross examine. The Applicants confirmed in their evidence update that they have secured all land rights necessary for the projects and will be able to construct with the consent of the directly affected land owners. As such, there is no need for the Group to cross examine on provision of independent legal advice or expropriation as there are no land use agreements or land matters in dispute. With respect to issues concerning Jericho, the Applicant notes that while Jericho is one of the Co-owners, the specific transmission facilities related to the Jericho project are not the subject of the current proceeding. The Applicant states that its evidence with respect to stray voltage was set out in in response to Board staff interrogatory #10. The Applicants confirmed that, if the Board decided to continue with oral hearing, they would have no cross examination for the Group's witness panel.

The Board's determination to proceed with an oral hearing was based on numerous requests in March 2013 for an oral hearing from the public, as well as from local governments who had indicated that they would actively pursue their participation in an oral hearing process to pursue the issues of concern to them. The local governments are now silent on their issues and on the matter of an oral hearing, or have reached agreement with the Applicants. As such, the only party that has issues on which it would like to cross examine is the Group.

As noted above, the Group has indicated it intends to cross examine on the provision of independent legal advice to property owners, expropriation of lands, the Jericho portion of the current application and stray voltage. The Board notes that if there are any matters related to expropriation they would be dealt with by way of a separate proceeding. The Group and the Applicants have different views on the other matters. However, the Board finds that it would not be efficient to proceed with an oral hearing for these matters alone. The Board finds that a written hearing will provide the parties with an opportunity to present their cases in a full and fair manner, taking into account the evidence on the record, the issues raised, and the opportunities provided for parties to ask questions on the evidence.

As parties may require further information following review of the evidence update filed on September 18, 2013, the Board is making provision for interrogatories on the

evidence update. The Board reminds parties that this additional provision for interrogatories is to be limited to matters set out in the evidence update and is not to be used as an opportunity to ask additional IRs on previously filed evidence. The Board hereby cancels the September 25-26, 2013 oral hearing dates and the October 7, 2013 oral submission date established in Procedural Order No. 8.

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 procedural dates set out in Procedural Order No. 8 are cancelled.
2. Board staff and intervenors shall, on or before **September 30, 2013**, file with the Board and deliver to all parties their interrogatories relating to the evidence update filed on September 18, 2013.
3. The Applicants shall, on or before **October 7, 2013**, file with the Board and deliver to all parties interrogatory responses.
4. The Applicants shall, on or before **October 11, 2013**, file with the Board and deliver to all intervenors their argument in chief.
5. Board staff and intervenors shall, on or before **October 18, 2013**, file with the Board and deliver to all parties their submissions.
6. The Applicants shall, on or before **October 25, 2013**, file with the Board and deliver to all parties their reply submission.

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, **September 19, 2013**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary