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October 2, 2013

RESS, EMAIL & COURIER

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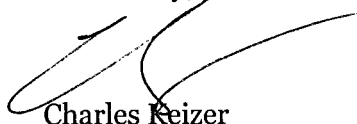
Attention: Ms. K. Walli, Board Secretary

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”) - Applicant Argument-in-Chief**

We are counsel to Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (the
“Applicants”) in the above-referenced proceedings. In accordance with Procedural Order No. 9,
please find enclosed the Applicants’ Argument-in-Chief.

Yours truly,



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cc: Mr. B. Greenhouse, Applicants
Intervenors

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.

APPLICANTS' ARGUMENT-IN-CHIEF

October 2, 2013

A. INTRODUCTION

1. These are submissions filed on behalf of Bornish Wind, LP ("**Bornish**"), Kerwood Wind, Inc. ("**Kerwood**") and Jericho Wind, Inc. ("**Jericho**") (together referred to as the "**Co-owners**") in EB 2013-0040 (the "**Co-owners' Application**") in which the Co-owners filed an application for leave to construct under Section 92 of the *Ontario Energy Board Act* (the "**OEB Act**") an electricity transmission line, a switching station and a transformer station, which will be used to serve the Bornish Wind Energy Centre, the Adelaide Wind Energy Centre and the Jericho Wind Energy Centre. In conjunction with these transmission facilities, Bornish has requested leave to construct a substation for the Bornish Wind Energy Centre, which will connect to the Co-owners' proposed transmission facilities.
2. These are also the submissions of Kerwood in EB-2013-0041 (the "**Kerwood Application**") in which Kerwood filed an application for leave to construct an electricity transmission line and a substation to serve the Adelaide Wind Energy Centre. The transmission facilities proposed in the Kerwood Application will connect to the transmission facilities that are proposed by the Co-owners in the Co-owners' Application.

3. The Applications of each of the Co-owners, Bornish and Kerwood (the “**Applicants**”) seek Board approval under Section 97 of the forms of agreements that have been offered or that will be offered to landowners affected by the proposed transmission facility locations and routing, as well as for orders under Section 101 approving the construction of transmission facilities upon, under or over a highway, utility line or ditch.
4. In the Notice of Application issued on March 11, 2013, the Board indicated that it would consider the Co-owners’ Application and the Kerwood Application through a combined proceeding.
5. The Applicants have, through their pre-filed and updated evidence, as well as interrogatory responses, filed detailed, comprehensive and specific information in support of the Applications. The evidence demonstrates that the public interest test for leave to construct under Section 96(2) of the OEB Act has been met and that the proposed transmission facility locations and routing are appropriate. Accordingly, the Applicants submit that leave to construct the proposed transmission facilities should be granted under each of the Applications for the following reasons:
 - (a) the interests of consumers with respect to prices are protected as the costs of the facilities, including interconnection, will not be passed onto consumers through electricity rates;
 - (b) based upon the Independent Electricity System Operator’s (“**IESO**”) System Impact Assessment (“**SIA**”) reports, the connection to the transmission facilities proposed will not have a material adverse impact on the reliability of the integrated power system;
 - (c) based upon the Hydro One Networks Inc.’s (“**Hydro One**”) Customer Impact Assessment (“**CIA**”) reports, the connection of the proposed transmission facilities will not have any adverse impact on the Hydro One transmission customers in the area;
 - (d) the proposed transmission facilities are required to convey electricity from each of the Applicants’ renewable energy generating facilities to the IESO-controlled grid

and consistent with the Province of Ontario's policy of promoting renewable energy;

- (e) the locations of stations and the routing of the transmission lines on private lands and in the public road rights-of-way in the County of Middlesex (the "**County**") is on the consent of each owner and includes the accommodation and agreement of other utilities (i.e. Hydro One and Bell Canada) as circumstances require; and
- (f) the Applicants have a statutory right to locate in the public road rights-of way.

B. APPLICATIONS

6. In the Co-owners' Application, Bornish and the Co-owners have sought leave to construct electricity transmission facilities comprised of:

- (a) a collection substation located on Part Lot 9, Concession 16 in the Municipality of North Middlesex, Middlesex County, to be owned by Bornish, at which power from the 34.5 kV collection system associated with the Bornish Wind Energy Centre will be transformed from 34.5 kV to 121 kV by means of one 121/34.5 kV, 51/68/85 MVA transformer (the "**Bornish Collection Substation**");
- (b) a 121 kV switching station located on Part Lot 9, Concession 16 in the Municipality of North Middlesex, Middlesex County, to be co-owned by the Co-owners as tenants in common, at which power transmitted from the Bornish Wind Energy Centre, the Adelaide Wind Energy Centre and the Jericho Wind Energy Centre will converge and which will consist of a four breaker ring bus (the "**Bornish Customer Switching Station**" or "**Bornish CSS**");
- (c) a 115 kV voltage class connection line of less than 100 m, to be owned by Bornish, connecting the Bornish Collection Substation to the Bornish CSS;
- (d) an approximately 12.6 km single circuit 115 kV voltage class transmission line, to be co-owned by the Co-owners as tenants in common, connecting the Bornish CSS with the Parkhill CTS (as defined below) (the "**Co-owners' Transmission Line**");

- (e) a 500 kV transformer station located on Part Lot 18, Concession 17 in the Municipality of North Middlesex, Middlesex County, to be co-owned by the Co-owners as tenants in common, at which power transmitted from the Bornish CSS will be transformed from 121 kV to 500 kV by means of two 500/121 kV 135/180/225 MVA transformers (the “**Parkhill Customer Transformer Station**” or “**Parkhill CTS**”); and
 - (f) a 500 kV connection line of less than 100 m, to be co-owned by the Co-owners as tenants in common, connecting the Parkhill CTS to Hydro One Networks Inc.’s planned Evergreen Switching Station.
7. In the Kerwood Application, Kerwood has sought leave to construct electricity transmission facilities comprised of:
- (a) a collection substation located on Part Lot 7, Concession 3 in the Township of Adelaide Metcalfe, Middlesex County, to be owned by Kerwood, at which power from the 34.5 kV collection system associated with the Adelaide Wind Energy Centre will be transformed from 34.5 kV to 121 kV by means of one 121/34.5 kV, 51/68/85 MVA transformer (the “**Adelaide Collection Substation**”); and
 - (b) an approximately 10.8 km single circuit 115 kV voltage class transmission line, to be owned by Kerwood, connecting the Adelaide Collection Substation to the Bornish CSS (the “**Kerwood Transmission Line**”).
8. The transmission facilities described in paragraphs 6 and 7, above (the “**Proposed Transmission Facilities**”) will be used for the purposes of conveying electricity generated by the Bornish Wind Energy Centre, the Adelaide Wind Energy Centre and, eventually, the Jericho Wind Energy Centre to the IESO-controlled grid. The Bornish Wind Energy Centre is a planned 72.9 MW wind generation facility in the Municipality of North Middlesex in Middlesex County. The Adelaide Wind Energy Centre is a planned 59.9 MW wind generation facility in the Township of Adelaide Metcalfe in Middlesex County. The Jericho Wind Energy Centre is a planned 149 MW wind generation facility in the Municipality of Lambton Shores and the Township of Warwick

in Lambton County. Geographically, the three generation facility sites are in relatively close proximity to one another. Each of the generation facilities are being developed pursuant to contracts from the Ontario Power Authority (the “OPA”) under the OPA’s Feed-in Tariff (“FIT”) Program.¹

9. As the Applicants will be both transmitters and generators and will be transmitting electricity only for the purpose of conveying electricity to the IESO-controlled grid, the Applicants rely upon the exemption from the requirement to obtain transmission licenses as set out in Section 4.0.2(1)(d) of Ontario Regulation 161/99.

C. LEGISLATIVE FRAMEWORK

10. The Applications are brought under Section 92(1) of the OEB Act, which provides that:

“No person shall construct, expand or reinforce an electricity transmission line . . . or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.”

11. Section 96 of the OEB Act sets out the relevant test for an application under Section 92:

(1) If, after considering an application under section . . . 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board **shall only** consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line . . . or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. (*emphasis added*)

¹ The FIT Contracts for the Bornish, Adelaide and Jericho projects allow for up to 73.5 MW, 60 MW and 150 MW to be produced from each facility, respectively.

12. The Board's jurisdiction in considering the Applications for leave to construct the Proposed Transmission Facilities is therefore limited to the application of the public interest test set out in Section 96(2), namely to a consideration of the interests of consumers with respect to prices, the interests of consumers with respect to the reliability and quality of electricity service, and the promotion of the use of renewable energy sources consistent with government policy. The Board's jurisdiction on the Applications is also limited to the Proposed Transmission Facilities. The associated wind generation facilities and their 34.5 kV collector systems are beyond the scope of the proceeding.
13. In Procedural Order No. 1, the Board acknowledged its limited scope of review under Section 92. The Board stated that matters relating to environmental impacts and approvals, land-use, land valuation, construction activities, as well as health and aesthetic issues are not within the scope of the Board's jurisdiction. Rather, the Board noted, many of these issues are instead considered within the scope of the Ministry of the Environment's Renewable Energy Approval ("**REA**") process. The Board also noted that the granting of approval in a leave to construct would ordinarily be conditional on all necessary permits and authorizations being received, including an REA.
14. The scope of the Board's jurisdiction under Sections 92 and 96 of the OEB Act, in these proceedings, is also affected by the Applicants reliance on the rights granted under Section 41 of the *Electricity Act, 1998* (the "**Electricity Act**"), relating to the use of public highways for the purpose of a transmission system.
15. Specifically, the Applicants have proposed locating the transmission lines within County road rights-of-way ("**ROWS**") except to the extent that certain portions of the transmission lines will be constructed on private lands adjacent to the ROWs. In proposing to use the ROWs, the Applicants have indicated that they are relying upon their rights under Section 41 of the Electricity Act. The Applicants submit that the Board's consideration of the public interest under Sections 92 and 96 in respect of the routing of the transmission lines is subject to those rights.
16. Section 41 of the Electricity Act provides transmitters and distributors with significant rights with respect to the construction of electricity transmission and distribution systems

under, over or on any public street or highway. Under Section 2(1) of the Electricity Act, a transmitter means “a person who owns or operates a transmission system”. The Applicants will own and operate a transmission system. As such, the Applicants are transmitters under Section 41 of the Electricity Act and have the statutory rights granted under Section 41 of the *Electricity Act*.

17. As transmitters, the Applicants under Section 41(1) of the Electricity Act may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as they consider “necessary for the purpose of its transmission system, including poles and lines”. Subsection (2) provides that transmitters may inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities constructed or installed under Subsection (1). Subsections (3) and (4) grant rights of entry for transmitters and their employees and agents. Most significantly, Subsection (5) provides that “the exercise of such powers under (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway”.
18. Subsection 41(9) of the Electricity Act states that the location of any structures, equipment or facilities constructed or installed under Subsection (1) shall be agreed on by the transmitter and the owner of the street or highway and, in the case of disagreement, shall be determined by the Board. However, as Section 92 of the OEB Act (in the case of a transmission line greater than 2 km in length) already provides a statutory process to establish the transmission line’s location, Subsection 41(10) provides that Subsection (9) does not apply if Section 92 of the OEB Act applies so as to require leave to construct.
19. It is important to note that Subsection 41(10) of the Electricity Act in the case of transmission lines only makes inapplicable the process under Subsection (9). This is because, with the Board’s powers established under Section 92 of the OEB Act, Subsection 41(9) would otherwise be redundant. Subsection 41(10) only affects Subsection 41(9), being the process before the Board. Subsection 41(10) does not amend or affect the rights granted to transmitters in Subsections 41(1) to 41(8), or render those provisions inapplicable. As such, the rights granted to transmitters under Subsections (1), (2) and (3) (location, ongoing rights to maintain and entry) remain in effect, as does the

right to do so without the owner's consent under Subsection (5). As a result, the application of Section 92 of the OEB Act does not diminish the Applicants' rights to be in the road allowance. Given Section 41, with respect to location of the transmission lines, the question before the Board under Section 92 is not whether the Applicants have a right to be in the road allowance or whether they can locate in the road allowance. Rather, the question for the Board is only with respect to where in the road allowance the transmission lines will be located.

20. Based on the foregoing, the scope of the Board's inquiry in respect of Section 92 in the present proceeding is (a) whether the Proposed Transmission Facilities satisfy the narrow public interest test established under Section 96(2) of the OEB Act, and (b) whether the Applicants' proposed locations within the road ROWs of any portion of the Proposed Transmission Facilities are acceptable.

D. PUBLIC INTEREST CONSIDERATIONS

Interests of Consumers with respect to Prices and Project Need

21. Section 96(2) of the OEB Act requires the Board, in applying the public interest test, to consider the interests of consumers with respect to prices. The Electricity Act defines "consumer" to mean a person who uses, for the person's own consumption, electricity that the person did not generate. The Proposed Transmission Facilities will not directly serve any "consumers" - they will be used only to convey electricity from the Applicants' respective wind generation facilities to the Hydro One transmission system which forms part of the IESO-controlled grid. As indicated in each Application at Exhibit B, Tab 1, Schedule 1, the costs of constructing and operating the Proposed Transmission Facilities will be the responsibility of and will be paid for entirely by the Applicants.² These costs will not be passed on to consumers through transmission rates but rather will be paid by the Applicants.³ The pricing available under the OPA's form of FIT Contract is

² See also Applicant response to Board Staff Interrogatory #19(c).

³ As indicated in Exhibit B, Tab 3, Schedule 1 of the Applications and as clarified in response to Board Staff Interrogatory #2, the OPA awarded contracts under the FIT Program in respect of the Bornish Wind Energy Centre, the Adelaide Wind Energy Centre and the Jericho Wind Energy Centre in July 2011. The Applicants are therefore required to deliver renewable energy from their respective renewable energy generation facilities to the IESO-controlled grid. The Proposed Transmission Facilities are required to convey electricity for this purpose.

standardized and does not vary based on the particular transmission or interconnection costs that an individual supplier incurs for purposes of its generation facility. As such, the Proposed Transmission Facilities will not have an impact on transmission rates or prices in Ontario.

22. Although “project need” is not expressly listed in Section 96(2) of the OEB Act as a consideration for the Board, in circumstances where the applicant is seeking to recover its project costs through transmission rates the Board will typically consider whether the additional costs to ratepayers are justified by the need for the project. In such circumstances, the Board will also consider the various routing alternatives to ensure that the selected route is the most cost effective from a ratepayer perspective. In the present Applications, as noted, all of the costs of the Proposed Transmission Facilities are being paid for by the Applicants. In Section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board will typically be satisfied as to the need for the transmission facilities where there is evidence of a power purchase agreement with the OPA.⁴

Interests of Consumers with respect to Reliability and Quality of Electricity Service

23. As noted above, the Proposed Transmission Facilities will not directly serve any “consumers”. The only potential impacts on the interests of consumers with respect to reliability and quality of electricity service would, therefore, be as a result of impacts from the Proposed Transmission Facilities on Hydro One’s transmission system or the IESO-controlled grid, which in turn directly and indirectly serve consumers. Any such potential impacts have been considered through the IESO’s system impact assessment process and Hydro One’s customer impact assessment process and will be addressed on an ongoing basis through the terms of the connection agreement that Bornish, Kerwood

⁴ See, for example, Grand Renewable Wind LP, Decision and Order dated December 8, 2011 at pp. 11-12 (EB-2011-0063), South Kent Wind LP, Decision and Order dated October 11, 2011 at pp. 3-4 (EB-2011-0217), McLean’s Mountain Wind LP, Decision and Order dated June 28, 2012 at p. 5 (EB-2011-0394), and Summerhaven Wind LP, Decision and Order dated November 11, 2011 at p. 3 (EB-2011-0027).

and Jericho, jointly and severally, will be required to enter into with Hydro One, based on the Board's prescribed form of agreement.⁵

24. The IESO issued SIA Final Reports in respect of the Bornish Wind Energy Centre and the Adelaide Wind Energy Centre on December 21, 2011.⁶ Subsequently, for each of these projects the IESO issued SIA Addendum Reports on June 6, 2012 and SIA 2nd Addendum Reports on December 12, 2012.⁷ The purposes of the June 6, 2012 Addendum Reports were (a) to consider connection requirements needed for the Bornish, Adelaide and Jericho projects together with the Suncor Energy Cedar Point Wind Power Project, and (b) to address changes to the means by which potential over-voltage will be mitigated. The purpose of the December 12, 2012 2nd Addendum Reports was to consider the potential implications of the proposal to connect to the 500 kV system via two separate autotransformers rather than a single autotransformer. In these SIA reports, the IESO concludes that the proposed connection, by means of the Proposed Transmission Facilities and subject to the requirements specified in each of the SIA reports, is expected to have no material adverse impacts on the reliability of the integrated power system. The SIA Final Reports were issued together with Notifications of Conditional Approval, and each of the addendum reports were issued together with addendums to these Notifications of Conditional Approval.
25. Hydro One issued a CIA Final Report dated December 20, 2011 in respect of the Bornish, Kerwood and Jericho renewable energy generation connections.⁸ Subsequently, Hydro One issued a CIA Addendum Report on June 8, 2012 and a 2nd CIA Addendum Report on February 1, 2013.⁹ The purpose of the June 8, 2012 Addendum Report was to consider the incorporation of the Suncor Energy Cedar Point Wind Power Project into the proposed connection and to address changes to the means by which potential over-voltage will be mitigated. The purpose of the 2nd Addendum Report was to consider the potential implications of the proposal to connect to the 500 kV system via two separate

⁵ See response to Board Staff Interrogatory #20.

⁶ Exhibit H, Tab 1, Schedule 1 of the Applications

⁷ Exhibit H, Tab 2, Schedule 1 of the respective Applications

⁸ Exhibit H, Tab 1, Schedule 1 of the Applications

⁹ Exhibit H, Tab 3, Schedule 1 of the Applications

autotransformers rather than a single autotransformer. In these CIA reports, Hydro One concludes that the proposed connection, by means of the Proposed Transmission Facilities and subject to the requirements specified in each of the CIA reports, will not have any adverse impact on existing Hydro One transmission customers in the area.

Promotion of Renewables Consistent with Government Policy

26. The Government of Ontario enacted the *Green Energy and Green Economy Act, 2009* to increase renewable energy generation and promote the creation of clean energy jobs. Under this legislation, the Minister of Energy directed the OPA to develop the FIT Program to procure energy from renewable energy sources. The procurement of renewable energy in Ontario is guided by *Ontario's Long-Term Energy Plan*, under which the Government of Ontario has committed to putting in place 10,700 MW of renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. The FIT Program has been the centerpiece of the Government's strategy for achieving this renewable energy target. The Government's efforts to increase renewable energy generation have been closely tied to the Government's commitment to phasing out coal generation in Ontario by 2014. The Province of Ontario made this commitment for purposes of reducing Ontario's carbon emissions and its impact on climate change, as well as for reducing local and regional air pollution and related health impacts.¹⁰
27. The Applicants entered into separate 20-year contracts with the OPA for their respective wind energy generation facilities under the FIT Program in July 2011 (the "**FIT Contracts**"). The Applicants' wind energy generation facilities will further the Government of Ontario's objective of increasing the amount of renewable energy generation that forms part of Ontario's energy supply mix. In particular, the Bornish Wind Energy Centre will contribute approximately 72.9 MW of renewable energy generation capacity, the Adelaide Wind Energy Centre will contribute approximately 59.9 MW of renewable energy generation capacity and the Jericho Wind Energy Centre will contribute approximately 149 MW of renewable energy generation capacity towards this objective. The Proposed Transmission Facilities are required to convey the

¹⁰ See *Ontario's Long-Term Energy Plan*, 2010, p. 3 at http://www.energy.gov.on.ca/docs/en/MEI_LTEP_en.pdf

electricity generated by each of these renewable energy generation facilities to the IESO-controlled grid so as to enable the Applicants to realize this objective, consistent with the Province's renewable energy policies.¹¹

Facility Routing and Location

28. As discussed in Exhibit B, Tab 4, Schedule 1 of the Co-owners' Application, the Co-owners initially identified several potential transmission routes, as well as constraints on the potential routes, and based on an evaluation of these alternatives determined that the proposed routing from the Bornish Customer Switching Station up Kerwood Road and along Elginfield Road and Nairn Road to the Parkhill Customer Transformer Station is the preferred approach. This route represents the most direct route between these two stations, is attractive from a land-use perspective given the focus on intensified use of existing infrastructure corridors rather than development of greenfield infrastructure corridors, and has the least impact on the natural environment.¹² Although joint use along existing Hydro One distribution poles along this route would have offered similar advantages, this alternative was found to be not feasible due to a Hydro One policy prohibiting joint use in this manner.¹³
29. As discussed in Exhibit B, Tab 4, Schedule 1 of the Kerwood Application, Kerwood recognized early in its route selection process that the options available to it would be constrained by the limited number of available crossings along the Ausable River in the project area. This is because establishing a new crossing would give rise to significantly greater impacts due to the need for clearing of trees and vegetation, as well as undertaking construction activities within natural areas on either side of the river. A review of existing river crossings determined that the Kerwood Road crossing provides the most direct route from the Adelaide Collection Substation to the Bornish Customer Switching Station. The next-closest options would require transmission lines over 10 km

¹¹ The Jericho Wind Energy Centre will require additional transmission facilities that will be the subject of a separate application to the Board. The additional transmission facilities, together with the Co-owners' Proposed Transmission Facilities, will enable electricity to be conveyed from the Jericho Wind Energy Centre to the IESO-controlled grid.

¹² See Exhibit B, Tab 4, Schedule 1 (EB-2013-0040).

¹³ See Exhibit B, Tab 4, Schedule 1 (EB-2013-0040) and Applicant response to County Interrogatory #10.

longer than Kerwood's proposed transmission line. Moreover, given the proximity of the station locations to Kerwood Road, a route running generally along Kerwood Road was selected as the preferred route.

30. The proposed locations of the Bornish Collection Substation, Adelaide Collection Substation, Bornish Customer Switching Station and Parkhill Customer Transformer Station, as well as the proposed routing of the Co-owners' proposed transmission line and Kerwood's proposed transmission line, are set out in Exhibit B, Tab 2, Schedule 3 of each of the Co-owners' Applications and the Kerwood Application and are depicted in the detailed mapping provided in Exhibit B, Tab 2, Schedule 4 of each of the Co-owners' Applications and Kerwood Application.
31. On September 18, 2013, the Applicants filed evidence updates in both EB-2013-0040 and EB-213-0041. These updates provided for the following key clarifications with respect to the selected route:
 - (a) On September 10, 2013, the Applicants and the County reached agreement on two road use agreements. One agreement is applicable to the Co-owners proposed transmission line and the other is related to Kerwood's proposed transmission line. Through the agreements all of the County's concerns were addressed.¹⁴ The agreements, which were filed at Exhibit F, Tab 1, Schedule 2, Appendix 'A' for each Application, set out at Schedule B in each agreement the specific pole locations and placement of the transmission lines in the road ROW. The County has committed to executing the agreements upon the Board granting leave to construct consistent with the agreements.
 - (b) The evidence update reflected minor modifications made by the Applicants to the locations of both the Co-owners' proposed transmission line and Kerwood's proposed transmission line. These minor modifications are described in Exhibit F, Tab 1, Schedule 2 for each of the Applications and provide for the construction

¹⁴ See Letter filed by Middlesex County, dated September 16, 2013, re Road Use Agreements in which the County states "As a result of the Updated Route, the County is of the view that its issues in these leave to construct transmission infrastructure proceedings have been addressed and the County does not object to the applications, so long as they are based on the Updated Route."

of portions of the transmission lines on specific private lands adjacent to the road allowances, subject to the Applicants obtaining REA amendments so as to permit construction on such adjacent private lands. The Applicants have secured land rights in respect of these lands.

- (c) The Applications as initially filed indicate that the proposed transmission lines would run entirely within municipal road ROWs and that although final engineering and construction planning may determine that the use of certain adjacent privately owned lands may be required, the need for such adjacent lands was not anticipated. This caveat in the Applications as initially filed, regarding the potential need for private lands adjacent to the municipal road ROW subject to determination through final engineering and construction planning, is no longer applicable. With the private land rights having been secured and the road use agreements with the County, as well as statutory rights under Section 41 of the Electricity Act, the Applicants have all necessary land rights required to construct the Proposed Transmission Facilities.
- (d) The Co-owners also worked with existing utilities to enhance their proposed transmission line design and routing. In particular, as described in response to Board Staff Interrogatory #8(b) and in Exhibit B, Tab 1, Schedule 4 of the Co-owners' Application, the Co-owners have reached agreement with Bell Canada to bury existing overhead Bell Canada telecommunications facilities and with Hydro One to remove existing Hydro One distribution facilities (which were determined to be obsolete), all of which is located on the south side of the road allowance along Nairn Road. As a result of these efforts, the Co-owners' proposed transmission line can be constructed entirely along the south side of the road allowance along Elginfield Road and Nairn Road, thereby eliminating the need for four cross-overs along this portion of the route.
- (e) Kerwood also worked with existing utilities to enhance its proposed transmission line design and routing. In particular, as described in Exhibit B, Tab 1, Schedule 4 of the Kerwood Application, Kerwood has reached agreement with Hydro One

for the relocation of a short segment of its existing distribution line underground in the vicinity of the “Keyser Store”. The Keyser Store is a privately owned structure located partially within the road allowance on the west side of Kerwood Road. As the Hydro One facilities run along the east side of Kerwood Road in this area and due to the presence of environmentally significant features on the adjacent private lands to the east, the Applicant would otherwise have had to run its line over or around the Keyser Store. By reaching agreement with Hydro One to bury a short section of its distribution line, the Kerwood transmission line may now be constructed overhead within the road allowance on the east side of Kerwood Road, thereby avoiding the environmental features and minimizing potential impacts on the Keyser Store.¹⁵

- (f) Kerwood has also consulted with Bell Canada, which owns overhead telecommunications facilities that cross the Ausable River on the east side of Kerwood Road. Given the presence of environmental features on the west side of the road in this area and the preference to minimize crossovers from one side of the road to the other, the Applicant’s preferred approach is to cross the river along the east side of the road. Kerwood has confirmed with Bell Canada that this proposed design is compatible with Bell’s existing facilities.¹⁶
- (g) The Co-owners and Kerwood have also reached agreement with Hydro One on various concerns raised by Hydro One early in the combined proceeding. In particular, as described in Exhibit B, Tab 1, Schedule 4 of each Application, the parties have finalized Perpendicular Crossing Agreements and Emergency Services Agreements. These agreements address concerns related to coordination of emergency response, coordination of work on electricity infrastructure on the rights-of-way, secondary conductors or customer service drops that are crossed by the Proposed Transmission Facilities, as well as the allocation of incremental costs for installing new customer service drops along the route.

¹⁵ Exhibit B, Tab 1, Schedule 4 (EB-2013-0041).

¹⁶ Exhibit B, Tab 1, Schedule 4 (EB-2013-0041).

32. The routing and locations of the Proposed Transmission Facilities are appropriate, are located with the consent of property owners and neighboring utilities, and offer a number of advantages over the alternative routes and designs that were considered. Accordingly, the Applicants submit that the routing and Proposed Transmission Facility locations should be approved.

Land Matters and Forms of Land Agreements

33. As part of the Applications, the Applicants seek orders pursuant to Section 97 of the OEB Act, which provides that in an application under Section 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.
34. The forms of land agreements for which the Applicants seek approval are provided in Exhibit F, Tab 2, Schedule 1 of each Application. The forms of land agreements are those typically used to acquire land rights.
35. To support the Applications, the Applicants have also filed detailed descriptions of the land area and land rights required, as well as the land acquisition process for the Proposed Transmission Facilities.¹⁷ Of particular note is that, as stated in Exhibit B, Tab 1, Schedule 4 for each Application, the Applicants have all necessary land rights they require to construct the Proposed Transmission Facilities. In particular:
- (a) Bornish has secured the necessary land rights in respect of the Bornish Collection Substation property;¹⁸
 - (b) Bornish has secured the necessary land rights in respect of the Adelaide Collection Substation property, which interests will be conveyed by Bornish to Kerwood prior to commencement of station construction;¹⁹

¹⁷ See Exhibit F, Tab 1, Schedule 1 and Exhibit F, Tab 1, Schedule 2 for each Application.

¹⁸ Exhibit F, Tab 1, Schedule 1 (EB-2013-0040) at p. 1.

¹⁹ Exhibit F, Tab 1, Schedule 1 (EB-2013-0041) at p. 1.

- (c) Bornish has secured the necessary land rights in respect of the Bornish Customer Switching Station property, and will provide future interests in such lands to the Co-owners;²⁰
- (d) the Co-owners have purchased and continue to own the Parkhill Customer Transformer Station property;²¹
- (e) Bornish has secured the necessary land rights in respect of any private lands adjacent to such road allowances that will be used for the proposed transmission line in EB-2013-0040 subject to Bornish obtaining the amendment to its REA (which would permit it to use such lands) by February 1, 2014. Bornish will assign or provide future interests in such lands to the Co-owners. In addition to their rights under Section 41, the Co-owners have entered into a form of Road Use Agreement with Middlesex County, which owns the road allowances, pursuant to which the Co-owners have the right to locate poles and wires within the road allowances. A final Road Use Agreement between the Co-owners and the County will be executed upon the granting by the Board of leave to construct;²² and
- (f) Kerwood has secured, directly or indirectly, the necessary land rights in respect of all private lands adjacent to such road allowance that will be used for the proposed transmission line in EB-2013-0041 upon Kerwood obtaining the amendment to its REA that would permit it to use such lands. In addition to its rights under Section 41, Kerwood has entered into a form of Road Use Agreement with Middlesex County, which owns the road allowance, pursuant to which Kerwood has the right to locate poles and wires within the road allowance. A final Road Use Agreement between Kerwood and the County will be executed upon the granting by the Board of leave to construct.²³

²⁰ Exhibit F, Tab 1, Schedule 1 (EB-2013-0040), p. 1.

²¹ Exhibit F, Tab 1, Schedule 1 (EB-2013-0040), p. 3.

²² Exhibit F, Tab 1, Schedule 2 (EB-2013-0040); Response to Board Staff Interrogatory #9.

²³ Exhibit F, Tab 1, Schedule 2 (EB-2013-0041); Response to Board Staff Interrogatory #15.

36. Given that Middlesex County, as the owner of the relevant ROWs, has consented to the Applicants' proposed locations of transmission structures within the ROWs, as well as that the Applicants have consulted with and reached agreements with utilities that have existing facilities within the relevant ROWs, it is the Applicants' submission that the proposed locations of transmission facilities within the road allowances are appropriate and should therefore be approved by the Board.

E. SCHEDULING CONSTRAINTS

37. As indicated in Exhibit B, Tab 1 Schedule 4 filed in the Co-Owners Application, there is a bald eagle's nest located near the site of the Bornish Collector Substation and the Bornish Customer Switching Station. A condition of the Bornish REA is that work in the primary zone (400 m from the nest) and the tertiary zone (up to 800 m away from the nest with actual distance being dependent upon further behavioral studies that are being finalized) in relation to this nest should not occur between March 1st and May 15th. In the construction schedule as previously filed, the proposed dates of construction of these components did not overlap with this restriction period, so it was not considered a key constraint on the schedule. As described in Exhibit B Tab 1 Schedule 4 and as shown in the Gantt chart attached to that Exhibit, Bornish and the Co-Owners are currently planning to prioritize the construction of the Proposed Transmission Facilities in order to have them complete prior to this restriction period. In particular, construction would need to start on the Bornish Collector Substation and the Bornish Customer Switching Station in early November 2013. In order to make this timeline and to avoid the environmental constraints, the Applicants request that the Board take this concern into consideration with respect to the timing of its decision in EB-2013-0040 in order to permit the Co-Owners to proceed with the revised time line set out in Exhibit B Tab 1 Schedule 4.

F. CONCLUSIONS

38. The construction and operation of the Proposed Transmission Facilities will not affect the interests of consumers with respect to prices because the facilities will be paid for entirely by the Applicants and will not be recovered through transmission rates in Ontario. The

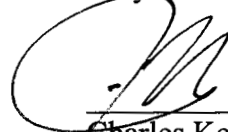
Proposed Transmission Facilities are consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.

39. Through the impact assessments undertaken by Hydro One and the IESO, the results of which were included in the pre-filed evidence, the Applicants have demonstrated that the Proposed Transmission Facilities will not adversely impact the interests of consumers with respect to reliability and quality of electricity service.
40. The Applicants have also demonstrated that the proposed routing and locations for the Proposed Transmission Facilities, including the specific locations of structures within the road allowances, are appropriate. The routing offers clear advantages over other alternatives considered and the specific locations proposed for transmission structures have been refined based on consultations and agreements entered into with existing utilities and the County.
41. For the reasons set out herein, we respectfully request that the Board grant to the Applicants leave to construct the Proposed Transmission Facilities pursuant to Section 92 of the OEB Act, along with such other relief as requested in the Applications.

All of which is respectfully submitted this 2nd day of October, 2013.

BORNISH WIND, LP
KERWOOD WIND, INC.
JERICHO WIND, INC.
By their counsel

Torys LLP



Charles Keizer

for