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October 18, 2013

RESS, EMAIL & COURIER

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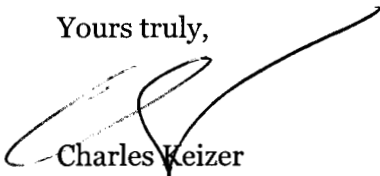
Attention: Ms. K. Walli, Board Secretary

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 Reply Argument**

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.
10, please find enclosed the Applicants’ Reply Argument.

Yours truly,



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cc: Mr. B. Greenhouse, Applicants
Mr. J. Myers, Torys LLP
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' REPLY ARGUMENT

October 18, 2013

A. INTRODUCTION

1. These are the reply arguments 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**"). These are also the reply arguments of Kerwood in EB-2013-0041 (the "**Kerwood Application**").
2. In accordance with Procedural Order No. 9, the applicants in each of the Co-owners' Application and the Kerwood Application (the "**Applicants**") filed their Argument-in-Chief on October 2, 2013. In accordance with Procedural Order No. 10, submissions were filed on October 11, 2013 by Ontario Energy Board staff ("**Board Staff**"), the Corporation of the County of Middlesex (the "**County**"), Hydro One Networks Inc. ("**Hydro One**") and the Intervenor Group (the "**Group**"). In summary, of the four parties that filed submissions, only the Group argued that the Board should not approve the Applications. The Group's submissions raise concerns relating to the renewable energy approval ("**REA**") process, which the Board has recognized as being outside the scope of this proceeding.

3. Each of the issue areas raised by the intervenor and Board Staff submissions is addressed as follows.

B. BOARD STAFF SUBMISSIONS

Clarification of Provisions in Road Use Agreements

4. In its submissions, Board Staff concludes that it has found nothing in the evidence to suggest that there are any concerns associated with the Proposed Transmission Facilities that are relevant to the Board's jurisdiction. Board Staff raised one question in its submissions that the Applicant wishes to respond to. In its discussion of the REA on p. 6 of its submissions, Board Staff notes that the Applicants have applied for REA amendments to reflect the use of private easements where necessary land rights have been secured for both the Co-owners' transmission facilities and Kerwood's transmission facilities.¹ Board Staff then references a particular provision from the road use agreement between the County and the Co-owners and asks the Applicants to clarify whether there is a similar provision in the road use agreement between the County and Kerwood.
5. The specific provision referenced by Board Staff provides that if the REA amendment is not obtained within the timeframe agreed to by the County and the Co-owners, then the County and the Co-owners have agreed that (subject to obtaining leave to construct) the Co-owners would instead implement the initially proposed plan of locating the transmission line entirely within, and along the south side of, the municipal road ROW. The road use agreement between the County and Kerwood does not include a similar provision in respect of Kerwood's proposed transmission facilities. Rather, the road use agreement between Kerwood and the County establishes the locations for poles and structures for the proposed transmission facilities. These locations include the use of private easements adjacent to the road allowance where the necessary land rights have been secured. On account of certain of those locations, Kerwood will require an amendment to its REA.

¹ Board Staff's comments are not entirely accurate. While an application to amend has been submitted for the Kerwood REA, one has not yet been submitted for the Bornish REA.

C. MIDDLESEX COUNTY SUBMISSIONS

Standard Conditions of Approval Provide Appropriate Safeguards

6. In its submissions, the County confirms that any and all concerns it had with respect to the Applications were addressed by the updated evidence filed by the Applicants on September 18, 2013 (the “**Evidence Update**”), including in particular by the forms of Road Use Agreements entered into between the County and the Co-owners, as well as between the County and Kerwood. The County’s support for the Applications is premised upon the granting of leave to construct being in respect of the updated route described in the Evidence Update.
7. In paragraph 3 of its submissions, the County goes on to state that “it does not object to the current form of the applications, so long as leave to construct is conditional on all of the specific details contained in the aforementioned agreements”. Although the Applicants do not take issue with the general intent of the County’s request for leave to construct to be conditional on certain aspects of the Applicants’ evidence, in the Applicants’ view the County’s request for leave to construct to be conditional on “all of the specific details” contained in the road use agreements is too broad. There are aspects of the road use agreements that address commercial matters between the parties that are beyond the scope of the Board’s jurisdiction in this proceeding. Of relevance to the Board from the road use agreements are the updated descriptions of the proposed transmission line routing and the specific proposed locations for poles, conductors and other structures within the road allowances. As these descriptions are in evidence, it is the Applicants’ submission that no special conditions of approval are required. Rather, the Board’s standard conditions on a leave to construct approval will provide the appropriate safeguards to address any concerns that the County may have that the facilities will ultimately be constructed in a manner consistent with the Evidence Update. In particular, we note that the Board typically grants leave to construct on the condition that the proponent “shall construct the transmission line and associated transmission facilities as defined in the Decision and Order in accordance with its Leave to Construct application, evidence and undertakings, except as modified by the Board’s Decision and

Order and by these Conditions of Approval and in accordance with applicable laws, codes and standards.”

D. HYDRO ONE SUBMISSIONS

Scope of Future Leave to Construct Applications is Not Relevant to the Present Proceeding

8. In its submissions, Hydro One confirms that its concerns in the present proceedings have been addressed by means of agreements entered into by its distribution business and the Applicants with respect to matters that include the coordination of work, emergency response and the allocation of incremental costs.
9. Hydro One then goes on to note that similar issues may arise in the context of future leave to construct applications by generators that are unlicensed transmitters, as well as by licensed entities that seek to construct infrastructure near existing Hydro One assets or customers. Based on this observation, Hydro One submits that the Board should consider these issues in future leave to construct applications by generators that are unlicensed transmitters. It is the Applicants’ submission that the question of whether or not the Board should consider such issues in future leave to construct applications is not relevant to the present proceeding. This is a policy matter of general application, which the Board has no jurisdiction and no need to consider in the context of the Applications which are presently before the Board.

E. INTERVENOR GROUP SUBMISSIONS

Bornish REA Permits Construction of Co-owners’ Transmission Facilities

10. In its submissions, the Group takes issue with one of the Applicants’ assertions in response to Intervenor Group Interrogatory #10(a), namely that only one REA is required to commence construction of the Co-owners’ Proposed Transmission Facilities (i.e., the Bornish Customer Switching Station, the Parkhill Transformer Station and the Transmission Line that runs between these two facilities). Whereas the Applicants have explained that the REA of any one of Bornish, Kerwood or Jericho would permit construction of these facilities to commence, the Group argues that only the REA for Jericho would permit construction of these particular facilities. The Group then argues

that, because the REA for Jericho has not yet been granted, the Board should not approve the present Application. With respect, the Group's arguments on this point are not correct.

11. The question of whether any REA has or has not been granted by the Ministry of the Environment should not be a consideration for the Board in determining whether or not to grant leave to construct. Rather, it has been the Board's practice to grant leave to construct on the condition that the proponent must obtain and comply with all necessary approvals and permits that are required to construct, operate and maintain the facilities that are the subject of the application.² There is no basis for the position that the Board should withhold leave to construct because another approval, such as a REA, has not yet been granted.
12. Moreover, the Group is not correct in claiming that the Applicants have submitted REA applications to the Ministry of the Environment for each of four projects. Although separate REA applications were filed for each of Bornish, Adelaide and Jericho, each of which covers the Co-owners' Proposed Transmission Facilities, there is no standalone REA application for the so-called Parkhill Interconnect project. This is because the "Parkhill Interconnect project", referred to in the present Applications as the Co-owners' Proposed Transmission Facilities, is subsumed into the REA applications or REAs for each of Bornish, Adelaide and Jericho. The January 29, 2013 letter from Ms. Doris Dumais of the Ministry of the Environment, a copy of which was included with the Group's interrogatories on September 30, 2013, confirms that the Parkhill Interconnect was not being proposed as a separate project. As such, the assertion that there is a separate REA application for the Co-owners' Proposed Transmission Facilities is not correct.
13. In addition, the September 23, 2013 letter from Ms. Agatha Garcia Wright, Director of the Ministry's Environmental Approvals Branch, a copy of which was also included with

² See Dufferin Wind Power Inc., Decision and Order, Appendix B (EB-2012-0365), July 5, 2013; McLean's Mountain Wind LP, Decision and Order, Appendix A (EB-2011-0394), June 28, 2012; Grand Renewable Wind LP, Decision and Order, Appendix A (EB-2011-0063), December 8, 2011; South Kent Wind LP, Decision and Order, Appendix A (EB-2011-0217), October 11, 2011.

the Group's interrogatories on September 30, 2013, clarifies and confirms that the Co-owners' Proposed Transmission Facilities are a shared component of each of the Bornish, Adelaide and Jericho Wind Energy Centre projects and that, as a result, the Ministry of the Environment required that information concerning the Co-owners' Proposed Transmission Facilities in each of the three REA applications for the Bornish, Adelaide and Jericho Wind Energy Centres. As a shared component of each of these REA applications, the granting of any one such REA, including the Bornish REA which was issued on April 26, 2013 or the Kerwood REA which was issued on August 1, 2013, would permit the construction of these particular facilities to commence (subject to granting of leave to construct).

14. The REA application documents for the Bornish and Adelaide projects integrate the Co-owners' Proposed Transmission Facilities throughout the REA documents for each of the Bornish and Kerwood projects. This is indicated, for example, by the Project Study Area map at Figure 1-1 of the Bornish Project Description Report, which shows the Transmission Line Study Area, as well as by section 2.1.3 of the Bornish Project Description Report which describes the proposed transmission line as linking the Bornish Collection Substation to the adjacent Bornish Customer Switching Station, then running east along Elginfield and Nairn Roads within the municipal rights-of-way to the existing Hydro One 500 kV transmission line. Approximate pole heights and potential pole materials are also described. Similar descriptions of the Transmission Line Study Area and the proposed transmission facilities are also provided in Figure 1-1 and section 2.1.3 of the Adelaide Project Description Report. By contrast, the REA application documents for the Jericho project incorporate summaries of those aspects of the Bornish and Kerwood REA applications relating specifically to the Co-owners' Proposed Transmission Facilities.

Public Consultation on the Proposed Transmission Facilities was Appropriate

15. In its submissions, the Group suggests that there was no public consultation on the so-called Parkhill Interconnect project and argues that due to this apparent lack of consultation the Board should not approve the Applications. The Group's submission on

this point is not correct. Consultations related to these facilities were part of the Bornish and Kerwood REA processes and were documented in an integrated manner in the Consultation Reports that formed part of the REA applications for each of those projects, each of which has been granted a REA from the Ministry of the Environment. The Applicants also note that the adequacy of public consultation is largely a matter for consideration in the relevant REA processes.³

Request for Timing of Decision to Recognize Construction Schedule Constraints

16. In paragraph 13 of its submissions, the Group argues that the Board should disregard the Applicant's request that the Board take into consideration the Applicant's construction constraints related to the presence of a bald eagle's nest in making its decision, and argues that it does not have anything to do with the Board's mandate in these matters but is rather a matter solely concerned with the convenience of the Applicant.
17. The Applicants note that the Board's filing requirements specifically require that an applicant provide information on critical construction schedule constraints, including construction windows due to environmental constraints.⁴ Having provided such information, and recognizing that the Board's timing in issuing a decision in EB-2013-0040 could, on account of such environmental constraints, affect the Applicants' ability to construct certain of the proposed transmission facilities in accordance with its project schedule, which schedule is driven by its obligations to the Ontario Power Authority under the relevant FIT Contracts, it is reasonable for the Applicants to request that the Board take this concern into consideration with respect to the timing for its decision.

F. CONCLUSIONS

18. In conclusion, of the four parties that filed submissions, only the Group recommended that the Board not approve the Applications, and those submissions raise concerns related to the REA process, which is outside the scope of this proceeding.

³ Decision with Reasons and Procedural Order No. 4, Dufferin Wind Power Inc., Application for Leave to Construct (EB-2012-0365), March 19, 2013, p. 3.

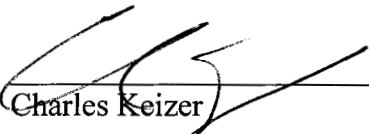
⁴ Chapter 4, Minimum Filing Requirements for Electricity Transmission Projects Under Section 92 of the Ontario Energy Board Act, Section 4.4, "Exhibit C: Project Planning", p. 14.

19. As demonstrated by the evidence in this proceeding, the Applicants have satisfied the public interest test under Section 96(2) of the *Ontario Energy Board Act* (the “**OEB Act**”) and that no party has, based on evidence in this proceeding, demonstrated otherwise. The Applicants have addressed all relevant aspects of the filing requirements and have shown that the transmission facilities proposed in each of EB-2013-0040 and EB-2013-0041 (the “**Proposed Transmission Facilities**”) are in the public interest, having regard to the factors enumerated in Section 96(2) of the OEB Act. The Board should therefore grant to the Applicants leave to construct the Proposed Transmission Facilities. The need for the facilities has been established, there will be no impact on consumers with respect to price, there will be no adverse impacts on consumers with respect to the reliability or quality of electricity service, and the Proposed Transmission Facilities will support the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.
20. As such, 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 18th day of October, 2013.

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

Torys LLP


Charles Keizer