

November 21, 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: Jericho Wind, Inc. - Application for Leave to Construct Transmission Facilities (EB-2013-0361) - Applicant Response to Intervention Requests

We are counsel to Jericho Wind, Inc. (the “Jericho”), applicant in the above-referenced proceeding. In accordance with the Notice of Application, requests for intervenor status were due by November 18, 2013. A number of requests for intervenor status, observer status and letters of comment were filed on or before such date. On behalf of Jericho, we wish to respond to the following matters arising from these requests and comment letters.

1. Requests for Extension to Period for Interventions

There were four requests for the Board to extend the period for interventions. These were set out in intervenor status requests from the “Lewis Group” and Muriel Allingham, as well as in letters of comment from Marcelle Brooks and We’re Against Industrial Wind Turbines - Plympton-Wyoming (“WAIT-PW”). The requests from the Lewis Group and Ms. Brooks ask for 2-week extensions. The other requests do not specify a duration. In the Applicant’s view, a delay in the proceeding is not warranted and these requests should not be granted.

The main arguments raised in support of the request for an extension in the period for filing interventions are (1) that a number of farmers in the community are occupied with their agricultural businesses and do not have time to prepare the necessary documentation, and (2) that the Notice of Application was not published in certain local newspapers.

In the Applicant’s view, the work schedules of stakeholders with potential interests in participating in the proceeding is not a compelling reason to extend the period for filing intervention and, thus, for delaying the proceeding. Appropriate notice has been provided in accordance with Board requirements, as discussed below. To extend the intervention period where the Applicant has complied with applicable notice requirements would be unfair to the Applicant. Moreover, the process for seeking status as a participant in the proceeding is not so onerous as to be a barrier to participation.

The Applicant was instructed by the Board's Letter of Direction to arrange for publication of the Notice of Application in one issue of an English language newspaper having the highest circulation, according to the best information available, in the Municipalities of North Middlesex and Lambton Shores. As explained in paragraph 2(c) of Jericho's Affidavit of Service, the Applicant determined based on audited circulation data from the Canadian Circulations Audit Board that the newspaper best meeting this requirement is The London Free Press. The Notice of Application was published in the November 8th edition of this publication and was also posted on Jericho's website. As all requirements for notice have been satisfied, the Applicant should not now be subject to procedural delays on account of having provided appropriate notice in compliance with the Board's requirements.

Also notable is that the Letter of Direction only requires service of Notice on directly affected property owners and encumbrancers, being those with interests in lands on which the proposed transmission facilities will be situated. However, the Applicant on its own initiative provided even broader notice by including property owners and encumbrancers with interests in lands on both sides of the road along which the transmission facilities will run, including numerous properties on which no transmission facilities will be situated. As such, through publication in the newspaper of highest circulation in the relevant municipalities, as well as through broad direct notice to those members of the community with interests in land closest to the project, the Applicant has provided adequate notice of the proceeding. As evidence of the adequacy of notice, we note that intervention requests, observer requests and letters of comment have been filed by twelve parties, one of which represents 34 individuals from 15 different addresses and another which claims to represent thousands of residents in Lambton County. This is not indicative of any deficiencies in the publication or service of notice in this proceeding.

2. Form of Hearing

In the Notice of Application, the Board indicated its intention to proceed by way of written hearing unless parties satisfy the Board that there is good reason that an oral hearing is necessary. In total, there were four requests made for an oral hearing. These were set out in the intervenor status requests from the Lewis Group and Muriel Allingham, as well as in the letters of comment from Margaret & Werner Schoeley and WAIT-PW. In the Applicant's view, these requests for an oral hearing do not raise compelling reasons for proceeding by way of an oral hearing and none of the submissions on this issue demonstrate that the issues relevant to the proceeding cannot be thoroughly and adequately considered by way of a written proceeding.

The Lewis Group argues that an oral hearing is needed due to the level of interest in the project from the community, the need for transparency and to enable the community to actively participate in the process. The Lewis Group also noted that it may wish to call an expert witness. Ms. Allingham argues that only an oral hearing would allow for cross examination and ensure transparency. WAIT-PW argues that only an oral hearing would allow for cross examination. The Schoeley's provide no reasons in support of their request.

In the Applicant's view, the Board's written hearing process provides for a high level of transparency, allows for discovery through the written interrogatory process, and allows for participation by members of the community that wish to participate to varying degrees. The written hearing process also allows for the filing of evidence by experts and discovery on that evidence through the interrogatory process. As such, the Board's usual written hearing process addresses all of the concerns that have been raised. Accordingly, it is the Applicant's view that the Board should continue to proceed by way of a written hearing.

3. Intervention from Robert Lewis, et al.

The November 18, 2013 letter filed by Mr. Robert Lewis is purported to be an intervenor status request on behalf of Mr. Lewis and 33 additional individuals from a total of 15 addresses, with an indication that additional individuals are to be added in future. As the reasons for intervening are identical for all of these individuals and they have demonstrated an intention to participate in a coordinated manner, the Applicant requests that if intervenor status is to be granted to these individuals then, pursuant to Rule 23.09 of the *Rules of Practice and Procedure*, the Board should require these intervenors to coordinate their participation and to file interrogatories, submissions and any other materials on a joint basis. In essence, this group of individuals should be treated as a single intervenor. Doing so would facilitate the efficient administration and conduct of the proceeding.

Should the Board instead prefer to treat these individuals as separate intervenors, then it is the Applicant's view that the ability to participate in the proceeding as an intervenor should not remain open for an indefinite period to other individuals that may become affiliated with the Lewis Group in the future. This would be inconsistent with the timelines established in the Notice of Application, pose an administrative burden and be procedurally inefficient.

4. Assertions re Applicant Conduct and Notice

In her email to the Board of November 16, 2013 at 7:56 am, Ms. Allingham states that the Board should "be advised that the proponent has taken steps in the past to deceive the community." The Applicant takes exception to this assertion and looks forward to addressing relevant concerns that may be raised by intervenors during the course of the proceeding.

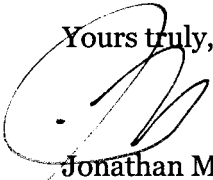
In a separate email to the Board on November 16, 2013 at 8:03 am, Ms. Allingham states that "the Municipal Council did not receive notice of this hearing, and will have to schedule a special meeting before applying for intervenor status." This statement is incorrect. As evidenced by paragraph 3(b) of the Affidavit of Service filed by Jericho on November 12, 2013, copies of the Notice of Application, together with copies of the Application, were sent by registered mail on October 31, 2013 to each of Lambton County, the Municipality of Lambton Shores, Middlesex County and the Municipality of North Middlesex. In addition, as evidenced by paragraph 4(c) a complete copy of the Application and pre-filed evidence was provided to the offices of each of these municipalities on October 31, 2013. In each case, the relevant materials were delivered to the attention of the clerks of the respective municipalities. None of the materials were returned as undeliverable. We also note that two of these municipalities, being Lambton County and Middlesex County, have filed intervention requests in a timely manner. We further note that the Applicant has worked closely with each of these municipalities, including through ongoing negotiations on a road use agreement with Lambton County and in recently concluding a road use agreement with Middlesex County. As such, the Board should have no concerns regarding notice to the municipalities.

Conclusion

For the reasons described, it is Jericho's submission that the Board should refuse the requests to extend the period for interventions and continue the proceeding by way of a written hearing. In addition, if the Board grants intervenor status to the individuals comprising the Lewis Group, for purposes of procedural and administrative efficiency this should be on condition that such individuals participate jointly, as a single intervenor. Finally, the Board should disregard the

incorrect assertions made by Ms. Allingham regarding the Applicant's conduct in the community and service of notice upon the affected municipalities.

Yours truly,



Jonathan Myers

Enclosure

cc: Mr. R. Groffman, Jericho Wind
Mr. C. Keizer, Torys LLP