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February 27, 2014

RESS, EMAIL & COURIER

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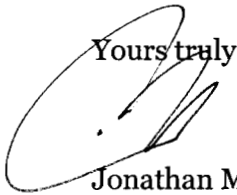
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli

**Re: Jericho Wind, Inc. - Application for Leave to Construct (EB-2013-0361) -
Applicant's Argument-in-Chief**

We are counsel to Jericho Wind, Inc. ("Jericho"), applicant in the above referenced proceeding. Further to Procedural Order #2 issued by the Board on January 27, 2014, please find enclosed the Applicant's Argument-in-Chief. These submissions have been filed on RESS and served on all intervenors.

Yours truly,



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cc: Mr. R. Groffman, Jericho
Mr. C. Keizer, 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 Jericho Wind, Inc. for an Order or Orders pursuant to Section 92 of the *Ontario Energy Board Act*, 1998 (as amended) granting leave to construct transmission facilities in the Municipality of Lambton Shores, Lambton County and the Municipality of North Middlesex, Middlesex County, Ontario.

APPLICANT'S ARGUMENT-IN-CHIEF

February 27, 2014

A. INTRODUCTION

1. These submissions are filed on behalf of Jericho Wind, Inc. ("**Jericho**" or the "**Applicant**") in EB-2013-0361 (the "**Application**"). In the Application, Jericho seeks leave to construct under Section 92 of the *Ontario Energy Board Act* (the "**OEB Act**") for an electricity transmission line and a substation that will serve the Jericho Wind Energy Centre. These proposed transmission facilities will connect to certain transmission facilities that were approved by the Ontario Energy Board (the "**Board**") in EB-2013-0040, in respect of which Jericho is a co-owner, so as to enable Jericho to convey electricity from the Jericho Wind Energy Centre to the IESO-controlled grid.
2. The Applicant also seeks Board approval under Section 97 of the *OEB Act* for the forms of land 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 an order under Section 101 of the *OEB Act* approving the construction of transmission facilities upon, under or over a highway, utility line or ditch.
3. The Applicant has, through its amended pre-filed evidence and interrogatory responses, provided detailed, comprehensive and specific information in support of the Application.

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 Applicant submits that leave to construct the proposed transmission facilities should be granted 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**") report, as amended, the connection of the Jericho Wind Energy Centre to the IESO-controlled grid by means of the proposed transmission facilities 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**") report, as amended, the connection of the Jericho Wind Energy Centre to the Hydro One transmission system by means 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 the Applicant's renewable energy generating facility to the IESO-controlled grid and are thereby consistent with the Province of Ontario's policy of promoting renewable energy; and
- (e) the location of the proposed substation and the routing of the proposed transmission line on private lands are on the consent of each relevant landowner.

B. APPLICATION

4. In the Application, Jericho has sought leave to construct electricity transmission facilities comprised of:

- (a) a collection substation located on Lot 16, Concession 7 in the Municipality of Lambton Shores, Lambton County, to be owned by Jericho, at which power from the 34.5 kV collection system associated with the Jericho Wind Energy Centre will be transformed from 34.5 kV to 121 kV by means of one 121/34.5 kV, 102/136/170 MVA transformer (the “**Jericho Collection Substation**”); and
 - (b) an approximately 15.7 km single circuit 115 kV class transmission line, to be owned by Jericho, in the Municipality of Lambton Shores, Lambton County and the Municipality of North Middlesex, Middlesex County, Ontario, connecting the Jericho Collection Substation to the Bornish Customer Switching Station, as described below (the “**Transmission Line**”).
5. The Jericho Collection Substation and the Transmission Line (together, the “**Proposed Transmission Facilities**”) will be used for the purposes of conveying electricity generated by the Jericho Wind Energy Centre to the IESO-controlled grid. The Jericho Wind Energy Centre is an approximately 149 MW wind generation facility in the Municipality of Lambton Shores and the Township of Warwick in Lambton County and is being developed pursuant to a contract from the Ontario Power Authority (the “**OPA**”) under the OPA’s Feed-in Tariff (“**FIT**”) Program.
6. Under a separate application approved by the Board on November 12, 2013 (EB-2013-0040), Jericho together with Bornish Wind, LP (“**Bornish**”) and Kerwood Wind, Inc. (“**Kerwood**”) as co-owners (together, the “**Co-owners**”), were granted leave to construct certain transmission facilities that, in combination with the Proposed Transmission Facilities, will enable Jericho to convey electricity from the Jericho Wind Energy Centre to the IESO-controlled grid (the “**Co-owners’ LTC Application**”). The facilities that were approved in the Co-owners’ LTC Application include the Bornish Customer Switching Station (to which the Proposed Transmission Facilities will connect), as well as the Parkhill Customer Transformer Station and a transmission line connecting the Bornish Customer Switching Station to the Parkhill Customer Transformer Station, each as described in the Co-owners’ LTC Application. The Parkhill Customer Transformer Station will be connected to the IESO-controlled grid at Hydro One’s planned Evergreen

Switching Station, which will sectionalize Hydro One's circuit B562L between Bruce A TS and Longwood TS.

7. As the Applicant will be both a transmitter and a generator and will be transmitting electricity only for the purpose of conveying electricity to the IESO-controlled grid, the Applicant relies upon the exemption from the requirement to obtain a transmission license as set out in Section 4.0.2(1)(d) of *Ontario Regulation 161/99*.

C. LEGISLATIVE FRAMEWORK

8. The Application is 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.”

9. 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*)

10. The Board's jurisdiction in considering the Application 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 Application is also limited to the Proposed Transmission Facilities. The associated wind generation facility and its 34.5 kV collector system are beyond the scope of the proceeding.

11. In Procedural Order No. 1, the Board acknowledged its limited scope of review under Section 92. The Board stated that matters relating to environmental issues, land-use issues, land valuation, health and aesthetic issues are not within the scope of the Board's jurisdiction. Rather, the Board noted, environmental issues are considered within the scope of the Ministry of the Environment's Renewable Energy Approval ("REA") process. Moreover, in Procedural Order No. 2 the Board decided not to grant intervenor status to certain parties that raised concerns with issues that included alleged safety impacts from electromagnetic fields, the intermittent nature of wind generation, the quality of consultations under the REA process and impacts on electricity prices in general, all of which the Board found to be outside the scope of its jurisdiction on the Application.
12. The scope of the Board's jurisdiction under Sections 92 and 96 of the *OEB Act*, in these proceedings, is also affected by the Applicant's 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.
13. Specifically, the Applicant has proposed locating the Transmission Line within County road rights-of-way ("**ROWS**") except to the extent that certain portions of the Transmission Line will be constructed on private lands adjacent to the ROWs. In proposing to use the ROWs, the Applicant has indicated that it is relying upon its rights under Section 41 of the *Electricity Act*. The Applicant submits that the Board's consideration of the public interest under Sections 92 and 96 in respect of the routing of the Transmission Line is subject to those rights.
14. 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

Applicant will own and operate a transmission system. As such, the Applicant is a transmitter under Section 41 of the *Electricity Act* and has the statutory rights granted under Section 41 of the *Electricity Act*.

15. As a transmitter, the Applicant 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 it considers “necessary for the purpose of its transmission system, including poles and lines”. Subsection (2) provides that a transmitter 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”.
16. 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.
17. 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).

18. As a result, the application of Section 92 of the *OEB Act* does not diminish the Applicant's rights to be in the road allowance. Given Section 41, with respect to location of the Transmission Line, the question before the Board under Section 92 is not whether the Applicant has a right to be in the road allowance or whether it can locate in the road allowance. Rather, the question for the Board is only with respect to where in the road allowance the Transmission Line will be located. In this regard, the Applicant notes that it has entered into a road use agreement with Middlesex County pursuant to which Middlesex County has consented to the location of the Transmission Line within its roads, consistent with the locations proposed in this Application. The Applicant has been negotiating a road use agreement with Lambton County based upon a Transmission Line location consistent with the location proposed in this Application. While Lambton County technical staff publicly endorse the form of agreement,¹ a final agreement has not yet been reached.
19. Based on the foregoing, the scope of the Board's inquiry in respect of Section 92 in the present proceeding is whether the Proposed Transmission Facilities satisfy the narrow public interest test established under Section 96(2) of the *OEB Act*.

D. PUBLIC INTEREST CONSIDERATIONS

Interests of Consumers with respect to Prices and Project Need

20. 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 Applicant's wind generation facility to the Hydro One transmission system which forms part of the IESO-controlled grid. In addition, the Proposed Transmission Facilities may be used to convey electricity from Suncor Energy Products Inc.'s Cedar Point Wind Power Project

¹ See County of Lambton, Infrastructure & Development Services Division, *Report from Department of Public Works to Committee A.M.*, January 15, 2014, at pp. 29-32 of <https://lambton.civicweb.net/Documents/DocumentDisplay.aspx?Id=47417>; See also County of Lambton, Infrastructure & Development Services Division, *Report from Department of Public Works to Committee A.M.*, February 19, 2014, at pp. 32-36 of <https://lambton.civicweb.net/Documents/DocumentDisplay.aspx?Id=48033>.

to the IESO-controlled grid.² As indicated in the 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 Applicant.³ These costs will not be passed on to consumers through transmission rates but rather will be paid by the Applicant. The pricing available under the OPA's form of FIT Contract is 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.

21. 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 Application, as noted, all of the costs of the Proposed Transmission Facilities are being paid for by the Applicant. In Section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board is typically 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

22. 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

² Exhibit D, Tab 1, Schedule 1, pp. 4-5.

³ See also Applicant response to Board Staff Interrogatory #4(a).

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).

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 will govern the relationship between Jericho and Hydro One, which will be based on the Board's prescribed form of agreement.

23. The IESO issued a System Impact Assessment ("SIA") Final Report in respect of the Jericho Project on December 21, 2011.⁵ Subsequently, the IESO issued an SIA Addendum Report on June 6, 2012 and an SIA 2nd Addendum Report on December 12, 2012.⁶ The purposes of the June 6, 2012 Addendum Report 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 Report 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 Report was issued together with a Notification of Conditional Approval, and each of the addendum reports were issued together with addendums to this Notification of Conditional Approval.
24. Hydro One issued a Customer Impact Assessment ("CIA") Final Report dated December 20, 2011 in respect of the Jericho Project.⁷ Subsequently, Hydro One issued a CIA Addendum Report on June 8, 2012 and a 2nd CIA Addendum Report on February 1, 2013.⁸ 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

⁵ Exhibit H, Tab 2, Schedule 1.

⁶ Exhibit H, Tab 2, Schedule 1.

⁷ Exhibit H, Tab 3, Schedule 1.

⁸ Exhibit H, Tab 3, Schedule 1.

connection to the Hydro One system 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 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 customers in the area.

Promotion of Renewables Consistent with Government Policy

25. 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* (the "LTEP"). Under the 2010 LTEP, the Government of Ontario committed to putting in place 10,700 MW of non-hydro renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. Under the 2013 LTEP, the Government of Ontario reiterated its commitment to renewable energy and has targeted capacity of 10,700 MW of non-hydro renewable capacity by 2021 and total renewable capacity of 20,000 MW by 2025. The FIT Program has been the centerpiece of the Government's strategy for achieving this renewable energy target to date. The Government's efforts to increase renewable energy generation have also 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.⁹
26. The Applicant entered into a 20-year contract with the OPA for its wind energy generation facility under the FIT Program in July 2011 (the "**FIT Contract**"). Jericho's

⁹ See *Ontario's Long-Term Energy Plan*, 2010, p. 3 at http://www.energy.gov.on.ca/docs/en/MEI_LTEP_en.pdf. See also *Achieving Balance, Ontario's Long-Term Energy Plan*, 2013, p. 30 at http://www.energy.gov.on.ca/docs/LTEP_2013_English_WEB.pdf

wind energy generation facility 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 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 electricity generated by this facility to the IESO-controlled grid so as to enable the Applicant to realize this objective, consistent with the Province's renewable energy policies. If the Suncor Energy Cedar Point Wind Power Project connects to the IESO-controlled grid through the Proposed Transmission Facilities, then these facilities would enable an additional 100 MW of renewable energy generation capacity to come on-line in Ontario.

Facility Routing and Location

27. As discussed in Exhibit B, Tab 4, Schedule 1 of the Application, Jericho recognized early in its development process that the range of potential route options for connecting to the Bornish Customer Switching Station would be fundamentally constrained by the limited number of available crossings along the Ausable River and the environmentally sensitive area that surrounds the river in the project area. Given the location of the project components, it is unavoidable that the Transmission Line must cross the Ausable River. The Applicant's preference has been to use an existing river crossing so as to avoid the need for significant tree and vegetation clearing and to avoid construction in natural areas of environmental significance. A review of the available crossings in the area found that the proposed route along the Thompson Line/Elginfield Road river crossing provides the most direct route, resulting in the shortest line length and the fewest number of affected properties, from the Jericho Collection Substation to the Bornish Customer Switching Station.¹⁰
28. The proposed location of the Jericho Collection Substation, as well as the proposed routing for the Transmission Line, are described in Exhibit B, Tab 2, Schedule 3 and Exhibit F, Tab 1, Schedule 1 (as amended) of the Application and are depicted in the detailed mapping provided in Exhibit B, Tab 2, Schedule 4 of the Application.

¹⁰ Exhibit B, Tab 4, Schedule 1. pp. 2-3.

29. The routing and locations of the Proposed Transmission Facilities are appropriate. In addition, the proposed project offers a number of advantages over the alternative routes and designs that were considered. Accordingly, the Applicant submits that the routing and Proposed Transmission Facility locations should be approved.

Land Matters and Forms of Land Agreements

30. As part of the Application, the Applicant seeks an order 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.
31. To support the Application, the Applicant has also filed detailed descriptions of the land area and land rights required, as well as the land acquisition process for the Proposed Transmission Facilities.¹¹ The forms of land agreements for which the Applicant seeks approval are provided in Exhibit F, Tab 2, Schedule 1 of the Application. The forms of land agreements are those typically used to acquire land rights and are the same forms of agreements approved by the Board in EB-2013-0040/EB-2013-0041.

E. CONCLUSIONS

32. 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 Applicant 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.
33. Through the impact assessments undertaken by Hydro One and the IESO, the results of which were included in the pre-filed evidence, the Applicant has demonstrated that the Proposed Transmission Facilities will not adversely impact the interests of consumers with respect to reliability or the quality of electricity service.

¹¹ See Exhibit F, Tab 1, Schedule 1.

34. The Applicant has also demonstrated that the 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 negotiated or entered into with Hydro One and the Counties.
35. For the reasons set out herein, we respectfully request that the Board grant to the Applicant leave to construct the Proposed Transmission Facilities pursuant to Section 92 of the *OEB Act*, along with such other relief as requested in the Application.

All of which is respectfully submitted this 27th day of February, 2014.

JERICO WIND, INC.

By its counsel
Torys LLP

for



Charles Keizer