

Appendix "D"

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2013-0040

EB-2013-0041

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. for an order or orders granting leave to construct a transmission line and transmission facilities;

AND IN THE MATTER OF an application by Kerwood Wind, Inc. for an order or orders granting leave to construct a transmission line and transmission facilities.

BEFORE: Marika Hare
Presiding Member

Christine Long
Member

Peter Noonan
Member

DECISION AND ORDER

November 12, 2013

SUMMARY OF APPLICATION

Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. (the “Co-owners”) filed an application with the Ontario Energy Board (the “Board”), dated February 8, 2013, under sections 92, 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B) (the “Act”). The Co-owners have applied for an order of the Board granting leave to construct an electricity transmission line and related facilities in the County of Middlesex. The Board assigned file number EB-2013-0040 to this application. A separate application under sections 92, 97 and 101 of the Act was filed by Kerwood Wind, Inc. (“Kerwood”) on February 8, 2013. Kerwood has applied for an order of the Board granting leave to construct an electricity transmission line and related facilities in the County of Middlesex. The Board assigned file number EB-2013-0041 to this application. In the interest of efficiency, the Board combined the EB-2013-0040 and EB-2013-0041 applications (the “Applications”) pursuant to the Board’s powers under section 21(5) of the Act.

The proposed Co-owners transmission facilities include:

- A substation to be owned by Bornish Wind, LP, that will step-up power from the Bornish Wind Energy Centre from 34.5 kV to 121 kV¹ (“Bornish Collection Substation”);
- A switching station to be owned by the Co-owners at which power from the Bornish Wind Energy Centre, Adelaide Wind Energy Centre and Jericho Wind Energy Centre will converge (“Bornish Customer Switching Station”);
- A 115 kV line of less than 100 m connecting the Bornish Collection Substation and the Bornish Customer Switching Station;
- A 115 kV single circuit transmission line, to be owned by the Co-owners, approximately 12.6 km in length connecting the Bornish Customer Switching Station and the Parkhill Customer Transformer Station. As proposed in the EB-2013-0040 application, the transmission line would run within the municipal road rights of way;
- A 500 kV transformer station to be owned by the Co-owners, that will step-up power from the Bornish Customer Switching Station from 121 kV to 500 kV (“Parkhill Customer Transformer Station”); and
- A 500 kV line of less than 100 m connecting the Parkhill Customer Transformer Station to Hydro One Networks Inc.’s Evergreen Switching Station.

¹ As revised from 115 kV, Evidence Update filed September 18, 2013

The proposed Kerwood transmission facilities include:

- A substation to be owned by Kerwood, that will step-up power from the Adelaide Wind Energy Centre from 34.5 kV to 121 kV (“Adelaide Collection Substation”); and
- A 115 kV single circuit transmission line, to be owned by Kerwood, approximately 10.8 km in length connecting the Adelaide Collection Substation to the Bornish Customer Switching Station. As proposed in the EB-2013-0041 application, the transmission line would run within the municipal road rights of way.

Additional transmission facilities related to the Jericho Wind Energy Centre are the subject of a separate leave to construct application. The proposed Suncor Energy Cedar Point Wind Power Project (the “Suncor Project”) may connect to the IESO-controlled grid through the planned Jericho transmission facilities.²

SUMMARY OF THIS PROCEEDING

The Board issued a Notice of Application dated March 11, 2013, which was published and served by the Co-owners and Kerwood (the “Applicants”) in accordance with the Board’s letter of direction.

The Board granted intervenor status to the following parties: the Corporation of the County of Middlesex (the “County”), the Corporation of the Township of Adelaide Metcalfe, a group of landowners (the “Group”), Hydro One Networks Inc. (“Hydro One”), the Independent Electricity System Operator (“IESO”), Middlesex-Lambton Wind Action Group, Inc. and the Municipality of North Middlesex.

The Board received 5 letters of comment from individuals. Several individuals expressed their concerns about the adequacy of consultation with the affected communities and the cost of power from wind generation projects. Concern was also expressed about health issues related to wind turbines and transmission lines, the aesthetics of transmission lines, and the protection of heritage buildings. One individual stated that that construction of the Co-owners’ transmission facilities should not begin until the Jericho Wind Energy Centre has received its Renewable Energy Approval (“REA”). These matters are discussed in this decision.

² EB-2013-0040, Exh D-1-1 page 6

The County, the Group and Board staff filed interrogatories on the Applicants' evidence. The Applicants provided responses to all interrogatories. The Board also received intervenor evidence from the County, the Group and Hydro One. The Applicants, the County and Board staff submitted interrogatories on the evidence filed by the intervenors and responses were provided by the parties that submitted the evidence.

The Applicants filed an evidence update (the "Evidence Update") on September 18, 2013 and the Board made provision for interrogatories on the Evidence Update. Pursuant to Procedural Orders No. 9 and 10, the Applicants filed argument-in-chief, submissions were filed by the County, Hydro One, the Group and Board staff, and the Applicants filed reply argument.

The record of this proceeding is available for review on the Board's website and at the Board's offices in Toronto. The Board has considered the full record but has referred to the record only to the extent necessary to provide context to its findings.

SCOPE OF THIS PROCEEDING

The Board's power to grant an applicant leave to construct electricity transmission facilities is set out in subsection 92 (1) of the Act which states:

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

In discharging its duties under section 92 the Board is governed by the provisions of section 96 of the Act which states:

96 (1) If, after considering an application under section 90, 91 or 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 electricity

distribution 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.

In addition, section 97 of the Act states:

97. In an application under section 90, 91 or 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.

The wording of subsection 96(2) requires the Board to consider only the factors specified in subsection 96(2) in determining whether the proposed Co-owners and Kerwood transmission facilities are in the public interest. While it may be appropriate to consider the concept of public interest from a broader perspective in other contexts, the Act clearly limits the factors the Board is to consider in the context of the Applications. Given the focus established by subsection 96(2), health and aesthetic issues related to wind turbines and transmission lines are not within the scope of this proceeding.

With respect to wind generation projects and the interests of consumers, the cost of power from such projects was the subject of some letters of comment. The Board in making a determination with respect to the interest of consumers with respect to prices, limits its review to the cost of connection of the wind generation facility to the provincial transmission system. A review of the actual commodity cost of wind power is outside the Board's jurisdiction in this proceeding.

INTERESTS OF CONSUMERS WITH RESPECT TO RELIABILITY AND QUALITY OF ELECTRICITY SERVICE

The Applicants filed System Impact Assessment ("SIA") Reports and Customer Impact Assessment ("CIA") Reports with the Applications.

The SIAs were performed by the IESO and are intended to assess whether the

proposed connection to the IESO-controlled electricity grid would have an adverse impact on the quality and reliability of the integrated power system. In the Final SIA Reports the IESO considered the Bornish, Adelaide and Jericho Wind Energy Centres as a cluster. The subsequent Addenda included the Suncor Project in the cluster. The IESO concluded that the proposed connection of the four wind generation projects is expected to have no material impact on the reliability of the integrated power system. Before the projects are allowed to connect, the Applicants must meet the IESO requirements for connection listed in the Final SIA Reports and Addenda.

The CIAs were performed by Hydro One and are intended to assess the potential impacts of the connection of the proposed wind generation projects on transmission customers in the local vicinity. The primary focus of the study is to assess the voltage and fault level variations due to the connection. The Final CIA Reports, issued on December 20, 2011, considered the total wind generation capacity of 283.5 MW from the Bornish, Adelaide and Jericho Wind Energy Centres. An Addendum was issued on June 8, 2012 relating to the proposed connection of the 100 MW Suncor Project. The CIAs confirmed that the fault levels at low voltage and high voltage buses are in accordance with the requirements set out in the Board's Transmission System Code. The CIA Reports concluded that the generation can be incorporated without adverse impact on existing transmission customers in the area. The CIA Reports and Addenda list facilities that the Applicants are required to install as part of their connection.

No party objected to the conclusions of the SIAs and CIAs.

Based on the conclusions of the SIA Reports and CIA Reports, the Board is satisfied that the proposed connection will not adversely impact the interests of consumers with respect to reliability or quality of electrical service, if the Applicants construct the transmission facilities in accordance with the conditions in the SIAs and CIAs.

INTERESTS OF CONSUMERS WITH RESPECT TO PRICES

The Co-owners state in the evidence that the cost of the Co-owners' transmission facilities will be borne by the Co-owners, and similarly, Kerwood will bear the cost of the Kerwood transmission facilities. The Applicants state that, as such, the proposed transmission facilities will not affect electricity transmission rates in Ontario.³

³ EB-2013-0040, Exh B-2-1 page 6, EB-2013-0041, Exh B-2-1 page 5

The Co-owners' line will be located on the opposite side of the road from Hydro One's distribution line for about 11 km. Similarly, Kerwood's line will be located on the opposite side of the road from Hydro One's distribution line for about 7 km. In its evidence, Hydro One raised concerns about the provision of service to Hydro One distribution customers who reside on the other side of the proposed transmission facilities, as well as the connection of new customers.⁴ The specific concerns were cost responsibility and duration of cost responsibility for services that need to be placed underground to avoid overhead crossing of the transmission lines. Hydro One stated that neither the Transmission System Code nor the Distribution System Code provide guidance on this issue.

The Applicants reported in the Evidence Update that a Perpendicular Crossing Agreement and Emergency Services Agreement had been finalized with Hydro One. In addition to service matters, the agreement addresses the allocation of increased costs for installing new customer connections.

Hydro One confirmed in its submission that its concerns in this proceeding are now addressed. However, in the event that similar issues arise, Hydro One submitted that parties would benefit from the Board's general guidance on cost responsibility and service quality considerations that arise when the assets of one licensed entity affect those of another. In reply, the Applicants argued that the Board need not consider a policy matter of general application in the context of the current proceeding.

As Hydro One and the Applicants have finalized an agreement with respect to the service and cost allocation matter relating to distribution customers who reside, or will reside, on the other side of the proposed transmission facilities, there is no need for a Board determination on this matter in the current proceeding.

The Board is satisfied that the Co-owners' and Kerwood's transmission facilities will not have an adverse impact on electricity transmission rates in Ontario.

⁴ Hydro One Intervenor Evidence filed June 3, 2013

POLICIES OF THE GOVERNMENT ON THE PROMOTION OF THE USE OF RENEWABLE ENERGY SOURCES

The Applicants state that each of their wind generation projects has been awarded a 20-year power purchase agreement under the Government of Ontario's Feed-in-Tariff program. The Bornish Wind Energy Centre has a capacity of 72.9 MW, the Adelaide Wind Energy Centre (to be owned and operated by Kerwood) has a capacity of 59.9 MW, and the Jericho Wind Energy Centre has a capacity of 149.0 MW. The transmission facilities proposed in this proceeding are needed to connect the renewable power that will be generated from the wind generation projects to the provincial grid.

In the view of the Board, the transmission facilities will promote the use of renewable energy consistent with provincial policy by connecting wind farms to the provincial grid.

LOCATION OF THE PROPOSED TRANSMISSION FACILITIES

As summarized in the Co-owners' application, the Co-owners considered co-locating the Co-owners' transmission line with Hydro One distribution lines, as well as a back country route, but decided that the municipal road right of way was the preferred route. It is a direct route that makes use of existing infrastructure corridors. The Kerwood route selection, as described in its application, was constrained by available crossings along the Ausable River. The route selected along Kerwood Road provided the most direct route.

In the Evidence Update the Applicants stated that they have all the necessary land rights required to construct the proposed transmission facilities, including some private easements. The Applicants reported that they had reached agreement with the County on modifications to the routing of transmission lines and the form of road use agreements, and that the Applicants have addressed all of the County's outstanding concerns with the proposed transmission facilities.

The Applicants' Evidence Update also reported that there was agreement in principle for Hydro One to undertake to relocate a short segment of distribution line underground at the Applicants' cost to permit the transmission facilities to avoid the Keyser Store.⁵ The

⁵ EB-2013-0041, Exh B-1-4 page 2

Group notes in its evidence that the Keyser Store is the oldest building in the area and is historically significant. Protection of heritage buildings was also a concern expressed in a letter of comment.

In its submission, the Group states that there was no public consultation on the “Parkhill Interconnect”, which is described in the Group’s interrogatory #10 as “a switchyard, approximately 11.5 km of 115 kV transmission line and a substation. The substation will consist of two (2) 135/225 MVA transformers. The 115 kV line will run from the Parkhill Interconnect's switchyard, known as the Bornish Switchyard, to the Parkhill Interconnect's substation, known as the Parkhill Substation”. The Applicants replied that there was consultation on these facilities that was documented in an integrated manner in the consultation reports that form part of the REA applications. The Applicants submitted that the adequacy of public consultation is a matter for consideration in the relevant REA processes.

The Group states that Jericho Wind, Inc. is seeking an REA for the Jericho Wind Energy Centre and its related Parkhill Interconnect Project. Similar to a position expressed in a letter of comment, the Group argues that the only REA that must be approved before the construction of the Parkhill Interconnect can proceed is the Jericho Wind Energy Centre REA, which has not yet been granted.

In response to the Group’s interrogatory #10 and in reply submission, the Applicants stated that the REA for each of its wind generation projects includes all transmission facilities necessary to connect the project to the IESO-controlled grid. As noted in the Evidence Update, the REA for the Bornish Wind Energy Centre (the “Bornish REA”) was received in April 2013 but has been appealed. The REA for the Adelaide Wind Energy Centre (the “Kerwood REA”) was received in August 2013 but also has been appealed.⁶ The transmission line routing as originally filed in the leave to construct applications on February 8, 2013 were considered during the REA process. The Applicants have submitted an application to the Ministry of Environment to amend the Kerwood REA to include the use of private easements where the necessary land rights have been secured. A similar amendment to include the use of private easements for the Bornish REA has not been submitted yet.⁷

⁶ EB-2013-0040, Exh B-1-4 page 4, EB-2013-0041, Exh B-1-4, page 5

⁷ Reply Argument, filed October 18, 2013

It is the Applicants' position that only one REA is required to commence construction of the Co-owners' transmission facilities that are shared by the wind generation projects and, further, the Board should not delay its consideration of the current application because of a related matter that is before another decision-maker.

The planned route does not pose any concerns from the perspective of the Board's jurisdiction in this matter. The evidence supports the view that some consultation has occurred and the Board considers that any contention about the adequacy of public consultation is best left to the determination of the Ministry of the Environment as part of the REA process. As to the Parkhill Interconnect Project, the Board notes that its process under section 92 of the Act is separate from the REA process and that all Applicants are required by regulation to conform to the requirements of the provincial REA process before their projects can be constructed.

FORM OF AGREEMENT OFFERED TO LANDOWNERS

Section 97 of the Act requires that the Board be satisfied that the Applicants have offered or will offer each landowner affected by the approved route or location an agreement in a form approved by the Board.

The Applicants seek approval of the forms of land agreement which were provided in Exh F-2-1 of each Application. As noted above, in the Evidence Update and reply submission, the Applicants stated that they have all necessary land rights required to construct the proposed transmission facilities, including in respect of any private lands adjacent to road allowances that will be used for the proposed transmission lines.

In each application seeking approval under section 97, the Board reviews the forms of agreements filed by the Applicant in order to satisfy itself that the form of agreement, which represents the initial offering to an affected landowner, is acceptable. Once the Board is satisfied with the initial offering to an affected landowner, the parties are free to negotiate terms to meet their respective interests. In this proceeding, the Board is satisfied with the forms of agreements filed by the Applicants. In addition, no concerns were expressed to the Board concerning the forms of agreements proposed by the Applicants.

There was a concern expressed by the Group relating to whether a provision for independent legal advice contained in the agreements was being implemented by the Applicants. The Applicants confirmed in response to Board staff interrogatory #23 that

all parties who have entered into a land use agreement have been provided with an opportunity to obtain independent legal advice. The Applicants also confirmed their practice with respect to reimbursement for costs incurred for obtaining independent legal advice.

The Board notes that the Applicants have satisfactorily explained their practices with respect to the implementation of the independent legal advice clause contained in the proposed agreements. The Board also notes that implementation of the independent legal advice clause is a matter of contract performance and as such is a matter for determination in another forum, and is not a matter for the Board to consider.

The Board approves the forms of agreement filed in this proceeding. The Board notes that its approval in this context does not necessarily imply that the Board would or would not approve these forms of agreement in any future proceeding.

Section 101 of the Act

The Applicants have applied under section 101 of the Act for an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch.

In the Evidence Update, the Applicants stated that on September 10, 2013, it reached agreement with the County on two road use agreements, and filed those agreements as part of the Evidence Update.⁸ The County submitted that its concerns have been addressed by the forms of agreement provided with the Evidence Update. The County further submitted 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."

In reply, the Applicants stated that they do not object with the general intent of the County's request. However, the Applicants argue that the County's request for leave to construct be conditional on "all of the specific details" contained in the road use agreements is too broad. The Applicants cited commercial matters as an example, which the Applicants stated was beyond the Board's jurisdiction in this proceeding.

⁸ EB-2013-0040. Exh B-1-4, page 1

The Board approves the construction of the transmission facilities on municipal road rights of way as agreed to by the Applicants and the County. The approval of the Board is subject to the condition that the proposed facilities be constructed in accordance with the settlement between the Applicants and the County to the extent that the terms of the settlement address matters that are within the jurisdiction of the Board pursuant to section 101 of the Act.

BOARD DECISION

The Board finds that the construction of the transmission facilities, as described in the Applications and submissions, is in the public interest as contemplated by subsection 96 of the Act. The Board grants its approval pursuant to section 97 of the Act for the forms of agreement that have been or will be executed by affected landowners, as submitted by the Applicants. The Board also grants its approval pursuant to section 101 of the Act approving construction of certain transmission facilities upon, under or over a highway, utility line or ditch subject to the condition that the proposed facilities be constructed in accordance with road use agreements between the Applicants and the County to the extent that the terms of the agreements address matters that are within the jurisdiction of the Board pursuant to section 101 of the Act.

The Board notes that its Decision is premised, among other things, on fulfillment of the commitments by the Applicants outlined in its submissions, which include the Applicants' commitments to fulfill the conditions in the SIA and CIA Reports, secure full and final REA and to pay costs as outlined in this Decision.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of the Act, the Board grants Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. leave to construct the Co-owners transmission facilities in accordance with the Board's Decision in this proceeding. The granting of this leave to construct is conditional on the Co-owners commencing construction within 12 months of the date of the Board's Decision.
2. Pursuant to section 92 of the Act, the Board grants Kerwood Wind, Inc. leave to construct the Kerwood transmission facilities in accordance with the Board's Decision in this proceeding. The granting of this leave to construct is conditional on

Kerwood Wind Inc. commencing construction within 12 months of the date of the Board's Decision.

3. Pursuant to section 97 of the Act, the Board approves the forms of agreements filed by the Applicants in this proceeding.
4. Pursuant to section 101 of the Act, the Board grants the Applicants authority to construct transmission facilities upon, under or over a highway, utility line or ditch. The granting of this authority is conditional on the Applicants constructing the facilities in accordance with terms of road use agreements agreed to by the Applicants and the County on September 10, 2013, to the extent that the terms of the road use agreements address matters within the jurisdiction of the Board pursuant to section 101 of the Act.
5. The Group of Intervenor shall file its cost claim with the Board within **7 days** from the date of issuance of this Decision and Order and deliver a copy of the cost claim to the Applicants. The cost claim must be in accordance with the Board's Practice Direction on Cost Awards.
6. The Applicants shall file with the Board and forward to the Group of Intervenor any objections to the claimed costs within **17 days** from the date of issuance of this Decision and Order.
7. If an objection is filed, the Group of Intervenor shall file with the Board and forward to the Applicants any responses to any objections for cost claims within **24 days** of the date of this Decision and Order.
8. The Applicants shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number EB-2013-0040 and EB-2013-0041, be made through the Board's web portal at

<https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at www.ontarioenergyboard.ca. If the web portal is not available you may e-mail your

document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

ISSUED at Toronto, November 12, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary