

March 14, 2014

Ontario Energy Board
Attn: Kirsten Walli, Board Secretary
P Box 2319
27th Floor
2300 Yonge Street Toronto ON M4P 14

Dear Ms. Walli,

**RE EB 2013-0361
Notice of Application and Hearing
Jericho Wind, Inc. For Leave to Construct Transmission Facilities in the
Municipality of Lambton Shores, Lambton County and the Municipality of
North Middlesex, Middlesex County, Ontario**

**Letter of Comment Submission by
Doris St. Amand**



A. Introduction

1. Please accept this letter of comment for consideration and response by the OEB Hearing Panel (the Board). I (the Commenter) live in a medium density residential area within Lambton County, am retired, and have a direct interest in the general consequences of rapid wind energy development in the country side, and the impact the Proposed Transmission Facilities (PTF) may have on a) the interests of consumers with respect to prices and the reliability and quality of electricity service, and (b) the public interest with respect to the construction of work upon, under or over a highway, utility line or ditch.
2. Four wind energy projects are involved with this PTF. Cedar Point Wind Project is owned and operated by Suncor Energy Products Inc. (Suncor), a wholly-owned subsidiary of Suncor Energy Inc. Bornish Wind Inc, Kerwood Wind Inc, and Jericho Wind Inc. (the Applicant) are all wholly-owned subsidiaries of Nextera Energy Canada ULC, which, in turn, is an

indirect wholly-owned subsidiary of Nextera Energy Resources LLC and six layers up the Organizational Chart the owner of all the subsidiaries - Nextera Energy Inc.

3. This application to the Board for Leave to Construct (LTC) its PTF impacts Cedar Point Wind functionality, as well as Bornish and Kerwood. This PTF may also have implications for future Hydro One customer transmission needs, and those needs, if not met, may impact consumers with respect to prices and the reliability and quality electricity service.
4. The Commenter requests that the Board respond to 5 concerns. The first concern deals with the language of the **Ontario Energy Board Notice** template. The rest relate directly to content in the Applicant's **Argument in Chief** and in **Application and Evidence** posted under EB2013-0361 on February 27, 2014.

B Actions Requested on Concerns Raised

5. The Commenter asks that the Board respond to the following matters:
 - (a) The Board, in its **Ontario Energy Board Notice** template, insert after the sentence, "The Board is an independent and impartial agency" a new sentence to read: "Its first objective is to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service".
 - (b) The Board meet its objective of protecting the interests of consumers with respect to prices, and the reliability and quality of electricity service and the public interest with respect to the construction of the work upon, under or over a highway, utility line or ditch by requiring the Applicant to complete a section "Financial Structuring of the Project" in its Application: in this instance, the Applicant can post the section to EB-2013-0361.
 - (c) The Board uphold "the public interest with respect to the construction of the work upon, under or over a highway, utility or ditch" and give due regard to municipal engagement as matter of public policy, to municipal regulatory authority and to the Board's own

jurisdictional authority at OEB Act 101.(1) against any right of the Applicant under the Electricity Act.

- (d) The Board require the Applicant to provide reasons and give evidence why it is not protective of the long term interests of consumers with respect to prices, and the reliability and quality of electricity service and why it is not in the public interest with respect to the construction of the work upon, under or over a highway, utility or ditch to upgrade the transmission line and to go underground and post the response to the EB website.
- (e) The Commenter requests that the Board provide answers to these questions:
 - i. Why is the Hydro One **Customer Impact Assessment** (CIA) referenced in the **Argument-in-Chief** and found in the **Application and Evidence** directed to Nextera Energy Canada ULC and not the Applicant, who, according to the Application, will be the owner and operator of the PTF (especially regarding Liability)?
 - ii. Why does the Board not require that the Applicant include in its **Application and Evidence** a section **Senior Management Organizational Chart**?

C. Rationale

(a) Protection of Consumer Interests with Respect to Prices and the Reliability and Quality of Electricity Service

- 6. The Board's mandate is to "oversee the province's electricity...sector through effective, fair and transparent regulation and in accordance with the objectives set out in the governing statutory framework." Its mission is to "promote a viable, sustainable and efficient energy sector that serves the public interest and assists consumers to obtain reliable energy services at reasonable cost". The [*Ontario Energy Board Act, 1998*](#), sets out the Board's guiding objectives, the first of which is "to **protect** the interests of consumers with respect to prices and the **adequacy**, reliability and quality of electricity service" (Commenter's emphasis).

7. The Board is to “protect the interests of consumers” regarding the energy sector. It cannot simply act in the interests of consumers (as for example to treat consumer interests on a level playing field with the Applicant’s interests). It has a duty to actively safeguard consumers.
8. The Board proactively protects consumer interests when through the **OEB Transmission Filing Requirements**, it requires the IESO to produce Service Impact Reports (SIA) so that the impact an Applicant’s PTF plan might have on the reliability of the existing and projected state of the integrated power system can be assessed in its technical context.
9. The same is true with the Hydro One Customer Impact Assessments (CIA). Hydro One notes:

This Customer Impact Assessment was prepared based on information available about the connection of the proposed NEXtera ENERGY Canada ULC – Adelaide, Bornish and Jericho Wind Energy Centre’s (WEC’s). It is intended to highlight significant impacts, if any, to affected transmission customers early in the project development process and thus allow an opportunity for these parties to bring forward any concerns that they may have. Subsequent changes to the required modifications or the implementation plan may affect the impacts of the proposed connection identified in Customer Impact Assessment. The results of this Customer Impact Assessment are also subject to change to accommodate the requirements of the IESO and other regulatory or municipal authority requirements.

The Commenter’s customer here is Bruce A (pending Hydro One confirmation). Hydro One is clear about the tentative nature of the report’s content. Changes may occur, in light of the IESO SIA report findings, municipal requirements, and regulations. Integrating this PTF involves active and ongoing participation by major stakeholders to ensure that this PTF’s connection from a generator and to the IESO controlled grid creates no disruption in customer service and is not an obstacle to present and future electricity service. If transmission customers are adequately and reliably serviced, then consumers hopefully are too. By requiring these reports, the Board acts to protect the interests of consumers.

10. Therefore, the Commenter requests that the Board in its **Ontario Energy Board Notice** template, insert after the sentence “The OEB is an independent and impartial agency” the sentence “Its first objective is to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service”.

(b) Applicant Financial Structuring for Project Costs and Capital

11. The Applicant notes in its **Argument-in-Chief** that the PTF will have no adverse impact on consumer and ratepayer prices. At para 3(a) the Applicant reasons that price protection exists because the costs of the facilities, including interconnection, will not be passed on to consumers through electricity rates. At para 20, the Applicant argues that, since the PTF will directly serve customers, not consumers, there can be no impact on the interests of consumers with respect to prices and regardless - no impact will occur to either customers or non-existent consumers because the costs “will be paid for entirely by the Applicant”. The Applicant then mentions its FIT contract. The Applicant says that since FIT contract pricing is standardized, every owner of a FIT Contract receives the same price and therefore this PTF will have no more impact on transmission rates or prices in Ontario than any other FIT contract would. Finally, at para 21 the Applicant states that income received under its FIT contract transmission rates is in fact the income it will use to recover PTF costs of construction and operation. At para 26, the Applicant further notes that it received its FIT Contract in July 2011 and that its term is 20 years. Finally, at para 33, the Applicant again points out that because the PTF will be paid for entirely by the Applicant, there exist no costs to be recovered through an increase in Ontario’s transmission rates and therefore no cost implications for ratepayers (who the Commenter assumes are the non-existent consumers). The monies from the negotiated transmission rate will be dedicated to cost recovery for the costs of the PTF. No mention is made of the Applicant’s own capital investment.
12. At para 6, The Applicant describes the PTF in the context of three other wind facilities – Suncor Cedar Point, Bornish Wind, Inc, and Kerwood Wind, Inc. The Applicant, Bornish and Kerwood are all wholly owned subsidiaries of Nextera Energy Canada. As we all know, government contracts are subject to the politics of the day – the concept of ‘public interest’ is a dynamic, ever evolving creature. Contract changes are made (e.g. the June 20, 2013 **Amended and Restated Wind Energy Agreement** with the Korea Electric Power

Corporation and Samsung C&T Corporation), moratoriums are pronounced with impunity (e.g. outcome of the Trillium Wind Power case), renewable energy supply generators have their output forcibly curtailed by the IESO and see themselves exposed to an indeterminate and unquantifiable risk, various government reviews and amendments occur to the FIT program (e.g. the new LTEP, the new LRP process). Just last week, the Minister of Energy, in the House, stated:

Hon. Bob Chiarelli: —under the FIT program for wind, large wind and large solar, there has been an actual moratorium on wind, because we have not issued more wind projects...

We have indicated that we're changing the procurement of large renewable moving forward. We're going to have the Ontario Power Authority do a request for proposals. There will absolutely need to be an agreement with the municipality to move forward with new projects.

Given the high risk potential of contracts based on politically controlled public policy, Nextera appears to have created these three subsidiaries to manage its risk. In the event that one or all subsidiaries fail, for whatever reason, that failure would not be fatal to the parent company, Nextera Energy Canada.

13. The FIT program guarantees more than just a power purchase rate for a 20 year period. It guarantees access to financing and it guarantees a reasonable rate of return. The program also requires that the FIT contract companies “must be willing to make necessary investments in their facilities, including the connection and metering costs, bear certain ongoing costs and risks of operation and maintenance”. The Applicant, in assuming costs of connection to the IESO controlled grid is meeting a requirement of the program. Those investments do not need to come from corporate capital but could come from leveraging that capital to maximize the financing to which the FIT program guarantees access. This business practice would minimize company exposure to ongoing costs and risks, thereby reducing its risk but potentially increasing consumer risk.

14. To summarize, other than cost recovery through FIT transmission rates paid over a 20 year period, the Applicant makes no mention of the resources it commands or company capital it has committed for investment in the PTF.
15. If the Applicant uses its guaranteed access to financing, it could very well end up with very little capital commitment. Private corporations create wealth. In committing funds to projects they must consider the costs, the potential risks and likely revenue. A project which fulfills its potential for profit will continue and a project that does not will be abandoned.
16. For whatever reason, if the Applicant, having made very little capital investment still does not make the return expected, there is no motivation to carry on. The company can sell it if it can, or just exit. The Applicant is a wholly-owned subsidiary. Any adversity that might cause the Applicant to fail is not fatal to the parent company. Approval of the PTF is the last step in getting the wind energy plant up and running. It is the last chance that the Board has to ensure that consumers and the public interest are protected.
17. The Board, in chapter 4 of EB2006-0170 **Filing Requirements for Transmission Applications** states:

4.1 Introduction

The filing requirements set out in this document are not intended to limit applicants in terms of what information they may want to present. Nor do these filing requirements limit the discretion of the Board in terms of what information and evidence it may wish to see.

4.2.2 Non Rate Regulated Applicants

Most of the projects proposed by non rate regulated applicants are designed to connect sites or plants to the electric power system. The financial risk of constructing new transmission facilities lies with the owners and shareholders of the company. The filing requirements for non-regulated entities reflect this risk structure. ...

As rate payer money is not involved, these applicants generally do not need to justify their expenditures on their own transmission facilities to the Board. However, it should be noted that in certain circumstances these owners and shareholders may be required by the Board to share some or all of the costs associated with the Network Reinforcement, as

set out in Section 6.3 of the TSC. In that case the Board will want to ensure that the shared costs are appropriately assigned.

Section 6.3 of the TSC sets out how cost sharing will need to be justified. Transmitters and distributors applying for transmission connection projects must include additional information as set out in the TSC in their applications to the Board, such as the calculation

of any capital contribution, and the relevant annual connection rate revenues over the applicable evaluation period if the costs are not recoverable in connection rate revenue.

18. The Board acting in the public interest requires the Applicant to cover all PTF costs and can ask about an Applicant's capital contribution to the PTF, as seen in the circumstance of shared cost.
19. The Board does not require Applicants to justify their expenditures if they own the transmission facilities. If costs are shared, the Board asks for more detailed financial information: "calculation of capital contribution and relevant annual connection rate revenues over the applicable evaluation period if costs are not recoverable in connection rate revenue". In this case, the PTF will be co-owned. The Board also includes in its requirements for the Application Exhibit B 1. a bullet "financial structuring of the project, as necessary".
20. The Board has discretionary power to require financial disclosure and to require any other information and evidence it may wish to see. .
21. The Board already requires some form of financial disclosure from the applicant to protect the public interest. Unfortunately, corporations do sometimes walk away from projects and that action may well have adverse consequences on the price and cost of electricity to consumers and ratepayers.
22. The Commenter requests the Board to require the Applicant to complete the section in the Application set aside for description of its financing structure for the project and submit it to the Board as part of its submission.

(c) Board Jurisdiction – Electricity Act and the OEB Act with Respect to Transmitter Rights

23. This issue starts as a straight forward request by the Applicant for approval of the Board either pursuant to Section 101 of the Act or pursuant to the Board's powers under Section 92 of the Act for authority to construct portions of the PTF upon, under or over a highway, utility line or ditch. (see para 2 **Application and Evidence**) However, for whatever reason, the Applicant takes a different tack in its **Argument-in-Chief** para 10 to para 19.
24. The Renewable Energy and Facilitation Office (REFO) outlines the steps for developing a renewable energy project. **Step 5: Construction begins** reads:
- You (the Applicant) will need to get in touch with your local municipality for information on obtaining required building permits for your project. Once you have received all permits and approvals, including any additional permits you may require for specific construction (e.g., roads, buildings), you may begin construction.
25. The Applicant has concluded a Road Use Agreement (RUA) with the County of Middlesex and has worked with County of Lambton staff to forge an RUA that now awaits only public consultation before final approval.
26. The Premier has made a public commitment to the importance of municipal engagement, as has the Hon Bob Chiarelli (quoted at the Commenter's para 7 above).
27. The FIT Program **Access Rights Declaration** form asks the Applicant to check off whether or not municipalities have granted access rights.
28. Under the OEB Act Section 19.1 the Board has in all matters within its jurisdiction authority to hear and determine all questions of law and fact and Section 101 puts this very issue within its jurisdiction. When conflicts arise in Regulations and Acts, the Board's job is to find the balance that protects consumer interests. The Commenter agrees wholeheartedly with the arguments and remedies found in **County of Lambton Schedule A Sub 20140305** and in **County of Middlesex Sub 20140306** posted to EB-2013-0361.

(d) Public Interest and Protection of Consumer Interests with Respect to Costs of Enhancing the PTF by Upgrading Transmission Line and Going Underground

29. The Applicant at its para 4(b) describes the transmission line as 15.7 km of single circuit 115 kV class transmission line.
30. The OPA report **Exhibit D Transmission Options** outlining transmission options for northern York region is relevant to the PTF here in two respects. First, one method of enhancing transmission line reliability and flexibility and to meet long term load capacity needs (for supplying bulk electricity for northern York Region), is to replace 115 single circuit transmission line (used now for radial supply in Southern Ontario) with a double circuit 230 kV line. Second, the report discusses having the transmission line overhead or underground. Option 2 (the one finally recommended) considers going underground for a 10 km stretch. It pegs the entire overhead cost at 23 million. The entire transmission line going underground increases overall capital cost to 67 million.
31. TransAlta Corp., Canada's largest publicly traded power generator with significant penetration into the renewable sector, at p. B5 Globe and Mail Report on Business Monday March 10, 2014, attributes missed expectations for its fourth quarter to "ice storms ... that affect its wind power business".
32. The OPA **Large Renewable Procurement Regional Community Meeting Presentation** identifies the area west of London as having "some area capability for Large Renewable Projects".
33. The proposed County of Lambton Road Use Agreement with the applicant contains a term which is the greater of (i) thirty (30) years...plus an option to renew for two (2) further ten (10) year periods, or (ii) ...to the expiry of the term of the PPA and any extensions thereof ...".
34. This PTF is a long term investment in the electricity system. New housing developments in the area will be compact and high density in nature. Right now, the reliability of the current system is so uncertain, that more and more customers are installing back up whole home generators (much like using natural gas plants to back unreliability of wind energy). Demand is increasing in the area, and it may be that some Renewable Energy Sources company will apply and receive a LR FIT contract and want to connect into this PTF. Will the PTF as envisioned accommodate those needs? Weather in the area is a significant factor when considering overhead design. TORNADOS happen. Ice storms happen. Outages occur. Indeed, 9 out of 10 new subdivisions are

now served by underground transmission lines to increase reliability and decrease cost of operation and maintenance. Planned long term flexibility is a good thing.

35. The Commenter requests that the Board require the Applicant to provide reasons and give evidence why it is not protective of the long term interests of consumers with respect to prices, and the reliability and quality of electricity service and why it is not in the public interest with respect to the construction of the work upon, under or over a highway, utility or ditch to upgrade the transmission line and to go underground and post the response to the EB website.
36. The Commenter appreciates this opportunity to raise concerns germane to the Board's hearing to consider the Applicant's request for Leave to Construct its Proposed Transmission Facilities.

Sincerely,

Doris St. Amand

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates.