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March 28, 2014

**EB-2014-0139**

Ontario Energy Board  
P.O. Box 2319  
2300 Young Street, 27th Floor  
Toronto, ON M4P 1E4

**Attn: Ms. K. Walli, Board Secretary**

Dear Ms. Walli:

**Re: Application for Intervenor Status, Jericho Wind, Inc. Application EB-2014-0139**

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Please accept this letter, as Application and request by The Corporation of the County of Lambton ("County of Lambton") for the following five purposes:

1. As Application for Intervenor Status, pursuant to Rule 23;
2. As Application to Dismiss portions of the proposed proceeding pursuant to both Rules 18.01 (b) and/or 19.01(d);
3. A motion for adjournment pending the public consultation process of the County of Lambton;
4. A recommendation that the Board consider its authority to require either an Interrogatory Conference or a Technical Conference prior to the consideration of Jericho Wind, Inc.'s application on its merits; and
5. Request for an Oral Hearing

### **1. Application for Intervenor Status**

Please accept this letter as the County of Lambton's official request to be granted Intervenor Status in Application EB-2014-0139. Further, please accept this letter as proof that the undersigned acts as solicitor for the County of Lambton. For the purpose of service of any and all future documents, it is requested that the Board use the address included on this correspondence's letterhead.



The County of Lambton is an upper-tier municipality, as defined by the *Municipal Act, 2001*, and as such is a democratically elected government with provincially delegated authority for the safe provision of certain public highways within its geographic territory. The County of Lambton has a substantial interest in this application as the Applicant proposes to construct infrastructure which would serve the purpose of transmission and/or collection of electricity within the rights-of-way of County owned and maintained roads, as is specifically contemplated in paragraphs 3 and 5 of Jericho Wind, Inc.'s Application, as well as Appendix B of Exhibit 6.

The County, other utility providers and the public in general have an interest in determining what, if any, impact the proposed infrastructure would have on the current and future needs of the right-of-way, including maintenance thereof and of ensuring that all approved infrastructure is located in accordance with the Ministry of Transportation's Design Guidelines for Highways and other applicable Canadian road design standards.

This Application is closely related to the "main" application EB-2013-0361, and must be considered in said context. The County of Lambton has been granted Intervenor Status in said related application currently before the Board, precisely because the County owns and has legislative authority over the road allowances in which the Applicant seeks to construct electrical infrastructure. *Inter alia*, it would constitute an absurd result for the County not to be granted Intervenor Status in this application, as it was already speaking to these exact issues in a pre-existing proceeding.

At time of writing, the County anticipates only seeking an award of costs from these proceedings if it is unable to successfully conclude a Road Use Agreement ("RUA") which it is currently attempting to negotiate with the Applicant. Should a RUA be executed, it is anticipated that either the County, the Applicant or possibly both parties would withdraw from this Application.

## **2. Application to Dismiss Issues not Properly Before the Board**

Rules 18.01(b) and 19.01(d) enable the Board to dismiss an application or a portion thereof that is not in compliance with the Board's Rules. It is the County's position that the Board should dismiss or not process any portion of the Application which exceeds the immediate jurisdiction of the Board. This Application technically seeks only Orders which would permit the construction of the distribution system. Unlike the companion application, being OEB File EB-2013-0361, in which two RUAs (one of which is not approved) and various other documents provide technical specifics, this application, as currently drafted, both lacks relevant data and could foreseeably result in an Order which exceeds the Board's authority in relation to section 41 of the *Electricity Act, 2006*.

The Application expressly requests the Board issue an order or orders establishing the location of the Distribution System associated with the Jericho Wind Energy Centre within Road Allowances under the jurisdiction of the County of Lambton. This would preclude the order or orders addressing other such items under consideration in File

EB-2013-0361, including the Transmission System to connect the Substation to the IESO controlled grid.

In addition, the order or Orders must not address items that fall outside the limited scope that the Board has previously acknowledged, including the location and construction of the Turbine facilities, approval of new or modified access ways to private properties from the Road Allowance (an area of sole municipal jurisdiction), the permitting of over-dimensional and overweight commercial vehicles on the Road Allowance (sole municipal jurisdiction), the erection of signs on or within the prescribed control zone of the Road Allowance (sole municipal jurisdiction), and roadway modifications not directly related to the construction of the Distribution System (also sole municipal jurisdiction).

### **3. Motion to Extend Time**

Against any reasonable conception of public interest or respect for democracy, the Applicant has had the temerity to request that the Board expedite its own proceedings, on the grounds that "the only person directly affected by this application is the County" (Applicant's Application, paragraph 9). It is a gross mischaracterization to describe a democratically elected government such as the County of Lambton, which has a mandate to represent the hopes, aspirations and interests of approximately 123,000 citizens of Ontario, as a single person.

Conversely, it warrants mentioning that the only legal person to potentially benefit from the requested expedition of proceedings is the sole shareholder of the Applicant, being NextEra Energy Canada, ULC (Applicant's Application, paragraph 1). When considering the balance of convenience and the extraordinary remedy of an expedited procedure, the Board should consider its mandate under Rule 2.01, which establishes that a "just" determination of the issues is at least as important as an expeditious determination. When the interests of 123,000 people are considered against the interests of the Applicant's sole shareholder, it is self-evident that the County, as political representative of the 123,000 people, should be granted adequate consideration so as to be able to complete its political and legislative contemplation of the proposed RUA, and thereafter adopt an official position. Based on the current process, it is anticipated that Lambton County Council will likely be able to provide direction to staff by June of 2014. Accordingly, Lambton County requests that the Board establish timelines for this Hearing which can accommodate the County's public decision-making process.

Finally, the Applicant has inaccurately portrayed the parties as having an "inability" to reach an agreement. At time of writing, there is no specific reason to believe that there exists an "inability" for the parties to have a meeting of the minds. Lambton County Council has a democratic, consultative and legislative process, which has not yet been completed. All that is required is adequate time for the County's process to be concluded, at which point County Council will adopt a formal position. In the event that County Council rejects the advice contained in the staff report, it would then become

appropriate to proceed with this Application. In the event that County Council accepts the advice contained in the staff reports, the potential RUA will be signed and this Application will likely be withdrawn.

#### **4. Recommendation for Interrogatory or Technical Conference**

In its initial Application materials, Jericho Wind, Inc.'s Application lacks many specific technical details (including but not limited to the exact locations of proposed electrical infrastructure). Further, the materials make no reference to existing, or potentially existing third party infrastructure. Rule 28.01 contemplates the use of Interrogatories, which amongst other things can assist with the clarification of evidence. In this Application, this would be beneficial as Jericho Wind, Inc. could be compelled to provide more specific evidence with respect to infrastructure location than it has to date. The County has a need, fundamental to its mandate as steward of the public road allowance, to be able to ask questions and demand satisfactory practices by the Applicant which respect competing needs for use of the road allowance - it is incumbent upon the County to ensure that any construction in the road allowance is done in such a manner that it causes no harm to existing users of the road allowance, and allows for future construction within the road allowance by other utility providers that also have a statutory right to build infrastructure there.

In addition, or in the alternative, Rule 27 provides the Board with the capacity to direct the conduct of a Technical Conference, to review and clarify details, which in this case would likely include a number of engineering and infrastructure location/design issues. It is suggested this could greatly simplify the proceedings and allow the parties to focus their testimony on discrete issues and items.

#### **5. Request for an Oral Hearing**

The Applicant has requested that this matter be conducted as a written hearing (paragraph 13 of its Application). The County resists this request, and instead requests that this matter be conducted as an oral hearing. It is the County's position that should the parties be unable to conclude a RUA, verbal testimony will be absolutely necessary as there will be conflicting evidence on a number of points, and the probative value of such evidence, particularly that obtained through cross-examination, would more than outweigh any minor inconvenience associated with an oral hearing.

It is specifically important for the Board to hear the respective parties' positions with regard to the impact of the proposed infrastructure within the County's road allowances and how such infrastructure will impact upon the current and future needs of the right of way, including such factors as planned relocation of the right away (near future plans to move a portion of the main road in question), as well as the needs and requirements of other and future users of said road allowance.

It is extremely likely that impacts and compatibility issues associated with the proposed electrical transmission and collection route infrastructure will constitute significant issues

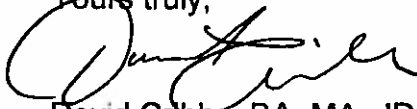
numerous questions will foreseeably lead to an alternate route or the potential need for substantive changes to the proposed RUA. For the Board to effectively adjudicate this issue, it will have to be able to assess the credibility of the engineering evidence and testimony. Such credibility assessments will be a dominant factor in the outcome of this Application, and as such support the request for an oral hearing.

The Applicant has requested an expedited hearing, but also seeks a hearing comprised of written submissions only, which would paradoxically increase the duration of time required for a full hearing on its merits. This is obviously the case, as the parties would require significant periods of time to respond to the voluminous technical materials that will be necessary to draft for the Board's consideration. It would clearly be faster for the Board to hear directly from the Applicant's engineers and County engineering staff with respect to the aforementioned issues.

While the County requests the matter be adjourned pending its own democratic, public consultation process, it would prefer an oral hearing immediately thereafter so as to have an expeditious conclusion to this Application, rather than experience the delay associated with time requirements for lengthy written materials and replies to same.

I trust the foregoing to be generally satisfactory.

Yours truly,



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