

1 **ONTARIO ENERGY BOARD**

2
3 **EB-2014-0139**

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5 IN THE MATTER OF the *Ontario Energy Board Act*,
6 1998, S.O., c. 15 (Sched. B);

7
8 AND IN THE MATTER OF an application by Jericho
9 Wind, Inc. for an Order or Orders pursuant to Section 41(9)
10 of the *Electricity Act, 1998* (as amended) establishing the
11 location of the applicant's distribution facilities within
12 certain road allowances owned by Lambton County.

13
14 **ARGUMENT IN CHIEF**

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16 In accordance with the Ontario Energy Board's (the "**Board's**") Procedural Order No. 2
17 dated June 9, 2014, Jericho Wind, Inc. ("**Jericho**") makes this written submission in
18 support of its application for an order or orders pursuant to Section 41(9) of the
19 *Electricity Act, 1998* (as amended) (the "**Electricity Act**") establishing the location of
20 Jericho's distribution facilities within certain public rights-of-way, streets and highways
21 owned by Lambton County.

22 **1.0 THE PROJECT**

23 By way of background, Jericho owns and will operate the generation, transmission and
24 distribution assets of the Jericho Wind Energy Centre (the "**Project**"), which is located in
25 the Municipality of Lambton Shores and the Township of Warwick in Lambton County,
26 and in the Municipality of North Middlesex in Middlesex County, Ontario. The Project
27 will include 92 wind turbine generators and will have a total nameplate capacity of up to

1 150 megawatts. The Project is further described in Exhibit B, Tab 2, Schedule 1 of
2 Jericho's March 18, 2014 application (the "**Application**").

3 The Project will involve 34.5 kilovolt ("**kV**") underground distribution lines located on
4 private property and municipal and county right-of-ways, which are essential to the
5 Project in that they will convey electricity from each of the wind turbines to a transformer
6 station (collectively, the "**Distribution System**").¹ Jericho has proposed to locate certain
7 power lines and other facilities associated with this Distribution System within certain
8 public rights-of-way, streets and highways owned by Lambton County (collectively, the
9 "**Road Allowances**"), as set out in Part 2.0 hereof.

10 In choosing to locate a portion of the Distribution System within the Road Allowances,
11 Jericho relied on its right pursuant to Section 41 of the Electricity Act to locate
12 distribution facilities within any public street or highway without the consent of the
13 owner. However, given that Lambton County has not agreed on a location of Jericho's
14 Distribution System within the Road Allowances, Section 41(9) of the Electricity Act
15 states that the Board shall determine such location. Because of the limited scope of
16 Section 41(9), the only issue before the Board is determining that location.²

17 **2.0 PROPOSAL FOR LOCATION OF THE DISTRIBUTION SYSTEM**

18 Jericho proposes that the location of the Distribution System within the Road Allowances
19 should be as follows:

¹ The Distribution System is further described in Exhibit B, Tab 2, Schedule 1 of the Application.

² For further details on Jericho's and Lambton County's disagreement regarding the location of the Distribution System within the Road Allowances, see Exhibit B, Tab 5, Schedule 1, Pages 2-5 of the Application.

- 1 • The Distribution System shall generally be located in the Road Allowances and
2 the locations listed on Exhibit B, Tab 6, Schedule 1, Appendix A of the
3 Application.
 - 4 • Where practicable, and where it meets all applicable engineering, environmental
5 and health and safety standards, the Distribution System lines shall be more
6 particularly located as shown in the drawings included in Exhibit B, Tab 6,
7 Schedule 1, Appendix B of the Application.
 - 8 • Where practicable, and where they meet all applicable engineering, environmental
9 and health and safety standards, the location aspects of the diagrams shown at
10 Exhibit B, Tab 6, Schedule 1, Appendix C of the Application. shall be followed in
11 constructing the Distribution System within the Road Allowances.
- 12 Jericho requests the Board approve the location of the Distribution System within the
13 Road Allowances by adopting the language above, in its entirety, in the Board's Decision
14 and Order.

15 **3.0 RATIONALE FOR AND ALTERNATIVES TO PROPOSED LOCATION**

16 Having chosen to locate the Distribution System within the Road Allowances, Jericho has
17 limited choices with respect to the location of those facilities within the Road
18 Allowances. That choice is restricted to, for example, whether the Distribution System
19 will be located on or near a traveled or untraveled section of the Road Allowances.
20 Given the limited scope of the choice, there is carefully considered rationale behind the
21 location that Jericho has proposed in this submission. In particular:

- 22 • the proposed location of the Distribution System within the Road Allowances is
23 the best balance of various environmental, social, technical and economic
24 considerations;
- 25 • Jericho consulted extensively with County staff to address its questions and
26 concerns, which ultimately resulted in County staff recommending approval of a
27 Road Use Agreement with Jericho on three separate occasions; and

- 1 • Lambton County has not proposed an alternative location for the Distribution
2 System within the Road Allowances.

3 Therefore there are no suitable alternatives for locating the Distribution System in the
4 Road Allowances other than as proposed herein.

5 **3.1 ADDRESSING ENVIRONMENTAL, SOCIAL, TECHNICAL AND** 6 **ECONOMIC CONSIDERATIONS**

7 Various environmental, social, technical and economic considerations influenced
8 Jericho's proposed layout of the Distribution System within the Road Allowances.
9 Relevant to these considerations is the fact that the location of the Distribution Facilities
10 depends on the siting of the turbines and transmission facilities. The turbine locations
11 have been specifically approved by the Ontario Ministry of the Environment in the
12 renewable energy approval issued in respect of the Project. The relevant transmission
13 facility locations have been specifically approved by the Board in its Decision and Order
14 in the leave to construct proceeding EB-2013-0361. Given these approved locations,
15 there is a limited corridor in which to locate the Distribution Facilities in order to connect
16 to the turbines to the transmission facilities.

17 Within this limited available corridor, the proposed Distribution System locations are the
18 product of an iterative approach to siting that involved extensive consultations with
19 County staff (as described below) as well as broader consultations with the public in
20 accordance with Ontario Regulation 359/09. Generally speaking, information collected
21 through these consultations, as well as through the detailed environmental and other
22 studies of the Project completed in accordance with O. Reg. 359/09, were used by the

Jericho design team to refine the placement of Project infrastructure, including the Distribution System, in order to minimize impacts to the County, the local community, the natural environment and other existing infrastructure and features.

3.2 ENGAGEMENT WITH AND ADDRESSING REQUESTS OF LAMBTON COUNTY

Jericho has repeatedly attempted to engage with Lambton County and come to an agreement regarding the location of the Distribution System. Jericho informed the County regarding the extent, timing and implications of the construction, installation, operation, maintenance and future decommissioning of the Distribution System and its proposed location.

Jericho's extensive track record of consultation with Lambton County on the Project configuration, including the layout of the Distribution System, is set out in Exhibit B, Tab 5, Schedule 1 of the Application. As discussed in the Application, Jericho previously sent County staff drawings of its proposed Distribution System location in early December 2013. Since that time, Jericho has reached general consensus with County staff that the proposed Distribution System locations are technically acceptable.

In addition, Jericho proposed a reasonable road use agreement (the "**Agreement**") to Lambton County, which would have conferred certain benefits on and provided numerous protections to Lambton County.³ For example, Jericho would have undertaken

³ For additional information and a copy of the proposed road use agreement, see Exhibit B, Tab 4, Schedule 1 of the Application.

1 the construction, installation, operation, maintenance and decommissioning of the
2 Distribution System at its own expense and in accordance with good engineering
3 practices; used reasonable efforts to avoid unnecessary adverse impacts on the public use
4 of the Road Allowances; and repaired the surface of any Road Allowance that was
5 damaged in the course of the work. Jericho first provided a copy of the Agreement to
6 Lambton County on July 3, 2013 and since that time has consulted extensively with
7 County staff in order to produce an agreement that would be acceptable to County. As
8 stated in Exhibit B, Tab 5, Schedule 1 of the Application, on January 15, 2014 and
9 February 19, 2014 County Committee considered County staff reports which
10 recommended that the County Warden and Clerk be authorized to execute the
11 Agreement. Despite these recommendations, at its February 19, 2014 meeting, the
12 County deferred consideration of the County staff report recommending the execution of
13 the Agreement in order to allow for a 60 day public commenting period. That
14 commenting period closed on May 4, 2014.

15 Following the closure of the commenting period, County staff and Jericho amended the
16 draft Agreement to incorporate public comments associated with Jericho's use of County
17 Road Allowances. At the May 21, 2014, meeting of the County's Committee, County
18 staff tabled a report that described the public comments received. In the same
19 report, County staff recommended a revised form of Agreement (the "Revised
20 Agreement"), concluding that such agreement "is considered to take into account

1 protection of the existing and future County road allowances and maintain the County's
2 interests as the road authority for these rights-of-way".⁴

3 Given the conclusion above, on page 6 of the report, County staff recommended that the
4 County Warden and Clerk be authorized to execute the Revised Agreement, which would
5 establish, among other things, the location of the Distribution System within the Road
6 Allowances. On page 4 of the report, County staff also noted its understanding that the
7 present section 41(9) application would be abandoned if a road use agreement was signed
8 between the County and Jericho.

9 Despite the opportunity for the County to address the public comments received through
10 a Revised Agreement, and despite County's staff's recommendation above, the County
11 Committee unfortunately voted 3-3 and did not vote in favor of authorizing the Warden
12 and Clerk to execute the Revised Agreement.

13 Since the May 21, 2014 meeting, the County has not contacted Jericho with any further
14 comments on the Revised Agreement, or with any alternative proposal regarding the
15 location of the Distribution System within the Road Allowances.

16 **3.3 NO ALTERNATIVES**

17 It is important to note that Jericho has submitted to the Board the only proposal regarding
18 the location of the Distribution System. Lambton County has not put forward an
19 alternative proposal. In fact, the County did not even ask any interrogatories in respect of

⁴ A copy of the staff report, which includes the Revised Agreement, was attached as Appendix "A" to Jericho's responses to Board Staff Interrogatories.

1 Jericho's proposed location. Given the lack of any alternatives, Jericho respectfully
2 requests that the Board approve Jericho's proposed location, which is consistent with and
3 responsive to the feedback received to date from County staff.

4 **4.0 ORDER SOUGHT**

5 Jericho therefore requests that the Board, pursuant to Section 41(9) of the Electricity Act,
6 issue an order or orders establishing the location of the Distribution System within the
7 Road Allowances owned by Lambton County. More particularly, Jericho requests that
8 the Board issue an order or orders establishing such location in accordance with the
9 location proposed in Part 2.0 of this submission.

10 Jericho also notes that it has taken seriously its obligation to attempt to reach an
11 agreement and has taken a reasoned and principled approach throughout its dealings with
12 the County. In contrast, the County Council has chosen to delay and oppose the
13 execution of the Agreement despite multiple recommendations from County staff to the
14 contrary. Jericho respectfully submits that this hearing would not have been necessary
15 had the County Council engaged with Jericho in good faith in accordance with its
16 statutory obligation to attempt to reach agreement with Jericho regarding the location of
17 the Distribution System. Jericho -- and presumably the Board -- have been put to
18 significant expense as a result of the County Council's failure to engage in these
19 negotiations, and as a result, Jericho respectfully reserves its right to request costs in this
20 proceeding.

1 DATED at Toronto, Ontario, this 16th day of June, 2014.

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3 All of which is respectfully submitted by:

4 JERICO WIND, INC.

5 By its counsel,

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Tyson Dyck

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