



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

Docket UE21007  
Order UE06-04

**IN THE MATTER** of an application by  
Maritime Electric Company, Limited for approval  
of a 39 MW Wind Power Purchase Agreement.

**BEFORE THE COMMISSION**  
on Tuesday, the 22nd day of August, 2006.

Maurice Rodgerson, Chair  
Weston Rose, Commissioner  
James Carragher, Commissioner  
Anne Petley, Commissioner

---

# Order

Compared and Certified a True Copy

(Sgd) *Donald G. Sutherland*

---

Technical and  
Regulatory Services Division

**IN THE MATTER** of an application by  
Maritime Electric Company, Limited for approval  
of a 39 MW Wind Power Purchase Agreement.

---

# Contents

CONTENTS.....	ii
REASONS FOR ORDER.....	1
1. Introduction.....	1
2. Background.....	1
3. Procedure.....	2
4. Discussion & Findings.....	4
5. Disposition.....	8
ORDER	

**IN THE MATTER** of an application by  
Maritime Electric Company, Limited for approval  
of a 39 MW Wind Power Purchase Agreement.

---

# Reasons for Order

---

## 1. Introduction

[1] This is an application by Maritime Electric Company, Limited (the “Applicant”, “Maritime Electric”, or the “Company”) for an order or orders of the Island Regulatory and Appeals Commission (the “Commission”) approving a wind power purchase agreement (“Agreement” or “WPPA”) with the Prince Edward Island Energy Corporation, a provincial crown corporation established under the *Energy Corporation Act*, R.S.P.E.I. 1988 Cap. E-7 (“PEI Energy Corporation”) and the Government of Prince Edward Island (“Government of PEI”). The agreement covers the purchase of 39 megawatts (“MW”) of wind power.

[2] The application in this matter was filed on April 6, 2006 and publicly noticed in the Province’s daily newspapers and on the Commission’s website. In response to the notice, the Commission received a formal intervention from the Prince Edward Island Power Company Limited (“PEI Power”). There were no other comments or responses to the Commission’s public notices.

## 2. Background

[3] In 2004, the Government of PEI announced an *Energy Framework and Renewable Energy Strategy*<sup>1</sup>. Its stated purpose is described as follows:

*... to ensure that residents of Prince Edward Island have access to secure and competitively priced energy supplies, which are acquired and consumed in an efficient and environmentally responsible manner ...*<sup>2</sup>

---

<sup>1</sup> See: [http://www.gov.pe.ca/photos/original/ee\\_frame\\_rep\\_e.pdf](http://www.gov.pe.ca/photos/original/ee_frame_rep_e.pdf)

<sup>2</sup> *op cit*, p. 1

[4] The *Energy Framework and Renewable Energy Strategy* establishes a Renewable Portfolio Standard, or RPS, for electricity of at least 15 per cent by 2010. The RPS requirement has since been incorporated into the *Renewable Energy Act*, S.P.E.I., 2005, Cap. R-12.1, section 3(1) of which reads as follows:

*3. (1) For the calendar year beginning on January 1, 2010 and for each calendar year thereafter, every public utility shall obtain at least 15 percent of the total amount of electric energy that it sells during that calendar year from renewable energy sources.*

[5] Presently, the PEI Energy Corporation has approximately 13 MW of wind power installed at North Cape, Prince Edward Island and sells the energy to Maritime Electric. This represents approximately four per cent of the Island's current electricity needs. Using a 38% annual capacity factor, Maritime Electric anticipates that an additional 39 to 40 MW of renewable energy will be required to meet the requirements of the *Renewable Energy Act*.

[6] The Agreement under consideration here states that the PEI Energy Corporation is undertaking the development of a 30 MW wind farm at East Point, Prince Edward Island and that it has the right to sell wind power produced at a nine MW wind farm to be developed by Ventus Energy Inc. ("Ventus") at Norway, Prince Edward Island. According to documents on file, Ventus is an investor-owned company that develops wind power projects. With the 39 MW of wind power covered under the proposed Agreement, Maritime Electric will essentially meet the RPS requirements of the *Renewable Energy Act*.

[7] The intervention filed in this matter by PEI Power alleges, among other things, that the proposed WPPA is not the least costly alternative available to Maritime Electric to meet the requirements of the *Renewable Energy Act*. In addition, PEI Power objects to the process, or lack thereof, used by Maritime Electric in sourcing renewable energy at the lowest cost. PEI Power asks that the Commission:

- disqualify the PEI Energy Corporation's wind farm from the RPS;
- disqualify the requested expenditure of \$3,500,000 for upgrades to Transmission Lines to accommodate the East Point Farm;
- require MECL to issue an open and transparent tender for Renewable Energy sufficient to meet the RPS; and
- hold public hearings.

### 3. Procedure

[8] As noted above, PEI Power seeks a public hearing. The Commission has decided against an oral hearing in favour of a written hearing that fully considers the relevant issues.

[9] In Commission Order PC05-01, dated December 15, 2005<sup>3</sup>, the Commission commented on a similar request for an oral hearing. The comments in Order PC05-01 have relevance here:

*[9] The principles of natural justice have developed in administrative law to provide a party with an interest in a proceeding with an opportunity to be heard before a decision contrary to that interest is made. Over time, the principles of natural justice have evolved into a general duty of procedural fairness which is owed by an administrative tribunal to those potentially affected by its decisions.*

*[10] In general terms, the duty of fairness requires that the tribunal, or decision maker, give notice to interested participants about a decision it is contemplating, as well as disclosure of information that is relevant to the issue. The participants should then be provided with an opportunity to present evidence or argument or both. The steps that are required by a tribunal to fulfill the duty of procedural fairness vary with the specific context of each case and all of the circumstances must be considered in order to consider the context of the duty.*

*[11] The Supreme Court of Canada has made it clear that the right to participate in the decision-making process does not automatically mean that a party has a right to an oral or a public hearing. A leading case on procedural fairness is *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, a decision of the Supreme Court of Canada where the court held, among other things, that a decision, by itself, not to hold a hearing is not a denial of fair procedure. The court stated that a number of factors should be considered, including the governing legislation and the factual circumstances of the matter under consideration. The court went on to state, at paragraph 22, as follows:*

*I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.*

*[12] Baker was decided in 1999. Last year, the statements in that case relating to the duty of fairness were confirmed by the Supreme Court of Canada in *Congregation des te moins de Jehovah de St. Jerome-Lafontaine v. Lafontaine (Municipalite)*, [2004] 2 S.C.R. 650, where Chief Justice McLauchlan stated, at paragraph 5, that the content of the duty of fairness on a public body varies according to five factors:*

- (1) the nature of the decision and the decision-making process employed by the public organization;*
- (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates;*
- (3) the importance of the decision to the individuals affected;*
- (4) the legitimate expectations of the party challenging the decision; and*
- (5) the nature of the deference accorded to the body.*

---

<sup>3</sup> See <http://www.irac.pe.ca/document.aspx?content=orders/petroleum/2005/pc05-01.htm>

[13] *In Baker, as well, the Supreme Court of Canada discussed the narrower issue of when an oral hearing must be held (at paragraph 33):*

*However, it cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations. The Federal Court has held that procedural fairness does not require an oral hearing in these circumstances . . .*

[14] *Finally, a review of the relevant case law indicates that a decision on whether to hold a public hearing is often influenced by consideration of expense, delay and inconvenience. In fact, the Supreme Court of Canada made the following observation in 1979, which was approved as a statement of principle earlier this year in a Newfoundland decision (Johnson v. The Board of Commissioners of Public Utilities), [2005] NLTD 53:*

*. . . Fairness, however, does not necessarily require plurality of hearings or representations and counter-representations. If there were too much elaboration of procedural safeguards, nothing could be done simply and quickly and cheaply. Administrative or executive efficiency and economy should not be too readily sacrificed . . .*

[10] The Commission has fully considered the request of PEI Power and is of the view that an oral hearing is not necessary to ensure a fair hearing and consideration of the issues involved. Both Maritime Electric and PEI Power have been given an opportunity to submit material related to the application. The Commission believes that procedural fairness has occurred in these proceedings through the public noticing and commenting process and through public access to all of the documentary evidence submitted by the parties.

## 4. Discussion & Findings

[11] The evidence discloses that, at present, energy generated from wind turbines is generally more costly than conventional sources such as fossil fuel or nuclear power. However, current forecasts suggest that this may change as fossil fuel prices continue to increase.

[12] While wind technology constitutes a significant investment in capital, fuel costs are virtually non-existent and operating and maintenance costs appear relatively predictable and manageable. The major downside to wind energy lies in the variability and availability of wind. However, according to documents on file, Prince Edward Island's wind regime is among the best in Canada.

[13] In its submissions to the Commission, Maritime Electric submits that wind energy is the most viable renewable energy source in Prince Edward Island. According to the Company, alternative sources such as solar, hydro and organic biomass are either more expensive or not available.

[14] The Agreement before the Commission is for 20 years and, if approved by the Commission, commences, in the case of the 30 MW East Point wind farm, on January 1, 2007 and, in the case of nine MW Norway wind farm, on June 1, 2007. The energy price in the Agreement is \$0.0775 per kWh with \$0.02 of this price subject to an annual CPI index adjustment beginning in April, 2008 using December, 2006 as the base index value. Presently, the price is the same as that established by the *Minimum Purchase Price Regulations* under the *Renewable Energy Act*.

[15] Under the Agreement, Maritime Electric has the right of termination if the price set by the Agreement is changed by regulation or by operation of law such that the new price exceeds the price established in the Agreement. The Agreement price includes any value associated with planning capacity credits that may eventually be assigned to both wind farm projects. Maritime Electric anticipates planning capacity credits of 15 MW assigned to these projects.

[16] The 39 MW of renewable energy covered by the Agreement along with the existing 13 MW at North Cape will, based on current load forecasts, represent 15% of the 2010 requirement of 55 MW. According to the Company, entering the Agreement some four years prior to 2010 will allow the Company time to integrate the characteristics of wind power into the Company's current energy supply portfolio.

[17] In its submissions to the Commission, PEI Power states that it has submitted various proposals to the Government of PEI and to Maritime Electric for the development of wind projects on P.E.I. PEI Power submits, as well, that it has entered into land agreements with landowners in Spring Valley, Irishtown and Kensington areas of P.E.I. for the purpose of developing wind projects.

[18] PEI Power also submits that:

- as a crown corporation, the PEI Energy Corporation is using taxpayer-funded resources to compete against private sector companies which, in PEI Power's view, is not the Energy Corporation's role;
- the PEI Energy Corporation entered into a non-tendered contract with Ventus Energy for nine MW of the 39 MW wind energy contemplated in the Agreement. According to PEI Power, the PEI Energy Corporation is required to issue public tenders to procure goods and services;
- PEI Energy Corporation is not a Utility as defined in the *Energy Corporation Act* and therefore can't enter into a contract to buy and resell energy as contemplated in this agreement;
- PEI Power's wind turbines are superior in nature to those that would be used under the proposed WPPA; and
- The proposed WPPA will result in higher rates to customers than PEI Power would be able to provide. According to PEI Power:

- locations of the proposed wind farms at East Point and Norway are further from urban centers than the Spring Valley area resulting in higher transmission line losses;
- the cost associated with transmission losses will be passed on to ratepayers;
- the proposed wind farms in East Point and Norway will require an estimated \$3.5 million transmission line infrastructure that Maritime Electric will include in customer rates;
- PEI Power's wind farm location will require \$1.2 million in transmission line infrastructure which PEI Power will pay for at no cost to ratepayers.

[19] A number of issues raised by PEI Power, including its challenge of the jurisdiction of the PEI Energy Corporation to acquire power for resale, have been rendered moot by virtue of recent amendments to the *Renewable Energy Act*. Other non-cost related issues raised by PEI Power are, in the Commission's view, either beyond our jurisdiction or more properly before the courts. The Commission does, however, understand PEI Power's frustration in being effectively shut out of an opportunity to participate in the RPS requirements of the *Renewable Energy Act*.

[20] The Commission's broad responsibility in this matter is to ensure that Maritime Electric meets its legislative obligations at the lowest cost consistent with a public utility's duty to serve. These obligations include the requirement to provide reasonably safe and adequate service and facilities for services as changing conditions require and to satisfy the Commission that expenditures associated with the *Renewable Energy Act* are reasonably and prudently incurred. More specifically, subsections 3(a) and 24(2) of the *Electric Power Act* read as follows:

*3. Every public utility shall*

*(a) furnish at all times such reasonably safe and adequate service and facilities for services as changing conditions require.*

*24 (2) The Commission shall allow a public utility to recover, in addition to the return the public utility is entitled to earn annually under subsection (1), any expenditures that the Commission is satisfied were reasonably and prudently incurred by the public utility for the purposes of complying with requirements of the Renewable Energy Act.*

[21] Maritime Electric's submissions are that the proposed WPPA satisfy's the utility's legislative obligations. PEI Power suggests that the WPPA does not.

[22] In response to PEI Power's submissions, Maritime Electric submits that a formal, competitive process for renewable energy would not have resulted in any cost savings to the consumer as the *Minimum Purchase Price Regulations* establishes the minimum price at \$0.0775 per kWh regardless of the supplier.



In the case of line losses, Maritime Electric submitted a summary load flow analysis that indicates that there is only a marginal difference in transmission losses at either the East Point or Spring Valley locations. According to the Company, losses on the new lines to connect the wind farms to the transmission system would be offset by reduced losses due to the unloading of portions of the existing transmission system in those areas.

[23] In the case of the costs of the transmission facilities necessary to connect a wind project to the utility's transmission system, PEI Power submits that those costs should be borne by the wind developer and not by Maritime Electric and its ratepayers. PEI Power further submits that this is the industry norm and that it is prepared to pay these costs in exchange for the \$0.0775 per kWh covered under the *Minimum Purchase Price Regulations*. According to PEI Power:

*PEI Power is stating here, in no uncertain terms, that it is prepared to absorb, within its own capital costs, the projected costs of transmission line upgrades to its proposed wind farm, all within the legislated current energy price of 0.0775 cents per Kwh. Not one cent of such costs would be passed on to the ratepayers and MECL would remain the legal owner of such upgrades. In addition, PEI Power is prepared to commit contractually to meeting 100% of MECL's legislated requirement of 15% Renewable Energy by 2010 and PEI Power is prepared to post a substantial performance bond upon execution of a PPA with MECL.*

[Written submission dated August 9, 2006, pp.1-2]

[24] In the Commission's view, there is a distinction to be drawn between transmission upgrade costs associated with wind generators whose primary function is to provide electric energy to the interconnecting utility's customers and wind generators whose primary function is to provide energy, via a utility's transmission system, to others. In the latter case, Maritime Electric and its customers provide a conduit to the so-called merchant generator and should be fully compensated for all capital and operating costs associated with both the interconnection to, and the transmission of, the merchant generator's energy. In the former case, the proposed WPPA is, in many ways, analogous to Maritime Electric contracting with any supplier for energy purchases or, for that matter, constructing the facility itself. In either of these situations, Maritime Electric either could or would pay for transmission upgrades.

[25] The Commission notes that, while publicly available information supports PEI Power's contention that interconnection costs associated with wind generators are, in some cases, borne by the wind generator wishing to connect to the utility's transmission system, it is not the case that such costs are universally borne by the wind generator, particularly in situations where utilities are either contracting for wind energy to meet public service obligations or building facilities for that purpose. In fact, the opposite appears to be the case.

[26] Publicly available information supports Maritime Electric's position that transmission costs associated with wind facilities that are developed for the

benefit of the utility's customers should be borne by the customers. The Commission notes, as well, that transmission upgrades associated with wind projects should improve overall system reliability and stability and, therefore, provide benefits to the overall system. In cases where Maritime Electric's customers receive direct benefits from the interconnection, it is, in the Commission's view, appropriate that Maritime Electric's customers pay for such benefits.

[27] Having fully considered the application, the submissions of both Maritime Electric and PEI Power and the applicable law, the Commission finds and concludes that:

- the proposed WPPA is necessary to satisfy legislative requirements; and
- forecast costs associated with the WPPA will be reasonably and prudently incurred.

## 5. Disposition

[28] An order approving the application and the inclusion of appropriate WPPA costs in the Energy Cost Adjustment Mechanism with therefore issue.

**IN THE MATTER** of an application by  
Maritime Electric Company, Limited for approval  
of a 39 MW Wind Power Purchase Agreement.

---

# Order

---

**UPON** receiving and considering an application by Maritime Electric Company, Limited (the “Company”) for approval of a 39 MW Wind Power Purchase Agreement;

**NOW THEREFORE**, for the reasons given in the annexed Reasons for Order;

**IT IS ORDERED THAT**

1. the application is approved; and
2. costs applicable to energy purchased via the Wind Power Purchase Agreement may be recovered through the operation of the Energy Cost Adjustment Mechanism.

**DATED** at Charlottetown, Prince Edward Island, this 22nd day of August, 2006.

**BY THE COMMISSION:**

(Sgd) *Maurice Rodgeron*

\_\_\_\_\_  
Maurice Rodgeron, Chair

(Sgd) *Weston Rose*

\_\_\_\_\_  
Weston Rose, Commissioner

(Sgd) *James Carragher*

\_\_\_\_\_  
James Carragher, Commissioner

(Sgd) *Anne Petley*

\_\_\_\_\_  
Anne Petley, Commissioner

## NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the *Act* provide as follows:

*13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.*

IRAC140A(04/07)