



March 3, 2021

DELIVERED VIA E-MAIL TO: PJRafuse@irac.pei.ca

Mr. Philip J. Rafuse,
PEI Island Regulatory and Appeals Commission
National Bank Tower
5th Floor, Suite 501
134 Kent Street,
Charlottetown, PE C1A 8R8

Dear Mr. Rafuse:

**RE: The PEI Energy Corporation v. Rural Municipality of Eastern Kings LA20014
Reply to Don Humphrey Intervener Application**

We acknowledge receipt of Mr. Humphrey's application to be granted Intervener Status that was filed with the Island Regulatory and Appeals Commission (the "Commission") on March 1, 2021.

We write on behalf of the appellant, The PEI Energy Corporation ("The Appellant"), in reply, pursuant to Rule 18 of the Commission's *Rules of Practice and Procedure*, to Mr. Don Humphrey's application to intervene in the above-noted appeal before the Commission.

Rule 20 of the *Rules of Practice and Procedure*, provides the factors that the Commission is to consider in determining whether to grant a person or organization intervener status. Rule 20 of the *Rules of Practice and Procedure* provides the following:

20. Factors to be Considered by the Panel

1. *In determining whether to grant status as an Added Party Intervener, the Panel may consider any factor the Panel deems relevant in the circumstances, including, but not limited to, the following:*

(a) the nature of the applicant's interest in the proceeding, including whether the applicant has a distinct and substantial interest in the proceeding;

(b) the nature and scope of the applicant's intended participation, including whether the applicant intends to participate actively in the

proceeding;

(c) the extent to which the proposed intervention will add to the costs and complexity of the proceeding; and

(d) whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding.

2. In determining whether to grant status as a Friend of the Commission, the Panel may consider any factor the Panel deems relevant in the circumstances, including, but not limited to, the following:

(a) the extent to which the issues raised by the proceeding have implications that extend beyond the parties;

(b) the extent to which the applicant is engaged with the subject matter of the proceeding; Prince Edward Island Rules of Practice & Procedure Regulatory & Appeals Commission 10

(c) whether the proposed submissions of the applicant will reproduce the submissions of the parties or other interveners;

(d) whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding; and

(e) the extent to which the proposed intervention will add to the costs and complexity of the proceeding.

Mr. Humphrey is a resident of the Rural Municipality of Eastern Kings ("RMEK"). As such, his interests are represented by the RMEK Council. Therefore, the Appellant submits that Mr. Humphrey's interests are not distinct from the parties in this matter and are opposed to him being granted intervener status.

By his own application of March 1, 2021, Mr. Humphrey has acknowledged that he has been involved in this matter since the Appellant's Application first appeared at an RMEK Council Meeting. Mr. Humphrey further acknowledges that she was responsible for the conflict-of-interest recusals of the mayor and a councilor, as well as having written to and appeared before Council several times as the matter proceeded. Mr. Humphrey further states that he has written letters to the media, has provided interviews, and has made submissions to the Environmental Impact Assessment comments. The Appellant submits that Mr. Humphrey's application to be granted intervener status should be denied as he has already been an active participant in this matter and has no new, or further evidence, to provide the Commission to contribute to a resolution of this matter.

Mr. Humphrey has also advised that his goal is to participate and to be in a position to make written submissions at the conclusion of the hearing based on the evidence tendered and submissions made by the parties. Mr. Humphrey has also advised that he wishes to retain the

right to cross-examine witness. The Appellant submits that Mr. Humphrey has been broad in how he intends to participate in the hearing and this makes it difficult for the parties to prepare in advance of the hearing. This also increases the costs and potential complexity of the hearing. The Appellant believes that if Mr. Humphrey is provided intervener status at this point, that the parties may be prejudiced and could cause potential delays.

Based on the above, the Appellant submits that Mr. Humphrey's application for Intervener status should be denied based on the following:

1. Mr. Humphrey's interests are aligned with, and represented by, the RMEK Council;
2. Granting Mr. Humphrey intervener status, particularly in the nature that he proposes, at this late stage, would possibly cause delay to the proceedings and prejudice the parties; and
3. Mr. Humphrey has no new evidence to provide the Commission in this matter that would contribute to a resolution.

Yours truly,

CARR, STEVENSON & MacKAY

J. GORDON MACKAY, Q.C.

Cc: Hilary Newman
Don Humphrey at realdonhumphrey@gmail.com