

CANADA
PROVINCE OF PRINCE EDWARD ISLAND
APPEAL NO.: LA20014

IN THE MATTER of an appeal pursuant to the Prince Edward Island *Planning Act*, R.S.P.E.I., 1988, c. P-8 in the matter of the decision of the Rural Municipality of Eastern Kings, dated October 22, 2020, denying The PEI Energy Corporation's Special Development Permit Application, and being Appeal Number LA20014.

REPLY TO FRED CHEVERIE INTERVENER SUBMISSIONS

Prepared on behalf of the Appellant,
The Prince Edward Island Energy Corporation

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Applicant for Intervener Status

Mr. Cheverie provided a post-hearing submission in this matter to the Island Regulatory and Appeals Commission (the "Commission") and legal counsel for the PEI Energy Corporation (the "Appellant") and the Rural Municipality of Eastern Kings ("RMEK") on April 16, 2021.

The Appellant submits that Mr. Cheverie has previously advised the RMEK of his concerns with the Appellant's proposed windfarm project and that Mr. Cheverie has failed to raise anything new or provide any additional information to the Commission in his post-hearing submissions that was not previously provided to the RMEK and included in the record.

OFFICIAL PLAN

In his post-hearing submissions, Mr. Cheverie purports that it was evident that there was intent in RMEK's Official Plan to limit and control future windmill expansion. The Appellant submits that by establishing the Official Plan and Subdivision and Control Bylaws (the "Bylaws"), the RMEK established the conditions in which a wind turbine could be built in the community. The proposed location of the Appellant's windfarm project is in an area that is identified in RMEK's Official Plan and Bylaws as a suitable location for a wind turbine. The Appellant submits that it has conformed to RMEK's Official Plan and Bylaws.

Mr. Cheverie states that despite the evidence of the Appellant at the hearing, the existing windfarm has negatively affected the quality of life in the community. However, Mr. Cheverie has not provided any evidence to substantiate this assertion other than anecdotal evidence regarding loss of property sales due to threat of more turbines in the future. The Technical Review Committee ("TRC") addressed the issue of property values and John Heseltine's evidence at the hearing was that in his review of documents, he did not see any complaints regarding the current wind turbines. In fact, Mr. Cheverie's introduction boasts that the tourism sector and real estate market were doing extremely well prior to the pandemic. The Appellant's current windfarm has been in operation since 2007 and appears, by Mr. Cheverie's own statements, to not have had a negative impact on the RMEK.

Further, Mr. Cheverie speaks to how the RMEK conducted a revision of their Official Plan in 2012 and that he was part of that as a representative. As provided by the Appellant in its submissions to Mr. Cheverie's application for intervener status, Mr. Cheverie's participation in the revision of the Official Plan in 2012 is irrelevant to this matter and such evidence is inadmissible. Admitting the subjective intention of Mr. Cheverie would be to admit evidence that would dispossess the written text of any independent force. (See *Gainers Inc. Pocklington Holdings Inc.*, 2000 ABCA 151, at paragraph 24, provided with the Appellant's reply to Mr. Cheverie's application for intervener status).

Mr. Cheverie also raised concerns about the Hermanville wind turbines. The Enercon Turbines utilize more advance technology and do not use hydraulically actuated pitch rams like in Hermanville; they utilize electric motors.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

Mr. Cheverie states that the Appellant is arguing that the approval by the Province of Prince Edward Island of its EIS is binding on RMEK and argues that this is a separate and distinct process that does not remove the jurisdiction of Council to come to its own conclusions on environmental concerns. The RMEK is required to comply with all government legislation when it makes a planning decision. In fact s. 5.33 (13)(d) of the Bylaws requires that copies of all documentation required by Canadian Environmental Assessment Act and any regulations for the Province of PEI, including the Environmental Protection Act and Regulations, be provided. In this

case, an EIS was a requirement. While the RMEK has the authority to make a planning decision, they must do so based on sound planning principles. The Appellant submits that the RMEK Council failed to make the decision to deny the Appellant's application on sound planning principles. Further, the RMEK Council took no independent steps to address any of the environmental concerns that they may have had with the Appellant's application and proposed windfarm project.

Mr. Cheverie argues that the EIS prepared by Wood Group was a "rush job" and that the EIS is inadequate. Mr. Cheverie also takes issue with the water quality data that was used. Water quality data and other data are used as they are publicly available. The EIS was not a "rush job" as Mr. Cheverie suggests. The EIS process began in the fall of 2018 and received a thorough review before being granted approval in 2020. The TRC was comprised of provincial and federal experts, and they reviewed the documents and were consulted during the development of field programs and once the document was submitted for review. The public was also invited to comment at many stages and the public comment period was extended by several months. The only study that was done outside of the EIS submission were bird studies as CWS had just recently released new guidance, in draft form, which the Appellant chose to follow, suggesting that two years preconstruction data collection for bird surveys and using radar which previously was one year.

Mr. Cheverie argues that the consultation section indicated that only two people were interviewed, Danelle Elliot and Tammy MacDonald (Mi'kmaq Confederacy) and that this was inadequate. This is not accurate. Public Meetings were publicized and well attended. Spencer Long personally spoke with Mr. Cheverie at the July 31, 2019 Special Meeting about his concerns and feedback. Further, prior to submissions of the EIA and application, as provided by Spencer Long and Carl Brothers at the hearing, they personally met with a large number of landowners and Mr. Brothers went out to the RMEK approximately 25 different times. Wood Group also performed site visits in the appropriate seasons for all Valued Components.

Mr. Cheverie also noted that SAB with a 65+ year history in watershed management was never consulted by the Wood Group. This is inaccurate. Spencer Long sent an e-mail on December 20, 2019, including members of the Wood Group team, seeking input and offering to meet in person (R2, page 1213, item #14). Neither the Appellant or the Wood Group received a response. Mr. Cheverie also notes that concerns regarding Electro Magnetic Fields (EMFs) were also never addressed by the Appellant and by the EIS process. This is also inaccurate as the Appellant provided RMEK Council a memo on this specific subject on December 3, 2019 (RIII, pg 2105-2109) and additionally in the Appellant's EIS responses (RII pg 1241-1243).

Mr. Cheverie also asserts that the RMEK was clearly informed by more complete information than that provided within the EIS, and that the information in the EIS was inadequate, if not misleading. He further states that more complete and accurate information was available to the Appellant and government departments, and that it urged for this information to be disregarded. Neither Mr. Cheverie nor the RMEK Council have provided any additional documentation to suggest that there is more complete and accurate information than that found in the EIS, or that the EIS was inadequate. In fact, it was Sonya Martin's evidence at the hearing that the RMEK Council took no steps to independently investigate the EIS to address any potential environmental concerns or issues with the EIS or hire a professional land use planner to review the Appellant's application.

Mr. Cheverie specially states that the EIS was inadequate with relation to section 4.2 "Fish and Fish Habitat" as the EIS only lists two species that frequent the watershed and advises that he has data to suggest there are additional species that frequent the watershed, which were not

addressed in the EIS. Mr. Cheverie has not provided the alleged documentation that he propounds to possess. Field data collected in any study are a snapshot in time of the species present; habitat will also determine which species are able to utilize an area. Further, the RMEK Council, in denying the Appellant's application, did not address this issue, and further, took no steps to address any potential issues.

Mr. Cheverie also stated that the one-year migratory bird data that was collected is insufficient and that scientists would suggest that it takes 2-3 years of data collection to make sound conclusions regarding numbers and species identified. Mr. Cheverie has not provided any information to substantiate this claim. Further, the RMEK Council did not call any expert evidence, or any evidence at all, to suggest that the migratory bird data that had been collected was insufficient. The TRC was satisfied with the data provided.

Mr. Cheverie stated that the regulator failed to ensure the proponent address all concerns and ensure quality answers to concerns proposed by stakeholders. As provided by Gregory Wilson at the hearing, they only typically address concerns that have merit and do not necessarily address each concern individually as many concerns raised fall into the same category.

Mr. Cheverie further asserts that the EIS proponent was seriously flawed, due in part, as a result of government overlap. Mr. Cheverie states that the Appellant's EIS was reviewed by a TRC comprised of representatives of various government departments, including Department of Transportation, Infrastructure and Energy, being Minister Myers' own department, which, as Mr. Cheverie noted, as being responsible for the Appellant. The Appellant submits that there was no bias with respect to the EIS that was completed. As Gregory Wilson, manager of the Environmental Land Management Section with the Department of Environment, Energy and Climate Action, who was responsible for the EIS, stated at the hearing, they hold government entities and crown corporations to the same standards as anyone else, perhaps even higher, when conducting an EIS.

CONCLUSION

The Appellant submits that the RMEK Official Plan and Bylaws allow for wind turbines and provides for the requirements of same. The Appellant has proposed a wind farm project in a location where the Official Plan and Bylaws allow for a wind turbine to be built and have complied with all requirements under the Official Plan and Bylaws and followed all requirements of the provincial process.

Mr. Cheverie raises a number of environmental concerns in his post-hearing submissions. However, these concerns are unsupported and have been adequately addressed by the Appellant and the EIS. Neither Mr. Cheverie nor the RMEK Council have provided any documentation to substantiate any environmental concerns raised in relation to the Appellant's application.

All of which is respectfully submitted this 21st day of April, 2021.



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