

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 DON HUMPHREY INTERVENER SUBMISSIONS

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

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Applicant for Intervener Status

Mr. Humphrey 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.

In response to Mr. Humphrey's post-hearing submission, the Appellant provides the following response in accordance with the Commission's March 29, 2021 Ruling on Intervener Status in this matter.

The Appellant submits that Mr. Humphrey has previously advised the RMEK of his concerns with the Appellant's proposed windfarm project and that Mr. Humphrey 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. Humphrey states that Council heard many submissions over the two years of processing, with representatives of the Appellant in attendance at all public meetings, expressing concerns and a desire that all Council decisions protect the natural environment, and the character and lifestyle of the rural area. The Appellant submits that, in accordance with the Commission's decision in *Jessie Frost-Wicks* Order LA20-04, attendance at a public meeting by councillors is not, on its own, evidence that the councillors have considered the relevant issues and made a final determination based on sound planning principles. Attending a public meeting and making a final decision on a development application that affects the rights and interests of a number of parties are distinct functions.

Mr. Humphrey also states that Council was well-informed and determined that the application was not of an appropriate size and scale for RMEK and did not meet the other relevant policies of its Official Plan. The Appellant submits that the only reason it was provided for the denial of its application was contained in the October 22, 2020 correspondence from Sonya Martin, which was received on October 27, 2020, stating that the proposed development was not in the best interests of the residents of Eastern Kings. The Appellant was not properly informed or advised that its application was denied as it was not an appropriate size or scale, or that it did not meet other relevant policies of the Official Plan.

FAIR PROCESS

Mr. Humphrey argued that while the RMEK was not as well-resourced as the Appellant, and may not have retained highly paid experts, they had the benefit of well informed, well recognized, and knowledgeable local-resources—persons, unlike the Appellant's expert witness who testified at the hearing, know the area well. The Appellant submits that the RMEK's financial resources is irrelevant to the appeal as the RMEK is under an obligation to adhere to planning requirements in reviewing a planning application.

Mr. Humphrey specifically asks the Commission to review items in the record, including presentations by Souris and Area Wildlife, Island Nature Trust and Fred Cheverie. As pointed out by Mr. Humphrey, these form part of the record before the Commission and he has not provided any new additional documentation for consideration. These documents were before the RMEK Council when it denied the Appellant's application. However, the Appellant submits, there is no evidence to support an assertion that these documents were relied upon in forming the decision to deny the Appellant's application.

FINANCIAL AND POLITICAL PRESSURE

Mr. Humphrey argues that RMEK is a small rural municipality and for some period of time, did not have a development officer. As addressed above, the size and resources of a community council are irrelevant as a community council, regardless of its size or resources, has an obligation to adhere to planning requirements in reviewing a planning application.

In his post-hearing submissions, Mr. Humphrey notes that at the RMEK Council Meeting on May 14, 2019 (IRAC-011) the Appellant gave a follow-up presentation (IRAC-014) and that four scenarios were presented, namely: increasing compensation, alter bylaws, urgency for a projection completion date, project design and procurement can't wait, memorandum of understanding, and a 10% variance in setbacks. While Mr. Humphrey provided six points as opposed to the four presented by the Appellant, the Appellant submits that the six scenarios provided for by Mr. Humphrey are incorrect. The Appellant states that the four scenarios discussed were: provincial setbacks, municipal setbacks, 10% variance and if RMEK allowed provincial setbacks that they could site another 7 turbines.

Mr. Humphrey further argues that the RMEK may be constrained from responding to intervener submissions because the budget for legal fees has been depleted. The Appellant submits that the financial resources of the RMEK are irrelevant. Further, as provided by Sonya Martin at the hearing, the Appellant paid an application fee of \$18,200.00 which has remained unused.

POLITICAL INTERFERENCE

Mr. Humphrey asserts that there was strong political interference by the government in relation to the Appellant's application. The Appellant submits that there was no political interference in relation to the Appellant's application.

In his post-hearing submissions, Mr. Humphrey states that prior to the formal application being submitted that the Appellant had already started on clearing access roads. The Appellant submits that this is inaccurate. The Appellant needed access to the sites in order to complete Geotechnical assessments in order to finalize the foundation drawings that the RMEK Bylaws required and Danelle Elliot was advised of this in advance.

Mr. Humphrey also states that during testimony at the hearing it emerged that the seven wind turbines had already been purchased prior to the submission of the completed Application. The Appellant' submits that this is an inaccurate statement. The Turbine Supply Agreement ("TSA") was in the process of negotiation in the fall of 2019 but that it was not executed until January 14, 2020. The Appellant provided evidence as to the need to secure turbines in a competitive global market.

Mr. Humphrey also argues that the compelling financial exposure of the Appellant fundamentally altered the nature of the application process and was inappropriate and reckless of the Appellant. The Appellant submits that this is not true. The RMEK chose to deny a conditional approval, which resulted in the Appellant requiring to submit additional information, which could only be received from a turbine company after entering into a TSA.

Mr. Humphrey further asserts that the only considerations deemed to be relevant by the Appellant were financial and political considerations. The Appellant submits that there is no basis for this assertion. As the record shows, the Appellant considered a number of factors in choosing the proposed location, including, amongst other things, the environment, climate change impacts,

infrastructure, financial benefits and the public interests. The Appellant took many steps to consider a number of things, specifically environmental concerns and potential impacts that the wind turbines may produce. The Appellant addressed each of these potential concerns and impacts before submitting a completed application for consideration.

Mr. Humphrey states that Council are required to consider and weigh all of the evidence before them in accordance with the Official Plan when making their decision, which he asserts they did. The Appellant submits that the RMEK failed to properly consider and appropriately weigh all evidence before it. Further, the Appellant submits that in denying the Appellant's application, the RMEK Council also failed to follow sound planning principles, which it was required to do.

ENVIRONMENTAL CONCERNS

Mr. Humphrey raised issues with the proposed location of the proposed windfarm. The Appellant submits that the proposed location of the proposed wind farm expansion is in an area which the RMEK has deemed appropriate for wind turbines.

Mr. Humphrey also takes issue with Mr. Heseltine and Mr. Heseltine's report. Mr. Heseltine was qualified as an expert at the hearing, at no objection by legal counsel for the RMEK. Mr. Heseltine is well versed in planning and has years of experience in this field. While Mr. Humphrey may disagree with the approach and conclusions that Mr. Heseltine came to, there is nothing to suggest that Mr. Heseltine did anything improper in coming to his conclusions. Furthermore, as advised by Mr. Heseltine at the hearing, he considered the objections raised to the Appellant's application and determined them to be irrelevant as they had been properly addressed by the Appellant and other professionals.

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.

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



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