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To:	J. Gordon MacKay, Q.C. Carr, Stevenson & MacKay 65 Queen St, Charlottetown, PE C1A 7L1	From:	John Heseltine LPP MCIP Stantec Consulting Inc. 40 Highfield Park Dr Suite 102, Dartmouth, NS B3A 0A3
File:	163601407	Date:	January 20, 2021

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I have reviewed the documents and related materials provided to me concerning the application of the Prince Edward Island Energy Corporation (PEIEC) to expand its existing wind farm within the Rural Municipality of Eastern Kings (RMEK). Materials reviewed include PEIEC's application including design drawings; the Environmental Impact Statement (EIS) prepared by Wood Environment and Infrastructure Services on behalf of PEIEC, including its appendices and the Supplemental Report dealing with Avian Migration and Bat Studies; RMEK's Official Plan and Development Bylaw; and transcripts of public consultation events and Council meetings, including minutes of the meeting at which RMEK Council voted to refuse the application.

I have worked as a planner since 1979, beginning as a planner with the City of Halifax from November 1979 to July 1988, and since that period as a consultant based in Halifax Regional Municipality but working across Atlantic Canada with occasional projects elsewhere in Canada and other countries. Within PEI, I have worked on projects such as the cost-benefit analysis that supported the creation of the Cities of Charlottetown and Summerside, and the Towns of Cornwall and Stratford in 1995; the PEI Infrastructure Study in 2010; the 2018 Growth Management Study that assessed the formation of the Rural Municipality of West River; and projects undertaken since 2016 to prepare official plans and development bylaws for the Town of Montague, the Rural Community of Brudenell, the Town of Cornwall, and the Rural Municipality of Crapaud. These and other PEI projects have familiarized me with the Island, its infrastructure, its municipal governance, and its planning legislation and practices.

## BACKGROUND

PEIEC constructed a wind farm at East Point within RMEK in 2006. According to the Points East Coastal Drive website, which identifies it as a "point of interest," the wind farm:

... consists of 10 Vestas V-90 wind turbines stretching from Elmira Road to East Point. The V-90 is the largest wind turbine in North America producing three megawatts each. The wind farm will produce enough electricity to power about 12,000 homes and will displace 70,000 tonnes of greenhouse gases per year. The height to the hub (the nose of the turbine) is 81 metres – equivalent to a 26-storey building. The Peace Tower in Ottawa is 92.2 metres high.<sup>1</sup>

The expansion proposed by PEIEC will add seven turbines capable of generating 4.2 MW each (29.4 MW total). They will also be built between Elmira and East Point to the south of the existing turbines. The roughly 140 ha project site is largely forested with agricultural uses on most adjacent properties. It covers

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<sup>1</sup> Points East Coastal Drive, "Points East Wind Farm," <https://pointseastcoastaldrive.com/things-to-do/entry/east-point-wind-farm>.

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approximately 20 different properties. PEIEC has specified Enercon E-138 EP3 E2 turbines for the expansion. The new turbines will have three 69-metre propeller blades mounted 108-metres above the ground. With the propeller at the top of its arc, the towers including their foundations will reach 177 metres above grade. Turbine blades will clear the ground by 39 metres at the bottom of their arc.<sup>2</sup>

## OPINION

PEIEC is proposing to double its wind power generating capacity in Eastern Kings through expansion of its East Point wind farm. The project implements PEI's Provincial Energy Strategy, which identifies "a new 30 MW wind project in 2019" as a proposed project to meet the objective of increasing the province's electricity generation from wind and maintaining its position as the leading wind energy jurisdiction in North America.<sup>3</sup>

## POLICY

Wind farms are permitted as a special permit use in the Agricultural Zone under the RMEK Subdivision and Development Control Bylaw (Section 7.1.2). Under Section 1.6, the Development Officer is not authorized to approve a special permit use. Under Section 4.5 of the Bylaw, Council must undertake consideration of such a use in accordance with the requirements of Bylaw Section 13.2(4):

### 4.5 Special Permit Uses

Subject to these Regulations, the uses that fall within the Special Permit Uses set out in the corresponding Zone may be permitted in that Zone if Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Official Plan, and to the public interest, and if Council has given notice of the application in accordance with the procedures established in section 13.2 (4), and has considered any objections or representations which may have been received on the matter.

### 13.2. Amendment Procedures/ Public Meeting Procedures

...

4. Council shall hold a public meeting to solicit input from residents on the proposed request. At least 7 clear days prior to the public meeting, the Development Officer shall post the date, time and place of the public meeting, together with the general terms of the application, by:

a) public notice in a newspaper circulating in the area;

b) written notice to all property owners wholly or partially within 60 m. (197 ft) of the boundaries of the subject property; and

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<sup>2</sup> Memorandum from Dave Brothers, Frontier Power Systems Inc., to Prince Edward Island Energy Corporation (Attention: Spencer Long), January 29, 2020. See Item 2.

<sup>3</sup> Prince Edward Island, *Prince Edward Island Provincial Energy Strategy, 2016/17*, "Overview - Prince Edward Island Energy Strategy," fourth page (unpaginated). See also p. 29.

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c) placing a sign on the land being proposed for rezoning indicating that a rezoning request has been received.

Bylaw Section 13.2(5) outlines the scope of Council's decision-making following the required public meeting:

5. Following the public meeting, Council shall formulate a decision on the proposed amendment. Council shall have the authority to determine whether an amendment request is approved, modified, or denied and applications shall be approved or denied by resolution of Council and the applicant shall be notified in writing of the decision ...

The Official Plan is supportive of wind turbine development, which it recognizes as a "regional resource," although its lead windmill policy (13.16(1)) states RMEK will "regulate windmill development in the Development Bylaw" as it does all other land uses requiring the building of structures. Following "windmill objectives" set priorities beginning with a clear statement of intent through Objective 1 to accommodate wind turbine development:

1. It is the Community's objective to permit windmills within the Community for the purposes of electrical power generation.
2. Council will require evidence that any proposed windmill does not pose any significant aesthetic, environmental or public safety threats to the Community residents or the travelling public.
3. To minimize potential land use conflicts, environmental and aesthetic conflicts between renewable energy generation facilities and other land uses within the Community.
4. To protect shoreline viewscapes.

Objectives 2 through 4 are regulatory goals intended to ensure that turbines are compatible with the community and natural environment. These intents are to be implemented pursuant to Policy RR-1:

#### **Windmill Policy**

It shall be Council's policy that renewable energy generation facilities, as defined in the Province's Renewable Energy Act, R.S.P.E.I., 1988, Cap. 16, shall be permitted within limited zones within the Community; such facilities shall be subject to specific restrictions. It shall be Council's policy that windmills, wind turbines or wind energy conversion system may be permitted within the Community for the purposes of electrical power generation, provided they do not pose any significant aesthetic, environmental or public safety threats to the Community residents or the travelling public.

It shall also be Council's policy that windmills shall be subject to a special permit process and a public review process prior to approval or denial by Council.

#### **Plan Action:**

- The Community's Zoning and Subdivision Control Bylaws will address the application process for any wind turbine development;

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- The Community's Zoning and Subdivision Control Bylaws will make provision for a public review process of any wind turbine development proposal which may come before Council; and
- The Community's Zoning and Subdivision Control Bylaws will address size and location of any wind turbine development within the Municipality.
- No large scale wind turbines will be permitted within 2 kilometres of the shoreline.
- Council will develop a spatial guide to identify future location for large scale wind turbine development, including large scale wind farms.

The application and public review processes have been addressed in the Subdivision and Development Control Bylaw (referred to as the Development Bylaw below) in the previously cited sections. Specific standards and considerations for wind turbines are provided in Section 5.33 of the Development Bylaw:

### **5.33. Wind Turbines**

All provincial rules and regulations regarding wind turbines will be respected. Where the provisions of this section conflict with those of any other Bylaw of the municipality or regulation of the Province or the Government of Canada, the higher or more stringent provisions shall prevail.

No large scale wind turbines shall be permitted within 2 kilometres of the shoreline.

All wind turbines shall require as a special permit review process.

Large scale wind turbines shall be permitted as a special permit use in the A1 Zone, subject to the following:

1. the blade clearance shall be a minimum of 25 feet;
2. the minimum separation distance between wind turbines shall be equal to or exceed the height of the tallest turbine;
3. the wind turbine(s) shall be setback a minimum of one (1) times the turbine height from rear, front and side lot lines, public rights-of-way;
4. the wind turbine(s) shall be setback from a dwelling a minimum of four (4) times the height of the turbine, as measured from the ground to the top of the blade
5. where adjacent properties are part of the same proposal, the setback requirement from a shared property line shall be zero
6. the wind turbine(s) shall be located a minimum of 3280 feet (1000 m) from any dwelling on a neighbouring property. This separation distance does not apply to a dwelling on the same property on which the large-scale wind turbine is installed or a dwelling on an adjacent property containing a wind turbine that is part of the same proposal;

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7. the required separation distance for any expansion shall be equal to or greater than the separation distance between the initial wind turbine development and the dwelling;
8. a development permit may be issued for one or more large-scale wind turbines to be located on a lot which does not front on a public road provided proof of access can be demonstrated;
9. the wind turbine shall be finished in a non-reflective matte and in an unobtrusive colour;
10. the only artificial lighting permitted on the wind turbine is lighting that is required by federal or provincial regulation;
11. no signage shall be permitted on the wind turbine except that of the manufacturer's identification;
12. the owner(s) of the land on which the wind turbines are located shall notify the Municipality of Eastern Kings within one (1) year of wind turbine inactivity and shall remove the wind turbines and associated infrastructure within two (2) years of wind turbine inactivity.
13. Upon application for a development permit for a large-scale wind turbine, the developer shall submit the following documentation:
  - a. the project definition including installed turbine(s) capacity, targeted long term production levels, scale elevations or photos of wind turbines showing total height, tower height, rotor diameter and colour;
  - b. a site plan showing all buildings, roads, boundaries, natural features and alterations of site;
  - c. wind turbine manufacturer's specifications and professional engineer's design and approval of turbine base(s);
  - d. copies of all documentation required for Canadian Environmental Assessment Act and any regulations for the Province of Prince Edward Island, where applicable Environment Act and regulations, if applicable;
  - e. evidence of notification to and approval from Department of National Defence, Nav Canada, Transport Canada or other applicable agencies regarding potential radio, telecommunications and radar interference, if applicable;
  - f. an emergency response plans for site safety;
  - g. a decommissioning and reclamation plan; and any other information the Development Officer or the Municipality of Eastern Kings deems necessary to determine whether the development conforms to this Bylaw.



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The Bylaw addresses location by limiting wind turbines to AG Zones and setting separation distances between turbines themselves, residences, and the coastline. While a maximum size is not specified, height is limited as a trade-off with separation. To reach greater height, wind turbines must have significantly greater separation from each other and from sensitive land uses.

## APPLICATION

PEIEC broached the possibility of expanding the East Point Wind Farm with RMEK in 2017, before the Corporation began wind resource monitoring in 2018 at three different PEI sites (Irishtown, Rock Bara, and East Point). Following a presentation to RMEK Council on January 29, 2019, the Corporation made a "preliminary application" for a Special Development Permit on June 10, 2019. As noted, the application was for seven wind turbines generating approximately 30 MW arrayed to the south of the current ten-turbine wind farm between Elmira and East Point. At the time, the Energy Corporation had not decided on the turbine model to be used. In the circumstances, the height of the turbines was uncertain, although the application is clear that technology is trending toward larger installations, with a maximum total height of 200 metres suggested as a possibility.<sup>4</sup>

The application acknowledged the requirements of the Eastern Kings Bylaw for wind turbines. The submission assumed setback distances expressed in terms of wind turbine height based on the potential maximum of 200 metres and committed to meet other objective bylaw standards (e.g., the 25-metre clearance between turbine blades and the ground), although it did include a request to vary the requirement for a 2,000-metre setback from the shoreline and the 1,000-metre setback from neighbouring dwellings by 10% each.

The application included a map of the preliminary layout taking setback requirements into account as well as additional standards. It also avoided the so called "Red Triangle" area identified through a study by Bird Studies Canada under contract with PEIEC. Bird Studies Canada stated the Triangle is the "area of greatest risk to birds" based on studies of bird migration patterns in the area undertaken in fall 2005.<sup>5</sup> It covers all lands east of East Lake. It is not recognized in the Eastern Kings Development Bylaw but was observed by PEIEC when laying out the existing ten-turbine wind farm as well as the seven-turbine expansion.

On November 1, 2019, after discussions with RMEK representatives and having determined the dimensions of the wind turbines it intended to erect, PEIEC made a formal application. A covering memo submitted with the application asserted that the revised design met all specifications of Section 5.33 of the RMEK Development Bylaw (i.e., no variances required).<sup>6</sup>

Before making its initial application to the Municipality, the Corporation had a detailed Environmental Impact Statement (EIS) prepared by a third-party consultant for submission to the PEI Department of Environment, Water and Climate Change. The EIS covered the geophysical environment (geology and soils); fish and fish habitat; wetland resources; terrestrial environment (flora, birds, and bats); species at risk (flora and fauna);

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<sup>4</sup> PEI Energy Corporation, *30MW Wind Farm Development - Special Development Permit (Preliminary Application) to Rural Municipality of Eastern Kings*, June 2019, p. 5,

<sup>5</sup> Greg Campbell and Becky Whittam, Bird Studies Canada, *Interim report on Fall studies of avian use of a potential wind energy site at East Point, Prince Edward Island*, December 20, 2005, p. 16.

<sup>6</sup> Memo from the Prince Edward Island Energy Corporation to the Rural Municipality of Eastern Kings, "Special Development Permit Application – Eastern Kings Phase 2 Wind Farm," November 1, 2019.

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atmospheric environment (climate, air quality, and noise); socioeconomic setting (demography, economy, safety, visual effects), and heritage and archaeology (paleontological resources and First Nations considerations).<sup>7</sup> A supplementary report on bird and bat impacts, which were a source of particular concern, was completed on December 13, 2019.<sup>8</sup>

There can be no question that the PEIEC submission contained considerable detail on the project, its effects, and measures to mitigate effects. The EIS with its addendum concerning birds and bats accounts for 380 pages of original material. Ten appendices (A through J) to the EIS report and the supplemental report add 619 pages of original material and supportive examples bringing the EIS alone to 999 pages. Several commentators noted the quantity of material that was prepared or compiled and the daunting task of gaining familiarity with all of the plans, studies, memos, minutes, and other documents pertinent to the project.

PEIEC asserted that the project will benefit Island residents by increasing the domestic supply of clean renewable energy. It will leverage available Federal Government funding and will assist Canada to meet its Climate Accord objectives by reducing nation-wide generation of greenhouse gases by 0.0042%.<sup>9</sup> The project will be built on locally owned land for which landowners will be compensated under contractual agreements in place for duration of the wind farm's operation. In addition to sharing the benefits of clean energy with all Islanders, local residents will also experience economic benefits from construction and operation of the facility.

The wind farm expansion was, nevertheless, the subject of lively debate from the time PEIEC's application became public. Among the concerns raised by participants at public discussions for which we have access to records were the following:

- Public safety (i.e., potential fire, blade throw, etc.)
- Noise
- Shadow flicker, vibration, and pressure pulsation
- Electromagnetic fields
- Disturbance of local groundwater supply
- Intrusion on watercourses and wetlands/buffers
- Wildlife habitat fragmentation and displacement

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<sup>7</sup> Wood Environment and Infrastructure Solutions, *Environmental Impact Statement - 30 Megawatt Wind Project, Eastern Kings, PEI*, October 23, 2019. The listing summarizes and paraphrases headings in the Table of Contents, pp. ii-iii.

<sup>8</sup> Wood Environment and Infrastructure Solutions, *Environmental Impact Statement - Supplemental Report: 30 Megawatt Wind Project Avian Migration and Bat Studies, Eastern Kings, PEI*, December 13, 2019.

<sup>9</sup> Stantec Consulting Ltd., *PEI Energy Corporation Proposed 30 MW Wind Farm, Wind Project Climate Lens Part I: Greenhouse Gas Mitigation Assessment*, Final Report, April 9, 2019, p. 3-10.

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- Harming/killing birds, bats, and insects
- Reduction of natural capacity to absorb carbon
- Visual intrusion
- Management of waste materials (e.g., aging propellor blades)
- Reduced property values
- Reduced attraction to potential seasonal residents and tourists.

Some participants also raised the possibility that coastal erosion might augment some of the foregoing effects by reducing the distances between turbines and the water's edge and diminishing the area available to wildlife outside the wind farm footprint.

At its meeting of October 22, 2020, RMEK Council, with the Mayor and one Councillor recusing themselves, voted 3 to 1 to refuse PEIEC's application. The letter notifying the Corporation of Council's decision stated the reasons as follows:

After careful examination of the application and consideration of the feedback from various members of the Community, in the estimation of the Council, this development is not in the best interests of the residents of Eastern Kings.<sup>10</sup>

## **ASSESSMENT**

A wind farm has been a major component of the landscape in Eastern Kings since 2006. As noted above, the Municipality's current Official Plan recognizes the potential for additional wind turbine development in Policy 13.1:

### **Regional Resources**

The Community of Eastern Kings supports some regional resources, such wind turbines.

Arguably, the policy welcomes wind power projects; however, it is not a blank cheque, as its next paragraph makes clear:

The Community will regulate all windmill/ wind turbine development. The potential exists for renewable energy generation facilities, utilizing sun, wind, flowing water and biomass production, to develop within the Community.

The meaning of "regional resource" is not defined in the Official Plan; however, it is reasonable to infer that it refers to the potential for Eastern Kings to contribute to welfare of communities beyond its borders. The meaning of regulation is less equivocal. The intention to regulate wind turbines is referenced repeatedly in the Official Plan: in the eighth objective listed in Policy 3.5; Policy AR-8 concerning their location within

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<sup>10</sup> Sonya Martin, Chief Administrative Office, Rural Municipality of Eastern Kings, to Heather Macleod, Prince Edward Island Energy Corporation, October 27, 2020.



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Agriculture Zones; Policy 3.16(1) called Windmill Policies and Objective; and Policy RR-1 called Windmill Policy in which windmills (turbines) are specified as a Special Permit Use within “limited zones” subject to requirements in “the Community’s Zoning and Subdivision Control Bylaws.”

While repeated references to regulation of wind turbines reflect concerns with their impacts, they also acknowledge that wind energy projects will be considered and, if appropriate requirements are observed, will be approved. Wind turbine development, furthermore, will reinforce the Official Plan’s Vision of “a long term sustainable economy which is in harmony with the natural carrying capacity of the local physical environment.”

Policy RR-1 specifies the requirements to be incorporated in the Development Bylaw. These include the application and consultation processes, the “size and location of any wind turbine development,” the required 2-kilometre setback from the shoreline, and the intention to “develop a spatial guide to identify future location for large scale wind turbine development.”

The implementation of these requirements in the Development Bylaw is incomplete. The application and consultation processes are specified, respectively, in Sections 2.3, 2.5, 2.7, and 4.5; and Sections 4.5 and 13.2. Location is addressed in Section 5.33, which reiterates the 2-kilometre setback from the shoreline required by the Official Plan, and sets required separations between turbines and other existing and proposed turbines, the lot lines of the properties on which turbines are built as well as adjacent dwellings; however, turbine size is not directly proscribed and no “spatial guide” appears to have been created.

Although the specifications in Section 5.33 repeatedly refer to their application to “large scale” turbines, the term “large scale” is not defined in the Development Bylaw and Section 5.33 does not set a maximum height. The only dimension specifically referenced is the clearance between the blade at the bottom of its arc, which is set at 25 metres, presumably in the interest of safety and comfort in the vicinity of operating turbines. The blade clearance, in fact, influences the *minimum* size of a turbine. Maximum size is only restricted by separation distances in Section 5.33 expressed in terms of the turbine’s total height. Effectively, if no other dwellings or turbines were in the vicinity, a turbine could be built to unlimited height under the Eastern Kings Bylaw with no restrictions on blade length or other parameters.

The form and content of the spatial guide are not defined in the Official Plan or the Development Bylaw or in any other documentation of which we are aware. Our interpretation of the phrase, however, would suggest that it would be a useful tool, if it were available. We would assume based on the phrase “spatial guide” such a document would address additional details of turbine siting and/or might assist Council in its interpretation of Plan and Bylaw requirements concerning wind turbine construction, especially in the absence of a qualified planner among municipal staff.

The memo from PEIEC to RMEK Council dated November 1, 2019, states that the application complied with all requirements of Section 5.33. The standards set by the Bylaw are individually listed in a table in the memo and their compliance verified with reference to related documentation.<sup>11</sup> RMEK requested additional information from PEIEC by letter dated January 15, 2020, and the Corporation responded with a 42-page memo summarizing design parameters and setback distances for each proposed turbine on January 29,

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<sup>11</sup> Memorandum from the Prince Edward Island Energy Corporation to Rural Municipality of Eastern Kings (Attention: Eastern Kings Community Council), “Special Development Permit Application – Eastern Kings Phase 2 Wind Farm,” November 1, 2019.

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2020. The memo included plans depicting separation distances for each turbine from the shoreline, neighbouring properties, and dwelling units but did not provide foundation design drawings requested by the Municipality explaining that foundation designs are not normally prepared until after receipt of a permit.<sup>12</sup> Detailed foundation designs were nevertheless prepared in August 2020 well before Council made its decision on the application in October.

PEIEC also had a third-party consultant prepare a detailed EIS that we have noted above addressed the impacts of the proposed wind farm expansion in depth. PEIEC discussed the EIS as well as their application for expansion with Eastern Kings officials on September 13, 2019. The EA was submitted to the Provincial Department of Environment, Water and Climate Change (EWCC) on October 23, 2019. The Department provided a letter approving the EIS with 17 conditions on September 2, 2020. Conditions included construction of the wind farm expansion in accordance with the EIS; preparation of an Environment Management Plan covering its construction, operation, and decommissioning; appointment of an Indigenous monitor; formation of a ten-member Environmental Management Committee with two PEIEC representatives but a majority of members representing local interests (i.e., four local residents, and one each from Souris and Area Wildlife Branch, and RMEK); and additional measures to protect birds and bats, and monitor noise, and ensure orderly and complete decommissioning of the project at the end of its life.<sup>13</sup>

While participants in consultation meetings raised many issues with the project, the EIS and direct responses from PEIEC staff addressed each concern. The Corporation provided answers through a variety of avenues. These included direct responses at sessions where issues were raised; written responses based on investigation and analysis by PEIEC staff; and research studies by outside consultants such as Wood Environment and Infrastructure Solutions' supplemental report to the EIS on Avian Migration and Bat Studies.<sup>14</sup>

PEIEC, in other words, complied with all quantitative standards set in the Development Bylaw and responded to all questions on other matters raised by the Municipality and the public. For the most part, issues raised were addressed by the EIS, including public concerns such as electromagnetic fields and property values, which are not referenced in the Official Plan or the Development Bylaw. The EIS, furthermore, was reviewed and approved by EWCC, which established a variety of measures to ensure the wind farm complies with all commitments made in connection with the EIS and that the Eastern Kings community is directly involved in its implementation.

Although the three Councillors who voted against the application at the RMEK Council meeting on October 22, 2020, stated they were guided by the Official Plan, all three acknowledged that the Official Plan supported the development of wind energy projects within Eastern Kings. All four councillors who voted also acknowledged that the project would bring moderate economic benefits, although some suggested economic influences would be mixed. The reasons offered by the three opposed to the application in their statements

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<sup>12</sup> Memorandum from Dave Brothers, Frontier Power Systems Inc., to Prince Edward Island Energy Corporation (Attention: Spencer Long), January 29, 2020. See Item 9 concerning foundation design.

<sup>13</sup> Natalie Jameson, Minister of Environment, Water and Climate Change, to Heather MacLeod, Director of Energy Policy and Assets, PEIEC, September 2, 2020.

<sup>14</sup> Wood Environment and Infrastructure Solutions, *Environmental Impact Statement Supplemental Report: 30 Megawatt Wind Project Avian Migration and Bat Studies*, December 13, 2019.

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before they voted were rooted in environmental concerns. None, however, addressed the extensive material from PEIEC dealing with expressed concerns.

The Councillors' statements suggested concern with:

- The "location, size and scale" of the proposed development
- Protection of the quality and supply of groundwater and surface water resources (also referred to as watershed management)
- Preservation of old growth forest
- The threat to birding as an economic asset
- That "the environmental impacts of development do not compromise that ability of future generations to meet their needs and enjoy the quality of life that we enjoy today."

Size, scale, and location are typical concerns with most land developments. The provisions for wind turbine developments in the Eastern Kings Development Bylaw, in fact, set the limits for these features in a flexible manner that allows variation for site conditions (i.e., separation distances). Had the Municipality prepared the spatial guide it committed to in Official Plan Policy RR-1 (Section 3.16(1)), RMEK Councillors as well as PEIEC's designers might have benefitted for more detailed direction but the current bylaw provisions are sufficiently clear and address all key design parameters.

With respect to groundwater, the EIS deemed that it was not a "valued environmental component" because "no blasting is required, [and] nearest building with [a] potential well is over 1km from [the] site." Wood Environment and Infrastructure Solutions, furthermore, responded to a question from the Technical Review Committee concerning "the extent of ground disturbance required to install the turbines" that:

The project will use spread footing foundations that will consist of a large concrete pad, approximately 20 metres across. Excavation for the foundation will be done by locally available excavators to a depth of approximately 3 metres (about the same as a residential basement). No piles will be driven into the soil. The concrete pads simply sit on the soil and are backfilled and compacted to avoid water flow around the foundation. There will be no impact on local groundwater.<sup>15</sup>

Surface water was dealt with as a component of Fish Habitat and Wetlands. In the first case, the EIS states "construction of the access roads has potential for harmful alteration, disruption, or destruction of fish habitat." In the second, it found, "At [the Turbine 5] location, a small potential exists for construction site erosion/sedimentation or accidental spills to enter the nearby wetland."

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<sup>15</sup> Wood Environment and Infrastructure Solutions, "PEIEC – Eastern Kings 30 MW Wind Farm, Eastern Kings, Prince Edward Island, "Response to TRC Comments Dated 13 December 2019, 6 February 2020, and 04 March 2020," March 2020, p. 2 (Point 14).

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Potential impacts to watercourses and wetlands are addressed in the comprehensive table on pages 132 to 148 of the EIS.<sup>16</sup> Mitigation measures include staking out of watercourse and wetland areas, and observation of 15-metre buffers around watercourse and wetlands; implementation of erosion and sedimentation mitigation measures to protect wetlands and watercourses; prohibition of heavy equipment or motorized vehicles within wetlands/watercourses; and implementation of supplementary buffers for storage of fuel (30 m), fueling of equipment (100 m), maintenance of equipment (100 m), and storage of hazardous materials (30 m) among other actions geared to project stages from clearing and construction through decommissioning.

For all turbines, including Turbine 5, the 15-metre buffer required by Section 5.3 of the RMEK Development Bylaw will be observed as well as these additional measures. For Turbine 5, vegetation will need to be cleared in the buffer zone for construction and then allowed to grow back during operation, which requires “a Buffer Zone Activity Permit issued by the Province” as specified in Section 5.32 of the Development Bylaw, which PEIEC was preparing to make application for at the time their application to expand the wind farm was rejected.

Condition 1 of EWCC’s project approval guarantees these measures to ensure surface water quality and fish habitat are implemented, maintained, and monitored:

**CONDITION #1: (Compliance with EIS)**

The proponent shall ensure that this undertaking is to be constructed in accordance with information provided in their Environmental Impact Statement (EIS) dated October 23, 2019, along with any subsequent revisions and addendums to the foregoing document, as well as all those identified in subsequent correspondence during the Environmental Impact Assessment (EIA) review. Additionally, on a monthly basis, the proponent shall submit a summary table detailing the status of each condition listed in this approval to the Environmental Land Management (ELM) Section of the Department of Environment, Water and Climate Change (EWCC). The submission of the table shall start 30 days following from the issuance of this approval, and continue until such time that all the conditions have been met.<sup>17</sup>

The Councillor who expressed concern with the loss of old growth forest on the wind farm expansion lands acknowledged that the forest loss will be compensated by the conservation of a forested area elsewhere in Kings (pursuant to Condition #12 of the EWCC’s approval of the EIS) but contended that the measure “would not make up the loss” even though the area to be designated for conservation would cover 42 hectares or three times the 14 hectares that must be removed for the wind farm expansion. He also failed to recognize that the agricultural use permitted as of right within the AG Zone applied to the wind farm expansion lands, would, in most cases, eliminate the forest cover.

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<sup>16</sup> Wood Environment and Infrastructure Solutions, *Environmental Impact Statement: 30 Megawatt Wind Project, Eastern Kings, PEI*, see pp. 132, 139, 142, and 144 for identification of fish habitat and surface water concerns and proposed mitigation. In each case, Wood states, “No significant [residual] effects [are] expected” and the level of residual impact will be “minimal.”

<sup>17</sup> Natalie Jameson to Heather MacLeod, *op cit.*, September 2, 2020, p. 1.

**Reference:** Appeal of the Decision of the Rural Municipality of Eastern Kings Council to refuse the Application of the PEI Energy Corporation to Develop a Wind Farm at East Point, PEI

The Councillor concerned with impacts on birding did not recognize that all the proposed wind turbines are to be located outside the Red Triangle Area PEIEC is avoiding to protect migrating birds. He also appears not to have considered the results of past and recent studies of birds and bats undertaken for PEIEC that showed very moderate mortality levels for the existing wind turbines at East Point.

The final statement concerning the threat of the wind farm expansion to the lifestyle of future residents in Eastern Kings is not well-defined. Statements in connection with RMEK Council's refusal of the expansion application on October 22, 2020, and previously suggest concern with the appearance and, perhaps, size of the new turbines, as well as other "environmental impacts" that are referred to generally. The Eastern Kings Official Plan, however, clearly anticipates and appears prepared to accept exactly this type of wind energy development with reasonable measures to ensure separation from sensitive receptors. The proposed development, furthermore, would take place in an area of established wind energy generation where it will meet all separation and setback requirements set by the Municipality. It is difficult to see how the experience of living in Eastern Kings or visiting the community would be affected by the project given roughly 15 years of experience with similar wind turbines in the same area.

RMEK sought legal advice concerning the special permit approval process as they were dealing with PEIEC's application. They did not however seek the advice of a qualified professional planner concerning the interpretation of relevant planning policy. A qualified and experienced planner trained to assess a proposal such as the wind farm expansion comprehensively and objectively could have provided guidance to Council members concerning the range of issues to be considered and the weight to be given to specific concerns. Although the October 22 minutes contain a good chronology of the interactions of Council with PEIEC and Council's deliberations concerning the Corporation's application, Council received no report summarizing the issues and information that had been presented or providing a recommendation for or against the application based on thorough consideration of Official Plan policy and Development Bylaw requirements.

## CONCLUSION

PEIEC and RMEK worked on the wind farm expansion application for nearly two years from the Corporation's first presentation of their early proposal in January 2019 to Council's refusal of the application for Special Permit in October 2020. During that time, PEIEC prepared a carefully designed wind generation project and adjusted it to meet all municipal requirements as well as the Province's conditional approval of the project pursuant to the EIS. The Corporation also responded to a wide range of municipal and public concerns as they were expressed and through the production of the EIS, which addressed multiple issue areas.

While RMEK Council members recognized the importance of the Municipality's Official Plan and Development Bylaw in arriving at their decision to refuse the application for expansion, they did not effectively weigh the Plan's priorities. Official Plan Section 3.16 supports the development of wind turbines as a "Regional Resource" and states that "[i]t is the Community's objective to permit windmills within the Community for the purposes of electrical power generation." Certainly, the same policy commits the Municipality to regulate wind turbines as it would any land use, but it should follow that if the requirements set in the Plan and Development Bylaw are met, wind farm development should be approved.



January 20, 2021

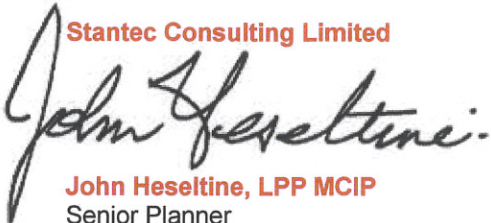
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**Reference:** Appeal of the Decision of the Rural Municipality of Eastern Kings Council to refuse the Application of the PEI Energy Corporation to Develop a Wind Farm at East Point, PEI

Without any guidance from a qualified professional planner, Council members over-emphasized a small number of narrow concerns without apparently considering information provided in PEIEC's submission and the EIS. They arrived at a decision to refuse despite information that indicated the issues were minor and would be mitigated by actions required as conditions of the EWCC's EIS approval. The decision reached and the manner in which it was reached do not represent sound planning practice and should, consequently, be over-turned.

**Stantec Consulting Limited**

A handwritten signature in black ink, reading "John Heseltine". The signature is fluid and cursive, with a long horizontal stroke at the end.

**John Heseltine, LPP MCIP**  
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