

**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.

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**REPLY SUBMISSIONS**

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

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## **INTRODUCTION**

1. The Prince Edward Island Energy Corporation (the "Appellant"), was provided with the pre-hearing written submissions submitted on behalf of the Rural Municipality of Eastern Kings ("RMEK") on February 16, 2021.
2. In response to the RMEK's pre-hearing written submissions, the Appellant submits the following, as a reply, in order to provide clarification to a number of issues and statements made in the RMEK's pre-hearing written submissions.

## **BACKGROUND**

### **The Development Bylaw**

3. At paragraph 10 of the RMEK's pre-hearing written submissions, section 5.33 of the Development Bylaws, which outlines the requirements for Wind Turbines, is reproduced in part. The Appellant submits that the whole of section 5.33 is important to the Appeal. Section 5.33 of the Development Bylaw reads, in whole:

#### **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 of the Government of Canada, the higher or more stringent provisions shall prevail.*

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

*All wind turbines shall require 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 (100 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;*
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 a public road provided proof of access can be demonstrated;*
9. *the wind turbine shall be finished in a non-reflective mate 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 of 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);*
  - i. *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;*
  - ii. *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;*
  - iii. *an emergency response plans for site safety;*
  - iv. *a decommissioning and reclamation plan; and any other information the Development Officer of the Municipality of Eastern Kings deems necessary to determine whether the development conforms to this Bylaw.*

- Rural Municipality of Eastern Kings  
Subdivision and Development Control  
Bylaw (the "Bylaw"); Section 5.33

### **The First Public Meeting**

4. Paragraphs 26 through 43 of the RMEK's pre-hearing written submissions advises that Council held a special public meeting and information sessions to hear from residents about the Preliminary Application and that comments and questions were heard from pre-registered residents and non-registered residents in attendance. The Appellant submits that a number of the comments and questions raised at the special public meeting and information sessions were raised by non-residents.
5. As to the comments and concerns addressed in paragraphs 26 and 29 of the RMEK's pre-hearing written submissions, the Appellant submits that these issues were addressed by the Environmental Impact Assessment ("EIA").

- Environmental Impact Assessment dated October 23, 2019 (RMEK Record- Volume II, Tab 6, Pages 0461-0759)
- Environmental Impact Assessment Supplemental Report dated December 13, 2019 (RMEK Record- Volume II, Tab 8, Pages 1049-1128)

### **The Second Public Meeting**

6. Paragraphs 44 through 56 of the RMEK's pre-hearing written submissions advises that Council held a further special public meeting and information sessions to hear from residents about the Application and the EIA and that comments and questions were heard from pre-registered residents and non-registered residents in attendance. The Appellant submits that a number of the comments and questions raised at the special public meeting and information sessions were raised by non-residents.
7. As to the comments and concerns addressed in paragraphs 44, 46 and 49 of the RMEK's pre-hearing written submissions, the Appellant submits that these issues were addressed by the EIA.
  - Environmental Impact Assessment dated October 23, 2019 (RMEK Record- Volume II, Tab 6, Pages 0461-0759)
  - Environmental Impact Assessment Supplemental Report dated December 13, 2019 (RMEK Record- Volume II, Tab 8, Pages 1049-1128)

### **The Department of Environment, Water and Climate Change's Review of the Environmental Impact Assessment**

8. At paragraph 58 of the RMEK's pre-hearing written submissions, RMEK states that following the Department's review of the Environmental Impact Assessment, a Technical Review Committee submitted to the Appellant a total of 147 comments on the Environmental Impact Assessment. The Appellant states, for clarification purposes, that the

Technical Review Committee submissions were part of the Department's review of the EIA and not in addition or response to. As well, the Appellant states that these submissions consisted of both questions and comments in relation to the EIA.

9. Additionally, the Appellant states that in relation to paragraph 58 of the RMEK's pre-hearing written submissions that the public was also provided the opportunity, along with the Technical Review Committee, to provide questions and comments on the EIA to the Appellant and that the 147 questions and comments on the EIA that were submitted to the Appellant were a combination of questions and comments from the Technical Review Committee and the public. Furthermore, the Appellant states that the specific comments raised in paragraph 58 of the RMEK's pre-hearing written submissions (the bullet points) are comments and questions raised by the general public and not the Technical Review Committee.

## **THE ENERGY CORPORATION'S GROUNDS OF APPEAL**

### **Response to Ground 1:**

10. At paragraph 86 of the RMEK's pre-hearing written submissions, excerpts from the transcript of the October 22, 2020 Special Meeting of the Rural Municipality of Eastern Kings (the "Special Meeting") were reproduced. With specific reference to the excerpt of Anne McPhee, which is also highlighted at paragraph 89 of the RMEK's pre-hearing written submissions, the Appellant submits that the environmental issues raised by Anne McPhee were all previously addressed by the EIA and the restrictions established in the Development Bylaws.

- Environmental Impact Assessment dated October 23, 2019 (RMEK Record- Volume II, Tab 6, Pages 0461-0759)
- Environmental Impact Assessment Supplemental Report dated December 13, 2019 (RMEK Record- Volume II, Tab 8, Pages 1049-1128)



11. Paragraph 87 of the RMEK's pre-hearing written submissions state that Council's reasons reflect careful consideration and weighed the economic benefits against the environmental objectives. The Appellant submits that the environmental objectives raised by the Council at the Special Meeting had been previously addressed by the EIA.

- Environmental Impact Assessment dated October 23, 2019 (RMEK Record-Volume II, Tab 6, Pages 0461-0759)
- Environmental Impact Assessment Supplemental Report dated December 13, 2019 (RMEK Record- Volume II, Tab 8, Pages 1049-1128)

12. At paragraph 95 of its pre-hearing written submissions, the RMEK suggests that it would be inappropriate to require Council to grapple with every piece of the record and that to make such a requirement fails to recognize the institutional reality a council for a rural municipality with a population of 700 residents is working within. The Appellant submits that it is Council's responsibility, as the RMEK has submitted in paragraphs 98 to 100 of its pre-hearing written submissions, to decide whether to issue a development permit in relation to the proposed wind farm project, as it is Council's responsibility to administer the Official Plan within the boundaries of the municipality. In order to properly administer the Official Plan and Development Bylaws, and in turn to decide whether to approve the Appellant's Application, the Appellant submits that Council was required to review all documentation, regardless of how voluminous the documentation was, before making a decision regarding the Appellant's Application.

13. Furthermore, the Appellant submits that while the RMEK purports that their reasons must be assessed within the institutional realities of a rural municipality of its size, the Appellant submits that it is still entitled to reasons for the decision to deny its Application. The Appellant submits, for the reasons outlined and discussed in its pre-hearing written submissions of February 4, 2021, that the RMEK's reasons for denying the Application were insufficient.

- The Appellant's Pre-Hearings Written Submissions, Dated February 4, 2021; paragraphs 72-90.

14. With regard to the transcripts of the Special Meeting, the Appellant adopts and relies on paragraphs 87 and 88 of its pre-hearing written submissions and submits that the transcript of the Special Meeting cannot be used as a substitute for providing reasons.

- The Appellant's Pre-Hearings Written Submissions, Dated February 4, 2021; paragraphs 87 and 88.

**Response to Ground 2:**

15. At paragraph 103 of the pre-hearing written submissions, RMEK states that Council's decision to deny the Appellant's Application was not a decision based upon the technical aspect of the Application but rather turned on a comprehensive consideration of the criteria set out in section 4.5 of the Development Bylaw. Section 4.5 of the Development Bylaw states:

***4.5 Special Permit Uses***

*Subject to these Regulations, the uses that fall within the Special Permit Uses set out in the Correspondence 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 12.3(4), and has considered any objections or representations which may have been received on the matter.*

- Rural Municipality of Eastern Kings Subdivision and Development Control Bylaw (the "Bylaw"); Section 4.5



16. The Appellant respectfully disagrees that Council's decision was not based upon technical aspects. The Appellant submits that the EIA is considered a technical aspect of the application process and a majority of the comments and concerns raised by residents, as well as Council, were regarding the perceived environmental issues. These environmental concerns and issues were properly addressed by the EIA. The Appellant submits that Council erroneously relied upon environmental concerns without acknowledging that these concerns were already addressed by the EIA and were therefore no longer issues to be considered. As such, Council, in deciding to deny the Appellant's Application based on environmental concerns, made their decision based on a technical aspect and not solely by the criteria set out in section 4.5 of the Development Bylaw.

All of which is respectfully submitted this 22<sup>rd</sup> day of February, 2021.



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