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VIA EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

**Attention: Ms Kirsten Walli
Board Secretary**

Dear Ms. Walli:

**Re: NextEra Energy Canadian Operating Services, Inc.
Conestogo Wind L.P. ("Conestogo")
Application for Feed-in Tariff Program Licences
Board File Nos. EB-2012-0311 and EB-2012-0312**

We are counsel for the Applicants in the above noted matter.

This application has received intervention requests from Preserve Mapleton Inc. ("PMI") and Elise Krul, who is a member of PMI.(the "Proposed Intervenors") dated August 20 and 22, 2012. Both of the Proposed Intervenors have requested an oral hearing.

PMI's Intervention request stated that its interest in the application is based on the fact that its members "are the people who will be affected by the wind turbines." PMI provided no further information with respect to its identity or interest and no other Proposed Intervenor has identified their interest in the application.

With respect to PMI's identity, PMI commenced unsuccessful proceedings against the generation projects before the Minister of Environment (under the Renewable Energy Approvals provisions of the *Environmental Protection Act*), before the Environmental Review Tribunal and before the Divisional Court.

In the latter proceeding, PMI was refused status to intervene on behalf of the public interest. The Divisional Court also held that PMI should be required to pay the legal costs incurred by the Director of the Ministry of the Environment and Conestogo in defending a Judicial Review

application. In making this unusual order of costs against a Judicial Review applicant, the Divisional Court noted that PMI did not make a helpful contribution to the process. It described PMI's participation as consisting of taking "issue with alleged defects in the process without producing evidence that any individual suffered prejudice because of those defects. The respondents were put to considerable expense to respond to the application."¹

With respect to PMI's interest in this proceeding, the Board's Rules of Practice provide that a person applying for Intervenor Status "must satisfy the Board that he or she has a substantial interest"² in the proceeding. The Board has applied this rule to prohibit an intervention where the applicant for intervention raises issues that are not relevant to the proceeding before it. Thus, for example, the Board refused to grant intervenor status to a First Nation who proposed to raise issues respecting the adequacy of consultation respecting a proposed generation licence amendment. The Board put it as follows:³

"The requested approval [i.e., for a generation licence amendment] has no direct connection to the Crown conduct in question, nor to the potential infringement of Aboriginal rights. The Board will therefore not accept the First Nations group as intervenors in these proceedings."

Thus, in order to qualify as intervenors, it is necessary to the Proposed Intervenor to represent an interest that is relevant to the issue engaged in this application.

The Board has addressed the criteria in considering a generator licence application as follows:⁴

"The Board uses three main criteria to assess an electricity generator licence applicant:

The applicant's ability to be a financially viable entity with respect to owning and operating a generation facility in Ontario's energy market;

The applicant's technical capability to reliably and safely operate a generator; and

The applicant and its key individuals' past business history and conduct such that they afford reasonable grounds for belief that the applicant will carry on business in accordance with law, integrity and honesty."

The Proposed Intervenor has not identified any reason why these issues could not be addressed in a written hearing and indeed have not even identified any interest or evidence that they can bring to bear on any of these issues.

¹ *Preserve Mapleton Incorporated v. Director, Ministry of Environment*, Divisional Court Costs Endorsement, August 7, 2012.

² OEB Rules of Practice and Procedure, Rule 23.02.

³ Decision and Order in application by ACH Limited Partnership for a licence amendment, May 20 (2011 EB-2011-0065 and EB-2011-0068), p. 10.

⁴ Decision and Order in York Energy Centre LP Generation Licence, March 23, 2010 (EB-2009-0242), pp. 8-9.

The Applicant therefore respectfully requests that the Board proceed with a written hearing and further that the Board not accord intervenor status to the Proposed Intervenors.

All of which is respectfully submitted.

signed in the original

George Vegh
Counsel for the Applicants

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Preserve Mapleton Inc., c/o Elise Krul, (via fax: 519-848-2227).