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November 29, 2010

Delivered by Hand

Appellate Body:

Secretary, Environmental Review Tribunal
655 Bay Street, Floor 15
Toronto, ON
M5G 1E5
Phone: (416) 314-4600
Fax: (416) 314-4506
Email: ERTTribunalSecretary@ontario.ca

Sent via facsimile

Environmental Commissioner of Ontario:

Environmental Commissioner of Ontario
1075 Bay Street, Suite 605
Toronto, ON
M5S 2B1
Phone: (416) 325-3377
Fax: (416) 325-3370
E-mail: commissioner@eco.on.ca

Issuing Authority:

Mansoor Mahmood
Director
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West
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Toronto, ON
M4V 1L5
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Proponent:

Kent Breeze Corp. and MacLeod Windmill Project Inc.
c/o Suncor Energy Services Inc.
2489 North Sheridan Way
Mississauga, ON
L5K 1A8
Phone: (905) 804-4508
Fax: (905) 804-4848

To Whom it May Concern:

Re: Notice of Appeal for Renewable Energy Approval issued to Kent Breeze Corp. and MacLeod Windmill Project Inc. (Kent Breeze Wind Farms) c/o Suncor Energy Services Inc., EBR Registry Number 011-1039

Name and address of Appellant:

Chatham-Kent Wind Action Inc.
12923 Longwoods Road
RR#6
Thamesville, ON
NOP 2K0

Name and address of Appellant's representative:

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Address for delivery of notices and other official documents to Appellant:

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Statement of appeal of Director’s decision in relation to a renewable energy project:

The appellant is appealing the decision of the Director to issue a Renewable Energy Approval to Kent Breeze Corp. and MacLeod Windmill Project Inc. to engage in a renewable energy project in respect of a Class 4 Wind facility consisting of the construction, installation, operation, use and retiring of the following: eight (8) wind turbine generators, each rated at 2.5 MW generating output capacity, with a total name plate capacity of 20 MW.

Copy of decision under appeal:

A copy of the instrument decision notice under appeal is attached (loaded to the Environmental Registry on November 12, 2010, EBR Registry Number: 011-1039).

Identification of the portions of the Renewable Energy Approval that the Appellant is appealing:

The portions of the Renewable Energy Approval that the Appellant is appealing are:

“The Renewable Energy Approval requires the proponent to construct, install, operate, use and retire the facility in accordance with specific terms and conditions. The terms and conditions, as summarized below, require the proponent to:

- *construct and install the Facility in accordance with the documentation considered for the issuance of this approval, and the setback requirements of Regulation 359/09,*
- *comply with the Ministry’s noise emission limits for Wind Farms at all times,*
- *maintain and operate the wind turbine generators in accordance with good engineering practices and as recommended by the equipment suppliers”*

Description of how engaging in the renewable energy project in accordance with the Renewable Energy Approval will cause serious harm to human health:

Industrial wind turbines are known to cause a range of serious health effects in certain individuals. These effects occur at distances greater than the set-backs prescribed for the renewable energy project in accordance with the Renewable Energy Approval.

Statement of the issues and material facts relevant to the subject matter of the appeal that the Appellant intends to present at the main Hearing:

Issue(s)

1. Is it more likely than not that the Kent Breeze Corp. and MacLeod Windmill Project Inc. as approved will cause serious harm to human health?
2. Should the set-back requirements for participating landowners and/or others at these locations be the same as for all other persons?
3. Should the approval be granted where the approval authority is unable to properly predict, measure or assess the sources that produce effects known to cause serious harm to human health?
4. Should the approval be granted prior to the approval authority determining the effects on human health and whether or how to regulate low frequency noise emissions from industrial wind turbines?
5. Does the approval comply with the approval authority's Statement of Environmental Values ("SEV")?

Materials Facts

A significant body of expert opinion, scientific information and literature supports the Appellant's contention that industrial wind turbines located at the distances approved for this project are more likely than not to cause serious harm to human health.

Examples of these effects include sleep disturbance, annoyance, stress or psychological distress, inner ear symptoms, headaches, excessive tiredness, loss of quality of life, stress and physiological distress. Stress and sleep deprivation are well known risk factors for increased morbidity including significant chronic disease such as cardiovascular problems including hypertension and ischemic heart disease. These effects are more likely than not caused by exposure to infrasound and/or low frequency noise and/or audible noise and/or visual impact and/or shadow flicker produced by industrial wind turbines. The tonality, pulsating nature of the noise and the lack of nighttime abatement are further factors. Other effects include exposure to ice throw/fall and turbine failure. These effects are caused by the operation and/or failure of industrial wind turbines or their individual components.

The effects of the project on human health will be serious. The effects on the health of participating landowners and/or other persons at these locations will be even more serious as they are exempted from all setback requirements without scientific or other justification.

In addition, current projects are known to exceed existing requirements. The approval authority also has no reliable method of predicting, measuring or assessing exposure to infrasound and/or low frequency noise and/or audible noise in order to protect persons from these effects.

As well, the approval has been granted prior to the approval authority making any determination regarding the effects on human health and whether or how to regulate low frequency noise emissions from industrial wind turbines. Furthermore, a Research Chair has been selected but to date has released no findings.

The Tribunal's decision must also be consistent with any policies issued by the Minister of the Environment designed to guide decisions of this kind that were in place at the time the Director's decision was made. The Ministry's SEV is such a policy. The project might significantly affect the environment. The approval was not exempted. As a result, it was the Minister's responsibility through the Ministry and its Director to take every reasonable step to ensure that the SEV was considered.

In this case, the Ministry did not consider the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society. More specifically, the economic impacts of the project on property values were not considered.

The Ministry did not use a precautionary, science-based approach in its decision-making to protect human health and the environment. More specifically, despite the risk of harm to humans from industrial wind turbines the approval was granted without resolution to the scientific uncertainty surrounding these effects.

The Ministry did not encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision making. More specifically, there are no provisions requiring transparency, timely report or enhanced ongoing engagement with the public regarding testing and data collection for infrasound and/or low frequency noise and/or audible noise.

Description of relief requested:

The Appellant requests that the Environmental Review Tribunal revoke the decision of the Director to issue a Renewable Energy Approval for the Kent Breeze Corp. and MacLeod Windmill Project Inc.(Kent Breeze Wind Farms) c/o Suncor Energy Services Inc.

Indication of Appellant's intention to seek a stay of the decision:

The Appellant will be seeking a stay of the decision.

**ERIC K. GILLESPIE
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Encl.