

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** August 31, 2016

**CASE NO.:** 16-076

**PROCEEDING COMMENCED UNDER** section 142.1(2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Kevin Jakubec  
Approval Holder: North Kent Wind 1 GP Inc., as the general partner of North Kent Wind 1 LP  
Respondent: Director, Ministry of the Environment and Climate Change  
Subject of appeal: Renewable Energy Approval for North Kent Wind 1 Project  
Reference No.: 5272-A9FHRL  
Property Address/Description: Various locations  
Municipality: Municipality of Chatham-Kent  
ERT Case No.: 16-076  
ERT Case Name: Jakubec v. Ontario (Environment and Climate Change)

Heard: August 23, 2016 in Chatham, Ontario and August 29, 2016 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

Kevin Jakubec

John Goudy

North Kent Wind 1 GP Inc., as the general partner of North Kent Wind 1 LP

Sarah Powell, Andrea Burke (August 29 only) and Chenyang Li (Articling Student) (August 23 only)

Director, Ministry of the Environment and Climate Change

Sarah Kromkamp, Rebecca Crangle and Stephanie Hewson (Articling Student)

Municipality of Chatham-Kent

David Taylor (August 23 only) and John Norton

**Participants**

Larry Meyerink

Self-represented (August 23 only)

Laura Poland

Self-represented (August 23 only)

Calvin Simmons

Self-represented (August 23 only)

Dorothy Travis

Self-represented

**Presenters**

Maureen Geddes

Self-represented (August 23 only)

Yvonne Laevens

Self-represented (August 23 only)

**ORDER DELIVERED BY JERRY V. DEMARCO**

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**BACKGROUND**

[1] The preliminary hearing in this matter began on August 23, 2016, in Chatham, Ontario and continued on August 29, 2016, by telephone conference call. This order sets out the dispositions of the Environmental Review Tribunal (the “Tribunal”) on the motions and procedural issues addressed during the preliminary hearing.

**ORDER**

[2] The Tribunal grants participant status to Larry Meyerink, Laura Poland, Calvin Simmons and Dorothy Travis (the “Participants”), and presenter status to Maureen Geddes and Yvonne Laevens (the “Presenters”). Each Participant and Presenter is granted 30 minutes for oral testimony and must file with the Tribunal their written statements by September 2, 2016. As set out in Rule 34 of the *Tribunal’s Rules of Practice* (the “Rules”), the Participants and Presenters may not raise issues that have not already been raised by Kevin Jakubec (the “Appellant”).

[3] The Tribunal grants the Municipality of Chatham-Kent (the “Municipality”) party status, subject to the following conditions:

- as set out in Rule 34 of the Tribunal’s Rules, the Municipality may not raise issues that have not already been raised by the Appellant;
- the Municipality is not seeking to call any witnesses; and
- the Municipality’s time allotment to cross-examine witnesses is subject to any restrictions set by the presiding Tribunal panel in order to adhere to the Schedule of Events for the hearing.

[4] The Tribunal grants the Appellant’s request for an extension until September 2, 2016, to serve the other parties with his additional disclosure and documents to be relied on at the hearing.

[5] The Tribunal grants the Appellant’s motion requesting permission to have the testimony of two of his witnesses, Dr. Mark-Paul Buckingham and Dr. William Sawyer, heard by videoconference.

[6] The Tribunal grants the Appellant’s request to adjourn the start of the hearing to October 5, 2016, but dismisses the Appellant’s motion for a lengthier adjournment.

[7] The Tribunal orders that the scope of the Appellant’s appeal includes both grounds set out in s. 142.1(3) of the *Environmental Protection Act*, that is, “serious harm to human health” and “serious and irreversible harm to the natural environment”.

[8] The Tribunal orders that the issues to be addressed in this appeal are defined as those set out in the Issues List in Appendix 1 to this Order.

[9] The Tribunal confirms the dates for events as outlined in the Schedule of Events attached as Appendix 2 to this Order.

*Requests for Party, Participant and Presenter Status Granted  
Procedural Directions Ordered*

*“Jerry V. DeMarco”*

JERRY V. DEMARCO  
ASSOCIATE CHAIR

Appendix 1 – Issues List  
Appendix 2 – Schedule of Events

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Environmental Review Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**Appendix 1****Issues List**

1. Will engaging in the North Kent Wind 1 Project (the “Project”) in accordance with Renewable Energy Approval 5272-A9FHRL (the “REA”) cause serious harm to human health due to:
  - a) Intensified release of substances related to the radionuclide decay chain existing in the bedrock and their transfer into the water and atmosphere as a result of construction and operation of the Project;
  - b) Elevated levels of substances related to the radionuclide decay chain in groundwater and water wells;
  - c) Long-term human exposure to substances related to the radionuclide decay chain through water and air causing health problems including cancer; and,
  - d) Inadequacy of preventative and remedial measures in the REA, including those to monitor and contain the substances related to the radionuclide decay chain that are present?
  
2. Will engaging in the Project in accordance with the REA cause serious and irreversible harm to the natural environment due to:
  - a) Intensified release of substances related to the radionuclide decay chain existing in the bedrock and their transfer into the water and atmosphere as a result of construction and operation of the Project;
  - b) Contamination of groundwater and water wells as a result of elevated levels of substances related to the radionuclide decay chain; and,
  - c) Inadequacy of preventative and remedial measures in the REA, including those to monitor and contain the substances related to the radionuclide decay chain that are present?
  
3. If engaging in the Project in accordance with the REA will cause harm referred to in Issue 1 or Issue 2, or both, what is the appropriate remedy to be ordered by the Environmental Review Tribunal pursuant to section 145.2.1(4) of the *Environmental Protection Act*?

**Appendix 2****Schedule of Events**

<b>September 2, 2016</b>		Appellant's additional disclosure and service of documents to be relied on at the Hearing Filing with the Tribunal of Written Statements of Participants and Presenters
<b>September 23, 2016</b>		Service of Respondents' documents to be relied on at the Hearing
<b>September 30, 2016</b>		Service of Appellant's reply documents to be relied on at the Hearing
<b>September 30, 2016</b>		Service and filing with the Tribunal of Witness Statements and documents to be relied on at the Hearing
<b>October 5, 2016</b>	<b>Hearing Day 1</b>	Full Day: Kevin Jakubec, Michele Howes, Laurier Cartier, Peter Hensel, Ken Wade
<b>October 6, 2016</b>	<b>Hearing Day 2</b>	Half-day: Completion of Appellant witnesses from Hearing Day 1 Half-day: Terry Carter
<b>October 11, 2016</b>	<b>Hearing Day 3</b>	Half-day: Dr. Mark-Paul Buckingham (via videoconference) Half-day: William Clarke
<b>October 12, 2016</b>	<b>Hearing Day 4</b>	Half-day: Dr. William Sawyer (via videoconference) Half-day: Additional time for Appellant witnesses (if necessary)
<b>October 13, 2016</b>	<b>Hearing Day 5</b>	Presenters and Participants
<b>October 14, 2016</b>	<b>Hearing Day 6</b>	Respondents' witnesses
<b>October 25, 2016</b>	<b>Hearing Day 7</b>	Respondents' witnesses
<b>October 26, 2016</b>	<b>Hearing Day 8</b>	Respondents' witnesses
<b>October 27, 2016</b>	<b>Hearing Day 9</b>	Respondents' witnesses and reply evidence (if permitted by the Tribunal)
<b>November 7, 2016</b>		Service and filing of Appellant's written submissions

<b>November 14, 2016</b>		Service and filing of Respondents' written submissions Service and filing of Municipality of Chatham-Kent's written submissions
<b>November 17, 2016</b>	<b>Hearing Day 10</b>	Service and filing of Appellant's written reply submissions Oral submissions (if required by the Tribunal)