



EB-2011-0394

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by McLean's
Mountain Wind LP for an Order granting leave to construct
a new transmission line and associated facilities.

PROCEDURAL ORDER NO. 1

McLean's Mountain Wind LP ("the "Applicant" or "McLean") has filed an application with the Ontario Energy Board (the "Board") dated November 22, 2011 under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B ("the Act"). McLean is seeking an order of the Board granting leave to construct a transmission line and associated facilities (the "Project") to connect the McLean Mountain Wind Farm to the IESO-controlled Grid. McLean also seeks an order approving the form of easement agreement provided in the application. The Board has assigned File No. EB-2011-0394 to the application.

Notice of Application.

The Board issued a Notice of Application and Hearing on December 9, 2011. McLean has served and published the Notice as directed by the Board.

By way of a letter received January 17, 2012 (Attachment 1), Hydro One Networks Inc. ("Hydro One") advised the Board of an error in the Notice. The Notice identified that the switchyard (connecting the proponent's transmission facilities to the Hydro One transmission line) will be owned and operated by Hydro One whereas it will in fact be owned and operated by the Applicant.

The Board received correspondence on behalf of several proposed intervenors on January 23, 2012, describing various other perceived deficiencies in the Notice, and asking that the Notice be clarified and re-issued. In particular, a concern was raised concerning possible confusion over the deadline for requests for intervenor status. The Notice advises that persons have 10 days from the date of publication of the Notice to request intervenor status; however, in addition to the publication date the Notice also includes the (earlier) date that the Notice was actually issued to the Applicant by the Board. The expressed concern is that potentially interested parties might confuse the date of issuance with the date of publication, and mistakenly believe that they had missed the deadline for interventions.

The letter also noted possible errors in a separate advertisement that was published by the Applicant. In the view of the intervenors, the advertisement included inaccurate or misleading information about the Board's process, in particular a statement suggesting that the Board would be holding a written, as opposed to an oral, hearing.

The Board will not order that the Notice be clarified or re-issued. The Notice clearly states that intervenor requests should be sent within 10 days of the publication date of the Notice. The publication date is clear on the newspaper, and there should be no confusion regarding the appropriate date. The Board has also on many occasions accepted intervention requests well after the deadline established in a notice, and would expect any interested parties to at least request intervenor status even if a deadline has been missed.

The separate advertisement published by the Applicant was not done under the Board's direction. Although the Board cautions the Applicant regarding the importance of accuracy in any communications it has with the public, the Board finds that the statements made in the advertisement do not warrant a new Notice.

Interventions

Requests for Intervenor status have been received from Wikwemikong Unceded First Nation Elders and Youth (the "Wikwemikong"), the Manitoulin Coalition for Safe Energy Alternatives ("MCSEA"), Wind Concerns Ontario ("WCO"), Lake Superior Action Research Conservation ("LSARC") and BayNiche Conservancy ("BayNiche").

On January 25, 2012, the Board received a letter from the Applicant. In addition to responding to the January 23 letter described above, the Applicant's letter asked the Board to reject the intervention requests of Wikwemikong, MCSEA, WCO, LSARC and BayNiche on the grounds that none of the issues identified in their respective letters of intervention related to matters that are within the scope of the proceeding.

As described in further detail below, the Board has some concerns regarding some of the issues that the proposed intervenors highlight in their letters of intervention. However, the Board is not prepared to deny these parties intervenor status. The Board will therefore grant Wikwemikong, MCSEA, WCO, LSARC and BayNiche intervenor status, subject to the restrictions on the scope of the Board's jurisdiction, as described below. The Board has also received numerous letters of comment which have been entered in the record of the proceeding.

Requests for Cost Eligibility

MCSEA requested costs for the proceeding and in an e-mail amendment of January 5, 2012 MCSEA also specifically requested "an honorarium recognizing individual efforts in preparing and presenting an intervention or submission".

The Board grants cost eligibility to MCSEA but the extent of the cost eligibility will be restricted to matters directly within the scope of this proceeding, as discussed further below. Further information on activities that are eligible for an award of costs is outlined in the Board's *Practice Direction on Cost Awards* on the Board's website. Please note that, unless the Board specifies otherwise, cost claims are to be filed at the end of this proceeding. Cost claims will be subject to the Applicant's right of objection. An honorarium may also be considered by the Board at the end of the proceeding.

Scope of the Board's Jurisdiction in a Section 92 Leave to Construct Application

The Board's jurisdiction to consider issues in a section 92 leave to construct case is limited by subsection 96(2) of the OEB Act which states:

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. 2009, c. 12, Sched. D, s. 16.

The Board does not have the power to consider any issues other than those identified in subsection 96(2). Parties requesting intervenor status have indicated a broad range of interests in this proceeding. The Board notes that as a general matter, the following issues are not within the scope of a section 92 leave to construct application: environmental issues, any issues relating to the wind farm itself, the Ontario Power Authority's feed in tariff program, and social policy issues. And while the Government's policies in respect of renewable energy form part of the criteria in section 96(2), the Board does not have the power to enquire into the appropriateness of that policy. The Board has further held in previous proceedings that it is not empowered to consider issues relating to the Crown's duty to consult with Aboriginal peoples in a section 92 leave to construct application.¹ Parties are reminded that any interrogatories and submissions to the Board must relate to the issues identified in subsection 96(2). Furthermore, the Board will not award costs in this proceeding for time spent on matters which are outside the scope of this proceeding.

The Board does not have the jurisdiction to determine issues related to environmental and social concerns outside of the scope of section 96(2), and it is important to note that the Project is subject to a separate Renewable Energy Approval ("REA") process. Generally speaking, environmental issues are considered in that process, and parties with an interest in these issues are encouraged to participate in the REA process if they

¹ Yellow Falls Power Limited Partnership, *Decision on Questions of Jurisdiction and Procedural Order 4*, EB-2009-0210, November 18, 2009. See also, Northgate Minerals, *Procedural Order 2*, EB-2010-0150, July 29, 2010.

have any concerns. Although the Board has no role in the REA process, any approval of the leave to construct application would ordinarily be conditional on all necessary permits and authorizations being acquired, including a completed REA.

Request for an Oral hearing on Manitoulin Island

Wikwemikong, MCSEA, WCO, and BayNiche Conservancy and numerous letters of comment have requested that the Board hold an oral hearing, and that the hearing be held on Manitoulin Island. At this point in the proceeding, it is not clear to the Board that many of the issues identified in the letters of intervention and letters of comment actually fall within the scope of this proceeding. The Board is therefore not prepared at this point to establish a process for an oral hearing. However, the Board may reconsider this issue after the interrogatory phase of the proceeding is completed.

Request for Confidentiality for certain documents

The Applicant has requested that the following documents be declared confidential, and therefore kept off of the public record, pursuant to the Board's *Practice Direction on Confidential Filings*:

- (a) Exhibit E, Tab 1, Schedule 2 - Single Line Drawing of Proposed Electrical Connection
- (b) Exhibit E, Tab 1, Schedule 3 - Electrical Drawings of Transmission Facilities
- (c) Exhibit E, Tab 1, Schedule 4 - Design Specifications and Operational Data: Submarine Cable
- (d) Exhibit E, Tab 1, Schedule 5 - Overhead Transmission Line Design and Stringing Charts
- (e) Exhibit G, Tab 1, Schedule 2 - Table of Lands Required for Transmission Facilities

The Applicant's letter to the Board, dated November 22, 2011, explaining its reasons for seeking confidential status for these documents is attached to this Procedural Order as Appendix 2.

Any party, or Board staff, objecting to the Applicant's request for confidential treatment of the listed documents may file submissions with the Board in accordance with the schedule detailed below. The Applicant will have a right of reply to any submissions.

Procedural Steps

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Any party, or Board staff, objecting to McLean's request for confidential status for certain documents shall file such objections with the Board, and serve on all other parties, by **February 3, 2012**.
2. If McLean wishes to make reply submissions to any objections to its request for confidential status for certain documents, it shall file same with the Board, and serve on all other parties, by **February 10, 2012**.
3. Intervenors and Board staff who wish information from McLean that is in addition to the evidence pre-filed with the Board and that is relevant to the hearing shall request the information by means of written interrogatories filed with the Board and delivered to McLean's on or before Friday, **February 15, 2012**. All interrogatories and responses must include a reference to the section of the application which identifies the specific evidence on which the interrogatory is based.
4. McLean shall, no later than Monday, **February 29, 2012** file with the Board and deliver to all intervenors, a complete response to each of the interrogatories.

All filings to the Board must quote file number EB-2011-00394, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All filings should be directed to the attention of the Board Secretary, and be received no later than 4:45 p.m. on the required date. Parties must also include the Case Manager, Edik Zwarenstein at edik.zwarenstein@ontarioenergyboard.ca and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca in all electronic correspondence related to this case.

DATED at Toronto, January 27, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX 'A'

TO

PROCEDURAL ORDER NO. 1

Applicant and List of Intervenors

Board File No: EB-2011-0394

January 27, 2012

**McLean's Mountain Wind Limited
EB-2011-0394**

APPLICANT & LIST OF INTERVENORS

January 27, 2012

APPLICANT

Rep. and Address for Service

**McLean's Mountain Wind
Limited**

Gordon Potts

Director, Business Development
McLean's Mountain Wind Limited
30 St. Clair Ave. W.
Suite 1700
Toronto, ON M4V 3A1

Tel: 647-288-1223
Fax: 416-926-6266
Email: gpotts@northlandpower.ca

APPLICANT

Rep. and Address for Service

**Mnidoo Mnsing Power
Limited Partnership**

Art Jacko

Mnidoo Mnsing Power Limited Partnership
c/o United Chiefs & Council of Mnidoo
Mnsing
P.O. Box 275
M'Chigeeng ON P0P 1G0
Tel: 705-377-5307
Fax: 705-377-5309
Email: ajacko@uccm.ca

APPLICANT COUNSEL

James Sidlofsky

Partner
Borden Ladner Gervais LLP
40 King Street West
Suite 4100, Scotia Plaza
Toronto ON M5H 3Y4
Tel: 416-367-6277
Fax: 416-361-2751
Email: jsidlofsky@blg.com

**McLean's Mountain Wind Limited
EB-2011-0394**

APPLICANT & LIST OF INTERVENORS

January 27, 2012

INTERVENORS

BayNiche Conservancy

Rep. and Address for Service

Catherine Bayne

BayNiche Conservancy

GD

Montreal River Harbour ON P0S 1H0

Tel: 416-834-7442

Fax: Not Provided

Email: cbayne@bayniche-conservancy.ca

LSARC

Geroge Browne

LSARC

P.O. Box 1

Montreal River Harbour ON P0S 1H0

Tel: 705-542-3482

Fax: Not Provided

Email: action@lsarc.ca

**Manitoulin Coalition for Safe
Energy Alternatives**

Raymond Beaudry

Manitoulin Coalition for Safe Energy Alternatives

342 Morphets Sideroad, RR1

Little Current ON P0P 1K0

Tel: Not Provided

Fax: Not Provided

Email: wrf@manitoulin.net

Tom Adams

Tom Adams Energy

12 Sidford Court

Toronto ON M6S 2J4

Tel: 416-834-7442

Fax: Not Provided

Email: tom.adams.energy@gmail.com

**McLean's Mountain Wind Limited
EB-2011-0394**

APPLICANT & LIST OF INTERVENORS

January 27, 2012

**Wikwemikong Unceded
Indian Reserve**

Rosemary Wakegijig

Wikwemikong Unceded Indian Reserve
19 A Complex Drive
Wikwemikong ON P0P2J0
Tel: 705-859-3122
Fax: 705-859-3851
Email: neoskwes@hotmail.com

Wind Concerns Ontario

Jane Wilson

President
Wind Concerns Ontario
P.O. Box 11059
105 Guildwood Parkway
Scarborough ON M1E 1N0
Tel: 613-489-3591
Fax: Not Provided
Email: windconcerns@gmail.com

Appendix 1
Hydro One Letter, dated January 17, 2011 (sic)

Hydro One Networks Inc.

8th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-5707
Fax: (416) 345-5866
Andrew.skalski@HydroOne.com

Andrew Skalski

Director – Major Projects and Partnerships
Regulatory Affairs



BY COURIER

January 17, 2011

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

Dear Ms. Walli:

EB-2011-0394 – McLean's Mountain Wind LP Application For Leave to Construct – Notice of Application Correction

Hydro One would like to advise the Board of what appears to be an error in the Notice of Application for the above-noted proceeding, dated December 19th, 2011. Specifically, in the second paragraph on the first page, the penultimate sentence indicates that the switchyard connecting the proponent's transmission facilities to the grid will be owned and operated by Hydro One Networks Inc. That is not the case. It is Hydro One's understanding that the switchyard will be owned and operated by the proponent, based on Hydro One's prior discussions with it and consistent with the filed evidence for this Application contained on the proponent's website.

Hydro One has advised the proponent of the above-noted error.

Sincerely,

ORIGINAL SIGNED BY ANDREW SKALSKI

Andrew Skalski

C McLean's Mountain Wind LP

Appendix 2

McLean Letter regarding Confidentiality, dated November 22, 2011

James C. Sidlofsky
T (416) 367-6277
F (416) 361-2751
jsidlofsky@blgcanada.com

November 22, 2011

Delivered by Courier and RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli

**Re: Application for Leave to Construct And Notice under Section 81 of the
 Ontario Energy Board Act, 1998 – McLean's Mountain Wind Limited
 Partnership**

We are counsel to McLean's Mountain Wind Limited Partnership (the "Applicant"). Please find accompanying this letter two (2) paper copies of each of the following documents:

1. an application for Leave to Construct (the "Application"), pursuant to section 91 and subsection 96(2) of the *Ontario Energy Board Act, 1998* (the "OEB Act"); and
2. a Notice of Proposal under section 81 of the OEB Act.

The Applicant requests that the following documents forming part of its Application be held in confidence by the Board pursuant to Rule 10.01 of the Board's *Rules of Practice and Procedure* (the "Rules") and the Board's *Practice Direction on Confidential Filings* (the "Practice Direction"):

- (a) Exhibit E, Tab 1, Schedule 2 - Single Line Drawing of Proposed Electrical Connection
- (b) Exhibit E, Tab 1, Schedule 3 - Electrical Drawings of Transmission Facilities
- (c) Exhibit E, Tab 1, Schedule 4 - Design Specifications and Operational Data: Submarine Cable
- (d) Exhibit E, Tab 1, Schedule 5 - Overhead Transmission Line Design and Stringing Charts
- (e) Exhibit G, Tab 1, Schedule 2 - Table of Lands Required for Transmission Facilities

Items (a) through (d) above consist of electrical drawings, design specifications and operational data in relation to transmission facilities the Applicant is proposing to construct. These documents have been prepared by the Applicant's consultants EPTCON Ltd. ("EPTCON") and contain proprietary and technical material that is consistently treated in a confidential manner. Disclosure of these documents could result in prejudice to both the Applicant and EPTCON's

competitive position in their respective businesses since it would enable competitors to ascertain the technical information and details of the transmission facilities contemplated by the Applicant in its Application to the Board. The above mentioned impacts are among the factors the Board considers in Appendix A of its Practice Direction when determining requests for Confidentiality.

Item (e) contains personal information relating to third party individuals and contractual arrangements made between the Applicant and these individuals with respect to the land acquisition process in relation to the Application. The contractual arrangements between the Applicant and third parties are not publicly available information. Disclosure of this information would conflict with Section 17(1) of the *Freedom of Information and Protection of Privacy Act* (Ontario), since it would prejudice the competitive position of the Applicant and could potentially interfere with the contractual arrangements or other negotiations between the Applicant and other third party landowners.

Where possible, the above mentioned confidential material has been printed on coloured paper, as required under section 5.1.4(b) of the Practice Directions, and is being delivered simultaneously with the application in an envelope marked "confidential".

Please do not hesitate to contact me should you have any questions or require further information.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original Signed by James C. Sidlofsky

James C. Sidlofsky

Encls.

copy to:

Gordon Potts, McLean's Mountain Wind Limited Partnership
Art Jacko, Mnidoo Mnising Power Limited Partnership