



ONTARIO ENERGY BOARD

STAFF SUBMISSION

Leave to Construct - Request for Confidentiality

McLean's Mountain Wind LP

EB-2011-0394

February 3, 2012

Board staff makes the following submission in relation to the claim for confidentiality, by McLean's Mountain Wind LP ("McLean" or the "Applicant"), of information provided with their application for Leave to Construct. The information relates to two categories, Land Matters and Technical Drawings related to the Transmission facilities.

Background

The Applicant provided the material in a separate envelope, along with a letter dated November 22, 2011. This letter, included as an attachment to Procedural Order 1, indicates that the claim for confidentiality relates to the following information sets:

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

McLean submits in its covering letter that:

- The documents were 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.
- 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.

Submission

The Board's mandate with respect to Leave to Construct applications is described in the *Ontario Energy Board Act, 1998*:

"The Board's role is to ensure that these transmission investments are in the public interest. Subsection 96(2) in part specifies that, for section 92 purposes, "the Board shall only consider the interests of consumers with respect to prices and the reliability and quality of electricity service."

Board staff concurs that it is appropriate that information provided in set e) above (Exh G, Tab 1, Schedule 2: Table of Lands Required for transmission Facilities) is suitably maintained in a confidential manner.

Board staff notes that the information in a) through d) is required to be submitted by part of Chapter 4 of the *Filing Requirements for Transmission and Distribution Applications* (the "Filing Requirements"), issued November 14, 2006. Specifically, section 4.3.4 says:

4.3.4 Design Specifications and Operational Details

The application must provide a description of the physical design, operational details, and lifecycle activities of the proposed project, identifying project design features and procedures that will ensure the safe and reliable operation of the proposed facilities. These design specifications should demonstrate compliance with the technical requirements as specified in the TSC.

Submission

As mentioned above, Board staff concurs that it is appropriate that information provided in e) above is suitably maintained in a confidential manner.

However, Board staff does not agree that McLean has provided sufficient rationale for the request for confidentiality of information sets a) through d).

1. From a price point of view there is no commercial information which is applicable to a competitive situation, since no part of this project is any longer the subject of competitive bidding, although that may have been the case when the project was conceived and prior to the awarding of the work to the Consultant contractor.

In addition, the information cannot be of value in a future bid since there is no dollar value or price per unit which can be determined from the information given which might be used to interpolate the price for similar constructions in the future. Nothing in the listed documents reveals current pricing or removes any incentive to submit materially lower bids in the future, lower bids that might have to be submitted in the absence of detailed knowledge of competitor pricing.

2. In the application in question the actual price (per unit of product or service) is not revealed directly nor, in the absence of the quantum of products or services purchased, can it be easily computed. As a hypothetical example, if Company A purchased \$150,000 of products and services from Company B annually, this could be of interest to Company B's competitors, as they may view Company A

as a possible customer. However, without knowing the quantum and mix of products and services, and whether there were any discounts for bundling or volume, there is no direct information on pricing which would allow competitors to undercut Company B's bid, and thereby gain the business.

3. Some of the information which is shown on the single line diagrams of sets a) and b) is included in one form or another in the System Impact Assessment ("SIA") produced by the Independent Electricity System Operator ("IESO"), or in the Customer Impact Assessment produced by the Transmitter. These are documents which include information which has been provided by the Applicant as part of the application and may even be available on the IESO or the transmitter websites.

For example, transformer data is provided in detail in the SIA as on the diagram, and generator data and protection data is either directly provided or could be extracted from dynamic model information provided to and published by the IESO in the SIA¹ and its addendum².

4. While some data included on the drawings of sections a) through d) reflects the value of the expertise of the consultant in having done calculations and utilising extensive experience of related or similar technical circumstances, it is insufficient for a bona fide engineering consultant to use as the basis of the design, without assured knowledge of the precise material conditions and local circumstances, such as relevant wind forces, frost depths, soil conditions, electrical impedance and the like. Diagrams such as those under section a) and b) (single line diagrams) are generally well known to the engineering community and follow standard practices and even national or international specified standards. Additionally, their application may frequently require knowledge of related local conditions, such as soil resistivity, or fault contribution from electrical equipment in the area.
5. The kind of information requested to be kept confidential includes information which has been the subject of scrutiny in various degrees in past applications e.g. there have been concerns about the physical characteristics and location of the poles and their effect on other utility facilities (Summerhaven Wind LP, EB-2011-0027). While the information is frequently associated with aesthetical concerns which are the subject of environmental review and not aspects within the mandate of the Board hearing this proceeding, there are other reasons, such as safety or electromagnetic interference, for which the public should be able to examine that information which does fall within the jurisdiction of the Board, as mentioned above.

¹ Application, Exhibit I Tab 1 Schedule 3

² Application, Exhibit I Tab 1 Schedule 4

There have only been a few proceedings in which information of this nature has been maintained confidential. In one proceeding (Talbot EB-2009-0290) information was claimed as confidential because it included proprietary information and was the subject of a confidentiality agreement. In its decision the Board allowed the information to be kept confidential only until such time as the “final” System Impact Assessment was published. The Board allowed confidentiality of single line diagrams. The reason given was as follows:

“The Practice Direction states that the onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case. Parties are directed to make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. Appendix B of the Practice Direction lists some of the factors that the Board may consider when considering whether to grant a request for confidentiality, and states “Information that is in the public domain will not be considered confidential”.

The Board has reviewed the material and determined that there are two main categories of information requested to be held confidential: engineering information including turbine generator data, protection and operating philosophy reports, and electrical diagrams all of which are provided to the Independent Electricity System Operator (“IESO”) for its System Impact Assessment report, (“SIA”) (on forms provided by the IESO) and information relating to consultations on Aboriginal issues and with Aboriginal communities.

With regard to the engineering information, the IESO will post its final SIA on its website; included in the final SIA will be some or all of the technical information and data that Talbot has supplied and for which it seeks confidentiality. A review of the IESO website shows that much of this type of data is in fact published.

As noted above, the Practice Direction specifically states that information in the public domain will not be considered confidential; as the final SIA has not been completed, the information has yet to enter the public domain but will do so shortly. Given the imminent release of the information to the public through the posting of the SIA on IESO's website, the Board will grant the request for confidentiality only until the time that the SIA is posted on the IESO website.

With regard to the single line diagram found in Schedule 5-1 and referred to in the letter accompanying the interrogatory responses, the information that will appear in the final SIA will be data; the line diagram as a whole conveys engineering information that cannot all be reduced to data and may not appear in the final SIA and enter the public domain. The Board accepts that the single line diagram contains proprietary engineering information the public disclosure of which could be detrimental to the applicant, and grants the request that it be kept confidential. “

Board staff suggests that the single line diagram falls into the category mentioned under paragraph 4 above in this submission, and that there is insufficient information for a competitor to gain advantage from simply copying information.

Finally, it is submitted that potential harm from not allowing this information to remain confidential is likely less than the harm which might result from making it known to the public, and is certainly more palpable and demonstrable e.g. by reason of physical safety due to insufficient clearances. In the interest of transparency the onus should be on the Applicant to provide realistic scenarios of likely harm before confidentiality is allowed.

6. Information contained in section c) above, the submarine cable portion, has been provided in similar proceedings without a request for confidentiality. In particular, the proceeding regarding transmission to export power to the grid from a wind generator on Wolfe Island (EB-2007-0034) included very similar data for the submarine part of the cable from Kingston to Wolfe Island. That company (Canadian Renewable Energy Corporation) is clearly in the same field and could reasonably be considered a competitor to the current Applicant, and vice versa. It is therefore difficult to make the case that knowledge about the submarine profile in one location is of any value to a submarine construction in another location. There appears to be little rationale for keeping this information confidential.
7. The crossing of the channel from Manitoulin Island to Goat Island is a public water channel and is an area navigable by the public. It would seem that there should be no right of a private contract to deprive the public of knowledge about that channel which is important to its (the public's) safety, without the informed consent of that public. Board staff suggest that the guidelines for confidential material should resolve this contradiction of private and public interest in favour of the public right to know.
8. In a submission on confidentiality requested by Waterloo North Hydro (proceeding EB-2010-0144) Board staff submitted that there is an onus on the applicant to provide reason why confidential treatment should be accorded and why the Board's usual practice should not be followed:

As all parties are aware, dealing with material in confidence can be an onerous task. Confidential material can also pose difficulties for the purposes of the Board Panel rendering its decision. As is stated in the Practice Direction and the *Rules or Practice and Procedure*, and as is the Board's usual practice, information on the record should be public; confidential material should be the exception, and only where specific direct harm from public disclosure can be justified. The Practice Direction further notes that the onus lies with the party seeking confidential treatment to demonstrate that this is justified.³

Board staff submits that this is equally applicable in the current proceeding.

Conclusion

In conclusion, Board staff submits that McLean's claim for confidentiality of the information in sets a) through d) above is not justified pursuant to the Practice Direction and that McLean should publicly disclose the information sets a) through d) in accordance with section 4.3.4 of the Filing Requirements.

All of which is respectfully submitted.

³ *Practice Direction on Confidential Filings*, Revision October 13, 2011 paragraph 5, page 7.