

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

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street W
Toronto, ON, Canada M5H 3Y4
T 416.367.6000
F 416.367.6749
blg.com



February 9, 2012

Delivered by Email and Courier

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

We are counsel to McLean's Mountain Wind Limited Partnership ("McLean's"), the Applicant in the above captioned matter. We are writing to you today with respect to two matters:

- the February 6, 2012, correspondence from counsel to Canadian Pacific Railway Company ("CP") regarding notice of this proceeding and related items; and
- the submissions of Board Staff and Mr. Adams on confidentiality.

The CP correspondence:

On Monday, February 6, 2012, we received a copy of correspondence from CP's counsel advising that on February 1, 2012, CP received notice of the Application from McLean's. We confirm that CP was the affected land owner that was the subject of the McLean's letter to the Board dated February 1, 2012, in which McLean's advised that it had inadvertently omitted an affected owner from its circulation of Notice of the proceeding.

Mr. Smiley, counsel to CP, indicated in his letter that CP intends to seek intervenor status and requested that CP be allowed additional time (until February 10th) to prepare and file its letter of intervention. McLean's has no objection to the CP request for additional time, and will respond to the request for intervenor status as soon as possible following its delivery by CP.

CP has also requested an adjustment to the current timeline for this proceeding as it would relate to CP. Specifically, CP has requested the following:

- The deadline for the filing of CP's objections, if any, to the McLean's request for confidentiality in respect of certain documents and for CP's provision of any comments with respect to the form of hearing would be extended to February 17, 2012; and
- The deadline for CP's interrogatories to McLean's would be adjusted from February 15, 2012 to March 2, 2012.

In the event that the Board grants intervenor status to CP, McLean's does not object to the adjustment of the deadlines for CP as requested by its counsel. McLean's has a number of additional comments on timing, below.

As will be seen below, McLean's has reduced the items in respect of which confidential treatment is being requested. As a result, it may not be necessary for CP to make submissions on confidentiality. However, if CP still intends to make submissions on the remaining material in respect of which confidential treatment is being requested, and if the Board is prepared to adjust the deadline for CP's submissions on confidentiality, McLean's suggests that it would be appropriate for the Board to adjust the deadline for the McLean's reply to all submissions in respect of confidentiality as they relate to the remaining material.

If the Board is prepared to adjust the deadline for interrogatories from CP, McLean's suggests that it will be necessary for the Board to establish a deadline for the responses to those interrogatories. Accordingly, in the event that the Board grants intervenor status to CP, McLean's proposes the following revised timeline for the steps addressed in Procedural Order No.1 ("PO#1"):

- The deadline for the filing of CP's objections, if any, to that portion of McLean's request for confidentiality that remains outstanding and for CP's provision of any comments with respect to the form of hearing would be February 17, 2012;
- The deadline for McLean's response to all outstanding submissions on confidentiality, and to CP's submissions on the form of hearing, would be February 24, 2012;
- The deadline for Board Staff and intervenor interrogatories to McLean's would remain at February 15, 2012;
- The deadline for McLean's responses to Board Staff and intervenor interrogatories would remain at February 29, 2012;
- The deadline for CP interrogatories to McLean's would be adjusted from February 15, 2012 to March 2, 2012; and
- The deadline for McLean's responses to CP interrogatories would be adjusted from February 29, 2012 to March 21, 2012. McLean's acknowledges that PO#1 provided for two weeks for the filing of responses to interrogatories, and that would suggest a March 16th deadline for the responses to CP. However, McLean's is concerned that with the March Break of various school boards falling during the week of March 12th – 16th, a brief amount of additional time may be needed for McLean's to coordinate with its consultants and to complete and file its responses to the CP interrogatories.

We trust that this revised timeline will be satisfactory to the Board.

The Submissions of Board Staff and Mr. Adams on Confidentiality:

McLean's is in receipt of Board Staff submissions on confidentiality dated February 3, 2012, and email correspondence from Mr. Adams dated February 3, 2012 related, in part, to confidentiality.

As Board Staff note in their submission, McLean's had requested that the Board maintain the following items in confidence:

- (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; and
- (e) Exhibit G, Tab 1, Schedule 2 - Table of Lands Required for Transmission Facilities

With respect to items (a) through (d), we can advise that McLean's has had further discussions with its consultants in this regard, and will produce these drawings and specifications on the public record. Electronic versions will be provided to the Board, intervenors of record and CP, and hard copies will be delivered to the Board.

This leaves only item (e) as the subject of the confidentiality request. With respect to item (e), Board Staff support McLean's request for confidential treatment, while Mr. Adams opposes it. As noted above, McLean's proposes to await any submission from CP in this regard and provide a single reply submission by February 24, 2012.

Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky

copy to: Gordon Potts, McLean's Mountain Wind Limited Partnership
 Art Jacko, Mnidoo Mnising Power Limited Partnership
 Tom Adams
 BayNiche Conservancy
 Lake Superior Action-Research-Conservation
 Manitoulin Coalition for Safe Energy Alternatives
 Rosemary Wakegijig
 Wind Concerns Ontario
 Neil Smiley, Counsel to CP

TOR01: 4847648: v2