



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.

**DECISION ON CONFIDENTIALITY
AND
PROCEDURAL ORDER NO. 3**

McLean's Mountain Wind LP ("McLean") 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 assigned File No. EB-2011-0394 to the application.

The Board issued a Notice of Application and Hearing on December 9, 2011. McLean served and published the Notice. The Board issued Procedural Order No.1 in which it accepted intervenors who had applied at that point, and established dates for dealing with an issue of confidentiality, and for interrogatories and evidence. Subsequently, further requests, including late requests for intervenor status were received. The Board granted these requests in Procedural Order No.2, and issued revised dates for submissions and replies on the issue of confidentiality and interrogatories.

Request for Confidentiality for Certain Documents

McLean requested in its application that certain documents be declared confidential, and therefore kept off of the public record, pursuant to the Board's *Practice Direction on Confidential Filings*. These documents were listed in Procedural Order No.1.

Submissions were received from Mr. Tom Adams (who at the time represented Manitoulin Coalition for Safe Energy Alternatives, Lake Superior Action Research Community, Bayniche Conservancy, Wikwemikong Elders, Community and Youth, and Manitoulin Nature Club) ("MCSEA et al") on February 3, 2012 and from Board staff and Canadian Pacific Rail ("CP Rail") on February 17, 2012.

A reply submission was submitted by McLean on February 24, 2012.

Submissions on Confidentiality

In a letter of February 9, 2012, McLean advised that following discussions with its consultant, it would produce and provide to all parties, the drawings and specifications described as items a) through d) which were the subject of its claim for confidentiality in Procedural Order No.1. It has since done so. Therefore the only outstanding confidentiality issue is item e) Exhibit G, Table 1, Schedule 2: Table of Lands Required for Transmission Facilities.

CP Rail indicated that it had no objection to McLean's request for confidentiality. Board staff also did not oppose the request.

MCSEA et al opposed the request and submitted that except for personal details, all information in the exhibit will be publicly available if construction is completed and that any severances or easements will have to be recorded and therefore available in Municipal Property Assessment Corporation (MPAC) and municipal records. MCSEA et al also submitted that full details should be provided to the extent the exhibit refers to lands planned to be acquired through expropriation.

MCSEA et al concluded that the document should be produced on the public record and only be redacted to remove any personal information related to affected land owners.

In its reply, McLean opposed the disclosure of the exhibit for multiple reasons: the confidential nature of the material and the treatment of the material in the Practice Direction; the Board's treatment of similar material in other proceedings; and the relevance of the MCSEA submissions. McLean submitted that disclosure of the information would conflict with the Freedom of Information and Privacy Act (FIPPA) requirements and that none of the circumstances that could justify the release of personal information pursuant to FIPPA exist in the current case. McLean further submitted that public disclosure of the information would prejudice its competitive position and could potentially interfere with its contractual arrangements or other negotiations with third party landowners.

McLean noted that the Board had held comparable information confidential in other similar proceedings.

McLean concluded that MCSEA had not provided any indication of why it is necessary for the purposes of this proceeding to publicly name the individuals with whom McLean has entered into agreements.

Board Findings

As set out in the Practice Direction, it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information that has been properly designated as confidential. In short, placing materials on the public record is the rule and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate.

The Board concurs with the submissions of McLean and Board staff that it is appropriate for the information in the columns labelled "PIN" and "Owner" in e) "Table of Lands Required for Transmission Facilities" to be maintained in a confidential manner.

The Board is of the view that the conditions that could justify the release of personal information pursuant to FIPPA are not present in this case. The Board notes that confidential treatment of this information is consistent with the Board's practice in other

proceedings of a similar nature. The Board will not adopt the proposal suggested by MCSEA et al, as there is an insufficient basis to warrant a deviation from the Board's current practice.

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. The applicant shall immediately issue the item e), "Table of Lands Required for Transmission Facilities", redacted to remove the information in the columns labeled "PIN" and "Owner", to all participants in the proceeding.

All filings to the Board must quote file number EB-2011-0394, 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, March 1, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary