

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.

**MCLEAN'S MOUNTAIN WIND LIMITED PARTNERSHIP
RESPONSES TO NORTH AMERICAN PLATFORM AGAINST WIND POWER
("NA-PAW") INTERROGATORIES**

DELIVERED MARCH 30, 2012

INTRODUCTION:

In Procedural Order No.1 in this matter, issued on January 27, 2012, the Board made the following comments with respect to the scope of its jurisdiction in a Leave to Construct Application under Section 92 of the *Ontario Energy Board Act, 1998*, as amended:

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 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.

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.

Notwithstanding this explanation and caution from the Board, which were repeated in Procedural Order No. 2 when the Board granted intervenor status to the Manitoulin Nature Club and NA-PAW, McLean's has received from NA-PAW what is held out to be a series of interrogatories but which, for the most part, are a group of comments on matters that are beyond the scope of this proceeding and a submission requesting that the Board deny the Application. Interspersed among those comments are submissions that have been put in the form of questions, but those questions are also, for the most part, beyond the scope of this proceeding as they pertain to environmental issues; the Wind Farm itself; the Ontario Power Authority's Feed-in-Tariff program; social policy issues; and the appropriateness of the Government's policy in respect of renewable energy.

In the pages that follow, McLean's Mountain Wind Limited Partnership ("McLean's") has provided responses to those NA-PAW questions (as opposed to assertions and submissions) that appear to be relevant and within the scope of this proceeding. Reasons have been provided where McLean's has refused to provide a response to a question.

Interrogatory #1

Reference:

Exhibit C, Tab 3, Schedule 1

Questions:

- (a) Under Project Summary: Rationale, the applicant suggests that they will be the licensed owner and operator of a 60 MW wind farm and the question arises whether the electricity transmission line is "in the public interest." It alludes to following the "policies of the Government of Ontario, the promotion of the use of renewable energy sources." However, these government policies (see referenced recent article from the UK) are now highly in dispute, and we must now defer to the first premise of the "best public interest." The fact is that as the article mentions, to the nearest percentage, there is ZERO power being produced by more than 100,000 turbines world wide. What then would be the purpose behind this contribution to massive energy sprawl? This is indeed one of our questions to MMWP.

Response:

As McLean's makes clear in the Application (for example, please see Exhibit B, Tab 1, Schedule 1, page 4, paragraph 4), McLean's has received two contracts from the Ontario Power Authority ("OPA") for the purchase of electricity generated by wind turbines through the Ontario Feed-in-Tariff ("FIT") program (enabled by the *Green Energy and Green Economy Act*) with contract capacities of 50 MW and 10 MW.

With respect to the balance of this NA-PAW comment/question, as discussed above, in Procedural Order No. 1, the Board stated:

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 subject matter of this question is not relevant to this proceeding, and McLean's will not respond to it.

- (b) What is the FIT allowance granted to MMWP for power through these lines? How does this escalated power price to consumers agree with the recent Auditor General's report asking for fiscal restraint and a curtailment of "renewables" as they have in the last eight years drained the province coffers, and put incredible

strain on jobs, prime agricultural and recreational lands, the environment, and the general economy? The rationale goes on to state: "Under this "public interest test" the Board must consider if the proposed transmission line is in the interests of consumers with respect to prices and the reliability of electricity service..." Again, we request that MMWP supply detailed accounting as to how they propose to prove to the Board and the people of Ontario that this public interest test will be met, given the tremendous pressure of 300,000 job losses in Ontario in the last eight years, much of which is directly due to the misguided renewables policies that have driven companies to bankruptcy or to other jurisdictions where energy prices are more favourable? NA-PAW respectfully suggests that the Board recognize that the high cost of these unnecessary transmission lines (as Ontario currently DUMPS excess power to New York and has some of the highest provincial power costs in Canada) and attendant useless power production, and address this inconsistency with the applicants.

Response:

Please see McLean's response to Question 1(a), above. The two FIT contracts awarded to McLean's to date have contract capacities of 50 MW and 10 MW. The subject matter of the balance of this NA-PAW comment/question is not relevant to this proceeding, and McLean's will not respond to it.

Secondary question re rationale:

- (c) What is the cost of the construction of this transmission line, Little Current, and Townships of Howland and Bidwell, Goat Island, to Espanola JCT? It is assumed that the cost will eventually be borne out of escalated FIT paid to the developer and out of the pockets of Ontarians, further driving the local and general economies downward. Has MMWP clearly articulated the long term effects of this development of transmission in ten years for the people of Ontario?

Response:

Costs related to the construction, operation and maintenance of the proposed transmission line are the responsibility of the Applicant. The balance of this NA-PAW comment/question appears to relate to the OPA's FIT program and the appropriateness of Provincial Government policies in respect of renewable energy, and is beyond the scope of this proceeding. McLean's will not respond to it.

Third question re rationale:

- (d) The key of "public interest test" given to the Board should bear the test of comparing to other historic public interest tests say in the UK where transmission of renewables has produced economic chaos and the reached conclusions that world wide with plus or minus 100,000 turbines, and thousands of miles of transmission and hundreds of substations, that the net percentage to the nearest

number of power produced is zero. Has MMWP transacted to obtain international experience in transmission, its benefits to society, to economic development? Detailed response would be appreciated. As the world approaches a turbine and transmission "crisis" ***has MMWP in the "public interest test" conducted a chart of the net result that can be expected from its proposal?***

Response:

This NA-PAW comment/question appears to relate to the Wind Farm, the OPA's FIT program and the appropriateness of Provincial Government policies in respect of renewable energy, all of which are beyond the scope of this proceeding. McLean's will not respond to it.

Interrogatory #2

Reference:

Exhibit G, Tab 1, Schedule 3

Land Matters: Form of Agreements

Questions:

- (a) Were the lessors advised that legal counsel might be independently consulted due to the apparent advantage to the developer, Northland Power, MMWP, in that health considerations from stray voltage, electrical pollution, may result and that livestock may be harmed, and that the lessor's rights are in this lease highly compromised? Was independent legal counsel obtained from lessors?

Response:

This Application relates to the proposed transmission line and related transmission facilities. Negotiations between the Applicant and land owners with whom it has entered into agreements for the use of their land for transmission-related purposes have been, and remain confidential. Land owners with whom the Applicant entered into agreements had the opportunity to obtain independent legal advice.

- (b) Were the lessors advised again independently about the nature of the secretive aspects of the contract, and that the confidentiality extends to employees, agents? Does NP and MMWP consider these "gag orders" and hence morally compromised business arrangements? How do they justify these heavily loaded documents in favour of the developer, but not sensitive to any regularly acceptable business and collaborative business agenda?

Response:

Please see McLean's response to question 2(a) above.

- (c) Are these business arrangements in favour of the people of Ontario? Have these leases met the legal standard for full disclosure of the issues?

Response:

Please see McLean's response to question 2(a) above.

Interrogatory #3

Reference:

Exhibit H, Tab 1, Schedule 2

Community and Stakeholder Consultation Report

- (a) NA-PAW and Toronto Wind Action have been privy to the incredible public outcry re the possibility of transmission and wind facilities at this location of Natural and Scientific Interest, and as well having historic cultural values to many settlers and FN peoples. This section does not, in our view, reflect the serious and querulous nature of the consultations. Would MMWP please provide more detail as to why they feel these are adequate consultations and increased proof that the community members are cooperative?

Response:

In the Application, McLean's has provided detailed information with respect to the public consultations it has conducted in respect of this matter (for example, please see Exhibit H, Tab 1, Schedule 1), in accordance with the Board's Filing Requirements. McLean's submits that these consultations have been adequate, and that the public has been made aware of the proposed route of the transmission line and related transmission assets through the consultation process. McLean's acknowledges that not all community members support the Application.

- (b) The FN consultations as described, and as referenced by MCSEA, do not appear to be legally binding or adequate, most consultations requiring many years, and the provision of education on the downside of such a project, reflect on Treaty Rights such as Water, Beaver Hunting, Fishing, Trapping Rights. Would MMWP please provide a timeline as to when they would be conducting these consultations? Any industrial activity affecting the wetlands, would necessarily affect these FN rights. Is any further discussion planned with Chief Shining Turtle, who says in the report on Consultation, *"The Chiefs of the Manito Minissing are against the Northland Power project because of the failure of the Government of Ontario to consult with the First Nations about this project as required by the Supreme Court of Canada. This legal requirement has been ignored and continues to be ignored."* Has this issue been fully resolved for this band? Does MMWP understand fully the need to consult that is complex, cultural, arduous and sensitive to the Elders and traditional people as well as the Chiefs? In a letter from Chief Craig Abatossaway of the A-O-K Peoples, he clearly outlines his view that this project is unsuitable. To proceed with this transmission outlay would continue to create dissension for generations to come.

Response:

As noted in McLean's introductory comments in respect of these NA-PAW interrogatories, the Board indicated, in Procedural Order No. 1 (in part), that:

"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)."

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.

This NA-PAW comment/question appears to relate to the duty to consult with Aboriginal peoples in a section 92 leave to construct application, which is beyond the scope of this proceeding. McLean's will not respond to it. Please see the McLean's response to Question 3(a) above for references to the detailed information regarding public consultation included in the Application.

- (c) There does not appear to be any mention of the UN Convention for the Protection of the Disabled and Children, and MMWP does not appear to have consulted with these persons as to the possible effect on their development and health. These are international laws that many signatory countries have adopted and which are legally binding. ***Does MMWP intend to conduct these studies shortly?***

Response:

This NA-PAW comment/question appears to be beyond the scope of this proceeding. McLean's will not respond to it.

Interrogatory #4

Reference:

Exhibit H, Tab 1, Schedule 2

Preamble:

(The following notes and questions relate directly and indirectly to the entire package of transmission and turbines, as MMWP appears to have included these for the purpose of augmenting their position for transmission with the Board)

Property Values:

Misleading documentation: Ms. Dale Godfrey, Realtor of Record, is in direct opposition to internationally recognized and accepted levels of property depreciation.

Noise Levels and Health:

Statements appear misleading in the pages referring to Noise Levels, MOE Guidelines (as various MOE representatives have admitted they cannot measure and mitigate noise levels) and 36 families have been forced to vacate homes and farms. Over 130 people have reported serious health effects and these are effects are completely in sync with international reports due to **substations, transmission** and turbines.

Statements appear misleading re Health Effects of Noise: Dr Arlene King and Dr Colby, reimbursed by the industry and government to produce favourable reports, are quoted, but not the accepted and respected independent world authorities on noise, electrical pollution, infrasound, vibration, shadow flicker. (*Dr Robert McMurtry, Dr Sarah Laurie, Carmen Krogh, Rick James, Dr Henrik Moeller, Dr Nina Pierpont, Dr Arline Bronzoft, Christopher Hanning, John Harrison, Bill Palmer and countless others.*)

Local Economic Benefits:

It is well known that job losses accrue from these developments, not gains. Spain has lost 2.2 net jobs in other sectors for every so called "green job," and Italy has lost 5.4. Jobs are temporary, and usually consist of the same groups of developer reliable people moved from site to site.

Question:

Will the developer please provide a baseline of INDEPENDENT international reporting on health, noise, lost jobs, and property values? (Turbines AND transmission issues)

Response:

This Application pertains to the proposed transmission line and related transmission facilities. This series of NA-PAW comments and the NA-PAW question appear to relate to the Wind Farm, the OPA's FIT program and the appropriateness of Provincial Government policies in respect of renewable energy, all of which are beyond the scope of this proceeding. McLean's will not respond to the NA-PAW question.

McLean's rejects NA-PAW's assertions with respect to misleading information. The material pertaining to the proposed transmission line and related transmission facilities provided in the Application, and supplemented by information provided by McLean's in response to interrogatories that are relevant and within the scope of this proceeding, is extensive and thorough.

Interrogatory #5

Reference:

Exhibit H, Tab 1, Schedule 3

Maps reflecting turbine placements, transmission lines, substations, woodlots, wetlands, ANSIs, First Nations Reserves etc.

- (a) Were up to date maps created to reflect the complex ecology of this area that would adequately be aids to project design? Where are such maps? Why is the developer so near an ANSI? Where are the reports on the sensitivity to those scientific interests? Where is the permit from MNR to approximate or push so near to an ANSI? Where are the reports on these efforts to protect? Which Canadian or international scientists were consulted?

Response:

This Application pertains to the proposed transmission line and related transmission facilities. As the Board indicated in Procedural Order No. 1:

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 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.

The McLean's REA material is available on its web site at

<http://mcleansmountain.northlandpower.ca/>

A CD copy of the REA reports has been provided in response to Board Staff Interrogatory No. 4(2).

This question relates to environmental matters that are beyond the scope of this proceeding, and McLean's will not respond to it.

- (b) Where are the ecological studies on the aquatic disruptions, spawning, bird nesting and migratory routes? Where are the biologists' reports?

Response:

Please see the McLean's response to question 5(a) above. This question relates to environmental matters that are beyond the scope of this proceeding, and McLean's will not respond to it.

- (c) Where are RECENT wetlands maps? Some maps here do not appear congruent with each other.

Response:

Please see the McLean's response to question (a) above. This question relates to environmental matters that are beyond the scope of this proceeding, and McLean's will not respond to it.

- (d) Where is a list and study of endangered species plant, animal bird, bat, and specific and detailed plans to mitigate harm?

Response:

Please see the McLean's response to question (a) above. This question relates to environmental matters that are beyond the scope of this proceeding, and McLean's will not respond to it.

(Supplementary) NA-PAW Interrogatory #6

Preamble:

The question relates to the absence of bat studies, especially given the COSEWIC (Committee on the Status of Endangered Wildlife in Canada) February 3, 2012 announcement that three species of bats are in serious peril.

The Emergency paper says that the loss of these species is "unprecedented," and the Tri-colored Bat (*Perimyotis subflavus*), Little Brown Myotis (*Myotis lucifugus*), and Northern Myotis (*Myotis septentrionalis*) in Canada are now classified as Endangered. Given that this **Emergency Paper** was released in Canada this February, and that wind turbines and **transmission lines** are causing increasing difficulty for survival, on top of White Nose Syndrome and loss of habitat, when would these studies be conducted and by whom?

Response:

Please see the McLean's response to question 5(a) above. This question relates to the Wind Farm and to environmental matters that are beyond the scope of this proceeding, and McLean's will not respond to it.