

EB-2011-0394  
McLean's Mountain Wind Limited Partnership  
Submission on the need for an Oral Hearing  
Attachment 1  
Delivered: April 20, 2012

**MCLEAN'S MOUNTAIN WIND LIMITED PARTNERSHIP**  
**ATTACHMENT 1 TO SUBMISSION ON THE NEED FOR AN ORAL HEARING**  
**DELIVERED APRIL 20, 2012**

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



January 25, 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**

**Introduction:**

We are counsel to McLean's Mountain Wind Limited Partnership (referred to here as "McLean's" or the "Applicant"), the Applicant in the above-captioned application for leave to construct transmission facilities to connect the McLean's Mountain Wind Farm (referred to in the Ontario Energy Board's Notice of this Application, published in the January 11, 2012 edition of the Manitoulin Expositor, as "MMWF" or the "Wind Farm"), to be located south of Little Current on Manitoulin Island, to the IESO-controlled grid on Goat Island, together with the other relief set out in the Application.

The Applicant's general partner is McLean's Mountain Wind GP Inc. ("McLean's GP"), which is equally owned by Northland Power Inc. ("NPI") and Mnidoo Mnising Power Limited Partnership ("MMP"). NPI and MMP are also the limited partners of the Applicant. MMP's general partner is Mnidoo Mnising Power General Partner Inc. MMP has six First Nations as limited partners: Aundeck Omni Kaning First Nation; M'chigeeng First Nation; Sheguiandah First Nation; Sheshegwaning First Nation; Whitefish River First Nation; and Zhiibaahaasing First Nation. MMP was formed to lead renewable energy projects on Manitoulin Island in order to protect First Nations' rights and heritage and to ensure the future for First Nations' youth.

On April 12, 2010 the Applicant received two contracts from the Ontario Power Authority ("OPA") for the purchase of electricity generated by the Wind Farm. The contracts, with contract capacities of 50 MW and 10 MW, were awarded through the Ontario Feed-in-Tariff ("FIT") program (enabled by the *Green Energy and Green Economy Act, 2009*). The Wind Farm has been the subject of significant public consultation, including the following public information sessions:

- June 30, 2004
- June 28, 2005

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- June 25, 2009
- March 22, 2010
- May 18, 2010

As the Board explained in its Notice of this Application,

“The Wind Farm itself is not part of this application, and does not fall within the scope of this proceeding. Environmental issues with respect to this project are considered through the separate Renewable Energy Approval (“REA”) process, which is not a part of this Board proceeding.”

McLean’s posted a copy of its Application on the internet and published the Board’s Notice pursuant to the Board’s directions in this regard. McLean’s is in receipt of a number of requests for intervenor status, an oral hearing and costs; and a number of letters of comment. On January 12, 2012, McLean’s wrote to the Board to advise that it intended to provide a single comprehensive reply to these requests. With the ten day period from publication of the Notice now having passed, McLean’s offers the following comments in respect of the various requests. McLean’s will address the letters of comment separately, as the time for filing those letters has not yet passed.

**Requests for Intervenor Status:**

The Board’s records show the following requests for intervenor status as having been received:

- Lake Superior Action-Research-Conservation (“LSARC”);
- Manitoulin Coalition for Safe Energy Alternatives (“McSEA”);
- BayNiche Conservancy (“BayNiche”) – while this initially appeared to be a letter of comment, BayNiche clarified on January 23<sup>rd</sup> that it is requesting intervenor status;
- Wind Concerns Ontario (“WCO”); and
- Rosemary Wakegijig, Wikwemikong Unceded First Nation Resident.

Before it addresses the individual requests, McLean’s must address one of the comments of Mr. Tom Adams, who has been retained as a consultant by McSEA, LSARC, BayNiche and Ms. Wakegijig. In his letter of January 23, 2012, Mr. Adams wrote to the Board to express his concern about, among other matters, the correct deadline for intervention requests. Mr. Adams suggests that there may be confusion between the date of the Notice (December 19, 2011) and the publication date (January 11, 2012, as is clearly shown at the top of each page of the January 11<sup>th</sup> edition of the Manitoulin Examiner) as the date from which the period for the making of intervenor, observer and oral hearing requests runs.

McLean’s submits that the deadline in the Board’s Notice is clear – it is 10 days from the date of publication or service of the Notice. The January 11<sup>th</sup> date of publication is equally clear - it is January 11, 2012, as can be seen in the header of each page of the newspaper, and particularly on pages 10 and 11 of the paper (the Notice was prominently displayed in the paper, over two full pages). It is not reasonable to suggest that the Notice could be mistaken for a “Notice of Record”.

In any event, while McLean's will discuss its concerns about particular intervention requests below, McLean's can confirm that it is not opposing any of the requests for intervenor status on the basis that they are out of time.

With respect to the individual requests, McLean's has the following comments:

- **LSARC**

LSARC's request is set out in a letter dated December 29, 2011 from George Browne of LSARC. No mention is made of the transmission facilities in the body of the letter. The letter does indicate that LSARC objects to the "project", but it is on the grounds of a concern that:

"no substantive and impartial cost-benefit analysis has been conducted to ascertain that it is, in fact, in the best interests of consumers with respect to prices, reliability and quality of electricity service, the OEB's mandate, considerations which take precedence over the Government of Ontario's ideologically and irresponsible promotion of the use of so-called renewable energy sources."

The letter goes on to state:

"The Government of Ontario has rashly rushed into the promotion of alternative energy sources, such as Wind Farms, without due-diligence, a cost-benefit analysis or investigating other options which would provide better value, quality and reliability. This is not merely out opinion, but one of the recent findings of the Ontario Auditor General.

...

LSARC also opposes the undemocratic Green Energy and Economy Act which deprives communities of their right to decide upon renewable energy developments, and the economically and financially destructive implementation of the Government of Ontario's renewable energy policies, including FIT subsidies, which destroys jobs in Ontario and results in much higher electricity prices for consumers while providing less quality and reliability."

As noted above, this proceeding is not about the Wind Farm, nor is it about Provincial policy with respect to renewable generation. There is no mention of the transmission facilities – which are the subject of this proceeding – in the LSARC correspondence. McLean's respectfully submits that the concerns expressed by LSARC relate to matters that are not within the scope of this proceeding; LSARC has therefore not established grounds for its intervention request; and the request should be denied.

- **McSEA**

McSEA's request is set out in an email message dated December 29, 2011 from Raymond Beaudry of McSEA. Mr. Beaudry's letter expresses concerns about both the Wind Farm and the proposed transmission line. However, McLean's is concerned that the opposition to the transmission facilities is being used as a means of attempting to stop the Wind Farm, and that is beyond the scope of this proceeding. This concern arises out of comments such as the following, from the McSEA request:

"Should transmission approval be given then the environmental, cultural, economic, visual, health, property rights impacts would be realized for this Industrial Wind Turbine project.

...

Transmission line approval would also allow this project to proceed in and environmentally sensitive key habitat and wetlands where our local township has the Perch Lake in the project area protected as environmentally sensitive and has building restrictions in the vicinity.

The 100 meter tall industrial wind turbines and 100 meter plus blade sweep would be an environmental disaster to this area and known flyway, stopover and nesting location.

Manitoulin Island is known for its biodiverse habitat and has many unique flora and fauna species at risk which would be impacted for an unreliable source of generation provincial auditor general agrees with. This generation is for off Manitoulin use and the impacts outweigh the community benefit.

...

With the OPA only allowing wind generation as 10% reliability then it and as above it does not seem practical or economically viable to allow this approval to proceed."

As the Board clearly indicated in the Notice, both the Wind Farm and environmental issues with respect to the project are not within the scope of this proceeding. McLean's respectfully submits that the concerns expressed by McSEA relate to matters that are not within the scope of this proceeding; McSEA has therefore not established grounds for its intervention request; and the request should be denied.

- **BayNiche**

BayNiche's request is set out in an email message from Catherine Bayne dated December 29, 2011. Ms. Bayne expresses BayNiche's concerns about "the lack of cost/benefit analysis for the renewable energy policy so unambiguously elucidated by the Auditor General of Ontario" and its view that "The power to be supplied via the proposed transmission corridor is not needed at present , nor even for the reasonably foreseeable future as conservation programs and economic constraints decrease demand, so the potential for economic losses to the community should be thoroughly weighed against the value of unreliable, non-dispatchable, costly and therefore very low value generation added to an increasingly unstable grid."

As with the LSARC request for intervenor status, there is no mention of the transmission facilities – the subject of this proceeding – in the BayNiche correspondence or in Mr. Adams' letter of yesterday's date clarifying that BayNiche seeks intervenor status. McLean's respectfully submits that the concerns expressed by BayNiche relate to matters – the Wind Farm and Provincial policy related to renewable energy – that are not within the scope of this proceeding; BayNiche has therefore not established grounds for its intervention request; and the request should be denied.

- **WCO**

WCO's request is set out in a letter from Jane Wilson, President of WCO, dated January 4, 2012. Ms. Wilson's letter expresses WCO's support for McSEA and LSARC, and consists almost exclusively of a repetition of the McSEA and LSARC correspondence.

The WCO letter describes both McSEA and LSARC as:

*"members of WCO, a coalition of more than 50 Ontario citizens' groups, concerned about the effects of industrial wind power generation plants operating in and planned for Ontario's rural communities. WCO has been a vocal opponent to the industrialization through the use of industrial wind turbines (IWTs) of our rural communities and provincial parklands since its inception." (WCO emphasis)*

WCO provides no basis for its participation in this proceeding aside from the status of McSEA and LSARC as WCO members and its repetition of the text of the McSEA and LSARC intervention requests. It is clear from the lines of the letter quoted above that WCO opposes wind farms, but once again, the Wind Farm is not the subject of this proceeding. McLean's respectfully submits that the concerns expressed by WCO relate to matters that are not within the scope of this proceeding; WCO has not established grounds for its intervention request; and the request should be denied.

- **Rosemary Wakegijig, Wikwemikong Unceded First Nation Resident**

Ms. Wakegijig's request is set out in a letter dated January 5, 2012. The letter begins with an expression of opposition to the proposed transmission line and expresses concerns about the extent of consultations with First Nations. However, the limited project-related comments (contained in a letter from the Wikwemikong Elders, apparently to the Chief and Council of the Wikwemikong First Nation, which is repeated in Ms. Wakegijig's letter) deal almost exclusively with the "industrial wind turbines" – that is, the Wind Farm – which is beyond the scope of this proceeding. McLean's respectfully submits that the concerns expressed by Ms. Wakegijig relate to matters that are not within the scope of this proceeding; she has not established grounds for the intervention request; and the request should be denied.

McLean's acknowledges that the Board will ultimately make the determination as to which prospective intervenors will be granted intervenor status. It should be clear from the foregoing comments, however, that most if not all of the requests relate to matters that are not before the Board. This proceeding is not a consultation on the Wind Farm or on Provincial policy related to renewable energy. In the event that the Board determines that it will grant intervenor status to some or all of these individuals or groups, McLean's trusts that the scope of this proceeding, and of intervenor participation, will be made clear to all parties.

**The McSEA Request for a Cost Award:**

McLean's is aware of only one request for a cost award in this matter. Mr. Beaudry's letter of January 5, 2012 includes a request on behalf of McSEA for a cost award, and the reasons for that request. As noted above, the McSEA request for intervenor status relates to the Wind Farm, environmental matters and Provincial policy, all of which are beyond the scope of this proceeding. Accordingly, McLean's respectfully submits that the request for a cost award should be denied. If the Board determines that McSEA will be eligible for an award of costs, it is in the interest of all parties that the scope of this proceeding be clear from the outset, and that the Board confirm that costs will not be recoverable for expenditures related to matters that are beyond that scope.

**Requests for an Oral Hearing:**

Several of the prospective intervenors have requested an oral hearing in respect of this Application. McLean's offers the following comments in this regard.

As can be seen in the Application, McLean's has conducted extensive public consultations through public information sessions held on Manitoulin Island. The material provided to the public included the proposed route of the Transmission Line that is the subject of this Application.

Based on the correspondence received from the prospective intervenors, and the very few references to the transmission facilities contained in that correspondence, it appears that the oral hearing is being sought as a forum for complaints about the Wind Farm, environmental matters and Provincial renewable generation policy, none of which is before the Board. The Board's Notice states that:

**“Written Hearing**

The Board intends to proceed with this matter by way of a written hearing unless a party satisfies the Board that there is a good reason for not holding a written hearing. If you object to the Board holding a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any submissions objecting to a written hearing must be received by the Board and copied to the applicant within 10 days of the publication or service date of this notice.”

McLean's respectfully submits that no party has provided a “good reason for not holding a written hearing”, and that the matters to be addressed in this Leave to Construct Application are well-suited to a written hearing. Accordingly, McLean's requests that the Board confirm that this matter will proceed by way of a written hearing.

**Mr. Adams' comments with respect to the Board's Notice and the McLean's publication in the Manitoulin Expositor:**

As discussed above, Mr. Adams' comments with respect to confusion between the date of the Board's Notice and the date of publication of the Notice in the Manitoulin Expositor are unfounded. The Notice clearly indicated that the dates for intervenor and observer requests, cost claims and letters of comment ran from the date of publication, and the publication date was clear from the date in the upper right-hand corner of each of the two pages of the newspaper on which the Notice ran (as it was on all the pages of the January 11<sup>th</sup> edition of the paper). As Mr. Adams knows, the publication date will typically not coincide with the date of the Notice. That is because the Notice is issued (and dated as of the date of issuance) together with a letter of direction from the Board, advising an applicant as to how the Notice is to be delivered. It is only after the Board's directions are received that arrangements will be made for publication of the Notice.

Aside from these comments with respect to the Notice, Mr. Adams takes issue with certain comments made in the message published by McLean's, suggesting that they are misleading. McLean's respectfully disagrees, and rejects Mr. Adams' assertion that there was any attempt to confuse readers of the message and the Board's Notice. McLean's has regularly published updates in the Manitoulin Expositor with respect to its activities, in the interest of keeping local residents informed. The “Manitoulin Wind News” piece published on January 11<sup>th</sup> was in part an effort by McLean's to draw the public's attention to the Board's Notice being published in the same edition of the paper. In the first paragraph of that piece, McLean's states:

“Included in this issue of the Expositor, you'll see a double-paged spread of the official Public Notice with the Ontario Energy Board (OEB) related to transmission lines.”

There is no ambiguity here – any interested party could simply read the Board's Notice. Later in the update, immediately following one of the statements to which Mr. Adams objects (“This Notice is to give interested parties an opportunity to participate in a written hearing on the matter.”), McLean's states: “All the details are included in the two-page Public Notice.” Again, the reader is being directed to the Board's Notice.

Finally, Mr. Adams complains about the statement in the update that “The clock starts ticking on the public comment period with the publication date of the Public Notice, which is Wednesday, January 11, 2012.” With respect, McLean’s does not see the basis for Mr. Adams’ complaint. The statement is accurate, and it is consistent with the provisions of the Notice in that the deadlines contained in the Notice run from the date of publication. The update does not give any indication as to the deadlines for any public comment. To determine the deadlines, it is necessary to look to the Notice, to which McLean’s directs the reader twice.

McLean’s respectfully submits that the Notice as published in the January 11, 2012 edition of the Manitoulin Expositor is sufficient and satisfies the Board’s directions in this regard, and that no further notice of this Application is required.

We thank you for your consideration in this matter. Should you have any questions or require further information in respect of the matters addressed in this letter, 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  
Manitoulin Coalition for Safe Energy Alternatives  
BayNiche Conservancy  
Lake Superior Action-Research-Conservation  
Wind Concerns Ontario  
Rosemary Wakegijig

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