



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.

### **PROCEDURAL ORDER NO. 6**

**April 24, 2012**

McLean's Mountain Wind LP ("McLean's") 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's Mountain Wind Farm to the IESO-controlled Grid. McLean's 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's 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. The Board also dealt with corrections and observations in regard to the Notice which had been issued. 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.

In accordance with Procedural Order No. 2 Board staff and numerous intervenors submitted interrogatories by March 2, 2012. Subsequent to that date Manitoulin Coalition for Safe Energy Alternatives ("MCSEA") and Manitoulin Nature Club submitted

further interrogatories, the last dated March 13, 2012. McLean's counsel advised Board staff verbally that responses to these would be included in the interrogatory responses, which were due on March 21, 2012.

On March 1, 2012 the Board issued Procedural Order No. 3 providing its decision on the Confidentiality of certain documents, mentioned in Procedural Order No. 1.

On March 20, 2012 McLean's wrote to the Board requesting an extension to April 11, 2012 for interrogatory responses. The Board issued Procedural Order No. 4 allowing for an extension to only March 30 for interrogatory responses, and these were duly received.

On April 9, 2012 MCSEA submitted additional interrogatories described as "questions of clarification" and on April 10, 2012 MCSEA submitted corrections to the questions and separately submitted referenced newspaper clippings. On April 11, 2012 McLean's wrote the Board that it was prepared to provide responses to clarifications that are relevant and within the scope of the proceeding, and that they anticipated delivering these by April 18, 2012.

On April 12, 2012 the Board issued Procedural Order No. 5 in which it ordered that McLean's respond to the second round of interrogatories by April 18, 2012. It also ordered that parties should make submissions regarding the appropriateness of an oral hearing by April 20, 2012. Submissions were received from MCSEA, which argued in favour of an oral hearing on Manitoulin Island, and the applicant, which argued that no oral hearing is necessary.

MCSEA's arguments in support of an oral hearing can be grouped into four general categories: deficiencies in the public notice, deficiencies in the application, incomplete or inaccurate information respecting the nature of the applicant's partnership structure, and incomplete or inaccurate information respecting the specifics of the proposed route.

The Board is of the view that none of these reasons justify an oral hearing. The Board will conduct an oral hearing where it is determined to be the appropriate means of acquiring additional factual evidence which is required to reach a decision, or as a

means of allowing parties to cross-examine on the written evidence. The Board has concluded that given the scope of the proceeding and the matters on which MCSEA proposes to cross-examine, an oral hearing on McLean's evidence would be of insufficient probative value to warrant its conduct. The Board will address each of the grounds raised by MCSEA below.

With respect to the Notice, the Board notes that the purpose of a notice is to provide sufficient information to allow parties to determine whether they have an interest in the proceeding. The notice need not be exhaustive; indeed, it should not be. It must be brief and it must be accurate. The Board is satisfied that the notice in this proceeding is adequate. This conclusion is borne out by the number and variety of intervenors responding to the Notice. If MCSEA is of the view that the Notice is legally inadequate, it can make these arguments based on the record as it now stands.

To the extent that there are any deficiencies in the applicant's evidence, MCSEA (or any other party) will be free to present its views on these issues through written argument. MCSEA has had ample opportunity to ask questions on all relevant facets of the application. The concerns raised by MCSEA are matters for argument, not further evidence. The Board notes that the onus is on the applicant to prove its case. It is open to any party to argue that the application is deficient, and, if the Board agrees, either in part or in full, then the application may be denied, adjourned, or approved subject to conditions.

MCSEA has expressed concerns with respect to the qualifications or roles of the owners of the applicant. The Board is of the view that to the extent these matters are relevant, they are appropriately addressed in argument. The Board is primarily concerned with the bona fides of the applicant itself. In a section 92 leave to construct application, the Board is interested in the ownership structure of an applicant only in so far as it relates to its statutory mandate under section 96(2). For example, while it is relevant whether the applicant is financially and technically able to undertake the construction and operation of the transmission facilities, it is not necessary that every owner of the applicant be similarly qualified. The evidence indicates that the technical expertise and financial backing for the proposed project is being provided by Northland Power Inc. ("NPI"), which is a 50% shareholder of the general partner of the Applicant (which is called McLean's Mountain Wind GP Inc.), and holds a 50% limited partnership interest in the Applicant itself. Mnidoo Mnising Power LP ("MMPLP") is also a 50% shareholder in the general partner, and also holds a 50% limited partnership interest in

the Applicant itself. MCSEA alleges that NPI can drop MMPLP from the partnership at a future date. Even if this is true, however, it is not clear why this should concern the Board in the context of a leave to construct application. The evidence is that MMPLP will not have an active management role in the project; it is essentially an investor. At this time, the Board does not see the relevance of the MMPLP's ownership structure or governance to the matters to be determined by the Board in this proceeding. However, it remains open to MCSEA to make submissions based on the evidence.

Finally, the Board is of the view that further discovery is not required with respect to the proposed route for the project. With the exception of a minor switchyard location issue on Goat Island, the proposed route is essentially set. Detailed routing modifications may arise due to environmental considerations – which are beyond the jurisdiction of the Board – or through the mutual agreement of the applicant and the affected landowner. The Board notes that if the application were approved and if the route were to be materially changed, then further Board approval would be required.

MCSEA has also indicated that it intends to introduce evidence in this proceeding. Parties are entitled to file evidence in a proceeding, provided that it is relevant to the issues in the proceeding. The stated intent of MCSEA's evidence is to provide the Board with information regarding the nature and character of MMPLP, and its relationship with NPI. As described above, it is not clear to the Board how the particulars of the applicant's ownership structure are relevant to the Board's mandate in this proceeding. The Board will make provision for the filing of intervenor evidence; however it reminds MCSEA that this evidence must be relevant to the Board's mandate as described in section 96(2).

The Board has decided that an oral hearing is not required with respect to the applicant's evidence. After intervenor evidence is filed, the Board will determine whether an oral hearing is required for intervenor evidence.

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. Parties wishing to do so shall, no later than **Friday, May 4, 2012** file in writing with the Board and deliver to all intervenors, any evidence which is within the scope of 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](http://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](http://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](mailto:edik.zwarenstein@ontarioenergyboard.ca) and Board Counsel, Michael Millar at [michael.mlllar@ontarioenergyboard.ca](mailto:michael.mlllar@ontarioenergyboard.ca) in all electronic correspondence related to this case.

**DATED** at Toronto, April 24, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary