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May 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”), the Applicant in the above captioned matter.

Throughout this proceeding, the Board has been very clear 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. In Procedural Order No.1, the Board confirmed that it does not have the power to consider any issues other than those identified in subsection 96(2); that as a general matter, environmental issues, any issues relating to the wind farm itself, the Ontario Power Authority’s feed in tariff program, social policy issues and issues relating to the Crown’s duty to consult with Aboriginal peoples are not within the scope of a section 92 leave to construct application; and that 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. Parties were reminded that any interrogatories and submissions to the Board must relate to the issues identified in subsection 96(2). The Board again cautioned parties about the scope of the proceeding and parties’ involvement in it in Procedural Order No. 2.

In procedural Order No. 5, issued on April 12, 2012, the Board allowed parties until April 20, 2012 to file submissions in regard to the need for an oral hearing. Submissions were filed by MCSEA and McLean. In the MCSEA submission, MCSEA reiterated its request for an oral hearing and went on to indicate the nature of the MCSEA evidence. The portion of the submission related to the MCSEA evidence was as follows:

**“MCSEA’s Evidence**

The Procedural Orders of the Board so far have not identified the schedule for the presentation of intervener evidence. MCSEA et al. intend to present documentary, prefiled and spoken evidence on aboriginal governance directly relevant to the Board’s understanding of the nature and character of MMP. In addition, should an oral hearing be ordered, MCSEA et al. intends to identify by way of notices of questions, key documents in the possession or control of MMW LP that will clarify what we believe the Board needs to understand about nature of MMP and its relationship with NPI.”

On April 24, 2012, the Board issued Procedural Order No.6, in which it made the following findings, among others:

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 ordered that parties wishing to do so would have until Friday, May 4, 2012 to file in writing with the Board and deliver to all intervenors, any evidence which is within the scope of the proceeding.

On May 4th, MCSEA delivered written comments related to the nature and character of Mnídoo Mnísing Power Limited Partnership ("MMPLP"), and its relationship with Northland Power Inc., as its evidence in this proceeding. Those comments included allegations as to the nature of the partnership and against an individual associated with one of the First Nations that comprise MMPLP, notwithstanding the Board's comments regarding the relevance of such matters. The MCSEA comments were accompanied by copies of two Aundeck Omni Kaning ("AOK") Band Council Resolutions from July 2009 and January 2010 (AOK subsequently became a member of MMPLP, and is identified as one of the MMPLP members in the Application); copies of photographs of individuals involved in the signing of documents related to the McLean partnership; and a copy of the United Chiefs and Councils of Mnídoo Mnísing ("UCCMM") February 8, 2011 announcement of the December 2, 2010 creation of Mnídoo Mnísing Power Corporation and the decision to enter into the McLean partnership.

As noted above, the Board has already determined that an oral hearing is not required with respect to McLean's evidence. McLean respectfully submits that there is no need for an oral hearing in respect of the comments and attachments filed by MCSEA. Moreover, McLean submits that despite numerous explanations by the Board as to the scope of this proceeding, and notwithstanding the Board's questioning of the relevance of the proposed MCSEA evidence in Procedural Order No. 6, the material filed by MCSEA on May 4<sup>th</sup> is beyond the scope of this proceeding.

McLean respectfully requests that the Board confirm that the MCSEA evidence is not relevant to this proceeding and that there is no reason for an oral hearing in respect of the MCSEA evidence. McLean also requests that the Board establish a timeline for final written submissions. However, in the event that the Board determines that the MCSEA material is within the scope of this proceeding, McLean requests an opportunity to respond to it.

We thank you again for your consideration in this matter. Should you have any questions 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

Encl.

copy to:        Gordon Potts, McLean's Mountain Wind Limited Partnership  
                  Art Jacko, Mnidoo Mnising Power Limited Partnership  
                  Michael Millar, Board Counsel  
                  Edik Zwarenstein, Board Staff  
                  Raymond Beaudry, MCSEA  
                  Catherine Bayne, BayNiche Conservancy  
                  George Brown, LSARC  
                  Jane Wilson, Wind Concerns Ontario  
                  Rosemary Wakegijig, Wikwemikong Elders, Community Members and Youth  
                  Neil Smiley, counsel to CP  
                  Lynda Lee, Manitoulin Nature Club  
                  Sherri Lange, NA-PAW

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