

ONTARIO ENERGY BOARD

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 Limited Partnership for an Order granting leave to construct a new transmission line and associated facilities.

APPLICANT'S ARGUMENT-IN-CHIEF

Delivered May 17, 2012

INTRODUCTION

The Application

1. McLean's Mountain Wind Limited Partnership (the "Applicant" or "McLean") has applied to the Board for leave to construct (the "Application") electricity transmission facilities (the "Transmission Facilities") that are comprised of:
 - i. "step-up" transformers located in the base of each wind turbine to transform electricity from 690 V to 34.5 kV for transmission of electricity through the collection system;
 - ii. a substation containing a three phase transformer to transform the voltage at the collector system from 34.5 kV to 115 kV, to allow for connection to the Hydro One ("HONI") transmission system;
 - iii. from the substation step-up transformer, a 115 kV single-circuit overhead transmission line, of which the majority will be placed within municipal road right-of-ways to minimize impact on private property;
 - iv. a transition station, where the overhead transmission line will transition to a buried transmission cable;
 - v. buried transmission line, to continue along a road allowance and cross the North Channel, to Goat Island;
 - vi. on Goat Island, the cable will emerge from the water on the north shore of the channel and will continue for approximately 340 metres underground; and
 - vii. a connection/switching station adjacent to the HONI transmission line at Hwy 6, to connect the transmission line to the provincial transmission grid at circuit S2B.
2. The Applicant will own and pay for all aspects of the Transmission Facility. These elements are discussed in greater detail in the document titled "Project Summary – Transmission Facilities" at Exhibit C, Tab 2, Schedule 1 of the Application. As discussed in the document titled "Project Location – Transmission Facilities" at Exhibit D, Tab 2, Schedule 1 of the Application, the transmission line is primarily routed along municipal road allowances in order to minimize the impact of the transmission line on private lands.
3. The proposed Transmission Facility will be used to connect the McLean's Mountain Wind Farm (the "Wind Farm"), which is to be located south of the community of Little Current, in the Municipality of Northeastern Manitoulin and the Islands ("NEMI"), to the IESO-controlled grid. The Wind Farm will consist of twenty-four (24) GE 2.5 MW wind turbine generators with a total installed nameplate capacity of 60 MW.

Overview of the Proceeding

4. The Applicant filed its Application with the Board on November 22, 2011. The Board issued a Notice of Application and Hearing on December 9, 2011, following which the Applicant delivered and published the Notice.
5. The Board issued Procedural Order No. 1 in which it accepted requests for intervenor status from parties that had applied for intervenor status 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.
6. The intervenors are: (i) Manitoulin Coalition for Safe Energy Alternatives ("MCSEA"); (ii) BayNiche Conservancy; (iii) Lake Superior Action-Research-Conservation ("LSARC"); (iv) Wind Concerns Ontario ("WCO"); (v) Canadian Pacific Railway Company ("CP"); (vi) Manitoulin Nature Club; (vii) North American Platform Against Windpower; and (viii) Wikwemikong Elders, Community Members and Youth (collectively, the "Intervenors").
7. The Applicant received and responded to Board Staff and Intervenor interrogatories.
8. On April 12, 2012 the Board issued Procedural Order No. 5 in which it directed the Applicant to respond to a second round of interrogatories from MCSEA. It also ordered that parties should make submissions regarding the appropriateness of an oral hearing. The Applicant responded to the supplemental interrogatories filed by MCSEA and submissions were also received from MCSEA, which argued in favour of an oral hearing on Manitoulin Island. The Applicant submitted that no oral hearing is necessary.
9. On April 24, 2012, the Board issued Procedural Order No. 6 in which it found that no oral hearing was required on the Applicant's evidence. The Procedural Order also directed intervenors and Board staff wishing to submit evidence to do so by May 4, 2012. MCSEA submitted evidence in relation to partners of the Applicant. The Applicant

subsequently submitted a letter in which it argued that the material filed by MCSEA was beyond the scope of the proceeding and that there was no reason for an oral hearing.

10. On May 11, 2012, the Board issued its Decision on the Form of Hearing and Procedural Order No. 7. The Board determined that it would not admit into evidence the additional material put forward by MCSEA on May 4, 2012; that there would be no oral hearing; and that the proceeding would conclude with written submissions.

THE INTERROGATORY PROCESS

11. The Applicant received interrogatories from Board Staff, CP, MCSEA (also on behalf of LSARC, Bayniche Conservancy, Wikwemikong Elders, Community and Youth, and the Manitoulin Nature Club), and NA-PAW. McLean initially received approximately 85 questions from MCSEA in the first round of MCSEA interrogatories, many of which were beyond the scope of this proceeding. Similarly, essentially all of the NA-PAW interrogatories were beyond the scope of the proceeding.
12. On March 30, 2012, the Applicant provided its responses to the Board Staff and Intervenor interrogatories. On Tuesday, April 3, 2012, MCSEA sent an email message to the Board, McLean and other parties expressing concerns about certain interrogatory responses and seeking to raise those concerns with the Applicant. In that message, MCSEA proposed the completion of the interrogatory record by April 6, 2012. On April 3, 2012, following receipt of the MCSEA message, McLean wrote to the Board suggesting that it would assist the Board and McLean if MCSEA were to set out its concerns, with reference to specific interrogatory responses, in order that McLean could determine an appropriate response to the MCSEA request. It was not until late in the afternoon of Monday, April 9, 2012 that MCSEA sent its "questions of clarification" in respect of McLean's responses to its initial interrogatories. A corrected version was sent in the morning of April 10, 2012, followed by copies of the newspaper articles referred to in various questions.
13. The MCSEA "questions of clarification" amounted to approximately 108 questions, some of them not requesting clarification but instead, seeking completely new information. The Board (in Procedural Order No. 5) determined that these will be considered to be a second round of interrogatories, and noted that McLean advised the Board that it was

prepared to provide responses to clarifications that are relevant and within the scope of the proceeding. McLean has provided those responses.

14. The interrogatory process has now included almost 250 questions, with close to 200 of those having come from MCSEA. Of just over 200 MCSEA and NA-PAW questions, over 40 were beyond the scope of this proceeding, as they dealt with the wind farm itself, environmental matters, aboriginal consultations, other approvals, and other matters not relevant to the proceeding. The discovery process in this proceeding – a proceeding with a limited scope – has been extensive. This is in addition to the extensive community and stakeholder consultation related to the Wind Farm and the Transmission Facilities that took place prior to the filing of the Application. That consultation is addressed at Exhibit H, Tab 1, Schedule 2 of the Application.

LEGISLATIVE CONTEXT AND BOARD'S JURISDICTION

15. Section 92 of the OEB Act requires leave of the Board for the construction, expansion, or reinforcement of an electricity transmission line, as well as for the making of a connection to the power system. The Board's role when considering applications made under section 92 of the OEB Act, is "to ensure that these transmission investments are in the public interest." Section 96(2) provides the test to be used by the Board when considering whether the construction of an electricity transmission line is in the public interest. 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 and quality of electricity service; and where applicable, and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. Furthermore, Chapter 4 of the Board's *Filing Requirements for Transmission and Distribution Applications* sets out the filing requirements for electricity transmission projects under Section 92 of the OEB Act.
16. In Procedural Order No.1 in this matter, issued on January 27, 2012, the Board made the following comments (at pages 4-5) with respect to the scope of its jurisdiction in a Leave to Construct Application under Section 92 of the OEB Act 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."

17. The Applicant submits that it has satisfied the Board's public interest test, as well as the Board's filing requirements, in its Application and throughout this Proceeding.

CONSIDERATIONS UNDER SECTION 96(2) AND BOARD'S FILING REQUIREMENTS FOR TRANSMISSION AND DISTRIBUTION APPLICATIONS

18. In addition to the Board's statements in Procedural Order No. 1, the Board has also limited its scope in other leave to construct proceedings for renewable generation projects to the following issues¹:
- a. Is the proposed project needed and is its routing the best alternative?
 - b. Is there a System Impact Assessment and Customer Impact Assessment and what are their conclusions?
 - c. Have the land use matters been addressed?
 - d. Will there be an impact on transmission rates?
 - e. If the project is approved, what should be the conditions of approval?

Need and Best Routing Alternative

19. One of the Board's objectives under the OEB Act is to facilitate the timely expansion of the transmission and distribution systems to accommodate the connection of renewable energy generation facilities. On April 12, 2010 the Applicant 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, 2009*) with contract capacities of 50 MW and 10 MW. The FIT contracts are for the Wind Farm. The Transmission Facilities that are the subject of this Application are necessary to connect the Wind Farm to the HONI transmission grid, in order to transmit electricity produced by the Wind Farm to the IESO-controlled grid. The Applicant submits that the subject Transmission Facilities promote the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.
20. An updated description of the proposed location and route for the Transmission Facilities, including the transmission lines, was provided by the Applicant in Attachment 1 to its response to Board Staff interrogatories. The route selected by the Applicant was chosen to minimize the crossings of highways, minimize crossings of the 44 kV Hydro One lines and to minimize the requirement for new easements across private land.

¹ For example, EB-2011-0063 (Grand Renewable Wind LP), EB-2009-0315 (Greenwich Wind Farm), EB-2007-0006 (Kruger Energy Port Alma), and EB-2009-0239 (Talbot Wind Farm).

Impact Assessments

21. The Applicant is fairly advanced in the process by which the Wind Farm will be connected to the IESO-controlled grid. On October 27, 2010 the IESO issued a "System Impact Assessment Report (Final Report)", referred to here as the "SIA".² At page 10 of the SIA, the IESO concluded that from the information provided, "the proposed connection of McLean's Mountain Wind Farm, subject to the requirements contained in this report, will not result in a material adverse effect on the reliability of the IESO-controlled grid." Hydro One Networks Inc. ("HONI") completed a Customer Impact Assessment ("CIA") in October 2010.³ At page 10 of the CIA, HONI determined that "for different load levels considered, no adverse impact on voltage performance to the customers in the area would be expected." HONI noted that certain mitigation measures would be required with respect to short circuit levels on the in order to proceed with the connection, and that the Applicant would be required to contribute toward the mitigation cost. HONI also noted that potentially impacted customers would need to review the adequacy of their equipment.
22. Addenda to the System Impact Assessment ("SIA Addendum") and Customer Impact Assessment ("CIA Addendum") were requested by the Applicant in January 2011 in order to reflect a decision by the Applicant to change the type of turbines used in the Wind Farm project. In March 2011, the IESO and HONI released their SIA Addendum⁴ and CIA Addendum⁵ respectively. At page 6 of the SIA Addendum, the IESO determined that "the proposed changes at McLean's Mountain Wind Farm, subject to the requirements contained in this report, will not result in a material adverse effect on the reliability of the IESO-controlled grid." The IESO recommended that a Notification of *Conditional Approval for Connection* be issued for the Wind Farm subject to the implementation of the requirements listed in that report. In its CIA Addendum, Hydro One determined that "...the results and requirements listed in the already issued customer impact assessment for the McLean's Mountain wind farm hold and the assessment is not required to be revised as a result of this change."

² A copy of the SIA was provided at Exhibit I, Tab 1, Schedule 3 of the Application.

³ A copy of the CIA was provided at Exhibit I, Tab 1, Schedule 4 of the Application.

⁴ A copy of the SIA Addendum was provided at Exhibit I, Tab 1, Schedule 5 of the Application.

⁵ A copy of the CIA Addendum was provided at Exhibit I, Tab 1, Schedule 6 of the Application.

Land Use Matters

23. As stated above, the Transmission Facilities are largely contained within the municipal right-of-way, with some private property being crossed.
24. The Applicant filed with the Board a table listing the private properties to be crossed by the Transmission Facilities and specified the type of instrument in place granting the Applicant access to such lands. As part of its original Application, the Applicant also provided the Board with the forms of such land agreements.
25. The land required for the project was acquired through private meetings with individual land owners over the past 8 years. Agreements with landowners include agreements of purchase and sale, options to purchase land, and options to lease land. Where municipal road right of ways are used for the Transmission Facilities the Applicant entered into a road use agreement with the Township of NEMI.
26. As the Applicant has advised the Board on previous occasions, negotiations between the Applicant and CP for appropriate land rights in respect of the Transmission Facilities to be located on Goat Island are continuing. The lease agreement with CP is being finalized and it is expected that it will be signed before the end of June, 2012. In its response to Board Staff Interrogatory #7, delivered March 30, 2012, the Applicant advised the Board of a modified proposed route for the buried cable to be located on Goat Island. The modified proposed route for the buried cable on Goat Island was shown in Attachment 1 to the March 30, 2012 responses to Board Staff interrogatories, and the proposed location of the switching station on Goat Island was shown in Attachment 2 to those responses. In the interest of ensuring that the information on the record in this proceeding is up to date, the Applicant wishes to advise the Board of an immaterial change in the route of the buried cable on Goat Island. The location of the switching station has not changed. However, the point at which the line enters the channel from Goat Island has been shifted 30 metres to the west. A revised sketch accompanies this submission as Attachment 1.

Impact on Transmission Rates

27. Costs related to the construction and operation of the Transmission Facilities that are the subject of this Application will be the responsibility of the Applicant. Accordingly, the Transmission Facilities will not have an impact on transmission rates in Ontario.

Conditions

28. As the Board noted in Procedural Order No.1, "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 Applicant would anticipate that the Board would append a list of Conditions of Approval to its Decision approving the Application. For the Board's reference, the Applicant notes that in response to Board Staff Interrogatory No. 5, the Applicant provided an updated list of required permits and approvals for completion of the Transmission Facilities.

CONCLUSION

29. As stated by the Board in Procedural Order No.1, applicable legislation and Board practice, the scope of the Board's mandate in a leave to construct proceeding is narrow. The Applicant has demonstrated the need for the Transmission Facilities, which need is consistent with the promotion of the use of renewable energy sources. The Applicant has also demonstrated that because the costs related to the construction and operation of the Transmission Facilities will be the responsibility of the Applicant, rate payers will not be adversely affected. The IESO and Hydro One, through the SIA and CIA, have demonstrated that the construction and operation of the Transmission Facilities is not anticipated to have an adverse impact on reliability or the quality of electricity service.
30. The Applicant therefore requests that the Board grant the relief requested in the Application, including granting leave to construct the Transmission Facilities and the approval of the forms of land-related agreements provided in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17TH DAY OF MAY, 2012

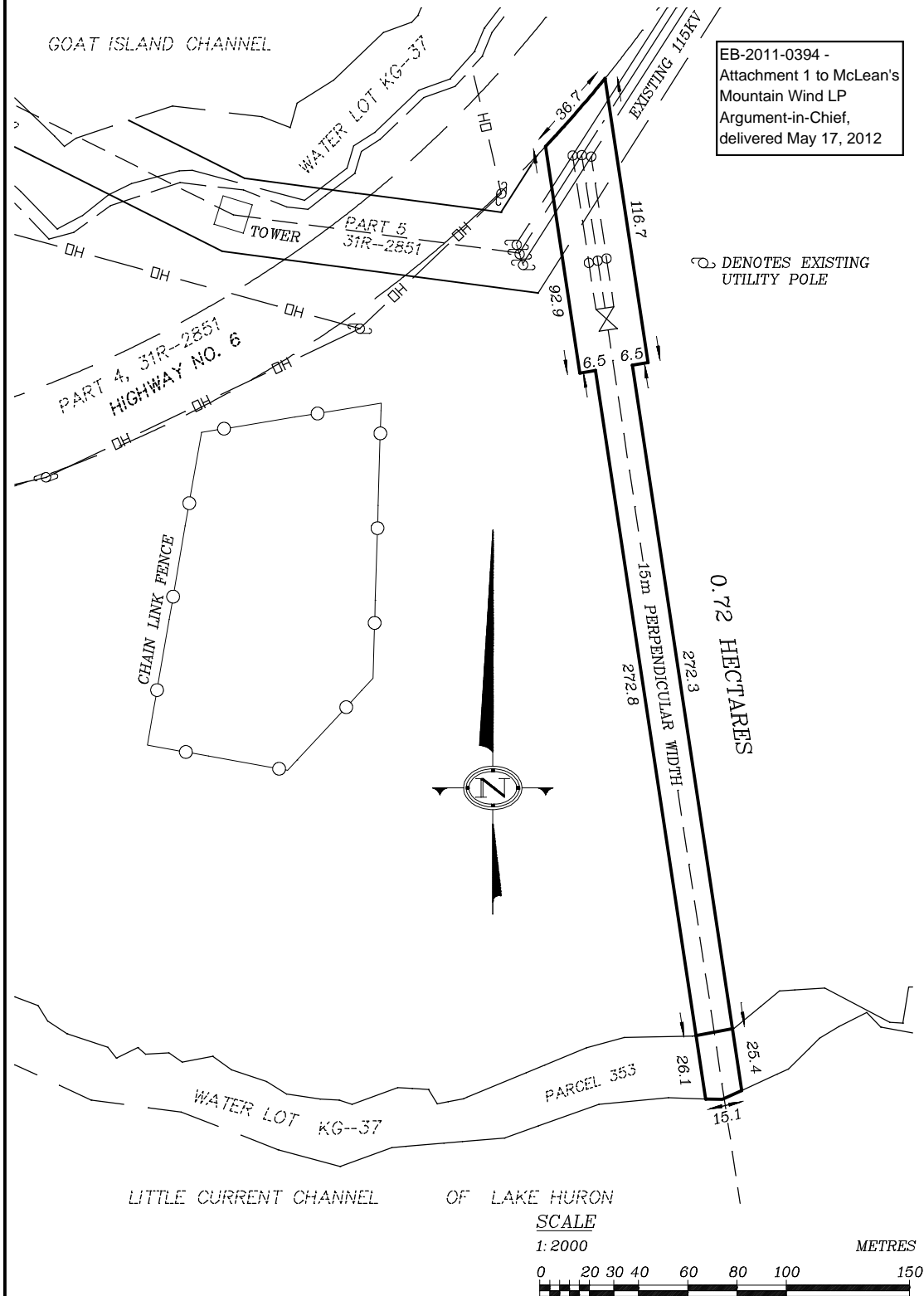
McLean's Mountain Wind Limited Partnership
By its Counsel
Borden Ladner Gervais LLP
Per:

Original Signed by James C. Sidlofsky

James C. Sidlofsky

MCLEAN'S MOUNTAIN WIND LIMITED PARTNERSHIP
ATTACHMENT 1 TO ARGUMENT-IN-CHIEF
DELIVERED MAY 17, 2012

SKETCH ILLUSTRATING PROPOSED EASEMENT
PART OF GOAT ISLAND
TOWN OF NORTHEASTERN MANITOULIN & THE ISLANDS
DISTRICT OF MANITOULIN



CAUTION

THIS IS NOT A PLAN OF SURVEY AND SHALL NOT BE USED FOR TRANSACTION OR MORTGAGE PURPOSES

DATE: MARCH 20, 2012

SCALE = 1:2,000

FILE: GOAT-NL/SKETCH 2012 04 20.DWG

© COPYRIGHT KEATLEY SURVEYING LTD.

The reproduction, alteration, or use of this sketch, in whole or in part, without the expressed permission of KEATLEY SURVEYING LTD., is STRICTLY PROHIBITED.

KEATLEY SURVEYING LTD.

ONTARIO LAND SURVEYOR

P.O. BOX 578

LITTLE CURRENT, ONTARIO