EB-2011-0394

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.

MCSEA Argument in Chief, Procedural Order No. 7

May 24, 2012

Dear Ms. Walli,

MCSEA, Wikwemikong Elders Community Members and Youth, Bayniche Conservancy, LSARC, Wind Concerns Ontario, and Manitoulin Nature Club wish to submit the following Argument in Chief pursuant to OEB Procedural Order Number 7, dated May 11, 2012.

The scope of this proceeding is established in the legislation as follows:

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

96. (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work. 1998, c. 15, Sched. B, s. 96.

Applications under s. 92

(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 contrast between the rights of citizens impacted by gas pipeline developments to seek protection from the Ontario Energy Board as compared with the rights of citizens impacted by electricity transmission developments is stark. The restrictions imposed by Section 96 on the scope of the Board's consideration of the public interest do not apply to gas pipeline

developments, which are covered by Section 90.

The scope of this review and the Board's interpretation of this scope has proven to be so narrow that despite intervenors demonstrating serious deficiencies and errors in this Application in submissions, interrogatories, and evidence, the Applicant has failed to effectively address these concerns.

Included below are fundamental flaws we wish to highlight for the Board's attention. In some instances, previous submissions and decisions the Board has made along the way are addressed.

Public participation in this process was impaired. MCSEA's primary concern has been the inadequate notice. When we pointed this out, the Board refused to order the applicant to correct its ambiguous public notice. The notice was published in an area where many landowners are seasonal residents and over the Christmas holiday season and presented with a deadline date for interventions that clearly appeared as if it was nearly expired at the time of publication. The applicant's failure to abide by procedural requirements further impaired public participation. We address the underlying factual and fairness concerns in further detail below.

The applicant's case is at best incomplete, constantly being revised in the midst of approval, and error-riddled. The applicant has stated its expectation that it will be free to continue changing the application after approval. We address the underlying factual and fairness concerns in further detail below.

When presented with clear and compelling proof that the application in front the Board was presented by an illegitimate partnership, the Board brushed aside that evidence on the grounds that if there was a concern, that concern only applied to some other authority. We address the underlying factual and fairness concerns in further detail below.

MCSEA asks has public participation been an exercise in futility?

IMPAIRED PUBLIC PARTICIPATION: INADEQUATE NOTICE

The entry point for public participation in this process is the Notice of Application. From the every beginning, MCSEA submits that the process has not be fair to the public.

In Procedural Order No. 6 dated April 24, 2012 page 3 paragraphs 2 and 3, regarding the Notice of Application, the Board notes,"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."

MCSEA has raised concerns regarding the inadequacy of the Notice previously. Prior to the issuance of Procedural Order #1, MCSEA documented the ambiguous intervention dates contained in the publication of the Notice.

In Procedural Order #1, the Board found that "The publication date is clear on the newspaper, and there should be no confusion regarding the appropriate date." On the basis of this finding and others, the Board decided that the Notice of Application was adequate.

MCSEA wishes to bring further evidence to the Board's attention supporting our view that the

decision in Procedural Order #1 on the adequacy of the Notice was incorrect and that the public notice was not adequate as it was misleading to readers potentially interested in participating in the Board's review of the application.

Contrary to the Board's view that there "should be no confusion regarding the appropriate date", in fact Board Staff was also confused regarding the appropriate date.

Having discovered the Notice dated December 19, 2011 with a 10 day response period and posted on the McLean's web site, MCSEA contacted Board Staff by phone on December 29, 2011 seeking an explanation as to the deadline for interventions. We were instructed that anyone seeking intervenor status was required to file their notice of intervention by 4:45 pm of that date (December 29th). This direction from Board Staff appeared to agree with the information presented in the Notice and MCSEA acted accordingly.

Following that phone discussion, MCSEA wrote to the Board Staff with our notice of intervention including a request for verification that the intervention had been received before the December 29th 4:45pm deadline. The email back from Board Staff is here:

LETTER
-----Original Message-----

From:	BoardSec <BoardSec@ontarioenergyboard.ca>
To:	'"beaudry, raymond"' <wrf@manitoulin.net>
Date:	12/29/2011 03:13 PM
Subject:	RE: OEB Oral Hearing Request EB-2011-0394

Hello Raymond,
I received your email.
John

_____
John Pickernell
Assistant Board Secretary
Ontario Energy Board
416-440-7605
Fax: 416-440-7656
Website: www.ontarioenergyboard.ca
Official Correspondence: BoardSec@ontarioenergyboard.ca
E-filings: https://www.errr.ontarioenergyboard.ca
Address:
P.O. Box 2319
2300 Yonge Street 27th Floor
Toronto, ON
M4P 1E4

_____
END

There was no indication from Board Staff that the deadline was anything other than December 29th. At no time did Board Staff instruct otherwise that all interested interventions were required to apply for intervenor status by 4:45 pm of that day.

MCSEA then attempted to communicate with as many potentially interested individuals and groups as possible within the time we were told was available within the 10 day window. An example of that communication is presented here. Phone calls to others were also placed around this same time.

LETTER
Original Message-----
From: "beaudry, raymond" <wrf@manitoulin.net>
To: "Wind Concerns Ont" <>,"Ontario Wind Resistance" <>, Addresses removed.
Date: Thu, 29 Dec 2011 13:08:47 -0500
Subject: [windconcerns] Comments required by 4;45 pm today, Thursday Dec 29,2011
http://mcleansmountain.northlandpower.ca/site/northland_power___mclean_s_ mountain/assets/pdf/noah_McLeans_Mountain_Wind_20111219.pdf
On the Northland Power website, the application for a transmission line was sent to the OEB. This is under project updates.
Objection to this has to be done today and sent to all addresses on the document.
Please request an oral hearing. They may take later submissions due to the holidays but that is no guarantee.
Should transmission approval be given then the environmental, cultural, economic, visual, health, property rights impacts would be realized.
We are requesting an oral hearings held on Manitoulin to accommodate the residents and FN people.
Thank you in advance.
Raymond Beaudry
MCSEA
END

There was no indication on McLean's website as to the actual deadline for intervenor requests beyond the date of the OEB Notice of Application and Hearing dated December 19, 2011, hence the urgency on MCSEA's part to present a notice of intervention.

Though the Board allowed late interventions, there was no publication that informed the public that their intervention would be considered or accepted after December 29, 2011 except for an obscure Procedural Order issued on January 27th that was not posted in the local newspaper or otherwise communicated directly to the community.

The Board ruled in Procedural Order #1 that the number and variety of interveners demonstrated that the Notice was adequate. MCSEA thinks it is significant that only one intervenor met the deadline of 10 days from the notice of December 19, 2011. It was only through MCSEA's contact with like-minded interveners that their further interventions were filed.

All interventions after the December 29, 2011 believed they were past the application deadline and requested late intervenor status.

MCSEA continues to contest the claim in Mr. Sidlofsky's letter dated January 25, 2012 pg 2 final paragraph which states; "McLean's submits that the deadline in the Boards Notice is clear - it is 10 days from the date of publication or service of the Notice. McLean's argument that the January 11th date of publication is equally clear." There is no indication in the notice whereby the reader would be informed that it could be otherwise. The newspaper date at the top of each page of the Manitoulin Expositor is always posted on each page of each edition.

MCSEA submits, being commonplace and recognized as tradition, readers are aware the date of any edition of the paper is always at the top of each page. However, there was no reference to the Manitoulin Expositor edition date and the date of the notice. Being the January 11th date in the Manitoulin Expositor has lead the readers to believe the 10 day window of intervention has passed for the Dec 19,2011 date. This can be confirmed by the lack of other public input as no other interveners participated in this process other than those like minded interveners we were in contact with when the notice was accessed on the Mclean's website on Dec 29,2011.

A letter on behalf of MCSEA to the Board January 23, 2012 noted that December 29,2011 was a business day (Thursday) and 10 days from the January 11, 2012 date was not a business day (Saturday). These dates were further indicate to the to the general public that December 29, 2011 was the date the intervention window ended. Our letter also noted that the public may also have reviewed this notice as a public record only. As submitted and reference above, the public is not aware or familiar with notice dates, publication dates, date of issuance or how a notice is delivered.

McLean had full opportunity to explain the process and provide clear dates for interventions in their own weekly ad in the Manitoulin Expositor but declined to do so.

McLean's ads reference only the public comment period from January 11, 2012. It appears that McLean also believed the countdown date for full participation began on December 19, 2011. Should the date have been otherwise, there was not full disclosure on McLean's part to inform the reader that the 10 day intervener window began on January 11, 2012 .

The Notice of Application has 3 methods of invitation to participation.
1.Interveners - 10 day window
2.Observers - 10 day window
3.Letters of Comment - 30 day window

In the McLean ad in the Manitoulin Expositor of January 11,2012 there was no reference to items 1 and 2 which leads us to believe that McLean understood also that the publication date of notice was December 19, 2011. Only the public comment period was mentioned in this ad. MCSEA submits that McLean led the readers to believe as we the public did also that the public comment period was the only window of public input available.

The Notice also failed to disclose the true scope of this project. In Board Staff interrogatory number 2 we learned that although currently McLean is contracted for 60 MW, it has applied for an additional 40 MW of FIT contracts which would also use the proposed facilities. The

Application is not a true reflection of the total planned connection .The application should have been for the approved FIT contracts and the remaining FIT contracts applied for. This impacts the SIA and CIA studies and required equipment. Full disclosure was not supplied to the Board and only through this interrogatory was this information discovered.

Another flaw in the Notice of Application was identified by Andrew Skalski of HONI in a letter dated January 17, 2011 identifying an incorrect ownership of the connection switchyard.

IMPAIRED PUBLIC PARTICIPATION: FAILURE TO COMPLY WITH LETTER OF DIRECTION

The procedural requirements of the Board with respect to the service of documents is a particular significance for rural communities where transportation is sometimes difficult and costly, where many citizens have only limited dial-up Internet service or no service at all, and where some of the intervenors are First Nations elders.

In the OEB's Letter Of Direction, dated December 19, 2011 to Gordon Potts of Mclean, the applicant was directed among other items "To immediately serve a copy of each of the Notice and the Application, either personally, by courier, or by registered mail upon all directly affected property owners and encumbrances with lands or interest in lands identified by the search of title referred to above."

Mclean did not fulfill this Board direction as identified by CP Rail dated February 6, 2012. In his letter of February 9, 2012, McLean confirmed that CP was the affected landowner that was the subject of the McLean's letter to the Board dated February 9, 2012, in which McLean's advised that it had inadvertently omitted an affected owner from its circulation of Notice of the proceeding.

The OEB's Letter Of Direction, dated December 19, 2011 also required the applicant "To immediately provide a copy of McLean's Application and pre-filed evidence, and any additional materials as they are developed, to any person upon request." Throughout the process, MCSEA and allied intervenors had difficulty obtaining the applicant's materials. Some materials were never made available in printed form such as the missing 115 KV Transmission Overhead Line plan and Profile Drawings (Sheet 3, or drawing No. 1106-P002-S03), and Mr. Sidlofsky's submissions dated May 17, 2012,

MCSEA submits additional requests for the materials were required where Mclean did not follow this direction as per MCSEA letter February 21, 2012 page 2. Reference Mr. Sidlofsky's letter of February 17,2012 suggests that they do not intend to send their material to all the concerned individuals identified on our list. The Sidlofsky letter only references placing the material on the McLean's website.

APPLICATION ERRORS AND FAILURES TO DISCLOSE

The Board cannot have confidence in the accuracy or completeness of the record.

Here are examples of errors in the application and the applicant's failure to disclose material information relevant to the Board's review. These deficiencies demonstrate carelessness on behalf of the applicant. Approving the haphazard application as it now stands would amount to a blank cheque allowing McLeans to make material changes in its plans without public input.

Of particular concern in this process is the self determination by McLean on which questions are beyond the scope of this hearing. The number of these responses is alarming as the public record shows.

The applicant has never explained its error in the Notice of Application with respect to the ownership of the connection and switching station facilities on Goat Island.

The line routing on Goat Island was not correct in the original application and has since been changed materially.

The routing in the application is not consistent with the REA as submitted. Board Staff in interrogatory number 4 sought details on this. McLean's response: "There are slight differences between the routing of the line as reflected in the REA and in the current Application." MCSEA suggests that the routing on Harborview Road, the submarine section, and on Goat Island is significantly changed. The new routing and its potential impacts on landowners and water users has not been properly reviewed.

Board Staff Interrogatory #6 asked for an explanation of what are noise receptors and their significance. Mclean did not provide a full response. Here is how the Ontario government defines receptors as referenced from the following two sources a; and b and the significance ;

a; Ministry Of Environment Environmental Registry
EBR Registry Number: 011-0181
Definition of noise receptor
Ontario Regulation 359/09 described a noise receptor as a location for "overnight accommodation". This amendment changes the definition of noise receptors from "overnight accommodation" to "dwelling" to better match the originally intended interpretation of a noise receptor – locations where there is a residence with cooking, eating, living, sleeping and sanitary facilities. In response to comments received in the EBR consultation, the definition of "dwelling" was further modified by replacing the words "intended to be used" with "capable of being used". The Ministry is also clarifying that a dwelling can be either a permanent or seasonal residence. This definition of dwelling is based on the definition in the Building Code and is premised upon the existence of the infrastructure needed to support someone living in a dwelling.
"dwelling" means one or more habitable rooms used or capable of being used as a permanent or seasonal residence by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;

b**; ONTARIO REGULATION 521/10**
made under the
ENVIRONMENTAL PROTECTION ACT
Amending O. Reg. 359/09
(Renewable Energy Approvals under Part V.0.1 of the Act)
Copy of Amendments to Ontario Regulation 359/09
http://www.ene.gov.on.ca/envision/env_reg/er/documents/2010/011-0181%20Final.pdf
(3) Subsection 1 (4) of the Regulation is revoked and the following substituted:
(4) Subject to subsection (6), for the purposes of the definition of "noise receptor" in

subsection (1), the following locations are noise receptors:
1. The centre of a building or structure that contains one or more dwellings.
2. The centre of a building used for an institutional purpose, including an educational facility, a day nursery, a health care facility, a community centre or a place of worship.
3. If the construction of a building or structure mentioned in paragraph 1 or 2 has not commenced but an approval under section 41 of the *Planning Act* or a building permit under section 8 of the *Building Code Act, 1992* has been issued in respect of a building or structure mentioned in paragraph 1 or 2, the centre of the proposed building.
4. A location on a vacant lot, other than an inaccessible vacant lot, that has been zoned to permit a building mentioned in paragraph 1 or 2 and in respect of which no approval or building permit mentioned in paragraph 3 has been issued and at which a building would reasonably be expected to be located, having regard to the existing zoning by-law and the typical building pattern in the area.
5. A portion of property that is used as a campsite or campground at which overnight accommodation is provided by or on behalf of a public agency or as part of a commercial operation.
END

These definitions are directly relevant to the Board's review because they indicate further deficiencies in the application.

In Supplementary Interrogatory #32.4, MCSEA requested that the applicant identify all vacant lot receptor locations as per attachment one and include the 550m noise receptor setback. Attachment one is located in Responses to Board Staff Interrogatories. Mclean did not fulfill this request. Of note, on the map in attachment one McLean has identified their known permanent dwelling receptors and 550m noise receptor setbacks but will not provide the vacant lot receptors as in the above regulation vacant lot description. There are other known receptors within the project area that are not identified.This is a major gap in that without this information, that Board cannot ensure proper setbacks to the facilities in this application. The enjoyment of private property could be seriously affected by this information gap. Full disclosure is required.

Another inconsistent element of the evidence relates to ballasting of the submarine cable. In response to Board Staff interrogatory #8 McLean indicated that the submarine cable will be anchored by a ballast system. This response was later identified as incorrect by Mclean. In an April 19, 2012 response to MCSEA questions of clarification Question 46.1, the applicant states; "The Applicant's original response to Board Staff Interrogatory No. 8 was incorrect. No ballasting system is required."

Evidence was supplied to contest the McLean response to MCSEA interrogatory # 11. " The applicant rejects the suggestion that the UCCMM Chiefs signed without the approval of its councils and members. Reference MCSEA Supplementary Interrogatory #11 with evidence to contest the McLean statement. McLean then states it is beyond the scope of the hearing. MCSEA submits incorrect info was supplied by McLean in the initial interrogatories. McLeans then quotes scope of the hearing to avoid responding to evidence.

As identified in response MCSEA question of clarification #18, the pole heights submitted in the

Application are not finalized and subject to change. Also the type of material used for the poles is subject to change.This is yet another example of incomplete information before the board.

Referring to MCSEA question of clarification #22, detailed mapping showing all First Nation land ownership was not supplied as well as further details to mapping as requested. This Application is not complete.

Reference MCSEA Supplementary Interrogatory #32.3. Inconsistencies in line routing will only be dealt with after an Approval is given. MCSEA submits a final design is required before the Board in an Application for full disclosure and an informed decision by the Board. MCSEA also submits the public has a right to know.

Reference MCSEA Supplementary Interrogatory #36.1. McLean verifies incorrect information before the Board in the number of existing HONI 44 kv line crossings by the proposed route. Other 44kv crossings were not identified in the Application.

Reference MCSEA interrogatory #43. Mclean Response. MCSEA argues Exhibit E,Tab 1, Schedule 4 does not describe the route and design of the submarine cable which originates at the transition station and terminates at the switching station on Goat Island. Poles 72 and 73 are well away from the road allowance as well as the transition station. MCSEA argues the route in this location has changed. There is also no manhole identified in the attachment as in Mclean's response. Incorrect submarine cable transition station identification in Application before the Board.MCSEA believes the route has been materially changed .

Reference MCSEA Supplementary Interrogatory #45. McLean did not provide the correct distances of the transition station from Harbour View Road or the road allowance.

Reference MCSEA Supplementary Interrogatory #57.1. McLean refuses to supply a detailed map in this question to support the Application.

Reference MCSEA interrogatory #70. MCSEA 's request for a complete survey of the ROW route should be provided in this Application before the Board. MCSEA suggests the Board demand that a complete survey is a requirement prior to approval.

The following points arise from Tab 4 Of Responses to Interrogatories From March 5, 2012 MCSEA letter:

Reference MCSEA Supplementary Interrogatory #3. Pt Lot 10 Conc 7 Lands required were incorrectly identified by McLean before the Board and public.

Reference MCSEA Supplementary Interrogatory #8. McLean confirms an error of inclusion of land identified as Pt Lot 10 Con 7.

Reference MCSEA Supplementary Interrogatory #13. MCSEA argues that the final transmission line routing design and location must be included in this Application to identify tree removal ,"trimming" along fencerow buffer areas along road allowance. McLean submits that

trees on the right of way that need to be removed will be identified during construction. This is not best practices and in the public interest for full disclosure. The Applicant does not have a plan and seems to be awaiting Board Approval for this Application then make any changes as in their interest and not the public. A new Application is required with full disclosure to all stakeholders who will be impacted by final design.

LINE ROUTE

A particular concern of MCSEA is the inaccurate and incomplete description of the route of the proposed transmission facilities. MCSEA asked about this subject in Supplementary Interrogatory #14.2 McLean's response was that pole 72 is 7.5 m from the road allowance and pole 73 is approximately 11m from the road allowance. MCSEA believes the route has been materially changed.

The overhead line plan and profile drawings sheet 8 evidence does not agree with the response in #14.2. Using the scale on the map, we estimate that the map depicts pole 72 as approximately 43 m from the road allowance and pole 73 approximately 85 m from the road allowance. This places the transition station approximately 100 m from the road allowance, potentially changing the land requirements relative to those filed. MCSEA believes that the original route in the Application was directly the shortest path towards the shoreline for the submarine cable entry point from the transition station and not along the road allowance. MCSEA argues this route has been modified by the Applicant after the Application was submitted. Mapping routes supplied seem to support this conclusion. Further surveying was also done in this location after the Application was submitted at approximately the same time as the submarine cable re routing plan on Goat Island of March 20,2012 in attachment one of James C. Sidlofsky letter of May 17,2012.

MCSEA submits the above raises many issues as to the accuracy of the information provided to the Board and public in this Application that warrants a complete new Application be filed in relation to this request.

MCSEA is of the belief that this Application before the Board is deficient.

McLEAN'S MOUNTAIN WIND LP AND MNIDOO MNISING POWER LP

In response to procedural Order No. 6, on May 04, 2012 MCSEA presented evidence demonstrating that the partnership arrangement between NPI and MMP is fundamentally flawed. The evidence clearly shows that during the signing of agreements between the two parties, one of signatories claimed to be a Chief but was not a Chief. This individual impersonating a public official, Franklin Paibomsai, appeared to be making commitments on behalf of his community. MCSEA's evidence also documented a lack of support for the project by Aundeck Omni Kaning (AOK) First Nation, a member partner of MMP.

The Board dismissed this evidence for two reasons:

First, one of the main purposes of a leave to construct application is to determine

> whether the proponent is capable of building and operating the facilities in a manner that will ensure reliable service. The evidence in this case is that Northland Power will fulfil that role. Therefore, matters concerning the other partner are of limited relevance in this proceeding in any event. The Board finds there would be limited probative value from enquiry into these matters. In short, the issue appears to have little if any relevance to the Board's statutory mandate in a leave to construct application.
>
> Second, the allegations made by MCSEA are potentially relevant to the contractual arrangements between McLean's and the Ontario Power Authority for the wind farm project. If the wind farm project does not proceed, either because of questions regarding the legitimacy of the contractual relationships governing the partnership or for any other reason, then the transmission line would not be built. Therefore, the bona fides of MMP and its authority to enter into the partnership need not be determined in this proceeding.

The first of the Board's reasons for dismissal ignores the fact that far from a minority partner or a passive investor, MMP is claiming 50% ownership of the project. MCSEA asserts that the status of MMP is a central issue in this application. The real interests that McLean's Mountain Wind LP represents are NPI and MMP.

The Board's second claim is that if there is a concern over legitimacy of the partnership, that concerns is only relevant to the OPA. MCSEA suggests that the Board cannot grant a leave to construct when there are fundamental but unanswered questions about the legitimacy of the applicant before the Board. The current proceeding is the last opportunity for the public to have the opportunity to make input into an official review process with decision making authority over this project. The Board's suggestion that we should address this issue through the OPA eliminates the public altogether as OPA's processes provide for no public hearings to address contract arrangements between McLean's and the OPA. The Board is directing MCSEA to a path of no recourse.

For the Board to suggest, as it does in PO #7, that the wind farm and the associated transmission facilities might not proceed because of some possible review by some other agency, is simply avoiding the Board's responsibilities.

When Franklin Paibomsai signed the agreements with Northland Power on February 10, 2011, he was in the midst of an election and well aware he was not Chief at the time. The Board's failure to investigate this issues by dismissing MCSEA's evidence leaves many questions unanswered about the application. What was Franklin Paibomsai signing and in what capacity? Did Franklin Paibomsai and Chiefs sign as representatives of their Communities as member partners or were they signatures of individuals with their own addresses? Should the latter be correct, the signatories were not representing their communities as promoted by NPI in this Application.

The Board has failed to test whether this applications has been brought forward by a legitimate applicant. Only, bona fide applicants ought to be granted permission to construct major electrical infrastructure on public land.

The Board should be mindful that there are a lot of unanswered questions in the community about what has taken place. As an example of this wider community concern, MCSEA submits the following Manitoulin Expositor letter to the Editor, May 16,2012 from a First Nation community member in regards to the questionable partnership arrangement.

UCCMM membership kept in the dark on wind farm deal, writer says

To the Expositor:
On February 21 and 23, 2012 respectively, I had sent the UCCMM Chief Administrative Officer (CAO), Hazel Recollet, and the UCCMM Board Chair, Mnidoo Mnising Power Corporation (MMPC) President and Whitefish River First Nation Chief Franklin Paibomsai, an email questioning them on the creation of the Mnidoo Mnising Power Corporation (MMP) and their 50/50 partnership agreement with Northland Power Incorporated (NPI). As some may know, both groups are partners in a project that plans to sell wind power energy to the Ontario Power Authority (OPA) through what is called a 20-year Feed-In Tariff (FIT) program. The issue is whether or not the UCCMM membership was adequately consulted on such a partnership. In light of this partnership agreement, I had posed the following questions to the UCCMM leadership.
To the UCCMM CAO, the questions were as follows: Does the UCCMM have a strategy in regards to the concept of re-dress? Where can UCCMM grassroots go when they have concerns/grievances against their leadership within their own respective First Nation communities? Is there a group/committee working on a re-dress strategy? What happens when grassroots have concerns with UCCMM? Where can grassroots go to effectively deal with any UCCMM issues? When can the UCCMM grassroots expect a UCCMM Annual General Meeting (AGM)? To date, I have received no response from the UCCMM CAO Hazel Recollet.
On February 23, 2012, I had sent other questions to Franklin Paibomsai, UCCM tribal chair, President of the Mnidoo Mnising Power Corporation (MMP), and Whitefish River First Nation chief. My questions were as follows: According to Julian Nowgabo's letter to the editor in the February 15, 2012 edition of The Manitoulin Expositor ('Stars 'miraculously align' for Birch Island chief, page 5), Mr. Nowgabo points out the fact that the tenure of the Whitefish River First Nation chief and Council ended on January 7, 2011 and that elections would resume on February 12, 2011. In between this time period, Mr. Paibomsai was apparently no longer a public official/chief. Yet on February 10, 2011, two days before the Whitefish River First Nation election, Mnidoo Mnising Power Corporation (MMP) and Northland Power (NPI) announced a 50/50 partnership agreement. The question is, among others: Can a non-chief sign official legal documents on behalf of UCCM or MMP? I had further questioned Mr. Paibomsai on the following: When a UCCM chief is not re-elected in their respective First Nation community, does that former chief remain on as a Director for the Mnidoo Mnising Power Corporation (MMP)?
I further queried Mr. Paibomsai on the matter of consultation. According to the Northland Power, McLeans Mountain Wind Farm Consultation Report, Mr. Paibomsai, as UCCMM tribal chair, indicated some reservations about entering into such an Agreement as recorded at a Public Information Center (PIC) meeting on March 22, 2010. The following is a quote from Mr. Paibomsai at that meeting: "A legal requirement of the Ontario government, as proclaimed by the Supreme Court of Canada, consultation has been ignored and continues to be ignored" and that "as long as the government of Ontario continues to ignore the First Nations, the chiefs will remain opposed to the project".
I would like to point out that the very thing that Mr. Paibomsai accuses the Province of Ontario of committing is the very same thing, or so it appears, that is being done to UCCMM grassroots people, albeit by the UCCMM itself. This is an irony that must be resolved at the UCCMM Board level. However, if UCCMM was initially opposed the project, what caused UCCMM to change its position with respect to the wind farm project? Was the grassroots consulted as to whether or not they wanted our leaders to enter into such an agreement between MMP and NPI? Was the UCCM grassroots

informed as to the human and environmental impacts of the wind farm project. Again, to date, I did not get a response from Mr. Paibomsai.

Ironically, I did receive a partial but indirect response in the form of the UCCMM Newsletter – Winter Issue 2012 – where the Mnidoo Mnising Power Corporation (MMP) was mentioned along with costs and those involved in terms of the agreement. I must assume that UCCMM, to some degree, was forced to print such information in their newsletter as a result of the flurry of questions and media articles directed towards the leadership of UCCM. However, I would like to say that this 'after-the-fact' rendition of the MMP/NPI deal comes too little, too late as such information should have been dealt with and communicated to the grassroots long before the 50/50 partnership announcement on February 10, 2011. Perhaps then, UCCMM could have avoided being questioned to the extent they are today. Further, in terms of the UCCMM newsletter, and as a grassroots UCCMM community member, I did not know the MMP/NPI deal was in excess of $170 million in terms of project costs. Also, according to the UCCMM newsletter, I did not know that each participating UCCMM First Nation would receive $10 million over the life of the project. I question whether or not off-reserve members would benefit as well! I also question how much NPI will profit over the life of the project. In spite of the information contained in the UCCMM newsletter, and in spite of my query to UCCMM, a vast majority of my questions to the UCCMM have gone unanswered.

As of today, and according to the moccasin telegraph, UCCMM appears to be in disarray, perhaps as a result of the flurry of questions sent to them by UCCMM members, including the media coverage regarding the 50/50 partnership between NPI and MMP. If UCCMM is not in disarray, and this is not the case, then I invite the UCCMM leadership to enlighten the UCCMM grassroots membership otherwise.

As a result of the disarray, it is alleged that Mr. Frankilin Paibomsai has since resigned from his post as the UCCMM tribal chair, perhaps because of the public and media pressure mentioned above. Instead of deciding to do the right thing and publicly addressing the issues, the only decision he makes is one where he decides to resign—a seemingly easy way out of all the questions and media attention. This does not make the problem go away. If anything, it may only exacerbate the problem. Certainly such a move can be viewed as a reflection of his leadership style. I would like to say that regardless of his alleged resignation, Mr. Paibomsai continues to be responsible and accountable for the issues that had occurred under his tenure as UCCM tribal chair and president of the Mnidoo Mnising Power Corporation (MMP). One question remains, did Mr. Paibomsai also resign as president of the Mnidoo Mnising Power Corporation (MMP)? Keeping the UCCM grassroots in the dark about such issues will only create more questions and dissention. I urge the UCCMM leadership to do the right thing!

Still, further questions remain; Are there any UCCMM First Nations who are opposed to the wind farm project, and how does this affect the overall agreement between MMP and NPI? How does Mr. Paibomsai's signing of the agreement as a citizen and not as a chief affect the overall Agreement? If Mr. Paibomsai was unauthorized to sign the MMP/NPI Agreement, did the UCCMM CAO, Hazel Recollet, and other UCCMM Board of Directors have a responsibility to advise and/or caution the tribal chair, Franklin Paibomsai, against signing? These are just a few questions that have also gone unanswered. Other questions come to mind: to what degree do these issues impact the UCCMM leadership overall? Is the UCCMM grassroots being deliberately kept in the dark about the 50/50 partnership? Do UCCMM chiefs have a responsibility to effectively deal with these matters?

I had mentioned, in an earlier Expositor submission, that Mr. Paibomsai has a great responsibility here as tribal chair in addition to his position as president of Mnidoo Mnising Power Corporation. It is time for that responsibility to be fulfilled. The fact that

> community members are questioning the UCCMM leadership is, indeed, a reflection on the need for transparency, accountability, good government, and re-dress among UCCMM communities.
> Finally, I would like to remind the UCCMM, as they may seem to have forgotten, that they are ultimately accountable to the people whom they serve—the UCCMM grassroots.
> Patrick Corbiere
> Birch Island

These concerns are widespread in the community. MCSEA submits the following correspondence from one of the intervenors in this Application from whom MCSEA is representing.

> Original Message-----
> From: Rosemary Wakegijig <neoskwes@hotmail.com>
> To: Raymond Beaudry <wrf@manitoulin.net>
> Date: Thu, 19 Apr 2012 08:33:33 -0400
> Subject: RE: EB-2011-0394 - McLean's Mountain Wind LP Application for Leave to Construct
>
> As a Wikwemikong Anishnabe, all I am asking them is to be honest and no more forked tongues and snake oil as our history indicates. I am unable to write to them directly. So if you could pass this word on, it would be appreciated.
> END

The evidence that the Board has dismissed demonstrates that the AOK First Nation is opposed to the project. Yet, the applicant is claiming that AOK is a member partner of MMP. This inconsistency has not been resolved or clarified in this proceeding.

The Board's own filing requirements require applicants to reveal the nature of their business, yet in this case MMP has not complied.

Exhibit B Tab 2 Schedule 1 contains the Board's filing requirements. MMP failed to provide the required information and all efforts by MCSEA to solicit the missing information through the discovery process of this proceeding have failed. The record of the hearing does not include even the most basic information on what MMP is such as MMP's officers, directors or shareholders, or the nature of MMPs business. The Applicant has not met the filing requirements. The Board cannot approve an application that fails to provide this basic information.

CONCLUSIONS

MCSEA sees the deficiencies outlined here as serious flaws in the application. MCSEA argues that the Application be required to be resubmitted and all requirements of the OEB Letter of Direction be complied with and verified.

If the Board is to approve this proposal, we make the following recommendations.

The scope of any approvals granted should be limited to the specific evidence presented in this case. The Board must explain in detail what constitutes an acceptable deviation from the filed

evidence. We also have concerns over the Board's statement in Procedural Order No 6 pg 4 full paragraph 2. "Detailed routing modifications may arise due to environmental considerations - which are beyond the jurisdiction of the Board - or through 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 submits that approval should not be given unless a final design is submitted. With a year 2004 project including transmission, there should be little need to modify the route due to environmental reasons that would exempt the Board. Any modifications made after Application approval would in our opinion be an incomplete application on line routing submitted in the initial Application by the Applicant.

McLean has stated on the record of this proceeding that it will not expropriate property for this project. If the Board is to approve this application, a condition of the Board's approval should be that McLean live up to this commitment. Any approval of the Board should include a prohibition of expropriation.

The transformer station location proposed is located on solid rock as well as many of the other proposed facilities. In these circumstances, ground resistance can be an issue. The Board should require that the grounding of the transformer station and all other facilities be adequate and not impair the grounding the the HONI system. Terminal ground points or other technical solutions may be required.

The application presented by McLean is incomplete and flawed, thrown together apparently to meet their deadline requirements. However, those deadline requirements are not clearly stated in the evidence. The applicant claimed in Exhibit F that delay would make make this project uneconomic but provided no supporting information. The apparent purpose was simply to apply pressure on the Board for an expedited approval.

Irrespective of the outcome of this proceeding, the Board should change its processes with respect to future notices so that the publication of a notice clearly states the dates by which interventions, observer status, and letters of comment must be filed. Relying on ambiguous formulas to derive the dates is not conducive to public participation.

Respectfully Submitted
Raymond Beaudry
MCSEA