

Wikwemikong Unceded Indian Reserve No. 26

19 A Complex Drive, P.O. Box 112
Wikwemikong, Ontario P0P 2J0

February 28, 2013

Via **REGISTERED MAIL**

The Board:

Ontario Energy Board *4/3/13*
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

EB-2013-0015

File No.	SECRETARY
Panel	SUB file: <i>5</i>
Licensing	<i>4D</i>
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ONTARIO ENERGY BOARD
OFFICE OF THE BOARD SECRETARY

Attention: Board Secretary

**Re: File No. EB-2013-0015 - McLean's Mountain Wind Limited Partnership
Application for a Feed-in-Tariff Program Electricity Generation Licence**

In reference to the above noted application for approval of a Feed-in-Tariff Program electricity generation licence, the Wikwemikong Unceded Indian Reserve is requesting that an oral hearing be held in order to allow representatives of this First Nation to share its views on how this proposed generation project and application for a Feed-in-Tariff Program Electricity Generation License might potentially interfere or infringe on the exercise of our aboriginal or treaty rights.

To date, the Ontario Energy Board has not consulted with the Wikwemikong Unceded Indian Reserve on the application for a Feed-in-Tariff Program electricity generation licence from McLean's Mountain Wind Limited Partnership. Our First Nation will require time to fully consider the scope and nature of this project and the impact it may have on our aboriginal and treaty rights.

As you are aware, the common law duty to consult is based on judicial interpretation of the obligations of the Crown in the context of existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, recognized and affirmed in section 35 of the Constitution Act, 1982. In the Haida and Taku River decisions, the Supreme Court of Canada held that the Crown has a legal duty to consult that might adversely impact section 35 rights. This duty has been applied to an array of Crown actions and in relation to a variety of potential or established Aboriginal treaty rights.

The Wikwemikong Unceded Indian Reserve takes the position that an oral hearing is necessary for the following reasons:

An oral hearing is imperative in order to provide an opportunity for community elders to share their historical understanding of the aboriginal perspective of the purpose and intent of the Bond

Head Treaty of 1836 and the rights and responsibilities attached to the Treaty. In order for our elders to express their historical understanding of the aboriginal perspective regarding the purpose and intent of the Bond Head Treaty of 1836 and how the project may potentially interfere with the exercise of the guarantees set out in that treaty, they must communicate orally and in the Anishinaabe language. In order to meaningfully consider the viewpoints of our elders, we would ask that a translator be provided so that representatives of the Ontario Energy Board can understand what is being shared.

Our understanding of the developing legal duty of consultation framework, is that where projects, such as this have the potential to interfere with the exercise of aboriginal or treaty rights, then the provincial Crown should consult with any First Nation whose rights may be impacted by the activities authorized by any licenses or permits, approvals, etc. The Wikwemikong Unceded Indian Reserve has set out the scope and nature of the breach of its aboriginal and treaty rights, including a claim to all islands in and around Manitoulin Island and for breach of the Crown's lawful obligations with respect to Wikwemikong's inherent, aboriginal and treaty rights in an action filed against Canada and Ontario in the Ontario Superior Court of Justice in 1997. This action is currently being held in abeyance while Canada and Ontario are engaged in negotiations with the Wikwemikong Unceded Indian Reserve to settle some aspects of that action.

We could find no evidence of being provided with information about the project being considered and would like to know the full scope of it and, in particular, on the question of how the activities might impact on the exercise of our rights and to canvass the question of how any interferences might be mitigated or accommodated, if mitigation measures are not possible.

In closing, we are asking for an oral hearing for the reasons set out above and look forward to working with the appropriate officials to arrange for an oral hearing and any other measures required to address our concerns.

Sincerely,

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per: Duke Peltier

C.C. Sushil Samant, McLean's Mountain Wind Limited

R. Martin Bayer, Weaver Simmons LLP