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

Introduction:

We are counsel to McLean's Mountain Wind Limited Partnership ("McLean"), the Applicant in the above captioned matter.

The Applicant's general partner is McLean's Mountain Wind GP Inc. ("McLean's GP"), which is equally owned by Northland Power Inc. ("NPI") and Mnidoo Mnising Power Limited Partnership ("MMP"). NPI and MMP are also the limited partners of the Applicant. MMP's general partner is Mnidoo Mnising Power General Partner Inc. MMP has six First Nations as limited partners: Aundeck Omni Kaning First Nation; M'chigeeng First Nation; Sheguiandah First Nation; Sheshegwaning First Nation; Whitefish River First Nation; and Zhiibaahaasing First Nation. MMP was formed to lead renewable energy projects on Manitoulin Island in order to protect First Nations' rights and heritage and to ensure the future for First Nations' youth.

This Application relates to the 60 MW McLean's Mountain Wind Farm (referred to here as the "Generation Facility") to be located south of Little Current on Manitoulin Island. On April 12, 2010 the Applicant received two contracts from the Ontario Power Authority (the "OPA") for the purchase of electricity generated by the Wind Farm. The contracts, with contract capacities of 50 MW and 10 MW, were awarded through the Ontario Feed-in-Tariff ("FIT") program (enabled by the *Green Energy and Green Economy Act, 2009*).

The Generation Facility and related infrastructure have been approved through the Renewable Energy Approval ("REA") process, and the Board has granted McLean leave to construct the transmission facilities that will connect the Generation Facility to the IESO-controlled grid (Board File No. EB-2011-0394). The granting of the Licence that is requested in this Application will enable McLean to generate electricity from the Generation Facility in accordance with the *Ontario Energy Board Act, 1998* (the "OEB Act").

The Generation Facility was the subject of significant public and Aboriginal consultation since 2004. There were also numerous meetings with aboriginal communities including the Wikwemikong Unceded Indian Reserve No. 26 (referred to here as "Wikwemikong") throughout the same period of time as the public consultation was undertaken.

The Board's Notice of Application and Written Hearing (the "Notice") in the current proceeding indicated that "The Board intends to proceed with this matter by way of a written hearing unless a party satisfies the Board that there is a good reason for not holding a written hearing." Persons objecting to a written hearing were to provide written reasons why an oral hearing is necessary. Those submissions were due to the Board and McLean by February 28, 2013.

As noted in our correspondence of March 6, 2013, McLean is in receipt of a request for an oral hearing from Wikwemikong dated February 28th. On March 5, 2013, McLean received correspondence from Raymond Beaudry of MCSEA, the Manitoulin Coalition for Safe Energy Alternatives. MCSEA was previously a party to the McLean Leave to Construct proceeding and the REA proceeding. MCSEA had initially appealed the REA approval, but withdrew its appeal. Mr. Beaudry's correspondence appears to be a letter of comment on the application, but Mr. Beaudry also writes that "We also wish to have the board recognize the request for an oral hearing by the Wikwemikong Unceded First Nation in EB-2013-0015."

McLean respectfully submits that an oral hearing is not warranted in this matter, for the reasons discussed below. McLean requests that the Board proceed with this Application on the basis of a written hearing, consistent with its Notice.

No good reason exists to proceed with this matter by way of an oral hearing.

To begin, as noted above, the Generation Facility and related infrastructure were the subject of a lengthy Aboriginal and public consultation process in the context of the REA and prior to the advent of the REA process in 2009. The REA process allowed for the consideration of a wide range of matters related to the Generation Facility, including environmental matters, and approval was granted. As noted above, the approval was appealed by MCSEA, but MCSEA withdrew its appeal.

The transmission facilities connecting the Generation Facility to the IESO-controlled grid were the subject of an application for leave to construct under Section 92 of the OEB Act, and that application was in turn the subject of a lengthy written proceeding. The Board granted leave to construct by its Decision and Order dated June 28, 2012, subject to the conditions contained therein. Among the intervenors were MCSEA and the Wikwemikong Unceded First Nation Elders and Youth (referred to in the list of parties in that proceeding as the Wikwemikong Unceded Indian Reserve, at the address shown in Wikwemikong's correspondence in the current proceeding). Requests for an oral hearing were considered and denied by the Board in the leave to construct proceeding. In denying the oral hearing request in Procedural Order No.1, issued on January 27, 2012, the Board wrote:

> **Request for an Oral hearing on Manitoulin Island**
>
> Wikwemikong, MCSEA, WCO, and BayNiche Conservancy and numerous letters of comment have requested that the Board hold an oral hearing, and that the hearing be held on Manitoulin Island. At this point in the proceeding, it is not clear to the Board that many of the issues identified in the letters of intervention and letters of comment actually fall within the scope of this proceeding. The Board is therefore

not prepared at this point to establish a process for an oral hearing. However, the Board may reconsider this issue after the interrogatory phase of the proceeding is completed.

In Procedural Order No. 1, the Board also discussed the scope of a section 92 leave to construct application, as follows:

> "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."

The Board considered a further request from MCSEA for an oral hearing on McLean's evidence later in the process, and that request was again denied. In Procedural Order No. 6, issued on April 24, 2012, the Board made the following findings (at pp. 2-3):

> "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."

McLean submits that the reasons for denying the oral hearing request in the current case are similar. The matters being raised by Wikwemikong are beyond the scope of this proceeding, and there is no need to conduct an oral hearing to acquire additional factual evidence in order for the Board to reach a decision, or as a means of allowing parties to cross-examine on the written evidence.

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[1] Yellow Falls Power Limited Partnership, *Decision on Questions of Jurisdiction and Procedural Order 4*, EB-2009-[0120], November 18, 2009. See also, Northgate Minerals, *Procedural Order 2*, EB-2010-0150, July 29, 2010."

The scope of a Generator Licence Application

The Wikwemikong letter of February 28, 2013 states that Wikwemikong seeks an oral hearing "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 Electricity Generation License might potentially interfere or infringe on the exercise of our aboriginal or treaty rights." Later in the letter, after discussing concerns related to consultation, Wikwemikong states:

> "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."

McLean has a number of concerns with this request. As discussed above, the Generation Facility was the subject of a public REA process with numerous opportunities for Aboriginal and public consultation. McLean met with Wikwemikong as early as June 2006 to discuss the Generation Facility and on numerous other occasions to discuss the details of the then proposed project. The details of the consultation are not being included with this letter as McLean submits that this information is not required for the Board to make a determination of this matter. However, the details of the extensive consultation with Wikwemikong are available in the Consultation Report that was filed as part of the REA process and is available online in its entirety.

McLean submits that the detail of the consultation is not required as the Board' decision can be made on more fundamental grounds. The Board's role in a licence application is not to approve the Generation Facility. Rather, in its January 17, 2013 Decision and Order in an Application by RE Orillia 3 ULC for an electricity generation Licence as a FIT Program participant, (EB-2012-0358), the Board (by delegation to a Board Staff member) made the following finding:

> "The Board finds that the concerns raised by OFP are not within the scope of the matters considered by the Board when reviewing an application made by an OPA-contracted FIT Program participant for an electricity generation licence. **The Board's main criteria for review in relation to the licensing of electricity generators under the FIT Program are whether the applicant has received a Notice to Proceed from the OPA.**" (McLean's emphasis)

As McLean has stated in the Application, the OPA's Notice to Proceed was received on November 29, 2012.

The Wikwemikong oral hearing request should be denied.

McLean suggests that it is clear from the Decision discussed above that this proceeding is not about the approval of the Generation Facility. Wikwemikong has raised no issue that would justify an oral hearing, and McLean respectfully requests that the oral hearing request be denied.

As noted above, the MCSEA correspondence appears to be a letter of comment and not a submission requesting an oral hearing, although Mr. Beaudry also writes that "We also wish to have the board recognize the request for an oral hearing by the Wikwemikong Unceded First Nation in EB-2013-0015." However, in the event that the Board does intend to consider it an independent request for an oral hearing, McLean submits that MCSEA has also provided no good reason for an oral hearing. As with the Wikwemikong request, MCSEA has raised no issue that would justify an oral hearing. The MCSEA letter includes complaints about the provincial

government's policies with respect to wind power, but those are beyond the scope of this proceeding. Similarly, Mr. Beaudry makes allegations and attempts to raise questions about McLean's compliance with the Board's Decision (and related conditions) in the leave to construct proceeding and with the REA approval, but McLean submits that those matters are beyond the scope of this licence proceeding, and in no way do they justify an oral hearing.

For all of the foregoing reasons, McLean respectfully requests that the Board deny the Wikwemikong oral hearing request and establish a timeline for the completion of this proceeding by way of a written hearing.

Should you have any questions or require further information 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: Sushil Samant, McLean's Mountain Wind Limited Partnership
Gordon Potts, McLean's Mountain Wind Limited Partnership
Duke Peltier, Wikwemikong Unceded Indian Reserve No. 26
Emily Weber
Anna Marie General
Raymond Beaudry, MCSEA
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