



EB-2013-0015

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 electricity
generation licence as a Feed-In Tariff Program participant.

BEFORE: Cynthia Chaplin
Vice-Chair and Presiding Member

Ellen Fry
Member

Emad Elsayed
Member

Decision and Order

June 13, 2013

McLean's Mountain Wind Limited Partnership ("McLean's") filed an application with the Ontario Energy Board (the "Board") dated January 17, 2013 under section 60 of the *Ontario Energy Board Act, 1998* (the "Act") seeking an electricity generation licence as a Feed-In Tariff ("FIT") Program participant.

In the application, McLean's states that in April 2010, the Ontario Power Authority ("OPA") awarded two FIT Program contracts to McLean's, relating to the purchase of electricity generated at its proposed McLean's Mountain Wind Farm in Little Current, Ontario. Further, McLean's has provided the Board with a "Notice to Proceed" for both FIT contracts related to the wind farm which are dated November 23, 2012 and November 26, 2012 and issued by the OPA to McLean's.

On April 26, 2013, the Board issued its Decision on Oral Hearing and Procedural Order No. 1, ("Procedural Order No. 1") in which it decided to proceed with a written hearing rather than an oral hearing.

The Board also determined in Procedural Order No. 1, in the light of the submissions to that point, that it has no jurisdiction in this licence proceeding "with respect to the siting, contracting, construction or impacts of the wind farm" and that Wikwemikong Unceded Indian Reserve ("Wikwemikong") had "identified no issue related to the Crown's duty to consult which is within the Board's jurisdiction in this licence proceeding". However, the Board permitted, and received, further submissions on the duty to consult issue from Wikwemikong, McLean's and Board staff.

Duty to Consult with Aboriginal Groups

McLean's submits that there is no causal connection between the conduct of the Crown in licensing it as an electricity generator and any potential infringement to Aboriginal or treaty rights. It also submits that in fact there has been significant consultation with Aboriginal groups concerning this project.

Wikwemikong takes the position that the duty to consult can be triggered both by decisions with direct impact on Aboriginal or treaty rights and by "higher level" decisions that may not themselves directly impact an Aboriginal or treaty right. Board staff also submits that the courts have adopted a broad approach when considering whether the honour of the Crown has been upheld in this context.

Wikwemikong submits that an electricity generation licence has a broad impact because it is "a main licence granted by a Board that justifi[ies] the construction of all other related electricity related infrastructure".

The Board does not consider that there are any potential direct impacts identified in this proceeding that trigger the duty to consult. The potential direct impacts that have been identified relate to the environmental impact of the wind farm generation facility or the transmission facilities that connect the generator to the electricity grid. As stated in Procedural Order No. 1, the scope of this proceeding does not include a review of the merits or impact of these facilities. These facilities are subject to environmental and other permitting processes that are not conducted by the Board. As noted in Procedural

Order No. 1, the transmission facilities were approved by the Board in a leave to construct proceeding, but that type of Board proceeding is limited by the Act and does not include environmental issues.

The Board also does not consider that this proceeding is a “higher level decision” with a potential indirect impact on Aboriginal or treaty rights that triggers the duty to consult. Wikwemikong is incorrect in describing the electricity generation licence as “a main licence granted by a Board that justif[ies] the construction of all other related electricity related infrastructure”. On the contrary, as explained both in Procedural Order No. 1 and below, the scope of this proceeding is confined to licensing McLean's itself, as an entity. It does not license the wind farm or imply that any other project will be approved by the Board.

In the view of the Board, the Board staff submission provides an accurate outline of the legal basis of the duty to consult and its application to the Board as a regulatory tribunal.

Authority of Mnidoo Mnising Power Limited Partnership (“MMP”)

The Manitoulin Coalition for Safe Energy Alternatives (“MCSEA”) and Anna Marie General submit that MMP's participation in the wind farm project has not been duly authorized by its constituents¹. The Board does not consider that this issue is a matter within the scope of this proceeding. Rather, it is an issue of internal governance for MMP, to be addressed between MMP and its constituents.

Board's Decision on the Application

This is an application by McLean's for an electricity generation licence. As stated in Procedural Order No. 1,

The scope of a generation licence application process has been articulated by the Board in its decision in EB-2009-0242 (York Energy Centre LP). In that decision, the Board stated:

¹ McLean's states that MMP is a limited partner of McLean's and also a 50% owner of the general partner of McLean's

In the exercise of its licensing function, the Board's practice is to review a licence application based on the Applicant's ability to own and/or operate a generation facility and to participate reliably in Ontario's energy market.

The Board uses three main criteria to assess an electricity generator licence applicant:

- The applicant's ability to be a financially viable entity with respect to owning and operating a generation facility in Ontario's energy market;
- The applicant's technical capability to reliably and safely operate a generator; and
- The applicant and its key individuals' past business history and conduct such that they afford reasonable grounds for belief that the applicant will carry on business in accordance with the law, integrity and honesty.

When an applicant for an electricity generation licence is a FIT Program participant, the OPA undertakes a rigorous assessment of the applicant's financial viability, technical capability and conduct. If the OPA is satisfied with the results of this assessment, the OPA grants the applicant a Notice to Proceed. Because of the rigour of the OPA assessment process, the Board will generally grant a generation licence to an applicant if it has received a Notice to Proceed from the OPA.

The Board grants the application. The Board is satisfied with McLean's financial viability, technical capability and conduct based on the fact that the OPA has entered into a FIT contract with McLean's and has provided McLean's with a Notice to Proceed.

A number of parties made submissions to the Board opposing the application. However, all of the objections raised were related to the wind farm project, which as the Board has explained above and in Procedural Order No. 1, is not the subject of this proceeding. No issues were raised that relate to the main criterion for issuing an electricity generating licence to a FIT Program participant, namely, that the applicant has received its Notice to Proceed from the OPA.

Compliance Issues

In addition, MCSEA raised concerns with respect to McLean's adherence to the Conditions of Approval in the Board's Leave to Construct Order for the wind farm

transmission facilities. Such matters are beyond the scope of this proceeding. However, the Board will review these matters separately and will initiate compliance action if warranted.

THE BOARD ORDERS THAT:

McLean's is granted an electricity generation licence , on such conditions as are contained in the attached licence.

DATED at Toronto, June 13, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary



Electricity Generation Licence

EG-2013-0015

McLean's Mountain Wind Limited Partnership

Valid Until

June 12, 2033

Original Signed By

Kirsten Walli
Board Secretary
Ontario Energy Board
Date of Issuance: June 13, 2013

Ontario Energy Board
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2300 Yonge Street
27th. Floor
Toronto, ON M4P 1E4

Commission de l'énergie de l'Ontario
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1 Definitions

In this Licence:

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"Electricity Act" means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

"generation facility" means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system and includes any structures, equipment or other things used for that purpose;

"Licensee" means McLean's Mountain Wind Limited Partnership;

"regulation" means a regulation made under the Act or the Electricity Act;

2 Interpretation

- 2.1 In this Licence words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this licence, to generate electricity or provide an ancillary service for sale under a contract with the Ontario Power Authority and the contract is entered into as part of a standard offer program offered by the Ontario Power Authority. This Licence authorizes the Licensee only in respect of those facilities set out in Schedule 1.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act and the Electricity Act, and regulations under these acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Maintain System Integrity

- 5.1 Where the IESO has identified, pursuant to the conditions of its licence and the Market Rules, that it is necessary for purposes of maintaining the reliability and security of the IESO-controlled grid, for the Licensee to provide energy or ancillary services, the IESO may require the Licensee to enter into an agreement for the supply of energy or such services.

- 5.2 Where an agreement is entered into in accordance with paragraph 5.1, it shall comply with the applicable provisions of the Market Rules or such other conditions as the Board may consider reasonable. The agreement shall be subject to approval by the Board prior to its implementation. Unresolved disputes relating to the terms of the Agreement, the interpretation of the Agreement, or amendment of the Agreement, may be determined by the Board.

6 Restrictions on Certain Business Activities

- 6.1 Neither the Licensee, nor an affiliate of the Licensee shall acquire an interest in a transmission or distribution system in Ontario, construct a transmission or distribution system in Ontario or purchase shares of a corporation that owns a transmission or distribution system in Ontario except in accordance with section 81 of the Act.

7 Provision of Information to the Board

- 7.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 7.2 Without limiting the generality of paragraph 7.1 the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee, as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

8 Term of Licence

- 8.1 This Licence shall take effect on June 13, 2013 and expire on June 12, 2033. The term of this Licence may be extended by the Board.

9 Fees and Assessments

- 9.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

10 Communication

- 10.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 10.2 All official communication relating to this Licence shall be in writing.
- 10.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

11 Copies of the Licence

11.1 The Licensee shall:

- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
- b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 LIST OF LICENSED GENERATION FACILITIES

The Licence authorizes the Licensee only in respect to the following:

1. McLean's Mountain Wind Farm, RR 1, Little Current, ON, P0P 1K0.