



**EB-2011-0394**

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S. O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** an application for an Order  
granting leave to construct Transmission facilities for  
McLean's Mountain Wind LP.

**BEFORE:** Karen Taylor  
Presiding Member

Cynthia Chaplin  
Vice-Chair

## **DECISION AND ORDER**

**June 28, 2012**

### **Application**

McLean's Mountain Wind LP. ("McLean's") filed an application on November 22, 2011 with the Ontario Energy Board pursuant to section 92(1) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B for an order granting leave to construct transmission facilities for the connection of a wind farm to the Ontario electricity grid.

The proposed transmission facilities (the "Transmission Facilities") include a single circuit overhead transmission line, a 1 km section of submarine cable, a switching station, a transformer station, and associated facilities. The Transmission Facilities will connect a wind farm on Manitoulin Island to the IESO-controlled grid on Goat Island, a distance of approximately 10 km.

The Board assigned File No. EB-2011-0394 to the application.

The Board issued a Notice of Application and Hearing on December 19, 2011 and the applicant served and published the Notice as directed by the Board. In response to the Notice, five parties requested intervenor status in the proceeding: the Wikwemikong Unceded First Nation Elders and Youth, the Manitoulin Coalition for Safe Energy Alternatives ("MCSEA"), Wind Concerns Ontario, Lake Superior Action Research Conservation, and BayNiche Conservancy. There were also numerous letters of comment from interested persons.

MCSEA requested costs eligibility for the proceeding and "an honorarium recognizing individual efforts in preparing and presenting an intervention or submission" and the Board granted cost eligibility to MCSEA for matters directly within the scope of the proceeding, and indicated that an honorarium might also be considered by the Board at the end of the proceeding. Cost awards are further discussed later in this decision.

### **Procedural Matters**

On January 23, 2012 a letter from Mr. Tom Adams on behalf of all the proposed intervenors mentioned above was received by the Board. The parties alleged deficiencies in the Notice and errors in a separate publication by the applicant, and requested clarification and the issuance of a new notice. On January 25, 2012, the applicant responded and asked the Board to reject the intervention requests of the five parties on the grounds that none of the issues identified in their respective letters of intervention related to matters that were within the scope of the proceeding.

Procedural Order No. 1 was issued on January 27, 2012. The Board determined that the Notice was sufficient and did not need to be re-issued. The Board also determined that the five parties would be granted intervenor status and reminded the parties concerning the scope of the Board's jurisdiction. The Board acknowledged a letter from Hydro One Networks Inc. ("Hydro One") which explained that the Notice erroneously indicated that the switchyard would be owned and operated by Hydro One, whereas it would be owned and operated by McLean's. The Board also responded to the numerous requests for an oral hearing on Manitoulin Island, indicating that it was concerned that many of the issues that had been raised might not fall within the scope

of the proceeding. The Board indicated that it would reconsider whether an oral hearing was required after the interrogatory phase of the proceeding. In Procedural Order No. 1 the Board also provided for intervenors and Board staff to file objections to a request by the applicant for confidentiality of certain documents, and for the applicant to reply, and for dates for interrogatories and responses to interrogatories.

In Procedural Order No. 2 issued on February 14, 2012 the Board granted intervenor status to Manitoulin Nature Club, North American Platform Against Wind and Canadian Pacific Railways ("CP Rail"), and, in light of late notification to CP Rail, extended the dates provided in Procedural Order No. 1. The Board also acknowledged that the applicant, in a letter dated February 9, 2012, withdrew four of five items in the list of documents over which it was claiming confidentiality.

The Board issued its Decision on Confidentiality and Procedural Order No. 3 on March 1, 2012 in which it ordered that a redacted version of the remaining document (Table of Lands Required for Transmission Facilities) be issued.

Procedural Order No. 4 extended the date for McLean's to respond to interrogatories including accommodating additional interrogatories submitted by MCSEA after the dates originally ordered by the Board. Subsequently, on April 9, 2012, MCSEA submitted additional interrogatories and McLean's sent a letter on April 11 indicating that it was prepared to respond to these additional interrogatories. Procedural Order No. 5 required McLean's to submit responses to the additional interrogatories by April 18, 2012 and invited parties to file submissions on the need for an oral hearing.

In Procedural Order No. 6, the Board decided that an oral hearing was not required with respect to the evidence of the applicant, but allowed that an oral hearing may be required with respect to any intervenor evidence. Procedural Order No. 6 also set a deadline for the filing of intervenor evidence.

MCSEA submitted evidence on May 4, 2012. In Procedural Order No. 7 the Board determined that MCSEA's evidence had little or no relevance to the Leave to Construct proceeding and that the issues raised could be dealt with in other processes (e.g. the REA process). The Board determined that the evidence would not be entered on the record, and that no oral hearing was required on the intervenor evidence. The Board established dates for argument-in-chief, intervenor and Board staff submissions, and reply submission. Argument in Chief was received on May 17, 2012, Board staff and

MCSEA made submissions on May 25, 2012 and McLean's Reply Argument was received on May 30, 2012.

### **Scope of the Proceeding**

The Board's jurisdiction in this case arises from section 92 (1) of the OEB Act which states:

*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.*

In discharging its duties under section 92, the Board's jurisdiction is limited by section 96, which states:

*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.*

*(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 resources.*

The Board is only empowered to consider 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 government's policies, the promotion of the use of renewable energy resources. The Board ensured at every opportunity that the parties had a clear understanding of the limits of the Board's jurisdiction.

Numerous concerns of the intervenors involve matters that fall outside of the Board's jurisdiction in considering this application. Particularly, some parties had an interest in the environmental impacts associated with the Transmission Facilities and the windfarm itself. Given the terms of Section 96 (2), those issues cannot be considered by the Board in its determination of the public interest. Those issues may be addressed in the environmental assessment process or other permitting-type processes associated with the Transmission Facilities or the windfarm itself. The Board is of the view that these issues fall outside of the Board's jurisdiction in the context of a leave to construct application.

In considering the public interest, within the limitations of section 96, the Board typically reviews a number of subject matters in determining whether the proposal made by the applicant is consistent with the public interest.

### **The Need for the Project**

McLean's was awarded Feed in Tariff contracts by the Ontario Power Authority for the purchase of electricity generated by wind turbine facilities of 50 MW and 10 MW, through the Ontario Feed-in Tariff Program. McLean's stated that the Transmission Facilities are necessary to connect the contracted wind energy facilities to the Hydro One transmission grid. This evidence was not disputed.

### **Board Findings**

In cases where an applicant will be seeking to recover the costs of a project through rates, the Board typically considers the issue of "need" through the lens of price – in other words, ensuring that customers are not responsible for costs associated with a project that is not actually needed. In this case, the evidence is that all of the costs of the Transmission Facilities will be borne by the applicant, and there will be no impact on the provincial uniform transmission rate.

The Board finds that the need for the proposed Transmission Facilities has been adequately demonstrated by McLean's. The evidence is clear that the Transmission Facilities are required for the purpose of connecting the contracted wind energy facilities to the IESO controlled transmission grid.

### **System Impact Assessment and Customer Impact Assessment**

The System Impact Assessment and Customer Impact Assessment assist the Board in determining whether a proposed project will have an adverse impact on the quality and reliability of electricity service.

System Impact Assessments are conducted by the IESO to determine the implications for the system of the proposed Transmission Facilities. This is a technical document intended to provide a detailed review of the components of the proposal and its impacts on system operating voltage, system operating flexibility and the implications for other connections to deliver and withdraw power from the system.

A Final System Impact Assessment dated October 27, 2010, and a System Impact Assessment Addendum dated March 15, 2011 were filed by McLean's. These assessments document the IESO's review of the project, and its conclusion that, subject to the completion of various modifications, the Transmission Facilities will not adversely affect the reliability of the IESO controlled grid.

A Customer Impact Assessment, conducted by Hydro One, was also filed. It is designed to assess the implications of the project on other transmission customers. A Customer Impact Assessment – Final dated October 22, 2010 and an Addendum Customer Impact Assessment dated March 16, 2011 were filed by McLean's. The study found there would be no adverse impact on voltage performance to customers in the area, but that mitigation measures are required to limit fault levels at the Martindale Transformer Station Low Voltage bus. McLean's advised that current limiting reactors would be installed at the Martindale Transformer Station to resolve the problem.

Both the System and Customer Impact Assessments identified various requirements to be fulfilled for the project to be allowed to proceed to in-service, and McLean's evidence is that it will comply with these requirements.

## Board Findings

The Board finds that, subject to the completion of the mitigating measures and specific and general requirements set out in the System Impact Assessment Reports of October 2010 and March 2011 and the Customer Impact Assessment Reports also of October 2010 and March 2011, the proposed Transmission Facilities can be accommodated on the grid without an adverse impact on the grid's reliability or other transmission customers. It will be a condition of the Board's order that McLean's comply with the requirements contained in these reports.

## **Environmental Issues**

This project is subject to the Renewable Energy Approval ("REA") process. The REA process requires the applicant to screen the affected area for environmental and social economic features, identify any environmental effects of the facilities and any corresponding mitigation measures that are required, provide information respecting the route selection and evaluation, and to conduct outreach to the community. McLean's has provided evidence that it has engaged in consultation with affected communities through public information centres as well as meetings designed to address concerns. Evidence has been provided that the applicant is engaged in the REA process.

## Board Findings

The Board notes that the applicant is engaged in the REA process, including the required matters of consultation with the public and First Nations. The Board agrees with the proposal of parties and Board staff that REA approval should be a condition of the Board's order granting leave to construct the Transmission Facilities. .

## **Land Matters**

Section 97 of the Act provides:

*In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.*

The applicant is seeking the Board's approval for the form of agreement to be offered to affected landowners.

The vast majority of the project runs along road allowances and easements and on private land where agreements have been secured with the landowner. McLean's has indicated that it has land use agreements concluded for all but the section of property on Goat Island which is land owned by CP Rail. Board staff indicated in its submission that the forms of agreement provided in evidence are acceptable and noted that there were no criticisms by intervenors of the forms provided.

Board staff proposed that the conditions of approval should include a requirement that an agreement be reached with CP Rail. CP Rail supported this proposal. Both CP Rail and McLean's submitted that a lease agreement is likely to be concluded in the near future. McLean's argued, however, that no specific condition should be included regarding an agreement between CP Rail and McLean's. McLean's was of the view that the Board's standard condition in respect of obtaining all easement rights was sufficient.

MCSEA submitted that the Board should hold McLean's to a commitment that there will be no expropriation. McLean's denied having made such a commitment, and although it expects that expropriation may not be required, expropriation remains available under the OEB Act in the event negotiations are not successful.

### Board Findings

The Board approves the proposed form of land use agreement, and notes that no issues regarding the proposed agreement were raised.

The Board will not apply a specific condition regarding an agreement between McLean's and CP Rail. The standard condition requiring McLean's to obtain all necessary easement rights is sufficient.

The Board will also not prohibit McLean's from seeking land rights through expropriation. This alternative is provided for under the OEB Act and remains a part of the overall scheme for transmission projects.

## **Effect on Ratepayers**

Evidence has been submitted that there will be no effect on the ratepayer from this application and that all costs of the Transmission Facilities, including the costs associated with certain mitigating measures, are to be borne by the applicant.

### Board Findings

The Board concludes that the proposed Transmission Facilities will have no effect on transmission rates.

## **Issues Raised by MCSEA**

MCSEA in its submission reiterated many of the concerns it has expressed at various points within the process. These concerns relate to the accuracy and adequacy of the Notice, the completeness and accuracy of the application, and the legitimacy of one of the partners, Mnidoo Mnising Power LP. The Board has already considered these matters and made its determinations. MCSEA's submissions seek to re-argue these issues and as such the Board will not address them further in this decision.

MCSEA concluded that if the Board were to approve the application, it should only do so if a final design is submitted, and that if the project does proceed, advises that the transformer station must be properly grounded.

### Board Findings

The Board is satisfied that the route of the proposed Transmission Facilities is sufficiently defined for purposes of this application. It is appropriate that McLean's have some flexibility to address detailed routing issues which may arise through other permitting and approval processes without being required to re-apply for a Leave to Construct. If there are any material changes to the proposed Transmission Facilities, approval of the Board will be required.

With respect to the technical matters raised by MCSEA, the Board's approval of the proposed Transmission Facilities will be conditional on McLean's compliance with the Transmission System Code and associated standards.

## Conclusion

For the reasons described above and subject to the Conditions appearing in Appendix A to this decision, the Board approves the application and grants McLean's leave to construct the proposed Transmission Facilities.

### THE BOARD ORDERS THAT:

1. McLean's Mountain Wind LP. is granted leave, pursuant to section 92 of the Act, to construct approximately 10 km of overhead and submarine transmission line facilities, and the associated transformation and connecting assets described in its application, subject to the Conditions of Approval attached as Appendix A to this Order.
2. The form of landowner agreement provided by McLean's Mountain Wind LP is approved.
3. McLean's Mountain Wind LP shall pay the Board's costs incidental to this proceeding immediately upon receipt of the Board's invoice.
4. MCSEA shall file its cost claim with the Board and forward it to McLean's within 21 calendar days of the date of this Decision and Order.
5. Any objections by McLean's to the claimed costs shall be filed with the Board and copied to MCSEA within 28 calendar days of the date of this Decision and Order.
6. If McLean's objects to MCSEA's cost claim, MCSEA may file with the Board and forward to McLean's any responses to that objection within 35 calendar days of the date of this Decision and Order.

All filings with the Board must quote the file number EB-2011-0394, and be made through the Board's web portal at [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is

not available, parties may e-mail their documents to the attention of the Board Secretary at [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca).

**DATED** at Toronto on June 28, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**Appendix A  
To Decision and Order  
EB-2011-0394  
June 28, 2012**

**CONDITIONS OF APPROVAL**

**Definitions:**

**(1) “Transmission Facilities” means the single circuit overhead transmission line, a 1 km section of submarine cable, a switching station, a transformer station, and associated facilities, as defined in the Decision and Order.**

**(2) “Applicant” means McLean’s Mountain Wind LP**

**1 General Requirements**

1.1 The Applicant shall construct the Transmission Facilities and restore the Transmission Facilities land in accordance with the Leave to Construct application, evidence and undertakings, except as modified by this Order and these Conditions of Approval.

1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate June 30, 2013 unless construction of the Transmission Facilities has commenced prior to that date.

1.3 The Applicant shall comply with the requirements of the Renewable Energy Approval regulations and any amendment thereto.

1.4 The Applicant shall satisfy the Independent Electricity System Operator (“IESO”) requirements as reflected in the System Impact Assessment Report dated March 15, 2011, and such further and other conditions which may be imposed by the IESO.

1.5 The Applicant shall satisfy the Hydro One Networks Inc. requirements as reflected in the Customer Impact Assessment Report dated March 16, 2011 and such further and other conditions which may be imposed by Hydro One.

1.6 The Applicant shall advise the Board's designated representative of any proposed material change in the Transmission Facilities, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicant shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.

1.7 The Applicant shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain

the Transmission Facilities, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

## **2 Transmission Facilities and Communications Requirements**

2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.

2.2 The Applicant shall designate a person as Transmission Facilities Manager and shall provide the name of the individual to the Board's designated representative.

The Transmission Facilities Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site. The Applicant shall provide a copy of the Order and Conditions of Approval to the Transmission Facilities Manager, within ten (10) days of the Board's Order being issued.

2.3 The Applicant shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. The Applicant shall submit two (2) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. The Applicant shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.

2.4 The Applicant shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.

2.5 The Applicant shall, in conjunction with Hydro One and the IESO, and other parties as required, develop an outage plan for the construction period which shall detail how proposed outages will be managed.

2.6 The Applicant shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Transmission Facilities construction. This written confirmation shall be provided within one month of the completion of construction.

### **3 Construction Impacts - Reporting Requirements**

3.1 Both during and for a period of twelve (12) months after the completion of construction of the Transmission Facilities, the Applicant shall maintain a log of all comments and complaints related to construction of the Transmission Facilities. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions. The Applicant shall file two (2) copies of the log with the Board within fifteen (15) months of the completion of construction of the Transmission Facilities.

End of Document