

December 6, 2010

**RESS, EMAIL & COURIER**

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

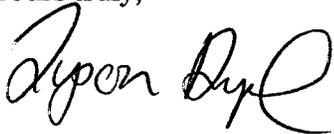
Dear Ms. Walli:

**Re: EB-2010-0253 -- Reply Submission of Plateau Wind Inc. in Support of its Application under Section 41(9) of the *Electricity Act, 1998***

We are counsel to Plateau Wind Inc. ("Plateau") in the above noted proceeding. In accordance with the Ontario Energy Board's Procedural Order dated October 29, 2010 and the Board's letter dated November 17, 2010, please find enclosed Plateau's submission in reply to the submissions of the Municipality of Grey Highlands ("Grey Highlands") dated November 25, 2010 and in support of Plateau's application for an order or orders pursuant to section 41(9) of the *Electricity Act, 1998* (as amended) establishing the location of Plateau's distribution facilities within certain public rights-of-way, streets and highways owned by Grey Highlands.

Please feel free to contact me with any questions.

Yours truly,



Tyson Dyck

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E. Veldboom, Russell, Christie LLP

**ONTARIO ENERGY BOARD**

**EB-2010-0253**

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

AND IN THE MATTER OF an application by Plateau Wind Inc. for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998* (as amended) determining the location of Plateau's distribution facilities within certain road allowances owned by the Municipality of Grey Highlands, Ontario.

**REPLY SUBMISSION OF PLATEAU WIND INC.**

**DECEMBER 6, 2010**

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1 “Distribution System”), which is necessary to transport the electricity generated from  
2 each turbine to the existing 44 kilovolt (“kV”) local distribution system of Hydro One  
3 Networks Inc. (“HONI”) and ultimately to the IESO-controlled grid.<sup>1</sup> Plateau has chosen  
4 to locate certain power lines, poles and other facilities associated with the Distribution  
5 System within certain public rights-of-way, streets and highways owned by Grey  
6 Highlands and more particularly identified in Appendix A to Plateau’s November 8, 2010  
7 Submission (the “Plateau’s First Submission”).

## 8 **2.0 SUMMARY ARGUMENT**

9 In the Grey Highlands Submissions, Grey Highlands argues that no aspect of the Project  
10 meets the definition of “distributor” under the Electricity Act, and therefore that Plateau  
11 cannot take advantage of the rights afforded to distributors under the section 41 of the  
12 Electricity Act.<sup>2</sup> However, Grey Highlands’ argument is premised on an incorrect  
13 interpretation of the Electricity Act in which no component of a “renewable energy  
14 generation facility” can be a “distribution system”, as those terms are defined.

15 Contrary to Grey Highlands’ position, Plateau is clearly a distributor, as that term is  
16 defined in the Electricity Act. Plateau is also exempt from the distribution licensing  
17 requirement in section 57(a) of the *Ontario Energy Board Act, 1998*, as amended (the  
18 “OEB Act” and, together with the Electricity Act, the “Acts”). Furthermore, the Board’s  
19 overarching statutory regime governing distribution, generation and transmission does

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<sup>1</sup> The Distribution System is described in more detail in Exhibit B, Tab 2, Schedule 1 and Exhibit B, Tab 3, Schedule 1 of the Plateau’s July 30, 2010 Application.

<sup>2</sup> See, generally, paragraphs 12-24 and 63-69 of the Grey Highlands Submissions.

1 not treat these activities as necessarily mutually exclusive; the terms “renewable energy  
2 generation facility” and “distributor” are not mutually exclusive; the statutory  
3 amendments that introduced the concept of a “renewable energy generation facility” into  
4 the Acts were not intended to create a new, independent class of comprehensively  
5 regulated entities; and other arguments of Grey Highlands have no bearing on this  
6 proceeding. Consequently, as a distributor, Plateau is entitled to the rights afforded to  
7 distributors under section 41 of the Electricity Act.

### 8 **3.0 PLATEAU IS A DISTRIBUTOR**

9 In its November 29, 2010 submissions (the “Board Staff Submissions”), Board staff  
10 endorsed Plateau’s First Submission by concluding the following:

- 11 • the Distribution System qualifies as a “distribution system”, as such term is  
12 defined in the Electricity Act;
- 13 • Plateau is a “distributor”, as such term is defined in the Electricity Act;
- 14 • Plateau is exempt under section 4.0.1(1)(d) of Ontario Regulation 161/99 from the  
15 distribution licensing requirement of section 57(a) of the OEB Act; and
- 16 • Plateau has standing to bring the Application.

17 Indeed, the Electricity Act defines “distribution system” as a system for distributing  
18 electricity, including any structures, equipment or other things used for that purpose.

19 “Distribute”, in turn, is defined as conveying electricity at voltages of 50 kV or less.

20 Because the Distribution System is a system used for conveying electricity at 44 kV, it is

1 a “distribution system” under the Electricity Act, as well as under the OEB Act, as both  
2 Acts use the same relevant definitions.<sup>3</sup>

3 Moreover, the Acts define “distributor” as a person who owns or operates a distribution  
4 system. Plateau owns and will operate the Distribution System and is therefore a  
5 “distributor”. As a result, Plateau is entitled to the rights of distributors under section 41  
6 of the Electricity Act, including the right, under the circumstances, to bring this  
7 Application pursuant to Section 41(9) of the Electricity Act.<sup>4</sup>

8 Furthermore, under section 4.0.1(1)(d) of Ontario Regulation 161/99, distributors are  
9 exempt from, among other provisions, the distribution licensing requirement in section  
10 57(a) of the OEB Act if they (i) distribute electricity for a price no greater than that  
11 required to recover all reasonable costs and (ii) with respect to a distribution system  
12 owned or operated by a distributor that is also a generator, distribute electricity solely for  
13 the purpose of conveying it to the IESO-controlled grid. This exemption applies to  
14 Plateau for the following reasons:

- 15 • Plateau will distribute electricity for a price no greater than that required to  
16 recover all reasonable costs. In fact, Plateau will not charge any price for its  
17 distribution of electricity. Contrary to Grey Highlands’ assertions<sup>5</sup>, it is irrelevant  
18 that Plateau will profit from the sale of generated electricity; the exemption in  
19 section 4.0.1(1)(d) requires that such electricity be *distributed* at a price no greater  
20 than that required to recover all reasonable costs. Grey Highlands appears to  
21 confuse the distribution of electricity with the sale of electricity as a commodity.

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<sup>3</sup> For further discussion of the application of these definitions, see Section 2.0 of Plateau’s First Submission and Exhibit B, Tab 2, Schedule 1, Page 1 of the Application.

<sup>4</sup> For further details on the disagreement regarding the location of the Distribution System within the Road Allowances that gave rise to this Application, see Exhibit B, Tab 5, Schedule 1 of the Application.

<sup>5</sup> In particular, see the assertions in paragraphs 27-30 of the Grey Highlands Submissions.

1 Further contrary to Grey Highlands' assertions<sup>6</sup>, it is also irrelevant that Plateau is  
2 incorporated under the *Business Corporations Act*, as Plateau's legal structure has  
3 no bearing on whether it will recover any costs for its distribution of electricity.

4 • Plateau is a distributor that will also be a generator, which is defined as a person  
5 who owns or operates a system for producing electricity.<sup>7</sup>

6 • Finally, Plateau will use the Distribution System solely for conveying the  
7 electricity generated by the Turbines to the HONI distribution system and  
8 ultimately to the IESO-controlled grid.<sup>8</sup>

9 Thus, contrary to the incorrect conclusion of Grey Highlands, Plateau is a distributor that  
10 is entitled to an exemption from the OEB Act's distribution licensing requirement.<sup>9</sup> That  
11 Plateau is exempt from the license requirement as a distributor in part because Plateau is  
12 also a generator confirms that the Acts contemplate situations where a distributor can also  
13 be a generator.

#### 14 **4.0 THE BOARD'S OVERARCHING REGULATORY REGIME**

15 The OEB Act establishes the overarching regulatory regime of the Board to license, and  
16 thereby to condition the ownership and operation of, generation, distribution and  
17 transmission. By incorrectly basing its submissions on the mutual exclusivity of these  
18 concepts<sup>10</sup>, Grey Highlands has ignored the Board's fundamental jurisdiction to regulate  
19 the *activities* of transmission, distribution and generation. Under the regulatory regime, if  
20 a person (as that term is defined under the OEB Act<sup>11</sup>) carries on any one of these

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<sup>6</sup> In particular, see the assertion in paragraph 29 of the Grey Highlands Submission.

<sup>7</sup> See the definitions of "generation facility", "generate" and "generator" in section 56 of the OEB Act.

<sup>8</sup> For further detail on the Distribution System, see Exhibit B, Tab 2, Schedule 1 and Exhibit B, Tab 3, Schedule 1 of the Application.

<sup>9</sup> See also Exhibit B, Tab 2, Schedule 1, Page 1 of the Application.

<sup>10</sup> In particular, see paragraphs 14-20, 65 and 67-69 of the Grey Highlands Submissions.

<sup>11</sup> See, in particular, section 1(1) of O. Reg. 161/99.

1 activities, then that person will require a license unless certain exemptions apply. The  
2 OEB Act is therefore structured so that the carrying out of a prescribed activity defines  
3 the person and its regulatory rights and obligations. If a person owns or operates a  
4 system for distributing electricity below a certain voltage, then that person is a distributor  
5 and is subject to the legislative obligations of a distributor. Moreover, even if a person is  
6 exempt from the distribution licensing requirement, the character of the person's activity  
7 does not change; the person remains a distributor given that it must be a distributor to  
8 even fall within the section 4.0.1(1)(d) exemption. As noted above, this is the case for  
9 Plateau.

10 Furthermore, there is nothing stated within Section 57 of the OEB Act that would directly  
11 or indirectly permit the interpretation that there is mutual exclusivity in respect of being a  
12 generator, distributor or transmitter. As a result, a person (as such term is defined under  
13 the OEB Act) can theoretically carry on the activities of owning and operating a  
14 distribution system, as well as generating, and thereby trigger the licensing requirements  
15 for both activities unless otherwise exempted from those requirements.

16 As noted above, Plateau satisfies the conditions set out in section 4.01(1)(d) of Ontario  
17 Regulation 161/99 and is thereby exempt from section 57(a), among other provisions, of  
18 the OEB Act. The wording of section 4.01(1)(d) itself clearly demonstrates that a person  
19 can be both a distributor and a generator; it indicates that the exemption applies to a  
20 "distributor" that, among other criteria, is also a "generator" and distributes electricity  
21 solely for the purpose of conveying it to the IESO controlled grid. The section does not

1 somehow change a distributor into a generator; rather, it provides an exemption for  
2 certain persons that carry out both activities. If a distributor did not meet the conditions  
3 of the exemption, then that distributor would still be a distributor, but one that was  
4 subject to the section 57(a) licensing requirement, the other provisions from which  
5 section 4.01(1) exempts certain distributors and all of the other obligations of a  
6 “distributor” under the Acts. If one were to adopt Grey Highlands’ incorrect  
7 interpretation of the licensing requirements<sup>12</sup>, a person that owned or operated a  
8 distribution system to carry out the activity of distribution could, by virtue of that system  
9 being associated with or ancillary to a renewable energy generation facility, fall not only  
10 outside of the section 4.01(1)(d) exemption, but also outside of the broader regulatory  
11 regime governing the activity of distribution. As discussed further below, this incorrect  
12 interpretation of the Acts should be rejected.

## 13 **5.0 RENEWABLE ENERGY GENERATION FACILITIES**

14 The Project does fit the Electricity Act’s definition of “renewable energy generation  
15 facility”. This is because of the following:

- 16 • Under the Electricity Act, “renewable energy generation facility” means “a  
17 generation facility that generates electricity from a renewable energy source and  
18 that meets such criteria as may be prescribed by regulation and includes  
19 associated or ancillary equipment, systems and technologies as may be prescribed  
20 by regulation ....”
- 21 • The Project will generate electricity from wind, a renewable energy source.
- 22 • Section 1(4) of Ontario Regulation 160/99 prescribes certain equipment for the  
23 purpose of the definition, including “transmission or distribution lines of less than

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<sup>12</sup> In particular, see paragraphs 21 to 26 of the Grey Highlands Submissions.

1 50 kilometres in length that are associated with or ancillary to a renewable energy  
2 generation facility”.

- 3 • Section 1(5) of Ontario Regulation 160/99 states that, for the purposes of section  
4 1(4), “[a] distribution line is associated with or ancillary to a renewable energy  
5 generation facility if the line is used to distribute electricity within the facility or  
6 from the facility to the distribution system of the distributor in whose distribution  
7 service area the renewable energy generation facility is located.”
- 8 • The Distribution System involves distribution lines of less than 50 km in length  
9 that are used to distribute electricity from the facility to the distribution system of  
10 HONI, in whose service area the Project is located.

11 However, contrary to the arguments of Grey Highlands<sup>13</sup>, “renewable energy generation  
12 facility”, “distributor”, “generator” and “transmitter” are not mutually exclusive terms.  
13 Given the Board’s overarching regulatory regime, this must be the case because Grey  
14 Highlands’ interpretation would lead to a result where the rights and obligations of  
15 “distributors” would not apply with respect to the ownership or operation of the  
16 distribution systems associated with or ancillary to renewable energy generation  
17 facilities, leaving those systems essentially unregulated. Indeed, according to Grey  
18 Highlands, the owner or operator of a “renewable energy generation facility” cannot also  
19 be a distributor with respect to certain components of that facility because the terms are  
20 mutually exclusive. As a result of that interpretation, the provisions of the Acts  
21 applicable to distributors would not apply with respect to the distribution components of  
22 a renewable energy generation facility. Importantly, because there is no provision in the  
23 Acts prohibiting generators from distributing electricity<sup>14</sup>, the owner or operator of a

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<sup>13</sup> See, for example, paragraphs 15-16 and 24 of the Grey Highlands Submissions.

<sup>14</sup> There is a restriction on the business activity of transmitters and distributors in section 71 of the OEB Act, provided those transmitters and distributors do not fall within the exemptions in 4.0.2 and 4.0.1, respectively, of O. Reg. 161/99. There are also certain exceptions to section 71 of the OEB Act, including exceptions that contemplate distributors owning and operating generation facilities.

1 renewable energy generation facility, using Grey Highlands' logic, could deliver  
2 electricity not only to the grid but also to end-use customers without triggering the  
3 requirement for a distribution license.

4 In this regard, it is noteworthy that the section 4.01(1)(d) exemption is conditioned on,  
5 among other things, the distribution being "solely" for the purpose of conveying  
6 electricity to the IESO-controlled grid, whereas section 1(4) or (5) of Ontario Regulation  
7 160/99, which prescribe certain distribution lines for the purpose of the definition of  
8 "renewable energy generation facility", do not require the prescribed lines to convey  
9 electricity "solely" to the grid. As a result, according to Grey Highlands' position, a  
10 renewable energy generation facility could carry out the activity of distribution, but not  
11 be subject to the Board's oversight in that regard, even if it distributed electricity to end-  
12 use customers. This is the very circumstance that section 4.01(1)(d) prevents by limiting  
13 the exemption to distributor-generators that distribute electricity "solely" for the purpose  
14 of conveying that electricity to the IESO-controlled grid. A person that distributes  
15 electricity for any other purpose would lose the exemption; consequently, unless  
16 exempted elsewhere, the person would become subject to all of the regulatory provisions  
17 applicable to both generators and distributors.

18 Therefore, given the consequences of Grey Highlands' position, the Grey Highlands  
19 Submissions should be rejected. Although Plateau does fit the definition of a renewable

1 energy generation facility, it remains a generator and a distributor. The argument of Grey  
2 Highlands, which interprets these terms as mutually exclusive, leads to a result where a  
3 renewable energy generation facility could engage in the activity of distribution,  
4 potentially even distributing electricity to end-use customers, without any OEB oversight  
5 of that activity. Such an interpretation would essentially uproot a fundamental part of the  
6 Board’s overarching regulatory jurisdiction, even though that jurisdiction is explicitly set  
7 out in the Acts.

## 8 **6.0 THE GREEN ENERGY ACT AMENDMENTS**

9 When the *Green Energy and Green Economy Act, 2009* (the “Green Energy Act”) came  
10 into force,<sup>15</sup> it amended various existing statutes, including the Acts. In doing so, it  
11 amended section 1(1) of the OEB Act to require the Board, in carrying out its  
12 responsibilities under the OEB Act or any other legislation in relation to electricity, to be  
13 guided by the objective of promoting “the use and generation of electricity from  
14 renewable energy sources in a manner consistent with the policies of the Government of  
15 Ontario, including the timely expansion or reinforcement of transmission systems and  
16 distribution systems to accommodate the connection of renewable energy generation  
17 facilities.” The Board must therefore be guided by this objective, among others, in  
18 deciding the Application  
19 In amending the Acts, the Green Energy Act added the same definition of renewable

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<sup>15</sup> The act received Royal Assent on May 14, 2009, with some provisions coming into force at a later date.

1 energy generation facility to each one.<sup>16</sup> However, the Green Energy Act amendments  
2 did not create an entire regulatory framework for renewable energy generation facilities.  
3 Rather, the amendments introduced only limited provisions with respect to these  
4 facilities. Those provisions added to the Electricity Act primarily concern the access  
5 rights of renewable energy generation facilities to transmission and distribution  
6 systems.<sup>17</sup> The OEB Act contains even fewer provisions using the term.<sup>18</sup>  
7 Such a limited use of the term renewable energy generation facilities is consistent with  
8 the Government of Ontario's Explanatory Note that accompanied the Green Energy  
9 Act.<sup>19</sup> That note, in summarizing the Green Energy Act amendments to the Electricity  
10 Act, uses the term "renewable energy generation facilities" primarily in summarizing (i)  
11 the Minister's authority to direct the Ontario Power Authority to facilitate the  
12 development of such facilities and (ii) the right of priority access to transmission and  
13 distribution facilities. The Explanatory Note does not suggest that the concept was  
14 introduced to supplant or substantially supplement the regulatory regime governing  
15 generators, transmitters and distributors.

16 If, by introducing the concept of renewable energy generation facilities, the Ontario  
17 legislature meant to create a new, independent category of comprehensively regulated  
18 entities, its intention in that regard would likely have been clearly expressed. However,  
19 the legislature did not express that intention. If the legislature meant to express that the  
20 distribution components of a renewable energy generation facility cannot be a

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<sup>16</sup> See section 3 of the OEB Act and section 2(1) of the Electricity Act.

<sup>17</sup> See Part III of the Electricity Act -- in particular, sections 25.36 and 26.

<sup>18</sup> See, for example, sections 71(3) and 88(1).

<sup>19</sup> See the Explanatory Note accompanying the Royal Assent version of Bill 150, S.O. 2009, C. 12.

1 distribution system, as Grey Highlands asserts<sup>20</sup>, it could have simply excluded  
2 “distribution lines associated with or ancillary to renewable energy generation facilities”  
3 from the Acts’ definition of distribution system.

4 In sum, nowhere do the Acts expressly state that renewable energy generation facilities,  
5 generation facilities, transmission systems and distribution systems are mutually  
6 exclusive terms. The Ontario legislature has had the opportunity to amend the Acts in  
7 this way but has not done so, instead continuing to maintain its regulatory regime for  
8 governing the activities of distribution, generation and transmission. Moreover, the Act’s  
9 limited use of the concept of renewable energy generation facilities does not suggest the  
10 legislature meant to create a new, independent class of comprehensively regulated  
11 entities. Finally, accepting Grey Highlands’ interpretation is in conflict with the Board’s  
12 objective of promoting the use and generation of electricity from renewable energy  
13 sources.

## 14 **7.0 OTHER ARGUMENTS OF GREY HIGHLANDS**

15 Other arguments set out in the Grey Highlands Submission are incorrect. For example,  
16 contrary to Grey Highlands’ assertion<sup>21</sup>, section 26 of the Electricity Act does not apply  
17 to distributors that are exempted from the distribution licensing requirement in section  
18 57(a) of the OEB Act.<sup>22</sup> Furthermore, contrary to Grey Highlands’ contention<sup>23</sup>, absent a

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<sup>20</sup> In particular, see paragraphs 30-31 of the Grey Highlands Submissions.

<sup>21</sup> In particular, see paragraphs 34-35 of the Grey Highlands Submissions.

<sup>22</sup> The reason for the exemption is section 2.2.1 of O. Reg. 160/99, which states, “Sections 26 and 28 of the [Electricity] Act do not apply to a transmitter or distributor that is exempted from clause 57 (a) or (b) of the *Ontario Energy Board Act, 1998* by section 4.0.1, 4.0.2 or 4.0.3.2 of Ontario Regulation 161/99.

<sup>23</sup> In particular, see paragraph 38 of the Grey Highlands Submissions.

1 license condition, there is no requirement for distributors to comply with the Distribution  
2 System Code (“DSC”).<sup>24</sup> Grey Highlands’ discussion of certain provisions of the DSC,  
3 including the definition of distribution system and the requirement for conditions of  
4 service, is therefore irrelevant to unlicensed distributors such as Plateau, as the DSC does  
5 not govern their distribution systems. Finally, in its submissions<sup>25</sup>, Grey Highlands  
6 makes reference to certain sections in the *Power Corporation Act* and the *Public Utilities*  
7 *Act*. These sections have been repealed and pertain to a former regulatory regime that is  
8 no longer in place. The relevant intention of the legislature is evidenced in the provisions  
9 of the Acts that replace, where applicable, the referenced sections in the *Power*  
10 *Corporation Act* and *Public Utilities Act*.

## 11 **8.0 THE RIGHTS OF PLATEAU UNDER SECTION 41**

12 Grey Highlands contends that, if the Province of Ontario had intended to grant special  
13 privileges to entities that produce electricity and introduce that electricity into the IESO-  
14 controlled grid with respect to the use and occupation of municipal roads, the legislature  
15 should have included language to that effect in the Electricity Act.<sup>26</sup> In fact, the  
16 legislature did include such language in section 41 of the Electricity Act.  
17 Under section 41 of the Electricity Act, Plateau has the right to locate the Distribution  
18 System within the Road Allowances and the right to bring this Application. These rights  
19 arise because Plateau, as the owner and operator of the Distribution System, is a

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<sup>24</sup> Under section 70.1(1) of the OEB Act, the Board has authority to issue certain codes, explicitly including the DSC, that can be incorporated by reference as a condition of a Board-issued license. In practice, as a license condition, the Board requires licensed distributors to comply with the provisions of the DSC.

<sup>25</sup> In particular, see paragraphs 47-53 of the Grey Highlands Submissions.

<sup>26</sup> In particular, see paragraphs 5-11 and 63 of the Grey Highlands Submissions.

1 distributor as defined in the Electricity Act.<sup>27</sup> Pursuant to subsections 41(1) and 41(5) of  
2 the Electricity Act, all distributors, regardless of whether they are licensed, may construct  
3 or install such distribution facilities within any public streets or highways without the  
4 consent of the owner of or any other person having an interest in such streets or highways  
5 -- in this case, Grey Highlands.<sup>28</sup> In the event that a distributor and the owner of the  
6 chosen public streets or highways cannot agree to the exact location of the distribution  
7 facilities within such public streets or highways, section 41(9) of the Electricity Act states  
8 that the Board shall determine such location.<sup>29</sup>

9 Because of the limited scope of section 41(9), and because Plateau and Grey Highlands  
10 have been unable to agree to the exact location of the Distribution System within the  
11 Road Allowances, the only issue before the Board is determining that location.<sup>30</sup> The  
12 Board acknowledged its limited jurisdiction in Procedural Order No. 1 dated October 29,  
13 2010, in which the Board stated that section 41(9) of the Electricity Act “limits the  
14 Board’s role in this proceeding to determination of the location of Plateau’s proposed  
15 distribution facilities within the prescribed road allowances owned by Grey Highlands. It  
16 is not the Board’s role in this proceeding ... to consider alternative routes for the  
17 distribution facilities that are outside of the prescribed road allowances.”

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<sup>27</sup> The Electricity Act defines a distributor as “a person who owns or operates a distribution system.”

<sup>28</sup> Section 41(1) states, “A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.”

Section 41(5) states, “The exercise of powers under subsections [41] (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway.”

<sup>29</sup> Section 41 (9) states: “The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.”

<sup>30</sup> For further details on the disagreement on the location of the Distribution System within the Road Allowances, see Exhibit B, Tab 5, Schedule 1, Pages 2-6 of the Application.

1 Grey Highlands disputes this conclusion, asserting that if the Province had intended to  
2 extend to the owners of renewable energy generation facilities the special privilege of  
3 locating their works on, across, under or upon public streets, it could have done so  
4 through the enactment of the Green Energy Act or through consequential amendments to  
5 the Electricity Act.<sup>31</sup> However, as discussed above, Plateau is a distributor, as such term  
6 is defined in the Acts, and the Green Energy Act's introduction of the concept of  
7 renewable energy generation facilities has no bearing on that fact. The Province need not  
8 have extended the rights under section 41 to renewable energy generation facilities  
9 because it never intended those facilities to be a new, independent category of  
10 comprehensively regulated entities. As such, section 41 clearly establishes the rights of  
11 distributors, including Plateau, to use public streets and highways to construct and install  
12 their distribution facilities.

### 13 **9.0 ORDER SOUGHT**

14 Contrary to Grey Highlands' assertions, Plateau is a distributor under the Electricity Act  
15 and is therefore entitled to the rights of distributors in section 41 of that Act. The terms  
16 and conditions of Plateau's proposed location for the Distribution System within the  
17 Road Allowances, as set out in Part 3.0 of Plateau's First Submission, are reasonable.<sup>32</sup>  
18 In particular, for the reasons set out in the Application and Plateau's First Submission,  
19 there is carefully considered rationale behind that location and there are no feasible

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<sup>31</sup> In particular, see paragraph 64 of the Grey Highlands Submission.

<sup>32</sup> See in particular Section 3.0 (pages 5-7) of Plateau's First Submission.

1 alternatives.<sup>33</sup> Importantly, throughout this proceeding, neither Grey Highlands nor any  
2 other observer has disputed the proposed location of the Distribution System within the  
3 Road Allowances.

4 Plateau therefore requests that the Board, pursuant to section 41(9) of the Electricity Act,  
5 issue an order or orders establishing the location of the Distribution System within the  
6 Road Allowances owned by Grey Highlands. More particularly, Plateau requests that the  
7 Board issue an order or orders establishing such location in accordance with the location  
8 and the terms and conditions proposed in Part 3.0 of Plateau's First Submission.

9

10 DATED at Toronto, Ontario, this 6th day of December, 2010.

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12 All of which is respectfully submitted by:

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14

PLATEAU WIND INC.

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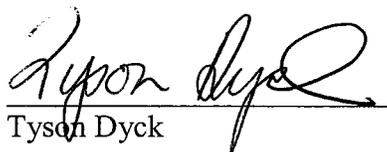
By its counsel,

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Tyson Dyck

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<sup>33</sup> See in particular Section 4.0 (pages 8-12) of Plateau's First Submission and Exhibit B, Tab 4, Schedule 1, Page 1; Exhibit B, Tab 3, Schedule 1, Page 2; and Exhibit B, Tab 6, Schedule 1 of the Application.