

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 wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant's distribution facilities on public road allowances owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

RESPONSE OF THE INTERVENOR TO BOARD STAFF INTERROGATORIES

Interrogatory No. 1

Ref: Tab 1, p. 4, paragraphs 13 & 15.

Question:

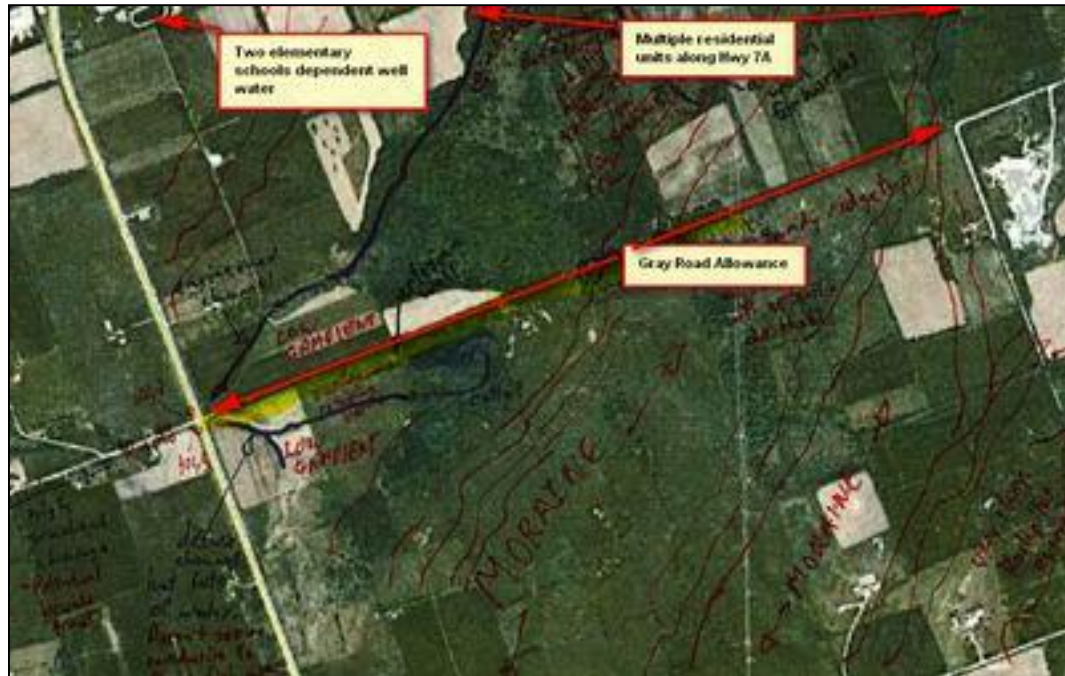
- a) What are your specific safety concerns regarding the overhead distribution lines proposed along Gray Road and the underground distribution lines proposed below Wild Turkey Road?

Reply to Interrogatory No. 1, a:

A - Gray Road

1. Residents are dependent on private wells for their drinking water.
2. Several water bodies are located in and along Gray Road. A large inline pond connected to an artesian well is located south of Gray Road, a wetland exists on the north side, there are seeps along Gray Road and two tributaries of Pigeon River meet at the intersection of Gray Road and Highway 35.
3. The Water Assessment Report prepared by the Applicant by the consulting firm NRSI includes a map showing the presumed directional flow of groundwater in the vicinity of Gray Road. A close-up with additional information (boxes & arrows) by the Intervenor is provided below.¹

¹ NRSI Water Report and Environmental Impact Study, Appendix III, Field Notes
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8.3_WR_EIS_Appendix_III_20120301_Web.pdf



4. The unopened road allowance Gray Road bisects the groundwater flow pattern assumed to be present by consultants NRSI working on behalf of the Applicant. There are multiple residences along Hwy 7A as well as two elementary schools, Rolling Hills and Grandview that are dependent on wells for drinking water.
5. David Kerr is a Geoscientist and Professional Hydrogeologist with more than twenty five years' experience in the Private and Public Sectors. He appeared as a witness before the Environmental Review Tribunal regarding the Sumac Ridge appeal. In his professional opinion, construction of the transmission line along the road allowance Gray Road presents a serious risk to human health.
6. Mr. Kerr has been the Manager of Environmental Services for the City of Kawartha Lakes for the past six years. He is currently responsible for the operation and delivery of safe, compliant and cost effective drinking water as well as wastewater and waste management services. Responsible for the operation of 21 drinking water plants, 6 wastewater plants, 5 operating landfills and 11 closed landfills. Mr. Kerr has gained a solid understanding and appreciation of environmental regulations, policies and guidelines through training and employment as a hydrogeologist and previously as a Provincial Environmental Officer with the Ontario Ministry of the Environment.
7. Mr. Kerr's memberships include: Ontario Waste Management Association, Ontario Water Works Association, International Association of Hydrogeologists and Association of Professional Geoscientists.

8. David Kerr appeared as an expert witness at the Sumac Ridge Environmental Review Tribunal Hearing qualified as a hydrogeologist and geoscientist with expertise in water movement and flow of contaminants through geological structures. Mr. Kerr's witness statement includes the following observations:

*"Much is not known at present about all the flow patterns and links between water entering the Moraine and water emerging from it. Much is not known or fully understood about the particular permeable pathways that allow water flows within the moraine."*²

*"The groundwater discharge from the Oak Ridges Moraine is thought to provide recharge for many of the streams, seeps and other water flows coming from the hills of the Moraine."*³

9. The witness statement of David Kerr includes the following description of Gray Road. The NRSI Water Report failed to note that the water table is at the ground surface level for a stretch of Gray Road.

"Gray Road -the unopened road allowance - which, as stated, is at a lower altitude on the Moraine, contains many water features some of which include seeps, streams, and vernal pools. These water features have been minimized in the proponent's reports."

*"It should be pointed out that the water table at Gray Road is at surface level from Highway 35 along the first few hundred metres of the road allowance as far as the east end of the pond on the south side of the road allowance. The road is often water-logged"*⁴

10. Mr. Kerr conducted a site visit of the road allowances Gray Road and Wild Turkey Road on April 21st, 2014. The following is a report from this site visit.

SUPPLEMENTARY STATEMENT BY DAVID KERR, P.Geo.
(GEOSCIENTIST), MANAGER OF ENVIRONMENTAL SERVICES,
DEPARTMENT OF PUBLIC WORKS, CITY OF KAWARTHA LAKES
- CONSTRUCTION OF A TRANSMISSION CORRIDOR

- According to wpd's application to the OEB to use Gray Road as a transmission corridor, hedgerow and tree destruction will be necessary to clear 1.75 km of the laneway (from Project Location Map) for a transmission corridor. Excavations will be required along the full length of the cleared portion to erect Hydro poles (or a similar transmission system).

² David Kerr, Witness Statement, Tab 1, Para 7, Page 2

³ David Kerr, Witness Statement, Tab 1, Para 9, Page 2

⁴ David Kerr, Witness Statement, Tab 1, Para 30, Page 5

- Any excavations along an unopened road allowance with a shallow water table means that some bore holes will fill with water. The proponent has repeatedly stated that no water taking permits will be required. The need for dewatering bore holes on Gray Road and trenches leading from the road should have been determined in advance of any approval (at the application stage) and have included MOE involvement.
- A Geotechnical Report carried out by Terraprobe Inc. (March 2012) was briefly reviewed. The report showed no subsurface investigations along Gray Road where the transmission line is to be constructed. Therefore there is little known about sensitive zones, shallow groundwater flow , water table etc. in this area
- Bore holes (or trenches to be used for certain sections of the transmission system) are back-filled. Boring and filling can re-direct groundwater flow vertically. Potential groundwater impacts have not been reported for Gray Road by the proponent or for any other part of the project. A groundwater monitoring plan should have been put in place and incorporated into a dewatering plan for Gray Road and for any other parts of the project in wetland areas where there would be potential groundwater discharge re-routing or takings (such as might be associated with the construction of Turbine 1).
- If poles are erected in a shallow saturated groundwater zone, boring to the required depth can cause hydraulic connection to another permeable zone or buried aquifer. This would have the effect of linking the two. Depending on hydraulic characteristics (i.e. upward or downward), flow discharge can be reduced i.e. shallow groundwater or surface water is introduced to a deeper depth in the system and cutoff from recharging a wetland area, or flow of a different chemistry may be introduced in the wetland area from a deeper aquifer disrupting the natural chemistry of the surface water regime. Either scenario could have deleterious impacts to the wetland area.⁵

11. Since the water table is found at ground level along several hundred metres along the road allowance Gray Road, the hydro poles will be located in standing water. Leaching of toxic material from poles treated with **CCA** or pentachlorophenol threatens the water table and the complex interconnected hydrologic features that extend far beyond Gray Road.

- a. **Article: [Evaluating the potential for environmental pollution from chromated copper arsenate \(CCA\)-treated wood waste: A new mass](#)**

⁵ Tab 10 - Supplementary Witness Statement of David Kerr

balance approach.

T G Mercer, L E Frostick

- b. **ABSTRACT:** The potential for pollution from arsenic, chromium and copper in chromated copper arsenate (CCA) treated wood waste was assessed using two lysimeter studies. The first utilised lysimeters containing soil and CCA wood waste mulch exposed to natural conditions over a five month period. The second study used the same lysimeter setup in a regulated greenhouse setting with a manual watering regime. Woodchip, soil and leachate samples were evaluated for arsenic, chromium and copper concentrations. Resultant concentration data were used to produce mass balances, an approach thus far unused in such studies. This novel analysis revealed new patterns of mobility and distribution of the elements in the system. The results suggest that CCA wood waste tends to leach on initial exposure to a leachant and during weathering of the wood. When in contact with soil, metal(loid) transport is reduced due to complexation reactions. **With higher water application or where the adsorption capacity of the soil is exceeded, the metal(loid)s are transported through the soil column as leachate.** Overall, there was an unexplained loss of metal(loid)s from the system that might be attributed to volatilisation of arsenic and plant uptake. **This suggests a hitherto unidentified risk to both the environment and human health.**⁶

12. In the opinion of Mr. Kerr, the various hydrologic features found in and surrounding Gray Road as well as the high water table makes it susceptible to contamination as a result of vegetation clearing, road alteration and installation of the hydro poles.

*“This situation makes the entire area susceptible to local spills and contamination because water is near the surface. It also means any contaminants emerging from the upper reaches of the Moraine would spread rapidly in this area”*⁷

13. The NRSI Water Report indicates the one documented seep is “in the path of the above ground electrical line along Gray Road” and that intermittent stream Pigeon River # 1 PRT1 “is located “9.5 m from the switching station area and above ground electrical line”.⁸
14. The NRSI Water Report notes the location of the seep as being 0 m from components required for the construction of the Sumac Ridge project, that it is, “In the path of the Above Ground Electrical Line along Gray Road”

⁶ Journal of Hazardous Materials 05/2014; 276C:10-18. · 4.33 Impact Factor

⁷ David Kerr, Witness Statement, Tab 1, Para 30, Page 5

⁸ NRSI Water Report and Environmental Impact Study,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_2_PDR_20120601_Web.pdf

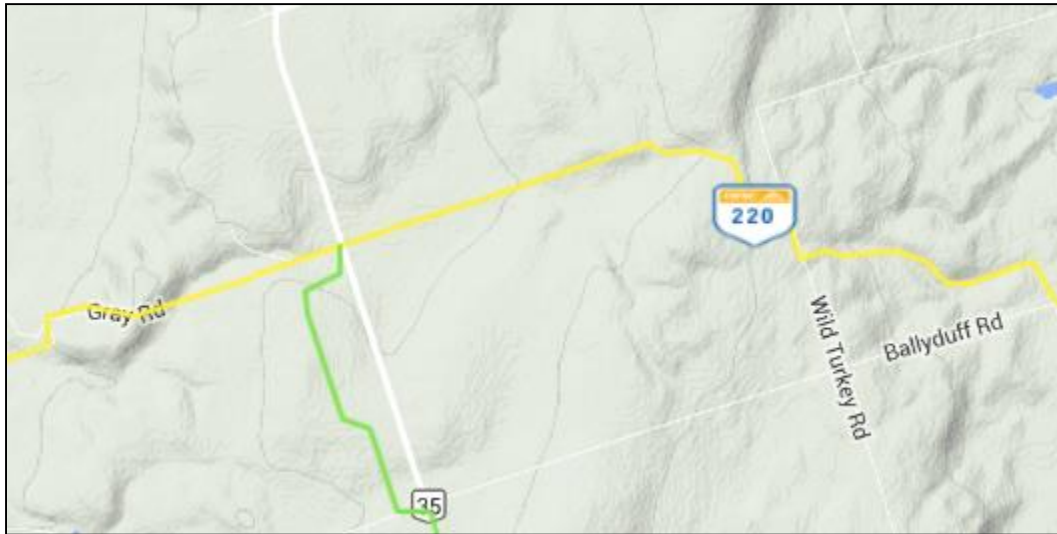
15. Page 1 of the Project Description summary report prepared for the approval holder and dated April 17, 2012 states:

“Removal of trees along Gray Road Trail, as well as construction of components required for Turbine # 1, will occur within Significant Woodland. Increased construction activity may result in disruption to breeding birds, as well as result in some disruption and alteration of hedgerows, agricultural field habitat, significant woodlot, and a variety of non-bat mammals and herpetofauna.”⁹

16. Trees play an important role by stabilizing soils and slopes and by regulating water infiltration rates through root nutrient uptake. The significant alteration of the road allowance Gray Road including vegetation along its length will interfere with the complex surface and ground water features present as well as their hydrological function thus jeopardizing the drinking water of area residents and beyond.
17. The opening of the road allowance Gray Road will attract vehicular traffic that presently does not have access. There will be the risk of water contamination by possible spills from unknown vehicles. The widening of the current unopened dead end road allowance will attract illegal dumping which is an unfortunate practice rural residents are well aware of. Illegal dumping is commonly found in rural areas. Unopened road allowances are target sites for illegal dumping. Most illegal dumping is done to avoid either fees at recycling centres or the time and effort required for proper disposal. Illegal dumping of residual waste is more than just an annoyance or an inconvenient eyesore; it costs ratepayers money for no apparent reason. The inaccessibility of Gray Road to vehicular traffic with no place to turn around has spared the road allowance from illegal dumping. However, alteration to the width of the road allowance coupled with vegetation clearance will invite vehicular access.
18. Illegal dumped materials could contain toxic materials that will infiltrate and contaminate a water table located at ground level.
19. In addition, the opening of the road allowance and vegetation clearance exposes once hidden adjacent properties thus inviting trespassers and possibly placing residents in danger.
20. Alteration of the currently unopened road allowance Gray Road will be open to traffic where none existed before placing recreational users in danger.

⁹ Sumac Ridge Project Description,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_2_PDR_20120601_Web.pdf

21. The unopened road allowances Gray Road and Wild Turkey are used as a snowmobile trail during the winter months. There are no manmade barriers or encumbrances along these routes.



Long Sault Ridge Runners Snowmobile Route map close-up Gray Road and Wild Turkey Trail

<http://ofsc.mapbase.ca/viewer/?extent=-8770086,5484945,-8746113,5472562>

22. The plan by the applicant to clear the trees and vegetation that exists to erect 22 hydro poles along the road allowance Gray Road will place the snowmobile riders at risk. The alternate route being proposed by the Intervener of constructing the transmission line along Hwy 7A where snowmobiles are not permitted will eliminate the risk of injury and death by collision. The following are just a few examples of many recorded incidents of collisions with hydro poles:
- a. A snowmobile collision Sunday evening near Steinbach has claimed the life of a 48-year-old woman. RCMP say at about 7:40 p.m., a snowmobile collided with a guide wire of a hydro pole at the intersection of Highway 12 and Hanover Road, just south of Steinbach. <http://www.chrisd.ca/tag/snowmobile/page/3/>
 - b. An 18-year-old snowmobiler near Ottawa also died on the weekend, after he lost control of his machine while going around a street corner and hit a hydro pole. <http://www.theenterprisebulletin.com/2011/02/04/snowmobile-crashes-on-ofsc-trails-a-rare-occurrence>

- c. A Port Dover man was listed in critical condition in a Hamilton hospital on Saturday after his snowmobile struck a utility pole in Normandale.
<http://www.brantfordexpositor.ca/2008/03/03/dover-man-critical-after-snowmobile-hits-hydro-pole>
 - d. OTTAWA - An 18-year-old man who crashed a snowmobile he had bought earlier that day is one of three snowmobile fatalities that marred a weekend on Ontario trails. The man from Almonte, Ont., near Ottawa, collided with a hydro pole at about 8:30 p.m. Sunday <http://www.thewhig.com/2011/01/31/two-snowmobile-deaths-on-ontario-trails>
 - e. The season's first serious accident involving snowmobilers in the region, occurred Nov. 28 when two males double riding collided with a hydro pole west of Everett.
<http://www.madhunt.com/sledztackberryhurtskido.html>
 - f. Garson, a snowmobile struck a hydro pole, (driver fatality injured & passenger injured. <http://www.normie.ca/boozesno.htm>
 - g. A snowmobile accident Sunday shortly after 2 a.m. put two Digby men in hospital with serious injuries Rodney Pulley, 26, and Matthew Stark, 24, were riding on a snowmobile that collided with a utility pole on Golf Course Road. Both were thrown at least 20 feet in the collision, said a witness
<http://www.novanewsnow.com/Living/2009-02-23/article-610913/Two-hospitalized-after-snowmobile-crash/1>
23. The transmission line along Gray Road poses a serious threat to the safety of those who use the trail during the winter months. Using an alternative route would eliminate this risk.

B - Wild Turkey Road

24. David Kerr also visited the road allowance Wild Turkey Road on April 21st, 2014. The following is a summary of this visit:
- SITE VISIT TO WILD TURKEY ROAD
 - a. The April 21 walk followed a steep climb along a narrow track at the east end of Gray Road and a descent to the junction at the north end of Wild Turkey Road. The visit continued south along Wild Turkey Road.
 - b. The sites of proposed turbines 2, 5, and 4 were observed from the road. The site for turbine 2 was at a distance on a high ridge to the west. Turbine 5 was about 60m east of

Wild Turkey Road. I was told there is a piezometer marking the site of the base of Turbine 5.

- c. It was evident from the road that a significantly steep slope occurs at the site for Turbine 5. This is consistent with a valley leading down to the river of the Fleetwood Creek Conservation Area. (See Slopes Map) The existence of steep slopes at a turbine site requiring a 4.6m x 18m foundation (twice as deep as for other sites in the project) and other excavations at the edge of a valley, raise serious issues. There is the danger of an unstable slope face, given the sandy soils of the Moraine. In addition there are concerns about stormwater run-off from the construction site resulting in pollution of the trout-bearing Fleetwood Creek.
 - d. Two streambeds termed FCH(A) and FCH(B) by the proponents, run across the T5 site and could be seen from the road. These carry water east and downhill into Fleetwood Creek. In addition, a culvert under Wild Turkey Road conveys water flowing in FCH(B). Again there is a concern and potential impact from pollution of these streambeds from widening and other major road works on Wild Turkey Road. The area is designated High Aquifer Vulnerability.
 - e. The site for Turbine 4 could be seen on farmland to the west of Wild Turkey Road. The entrance to the valley of the Fleetwood Creek Conservation Area was at the end of the walk, along a turning to the east of Wild Turkey Road that is a non-maintained portion of Ballyduff Road.
 - f. It must be pointed out that compacting ground throughout the project area for roads, access routes, laydown areas, storage areas and so forth, will reduce water infiltration to the Moraine. While specific sites for turbines may be relatively small, larger compacted areas of roads, access routes, and laydown areas will **not return to normal** once the project is built. Infiltration on the Moraine and as a consequence, the outflows of water through streams, springs, and seeps will be permanently affected.
25. According to the Application, the underground cabling will occur between two headwaters of Fleetwood Creek. The applicant has indicated that the unopened road allowance Wild Turkey Road will have to be widened in order to transport turbine components and other infrastructure. This will include tree removal and may require ditching. The Applicant has not provided a stormwater management plan. This area

located on the Oak Ridges Moraine is over a designated High Vulnerability aquifer and Significant Recharge Area. There is a danger that the aquifer may become contaminated.

Interrogatory No. 1(b)

Ref: Tab 1, p. 4, paragraphs 13 & 15.

b. Section 57(c) of the *Ontario Energy Board Act* (Act) refers to requirements to hold a licence. On what authority do you rely on in stating that the Board is authorized under section 57(c) of the Act to address environmental matters concerning the environmental impact of the construction of energy generation and transmission facilities?

Reply to Interrogatory No. 1 (b):

26. With apologies, the incorrect section of the *Ontario Energy Board Act* was cited. The following legal opinion suggests the OEB can address environmental matters as outlined in the following sections of the Act:

*“We also note that some statutes confer a jurisdiction on regulatory boards to address environmental matters, even though that is not their principal function. For example, the Ontario Energy Board Act authorizes the Ontario Energy Board to conduct assessments of the environmental impact of the construction of energy generation and transmission facilities.”*¹⁰

27. s. 88 (1) (b) requiring retailers or generators or persons engaged in an activity described in clause [57\(f\)](#) to make timely disclosure to the Minister of the Environment, or the IESO in the manner and at the times prescribed, of the nature and quantity of the prescribed contaminants emitted by the generation facility from which the electricity being sold or offered for sale is produced or deemed to be produced, the nature of the fuel and the process of generation used at the facility;
28. (c) authorizing the Minister of the Environment to determine from which generation facility or facilities electricity is deemed to be produced in accordance with such rules as may be prescribed in the regulation;
29. (d) requiring retailers or generators or persons engaged in an activity described in clause [57\(f\)](#) to file with the Board, in such form and at such times as the Board may determine, evidence that the generation

¹⁰ Tab 9 - http://www.weirfoulds.com/files/4130_WeirFoulds%20LLP-EnvironmentalLawProtectionOntario.pdf, p. 3.

facility from which the electricity is produced or is deemed to be produced meets standards for emission of prescribed contaminants from a source or class of sources set out under the Environmental Protection Act;

30. Industrial wind turbines do release contaminants. They contain hundreds of litres of contaminants that can leach into the ground and into surface water and ground water. These lubricants must be changed at regular intervals. Both road allowances Gray Road and Wild Turkey Road are located within complex hydrologic features. The area is dominated by a designated High Vulnerability aquifer and is considered a Significant Recharge area.
31. For example:

Lubricants and Oils used in a single REpower MM92 industrial wind turbine – model to be used in the Sumac Ridge project

a. **Fluid Type Quantity**

- Gearbox - synthetic oil 500 l
- Azimuth gears – synthetic oil 20 l
- Hydraulic system – hydraulic oil 12 l
- Main bearing – grease 15 kg
- Generator bearing - grease 1 kg
- Azimuth bearing – grease 9 kg
- Azimuth toothing – grease 1.4 kg
- Blade bearing – grease 12 kg
- Blade bearing toothing – grease 1 kg
- Pitch gear – synthetic oil 3×5.5 kg
- Pitch gear seal – grease Small amount
- Rotor locking, door hinges, etc - grease Small amount

Interrogatory No. 2

Ref: Tab 1, p. 9, paragraph 35.

Question:

You have stated that the photos supplied on January 21, 2015 by the Applicant in its response to interrogatories are inaccurate and misleading. On what basis do you make this statement? Please provide specific details and/or documents of the alleged inaccurate and misleading items for each photo supplied.

Reply to Interrogatory No. 2:

32. On September 8th, 2014, the Ontario Energy Board asked the Applicant to provide colour photographs of the affected sections of road allowances Gray Road and Wild Turkey Road:

September 8th, 2014

Board Staff Interrogatories in EB-2013-0442
Interrogatory No. 1

Ref: Ex C/Tab 1/Schedule 1/Appendix B

*d. It is stated in the application that the proposed facilities are to be located on an undeveloped portion of Gray Road. If available, please provide colour photographs of the affected sections (i.e. where distribution facilities are proposed to be located) of Gray Road and Wild Turkey Road.*¹¹

Gray Road Photographs

33. These are the photographs the Applicant provided of the affected area of the unopened road allowance Gray Road in the Interrogatory Response provided on September 18, 2014. These are NOT photographs taken by the Applicant. They are Google Earth Street views dated August 2011.



34. This Google street view image is of Hwy 35 at the junction of Gray Road. There is no construction planned for this area aside from the possibility of a hydro pole being installed in the area circled in blue in the photograph below.

¹¹

[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/448625/view/Board%20Staff %20 Interrogatories_wpd%20Sumac%20Ridge_20140908.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/448625/view/Board%20Staff%20Interrogatories_wpd%20Sumac%20Ridge_20140908.PDF)



35.

36. This Google street view provided by the Applicant is of Highway 35 not the affected area of the road allowance Gray Road. The blue circle indicates where a hydro pole might be located. NOTE: Hwy 35 is slated to be widened in the near future.



37. This Google street view image provided by the Applicant is of the opened section of the road allowance Gray Road located on the west side of Hwy 35. There will be no hydro poles or underground cabling in this area. It is not an affected area.



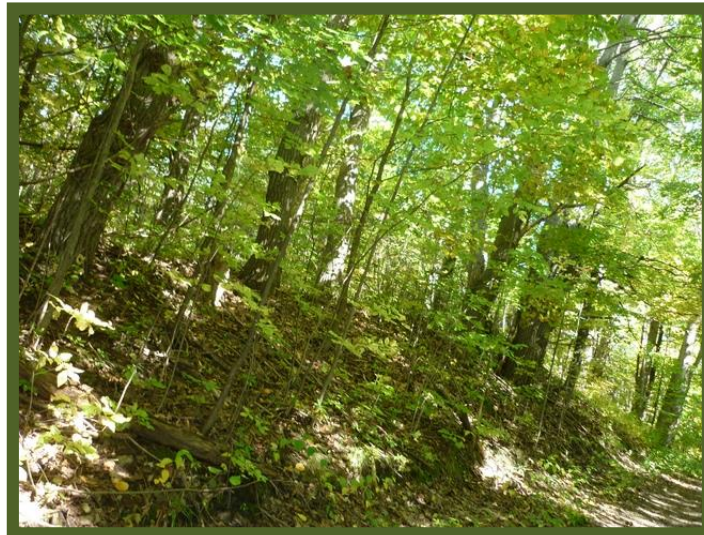
38. This Google street view capture is taken from distance located at an unknown location on the western side of Hwy 35 making it look like an open municipal rural road. However, If one zooms in on this Google street view as indicated in the following close-up, one can see the narrow trail and wild growth that lines the road allowance which connects to a woodland area to the east. This 1.7 km stretch of the affected area will be significantly altered since the Applicant indicates vegetation is to be removed in order to provide a 3 m clearance zone around the hydro poles.



39. The Applicant did not provide photographs of the affected areas of the dead end unopened, unmaintained road allowance Gray Road.
40. This is what the affected area of the road allowance Gray Road actually looks like. All photographs below documenting the unopened road allowance Gray Road were taken on September 28, 2014. The following photos indicate the narrow and varying width of Gray Road, the dense vegetation, slopes and road and water feature conditions not documented in the photographs provided by the Applicant to the Board.







41. The Google street view photos of provided by the Applicant neglect to document the permanent water features within the road allowance Gray Road.



42. The Google street view images of the affected unopened road allowance Gray Road by the Applicant also suggest that the terrain is flat. It is not. Gray Road rises to a high elevation to the east where it connects with another unopened road allowance Wild Turkey Road. The elevation provides a scenic view of miles of the Oak Ridges Moraine, a view that recreational users enjoy during all seasons.



43. Views of the surrounding countryside as viewed from the east end of the road allowance Gray Road.
44. Additional photos of what the road allowance Gray Road looks like can be found filed as evidence in this Appeal:
- http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/464406/view/Tab%202_Salmon_IntrvEVD_wpd%20Sumac_20150126.PDF
 - http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/464408/view/Tab%204_Salmon_IntrvEVD_Gray%20Rd_east%20of%20Hwy%2035_wpd%20Sumac_20150126.PDF

Wild Turkey Road Photographs

45. The Applicant did provide photographs of the road allowance Wild Turkey Road in its response to the OEB. Two photographs are dated September 18, 2014 which was the same date as the deadline set by the OEB for a response by the Applicant.
46. The one photo with the surveyors (below) which demonstrates the narrowness of the unmaintained road allowance Wild Turkey Road is undated. It is not from the same time frame as the other two photos which were taken in September 2014. This is a photograph taken sometime in the summer of some unspecified year and does not document the affected area along Wild Turkey Road where the underground cabling is to be constructed. This photograph was taken several hundred metres south of the site proposed for underground cabling.



47. The following photographs were taken the same day the Applicant responded to the OEB interrogatory on September 18, 2014 at 12:38 pm and 12:37 pm respectively.



48. This photograph is not where the cabling across the road allowance Wild Turkey Road is proposed.
49. In the photograph dated 12:37 pm, September 18, 2014 where the vehicle is parked on the side of the road does not include any UTM coordinates. It may be where the underground cabling is proposed to cross the road allowance Wild Turkey Road. Closer inspection suggests that it might actually be from a location located several hundred metres south of the proposed site.



50. Wild Turkey Road is an unmaintained, unopened road allowance. The following photographs taken September 28th, 2014 provide documentation of features where the below ground collector line is planned to connect to the site of Turbine # 5.



51. The site along unmaintained unopened road allowance Wild Turkey Road where underground cabling is proposed. The Applicant plans to widen the road allowance by at least 1.5 metres on the eastern side.



52. Mature trees within the direct route of the proposed cable route.

Interrogatory No. 3

Ref: Tab 1, p. 22, paragraph 70.

Question:

On what evidentiary basis are you relying on in stating that the municipality of the City of Kawartha Lakes wants to keep the road allowance, specifically on Gray Road, as a recreational trail and does not want it widened and opened to vehicular traffic? Please also provide the same from local residents, members of the public and First Nations that want the road allowance to remain in its unaltered state.

Reply to Interrogatory No. 3:

53. Vocal opposition is often a voice of support to not interfere, disturb or alter what already exists. Many people voiced their opposition to the significant alteration being proposed

to the area by the Applicant for the construction of the Sumac Ridge project which includes the unopened, unmaintained road allowance Gray Road.

54. Unopened road allowances exist throughout Manvers Township, and can be found on both concession and lot lines as they were originally surveyed during the Province's early settlement.
55. The unopened road allowances are owned by the City of Kawartha Lakes but are not maintained. The public is permitted to walk, horseback ride, ATV, snowmobile, among many other activities on unopened road allowances. However, while doing so they cannot alter the road allowance in any way; they cannot cut trees, cut brush, block access, dig, or change the grade of the allowance.

City of Kawartha Lakes

56. The City of Kawartha Lakes recently entered into agreements with several snowmobile clubs allowing the use of the unopened road allowance Gray Road as a recreational trail. Conversely, the City of Kawartha Lakes expressed objections to the alteration of both road allowances Gray Road and Wild Turkey Road through comments posted to the EBR regarding the Sumac Ridge project as well by the appearance of City of Kawartha Lakes staff as witnesses and participants at the Sumac Ridge Environmental Review Tribunal hearing.¹²
57. The Sumac Ridge Construction Report, and Design and Operations Report indicate de-icing materials and salt will be applied to access roads during the winter months. The application of road salt or other de-icing materials will interfere with the snowmobilers' ability to use the road allowance Gray Road as a recreational trail. Road salt is NOT applied to secondary roads in the Manvers area of the City of Kawartha Lakes since residents rely on wells for their drinking water. In nearby Welcome, application of salt contaminated an aquifer in the early 1980s.... it is still contaminated. Groundwater is found along the surface of Gray Road.¹³
58. Ron Taylor, the Director of Development Services at the City of Kawartha Lakes, as a Participant, presented a statement to the Environmental Review Tribunal on December 11th, 2014. Mr. Taylor explained to the ERT panel that the City of Kawartha Lakes under Schedule B as part of the REA consultation process followed the municipality's right to ask for more information and studies. Wpd Canada did not supply any of the information asked for, including the all-important promised hydrogeological report. In addition, it was pointed out the Sumac Ridge project violated the city's own by-laws regarding development on the Oak Ridges Moraine. Mr. Taylor also explained at the hearing the City of Kawartha Lakes under a by-law agrees to keep the Sumac Ridge project area free from any kind of large scale development. This includes keeping both road allowance

¹²City of Kawartha Lakes EBR Submission, Tab 2

¹³<http://www.northumberlandnews.com/community/health/article/1570091--fresh-water-would-be-welcomed-in-welcome>

Wild Turkey Road and Gray Road in their current state. The COKL does not want either road allowance made into thoroughfares.¹⁴

59. Professional Engineer Juan Rojas, the Manager of Engineering Services regarding roads and transportation networks for the City of Kawartha Lakes, testified as an expert witness at the Sumac Ridge Environmental Hearing. Mr. Rojas informed the Environmental Review Tribunal the City of Kawartha Lakes had no obligation or justification to open the road allowances Wild Turkey or Gray Road. The City of Kawartha Lakes has no intention of opening up these unassumed and unmaintained road allowances thus preserving in their present natural state.¹⁵
60. City of Kawartha Lakes Councillor Heather Stauble responsible for the care of Ward 16 residents which the Sumac Ridge project falls within testified as a Participant at the Sumac Ridge Environmental Review Tribunal hearing. In her testimony Ms. Stauble explained that a record number of comments of objection had been registered to the EBR regarding this industrial project which would include the significant alteration of the road allowance Gray Road and that residents wanted the natural areas to remain as they have been for many decades.¹⁶

First Nations

61. On Tuesday December 9th, 2014, the Sumac Ridge Environmental Review Tribunal hearing was held at Curve Lake. First Nations spoke to their unique and compassionate relationship with Mother Earth as well as their entrenched rights. Representatives from Curve Lake First Nation Brent Whetung, Ryerson Whetung and Melissa Dokis spoke as well as Hiawatha First Nation representative Diane Sheridan. These representatives stated the relationship their people forged with the Crown is not being upheld; that one letter and a couple of emails sent by the Applicant over 4 years with regard to a precedent-setting huge industrial project is not consultation.
62. The First Nations representatives presented evidence to the Environmental Review Tribunal that the alteration of the road allowances Gray Road and Wild Turkey Road will infringe on their rights to hunt and gather food and plants for medicinal preparations. Vegetation clearance will remove plant material as well as wildlife habitat. Curve Lake and Hiawatha spokespersons all indicated their wish for the project area to remain in its present natural state which includes the road allowance Gray Road.¹⁷

¹⁴ Ron Taylor, Sumac Ridge ERT Participant Statement, Tab 3

¹⁵ Juan Rojas, Witness Statement, Sumac Ridge ERT Hearing, Tab 4

¹⁶ Heather Stauble, Sumac Ridge ERT Participant Statement, Tab 5

¹⁷ Brent Whetung, Ryerson Whetung, Melissa Dokis, Diane Sheridan, First Nation Statements, Tab 6

**Excerpt from the Final Submission by the Appellants, *Cham Shan Temple v. Director, MOE, ERT*
Case Nos. 13-140/141/142, pages 189-190**

63. The following are excerpts from the Final Submissions of the Appellants in the hearing before the Environmental Review Tribunal regarding this project and speaking of the First Nations concerns:

788. Two of the First Nations who are parties to the Williams Treaty (Treaty 20) oppose the Sumac Ridge Industrial Wind Turbine Project, the Curve Lake First Nation and the Hiawatha First Nation. The Sumac Project is on Treaty 20 land.

789. Four members of these two First Nations spoke as participants at Curve Lake before the Hearing Panel on Tuesday, December 9, 2014

790. They were Diane Sheridan for the Hiawatha First Nation, and Brent Whetung, Ryerson Whetung, and Melissa Dokis for the Curve Lake Nation.

791. The participants had provided presentations in writing to the Tribunal and their written evidence will not be repeated in this submission.

792. Diane Sheridan spoke of the unique and compassionate relationship between the First Nations people and Mother Earth. She said we take only what we need. We have the right to hunt, fish and gather on Crown land. 575

793. Brent Whetung stated that the traditional lifestyle of the Curve Lake people was hunting and fishing. He spoke of the fiduciary obligation of the Crown that was not being upheld. He stated that the Sumac Ridge Project will cause serious and irreversible harm. He stated that harvesting rights had never been ceded and that the First Nation's definition of natural environment is the definition that applies. The Project ignores First Nation's rights. 576

Mr. Whetung also showed a video about the history of First Nations People.

794. Ryerson Whetung gave a statement that referred to his interest in traditions of hunting and fishing 577 and he spoke of deer and water fowl, down to flowers and insects. Mr. Whetung stated that they would survive without us but not us without them. They were part of his "natural environment" and he referred to the inter-

relationships among all aspects of the environment for First Nations people emphasising their reliance on the natural environment for food, He showed a short video of a hunt.

795. Melissa Dokis of Curve Lake spoke of the gathering aspects of First Nations culture, the harvesting of birch bark and berries and spiritual practices as part of the environment including the relationship to land. 578

796. Neither the Approval Holder nor the Director called any evidence in response. Neither cross examined any of these witnesses on matters material to the appeals before this Tribunal. There, the evidence submitted by the First Nations stands completely uncontradicted and unchallenged.

575 Diane Sheridan statement, Exhibit 35

576 Brent Whetung, Exhibit 36

577 Ryerson Whetung, Exhibit 37

578 Melissa Dokis, Exhibit 38

64. In addition, a local reporter had this to say:

First Nations speakers say wind turbine project infringes on treaty rights

Representatives from Hiawatha and Curve Lake say they should have had a chance to veto the project

Peterborough This Week by Angela Lavallee

CURVE LAKE -Concerns came on strong from two area First Nations at Tuesday's hearing on the Sumac Ridge wind turbine project.

Environmental Review Tribunal (ERT) vice-chair Heather Gibbs made it clear that the hearing was only intended to hear presentations from the First Nations on the potential negative impacts from the turbines. She has been listening to arguments about the pros and cons of the project for more than two weeks now at the Pontypool Community Centre about the project in Manvers Township in the City of Kawartha Lakes.

Hiawatha representative Diane Sheridan didn't waste any time in stating the negative impacts the turbines will have on the land.

"We have a unique compassion for Mother Earth and we fear that the turbines will diminish the land," she said.

Ms Sheridan went on to say that under Treaty 20, the turbine project infringes on treaty rights and that there was no consultation with the First Nation on the project beforehand.

The turbine company, wpd Canada, had representatives at the hearing but they remained silent throughout.

“This tribunal needs to take into account of the Aboriginal use of the land and water,” Ms Sheridan added.

Brent Whetung, a member of Curve Lake First Nation, has support from the community to speak on their behalf and to reject the decision of the (ERT).

“The fact that WPD did not consult with the First Nations signifies the lack of communication,” he said.

An email sent to wpd from Mr. Whetung in April 2014, stated that he wanted the project to cease immediately until further discussions. The Ministry of Environment has since issued a permit to allow the project to go ahead.

Additional meetings for the ERT are scheduled Dec. 11 and 12 in Pontypool.¹⁸

ERT listens to Curve Lake First Nation

The Millbrook Times by Andy Harjula

This is the first part of two stories about the Environmental Review Tribunal's (ERT) visit to hear testimony from Curve Lake First Nation on December 9th, 2014. The second installment will be available next week.

Pictured is Diane Sheridan from Hiawatha First Nation. The Hiawatha First Nation is part of Treaty # 20 and they are very concerned about the Sumac Ridge Industrial Wind Turbine Complex approved for Manvers.

Prior to Diane's testimony, Doug Williams or Spotted Eagle as he is known by his Ojibwa name, is an elder from Curve Lake First Nation. He blessed the meeting with an Ojibwa prayer and by performing the smudging ceremony.

¹⁸ <http://www.mykawartha.com/news-story/5200489-first-nations-speakers-say-wind-turbine-project-infringes-on-treaty-rights/>

The smudging ceremony involves burning sweet grass and each member at the First Nation's table cupped their hands and caught the smoke from the grass and "wash their minds", then "wash their heart" and finally "wash their body."

The purpose of the smudge wash is to clean yourself and get rid of any baggage you may have before the meeting begins. The other part of the ceremony was for the ERT to present Doug with a symbolic tobacco gift from the Ontario Government but this did not materialize.

Mr. Williams declined to have his picture taken because of the solemnity of the ceremony. Mr. Williams told the audience "we have developed a nation of sustainability; we will be here 10,000 years from now." He questioned the faith for the rest of us.

Diane Sheridan was the first person to speak and made the following points:

- **her people are close attendants to mother earth**
- **water is of concern to them**
- **the aquifer on the Industrial Wind Turbine Complex will be affected if the turbines are built**
- the Sumac Ridge Industrial Wind Turbines are an infringement on their treaty rights
- **the Sumac Ridge Industrial Wind Turbines will have a negative impact on wildlife**

She was emphatic when she said "We were not afforded the opportunity to comment on the turbines until, after the fact."

The adjudicators asked Diane for the reason why she held an eagle feather during her testimony. Brent Whetung explained the feather was sacred to their beliefs and thus the feather stated that Diane gave truthful testimony to the ERT.

Wisely, the adjudicator did not insist the First Nations presenters had to be "sworn in."¹⁹

Members of the Public

65. As previously stated voicing opposition is a way of voicing the preference for the retention of the natural features that exists within and along the road allowance Gray Road, and to keep its function as solely a recreational trail. As indicated in this email

¹⁹ The Millbrook Times, print copy only available, December 11th, 2014

provided through disclosures during the Sumac Ridge Environmental Review Tribunal Hearing, a record number of comments of objection were posted to the EBR.

From: Rudzki, Kristina (ENE)
Sent: August 9, 2013 2:08 PM
To: Peddle, Shawna (Shawna.Peddle@stantec.com); Khlaire Parre (Khlaire@wpd-canada.ca)
Cc: Tse, Enoch (ENE)
Subject: Sumac Ridge: EBR comment summary table
Hi Shawna,
I have attached the EBR comment summary table. Our count for total number of comments is 2874 (which I think may be a record for REA postings).
Please fill out the attached table and return at your earliest convenience.
Please also note that Enoch may be sending some separate comments relating to noise in the near future.
Thank you!
Kristina

66. Comments posted to the EBR did include concerns about the alteration of Gray Road. In ERT disclosures this concern was listed in the summary of concerns assembled by the Applicant wpd Canada. It must be noted the Applicant provided a response containing information contradictory to the OEB application for an above ground transmission line requiring a vegetation clear zone of 3 m along the length of the road allowance Gray Road.

“Gray Road is part of a snowmobile trail system and trail used for hiking, bird watching and mountain biking, which would become unavailable”

Response wpd Canada. We are not upgrading Gray Road to alter its purposes. Construction will only be to bury cables underground, as wpd will not be installing any transmission poles. Any potential impacts on snowmobile trail systems and trails used for hiking, bird watching and mountain biking will be temporary (limited to on-site construction). Modifications to roads and trails will be restored to their original condition

67. The Applicant’s summary of comments received and posted as part of the application for approval of the Sumac Ridge project also reveals concerns about the alteration of the road allowance Gray Road; specifically that it no longer will function as a recreational trail.

19.1 11-Jun-2012 • Correspondent191

- He was concerned about the loss of vegetation and the impact it may have on hiking/ snow mobile trails.
- Explained that at this time the placement of the cables is undecided as they may be over or underground.
- Explained that in the Construction report there was mention of these lines being under or above ground.
- Mentioned that wpd is currently speaking with the city to determine the layout and that they were aware of the hiking and snowmobile trails in the area.

Page 10

68. The natural features found within and along the unopened road allowance Gray Road can be found in the EBR comment submitted to the MOECC by local resident Jane Zednik. Page 3 of the document indicates the use of the road allowance as a recreational trail.²⁰
69. EBR comments included the following concerns about tree removal along Gray Road.
“About 77% of all forest plant species (including some endangered taxa) occurring in the neighbouring forests are also found in the adjacent hedgerows. ([Biological Conservation Volume 142, Issue 11](#), November 2009, Pages 2522–2530) Environment Canada has conducted many studies on hedgerows...and concludes: “Biodiversity was always highly significant between hedgerows and fields at all trophic levels” as well as: “Habitats are important to wildlife in agroecosystems”. The removal of hedgerows will remove habitat that will affect many generations of avifauna. Furthermore, Wild Turkey Road as is Gray Road are pioneer roadways identified on the Tremaine map of 1861. The Ministry of Culture identifies that existing hedgerows to be of historical cultural importance and to be retained as part of the cultural heritage of Ontario.
http://www.mtc.gov.on.ca/en/publications/Strength_Heritage.pdf

*Trees and vegetation along a section of 1.9 km of Gray Road will have to be removed either to accommodate construction vehicles, road widening or erection of the transmission line. Gray Road is little more than a rutted laneway used primarily by recreational users. It is a pioneer trail dating back to the 1800s. The removal of an acre - .4 hectares of mature forest that connects and crosses Gray Road will fragment this mature forest.*²¹
70. Concerns about the negative hydrologic impact alteration along the road allowance Gray Road were also submitted to the EBR. The water features found within and surrounding the road allowance provide wildlife habitat and thus provides much interest to recreational users of the trail system.
71. On a very cold March 2nd, 2013, approximately 100-150 people came to see the hand-off of the big boxes of petitions and letters of objection to the Sumac Ridge project. The handing over of the petitions which was to be a quiet event quickly turned into a well-attended rally.
72. Dale Goldhawk of Goldhawk Talks Back re-broadcast segments of the handover of over 5000 petitions on his radio show.²²

²⁰ EBR Comment Gray Road Allowance, Jane Zednik, Tab 7

²¹ <https://manverswindconcerns.wordpress.com/2013/04/07/save-your-community-action-required/>

²² <http://www.zoomerradio.ca/shows/goldhawk-fights-back/podcast-goldhawk-fights-back/gfb-podcast-anti-wind-turbine-rally/>

73. Aside from MPP Laurie Scott, and MP Barry Devolin, local residents as well as people from Cavan Monaghan/Millbrook area, Northumberland County and as far away as Norwood came to offer their support to retaining this special area in its natural state which includes the trail system along the road allowance Gray Road.

Petition with thousands of signatures delivered to MPP Laurie Scott

Laurie Scott MPP

BETHANY – On Saturday, March 2, about two hundred local residents braved subzero temperatures to voice their opposition to proposed industrial wind turbines in their area.

The rally took place at Rolling Hills Public School in Bethany, where previous rallies and public meetings had been held.

Haliburton-Kawartha Lakes-Brock MPP Laurie Scott was presented with thousands of signatures on petitions, letters and emails by Paul Reid of Manvers Wind Concerns and local Councilor Heather Stauble. In addressing the crowd, Scott said, “For four years you have voiced your opposition to wind turbines in our community. These petitions further reinforce that.”

Scott was also joined on stage by Member of Parliament Barry Devolin and broadcaster Dale Goldhawk. Scott went on to say “In her Throne Speech, the new premier talked about communities having a say in where these projects will be built and that they should go to willing host communities. I can assure the Premier that this is not a willing community.”

Since these proposed wind turbine projects have not been approved, Scott is urging the Premier to live up to her commitment in the Throne Speech, listen to the community and turn them down.

74. In June of 2012, the south side of Hwy 7A to Weston Road (inclusive) and west from Porter Road (both sides) to include Glengarry (both sides) and the subdivisions to the east of Glengarry were canvassed before the second and final meeting for the Sumac Ridge project. Only one person was in favour of the Sumac Ridge project, one was unsure, and the rest were strongly opposed. Approximately 100 residences were visited during this survey. Another door to door survey was taken during the same time period. Six residents canvassed approximately 500 people residing in the nearby communities in Janetville, Omemee, Ski Hill Road, and the Devil's Elbow area. The result was that not one person spoke in support of the Sumac Ridge project.

75. No support for the Sumac Ridge project could be found in the nearby community of Pontypool. Many of these residents are recreational users of the unopened road allowance Gray Road.
76. The Applicant proposed to conduct its own Municipal Class B EA on the alteration of the road allowances Wild Turkey as well as Gray Road. While this Class EA was dismissed by the MOE since the Applicant is not a municipality and cannot conduct such assessments as a private company, 145 comments from 88 individuals were received. There were many requests for EA Part II orders which included the need for a consultation report with all recreational users of the road allowances which include Gray Road including the snowmobile club, naturalist and stewardship groups, hunters, hiking clubs, cross country skiers, users of Fleetwood Creek, biking clubs, and horseback riders.²³
77. The Board received numerous comments of objection to this Application before the Ontario Energy Board from members of the public. They include the following objections to the alteration of the road allowance Gray Road. These objections support the retention of the unopened road allowance Gray Road in its decades-old unaltered natural state.

“In order to construct the transmission line along the unopened trail road allowance known as Gray Road, the heritage pioneer trail will have to be considerably altered. Wpd Canada has not provided any designs or site plans that include road alteration to the MOE or in the application before the OEB. This omission places the safety of those who use the trail for recreational purposes at risk. First Nations peoples who are stewards of the lands in question under Treaty 20 have not been consulted regarding land alteration.”

“Approval of the Sumac Ridge REA application stipulates an underground transmission line along Gray Road. The application before the OEB is not the same as the plan approved by the Ministry of the Environment. The design has changed dramatically from the REA application to the application before the OEB. The public was not, and has not been made aware of this new plan for an aboveground transmission line. There has been no opportunity for the public or the City of Kawartha Lakes to raise potential safety and reliability issues or to examine and address any issues that might arise as a result of this new design concept.”

“All studies regarding the approved MOE Sumac Ridge application are based on the transmission line along Gray Road being below ground, wpd Canada has not included natural heritage assessments, avian impact studies (there is a large 3 acre pond used as a

²³ <http://www.municipalea2014.ca/>

migratory stopover for waterfowl) environmental impact statements, wetland impact assessments, geotechnical, hydrological or archaeological studies that support the 'new' aboveground plan and the location of the poles and cabling in the current application before the OEB. High safety and environmental standards have not been introduced, let alone met. There are several species at risk in the proposed construction zone."

"The widening and opening of a dead-end trail such as Gray Road will invite unwanted vehicular traffic at certain times of the year, including possible illegal activities as well as illegal dumping. Gray Road trail is not maintained. It is inaccessible to vehicular traffic during the winter months. It is also impassable during part of the spring and fall months. During emergency situations and/or required maintenance, access to the transmission line will not be possible thus putting the safety of residents at risk. "

"The water table is at the surface along an extended section of Gray Road. There are also seeps, springs and a wetland. Alteration of water features along Gray Road without any form of hydrogeologic assessment will place area wells in jeopardy including wells used at two nearby elementary schools."

"The transmission line along Gray Road which will involve significant and permanent alteration of a heritage trail and the distribution line that crosses Wild Turkey Road located on the Oak Ridges Moraine for a costly, intermittent energy supply is not in the public interest."

From resident Kate Gregory:

"Gray Road is an unmaintained trail. Year round access to the transmission line for maintenance and repairs will not be possible. Not being able to maintain the line or access it during emergency situations places the public in danger. It is important to me personally that the unmaintained roads around my house remain unmaintained and unused by traffic. My family and I use these unmaintained roads for recreation (walking and cycling primarily) and they are perfectly suited for this. Putting traffic in this area will change the fundamental nature of my neighbourhood. I have lived here over 20 years, and raised two children here who attended the schools in the study area. I know what it is supposed to be like here

and it should not change without a good reason in the public interest.”²⁴

78. The recreational trail that is the unopened road allowance Gray Road is part of a larger trail system. The Gray Road allowance joins another road allowance Wild Turkey Road to the east.
79. The Ballyduff trail system which is located on the Oak Ridges Moraine is located just east of Wild Turkey Road.²⁵ The Ballyduff Trail System leads to the Fleetwood Creek Conservation area which is a 900 acre (380 hectare) tract of land managed by Kawartha Conservation for the Ontario Heritage Foundation. This large natural area is also located within the Oak Ridges Moraine, and it is characterized by steep valleys, sand, soil, and many cold water streams. There are three trails that meander through uplands, deciduous forests, meadows, and wetlands. The Ballyduff Trail system also connects to a commercial venue called South Ponds located on the opened part of Gray Road where one is encouraged to:

“Snowshoe or cross country ski on the adjoining Ballyduff Trails winding through stands of pine and cedar on a KLT-protected property”²⁶

80. Another commercial operation which backs on to the unopened section of the road allowance Gray Road, called Ironstone, which is used as a wedding venue indicates on its website:

“Hiking trails meander through the once-impenetrable thickets, offering a chance to enjoy nature up close.”

81. To the west next to the opened portion of Gray Road, there is another trail system located within Pigeon River Headwaters Conservation Area a valuable natural resource and a beautiful 125 hectare (308 acre) property.²⁷
82. The significant alteration of the unopened road allowance Gray Road as proposed by the Applicant which will include extensive vegetation removal, interference with water features and the narrow trail as well as placement of manmade infrastructure (22 hydro poles) where none has previously existed will result in the removal of a vital connective corridor that is part of a much larger recreational trail system.

²⁴

http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/435870/view/K_Gregory_LetterofComment_20140421_Redacted.PDF

²⁵ Ballyduff Trail Map, Tab 8

²⁶ <http://www.southpondfarms.ca/stories/201423out-on-the-trails/>

²⁷ <http://www.kawarthaconservation.com/conservation-areas/pigeon-river-headwaters>

83. Based on this evidentiary basis, we feel members of the public, First Nations as well as the City of Kawartha Lakes have made it quite clear their preference to retain the unopened portion of the road allowance Gray Road in its natural state.

Date: February 17, 2015

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