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**BORALEX**

July 22, 2016

Ms. Kristen Walli  
Ontario Energy Board  
2300 Yonge Street  
Toronto, Ontario Canada, M4P 1E4

Ms. Walli,

Further to the Ontario Energy Board's order dated July 13, 2016 in the above-noted proceeding, please find enclosed an Affidavit of Service. The Affidavit of Service is being filed pursuant to the Ontario Energy Board's Practice Direction on Confidential Filings. Please contact Heloise Apesteguy-Reux at [hapesteguyreux@mccarthy.ca](mailto:hapesteguyreux@mccarthy.ca) or 416 601-7809 with any questions

Regards,

Adam Rosso  
Director of Development  
Boralex Inc.

**RECEIVED**

JUL 26 2016

**ONTARIO ENERGY BOARD**

EB-2016-0196





## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B, as amended (the "**OEB Act**");

**AND IN THE MATTER OF** an application by FWRN LP and NR Capital General Partnership for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct amending the relief requested in EB-2013-0203 (the "**Application**").

## AFFIDAVIT OF SERVICE

I, Adam Rosso, of the City of Milton, in the Province of Ontario, **MAKE OATH and SAY:**

1. I am Director, Project Development, Ontario at Boralex Inc., which company is engaged in development work for the Niagara Region Wind Farm<sup>1</sup> on behalf of FWRN LP and NR Capital General Partnership (the "**Applicants**").
2. In my role as Director, Project Development, I am responsible for various activities related to the development of the Niagara Region Wind Farm and have directed the carrying out of certain activities on behalf of the Applicants and have personal knowledge of the matters herein disposed.
3. In accordance with the Ontario Energy Board's Procedural Order No. 1 dated July 13, 2016 (the "**July 13 Order**"), I arranged to serve the three landowners who use the unopened road allowance on which a portion of the Smithville Bypass (as defined in the Application) is proposed to be located with a copy of (i) the July 13 Order (attached hereto as Exhibit "A") and (ii) the first 15 pages of the Application (attached hereto as Exhibit "B").
4. The July 13 Order and the first 15 pages of the Application were delivered via courier on Friday, July 15, 2016. The addresses of the three landowners who use the unopened road allowance on which a portion of the Smithville Bypass (as defined in the

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<sup>1</sup> Boralex Inc. also has an option to purchase a 25% interest in the project: see June 8, 2015 press release available at <http://www.boralex.com/newsfeed/press-releases>

Application) is proposed to be located are attached at Exhibit "C". The invoice showing the date and time of delivery is attached at Exhibit "D".

SWORN BEFORE ME at the City of  
MILTON this 21<sup>st</sup> day of July  
2016.

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)  
)  
)  
)  
)  
)



A commissioner for taking affidavits

Conrad A. Willemse,  
no expiry.



Adam Rosso

Filed: 2016-07-22  
EB-2016-0196  
Affidavit of Service

**EXHIBIT "A"**



EB-2016-0196

**FWRN LP and NR Capital General Partnership**

**Application for Leave to Construct amending the relief  
granted in EB-2013-0203**

**PROCEDURAL ORDER NO. 1**

**July 13, 2016**

FWRN LP and NR Capital General Partnership (Applicants) filed an application on June 17, 2016 for leave to construct under sections 92 and 96(2) of the *Ontario Energy Board Act, 1998* (Act). Through the application, the Applicants seek approval for two modifications to the transmission line route that is being constructed in Haldimand County and Niagara Region pursuant to the Leave to Construct Order issued by the OEB on July 3, 2014 in proceeding EB-2013-0203 (LTC Order). The Applicants request that the application be determined on an expedited basis without a hearing pursuant to section 21 of the Act. The application has been assigned file no. EB-2016-0196.

At the time of filing the application, the transmission line and related facilities (Transmission Facilities) are approximately 85% completed, with 82% of the approximately 44 kilometer transmission line already built. Once completed, the Transmission Facilities will connect the Niagara Region Wind Farm, a 230 MW renewable energy generation facility, to the IESO-controlled grid. The affected municipalities are the townships of West Lincoln, Lincoln, and Wainfleet.

The first modification to the transmission line route originally approved in the LTC Order is an approximately 300 meter change to accommodate the interests of the Ministry of Transportation (the Highway 3 Bypass). The other modification is an approximately 2.4 kilometer change to accommodate the interests of the Township of West Lincoln (the Smithville Bypass).

### Highway 3 Bypass

As originally approved, a portion of the transmission line route would run north on Wainfleet Dunnville Townline Road and then turn east and run along Highway 3. The proposed Highway 3 Bypass would have the transmission line route avoid Highway 3 by crossing over a piece of private property. The Applicants have entered into a land use agreement with the owner of this private property, in a form approved by the OEB.

The Applicants state that there are no utility crossings along the Highway 3 Bypass, that the Highway 3 Bypass has obtained a Renewable Energy Approval (REA) amendment approval from the Ministry of Environment and Climate Change, and that the REA amendment has not been appealed to the Environmental Review Tribunal. The Applicants confirm that the IESO and Hydro One have indicated that there will be no impact on, respectively, the System Impact Assessment (SIA) and Customer Impact Assessment (CIA) due the reduction in transmission line length if the proposed Highway 3 Bypass modification is approved.

The Applicants state that all electrical equipment and systems for the Highway 3 Bypass will be designed in accordance with current codes and standards, including the Ontario Electrical Safety Code issued by the Electrical Safety Authority (ESA).

The Applicants filed a letter of comment on June 28, 2016 from the Ministry of Transportation in support of the Highway 3 Bypass.

The Applicant states that no one will be adversely affected in a material way by the OEB's decision regarding the Highway 3 Bypass.

### Smithville Bypass

As originally approved, a portion of the transmission line route would run through a new urban development area planned in the community of Smithville, which is located in the Township of West Lincoln. The proposed Smithville Bypass would change the route of the transmission line such that it would bypass the new urban development area in Smithville.

If approved, the Smithville Bypass would cross properties owned by Hydro One Networks Inc., and a private landowner. It would also cross a Canadian Pacific Railways (CP) rail line and an unopened road allowance belonging to the Township of West Lincoln. The Applicants state that they have secured, or are in the process of securing, the rights to construct over or beneath each of these properties as follows: the Applicant has received approval from CP for the rail crossing; the Applicants have

submitted drawings to Hydro One for the underground crossing beneath the existing Hydro One transmission line identified within the proposed route and are awaiting approval together with approval from Hydro One for a small crossing over a second area (PIN 46055-0086) owned by Hydro One; the Applicants have secured land rights from the private landowner through an option agreement (entered March 2016) in a form approved by the OEB; and the Applicants are party to a Road Use Agreement with the Township of West Lincoln.

The proposed Smithville Bypass also crosses an unopened road allowance currently used by three landowners for access to their properties. The Applicants filed a letter on July 8, 2016 indicating these three landowners (the Three Landowners) would not be impacted during construction. The Applicants further state the unopened road allowance is used by persons accessing a recreational trail. The Applicants do not address, in the letter or otherwise, whether the Three Land Owners have been notified of the application or the proposed transmission line route modifications.

The Applicants state that all electrical equipment and systems for the Smithville Bypass will be designed in accordance with current codes and standards, including the Ontario Electrical Safety Code issued by the ESA.

The Applicants state that the IESO and Hydro One have indicated that there will be no impact on either the SIA and CIA, respectively, due the reduction in transmission line length resulting from the Smithville Bypass.

The Applicants obtained their REA approval on May 6, 2016 from the Ministry of Energy and Climate Change, and have confirmed that the amendment has not been appealed to the Environmental Review Tribunal. The Applicants submit the REA Amendment process required extensive consultation with local residents. Notices were published in ten local newspapers, the West Lincoln Road Use Agreement is posted on the Township of West Lincoln's website, and discussions regarding the proposed change in route has been set out in municipal council minutes, which are posted on the Township of West Lincoln's website. The Applicants state that all landowners along the route of the Smithville Bypass have received tree trimming notices.

The OEB received a letter of comment on June 28, 2016 from the Township of West Lincoln supporting the Smithville Bypass.

The Applicants state that no one will be adversely affected in a material way by the OEB's decision regarding the Smithville Bypass.



## Findings

### *Merits*

Section 21 (4) of the OEB Act provides, in part, that the OEB may dispose of a proceeding without a hearing where the OEB determines that no person, other than the applicant, will be adversely affected in a material way by the outcome of the proceeding. The section requires that the OEB consider whether any person, not just a landowner, will be adversely affected by the outcome of the proceeding.

In seeking the two modifications to a previously approved transmission line route without a hearing, the Applicants state that no party will be adversely affected in a material way. The Applicants have provided the OEB with details regarding the dealings that they have had with affected parties.

The OEB has reviewed the information pertaining to the affected parties in relation to the proposed modifications to the route of the transmission line. In respect of the Smithville Bypass, the OEB notes that the Applicants have not filed evidence that notice of this proceeding has been provided to those who use the unopened road allowance.

The OEB is satisfied that the Applicants are not able to serve notice upon those using the recreation trail as these individuals are most likely unknown to the Applicants.

However, the Applicants have also not provided evidence of notice to the Three Landowners who rely on access to their properties through the unopened road allowance. Paragraph 55 of the application provides, in part, as follows:

Although there may be a small impact on those currently using the Unopened Road Allowance during the construction of the transmission line, this impact will not, ***in the submission of the Applicants***, amount to a material adverse effect on those using the Unopened Road Allowance.  
***[emphasis added]***

The Applicants state that the Three Landowners will have access to the unopened road allowance during construction. This statement does not contain any specific information related to the severity or duration of impact which would allow the OEB to make an assessment as to whether the Three Landowners will be materially adversely affected by the proposed modification. The OEB must base its decisions on evidence provided to it by the Applicants. It is not clear to the OEB why evidence demonstrating notice to the Three Landowners is not contained within the application. The Applicants have

also not confirmed that there will be no impact post construction. Presumably, the Three Landowners are known to the Applicants and could have easily been provided with notice.

The Applicants appear to rely on notice given through the REA process and in the form of a tree trimming notice. The OEB does not find notice given in relation to a separate process, in this case the REA process, to constitute sufficient notice as it relates to an OEB proceeding. The two are separate and distinct matters dealing with separate and distinct approvals. The Applicants have not filed the tree trimming notice referred to in its application. As a result, it is unclear to the OEB whether the notice would provide sufficient detail to the Three Landowners to advise them of the effect of the change to the transmission line.

In the light of the foregoing, the OEB orders the Applicants to give notice to the Three Landowners who rely on access through the unopened road allowance and who may be impacted by the proposed Smithville Bypass, and to allow them an opportunity to provide the OEB with comments on whether they will be materially adversely impacted.

#### *Timing*

The Applicants have asked the OEB to consider the application on an expedited basis.

On March 14, 2016 and April 1, 2016, the Applicants filed motions to review in relation to the two modifications seeking to vary the LTC Order issued July 3, 2014. On June 2, 2016 the motions to review were dismissed by the OEB on the basis that they failed to meet the threshold test for a motion to review.

On June 17, 2016, the Applicants filed the application to seek to modify the LTC Order. The OEB received additional supporting information and evidence related to the application on June 21, 28, 29, July 4 and July 8.

On July 11, 2016, the Applicants wrote to the OEB to reiterate their position that the OEB consider the application on an expedited basis. In their letter, the Applicants state that "Given the time that had passed since the Vary Motions were applied for (over 3.5 and 3 months from today's date), the current application requested that the Board proceed with this application on an expedited basis."

The OEB is aware of the Applicants' request for an expeditious decision on its application. However, the OEB can only proceed to consider whether an application can be heard without a written hearing where it is satisfied that no person is materially

adversely impacted. On the basis of the record as it stands, the OEB is unable to make this determination. The onus rests with the Applicants to ensure that the OEB has the evidence necessary to evaluate and make a determination in respect of an application. The Applicants have within their control the ability to facilitate the timely processing of the application by providing the OEB with the information required to make an assessment under section 21(4).

**IT IS THEREFORE ORDERED THAT:**

1. The Applicants shall serve a copy of this Procedural Order No. 1, together with pages 1-14 of the application, to the Three Landowners who rely on access through the unopened road allowance and who may be impacted by the proposed Smithville Bypass by July 20, 2016.
2. The Applicants shall file notice of service with the OEB upon completion of item #1 above.
3. Should they wish to do so, the Three Landowners may file written submissions on the application, as it relates to the Smithville Bypass aspect only and whether the proposed modifications to the transmission line will cause them to be materially adversely affected, within ten calendar days of being served.

All filings to the OEB must quote the file number, EB-2016-0196, and must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

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

E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, July 13, 2016

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

Filed: 2016-07-22  
EB-2016-0196  
Affidavit of Service

**EXHIBIT "B"**



McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

**George Vegh**  
Counsel  
Direct Line: (416) 601-7709  
Direct Fax: (416) 868-0673  
Email: gvegh@mccarthy.ca

June 17, 2016

**VIA RESS, EMAIL AND COURIER**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
P.O. Box 2319  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Application for leave to construct amending the relief requested in EB-2013-0203**

Please find enclosed an application for leave to construct which amends the relief requested in the application filed in EB-2013-0203. This application is filed on behalf of FWRN LP and NR Capital General Partnership, as joint applicants.

Please contact the undersigned if you have any questions in regards to the foregoing.

Sincerely,

*Signed in the original*

George Vegh

Cc: Peter Ascherl, Counsel to FWRN LP and NR Capital General Partnership  
Gael Gravenor, Enercon  
Chris Carter, CAO, West Lincoln  
Paul Nunes, Corridor Management Officer, Ontario Ministry of Transportation  
Hydro One (regulatory affairs)  
IESO (regulatory affairs)

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B, as amended* (the “**OEB Act**”);

**AND IN THE MATTER OF** an application by Niagara Region Wind Corporation for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct an electricity transmission line and related facilities.

### APPLICATION SEEKING LEAVE TO CONSTRUCT TRANSMISSION FACILITIES

1. On July 3, 2014, the Ontario Energy Board (the “**OEB**” or the “**Board**”) granted Niagara Region Wind Corporation (“**NRWC**”) leave to construct a transmission line and transmission facilities (the “**Transmission Facilities**”) <sup>1</sup> for the Niagara Region Wind Farm (the “**Project**”) under section 92 and 96(2) of the OEB Act (the “**LTC Order**”). In the LTC Order, the Board also approved the forms of land use agreements proposed to be used by NRWC under section 97 of the OEB Act.
2. On September 3, 2015 the Board granted leave to transfer the LTC Order to FWRN LP<sup>2</sup> and on November 26, 2015, the Board granted leave to transfer<sup>3</sup> the LTC Order to NR Capital General Partnership (together with FWRN LP, the “**Applicants**”).<sup>4</sup>
3. In the LTC Order, the Board found that it was “in the public interest to grant [NRWC] leave to construct the Transmission Facilities pursuant to section 92 of the [OEB] Act”.<sup>5</sup>
4. Since the date of the LTC Order and as set out in detail herein, the Applicants have worked to make the construction of the transmission facilities even more aligned with the public interest than at the time of the LTC Order. More specifically, the Applicants have undertaken all the necessary studies and have obtained all approvals (aside from the one sought herein), to change the original transmission line route in two places for the sole purpose of accommodating public authorities, namely the Ministry of Transportation and the Municipality of West Lincoln.

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<sup>1</sup> OEB Decision and Order in EB-2013-0203 dated July 3, 2014.

<sup>2</sup> OEB Decision and Order in EB-2015-0183, dated September 3, 2015.

<sup>3</sup> OEB Decision and Order in EB-2015-0290, dated November 26, 2015.

<sup>4</sup> As the transfer of transmission assets described in FWRN LP’s application for leave to transfer in EB-2015-0290 has not yet occurred (i.e., FWRN LP will soon be transferring the transmission assets to NR Capital General Partnership, but has not yet done so), the leave to construct is still held by FWRN LP and therefore FWRN LP is filing this application jointly with NR Capital General Partnership, to whom it will soon be transferring the leave to construct. On June 26, 2015, the Board also varied the LTC Order to extend by six months the date by which the Applicant had to begin construction (OEB Vary Order in EB-2013-0203 dated June 26, 2015).

<sup>5</sup> See OEB Decision and Order in EB-2013-0203 dated July 3, 2014, page 14.

5. As described herein, the public record demonstrates that these two changes have been vetted by a number of public authorities through the Renewable Energy Approval (“**REA**”) process pursuant to *Ontario Regulation 359/09, Renewable Energy Approvals under Part V.0.1 of the Act* made pursuant to *Environmental Protection Act*, R.S.O. 1990, c. E.19 (the “**REA Regulation**”) and moreover, were not appealed to the Environmental Review Tribunal (“**ERT**”), demonstrating a high level of support for these two changes in the local community.
6. As set out in detail herein, the Applicants are proposing an approximately 300 meter change to accommodate the Ministry of Transportation (the “**Highway 3 Bypass**”), and an approximately 2.4 kilometer change to accommodate the Municipality of West Lincoln (the “**Smithville Bypass**”). The changes result in a 1% reduction in length of the 44km transmission line.<sup>6</sup>
7. Aside from the Highway 3 Bypass and the Smithville Bypass as described herein, the transmission line and related infrastructure will not change. Therefore, the Transmission Facilities, which were previously found by the Board to be in the public interest, would, if leave to construct for the Highway 3 Bypass and the Smithville Bypass is granted, simply be even more aligned with the public interest, given that the sole purpose of the Highway 3 Bypass and the Smithville Bypass is to accommodate the priorities of the local community as represented by public authorities and as reflected by the completion of all approval processes without appeal by members of the public.
8. In addition, the Applicants request that the Board determine this application on an expedited basis without a hearing pursuant to s. 21 of the *OEB Act, 1998*. The legal test for proceeding under s. 21 is addressed in Part IV below.
9. In addition to those factors, the project is currently approximately 85% completed, and the Project must adhere to timelines under FWRN LP’s FIT contract with the IESO. If there is a hearing, the delay and uncertainty will result in challenges to the commercial viability of the project and, combined with the necessity of meeting FIT contract timelines the project will have to proceed as per the original Leave to Construct which, as this application demonstrates, is less aligned with the public interest than the proposed amendments.
10. Therefore and pursuant to the Board’s decision and order dated June 2, 2016 wherein the Board directed the Applicants to file an amended application in respect of the Highway 3 Bypass and the Smithville Bypass, the Applicants hereby seek an order granting leave to construct the transmission facilities described herein.
11. This application is organized as follows:
  - (i) Part I describes the chronology from the time of the LTC Order to the filing of the motions in regards to the Highway 3 Bypass and the Smithville Bypass on March 14, 2016 and April 1, 2016 respectively. The main purpose of the chronology is to set out the reasons why the

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<sup>6</sup> The Highway 3 Bypass is approximately 335 meters long, and results in a reduction in transmission line length of 308 meters. The Smithville Bypass is approximately 2.4 km long, and results in a transmission line length reduction of 183 meters. This results in a total transmission line length reduction of 491 meters, which is 1.1% reduction in length of the 44 km transmission line.



Applicants could not bring this change request to the Board at an earlier date.

- (ii) Part II describes the Smithville Bypass and the Highway 3 Bypass, including how the Smithville Bypass and the Highway 3 Bypass change the original OEB-approved route.
- (iii) Part III describes the land rights, approvals and local community consultation conducted in regards to the Smithville Bypass and the Highway 3 Bypass.
- (iv) Part IV sets out a request that the Board proceed without a hearing pursuant to section 21(4)(b) of the OEB Act, including the reasons for this request. Part IV also includes a request that the Board determine this application on an expedited basis pursuant to sections 2.01 and 7.01 of the Board's *Rules of Practice and Procedure*, including the reasons for this request.
- (v) Part V sets out the reasons why this application is in the public interest and should be approved by the Board.

#### **Part I – Chronology: From the LTC Order to the Smithville Bypass and the Highway 3 Bypass**

##### ***From the LTC Order to the Smithville Bypass Proposed to the OEB***

- 12. As noted above, the Project received the LTC Order on July 3, 2014.
- 13. In September 2014, NRWC filed an application under section 41 of the *Electricity Act, 1998* in respect of the location of distribution infrastructure within municipal road allowances in three municipalities, including the Municipality of West Lincoln (“**West Lincoln**”).
- 14. Subsequently, on October 9, 2014, NRWC entered into a road use agreement with the Municipality of West Lincoln<sup>7</sup> (the “**West Lincoln Road Use Agreement**”). The road use agreement set out, *inter alia*, the agreed-upon location for NRWC's distribution infrastructure in West Lincoln's road allowances. NRWC later amended its section 41 application such that the section 41 application no longer requested the Board to determine the location of distribution infrastructure in West Lincoln road allowances.<sup>8</sup>
- 15. In the West Lincoln Road Use Agreement, NRWC agreed with West Lincoln to pursue: (i) an amendment to its REA, once received (NRWC subsequently received its REA on November 6, 2014) and (ii) an amendment to the LTC Order. The purpose of both amendments was to be to change the route of the transmission line such that it would bypass a new urban development area in Smithville, which is a community in

<sup>7</sup> As advised in NRWC's amended application for an order under section 41(9) of the *Electricity Act*, filed with the OEB on December 16, 2014.

<sup>8</sup> NRWC's amended application for an order under section 41(9) of the *Electricity Act* was in respect of the location of road allowances in the Municipality of Wainfleet only.

West Lincoln. See section 6.1(b) of the West Lincoln Road Use Agreement, attached hereto at Schedule "A".<sup>9</sup>

16. The modified route that NRWC agreed to study for the purpose of a REA amendment and LTC amendment is found at the final page of the West Lincoln Road Use Agreement attached at Schedule "A".
17. Therefore, NRWC began the process of studying the route which it had agreed with West Lincoln to study for the purpose of a potential REA and LTC amendment.
18. Unfortunately, it soon became apparent that there was a problem with a portion of the unopened road allowance which West Lincoln had proposed be used for the modified route to be studied by NRWC. The portion of unopened road allowance between South Grimsby Road 6 and Regional Road 20, as circled on the map provided at Schedule "B", was disputed by a local landowner – more specifically, while West Lincoln argued that the portion of unopened road allowance belonged to West Lincoln, the landowner argued that the portion of unopened road allowance belonged to him.
19. West Lincoln began a legal process in regards to the disputed portion of the unopened road allowance. This legal process is ongoing and is not impacted one way or another by this application.
20. During this time, on April 29, 2015, the Project was transferred from NRWC to FWRN LP.<sup>10</sup>
21. As it became apparent that the dispute regarding the portion of unopened road allowance was going to take too long before being resolved in the courts, FWRN LP and West Lincoln began to discuss alternatives to the portion of the modified route which required the disputed portion of the unopened road allowance.
22. FWRN LP continued to consider the modified route, and in particular turned to the portion of the unopened road allowance which is not disputed (i.e., the portion between Regional Road 20 and Young Street) to begin the required studies of this portion of the route.
23. In mid-2015, initial Natural Heritage assessment surveys were undertaken and found that there was a provincially significant wetland in the undisputed portion of the unopened road allowance. This led to consultations and discussions with the Ministry

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<sup>9</sup> The Road Use Agreement is also available on West Lincoln's website at <http://westlincoln.ca/~west1172/wp-content/uploads/2014/10/Road-Use-Agreement-with-Niagara-Region-Wind-Corporation-October-14-2014.pdf>

<sup>10</sup> As advised in a joint letter to the OEB from NRWC and FWRN LP dated July 29, 2015 in support of the request to transfer the LTC Order to FWRN LP, pursuant to a reorganization, NRWC transferred the Niagara Region Wind Farm project, including the FIT contract for the project, on April 29, 2015 to FWRN LP, a newly-formed limited partnership which, at the time of the transfer, was controlled by NRWC.

Immediately following the transfer of the Niagara Region Wind Farm project to FWRN LP, pursuant to a share and unit purchase agreement between NRWC and 1022340 B.C. Ltd. ("Enercon Subco") dated March 16, 2015, NRWC transferred 74.99% of the issued and outstanding limited partner units of FWRN LP and 100% of the shares of the sole general partner of FWRN LP to Enercon Subco.

Enercon Subco is a wholly-owned subsidiary of Enercon Canada Inc., a corporation incorporated under the laws of the Province of Nova Scotia.

of Natural Resources and Forestry, and with West Lincoln, over the summer and fall of 2015. Eventually, a solution was found which would allow for FWRN LP's transmission line to run in the unopened road allowance between Regional Road 20 and Young Street.

24. Also in Q3 to Q4 2015, other required studies including archeological studies in relation to the modified proposed route were undertaken.
25. On December 18, 2015, West Lincoln and FWRN LP met and discussed alternatives to the disputed portion of unopened road allowance. In particular, West Lincoln and FWRN LP discussed an alternate modified route that would no longer require the disputed portion of unopened road allowance, and would instead continue on South Grimsby Road 6 as per the original route to Regional Road 20, where it would turn left (instead of right) onto Regional Road 20 to reach the undisputed portion of unopened road allowance (this undisputed portion of the unopened road allowance hereinafter the "**Unopened Road Allowance**").
26. In other words, the alternate modified route would avoid the disputed portion of unopened road allowance by running on West Lincoln's road allowance. Please see Schedule "C" for the amended modified route (i.e., the route without the disputed portion of unopened road allowance).
27. On February 23, 2016, FWRN LP submitted the REA amendment for the Smithville Bypass. However, in March 2015, FWRN LP was able to conclude a land use agreement with a landowner whose land (PIN 46055-0085) is adjacent to part of the Unopened Road Allowance. This land use agreement allowed FWRN LP to shift this particular portion of the modified transmission line route onto private property and better avoid provincially significant wetlands and a provincially significant woodlot.
28. Therefore, FWRN LP further amended the required components portions of its REA amendment in relation to the Smithville Bypass in April 2016.
29. With the Smithville Bypass finalized, on April 1, 2016, FWRN LP submitted a motion to vary to the OEB in relation to the Smithville Bypass. As demonstrated above, the reason that the motion to vary was not filed earlier was because the route of the proposed Smithville Bypass was not finalized until March 2016.

***From the LTC Order to the Highway 3 Bypass Proposed to the OEB***

30. When NRWC studied routes prior to filing its leave to construct application, NRWC was in contact with the local Ministry of Transportation office. At this time, the Ministry of Transportation ("**MTO**") did not raise objections to the route proposed for the transmission line by NRWC.
31. In 2015, when applications were made to the MTO for poles along Highway 3, the central MTO office indicated that for safety reasons and due to a possible expansion of Highway 3, it was the MTO's strong preference that poles not be located along Highway 3. More specifically, the MTO's position is that the transmission line poles must not be located within the Highway 3 right-of-way and must be set back 14 meters from the right-of-way. Please see correspondence to the Applicants from the MTO attached as Schedule "D".

32. FWRN LP therefore worked to find a way to not locate poles on Highway 3, and was able to sign, in February 2016, a land use agreement in the form approved by the Board in the LTC Order<sup>11</sup> with the landowner whose land on which the Highway 3 Bypass is proposed.
33. Because it was not until November 2015 that the MTO stated it was its strong preference that there not be poles on Highway 3, it was not possible for FWRN LP to know at an earlier date that this change would be needed. Once FWRN LP was made aware that an alternative to having poles on Highway 3 was necessary, FWRN LP worked quickly to find an alternative. That alternative is the proposed Highway 3 Bypass.

**Part II – Description of the Smithville Bypass and the Highway 3 Bypass, including the changes to the original OEB-approved route**

***Description of Smithville Bypass***

*Description of Original Route (OEB Approved Route)*

34. As shown on Schedule “E”, the original transmission line route (shown in green) currently runs northwest along Young Street and then turns south onto South Grimsby Road 5 for 1.9 km, prior to veering north on Regional Road 20 for approximately 696 meters prior to turning back southwest on South Grimsby Road 6.

*Description of the Smithville Bypass*

35. The Smithville Bypass, shown in orange on Schedule “E”, would have the transmission line running approximately 750 meters further northwest along Young Street, then turning to cross Young Street in a diagonal manner in order to avoid trees along Young Street at that location, and then turning onto a private property for 476 metres (PIN 46055-0085), then turning slightly to run along an unopened road allowance for approximately 770 metres and finally turning to run approximately 326 meters southeast along Regional Road 20 prior to joining the original transmission line route as shown.
36. The Smithville Bypass route would consist primarily of an overhead transmission line, with one section of the transmission line being installed underground beneath existing Hydro One Networks Inc. (“**Hydro One**”) transmission lines (see “Hydro One and CP Crossings”, below) and beneath a provincially significant wetland within the unopened road allowance just north of Hydro One’s transmission lines.
37. The area where the Smithville Bypass route crosses underneath a provincially significant wetland is (i) within the unopened road allowance, which road allowance belongs to the Municipality of West Lincoln and (ii) within the private property on which the Applicants propose to locate a portion of the line and in respect of which they have secured land rights from the landowner. In sum, the Smithville Bypass route goes underground for approximately 240 meters in order to avoid an above ground crossing with Hydro One’s transmission lines and to go underneath a small

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<sup>11</sup> See Niagara Region Wind Corporation Interrogatory Responses in EB-2013-0203 filed February 28, 2014, pgs. 61-109.

part of a provincially significant wetland area. Please see Schedule "F" for a detailed drawing of the plan of the crossing underneath the wetland and underneath Hydro One's transmission lines.

### **Description of Highway 3 Bypass**

#### *Description of Original Route (OEB Approved Route)*

38. The part of the OEB-approved route which would be changed by the Highway 3 Bypass is approximately 335 meters of the approved transmission line route that runs along Highway 3 in Wainfleet, Ontario and approximately 308 meters of the approved transmission line route that runs along Wainfleet Dunnville Townline Road. This amounts to approximately 643 meters of the 44 km OEB-approved route.
39. As shown in green on Schedule "G", the transmission line route currently runs north on Wainfleet Dunnville Townline Road and then turns east on Highway 3 for 335 meters.

#### *Description of Highway 3 Bypass*

40. The Highway 3 Bypass, shown in orange on Schedule "G", would have the transmission line running approximately 335 meters across a private property in order to completely avoid running along Highway 3, and reducing the length of the transmission line by approximately 308 meters, including reducing the poles needed from 7 poles (see pole locations marked in yellow) to 5 poles (see pole locations marked in pink).
41. As can be seen on Schedule "G", the transmission line would turn onto the private property just north of Buckner Road and would run on this property for 308 meters, before crossing Highway 3 in an overhead crossing that does not require any poles on Highway 3, before joining the original transmission line route on Shafley Road.

### **Part III – Land Rights, approvals, consents and consultation in regards to the Smithville Bypass and Highway 3 Bypass**

#### **Smithville Bypass**

##### Land Rights for the Smithville Bypass Obtained

##### *Rights from private landowner obtained*

42. As mentioned in the chronology above, land rights have been secured from the private landowner of the land on which a portion of the Smithville Bypass route is proposed. Specifically, an option to enter into a land use agreement, in the form approved by the OEB in the LTC Order,<sup>12</sup> has been entered into with the landowner.

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<sup>12</sup> See Niagara Region Wind Corporation Interrogatory Responses in EB-2013-0203 filed February 28, 2014, pgs. 61-109.

*West Lincoln Road Use Agreement provides for Smithville Bypass – it is to accommodate West Lincoln that Smithville Bypass is proposed*

43. The remainder of the Smithville Bypass will not require any further land rights, as the remainder of the transmission line route will simply run along West Lincoln road allowance or a West Lincoln unopened road allowance.
44. As explained above, the Applicants agreed to pursue the Smithville Bypass in the West Lincoln Road Use Agreement. As West Lincoln has itself requested the Smithville Bypass, it is entirely in agreement and supportive of this change in the use of its road allowances and the use of its unopened road allowance. In other words, the Applicants have the approval of West Lincoln to build the transmission line along the Smithville Bypass route.

*Hydro One and CP Crossings*

45. The portion of the original, OEB-approved route which the Applicants propose to change includes a Hydro One crossing and a Canadian Pacific (“CP”) railway crossing.
46. Both crossings also occur along the Smithville Bypass route. The only change to each of the Hydro One and CP crossings is that along the route of the Smithville Bypass, the crossings are located approximately 500 metres west of where these crossings occur along the OEB-approved route.
47. The technical details applicable to both the Hydro One and CP crossings do not change when these crossings are moved approximately 500 meters west. The Hydro One crossing is an underground crossing; this will remain the same when the crossing is moved approximately 500 meters west. The CP crossing is above ground; this too will not change when the crossing is moved approximately 500 meters west.

*Approval for CP Crossing Obtained*

48. The Applicants have received approval from CP for the crossing of its rail line along the route of the Smithville Bypass. Please see Schedule “H” for the CP approval.

*Approval of Drawings by Hydro One expected shortly*

49. Hydro One's process is to review drawings in relation to crossings. Therefore, the Applicants have submitted modified drawings, along with confirmation that all required standards will be followed, to Hydro One and expect to receive a confirmation from Hydro One shortly that it finds the drawings acceptable.
50. As mentioned above, because the technical details of the crossing will not change, the Applicants are confident that Hydro One's approval of the modified crossing drawings will be obtained. Moreover, the Applications have successfully received approval from Hydro One for two other underground crossings of Hydro One transmission lines along the route of the Transmission Facilities.
51. Moreover, the area identified as PIN 46055-0086 (which area is north of the private property on which the Applicants propose to locate a portion of the line) will also have

a small portion of the transmission line running above it. This area (i.e., PIN 46055-0086), is a Hydro One property and the Applicants will obtain the necessary approval from Hydro One to have the transmission line run above this small property.

52. For the reasons above, the Applicants submit that Hydro One will not be adversely affected in a material way due to the change in location of the crossing.

Minimal impact on residents and users of the unopened road allowance

53. The persons currently using the Unopened Road Allowance on which a portion of the Smithville Bypass is located will be able to continue using it.
54. More specifically, the Unopened Road Allowance is currently used as a property access road by three landowners. It is also used as a recreational trail by persons with snowmobiles and ATV/ "all-terrain vehicle" users.
55. These users of the Unopened Road Allowance will be able to continue using the Unopened Road Allowance. Although there may be a small impact on those currently using the Unopened Road Allowance during the construction of the transmission line, this impact will not, in the submission of the Applicants, amount to a material adverse effect on those using the Unopened Road Allowance.

REA approval obtained, not appealed and consultation undertaken with the local residents

56. As mentioned above, the Applicants have obtained the approval from the Ministry of the Environment and Climate Change ("MOECC") for the REA amendment needed for the Smithville Bypass.<sup>13</sup> This approval was obtained on May 6, 2016 and was not appealed to the Environmental Review Tribunal ("ERT") by any local resident.
57. The REA approval involved vetting by various public agencies. These agencies include the Ministry of Natural Resources, the Ministry of Tourism, Culture and Sport for both archeological studies and heritage assessment, and, of course, the MOECC. See Schedule "I" for copies of confirmation letters issued by the various public authorities further to the REA process, and Schedule J for a copy of the approval of the REA amendment by the MOECC regarding the Smithville Bypass.<sup>14</sup>

<sup>13</sup> See Schedule J for a copy of the REA approval of the amendment for the Smithville Bypass.

<sup>14</sup> The Niagara Region Wind Farm Renewable Energy Approval Amendment Modification Report for the Smithville Bypass (49 MB) is available at [http://www.nrwf.ca/wp-content/uploads/2016/01/rpt\\_50269\\_nrwf\\_rea\\_mod-rpt2\\_20160502.pdf](http://www.nrwf.ca/wp-content/uploads/2016/01/rpt_50269_nrwf_rea_mod-rpt2_20160502.pdf). The confirmation letters issued by various public authorities are attached at Schedule "I" and are also found within the REA Modification Report for the Smithville Bypass at the following page references:

Document	Date	Section/Page Reference
MNRF Confirmation	April 29, 2016	Appendix B, PDF page 60-61
MTCS Confirmation - Archaeology	March 16, 2016	Appendix C, PDF page 151-152
MTCS Confirmation - Archaeology	April 20, 2016	Appendix C, PDF page 186-187
MTCS Confirmation - Heritage	April 11, 2016	Appendix C, PDF page 221-222

58. All the above agencies found that the proposed change to the route was acceptable in relation to their sphere of jurisdiction.
59. Moreover, the REA amendment process required extensive consultation with local residents. More specifically, as detailed in the Community and Stakeholder Notification Summary attached hereto at Schedule "K", the Notice of a Proposed Change to a Renewable Energy Project (the "**Smithville Notice**"), which notice is attached at Schedule "L" and which notice shows the proposed change to the transmission line route, was distributed to agencies, municipalities, Aboriginal communities and community members that are on the Project's distribution list.
60. In addition, the Notice was published in ten local newspapers on two dates, as set out on page 3 of the Community and Stakeholder Notification Summary at Schedule "K".
61. In addition, the West Lincoln Road Use Agreement is also posted on West Lincoln's website, and discussions regarding the change in route has been set out in municipal council minutes, which are also posted on West Lincoln's website.
62. Finally, landowners along the route of the Smithville Bypass have all received tree-trimming notices.

Codes and standards to be complied with

63. All electrical equipment and systems for the Smithville Bypass will be designed, supplied and installed in accordance with the latest editions of relevant codes and standards, including the Ontario Electrical Safety Code issued by the Electrical Safety Authority.

**Highway 3 Bypass**

Land Rights obtained for Highway 3 Bypass

64. Land rights have been secured from the owner of the land on which the Highway 3 Bypass is proposed. Specifically, a land use agreement, in the form approved by the OEB in the LTC Order<sup>15</sup>, has been entered into with the landowner.

No utility crossings along the Highway 3 Bypass

65. There are no utility crossings along the Highway 3 Bypass route.

The Highway 3 Bypass Minimizes LDC relocations

66. Moreover, the Highway 3 Bypass will minimize the local distribution company relocations based on the currently-approved route. For example, if the Highway 3 Bypass is approved, there will not be a need to re-locate and bury several single-phase distribution lines.

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<sup>15</sup> See Niagara Region Wind Corporation Interrogatory Responses in EB-2013-0203 filed February 28, 2014, pgs. 61-109.



Other approvals for Highway 3 Bypass obtained

67. The Project has obtained a REA amendment from the MOECC in relation to the Highway 3 Bypass, and this amendment was not appealed to the Environmental Review Tribunal. The REA approval involved review of several government ministries, and therefore like the Smithville Bypass, the Highway 3 Bypass has been reviewed and vetted by various public agencies.<sup>16</sup> All of these government ministries found that the proposed change to the route was acceptable in relation to their sphere of jurisdiction. See Schedule "O" for copies of confirmation letters issued by the various public authorities further to the REA process,<sup>17</sup> and Schedule "P" for a copy of the approval of the REA amendment by the MOECC regarding the Highway 3 Bypass.

Codes and standards to be complied with

68. All electrical equipment and systems for the Highway 3 Bypass will be designed, supplied and installed in accordance with the latest editions of relevant codes and standards, including the Ontario Electrical Safety Code issued by the Electrical Safety Authority.

***No effect on System Impact Assessment and Customer Impact Assessment as a result of the Smithville Bypass and Highway 3 Bypass***

69. The Highway 3 Bypass is approximately 335 meters long, and results in a reduction in transmission line length of 308 meters. The Smithville Bypass is approximately 2.4 km long, and results in a transmission line length reduction of 183 meters. This results in

<sup>16</sup> These agencies include the Ministry of Natural Resources, the Ministry of Tourism, Culture and Sport for both archeological studies and heritage assessment, and, of course, the MOECC.

Moreover, the REA amendment process required extensive consultation with local residents. More specifically, as detailed in the Community and Stakeholder Notification Plan attached hereto at Schedule "M", the Notice of a Proposed Change to a Renewable Energy Project (the "Highway 3 Notice"), which notice is attached at Schedule "N" and which notice shows the proposed change to the transmission line route, was distributed to agencies, municipalities, Aboriginal communities and community members that are on the Project's distribution list.

In addition, the Notice was published in ten local newspapers on two dates, as set out on page 3 of the Community and Stakeholder Notification Summary at Schedule "M".

<sup>17</sup> The Niagara Region Wind Farm Renewable Energy Approval Amendment Modification Report for the Highway 3 Bypass (as well as for Meteorological tower changes which are not related to the transmission line) (part 1, 57 MB) (part 2, 18 MB) is available at [http://www.nrwf.ca/wp-content/uploads/2016/01/rpt\\_50269\\_nrwf\\_rea\\_mod-rpt3\\_April2016\\_PART-1.pdf](http://www.nrwf.ca/wp-content/uploads/2016/01/rpt_50269_nrwf_rea_mod-rpt3_April2016_PART-1.pdf) (part 1) and [http://www.nrwf.ca/wp-content/uploads/2016/01/rpt\\_50269\\_nrwf\\_rea\\_mod-rpt3\\_April2016\\_part2.pdf](http://www.nrwf.ca/wp-content/uploads/2016/01/rpt_50269_nrwf_rea_mod-rpt3_April2016_part2.pdf) (part 2). The page references within the REA Modification Report for the confirmation letters issued by public authorities (attached on their own at Schedule "O") are below:

Document	Date	Section/Page Reference
MNRF Confirmation email	April 29, 2016	part 1, Appendix B, PDF page 111-112
MTCS Confirmation - Heritage	April 5, 2016	part 1, Appendix C, PDF page 142-143
MTCS Confirmation - Heritage	January 5, 2016	part 1, Appendix C, PDF page 150-151
MTCS Confirmation - Archaeology	March 16, 2016	part 1, Appendix C, PDF page 161-162

a total transmission line length reduction of 491 meters, which is 1.1% reduction in length of the 44 km transmission line.

70. Further to the Board's Decision and Order of June 2, 2016, the Applicants have inquired with the IESO and Hydro One to confirm that the System Impact Assessment and the Customer Impact Assessment will not change as a result of the transmission line length being shorter by approximately 500 meters total.

*System Impact Assessment will not be affected*

71. The Applicants inquired with the IESO as to whether a 400-700 meter reduction in transmission line length would have an impact on the SIA. The IESO has confirmed that there is no implication or change to the SIA as a result of the shorter length.<sup>18</sup>

*Customer Impact Assessment will not be affected*

72. Hydro One has not yet replied to the Applicant's email regarding this question, but the Applicants will provide Hydro One's response as soon as it is available.

**Part IV – Request to proceed without a hearing and request for an expedited proceeding**

*Request to proceed without a hearing*

*Smithville Bypass*

73. In regards to the Smithville Bypass, the Applicants submit that no one will be adversely affected in a material way by the Board's decision regarding this application.
74. With respect to adverse impact, there are no landowners (aside from the landowner who has entered into a land use agreement in the form approved by the Board with FWRN LP) who are directly affected by this application. The Board's Letter of Direction in the original leave to construct application defined directly affected landowners as those persons with an interest in land "that is required on either a temporary or permanent basis for the construction and/or operation" of the transmission facilities.<sup>19</sup> Only directly affected landowners were required to receive notice of the leave to construct proceeding. The one landowner who is directly affected by the Smithville Bypass has been contacted and has agreed to host transmission infrastructure in accordance with the Board-approved form of agreement.
75. As for other persons, i.e., those who are not directly affected, the Applicants submit that current users of the unopened road allowance upon which a portion of the Smithville Bypass is proposed will not be adversely affected in a material way by the construction of the transmission line. Finally, the relocation of the Hydro One and CP crossings approximately 500 meters west will also not have a material adverse effect.

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<sup>18</sup> See Schedule "Q" for the email from the IESO confirming that the change will not impact the SIA.

<sup>19</sup> EBO-2013-0203, Letter of Direction, July 5, 2013.

76. Further, the community has received extensive notice of the Smithville Bypass. Through the REA amendment process, the Smithville Bypass has been publicized in the local community by way of publications in various local newspapers on two dates, and with a route map as shown as Schedule "L" and through municipal council minutes published on West Lincoln's website. Landowners along the route have also received tree-trimming notices. The REA amendment, once issued, could have been appealed to the ERT but it was not so appealed. The Applicants submit that these facts, available on the public record, support the Applicants' request that this application be determined without a hearing.

#### *Highway 3 Bypass*

77. In the case of the Highway 3 Bypass, the Applicants also submit that no one will be adversely affected in a material way by the Board's decision regarding this application.
78. As described above, the Highway 3 Bypass is being pursued due to the request of the MTO. The private land rights needed for the Highway 3 Bypass have been secured, and there are no utility crossings along the proposed bypass route.

#### *No one will be adversely affected in a material way by the Smithville Bypass or Highway 3 Bypass*

79. Consequently and in regards to both the Smithville Bypass and the Highway 3 Bypass, as no one will be adversely affected in a material way by the outcome of this application, the Applicants request that the Board exercise its authority under s. 21(4)(b) of the OEB Act to dispose of this application without a hearing.

#### *Determination of application on expedited basis*

80. In addition, the Applicants request that the Board determine this application on an expedited basis pursuant to sections 2.01 and 7.01 of the Board's *Rules of Practice and Procedure*. The project is currently approximately 85% completed and the Transmission Facilities almost 82% built, and the Project must adhere to timelines under FWRN LP's FIT contract with the IESO.
81. If there is a hearing, the delay and uncertainty will result in challenges to the commercial viability of the project and, combined with the necessity of meeting FIT contract timelines, the Project will have to proceed as per the original Leave to Construct which, as this application demonstrates, is less aligned with the public interest than the proposed amendments.

#### **Part V – The Smithville Bypass and the Highway 3 Bypass are in the public interest**

82. In Part IV above, the Applicants set out how no one will be adversely affected in a material way by the Smithville Bypass or the Highway 3 Bypass. However, should the Board not approve the Smithville Bypass or Highway 3 Bypass, there will be a clear adverse affect on the Municipality of West Lincoln and on the MTO, whose interests the Applicants have worked hard to accommodate.

83. The reality is that at the time that a leave to construct is approved, there is still work to be done on a renewable project. This is why Ontario's REA Regulation sets out a process for REA amendments. In other words, the Ontario government, through the REA Regulation, has recognized that changes often need to be made to a project after the REA is issued. Moreover, it is consistent with the policies of the Government of Ontario to seek to accommodate local communities and municipalities. Therefore, this application, pursuant to section 96(2) of the OEB Act, renders the Project even more consistent with the policies of the Government of Ontario and the promotion of the use of renewable energy sources.
84. Also and importantly, the OEB's own filing guidelines in regards to leave to construct clearly provide that when a proponent obtains approvals after the LTC process, changes to the LTC may be required, including a change in route (see s. 4.2.2).
85. As noted above, the Board found in the July 3, 2014 LTC Order that the construction of the Transmission Facilities was in the public interest. As has been explained herein, the Applicants have now worked to make the construction of the transmission facilities even more aligned with the public interest by undertaking all the necessary studies and obtaining all approvals, aside from OEB approval, to change the original transmission line route in two places for the sole purpose of accommodating the local community and the MTO.
86. Moreover, the Project has developed a new partnership since the LTC Order which renders the Project itself, in the submission of the Applicants, even more in the public interest. Specifically, the Project has now executed a term sheet with Six Nations of the Grand River for Six Nations to be a partner in the Project.<sup>20</sup>
87. In conclusion and for all the reasons described herein, the Applicants submit that it is in the public interest for the Board to approve the Smithville Bypass and the Highway 3 Bypass without a hearing pursuant to section 21(4)(b) of the OEB Act, and within an expedited timeline pursuant to sections 2.01 and 7.01 of the Board's *Rules of Practice and Procedure*.

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<sup>20</sup> See <http://www.snfuture.com/project.php?id=12> and term sheet available at <http://www.snfuture.com/ius/resources/32-Six%20Nations%20NRWC%20Term%20Sheet%20executed.pdf>. See also Six Nations website, PowerPoint presentation (slide 80): [http://www.sixnations.ca/AGM2015\\_Presentation4SlidesPerPage.pdf](http://www.sixnations.ca/AGM2015_Presentation4SlidesPerPage.pdf)