

February 3, 2017

**RESS, EMAIL & COURIER**

Ontario Energy Board  
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Toronto, ON M4P 1E4

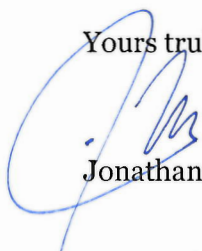
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Wataynikaneyap Power LP - Application for Accounting Order to Establish  
Deferral Account (EB-2016-0262) – Applicant Argument-in-Chief**

On behalf of the applicant in the above-referenced proceeding, and in accordance with the Board's Procedural Order No. 3, please find enclosed two copies of the applicant's Argument-in-Chief. These materials have also been filed on RESS.

Yours truly,



Jonathan Myers

Enclosure

cc: Ms. Margaret Kenequanash, WPLP  
Mr. Jerry Vaninetti, WPLP  
Mr. Tim Lavoie, WPLP  
Mr. Charles Keizer, Torys LLP

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
C.S.O. 1998, c.15 (Sched. B); pursuant to section 78 of the  
*Ontario Energy Board Act*.

**AND IN THE MATTER OF** an Application by 2472883 Ontario  
Limited on behalf of Wataynikaneyap Power LP, for an Order or  
Orders to establish a deferral account, for the purposes of  
recording certain costs relating to development of the  
Wataynikaneyap Transmission Project.

### APPLICANT ARGUMENT-IN-CHIEF

#### Introduction

1 2472883 Ontario Limited ("Wataynikaneyap Power GP") on behalf of Wataynikaneyap Power  
2 LP ("WPLP"), the "Applicant", filed an application with the Ontario Energy Board (the "Board") on  
3 August 26, 2016 for an accounting order authorizing the Applicant to establish a new deferral  
4 account, to be known as the "Wataynikaneyap Power Development Deferral Account". The  
5 proposed account is requested for the purpose of recording costs incurred in relation to the  
6 development of a new 230 kV transmission line originating at a point between Ignace and  
7 Dryden and terminating in Pickle Lake, and for new transmission lines extending north from Red  
8 Lake and Pickle Lake as required to connect certain remote communities to the provincial  
9 electricity grid (the "Project").

10 No parties intervened in the proceeding. WPLP provided detailed responses to interrogatories  
11 from Board staff on December 19, 2016, as well as to supplemental interrogatories from Board  
12 staff on January 24, 2017. The Board has previously recognized the risks associated with  
13 transmission development and has approved deferral accounts in comparable circumstances.  
14 Moreover, the Applicant's request meets the Board's established criteria for granting a deferral  
15 account. Accordingly, the Board should grant the Applicant's request in accordance with the  
16 Application as filed. The following is the Applicant's Argument-in-Chief in support of this request.

## Background

WPLP is a licensed Ontario electricity transmitter (ET-2015-0264) that currently has no operating transmission assets or Board-approved transmission rates.

On July 20, 2016 the Lieutenant Governor in Council (“LGIC”) made an Order in Council pursuant to Section 96.1 of the Act declaring the Project to be a “priority project”. In addition, on July 20, 2016 the LGIC made an Order in Council approving a Directive to be issued by the Minister of Energy under Section 28.6.1 of the Act, requiring the Board, without holding a hearing, to amend the conditions of the Applicant’s transmission licence to include a requirement that the Applicant proceed to develop and seek approvals for the Project. The Minister’s Directive was issued to the Board on July 29, 2016 and, on September 1, 2016, the Board amended the Applicant’s transmission licence in accordance with the Directive. The licence is effective for a period of 20 years.

The Applicant’s general partner, Wataynikaneyap Power GP, is held 51% by 2472881 Ontario Limited (“First Nation GP”) and 49% by Fortis-RES GP. The limited partnership itself, WPLP, is similarly held 51% by First Nation LP and 49% by Fortis-RES LP. The shares of First Nation GP and interests of First Nation LP are held directly by 22 First Nations (the “Participating First Nations”) in equal shares. The Participating First Nations thereby control the Applicant. At least 16 of the 22 Participating First Nations will be connected to the planned transmission system.<sup>1</sup> The shares of Fortis-RES GP and interests of Fortis-RES LP are currently held by RES Canada Transmission Holdings Inc. (“RES Canada”) and FortisOntario Inc. (“FortisOntario”) in equal shares.<sup>2</sup> The Participating First Nations, FortisOntario and RES Canada are described in Exhibit 3 of the pre-filed evidence.

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<sup>1</sup> The Participating First Nations are: Lac Seul First Nation, Bearskin Lake First Nation\*, North Caribou Lake First Nation\*, Cat Lake First Nation, Slate Falls Nation, Kasabonika Lake First Nation\*, Sachigo Lake First Nation\*, Kingfisher Lake First Nation\*, Wapekeka First Nation\*, Kitchenuhmaykoosib Inninuwug\*, Wawakapewin First Nation\*, Wunnumin Lake First Nation\*, Muskrat Dam First Nation\*, Deer Lake First Nation\*, Keewaywin First Nation\*, McDowell Lake First Nation, North Spirit Lake First Nation\*, Poplar Hill First Nation\*, Sandy Lake First Nation\*, Wabigoon Lake Ojibway Nation, Pikangikum First Nation\* and Lac des Mille Lacs First Nation (\* denotes community to be connected to planned transmission system). In addition, consideration is being given to the future connection of McDowell Lake First Nation.

<sup>2</sup> As explained in a letter filed by the Applicant on January 20, 2017, FortisOntario (through its parent company Fortis Inc.) plans to increase its share of the ownership of Wataynikaneyap Power LP by acquiring all of the

**The Project is Unique**

The Project involves the planning, development and construction of a transmission system that will provide new transmission supply to Pickle Lake and connect certain remote First Nations communities, currently served by diesel generation, by means of transmission lines running north from Pickle Lake and north from Red Lake.

Reinforcement of transmission to Pickle Lake will be achieved through development of an approximately 300 km new 230 kV single circuit overhead transmission line from a point between Dryden and Ignace to Pickle Lake, including associated stations and ancillary facilities (the “Line to Pickle Lake”). The connection of remote First Nations communities will be achieved through development of approximately 905 km of new 115 kV and 44 kV transmission lines north of Pickle Lake, and approximately 595 km of new 115 kV and 44 kV transmission lines north of Red Lake, including associated stations and ancillary facilities (the “Remotes Connection Lines”).

The Project is unique in many respects. This includes the size of the transmission build, the remoteness of the areas to be served, the geography and terrain to be encountered, the magnitude of expected Project costs, the nature of the partnership and extent of First Nations participation, as well as the extensive scope of Aboriginal and stakeholder engagement. Due to these challenges, significant initial planning and development activities have been and continue to be needed in advance of filing an application for leave to construct the planned facilities. These activities are required to ensure the Project is appropriately scoped and sufficiently defined and, most importantly, capable of being implemented thereafter in a timely, efficient and cost effective manner.

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interests in WPLP that are currently held by RES Canada. This would be achieved through an internal reorganization, the completion of which is conditional on obtaining Board approval for one particular aspect of the reorganization. FortisOntario filed an application with the Board on January 18, 2017 for approval of that aspect of the reorganization under s. 86(2)(b) of the *Ontario Energy Board Act* (EB-2017-0009). Neither the proposed transaction, nor any other aspect of the planned reorganization, will materially affect WPLP’s present application, nor will there be any adverse impacts on the ongoing development or future operation of the Project. To ensure this, the parties have made arrangements for a smooth and orderly transition.

1 In considering the Project and the Application, it is critical not to lose sight of its unique  
2 characteristics - particularly the circumstances the Project is intended to address and the  
3 urgency of the need for the affected communities. The remote First Nation communities are  
4 not connected to the provincial electricity grid. Instead, they get their electricity from on-site  
5 generators that burn diesel fuel. These are increasingly expensive, high-emission sources of  
6 electricity that carry significant environmental risks. For most communities, diesel fuel must be  
7 brought in on ice roads in the winter - though the shipping season is getting shorter because of  
8 warmer winters. A single community can require the equivalent of more than two-dozen tankers  
9 full of diesel fuel each year. When roads are not available, reliance on even more expensive  
10 airfreight is often the only option to bring in diesel fuel.

11 Power generated in this manner is not reliable and communities regularly experience power  
12 outages that can continue for multiple days at all times of the year. In addition, power systems  
13 in many of the remote communities have reached their capacity. With no alternative sources of  
14 supply, this significantly limits not only economic development but, more fundamentally, the  
15 ability to build housing and other buildings as there is no capacity to connect new homes and  
16 buildings to a power supply. Consequently, there is widespread overcrowding and living  
17 conditions are very poor. Also affected are other basic needs, such as water and food supplies.  
18 As the Minister of Energy stated, referring to the Project as a priority “may be too weak a term”  
19 because it is unacceptable that tens of thousands of Ontario individuals and families are not  
20 connected to the grid but, instead, depend on unreliable and high-cost diesel generation which  
21 affects their quality of life, the environment and which limits social and economic development.<sup>3</sup>

22 The term “energy poverty” has aptly been used to describe conditions in the remote  
23 communities. An article filed at Appendix ‘C’ to IR Board Staff – 13(a) about the circumstances  
24 in one particular remote First Nation community, Pikangikum, paints a troubling picture of how  
25 the lack of adequate and reliable power affects all aspects of life. The circumstances in  
26 Pikangikum are just one example, but are typical of what is being experienced in all of the  
27 remote First Nation communities as they all face similar electrical load restrictions and  
28 experience similar impacts as a result. In Pikangikum, as of April 2016 when the article was  
29 written, the reserve’s main generator was 8 years past its expected 10-year lifespan and had

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<sup>3</sup> IR Board Staff – S7, p. 6 of 7.

1 been out of service since February 2016. During these winter months and until a new generator  
2 could be flown in, they had timed blackouts to rotate electricity service every two hours between  
3 different parts of the community.

4 In Pikangikum, the article explains, 80% of homes on the reserve do not have running water or  
5 wastewater systems because energy restrictions have prevented the infrastructure  
6 improvements that are needed to support such services. Using buckets, families must obtain  
7 water - for washing, cleaning and drinking - from several water stations spread across the  
8 community, including in extreme cold winter conditions. The lack of power has caused housing  
9 supplies to tighten to the point of crisis – new homes and other buildings cannot be connected  
10 to power supplies, so they are simply not built. Consequently, as many as 16 people are forced  
11 to share a small home, requiring some families to sleep in shifts. The lack of power also has  
12 significant impacts on schools and youth, and is noted as a contributing factor in the growing  
13 and deeply disturbing number of suicides among young people. The Applicant's continued  
14 progress on the Project provides an important source of hope that circumstances will improve  
15 for all of the remote First Nation communities in northwest Ontario in the foreseeable future.<sup>4</sup>

## 16 **Requested Relief**

17 In this application, the Applicant requests:

- 18 • an order of the Board, pursuant to Section 78 of the Act, authorizing it to establish a  
19 deferral account, to be known as the "Wataynikaneyap Power Development Deferral  
20 Account" (the "Deferral Account"), for the purpose of recording costs incurred in relation  
21 to development of the Project, including (without limiting the generality of the foregoing)  
22 with respect to engineering, design, procurement, permitting and licensing,  
23 environmental and regulatory approvals, non-Aboriginal land rights acquisition,  
24 Aboriginal land-related matters, stakeholder consultation and Aboriginal engagement,

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<sup>4</sup> IR Board Staff – 13(a), Appendix C.

1 interconnection studies, Aboriginal participation, formation of the Applicant and its  
2 predecessor organizations, as well as Project management and administration;<sup>5</sup>

- 3 • that the Applicant be permitted to record carrying charges on the balance in the Deferral  
4 Account by calculating simple interest, monthly, on the opening balance in accordance  
5 with the methodology approved by the Board in EB-2006-0117;
- 6 • that the effective date for the Deferral Account be the date of the application, August 26,  
7 2016;<sup>6</sup>
- 8 • that, notwithstanding the effective date that the Board establishes for the Deferral  
9 Account, the Board permit the Applicant to record in the Deferral Account the  
10 development costs incurred by the Applicant and its predecessors in relation to the  
11 Project between September 2008 and such effective date for the Deferral Account as the  
12 Board determines; and
- 13 • that the Board require WPLP to report to the Board on a quarterly basis, by the end of  
14 the month following the relevant quarter, beginning with the quarter after the final  
15 decision and order in this Application is made, with respect to budget, timing and risks in  
16 relation to development of the Project, as further described in the application.

17 If approval to establish the Deferral Account is granted, it is WPLP's understanding and  
18 expectation that the effect of doing so would be that WPLP would have the right to record its  
19 development costs in the Deferral Account and, if the Project does not proceed to completion  
20 due to circumstances beyond its control, WPLP would apply to the Board for an order  
21 determining that its prudently incurred development costs and reasonable wind-up costs, which  
22 will have been recorded in the account, are recoverable from transmission ratepayers. WPLP  
23 recognizes that the right to record costs is not a guarantee of recovery of said costs.

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<sup>5</sup> The amounts to be recorded in the Deferral Account will exclude the costs associated with development of a distribution line from Red Lake to Pikangikum, but will include the costs associated with converting that distribution line into a transmission line that forms part of the Project.

<sup>6</sup> Although the Application included a request for an interim order of the Board establishing the Deferral Account effective from the date of the application, which would at least enable the Applicant to record costs in the proposed Deferral Account in advance of the final decision of the Board, the Board did not consider or make a determination on that request.

1 The Applicant intends to seek recovery of the amounts recorded in the Deferral Account through  
2 its initial request for transmission rates, or at such other time as the Applicant may request and  
3 the Board may order.

4 The Applicant recognizes that, if the Project goes into service, the development costs will  
5 ultimately be accounted for as capital costs which will form part of the rate base upon which  
6 WPLP's initial transmission rates will be calculated. However, in the event that the Project does  
7 not proceed to completion, as noted above, the proposed Deferral Account would provide  
8 WPLP with a basis on which it could nevertheless seek recovery of its prudently incurred  
9 development costs, with prudence to be determined at that time. In this way, the Applicant  
10 regards the Deferral Account as an important risk mitigation mechanism that gives it the  
11 confidence to proceed with developing this complex and important project.

#### 12 **The Board's Test is Met**

13 The Applicant's request meets the Board's established criteria for granting a deferral account,  
14 as set out in the Board's *Filing Requirements for Electricity Transmission Applications* (the  
15 "Filing Requirements"). These criteria – causation, materiality and prudence – are discussed  
16 below.

#### 17 *Causation*

18 The Board requires that a transmitter's forecasted expense be clearly outside the base upon  
19 which its revenue requirement has been derived. The Applicant's initial transmission rates have  
20 not yet been established and the forecasted development costs for the Project have not  
21 otherwise been brought before the Board by the Applicant. Consequently, the costs to be  
22 recorded in the account are clearly outside the base upon which the Applicant's revenue  
23 requirement, and current Uniform Transmission Rates, are derived.

#### 24 *Materiality*

25 The Board requires a transmitter's forecasted costs to exceed the Board-defined materiality  
26 threshold and to have a significant influence on the operation of the transmitter, otherwise the  
27 amounts must be expensed in the normal course. The Filing Requirements provide default



1 materiality thresholds ranging up to \$3 million, depending on a transmitter's approved revenue  
2 requirement. As noted, the Applicant's revenue requirement has not been determined.  
3 However, with a development budget of \$77M, the forecasted development costs for the Project  
4 will be well in excess of the Board's highest materiality threshold. Moreover, as a new  
5 transmitter the Applicant does not have a means to expense any amounts in the normal course.  
6 As such, the forecasted development costs are material.

### 7 *Prudence*

8 The Board requires that the nature of the costs and forecasted quantum must be reasonably  
9 incurred, though final determination of prudence will be made at the time of disposition. In  
10 terms of quantum, this means that an applicant must demonstrate why the option selected  
11 represents a cost-effective option for ratepayers. As indicated in the pre-filed evidence and in  
12 interrogatory responses, the Project has been formally identified as a priority in successive Long  
13 Term Energy Plans and is supported by various studies from the IESO. The Applicant and its  
14 predecessors worked closely with the Province, the OPA and the IESO over a number of years  
15 to define the scope, need, technical parameters and preliminary routing for the Project. More  
16 recently, the Province has formally declared the Project to be a priority under section 96.1 of the  
17 Act and, in response to a Ministerial Directive, the Board has made it a condition of the WPLP's  
18 transmission licence that WPLP must develop and seek approvals for the Project. Given these  
19 factors, it will be reasonable for the Applicant to incur its budgeted development costs and to  
20 have incurred some of its budgeted development costs to date. The costs to be recorded are  
21 for activities that have been or that will be necessary for developing the Project and obtaining  
22 required approvals, including putting the Applicant in a position to file an application for leave to  
23 construct.

### 24 **Relevant Precedents**

25 The Board has previously recognized the risks associated with development of transmission  
26 projects, and has approved deferral accounts for other developers as a means of helping to  
27 mitigate those risks in order to facilitate development. For example, on September 26, 2013 the  
28 Board approved a deferral account for NextBridge Infrastructure (formerly Upper Canada  
29 Transmission Inc.) as the designated transmitter in respect of the East West Tie Line Project

1 (EB-2011-0140) and on March 27, 2015 the Board approved a deferral account for Hydro One  
2 Networks Inc. (“Hydro One”) in respect of the North West Bulk Transmission Line Project. The  
3 circumstances of those proceedings are considered relative to the present application, below.

4 In the September 26, 2013 Decision and Order in EB-2011-0140, the Board approved  
5 NextBridge’s proposed accounting order, including its breakdown of sub-accounts, for  
6 establishing a Development Cost Deferral Account in connection with the East West Tie Line  
7 Project. The accounting order permits NextBridge to record in the account its actual costs of  
8 development for the project, plus carrying charges in accordance with the methodology  
9 approved by the Board in EB-2006-0117. The accounting order includes 13 sub-accounts  
10 based on different categories of anticipated development costs. As noted in response to IR  
11 Board Staff – S1, WPLP’s proposed breakdown of sub-accounts is based on the approach  
12 taken by NextBridge. In the Board’s July 12, 2012 Decision and Order in Phase 1 of the  
13 Designation Process, the Board determined that the designated transmitter will be permitted to  
14 record in the deferral account, for future recovery, costs incurred from the date the Board issued  
15 notice in that proceeding, February 2, 2012, which was nearly two years prior to the date that  
16 the account was ultimately established on September 26, 2013.<sup>7</sup>

17 In the March 27, 2015 Decision and Order in EB-2014-0311, the Board found that Hydro One  
18 met the three criteria – causation, materiality and prudence - in respect of its application to  
19 establish a deferral account to record development costs in relation to the North West Bulk  
20 Transmission Line Project. The Board stated that it reached this conclusion “largely on the  
21 strength of the reference to the NWBTL project in the Long Term Energy Plan and in the  
22 condition added to Hydro One’s transmission licence”. In particular, the NWBTL project was  
23 identified as a priority project in the 2013 Long-Term Energy Plan and, in response to a letter  
24 from the Minister of Energy, the Board made it a condition of Hydro One’s transmission licence  
25 that it undertake development of this project.

26 The circumstances considered by the Board in EB-2014-0311 are similar to those in the present  
27 application: the Line to Pickle Lake portion of WPLP’s Project was referenced in the 2010 Long  
28 Term Energy Plan, both the Line to Pickle Lake and the connection of remote communities were

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<sup>7</sup> See the Board’s consideration of Issue 14, at p. 18 of the Phase 1 Decision and Order.

1 recognized as priorities in the 2013 Long Term Energy Plan, and in response to the Ministerial  
2 Directive, a condition requiring WPLP to develop and seek approvals for the Project was added  
3 to its transmission licence.

#### 4 **Period for Recording Amounts and Effective Date**

5 The Applicant proposed an effective date as of the date of the application, being August 26,  
6 2016. Notwithstanding this, the Applicant has requested authorization from the Board to record  
7 in the Deferral Account the development costs that have been incurred by WPLP and its  
8 predecessors for purposes of developing the Project between September 2008 and the  
9 proposed effective date.

10 The Applicant submits that the Board should permit it to record in the Deferral Account  
11 development costs incurred by the Applicant and its predecessors commencing from September  
12 2008. Such a determination would not be without precedent. As described above, in EB-2011-  
13 0140 the Board determined that the designated transmitter in the East-West Tie proceeding  
14 would be permitted to record, for future recovery, costs incurred from the date the Board issued  
15 notice in that proceeding, February 2, 2012. This date was nearly two years prior to the date  
16 that the account was ultimately established on September 26, 2013.

17 The reasons for the Applicant proposing September 2008 as the date from which it should be  
18 permitted to record development costs in the Deferral Account have been set out in detail in  
19 response to IR Board Staff – 1, IR Board Staff – S6 and IR Board Staff – S7. The balance of  
20 this section highlights the key aspects.

21 As a result of preliminary activities undertaken prior to September 2008, and after seeing the  
22 failure of several prior initiatives to establish grid connections, a number of the Participating  
23 First Nation communities reached a clear and shared understanding of the importance of  
24 addressing the dire circumstances faced by the communities in a coordinated manner, on a  
25 regional basis.

26 September 2008 is when the initial project organization – the Central Corridor Energy Group  
27 (“CCEG”) - was formed and development work on the Project was formally authorized. These  
28 steps were achieved by means of resolutions from the Chiefs of twelve First Nations through

1 two Tribal Councils – the Shibogama First Nations Council and the Windigo First Nations  
2 Council. In addition to authorizing the commencement of development work and formation of  
3 CCEG, the resolutions provided for initial funding contributions from those First Nations and  
4 authorized the preparation of an application for an initial funding contribution from Indigenous  
5 and Northern Affairs Canada.

6 Moreover, it was at this time that the Project's development costs started to be documented and  
7 managed in a systematic and transparent manner. In particular, as explained in response to IR  
8 Board Staff – S6(c), from September 2008 until the formation of WPLP in August 2015 all  
9 Project costs were documented and managed by the Shibogama First Nations Council on  
10 behalf of CCEG, First Nations Holding Company or Wataynikanyap Power Corp., as applicable.  
11 These costs were subject to review through annual audits of the Shibogama First Nations  
12 Council prepared by a reputable accounting firm. Once WPLP was established, the  
13 responsibility for documenting and managing Project costs transferred to a special purpose  
14 project management company formed by Fortis and RES Canada. Through this entity, the  
15 Project costs have continued to be subject to audit from a reputable accounting firm.

16 In parallel with the formation of CCEG and authorization of its initial development activities, the  
17 OPA was seeking approval from the Board for its Integrated Power System Plan ("IPSP") in EB-  
18 2007-0707. During that proceeding, it became apparent that the IPSP did not plan for the  
19 connection of remote First Nation communities in northwestern Ontario but, instead, dismissed  
20 these areas as locations with no transmission capacity. In response, the Minister of Energy  
21 issued a directive requiring the OPA to more fully consider the improvement of transmission  
22 capacity in northern Ontario, to undertake an enhanced process of consultation with First  
23 Nations and Métis communities, and to consider the principle of Aboriginal partnership  
24 opportunities in matters of both generation and transmission. A copy of the directive is included  
25 with WPLP's response to IR Staff-1(c).

26 Very shortly after CCEG was formed and the Minister's directive was issued in September 2008,  
27 CCEG began a series of meetings concerning its interest in pursuing development of the Project  
28 through a partnership approach. These meetings were held with the Minister of Energy and his

1 staff, representatives of the OPA, Hydro One, the Minister of Northern Development and Mines  
2 and other key stakeholders.

3 In the Applicant's view, the confluence of these key developments clearly demonstrates that the  
4 Project commenced in September 2008. There was authorization from the Tribal Councils to  
5 proceed, a project organization was formed, costs began to be recorded and tracked, and the  
6 Minister of Energy and various provincial agencies began to recognize and rely upon the initial  
7 development work from this project organization. What is of note is that it was the *absence* of a  
8 formal announcement by the Province and the *failure* to plan for the connection of remote  
9 communities in the IPSP, despite the urgency of the need, that was the impetus for the Project.  
10 The Province recognized that CCEG, and eventually Wataynikaneyap Power, were key to the  
11 further development of the Project and meeting the need in the affected communities.

12 From September 2008 until the Minister's directive in 2016, as development progressed and the  
13 Project matured, recognition of the Project by the Province has become increasingly formalized.  
14 Some of the key steps in this process have included:

- 15 • 2008 – 2010: Ongoing meetings with the Minister and representatives of the Ministry,  
16 OPA, Hydro One and other agencies; issuance of the IPSP directive.
- 17 • 2010: In the 2010 LTEP, the Province identified the Line to Pickle Lake as a priority  
18 project and signaled its intent to ask the OPA to develop a plan for remote connections;  
19 a directive to the OPA requiring this was subsequently issued in February 2011.
- 20 • 2013: In the 2013 LTEP, the Province identified both the Line to Pickle Lake and the  
21 Remotes Connection Lines as priorities; the OPA issued its *North of Dryden Draft*  
22 *Reference Integrated Regional Resource Plan* noting that it consulted with  
23 CCEG/Wataynikaneyap Power between 2011 and 2013 and noting that the Applicant  
24 has initiated steps towards implementing a new line to Pickle Lake.
- 25 • 2014: The OPA, in consultation with the remote First Nations communities, issues a  
26 *Draft Remote Communities Connection Plan* which references the work being carried

1 out by WPLP, the OPA's reliance on WPLP's preliminary planned transmission routing  
2 and the OPA's reliance on a Project Benefits Study prepared on behalf of WPLP.

- 3 • 2015: WPLP obtained approval for its environmental assessment Terms of Reference  
4 for the Line to Pickle Lake; WPLP obtained a transmission licence from the Board; the  
5 Minister of Energy attended at the signing ceremony for WPLP and spoke publicly about  
6 the Project.
- 7 • 2016: Once certain legislative amendments took effect, the Province through Orders in  
8 Council declared the Project to be a "priority project" and approved a Ministerial Directive  
9 requiring the Board to amend WPLP's transmission licence, thereby formally selecting  
10 the Applicant as the party responsible for developing the Project.

11 Since September 2008, WPLP and its predecessors – CCEG, First Nations Holding Company  
12 and Wataynikaneyap Power Corp. - have carried out a significant amount of development work,  
13 all of which is essential for the successful implementation of the Project. This development work  
14 has included: extensive engagement within affected communities; consultation with key  
15 regulators and governmental authorities; bringing together over 20 First Nation communities into  
16 an innovative ownership structure for the Project and then bringing into the structure as partners  
17 two established transmission development companies; development of preliminary transmission  
18 line routing; development of technical parameters for the transmission system and commencing  
19 impact assessment processes; engagement of environmental and technical consultants; and  
20 obtaining approval from the Ministry of the Environment and Climate Change for the  
21 Environmental Assessment Terms of Reference in respect of the Line to Pickle Lake component  
22 of the Project.

23 It is appropriate for the costs incurred in connection with these essential development activities  
24 to be recorded in the Deferral Account. The development activities of the Applicant and its  
25 predecessors to date have clearly and significantly advanced these priority transmission lines  
26 beyond where they would have been if the Applicant had merely waited for these lines to attain  
27 such priority status under the legislation before commencing development activities. Without  
28 the efforts of WPLP and its predecessors, the prioritization of the Project may never have  
29 happened and a transmitter may not have been formally designated to develop the Project.

1 Given the needs of these remote communities, this would have been an unacceptable result.  
2 As such, the development costs incurred thus far by the Applicant and its predecessors should  
3 be regarded as having been incurred in the public interest and for the purposes of the priority  
4 transmission lines notwithstanding that those costs were incurred before the Order-in-Council  
5 was made or prior to the effective date requested in this Application.

### 6 **Start-up / Partnership Formation Costs**

7 One group of development costs that WPLP is seeking to record in the Deferral Account  
8 consists of the start-up/formation costs incurred by WPLP and its predecessors (CCEG, First  
9 Nations Holding Company and Wataynikaneyap Power Corp.). As indicated in response to IR  
10 Board Staff – 6(c), CCEG was formed in September 2008, First Nations Holding Company was  
11 formed in December 2012, Wataynikaneyap Power Corp. was formed in April 2013, and WPLP  
12 was formed, with First Nations LP, FortisOntario and RES Canada, in August 2015. As  
13 indicated in Exhibit 6, Tab B of the pre-filed evidence, the Applicant has budgeted approximately  
14 \$7M for costs relating to the start-up/formation of WPLP and its predecessors.<sup>8</sup>

15 At such time that WPLP seeks to dispose of the amounts recorded in the Deferral Account,  
16 WPLP will determine whether and to what extent it will seek to recover these start-up/formation  
17 costs through transmission rates. At that time, the Board will have an opportunity to consider the  
18 prudence of these costs and any concerns that it may have in relation to whether and to what  
19 extent these amounts should be permitted to be recovered by WPLP through transmission  
20 rates. However, in the context of this Application, for the reasons set out below, the Applicant  
21 should be permitted to record such costs in the requested Deferral Account for the purposes of  
22 considering the recovery of such costs in a future proceeding.

23 Notably, as described in response to IR Board Staff – 9(a), the Board permitted the recovery of  
24 start-up costs in rates for B2M LP in EB-2015-0026. There, B2M sought to recover \$7.7M of  
25 such costs, including for legal and tax advice, advice on partnership structure, regulatory advice  
26 and advice on partnership financing. In its Decision and Order dated December 29, 2015, the

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<sup>8</sup> For greater certainty, no costs relating to the planned internal reorganization involving FortisOntario and RES Canada, as described in response to IR Board Staff – S9, will form part of the start-up/formation costs that would be recorded in the Deferral Account.

1 Board noted that B2M's start-up costs "were incurred in a careful and prudent way and were  
2 necessary to bring into existence a novel and complex commercial arrangement . . . (in which)  
3 expert advice was necessary to resolve contractual, financial, tax and regulatory issues." The  
4 Board went on to find that the manner in which B2M was structured would give rise to ratepayer  
5 benefits over the long term. The Board also observed that, while in consolidation transactions  
6 the Board's policy allows applicants to recover transaction costs by allowing productivity gains  
7 to be retained for up to ten years, in the circumstances of B2M as a new transmitter seeking  
8 initial rates, incorporating the start-up transaction costs into initial rates is the only mechanism  
9 available to allow them to be recovered. The Board further commented that the circumstances  
10 of B2M involved a novel and complex commercial arrangement which required significant effort  
11 to structure and negotiate.

12 Though it will be a matter to be considered in a future application when WPLP seeks to dispose  
13 of and recover any start-up/formation costs that it has recorded in the proposed account, WPLP  
14 observes that there are a number of similarities between the circumstances considered by the  
15 Board regarding B2M and WPLP's own circumstances. Whereas B2M involved a single  
16 transaction that took three years to complete, for WPLP the relevant start-up costs were  
17 incurred through a series of transactions that occurred as the Project matured and required  
18 additional resources and capabilities. The evolution of both the Project and the form of the  
19 proponent are described in detail in response to IR Board Staff – S7.

20 Like in the case of B2M, it is also important to recognize that ratepayers will receive benefits  
21 from the costs incurred in starting-up/forming the Applicant and its predecessors, as well as  
22 from the development work that their formation has enabled since September 2008.

23 First, based on WPLP's corporate structure, all utility profits will flow to the limited partners in  
24 proportion to their level of ownership interests in the limited partnership. As a result, 51% of  
25 WPLP's profits will flow to the First Nations partners, and will therefore be non-taxable under  
26 Section 149 of the *Income Tax Act*. The overall income tax allowance that WPLP intends to  
27 recover through transmission rates will therefore reflect only 49% of the income taxes that would  
28 otherwise be included in rates in respect of a fully taxable entity. Moreover, it is the intent of the  
29 First Nations partners to increase their ownership share beyond 51% over time. This benefit is



1 similar to the benefit recognized by the Board in EB-2015-0026 in respect of B2M. WPLP's  
2 corporate structure is a key outcome from the extensive Aboriginal engagement, participation  
3 and development work carried out by WPLP its predecessors prior to the application being filed.

4 Second, the IESO has determined that grid-connection of the Remote Communities north of  
5 Pickle Lake and north of Red Lake would result in significant net economic benefits as  
6 compared to status quo diesel generation. By advancing the Project through development work  
7 carried out and costs incurred prior to filing the present application, including with respect to  
8 environmental assessment and Aboriginal engagement, WPLP and its predecessors have  
9 moved ratepayers significantly closer to being able to realize these economic benefits. More  
10 particularly, the OPA/IESO found that Ontario ratepayers currently fund approximately 34.5% of  
11 the total annual cost of diesel generation in the remote communities through RRRP subsidies.<sup>9</sup>  
12 The same report found that the Average Total Cost of Supply to 2054 would be lowest for the  
13 Transmission Connection option, at \$0.40 to \$0.50 per kWh. This compares to a cost of \$1.10  
14 to \$1.20 per kWh for the status-quo diesel option.<sup>10</sup> It therefore follows that investment in the  
15 Project will result in a net benefit to Ontario Ratepayers through reduced RRRP subsidies.<sup>11</sup> In  
16 addition, some of the development work by WPLP's predecessors was noted as having  
17 contributed in a material way to the OPA/IESO study on the economic case for connecting  
18 Remote Communities.<sup>12,13</sup>

19 Similarly, by significantly advancing the Project through development work carried out and costs  
20 incurred to date, WPLP and its predecessors have moved Ontario that much closer to realizing  
21 the very significant public interest benefits of grid-connecting the remote First Nation  
22 communities. This includes the environmental benefits of eliminating dependence on diesel  
23 generation in these communities, as well as the social, economic and public health benefits of  
24 providing access to sufficient and reliable electricity service.

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<sup>9</sup> [http://www.ieso.ca/Documents/Regional-Planning/Northwest\\_Ontario/Remote\\_Community/OPA-technical-report-2014-08-21.pdf](http://www.ieso.ca/Documents/Regional-Planning/Northwest_Ontario/Remote_Community/OPA-technical-report-2014-08-21.pdf) (Pages 6-7)

<sup>10</sup> Ibid. (Table 4, Page 24)

<sup>11</sup> Ibid. (Table 6, Page 38)

<sup>12</sup> Ibid. – Pages 67 and 81 indicate that the IESO used Wataynikaneyap's routing configuration in its analysis

<sup>13</sup> In 2012, the OPA makes reference to routing and line configuration options studied by CCEG having been considered in its analysis - [http://www.ieso.ca/Documents/Regional-Planning/Northwest\\_Ontario/Remote\\_Community/2012-Draft-Remote-Community-Connection-Plan.pdf](http://www.ieso.ca/Documents/Regional-Planning/Northwest_Ontario/Remote_Community/2012-Draft-Remote-Community-Connection-Plan.pdf) (Page 56)

1 Finally, a significant part of the development work carried out prior to this application has been  
2 in respect of Aboriginal engagement and participation. This work has resulted in a Project that  
3 is being developed by a unique partnership in which a controlling interest is held by a group of  
4 22 First Nations (including all First Nations that will be connected to the grid through the Project)  
5 and a minority interest is held by an experienced transmission developer and operator. As a  
6 result of this structure and the high level of Aboriginal engagement and participation in the  
7 Project, the Applicant reasonably expects the remainder of the development process to have  
8 significantly less risk and uncertainty than it otherwise would. When contrasted with  
9 circumstances in which a transmission developer, seeking to develop a similar project, has to  
10 commence Aboriginal engagement activities and work towards mutually acceptable  
11 arrangements for Aboriginal participation (as well as routing, project design and other matters)  
12 with an equivalent number of affected First Nation communities *subsequent* to being formally  
13 selected as the proponent and *subsequent* to obtaining a development costs deferral account  
14 for their project, it is very likely that the approach taken by WPLP would be found to result in a  
15 more efficient and lower cost development process with a greater likelihood of success.

## 16 **Reporting**

17 The Directive issued by the Minister of Energy pursuant to Section 28.6.1 of the Act requires  
18 WPLP to report to the Board as the Board considers appropriate with respect to budget, timing  
19 and risks in relation to development of the Project. WPLP considers quarterly reporting to be an  
20 essential component of the Project as development efforts progress towards an application for  
21 leave to construct. Moreover, WPLP believes that the reporting requirements identified by the  
22 IESO will serve the needs of a wide range of stakeholders.

23 The Applicant has proposed that, through the decision and order in this Application, the Board  
24 should require WPLP to report to the Board on a quarterly basis, by the end of the month  
25 following the relevant quarter, beginning with the quarter after the final decision and order in this  
26 Application is made.<sup>14</sup> WPLP has further proposed that the quarterly reports would provide (a) a  
27 summary of overall progress on the Project; (b) a summary of the Applicant's up-to-date

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<sup>14</sup> Q1 reports would be due by April 30; Q2 reports would be due by July 31; Q3 reports would be due by October 31; Q4 reports would be due by January 31.

development budget and changes in the development budget (if any); (c) a summary of the Applicant's up-to-date development schedule, changes in the development schedule (if any), indications of items that have been completed, and the status of items that are in progress; and (d) a summary of key risks and issues in relation to development of the Project and the steps taken or planned by the Applicant for mitigating those risks.

In response to IR Board Staff – 10, WPLP acknowledged that the items suggested by the IESO for reporting, as set out in the IESO report, would be useful to the Board. Those items are substantially the same as WPLP's proposed content for the quarterly reports, as set out above. WPLP also commented that, because of its existing licence obligation to report material changes in circumstances, it is not necessary for the Board to impose a specific requirement for WPLP to report if and when it were to become clear that the Project will not proceed. However, if the Board finds this necessary, WPLP would have no objections.

#### **Structure and Mechanics of the Deferral Account**

The structure for the proposed Deferral Account is set out in the revised draft accounting order filed in response to IR Board Staff – S1 (Appendix 'A'). The account would have five sub-accounts:

- 1508.001 would be used to record as a debit development costs in respect of the Line to Pickle Lake from the date determined by the Board. This sub-account will be further divided into 14 sub-accounts, each pertaining to a different category of development activity, as set out in the revised draft accounting order.
- 1508.002 would be used to record as a debit development costs in respect of the Remote Connection Lines from the date determined by the Board. This sub-account will be further divided into 14 sub-accounts, each pertaining to a different category of development activity, as set out in the revised draft accounting order.
- 1508.003 would be used to record as a debit carrying charges on the balances in sub-accounts 1508.001 and 1508.002. Simple interest will be computed monthly on the

opening balances in those sub-accounts in accordance with the methodology approved by the Board in EB-2006-0117.

- 1508.004 would be used to record as a credit funding received applied for and received by WPLP in respect of development activities for the Project that are attributable to the Line to Pickle Lake.
- 1508.005 would be used to record as a credit funding received applied for and received by WPLP in respect of development activities for the Project that are attributable to the Remote Connection Lines.

The structure of the Deferral Account, including the 14 activity-based sub-accounts, is based on the structure of the deferral account established by the Board for the designated transmitter in the East-West Tie proceeding (EB-2011-0140), as modified by the Applicant to better meet the needs and characteristics of the Project, and in response to the requests for modifications made by Board staff through interrogatories (See IR Board Staff – S1).

The Applicant expects to seek disposition of the Deferral Account balance at such time that it seeks approval for initial transmission rates for the planned transmission system, or at such other time as it may request or the Board may order. Assuming the Project goes into service, the development costs will ultimately be accounted for as capital costs which will form part of the rate base upon which WPLP's initial transmission rates will be calculated. If the Project does not go into service as a result of circumstances that are beyond its control, WPLP would expect to apply to the Board for an order determining that its prudently incurred development costs and reasonable wind-up costs, which will have been recorded in the account, are recoverable from transmission ratepayers.

## **Conclusion**

The Applicant's request meets the Board's established criteria for granting a deferral account. Moreover, the Board has previously recognized the risks associated with transmission development and has approved deferral accounts for transmission development costs in comparable circumstances. In the unique circumstances of the Project, and for the reasons

1 stated, it is also appropriate for the Board to permit the Applicant to record in the Deferral  
2 Account the development costs incurred by WPLP and its predecessors in connection with the  
3 Project from September 2008, and to permit the Applicant to record the start-up/formation costs  
4 that they have incurred during this period. Accordingly, the Board should grant the Applicant's  
5 request in accordance with the Application as filed, and as further described herein.

All which is respectively submitted this 3rd day of February, 2017.

**2472883 ONTARIO LIMITED on behalf of  
WATAYNIKANEYAP POWER LP**  
by its Counsel

  
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