

**EB-2016-0310**

**Henvey Inlet Wind GP Inc.**

**Application for leave to construct transmission facilities  
between Henvey Inlet First Nation Reserve No. 2 and  
Parry Sound, Ontario.**

**OEB Staff Submission**

**April 27, 2017**

On October 14, 2016 Henvey Inlet Wind GP Inc. on behalf of Henvey Inlet Wind LP (the Applicant or Henvey Inlet) applied to the Ontario Energy Board (OEB) under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (Act) for an order or orders granting leave to construct transmission facilities between Henvey Inlet First Nation Reserve No. 2 (Reserve) and Parry Sound, Ontario. The Applicant subsequently filed an Amendment to the Application and Pre-filed Evidence on November 30, 2016 to remove potential route variations that would deviate from the main route in certain places in the event they were not successful in securing land rights on two First Nations Reserves (Magnetawan and Shawanaga). The transmission facilities are required to connect a renewable wind generation facility known as the Henvey Inlet Wind Energy Centre (HIWEC) on the Reserve to the Independent Electricity System Operator (IESO)-controlled grid. Its contract capacity is up to 300 MW.

The Applicant has also applied under section 97 of the Act for approval of the form of land use agreements and under section 101 of the Act authorizing the construction of portions of the proposed Transmission Facilities upon, under or over a highway, utility line or ditch.

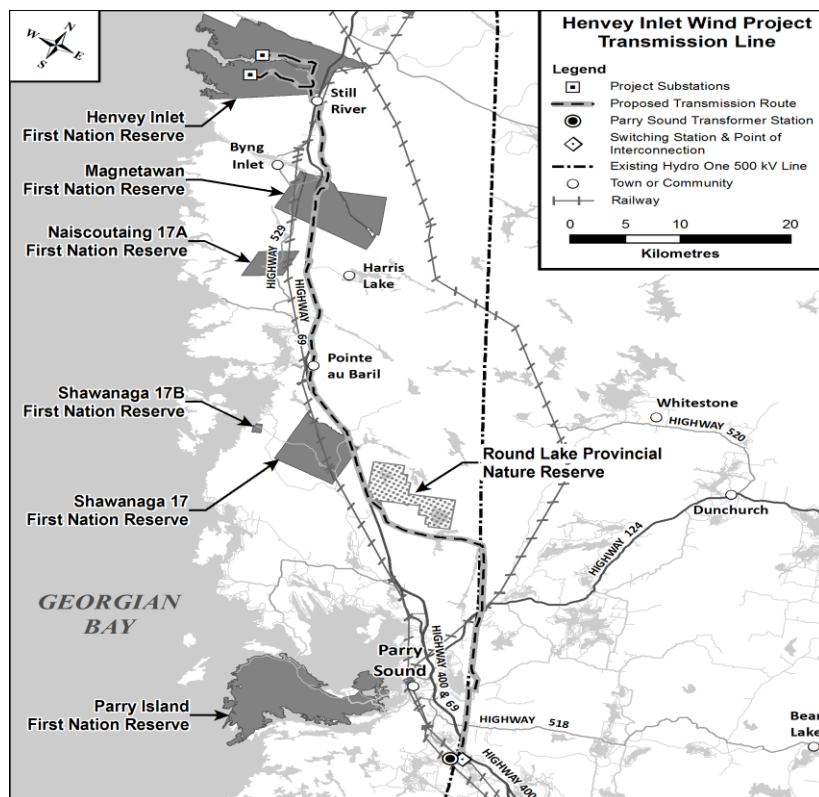
The proposed transmission facilities include:

- two 230 kV/34.5 kV substations known as the North and South Project Substations that will step up power from the HIWEC Project;

- a 230 kV switching station in the Township of Seguin adjacent to the existing Hydro One Networks Inc. (Hydro One) 230 kV circuits E26 and E27, and located approximately 0.6 km east of Hydro One's Parry Sound transformer station, (Switching Station) at the interconnection point to Hydro One's transmission system; and
- a 103 km three-phase single 230 kV circuit overhead transmission line, comprised of:
  - an approximately 8 km segment running from the North Project Substation and an approximately 6 km segment running from the South Project Substation, to a point on the Reserve where these two segments join together (Tap Point) ; and
  - an approximately 89 km segment that runs from the Tap Point to the Switching Station.

The proposed transmission facilities described above are collectively referred to herein as the Transmission Facilities.

The proposed location of the Transmission Facilities is illustrated in the following diagram that appeared in the notice of hearing published on January 11, 2017 in the Turtle Island News and Parry Sound North Star and January 13, 2017 in the Parry Sound Beacon Star.



On February 25, 2011, the former Ontario Power Authority (the OPA), now the Independent Electricity System Operator (IESO), issued a contract under the Feed in Tariff (FIT)<sup>1</sup> Program in respect of the HIWEC project. The Transmission Facilities are required to transmit the renewable electricity generated by HIWEC to the provincial electricity grid.

For any leave to construct application under section 92 of the Act, subsection 96(1) of the Act provides that “If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.” Subsection 96(2) of the Act provides that when determining if the proposed construction of an electricity transmission line is in the public interest, the OEB’s jurisdiction is limited to the consideration of the interests of consumers with respect to prices and the reliability and quality of electricity service, and where applicable in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy resources.

As discussed below, OEB staff has no concerns with the evidence presented in this Application with respect to matters that are within the OEB’s jurisdiction.

While other issues and concerns were raised by parties during the proceeding, these matters have either been resolved or are outside the OEB’s jurisdiction in applications of this kind.

### **Price of Electricity Service**

#### **Cost of Transmission Facilities**

The Applicant states in its evidence that “The cost for the proposed Transmission Facilities will be borne by the Applicant”.<sup>2</sup> The Applicant further confirmed that the project will not affect electricity transmission rates in Ontario.

Based on the above, OEB staff submits that there are no concerns related to the Transmission Facilities with respect to the price of electricity service.

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<sup>1</sup> FIT contracts in Ontario are power purchase agreements that renewable energy producers enter into with the IESO as per government of Ontario directives to the IESO.

<sup>2</sup> Henvey Inlet Wind GP Inc., October 14, 2016 LTC Application, Exhibit B, Tab 1, Schedule 1, pg. 6, paragraph 19.

**Reliability and Quality of Electricity Service****System Impact Assessment (SIA)**

The IESO completed a Final SIA Report for the HIWEC and connection of the Transmission Facilities dated June 30, 2015. The IESO concluded that the proposed connection of the HIWEC and associated Transmission Facilities will not result in a material adverse impact on the reliability of the integrated power system. The Applicant also received a Notification of Conditional Approval for connection simultaneously with the Final SIA Report.

On September 30, 2016, the IESO issued a final addendum to the SIA (SIA Addendum) in response to updated information the IESO received from the Applicant in late October 2015. At that time the Applicant requested amendments to the SIA due to a change in the turbine model; changes to HIWEC's collector system design; and modifications to the substation design. The SIA Addendum requires the Applicant to meet all the specific and general requirements in the original Final SIA Report and additional specific requirements identified in the Connection Applicant Requirements section at pages 2 and 3 of the SIA Addendum. The IESO concluded that, provided the Applicant meets these requirements, the proposed connection, as modified "is expected to have no material adverse impact on the reliability of the integrated power system".

**Customer Impact Assessment (CIA)**

Hydro One completed a final CIA for the HIWEC and the connection of the Transmission Facilities and provided a copy to the Applicant on June 30, 2015. Hydro One has advised the Applicant that it has no concerns with the changes made to the original Application pursuant to the requirements outlined in the SIA Addendum and does not need to update the CIA for the amendments to the SIA.

Based on the above evidence submitted by the Applicant with respect to the SIA and CIA, OEB staff submits that it has no concerns with respect to reliability and quality of electricity service.

**Policies of the Government on the Promotion of the Use of Renewable Energy Sources**

The evidence filed in the Application indicates that HIWEC will contribute up to 300 MW of clean, renewable energy to the provincial electricity grid. OEB Staff submits that the connection of the HIWEC via the Transmission Facilities will further the Ontario

Government's policy objective of increasing the amount of renewable energy being added to the Province's energy supply mix.

Therefore, OEB staff has no concerns with connection of the proposed Transmission Facilities to the provincial grid in respect to promoting government policy on use of renewable energy sources.

### **Forms of Land Agreement**

In accordance with section 97 of the Act, the OEB must be satisfied that the Applicant has or will offer each owner of land affected by the proposed route or location an agreement in a form approved by the OEB. Once the OEB is satisfied with the initial offering to an affected landowner, the parties are free to negotiate terms to meet their respective needs.

The length and number of Transmission Facilities required the Applicant to use a variety of land agreements, the form of which depends on the nature of the property, current ownership and the interests in land to be acquired. The Applicant provided the following description of land requirements in its response to OEB Staff Interrogatory 1 in respect of Transmission Line Routing:

- 1) Privately Owned: A total of 75 affected properties. The Applicant indicates the following agreements have been or will be presented: Transmission Easement Option Agreements, Temporary Access Easement Option Agreements, Construction Laydown Ground Leases and Agreement of Purchase and Sale. All these Forms of Agreements are provided in Exhibit E, Tab 1, Appendices A, B, D and E.
- 2) Municipally Owned: A total of 46 affected properties owned by 4 municipalities. The Applicant indicates the following agreements have been or will be presented: Transmission Easement Agreements (Public), Temporary Access Easement Agreements, and Construction Laydown Ground Lease. All these Forms of Agreements are provided in Exhibit E, Tab 1, Appendices C, D and E.

The Applicant also discussed in its responses to OEB Staff Interrogatory 1 and OEB Staff Interrogatory 4(3)(a) its acquisition of necessary rights in respect of "Agency and Utility Owned" lands and the status of its negotiations with the Crown and MTO for necessary land rights. It explained in its response to OEB Staff Interrogatory 1 that there are 6 agencies and utilities with ownership interests in 69 affected properties; that the Applicant requires some of these properties on a permanent basis and some on a temporary basis; that on some properties, both permanent and temporary rights are

required; and that the forms of agreement to be used to convey such permanent and temporary land rights are generally the forms that are customarily used by the agencies and utilities for these purposes. The Applicant advised that accordingly, these will vary from one agency or utility to another and in some cases take the form of a permit.

The Applicant advised that of the 35 affected agency/utility properties in respect of which it requires permanent rights, it has completed and submitted relevant permit applications and/or requested necessary agreements for 6 of these properties thus far and is awaiting receipt of same, and that it is working toward completing permit applications and reviewing/requesting agreements with respect to the remaining 29 affected properties. The Applicant advised further that of the 55 affected agency/utility properties in respect of which it requires temporary rights, it has completed and submitted relevant permit applications and/or requested necessary agreements for 3 of these properties and is awaiting receipt of same, and that it is working toward completing permit applications and reviewing/requesting agreements with respect to the remaining 52 affected properties.

Finally, the Applicant advised that all agencies and utilities with affected properties for which the Applicant seeks land rights (whether permanent or temporary) have been contacted and have received information packages and information necessary to process the request to issue to the Applicant the relevant permits and agreements.

In the Application, the Applicant states:

The forms of agreement are substantially in accordance with the “Essential Easement Considerations” set out in Appendix A of the Board’s Filing Requirements.

On March 20, 2017, the OEB issued PO No. 2 in which it addressed a review motion by Mr. Jeffrey Todd Hull for Intervenor status. The OEB varied its decision and granted Mr. Hull Intervenor status based on the statements the Applicant made in its March 17, 2017 submission that in fact the proposed transmission line would cross Mr. Hull’s property. In its March 17, 2017 submission the Applicant indicated Mr. Hull will be offered a land agreement in the standard form that Henvey has used for other affected landowners.

#### First Nations (FN) Land Rights

The Applicant advises the location of the Transmission Facilities on reserve lands within the Henvey Inlet Reserve No.2, Magnetawan FN and Shawanaga FN is a matter that is

within the exclusive jurisdiction of all three FNs, in accordance with the authority delegated to each FN by federal statute.<sup>3</sup> The Applicant confirms that it has acquired the necessary land rights for the Transmission Facilities to be located within Henvey Inlet Reserve No. 2 through the Henvey Lease. The Applicant advises that it is currently engaged in discussions with the Chiefs and Councils of both Magnetwan FN and Shawanaga FN to obtain easements for the proposed transmission line crossing through these reserves.

OEB staff does not have any concerns about the forms of agreement filed by the Applicant within the application and with the evidence updates.

### **Section 101 of the Act**

The Applicant is requesting approval of the OEB pursuant to Section 101 of the Act for authority to construct portions of the proposed Transmission Facilities upon, under or over a highway, utility line or ditch.

As discussed above, in response to OEB Staff Interrogatory 1 (Part 1 of 3) – Transmission Line Routing Agency and Utility Owned, the Applicant indicates that it has consulted with 6 agencies and utilities with ownership in 69 affected Properties to acquire permanent and temporary land rights.<sup>4</sup> All agencies and utilities with affected properties have been contacted and have received the information necessary to process the Applicant's request to issue the relevant permits and agreements.

With respect to specific MTO requirements; the Applicant has provided an e-mail (attached to their interrogatory responses) from MTO dated March 3, 2017 that confirms the MTO's commitment to work with the Applicant to ensure the project meets all MTO requirements and conditions. The Applicant anticipates that upon conclusion of the MTO's review process the MTO will issue a combination of Encroachment Permits and Leases to the Applicant.

For the portions of the Transmission Line that will cross utility lines, the Applicant states:

The Applicant will enter into crossing agreements based on the standard forms used by the relevant electricity, telecommunications, rail and gas utilities.

OEB Staff is satisfied that the Applicant is taking the necessary steps to obtain the necessary permits and agreements for highway and utility crossing required for the

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<sup>3</sup> Henvey Inlet Wind GP Inc., October 14, 2016 LTC Application, Exhibit B, Tab 2, Schedule 1, pg. 5, paragraph 2.

<sup>4</sup> MTO, MNRF, Infrastructure, Ontario, Hydro One, CN Rail, CP Rail

proposed Transmission Facilities. OEB Staff have no objection to the granting of the requested approval under Section 101 of the Act, subject to a condition that the proposed facilities be constructed in accordance with all necessary permits and agreements issued by, or entered into with, the relevant agencies and utilities.

### **Environmental and Other Approvals**

#### **Environmental**

The Applicant is subject to the requirements of the Category B Environmental Screening Process pursuant to Ontario Regulation 116/01, under the Environmental Assessment Act (EAA Ontario) for the off-reserve portion of the proposed Transmission Facilities. The process is described in the Ontario Ministry of the Environment and Climate Change *Guide to Environmental Assessment (EA) Requirements for Electricity Projects*. This process includes a review of potential environmental effects associated with construction, operation and decommissioning of the relevant proposed Transmission Facilities. At the time the Application was submitted, the Applicant was in the process of completing a minor amendment to its EA to reflect revisions to the areas to be affected by the construction footprint for the proposed Transmission Facilities and associated laydown areas and access roads.

The Applicant has obtained an EA Permit from Henvey Inlet First Nation (FN) for the on-Reserve portions of the proposed Transmission Facilities. Henvey Inlet FN has the authority to issue its own EA Permit for the HIWEC, including portions of the proposed Transmission Facilities, pursuant to its Land Code under the *First Nations Lands Management Act*.

The final Draft EA Report for the on-Reserve portion of the project and final Environmental Review Report for the off-Reserve portion of the project, were issued on September 30, 2015 for public review under the environmental assessment processes described above. This process was completed on June 7, 2016.<sup>5</sup>

The Applicant did not submit any information in respect to environmental assessments required for Transmission Facilities that are proposed to cross Magnetawan FN Reserve and Shawanaga FN Reserve.

OEB staff believes that EA Permits will be required similar to the one obtained for HIWEC for the proposed Transmission Facilities that will cross Magnetawan FN Reserve and Shawanaga FN Reserve.

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<sup>5</sup> Henvey Inlet Wind GP Inc., October 14, 2016 LTC Application, Exhibit B, Tab 2, Schedule 1, pgs. 11-12, paragraph 6



OEB staff is of the view, however, that the OEB can proceed with its decision as the OEB's leave to construct decisions generally include conditions that require securing all relevant approvals, including the EA.

### Other Approvals

The Applicant advises that, subject to obtaining all of the necessary permits and approvals, as well as land rights, it plans to commence construction of the proposed Transmission Facilities in Q2 2017.

OEB staff submits that the Transmission Facilities should be constructed and operated in accordance with all applicable technical codes and standards, including the requirements of the *Ontario Electrical Safety Code*, the *Occupational Health and Safety Act* (Ontario), the *Transmission System Code*, the *Market Rules for the Ontario Electricity Market*, including those with respect to metering.

### CONCLUSION

OEB Staff submits that the Applicant has provided evidence with respect to the interests of consumers with respect to prices and the reliability and quality of electricity service and the promotion of the use of renewable energy resources; the Forms of Agreement for affected landowners within the OEB's jurisdiction; and the need to construct portions of the proposed Transmission Facilities upon, under or over a highway, utility line or ditch. Based on the Applicant's evidence, OEB Staff has no concerns and submits that leave to construct the Transmission Facilities should be granted; the forms of agreements should be approved; and the requested leave to construct portions of the proposed Transmission Facilities upon, under or over a highway, utility line or ditch should be granted.

OEB Staff proposes that the following conditions be included in the order for leave to construct, should the OEB approve the Applicant's application:

- 1) Leave pursuant to section 92 of the Act shall be subject to the fulfillment of the requirements of the SIA, SIA Addendum and CIA and all other necessary approvals, permits, licences and certificates required to construct, operate and maintain the proposed facilities.
- 2) Unless otherwise ordered by the OEB, authorization for Leave to Construct shall terminate 12 months from the date of this Order, unless construction has

commenced prior to that date.

- 3) Unless otherwise ordered by the OEB authorization for leave to construct to Henvey Inlet shall terminate November 1, 2020 approximately 24 months after the planned in service date if construction of the Transmission Facilities is not completed by that time.
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- 4) Henvey Inlet shall advise the OEB of any proposed material change in the Transmission Facilities, including but not limited to changes in: the proposed route, construction schedule or the necessary environmental assessment approvals, including the EA, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities.
- 5) Pursuant to section 101 of the Act, the Transmission Facilities shall be constructed in accordance with all necessary permits and agreements issued by, or entered into with, the relevant agencies and utilities.

**All of which is respectfully submitted.**