

May 4, 2017

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


Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Henvey Inlet Wind LP - Application for Leave to Construct (EB-2016-0310)  
– Applicant Reply Submissions**

We are counsel to Henvey Inlet Wind GP Inc. and Henvey Inlet Wind LP (together, “Henvey”) in respect of the above-referenced proceeding. On behalf of Henvey, and in accordance with the Board’s Procedural Order No. 3, please find enclosed two copies of the applicant’s Reply Submissions. These materials have also been filed on RESS.

Yours truly,



Jonathan Myers

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cc: Mr. J. Law, Henvey  
Mr. C. Keizer, Torys LLP  
Mr. E. Bisceglia, Counsel to Mr. Hull

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

**AND IN THE MATTER OF** an application by Henvey Inlet Wind GP Inc. on behalf of Henvey Inlet Wind LP for an Order or Orders pursuant to Section 92 of the *Ontario Energy Board Act, 1998* (as amended) granting leave to construct transmission facilities between Henvey Inlet First Nation Reserve No. 2 and Parry Sound, Ontario.

## **APPLICANT'S REPLY SUBMISSIONS**

**May 4, 2017**

### **A. INTRODUCTION**

1. These are the reply submissions of Henvey Inlet Wind GP Inc. as the general partner on behalf of Henvey Inlet Wind LP (“HIW” or the “Applicant”) in connection with its application (the “Application”) to the Ontario Energy Board (the “Board”) seeking leave to construct, under Section 92 of the *Ontario Energy Board Act* (the “OEB Act”), for an electricity transmission line and related facilities that will serve the Henvey Inlet Wind Energy Centre (the “Generation Project”).
2. In its Application, HIW also seeks Board approval under Section 97 of the OEB Act for the forms of land agreements that it has offered or intends to offer to landowners affected by the proposed transmission facilities and routing, as well as for an order under Section 101 of the OEB Act approving the construction of transmission facilities upon, under or over a highway, utility line or ditch.
3. Through its pre-filed evidence, which was filed on October 14, 2016 and amended on November 30, 2016<sup>1</sup>, HIW has provided detailed and comprehensive information in support of the Application. The evidence, including responses to interrogatories from

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<sup>1</sup> HIW amended the Application by removing two potential route variations that would have deviated from the main route in the event HIW determined that it would not be able to secure, within a reasonable period, the necessary land rights on each of the Magnetawan First Nation Reserve and the Shawanaga First Nation Reserve.

Board staff and the intervenor, Mr. Hull, is responsive to all aspects of the Board's *Filing Requirements for Electricity Transmission Applications* (the "Filing Requirements").

This evidence demonstrates that the public interest test for leave to construct under Section 96(2) of the OEB Act has been met, and that the proposed transmission facility locations and routing are appropriate. Accordingly, the Applicant submits that leave to construct the proposed transmission facilities should be granted.

4. More specifically, the Application should be granted for the following reasons:
  - (a) the interests of consumers with respect to prices are protected as the costs of the proposed transmission facilities, including their interconnection to the grid, will be borne entirely by the Applicant and will not be passed onto consumers through electricity transmission rates;
  - (b) based upon the Independent Electricity System Operator's ("IESO") System Impact Assessment ("SIA") report, including subsequent Addendum Report, the connection of the Generation Project to the IESO-controlled grid by means of the proposed transmission facilities will not have a material adverse impact on the reliability of the integrated power system;
  - (c) based upon the Hydro One Networks Inc. ("Hydro One") Customer Impact Assessment ("CIA") report, the connection of the Generation Project to the Hydro One transmission system by means of the proposed transmission facilities will not adversely impact Hydro One's transmission customers in the relevant area;
  - (d) the proposed transmission facilities are required to convey electricity from the Applicant's Generation Project, which is a renewable energy generation facility, to the IESO-controlled grid and is thereby consistent with the Province of Ontario's policies for promoting the use of renewable energy;
  - (e) the locations of the proposed substations and switching station, as well as the routing for the proposed transmission line, are appropriate;

- (f) the forms of land agreements offered or to be offered by the Applicant to directly affected landowners are appropriate and are consistent with the expectations of the Board as set out in the Filing Requirements; and
- (g) Board staff has no concerns with the Application and submits that leave to construct should be granted, that the forms of land agreements should be approved, as well as that approval under Section 101 of the OEB Act should be granted, and no other party has raised any issues that would suggest the Board should conclude otherwise.

## **B. APPLICATION**

- 5. In its Application, HIW has sought leave to construct electricity transmission facilities comprised of:
  - (a) a substation located on the Henvey Inlet First Nation Reserve No. 2 (the “Reserve”), sited approximately 0.4 km north of the Henvey Inlet and 6 km west of Provincial Highway 69, at which power from the 34.5 kV collection system associated with the northern portion of the Generation Project will be transformed from 34.5 kV to 230 kV by means of one 230 kV/34.5 kV step-up transformer rated at 105/140/175 MVA, with under load tap changer (“North Project Substation”);
  - (b) a substation located on the Reserve, sited approximately 1.2 km south of the Henvey Inlet and 6.5 km west of Provincial Highway 69, at which power from the 34.5 kV collection system associated with the southern portion of the Generation Project will be transformed from 34.5 kV to 230 kV by means of one 230 kV/34.5 kV step-up transformer rated at 105/140/175 MVA, with under load tap changer (“South Project Substation”);
  - (c) a 230 kV switching station located on BLK B, C, D, E, F PL 295; PT LT 129 FOLEY PT 1 42R3535 E of PT 1, 2 42R14465; S/T RO89192; S/T RO31587, RO44832, in the Township of Seguin (PIN 52182-1013), adjacent to the existing Hydro One Networks Inc. (“Hydro One”) circuits E26 and E27, and located

approximately 0.6 km east of Hydro One's existing Parry Sound TS (the "Switching Station");

- (d) an approximately 103 km single circuit, overhead, 230 kV transmission line (the "Transmission Line"), comprised of:
    - (i) 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 (the "Tap Point"); and
    - (ii) an approximately 89 km segment that runs from the Tap Point to the Switching Station; and
  - (e) an approximately 180 m line tap from the Switching Station to Hydro One's E26 and E27 circuits.
6. The foregoing facilities (together the "Proposed Transmission Facilities") will be used solely for the purpose of conveying electricity generated by the Generation Project to the Hydro One transmission system, which forms part of the IESO-controlled grid.
7. The Generation Project, which is related to but is not the subject of the Application, is a planned 300 MW wind generation facility located on the Reserve. The Applicant has a 20-year contract with the IESO (formerly the Ontario Power Authority) for the Generation Project under the Feed-in Tariff ("FIT") Program.
8. As HIW will be both a transmitter and a generator, but will be transmitting electricity only for the purpose of conveying electricity from its generation facility to the IESO-controlled grid, it relies on the exemption from the requirement to obtain a transmission licence as set out in Section 4.0.2(1)(d)(i) of *Ontario Regulation 161/99* under the OEB Act. HIW will seek a generation license upon receiving Notice to Proceed under its FIT Contract.

**C. LEGISLATIVE FRAMEWORK**

9. The Application is brought under Section 92(1) of the *OEB Act*, which provides that:

“No person shall construct, expand or reinforce an electricity transmission line . . . or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.”

10. Section 96 of the *OEB Act* sets out the relevant test for an application under Section 92:

(1) If, after considering an application under section . . . 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.

(2) In an application under section 92, the Board **shall only** consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line . . . or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. (*emphasis added*)

11. The Board’s jurisdiction in considering HIW’s Application for leave to construct the Proposed Transmission Facilities is therefore limited to the application of the public interest test set out in Section 96(2), namely to a consideration of the interests of consumers with respect to prices, the interests of consumers with respect to the reliability and quality of electricity service, and the promotion of the use of renewable energy sources consistent with government policy. The Board’s jurisdiction on the Application is also limited to the Proposed Transmission Facilities. The related Generation Project and its low voltage collector system are beyond the scope of the proceeding.

12. The Board has acknowledged and clarified the limited scope of its review at several points during the proceeding. For instance, in the Notice of Application, the Board ensured that potential parties were made aware that the Board would only consider the

three issues specified in Section 96 of the OEB Act and that the Board will not address other factors such as environmental, health, aesthetics or property value impacts.<sup>2</sup> In Procedural Order No. 1, the Board reiterated that its review would be limited to a consideration of the three aspects under Section 96 of the OEB Act and stated that it “has no authority under the Act to review, consider or adjudicate upon other issues related to the HIWEC project, the government of Ontario’s renewable energy policy or on any matters that might be broadly described as “environmental” in nature.”<sup>3</sup>

13. Moreover, in prior proceedings under Section 92 of the OEB Act, the Board has clarified that concerns relating to matters such as land use, land valuation, health, aesthetics, safety impacts such as those arising from electromagnetic fields, the intermittent nature of wind generation, the quality of consultations under the Renewable Energy Approval process, and impacts on electricity prices in general, are all outside the scope of the Board’s jurisdiction on an application for leave to construct.<sup>4</sup>
14. Based on the foregoing, the focus of the Board’s inquiry in this proceeding is on whether the Proposed Transmission Facilities satisfy the limited public interest test established under Section 96(2) of the OEB Act. These considerations are addressed below.

#### **D. PUBLIC INTEREST CONSIDERATIONS**

15. The public interest considerations addressed in this part include those aspects that are relevant to the test prescribed under Section 96(2) of the OEB Act and those aspects that are otherwise identified in the Filing Requirements as being of interest to the Board. While these aspects would normally be addressed in argument-in-chief, as the Applicant was not afforded an opportunity to file argument-in-chief they are addressed briefly as follows.

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<sup>2</sup> Notice of Application, EB-2016-0310, published January 13, 2017.

<sup>3</sup> Procedural Order No. 1, EB-2016-0310, dated February 16, 2017, p. 2.

<sup>4</sup> Procedural Order No. 1, EB-2013-0361, dated November 25, 2013, p. 2; Procedural Order No. 2, EB-2013-0361, dated January 27, 2014, p. 2.

**(a) Project Need**

16. As noted in the Application, all of the costs of the Proposed Transmission Facilities are being paid for by the Applicant.<sup>5</sup> In Section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board is typically satisfied as to the need for the transmission facilities where there is evidence of a power purchase agreement with the IESO (or, formerly, the Ontario Power Authority).<sup>6</sup> This is consistent with Section 4.4.2.3 of the Filing Requirements. HIW's evidence confirms that it was awarded a FIT Contract for the Generation Project.<sup>7</sup>

**(b) Interests of Consumers with Respect to Prices**

17. Section 96(2) of the OEB Act requires the Board to consider the interests of consumers with respect to prices. The *Electricity Act* defines "consumer" to mean a person who uses, for the person's own consumption, electricity that the person did not generate.<sup>8</sup> The Proposed Transmission Facilities will not directly serve any "consumers". Rather, the facilities will be used only to convey electricity from the Generation Project to the Hydro One transmission system, which forms part of the IESO-controlled grid. As indicated, the costs of constructing and operating the Proposed Transmission Facilities will be borne entirely by the Applicant. These costs have no bearing on the revenue HIW will have the opportunity to earn under its FIT Contract and will not be passed on to consumers through transmission rates. As such, the Proposed Transmission Facilities will not have any impact on prices in Ontario.

**(c) Interests of Consumers with respect to Reliability & Quality of Electricity Service**

18. As the Proposed Transmission Facilities will not directly serve any "consumers", the only potential impacts on the interests of consumers with respect to reliability and quality of

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<sup>5</sup> Application (as amended), Exhibit B-1-1, p. 6.

<sup>6</sup> See, for example, Grand Renewable Wind LP, Decision and Order dated December 8, 2011 at pp. 11-12 (EB-2011-0063), South Kent Wind LP, Decision and Order dated October 11, 2011 at pp. 3-4 (EB-2011-0217), McLean's Mountain Wind LP, Decision and Order dated June 28, 2012 at p. 5 (EB-2011-0394), and Summerhaven Wind LP, Decision and Order dated November 11, 2011 at p. 3 (EB-2011-0027).

<sup>7</sup> Application (as amended), Exhibit B-3-1, p. 1.

<sup>8</sup> *Electricity Act, 1998*, s. 2(1).



electricity service would, therefore, be as a result of impacts from the Proposed Transmission Facilities on Hydro One's transmission system or the IESO-controlled grid, which in turn directly and indirectly serve consumers. Any such potential impacts have been considered through the IESO's SIA process and Hydro One's CIA process and will be addressed through HIW's compliance with the requirements set out in the final SIA report (including addendum) and the final CIA report, as well as through ongoing compliance with the terms of the connection agreement that will eventually govern the relationship between HIW and Hydro One, and which will be based on the Board's prescribed form of connection agreement.

19. As indicated in Exhibits F and G of the Application (as amended), the Applicant received a SIA Final Report from the IESO on June 30, 2015 and an SIA Addendum Report on September 30, 2016. The IESO concluded that the proposed connection of the Generation Project to the IESO-controlled grid by means of the Proposed Transmission Facilities, and subject to the requirements specified in the SIA Final Report and the SIA Addendum Report, is expected to have no material adverse impacts on the reliability of the integrated power system.<sup>9</sup> In addition, the Applicant received a CIA Final Report from Hydro One on June 30, 2015, which concludes that connection of the Generation Project to Hydro One's system, by means of the Proposed Transmission Facilities, will not adversely impact existing Hydro One customers in the vicinity of the project.

**(d) Promotion of Renewables Consistent with Government Policy**

20. The Government of Ontario enacted the *Green Energy and Green Economy Act, 2009* to increase renewable energy generation and promote the creation of clean energy jobs. Under this legislation, the Minister of Energy directed the Ontario Power Authority to develop the FIT Program to procure energy from renewable energy sources. The procurement of renewable energy in Ontario has been guided by Ontario's *Long-Term*

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<sup>9</sup> As indicated in response to Board Staff Interrogatory #7, between applying for the SIA amendment that resulted in the SIA Addendum Report being issued on September 30, 2016 and the date the Application was filed on October 14, 2016, the Applicant made several relatively minor changes to the Project. Some of the changes resulted in increases to the total length of the transmission line. All such changes have been reflected in the Application. However, the SIA will need to be further amended to reflect the changes. The Applicant does not anticipate any material impacts to either of the SIA or CIA.

*Energy Plan* (the “LTEP”). Under the 2010 LTEP, the Government of Ontario committed to putting in place 10,700 MW of non-hydro renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. Under the 2013 LTEP, the Government of Ontario reiterated its commitment to renewable energy and targeted capacity of 10,700 MW of non-hydro renewable capacity by 2021 and total renewable capacity of 20,000 MW by 2025. The FIT Program has been the centerpiece of the Government’s strategy for implementing its renewable energy policy to date. The Government’s efforts to increase renewable energy generation have also been closely tied to the Province’s commitment to phasing out coal generation in Ontario. The Province of Ontario made this commitment for purposes of reducing Ontario’s carbon emissions and its impact on climate change, as well as for reducing local and regional air pollution and related health impacts.<sup>10</sup>

21. The Applicant entered into a 20-year contract with the Ontario Power Authority for its wind energy generation facility under the FIT Program on February 25, 2011 (the “FIT Contract”).<sup>11</sup> HIW’s Generation Project will further the Government of Ontario’s objective of increasing the amount of renewable energy generation that forms part of Ontario’s energy supply mix. In particular, the Generation Project will contribute approximately 300 MW of renewable energy generation capacity towards this objective. The Proposed Transmission Facilities are required to convey the electricity generated by this facility to the IESO-controlled grid so as to enable the Applicant to realize this objective, consistent with the Province’s renewable energy policies.

**(e) Facility Routing and Location**

22. The main components of the Proposed Transmission Facilities are the North Project Substation, the South Project Substation, the Switching Station and the Transmission Line. The locations for each of the stations are identified in paragraph 5 of these Reply Submissions and more particularly in the Application.<sup>12</sup> The Substation locations were

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<sup>10</sup> See *Ontario’s Long-Term Energy Plan*, 2010, p. 3 at [http://www.energy.gov.on.ca/docs/en/MEI\\_LTEP\\_en.pdf](http://www.energy.gov.on.ca/docs/en/MEI_LTEP_en.pdf). See also *Achieving Balance, Ontario’s Long-Term Energy Plan*, 2013, p. 30 at [http://www.energy.gov.on.ca/docs/LTEP\\_2013\\_English\\_WEB.pdf](http://www.energy.gov.on.ca/docs/LTEP_2013_English_WEB.pdf)

<sup>11</sup> Application (as amended), Exhibit B-3-1, p. 1.

<sup>12</sup> See Application (as amended), Exhibit C-1-1, pp. 2 and 7.

selected based on their proximity to the Generation Project and the arrangement of the collection system. The Switching Station location was selected based on its proximity to the interconnection point, accessibility for maintenance crews and its availability from the existing municipal owner. The point of interconnection was specified in the FIT Contract as the most suitable connection point for the Generation Project based on processes carried out under the FIT Program.

23. The Transmission Line routing is thoroughly described, with reference to detailed mapping, in Exhibit C-1-1 at pp. 3-7 of the Application (as amended). As explained in Exhibit C-1-1 at pp. 8-10 of the Application, given the location of the Generation Project and the location of the point of interconnection, the Applicant's preference for the Transmission Line routing was to follow, to the extent possible, established infrastructure corridors so as to minimize environmental impacts and aid in the constructability. The Applicant identified two existing infrastructure corridors running from the area of the Reserve to the area of the interconnection point - Highway 69 (including a potential MTO expanded Highway 69 corridor) and an existing Hydro One 500 kV corridor.
24. Based on consultations with the Ministry of Natural Resources and Forestry, the Applicant ruled out the possibility of running along the existing Hydro One corridor for the entire length of the Transmission Line as that routing would have impacted a number of environmentally sensitive areas that were considered likely to be home to species of concern, particularly along the northern portion of that route option. Moreover, the area is very remote and very little data regarding natural heritage features and species habitats was available. The Applicant also ruled out the possibility of running along the Highway 69 corridor for the entire length of the Transmission Line based on its objective of minimizing impacts on communities and landowners. In particular, that routing would have impacted areas with higher population densities towards the southern portion of that alternative route. The Applicant also refined its routing to reflect plans by the Ministry of Transportation ("MTO") to expand and realign portions of Highway 69.
25. The proposed Transmission Line routing is, therefore, a hybrid of the above alternatives. It runs along the Highway 69 corridor, taking into account MTO's proposed realignment

thereof, from the Reserve to Carling Township, then after passing Round Lake Provincial Park it runs east to the Hydro One 500 kV corridor and then alongside that corridor to the Switching Station. This proposed routing minimizes potential environmental impacts while avoiding to the extent possible areas with higher population densities.

**(f) Land Matters and Forms of Land Agreements**

26. As part of its Application, HIW seeks an order pursuant to Section 97 of the OEB Act. Section 97 provides that, in an application under Section 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. The forms of land agreements for which the Applicant seeks approval are provided in Exhibit E-1-2 of the Application. No party has raised any issues in respect of these forms.
27. As explained in Exhibit E-1-1 of the Application, HIW has acquired the land rights needed for the North Project Substation and the South Project Substation, as well as for the portions of the Transmission Line to be located on the Reserve. These land rights have been acquired under the Henvey Lease, which was entered into with the Henvey Inlet First Nation pursuant to its Land Code, which was established under the *First Nations Land Management Act* (Canada).
28. The Applicant plans to locate the Switching Station on private lands that are owned by the Township of Seguin. Discussions with the Township of Seguin for the purchase of a portion of the relevant property are well advanced and it is anticipated that the matter will be presented to the Township Council for approval in the coming weeks.
29. With respect to the balance of the Transmission Line, which will be situated outside of the Reserve, the Applicant has secured or is in the process of securing the necessary land rights through various means as described in Exhibit E-1-1 at pp. 2-8 and summarized at Exhibit B-2-1 at pp. 10-11. These include:
  - (a) Encroachment Permits or leases from the MTO for portions of the Transmission Line to be located on Crown lands under authority of the MTO;

- (b) Land Use Permits and Work Permits from the Ministry of Natural Resources and Forestry for portions of the Transmission Line to be located on other Crown lands (depending on whether the use will be permanent or temporary);
- (c) leases from each of the Magnetawan First Nation and the Shawanaga First Nation under their respective Land Codes, each established under the *First Nations Land Management Act* (Canada), for portions of the Transmission Line running through each of their reserves;
- (d) transmission easement option agreements and, upon exercising such options, transmission easements, based on the forms of these agreements included in the Application, from directly affected private landowners (other than Hydro One, for which land rights would be acquired pursuant to Hydro One's standard form of easement agreement);
- (e) crossing agreements for utility crossings using the standard forms of crossing agreements used by the relevant utilities;
- (f) easements from municipalities for rights required along or across municipal road rights-of-way;<sup>13</sup> and
- (g) access easement options and short term ground leases from private landowners for temporary working rights for construction access and equipment storage/laydown, respectively.

#### **E. ISSUES RAISED BY BOARD STAFF**

30. In their submissions, Board staff indicate that they have no concerns with the evidence presented in the Application and that, while other issues and concerns were raised during the proceeding, those matters have either been resolved or are outside the Board's jurisdiction.<sup>14</sup> More specifically, staff states that it has no concerns relating to the

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<sup>13</sup> If necessary and as a last resort, the Applicant would look to exercise its rights under s. 41 of the *Electricity Act*.

<sup>14</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 3.

Proposed Transmission Facilities with respect to the price of electricity service<sup>15</sup>, reliability or the quality of electricity service<sup>16</sup>, consistency with the policies of the Government of Ontario for the promotion of the use of renewable energy sources<sup>17</sup>, or the forms of land agreements filed by the Applicant<sup>18</sup>. Moreover, Board staff indicates that they are satisfied that HIW is taking the necessary steps to obtain the necessary permits and agreements for highway and utility crossings and have no objection to the granting of approval under Section 101 of the OEB 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.<sup>19</sup>

31. Notwithstanding Board staff's submissions in support of the Application, there are three aspects that the Applicant wishes to respond to, as follows.
32. First, on pp. 8-9 of its submissions, Board staff comments that the Applicant did not submit information in respect to environmental assessments required for the Proposed Transmission Facilities that will cross the Magnetawan and Shawanaga First Nation Reserves. Board staff indicates its understanding that environmental assessment permits for these reserves will be required similar to the one obtained in respect of the Henvey Inlet First Nation Reserve. Ultimately, Board staff submits that the Board can proceed with its decision as decisions to grant leave to construct generally include conditions that require securing all relevant approvals, including for environmental assessments.
33. The Applicant agrees that the Board can proceed with its decision and, as indicated below, does not take issue with staff's proposed condition of approval regarding all other necessary approvals and permits. The Applicant nevertheless wishes to clarify that, as the Land Codes in each of Magnetawan and Shawanaga only came into effect fairly recently, the provincial environmental assessment has been carried out by HIW so as to include each of the Magnetawan and Shawanaga reserves. The Applicant and each of the

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<sup>15</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 3.

<sup>16</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 4.

<sup>17</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 5.

<sup>18</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 7.

<sup>19</sup> Board Staff Submissions (EB-2016-0310), April 27, 2017, p. 8.

Magnetawan and Shawanaga First Nations agree that the provincial environmental assessment, insofar as it relates to each of these reserves, will require formal signoff or adoption by each of Magnetawan and Shawanaga under their respective Land Codes, in a manner consistent with the requirements of the *First Nations Land Management Act* (Canada) and the Individual Agreement signed by each of these First Nations thereunder. The Applicant is actively working with each of these First Nations and their legal counsel in order to document such signoff or adoption.

34. Second, on p. 9 of its submissions, Board staff states that the Applicant has advised that, subject to obtaining all necessary permits and approvals, as well as land rights, it plans to commence construction in Q2 2017. While this information was accurate at the time the Application was filed, as explained by HIW in response to Board Staff Interrogatory #6, subject to receipt of all necessary permits and approvals the Applicant now plans to commence construction of the Proposed Transmission Facilities in Q3 of 2017.
35. Third, Board staff has proposed five conditions for inclusion in the Board's order, should the Board approve the Application. The Applicant takes no issue with staff's proposed conditions #1, #2 and #5. The Applicant submits that proposed condition #4 is not necessary as section 4.3.3.1 of the Board's Filing Requirements already establish a requirement to advise the Board where there is a material deviation to the approved route following Board approval. Moreover, the list of items that staff suggests would constitute a material change is unnecessarily broad.
36. The Applicant objects to staff's proposed condition #3, which provides:

Unless otherwise ordered by the OEB authorization for leave to construct to Henvey inlet shall terminate November 1, 2010 approximately 24 months after the planned in service date if construction of the Transmission Facilities is not completed by that time.

Although HIW does not expect that the timeframe set out in this condition will be an issue, it is the Applicant's submission that this proposed condition would be impractical, is not consistent with Board practice and is not consistent with the Board's jurisdiction under the OEB Act. It is impractical because, if applied, it would have the potential

effect of leaving the Applicant with partially constructed Transmission Facilities and an inability to connect its Generation Project to the grid after having invested significantly in the development and construction of the project, including procurement of all materials, labour, equipment and construction services. Moreover, based on a review of recent Board decisions on electricity leave to construct applications, it is not the Board's practice to establish conditions which terminate leave to construct approvals if projects are not completed by a specified date. There is nothing unique to the circumstances of the present Application that would suggest the Board should do so here. Finally, this proposed condition is not consistent with the Board's jurisdiction under the OEB Act, which only authorizes the Board to grant leave to construct. While the Board may grant permission to construct conditional upon construction starting by a specified date, upon commencing construction prior to such date the right to construct takes effect and the Board does not then have the authority to revoke the permission that it has granted.

**F. ISSUES RAISED BY JEFFREY HULL**

37. Mr. Hull raises several issues in his submissions dated April 27, 2017. The issues raised are either irrelevant to the proceeding, based on a misunderstanding of the regulatory framework and/or are not based on evidence. As such, the Board should reject each of the submissions made by Mr. Hull for the reasons that follow.
38. Mr. Hull appears to argue that the Applicant has not satisfied the second branch of the public interest test under Section 96(2) of the OEB Act because, in his view, the Application is not consistent with the Ontario Government's policies on the conservation of biodiversity. Mr. Hull argues that the Application is not consistent with government policy on the conservation of biodiversity because the proposed transmission line will run through his property, which he states is home to various ecological systems and species.<sup>20</sup> As the Board has explained at several points in the proceeding, including in the Notice of Application and in the procedural orders where it granted and confirmed Mr. Hull's intervenor status, environmental considerations are outside the scope of the Board's jurisdiction in this proceeding. The requirement under Section 96(2)2 for the Board to

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<sup>20</sup> Hull Submissions (EB-2016-0310), April 27, 2017, pp. 1-2.



consider the policies of the Government of Ontario does not require the Board to consider all policies of the Government of Ontario but, rather, only those policies relating to the promotion of the use of renewable energy sources. As the transmission line is required to convey electricity from the Applicant's renewable energy generation facility, for which a FIT Contract was granted under a program that has been central to provincial government policy on the promotion of the use of renewables, this branch of the public interest test has been met.

39. Mr. Hull argues that the presence of the proposed Transmission Lines on his property could pose health and safety risks (including stray voltage, noise, falling ice and electrical fields) to humans who occupy the affected property.<sup>21</sup> Mr. Hull's argument is speculative and is not based on any evidence filed in the proceeding. Moreover, as explained in Part C of these Reply Submissions, the consideration of potential health and safety impacts is outside the scope of the Board's jurisdiction.
40. Mr. Hull argues that, as the Applicant has not accessed the Hull property, it has therefore not conducted an environmental assessment of the impact of the project on the ecological systems or species that he states are present on his property.<sup>22</sup> As noted, environmental considerations are outside the scope of this proceeding and, moreover, the Applicant does not object to Board staff's proposal that leave to construct be conditional on HIW obtaining all other required approvals, which includes the environmental assessment approval. The Applicant also notes that it is not necessary for it to access all areas covered by the environmental assessment for purposes of completing the environmental assessment in accordance with established practices, procedures and regulatory requirements. The Applicant does, however, acknowledge that it will need to complete archeological work on site prior to commencing construction.
41. Mr. Hull argues that the Application should not be granted without a full and complete environmental assessment showing that the environment will not be negatively

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<sup>21</sup> Hull Submissions (EB-2016-0310), April 27, 2017, p. 2.

<sup>22</sup> Hull Submissions (EB-2016-0310), April 27, 2017, p. 2.

impacted.<sup>23</sup> As noted, the Applicant does not object to Board staff's proposal that leave to construct be conditional on HIW obtaining all other required approvals, which includes the environmental assessment approval. As such, there is no need for the Board to withhold the granting of leave to construct.

42. Mr. Hull comments that his property has an area that is commercially zoned and an area that is zoned as environmentally protected, and argues that the proposed transmission line will (i) interfere with potential uses and future uses of his property, (ii) be aesthetically unpleasing, (iii) devalue his property, and (iv) affect Mr. Hull's enjoyment of his property, which he says he purchased for its pristine state.<sup>24</sup> It is not clear what Mr. Hull's argument is with respect to zoning or which zoning designation he is suggesting relates to the particular location of the proposed Transmission Line on his property. However, the Applicant notes that Mr. Hull has filed no evidence with respect to zoning and, moreover, Section 62.0.2(6) of the *Planning Act* provides that zoning by-laws do not apply to renewable energy undertakings. In addition, with respect to each of the potential impacts identified by Mr. Hull, as explained in Part C of these Reply Submissions the Board has made it clear that concerns relating to land use, aesthetics, environmental impacts and property values are outside the scope of its jurisdiction to consider.
43. Mr. Hull indicates that he has not yet received an offer from the Applicant based on the Applicant's standard form of agreement and that, as such, he purports to reserve his right to make further submissions on the Application once Applicant has provided the form of agreement.<sup>25</sup> The Board's jurisdiction is to approve the forms of agreement that have or will be offered by the Applicant. All of HIW's forms of agreement are part of the Application and pre-filed evidence, which Mr. Hull has had ample opportunity to review and consider. Whether or not Mr. Hull has received an offer from the Applicant to date based on the form is not relevant and Mr. Hull should therefore not have any further opportunity to make submissions on the Application. Nevertheless, the Applicant can advise that it is in the process of setting up a meeting with Mr. Hull during the second

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<sup>23</sup> Hull Submissions (EB-2016-0310), April 27, 2017, p. 2.

<sup>24</sup> Hull Submissions (EB-2016-0310), April 27, 2017, p. 2.

<sup>25</sup> Hull Submissions (EB-2016-0310), April 27, 2017, p. 3.

week of May. The Applicant also notes that the Board does not have jurisdiction to review or approve individual landowner agreements – it only approves the forms of agreement that have been or will be offered. Moreover, the Applicant understands that it will need to secure the necessary land rights prior to carrying out construction.

**G. LETTERS OF COMMENT**

44. Letters of comment were filed during the proceeding by four individuals. As explained below, the comments received have been (i) in support of the project, (ii) addressed or in the process of being addressed by the Applicant, or (iii) found to relate to matters outside the scope of the proceeding. Consequently, there are no outstanding issues arising from the letters of comment that should affect the Board's determination of the Application.
45. First, a letter of comment was filed on January 24, 2017 by Daniella Baker on behalf of the Wasauksing First Nation to express support for the project.
46. Second, a letter of comment was filed on January 17, 2017 by Tim Emerson expressing a concern about the potential impact of the proposed Transmission Line on a Citizen Band Radio base station that he operates. The Applicant has since been in contact with Mr. Emerson and has addressed his concerns.
47. Third, a letter of comment was filed on March 16, 2017 by Steve Mallory expressing concerns about the proposed routing of the Transmission Line on and near his property. In essence, the proposed transmission corridor straddles the boundary between Mr. Mallory's property and an adjacent property. Mr. Mallory wants the Transmission Line to be located within the proposed corridor, but entirely on the adjacent property. While the Applicant has confirmed that it would be technically feasible to locate this portion of its Transmission Line entirely on the adjacent property, the Applicant and its land agents continue to be in contact with Mr. Mallory, as well as with the adjacent property owner, in an effort to address the concerns in a manner that is acceptable to Mr. Mallory, the adjacent property owner and the Applicant.
48. Finally, a letter of comment was filed on January 18, 2017 by Richard and Anne Kaster expressing concerns about the proposed routing of the Transmission Line near their

property and perceived impacts on their business and residence. Although the Kastars requested intervenor status, this was rejected by the Board in Procedural Order No. 1 on the basis that the Kastars did not raise issues relating to the Board's jurisdiction and are not landowners that will be offered an agreement because the proposed facilities will not cross over, under or through their property. After the Kastars wrote to the Board to contest this decision, the Board provided them an opportunity to file additional information to support their request and for the Applicant to respond. The Applicant provided information showing that, in accordance with the Kastars' wishes that the transmission line avoid their property, the proposed transmission line will be located entirely within the MTO corridor as it passes by their property. Moreover, the Applicant confirmed that there is sufficient room within the MTO corridor to accommodate the line while meeting applicable technical standards. In Procedural Order No. 3, the Board confirmed that the Kastars are not affected landowners and upheld its decision to deny them intervenor status.

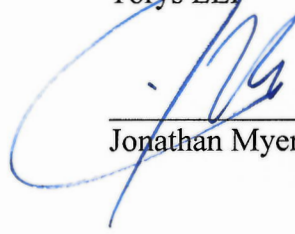
## **H. CONCLUSION**

49. The construction and operation of the Proposed Transmission Facilities will not affect the interests of consumers with respect to prices because the facilities will be paid for entirely by the Applicant and will not be recovered through transmission rates in Ontario. The Proposed Transmission Facilities are also consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.
50. Through the impact assessments undertaken by Hydro One and the IESO, the Applicant has demonstrated that the Proposed Transmission Facilities will not adversely impact the interests of consumers with respect to reliability or the quality of electricity service. The Applicant has also demonstrated that the routing and locations for the Proposed Transmission Facilities are appropriate.
51. Board staff has indicated that it has no concerns and submitted that leave to construct should be granted. The intervenor has not raised any relevant issues or presented any evidence, and no issues have been raised through letters of comment, that would suggest the Board should find otherwise. As such, for the reasons set out herein, we respectfully

request that the Board grant HIW leave to construct the Proposed Transmission Facilities pursuant to Section 92 of the OEB Act, along with such other relief as requested in the Application and as set out herein.

All of which is respectfully submitted this 4th day of May, 2017.

**HENVEY INLET WIND GP INC.**  
**on behalf of HENVEY INLET WIND LP**  
By its counsel  
Torys LLP



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Jonathan Myers