



**EB-2011-0140**

**IN THE MATTER OF** sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

**AND IN THE MATTER OF** a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

## **PROCEDURAL ORDER NO. 2**

**April 16, 2012**

On March 9, 2012, the Board issued Procedural Order No. 1 for this proceeding. The order granted intervenor status to the seven transmitters registered in the proceeding, listed the parties requesting intervenor status, and identified the parties also requesting eligibility for cost awards.

Pursuant to Procedural Order No. 1, an all-parties meeting was convened at the Board's hearing room in Toronto on March 23, 2012 to, among other things, discuss and scope the issues for the first phase of this proceeding. (A draft issues list had been prepared by Board staff and distributed to the parties on March 20, 2012.)

Also pursuant to Procedural Order No.1, on March 30, 2012, the Board issued its decision and order on interventions and its preliminary decision on cost award eligibility.

### **Two-Phased Hearing**

The Board will hear this proceeding in two phases.

In phase 1, the Board will consider issues to be determined before applications for designation are filed, such as decision criteria, filing requirements, obligations and

consequences arising on designation, the process for phase 2 of the hearing, and the schedule for the filing of applications for designation.

In phase 2, the registered transmitters will be invited to file their applications for the development of the East-West Tie line with the Board. The Board will review the applications and intends that, at the end of phase 2, it will designate a transmitter to undertake development work for the East-West Tie line.

### **Issues List**

The all-parties meeting led by Board staff on March 23, 2012, culminated in a proposed issues list for phase 1 of the proceeding that was generally accepted by all parties. Under cover of e-mail dated March 26, 2012, Board staff circulated the proposed issues list to all of the parties, and asked for suggestions for any further essential issues to be included in the list. In response, Board staff received the following three additional comments:

- (i) a request by one intervenor for confirmation that the proposed issues list provides adequate scope for the filing of submissions on, and for the Board to require, the provision of reasonable access to existing rights of way from incumbent transmitters to the competing proponents;
- (ii) a proposal by a registered transmitter that one further issue be added to the issues list, as follows: “May applicants submit, in addition or in the alternative to plans for the entire East-West Tie Line, plans for separate segments of the East-West Tie Line?”; and
- (iii) a proposal by a group of registered transmitters that one further issue be added to the issues list, as follows: “Given the participation of EWT in this proceeding and having regard to the relationship between EWT and the Incumbent Utilities, should the Incumbent Utilities be required to comply with the Board’s regulatory requirements (including the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?”

### **Board Findings**

The Board has reviewed the proposed issues list for phase 1 and has considered the additional above-referenced suggestions. The Board approves the proposed issues list for phase 1, subject to the following findings.

Dealing with the first request, the Board finds that the proposed issues list sufficiently and adequately addresses the concern raised by the intervenor (with respect to rights of way access). A new issue does not need to be added to the issues list for phase 1, as the concern can be addressed in the process-related issues 18 and 19.

With respect to the proposed issue relating to the filing of plans for separate segments of the East- West Tie Line, the Board finds that it will be added to the issues list for phase 1. The Board finds that this is a distinct issue, relevant to the designation proceeding, which may not sufficiently and adequately be addressed otherwise.

With respect to the proposed issue relating to the imposition of the Board's regulatory requirements on the "Incumbent Utilities", the Board finds that it has merit and will be added to the issues list for phase 1, with a slight modification, as follows: "Given that EWT LP shares a common parent with Great Lakes Power Transmission LP and Hydro One Networks Inc., should the relationship between EWT LP and each of Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?"

Based on the above, the Board has established an issues list for phase 1 of this proceeding. The Board-approved issues list is attached as Appendix A to this Procedural Order No. 2.

### **Cost Award Eligibility**

In the March 30, 2012 decision and order on interventions and cost award eligibility, the Board decided that it would grant cost award eligibility for the remainder of the proceeding to two ratepayer representatives - one low volume and one high volume, and invited submissions from the representatives within those groups as to which party, or whether a coalition of the parties, should be eligible for cost awards.

On April 10, 2012, the Board received submissions from Consumers Council of Canada ("CCC"), Energy Probe Research Foundation ("Energy Probe") and School Energy Coalition ("SEC").

CCC and Energy Probe have advised that they entered into discussions. These discussions did not lead to the formation of a coalition of these two parties for the

purposes of being cost eligible in this proceeding. Each of these parties submits that it should be eligible for costs.

SEC advises that it initiated discussions with Canadian Manufacturers and Exporters (“CME”), the Association of Major Power Consumers in Ontario (“AMPCO”) and the Building Owners and Managers Association, Toronto (“BOMA”). These discussions did not lead to there being a coalition of two or more of these parties for the purposes of being cost eligible in this proceeding, as SEC advises that their interests are were not necessarily coincident. SEC submits that it is not possible to argue, in any principled way, for any one intervenor to be the sole representative of the higher volume ratepayers, and the restriction of ratepayer intervenor participation would arbitrarily exclude from the proceeding parties who represent those who are paying for the designation process.

### Board Findings

In accordance with the Board’s Decision on Intervention and Cost Award Eligibility, and having considered the submissions filed by the parties, the Board finds that CCC and SEC will be eligible for costs.

With respect to low volume consumers, the Board received submissions from CCC and Energy Probe seeking individual cost eligibility, because the two intervenors could not agree on a joint intervention. Energy Probe questions whether CCC is the appropriate lead for a joint intervention because Energy Probe was the only low volume ratepayer intervenor in the Bruce to Milton transmission proceeding. CCC questions to what extent Energy Probe represents the interests of small volume consumers.

The Board finds that Energy Probe’s participation in the Bruce to Milton proceeding does not place it in a preferred position with respect to representing low volume consumers in this designation proceeding. CCC has a significant record of responsible and substantive contributions in a wide variety of proceedings before the Board. The Board finds that CCC is well placed to represent the interests of the broad base of low volume consumers in the designation proceeding and the Board therefore grants CCC cost eligibility at this time. The Board will not grant Energy Probe cost eligibility at this time. It is open to Energy Probe to participate in the proceeding and to put in a further claim for cost eligibility at the conclusion of the proceeding. Depending upon the nature of Energy Probe’s participation and the value of its contribution to the Board’s understanding of the issues, the Board may subsequently find Energy Probe eligible for an award of costs.

With respect to the high volume consumers, the Board has only received submissions from SEC. The Board finds that SEC is eligible for an award of costs. The Board makes no finding as to the cost eligibility of the other representatives of high volume consumers (BOMA, CME, and AMPCO) at this time.

The Board intends that cost awards for phase 1 of this proceeding will be dealt with following the completion of phase 1. The decision and order for phase 1 will include a schedule for submission of cost claims.

### **Next Steps**

The Board has decided on the procedural steps for the remainder of phase 1 of this proceeding. These include: written submissions by Board staff; written submissions by all parties; reply submissions from any party that wishes to reply; and the potential for a hearing day during which the Board panel will ask questions of the parties who filed submissions on any matter it considers relevant in its decision for phase 1 of this proceeding.

A list of all parties to this proceeding is attached as Appendix B to this procedural order.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

### **THE BOARD ORDERS THAT:**

1. Board staff may file a submission pertaining to the issues in phase 1 of this proceeding with the Board and deliver the submission to all parties in this proceeding on or before **Tuesday April 24, 2012**.
2. Any party who wishes to file a submission pertaining to the issues in phase 1 of this proceeding must file the submission with the Board and deliver it to all other parties on or before **Monday May 7, 2012**.
3. Any party who wishes to file a reply submission must file the submission with the Board and deliver it to all other parties on or before **Wednesday May 16, 2012**.
4. An oral hearing may be held at the Board's North Hearing Room located on the 25<sup>th</sup> floor of 2300 Yonge Street, Toronto on **Monday May 28, 2012** from 9:30

a.m. to 5:00 p.m. The Board will advise parties no later than May 22, 2012 if this hearing day is necessary.

All filings with the Board must quote file number EB-2011-0140 and consist of one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at <https://www.errr.ontarioenergyboard.ca>, and three paper copies mailed or delivered to the Board Secretary's office at the address below. If you do not have a user ID, visit the Board's website under e-Filing Services and complete a user ID/password request form.

Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have Internet access are required to submit all filings on a CD in PDF format, along with three paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

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**DATED** at Toronto, April 16, 2012  
**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX "A"**

**TO PROCEDURAL ORDER NO. 2**

**ISSUES LIST**

**BOARD FILE NO. EB-2011-0140**

**DATED: April 16, 2012**

**Issues List for  
EB-2011-0140 East-West Tie Line Designation  
Phase 1**

**Decision Criteria**

1. What additions, deletions or changes, if any, should be made to the general decision criteria listed by the Board in its policy *Framework for Transmission Project Development Plans* (EB-2010-0059)?
2. Should the Board add the criterion of First Nations and Métis participation? If yes, how will that criterion be assessed?
3. Should the Board add the criterion of the ability to carry out the procedural aspects of First Nations and Métis consultation? If yes, how will that criterion be assessed?
4. What is the effect of the Minister's letter to the Board dated March 29, 2011 on the above two questions?

**Use of the Decision Criteria**

5. Should the Board assign relative importance to the decision criteria through rankings, groupings or weightings? If yes, what should those rankings, groupings or weightings be?
6. Should the Board articulate an assessment methodology to apply to the decision criteria? If yes, what should this methodology be?

**Filing Requirements**

7. What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?
8. May applicants submit, in addition or in the alternative to plans for the entire East-West Tie Line, plans for separate segments of the East-West Tie Line?

**Obligations and Milestones**

9. What reporting obligations should be imposed on the designated transmitter (subject matter and timing)? When should these obligations be determined? When should they be imposed?



10. What performance obligations should be imposed on the designated transmitter? When should these obligations be determined? When should they be imposed?
11. What are the performance milestones that the designated transmitter should be required to meet: for both the development period and for the construction period? When should these milestones be determined? When should they be imposed?
12. What should the consequences be of failure to meet these obligations and milestones? When should these consequences be determined? When should they be imposed?

### **Consequences of Designation**

13. On what basis and when does the Board determine the prudence of budgeted development costs?
14. Should the designated transmitter be permitted to recover its prudently incurred costs associated with preparing its application for designation? If yes, what accounting mechanism(s) are required to allow for such recovery?
15. To what extent will the designated transmitter be held to the content of its application for designation?
16. What costs will a designated transmitter be entitled to recover in the event that the project does not move forward to a successful application for leave to construct?

### **Process**

17. The Board has stated its intention to proceed by way of a written hearing and has received objections to a written hearing. What should the process be for the phase of the hearing in which a designated transmitter is selected (phase 2)?
18. Should the Board clarify the roles of the Board's expert advisor, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission LP in the designation process? If yes, what should those roles be?
19. What information should Hydro One Networks Inc. and Great Lakes Power Transmission LP be required to disclose?

20. Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?
21. Are the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP, and described in response to the Board's letter of December 22, 2011, adequate, and if not, should the Board require modification of the protocols?
22. Given that EWT LP shares a common parent with Great Lakes Power Transmission LP and Hydro One Networks Inc., should the relationship between EWT LP and each of Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?
23. What should be the required date for filing an application for designation?

**APPENDIX "B"**

**TO PROCEDURAL ORDER NO. 2**

**LIST OF PARTIES**

**BOARD FILE NO. EB-2011-0140**

**DATED: April 16, 2012**

**Ontario Energy Board  
EB-2011-0140**

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Last update **April 16, 2012**

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and

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**Ontario Energy Board  
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**LIST OF INTERVENORS**

Last update **April 16, 2012**

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