



# **Ontario Energy Board Staff Submission**

**EB-2011-0140**

**Proceeding to designate a transmitter to carry out  
development work for the East-West Tie line**

**Phase 1**

April 24, 2012

## Background

The Ontario Energy Board has initiated a 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. The Board assigned File No. EB-2011-0140 to the proceeding.

The Board released its policy *Framework for Transmission Project Development Plans* EB-2010-0059 on August 26, 2010, dealing with transmission project development to accommodate the connection of renewable energy generation. The Policy described a process to designate a licensed transmitter to undertake development work on any transmission network expansions or enabler lines identified by the Ontario Power Authority as necessary to connect renewable generation. The designation process was intended to allow transmitters to move ahead on development work in a timely manner; to encourage new entrants to transmission in Ontario bringing additional resources for development work; and to support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers. The Policy set out general decision criteria for designation and approved generic filing requirements (G-2010-0059). At that time, the Board did not ascribe relative importance to the criteria.

The then Minister of Energy suggested, in a letter dated March 29, 2011, that the Board's designation process could be used to select the most qualified and cost-effective transmission company to develop the East-West Tie line. The OPA provided a report describing preliminary need for the line, the Independent Electricity System Operator provided a feasibility study identifying potential solutions, and the Board decided to initiate the designation process. In contrast to the drivers for competition in transmission contemplated in the Board's Policy, the East-West Tie line is proposed primarily to maintain a reliable, cost effective supply of electricity over the long term in Northwest Ontario. The Board delivered an information package to all transmitters who had registered an interest in the designation process on December 20, 2011. In that correspondence, the Board adopted as a Reference Option for the line the option identified by the OPA as its preferred solution, but also invited alternative solutions. As well, in order to establish appropriate standards for the line, the Board adopted Minimum Technical Requirements to specify general design

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concepts to be used in the design and costing of the Reference Option of the East-West Tie transmission line.

The Board has adopted a two phase process for the proceeding. In the first phase, the Board will establish specifics for the proceeding including decision criteria, filing requirements, obligations and consequences arising on designation, the hearing process for phase 2 and the schedule for the filing of applications for designation. In phase 2, registered transmitters will have an opportunity to file their applications for designation, and the Board intends to select one of the applicants as the designated transmitter through a hearing process. In procedural order #2, the Board approved an issues list for phase 1 of the hearing.

Board staff's submission is structured around the issues list for phase 1 approved by the Board. Although in some sections of this document Board staff expresses a view, the primary purpose of this document is to elicit submissions from other parties on the issues in phase 1.

Submissions are particularly invited on Appendix A to this document, Board staff's proposed Filing Requirements for the Designation Process for the East West Tie Line. As discussed in detail later in this submission, these proposed filing requirements are intended to supersede, for the purposes of this particular designation proceeding, the original 2010 filing requirements (G-2010-0059). In Board staff's view, the criteria for selection of a designated transmitter, use of the decision criteria for evaluating applications for designation, and the filing requirements for the applications are inextricably linked, and submissions addressing decision criteria and their use must also address any consequent amendments to the filing requirements. Similarly, staff has attempted to seek through the proposed filing requirements information regarding reporting obligations, performance milestones and the consequences of designation. Staff reminds parties to propose specific additions, deletions or changes to the filing requirements to implement any submissions they may have.

## ***Decision Criteria: Issues 1 - 4***

- 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?***

As noted earlier, the purpose of the East-West Tie line is somewhat different than the purpose of transmission infrastructure originally envisioned for designation in the Board's Policy. However, Board staff submits that the decision criteria originally identified in the Policy remain valid and appropriate. Staff recommends that the Board retain the existing criteria, as all these criteria are important to the success of the East-West Tie line. These criteria were listed at page 14 of the Policy as:

- Organization
- Technical capability
- Financial capacity
- Schedule
- Costs
- Landowner and other consultations
- Other factors

Failure in any of organization, technical capability, financial capacity or consultations would likely lead to failure of the project. The schedule and costs are fundamental to the economic efficiency, and therefore the need for the line. For example, if costs of construction are too high, other options identified by the OPA for satisfying demand in Northwest Ontario could be preferable. The ability of the designated transmitter to successfully complete landowner, First Nation and Métis, and other necessary consultations is also critical to the success of the project.

Board staff is not recommending the addition of any new criteria, as staff believes the original criteria can include the factors necessary to the Board's selection of a designated transmitter. However, staff wishes to highlight the importance of the Minister's letter to the Board dated March 29, 2011. In that letter the Minister said:

“...I would expect that the weighting of decision criteria in the Board's designation process takes into account the significance of aboriginal participation to the delivery of the transmission project, as well as a proponent's ability to carry out the procedural aspects of Crown consultation.”

Staff submits that the letter is not a Directive within the meaning of sections 27 and 28 of the *Ontario Energy Board Act, 1998*, and does not have the legal force and effect of a Directive. Staff does submit, however, that the Board should give serious consideration to the Minister's expectations, and that these expectations can be met through supplementing the original filing requirements.

The original filing requirements sought information on both participation by First Nation and Métis groups (in the section entitled “Organization and Applicant's Experience) and the ability of the applicant to conduct successful consultations with First Nation and Métis groups (in the section entitled Landowner and Other Consultations). In the proposed filing requirements attached as Appendix A to this submission, Board staff is recommending expanded informational requirements in these areas, to recognize the importance of the Minister's letter. The question for the Board, in staff's view, is whether “aboriginal participation” and “a proponent's ability to carry out the procedural aspects of Crown consultation” should have the status of individual criteria, and invites submissions from all parties on this question.

Staff acknowledges that, as yet, no delegation has been made by the Crown that would impose the responsibility for the procedural aspects of Crown consultation on the designated transmitter. However, the fact that the Minister's letter does emphasize the importance of this ability suggests that such a delegation is contemplated. In staff's submission, the lack of a present delegation of this responsibility is not a bar to the Board considering an applicant's abilities to bear the responsibility for the procedural aspects of Crown consultation.

Staff submits that if the Board is contemplating adding new criteria, the Board should keep in mind the stated aims of the original Policy for transmission project development planning (that were reiterated in the Minister's letter), which included timeliness of new work, encouragement of new entrants, the availability of additional resources for project development and the benefits of economic efficiency through the support of competition. In his letter the Minister also highlighted importance of the East-West Tie line in ensuring reliability and maintaining efficiency and flexibility of the transmission system. Staff notes that the creation of any additional criterion means that the relative importance of the original criteria is necessarily reduced. Staff suggests that if the Board proposes to increase the number of decision criteria, a criterion specifically tailored to the East-West Tie line: Line capacity and reliability, could be added, as the capacity and reliability of the line are fundamental to achieving the need identified for this project by the OPA.

Issues 2 and 3 include questions regarding how the potential additional criteria of First Nation and Métis participation, and the ability to carry out First Nation and Métis consultation, would be assessed. Board staff's general submissions on assessment of decision criteria appear in the next section of this document. However, staff offers the following submission on an issue raised at a meeting of all parties: when consultation with First Nations and Métis peoples should begin; specifically, will the Board look with favour on an applicant that has already commenced consultation before filing an application for designation?

It is Board staff's submission that applicants who have commenced consultation with First Nations and Métis groups before they apply for designation should not be regarded more favourably than those who have not commenced consultation but have a comprehensive and practical plan for consultation that would be initiated upon designation. There are two main reasons for this submission.

The Board in creating its Policy, noted at page 14:

“...the Board has removed a question [from the filing requirements] that implied that transmitters must undertake consultation as part of plan preparation.”

This suggests that the Board does not consider that an applicant must undertake consultation before filing an application for designation.

Secondly, as Board staff understands it, the duty to consult is the responsibility of the Crown, although the Crown can delegate certain aspects of consultation. The letter from Jon Norman of the Transmission and Distribution Policy Branch of the Ministry of Energy to the General Counsel of the OPA dated May 31, 2011 deals with the roles of the Crown and the OPA in any duty to consult on the East-West Tie project. The letter indicates that the Crown has decided to delegate certain procedural aspects of consultation to the OPA “during the period prior to any Ontario Energy Board transmitter designation”. This suggests that any responsibility for consultation will remain with the OPA until designation. Board staff is not aware that the Crown has made any other delegation of this responsibility.

Board staff understands that the OPA has completed its planned consultation activities for the East-West Tie line. It may be that potential applicants for designation may choose to establish relationships with First Nation and Métis communities so as to prepare for or begin to undertake consultation. However, it is Board staff’s submission that the clear responsibility for undertaking procedural aspects of the Crown’s duty to consult does not arise in the absence of a delegation from the Crown of that responsibility. Staff also notes that the determination of the adequacy of consultation with First Nation and Métis peoples is part of the Environmental Assessment process.

### ***Use of the Decision Criteria: Issues 5 and 6***

- 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?***

Board staff does not propose any particular ranking or weighting for the decision criteria the Board selects. As stated earlier, failure on any one criterion could mean failure of the project, and all the criteria are important. Staff recommends

that the Board assess the applications in the same manner it does in any hearing, weighing and testing the evidence.

Staff submits that at a basic level, the Board should be seeking to choose the transmitter who best understands the challenges of the East-West Tie line project, who has the best plan for meeting those challenges, and has the best track record of meeting similar challenges in the past. Each applicant must demonstrate it has the financial capacity, technical capability and experience to complete the project. Any applicant that cannot demonstrate that it has basic competence in each of these areas could be rejected, even if the application was otherwise sufficient. The Board could choose to rank applicants who demonstrate this competence on each decision criterion based on the quality of their plan for the line and accompanying information in the application.

Staff recognizes that assigning weights to the decision criteria could be helpful in preparing applications for designation, but submits that the record in this proceeding may be as yet insufficient for the Board to understand fully the relative importance of the various decision criteria. In a sense, the Board and the potential applicants for this designation are facing a unique challenge, in that this is the first designation process for transmission infrastructure in Ontario, and there are no Ontario Energy Board precedents providing weightings or an assessment methodology. Staff submits that any assessment methodology that parties suggest must be consistent with principles of fairness and practical to implement.

Staff submits that the filing requirements that the Board determines in this phase of the process will provide a good indication of what the Board will evaluate in selecting a transmitter for designation. Staff reminds parties that any proposal for an assessment methodology should be reflected in the filing requirements.

In preparing the filing requirements appended to this submission, Board staff considered whether some items could be evaluated on a pass/fail basis. Staff identified several items that could be suitable as threshold tests. These items appear in section 1 of the proposed filing requirements. For other items, the Board would evaluate the quality of the filings. Staff is mindful of the Board's statement at page 13 of the Policy regarding the use of threshold or pass/fail

tests for the criteria of organization, technical capability and financial capacity. The Board said:

“...the Board’s process is not the same as a procurement process. The Board’s hearing process does not lend itself to threshold tests nor is the Board convinced that it will be possible to examine those three criteria without substantial reference to the evidence regarding cost, scheduling, and consultation plans for the project.”

Staff interprets this statement to indicate that the Board will generally need to evaluate the evidence and exercise judgement in assessing the applicants against each decision criterion. Staff suggests that aside from the items identified in section 1 of the appended filing requirements, the remainder of the evidence will need to be evaluated beyond meeting a threshold.

Board staff invites parties views on whether the Board should select one or more “runners-up” for designation. The Board will likely choose one successful designated transmitter. Should alternates also be selected? In theory, the selection of a runner-up would create efficiencies if the successful designee failed to bring an application for leave to construct (for reasons within the control of that designee). However, staff notes that the runner-up might be in a difficult position, in that that company may be uncertain as to whether it will be called upon to develop the line, or whether it can direct its resources to other projects.

### ***Filing Requirements: Issues 7 and 8***

- 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?***

Based on the original filing requirements for designation contained in G-2010-0059 *Filing Requirements: Transmission Project Development Plans*, Board staff has prepared the document attached as Appendix A to this submission “Filing Requirements for the Designation Process for the East-West Tie Line”. Board

staff suggests that these filing requirements be adopted to guide potential applicants in preparing applications for designation in this proceeding.

In preparing the appended filing requirements, Board staff has made several deletions from the original filing requirements. For example, staff deleted requirements that referred to a Plan containing multiple projects, as the East-West Tie line is considered to be a single project for the purposes of designation. Staff also deleted the requirement to assess the economic efficiency of the Plan, as staff understands that economic efficiency will depend on the revised OPA assessment of need, which will not be available until after development work has been largely completed. Staff also notes that the OPA has stated that it is seeking input on the proposed in-service date for the line, and economic efficiency cannot be assessed in the absence of an in-service date.

Staff has proposed several items be added to the original filing requirements; for example, information specifically related to the necessary characteristics of the East-West Tie line. Staff has also proposed increased requirements relating to First Nation and Métis participation and consultation with these groups, in recognition of the expectations expressed in the Minister's letter of March 29, 2011.

The proposed filing requirements are organized around the original decision criteria set out by the Board in its Policy. However, as noted elsewhere in this submission, if the criteria change, the filing requirements will need to be modified.

Staff notes that the Board's Minimum Technical Requirements contain, in section 2.1.5, three bullets requiring certain filings from applicants. Staff has included the items in bullets 2 and 3 in the appended filing requirements, but staff believes that the information required in the first bullet, "all proposed design assumptions" will not be available to the applicants before development work for the line is well underway, and therefore recommends that this information not be required of applicants for designation.

Staff invites parties to address whether some of the information proposed to be filed in the appended filing requirements is also too specific to be available at the time of an application for designation. For example, is the information sought in sections 5.1 and 8.3 too specific prior to development work being undertaken?

In addition, Board staff asks parties to consider the level of detail in general in the proposed filing requirements. Staff recognizes that more detailed requirements may assist applicants in the preparation of their applications. However, staff submits that the Board may have more opportunity to assess the judgement of an applicant if the filing requirements are not overly prescriptive.

### ***Obligations and Milestones: Issues 9 - 12***

- 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?***

When considering the imposition of performance milestones and reporting obligations (issues 9 and 11), Board staff submits that one of the key purposes of designation is to encourage timely development of infrastructure. On page 16 of the Board Policy, the Board notes that:

“If a designated transmitter is failing to make progress on developing the project and is not making progress toward bringing a leave to construct application, the Board needs the ability to rescind the designation both to limit the exposure of the ratepayer and to allow a different transmitter to be designated. Therefore, the Board order of designation will have conditions such as performance milestones (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in designation being rescinded and will put further expenditures at risk.”

After phase 1 of the hearing, Board staff submits there are three time periods:

- Application preparation, which ends once the applications for designation are filed;
- Development, which ends with the leave to construct proceeding; and
- Construction, which occurs after leave to construct is granted.

Most activities necessary to the eventual construction and operation of the East-West Tie line will extend over all three of these time periods. It may be difficult to draw a line along the continuum of an activity separating any of these time periods from another. Some work will be necessary during the plan preparation phase to provide cost estimates and schedules for the application for designation. More significant work will be necessary during the development phase in preparation for a leave to construct application. The preparatory work is not completed until the line is energized.

The Board could set development milestones in phase 1 of the hearing and include these in setting filing requirements. This approach would give potential applicants more certainty regarding expectations.

However, each of the transmitters who have registered their interest in the East-West Tie is, or is associated with, an experienced transmitter and has developed projects in the past. Each will have its own method for carrying out the work. Staff submits that the Board should not impose a development work plan and therefore method of work on the transmitters by setting specific milestones in the filing requirements. Instead, the Board should obtain input from the transmitters themselves as part of their applications for designation. One of the areas that the Board might use to differentiate the transmitters is the judgement that they bring in proposing milestones and a schedule in each application.

Staff therefore recommends that the Board require transmitters to propose performance milestones in their applications for designation. In its order the Board would impose performance milestones and reporting requirements related to those milestones through an amendment to the designated transmitter's licence. Staff further submits that the milestones and reporting obligations that the Board should consider imposing on the successful applicant for designation should apply to the development phase only and not be drawn from the construction phase of the project. Any reporting requirements for the

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construction phase could be determined and imposed in the hearing for leave to construct. The filing requirements proposed by staff as part of this submission reflect this requirement.

Board staff invites all parties to assist the Board by commenting on this submission. Parties are invited to suggest milestones and timing for reports if they submit that pre-determined milestones are preferable.

With respect to performance obligations (issue 10), Board staff is not recommending any specific performance bond or other obligation. Staff is not clear as to what such an obligation would guarantee or how it would be enforced. The designation process is not a procurement exercise and will not result in a contract between the designated transmitter and the Board. Staff invites parties that believe a performance obligation should be required to explain the purpose of the obligation and the authority through which the Board would collect the amount of the bond.

Staff also notes that the designation process is, at base, concerned with the provision of an incentive to interested transmitters: the ability to recover from ratepayers the development costs for the East-West Tie line. Failure to complete the development process for reasons within the transmitter's control could result in the denial of this incentive. Given this context, and the absence of a resultant contract, staff submits that any performance obligation would be useful only to cover the costs of the designation proceeding itself. Staff acknowledges that there is a cost to the ratepayer for the designation process. If the designated transmitter fails to complete development (i.e. obtain leave to construct the line) for reasons under its control and the line still needs to be developed, the Board may want to have some remedy to ensure that the costs of the process do not have to be repeated.

With respect to issue 12, staff suggests that the Board's filing requirements for designation include a requirement that applicants identify their proposals for the consequences of failure to complete the development (i.e. failure to file for, or obtain a leave to construct order from the Board). The consequences of failure should be set out in the designation order.

Alternatively, the Board could determine the consequences of failure or delay as part of its phase 1 decision. If the Board chooses to make a ruling on this matter in phase 1, staff submits that the Board should have regard to the consequences outlined in the Board's Policy at p. 16: failure to meet the performance milestones or reporting requirements could include loss of designation, with the Board designating an alternate transmitter, and the inability to recover any further development costs. This issue is related to issue 16, which is discussed below.

Staff acknowledges that delays and difficulties may arise that could not have been anticipated by a diligent transmitter. Staff proposes that the Board, in its order regarding performance milestones and reporting obligations, include the opportunity for the designated transmitter to seek amendments to the timelines established for performance and reporting in accordance with the Board Policy on page 16. Staff further recommends that the Board require the designated transmitter to be vigilant in identifying potential sources of failure or delay and to mitigate them to the extent possible. Where the designated transmitter anticipates unavoidable sources of failure or delay, staff submits that the Board should require the transmitter to report to the Board as soon as it has exhausted its ability to mitigate the problem. Such a special report would be in addition to any regular reporting required of the transmitter.

### ***Consequences of Designation: Issues 13 – 16***

***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?***

Board staff submits that the prudence of budgeted development costs will be assessed through the hearing process in phase 2 in which a transmitter is selected for designation. The level of development costs proposed by an applicant will be an important consideration for the Board, as this is the amount that will be recovered from ratepayers if the transmitter is designated. In this proceeding, competition will, in a sense, be a surrogate for regulation; the applicants for designation will be compared in part on the level of risk their plan for the East-West Tie line poses to the ratepayer.

Staff recommends that the Board reiterate its intention that any development costs in excess of budgeted development costs that are put forward for recovery from ratepayers will be subject to a thorough review for prudence.

The Board's Policy indicates that the designated transmitter will be entitled to recover its budgeted development costs. However, it is not clear from the policy whether "development costs" include the preparation of an application for designation. At page 11 the Policy indicates that "Only the transmitter that is successful in being designated will be able to recover the costs of preparing a plan". However, at page 15 of the Policy, the Board indicates that development costs begin when a transmitter is designated and end when a leave to construct application is submitted. The costs of preparing a plan are incurred before designation. The Board's letter of December 20, 2011 appeared to clarify the issue, stating:

"As described in the Ontario Energy Board's policy *Framework for Transmission Project Development Plans* a designation process is a hearing of the Board, convened to identify a licensed transmitter who will be entitled to recover its prudently incurred development costs for a specific transmission project. Development costs begin when a transmitter is designated and end when a leave to construct application is submitted. The designated transmitter will also be able to recover its cost of becoming designated. Unsuccessful applicants will not."

Staff submits that the successful applicant for designation should be able to recover its costs of preparing a plan for an application for designation. However, staff suggests that these costs would begin to be incurred following the issuance of the Board's phase 1 decision. In proposing this time frame, staff is attempting to prevent burdening transmission ratepayers with costs related to the creation of the applicant companies, the licence application process and the development of

strategy for the designation process. One stated purpose of the Board's Policy is to drive economic efficiency for the benefit of ratepayers. It would seem contrary to this policy to allow recovery of costs that would not be incurred in the normal course by an incumbent transmitter.

Staff acknowledges that applicants for designation will have incurred costs before the phase 1 decision is issued, and that other stated purposes of the Board's Policy are to encourage new entrants and support competition in transmission in the province. Staff invites comments on this issue from all parties.

Regarding the mechanism for recovery, the Board may choose to create a deferral account for the designated transmitter to provide for cost recovery. The Board could do this through licence conditions as well, for example section 70(2) of the OEB Act provides for conditions regarding the keeping of accounting records and methods or techniques to be applied in determining the licensee's rates. Section 78(3.0.5) may also be important, as it allows the Board to adopt rate setting methods that provide for incentives and cost recovery for work related to siting, design and construction of an expansion to a transmission system

Issue 16 asks what costs a designated transmitter will be entitled to recover if the project does not move forward to a successful application for leave to construct. Staff submits that the answer to this question is dependent on the reason that leave to construct is not granted. The Board's policy at page 15 states:

"The Board accepts the premise that designation should carry with it the assurance of recovery of the budgeted amount for project development. When subsequent analysis by the OPA suggests that a project has ceased to be needed or economically viable (e.g. FIT applications have dropped out of the reserve such that the project falls below the economic threshold), the transmitter is entitled to amounts expended and reasonable wind-up costs."

Staff submits that this quote indicates that if the projects fails for reasons outside the designated transmitter's control, the transmitter can recover budgeted development costs already expended and reasonable wind-up costs. However, staff suggests that if the designated transmitter fails to obtain a leave to construct

order from the Board due to some incompetence or failure within the transmitter's control, recovery of all budgeted development costs and reasonable wind-up costs should not be automatic. In such a case the Board would have to consider whether ratepayers should bear all such costs. Staff acknowledges that the Board's Policy does not address the recovery of budgeted development costs and wind-up costs where failure is due to some problem within the designated transmitter's control, and invites parties to address this issue in their submissions.

With respect to issue 15, to what extent will the designated transmitter be held to the content of its application for designation, staff submits that the Board should ensure that applicants are judged on plans to which they are committed. Staff suggests that, at a minimum, commitment should be given and met on the following matters:

- Adherence to the IESO required standards
- Adherence to the Minimum Technical Requirements
- Adherence to the performance milestones and reporting requirements imposed
- Adherence to planned First Nation and Métis participation
- Recovery of no more than budgeted development costs (in the absence of extraordinary circumstances)

Failure to meet these commitments could result in the rescinding of designation, or failure to obtain an order for leave to construct.

Board staff acknowledges that there are some aspects of the applicants' plans for which insufficient information will be available at the time that plans are filed to require a definite commitment. Construction costs, for example, may be compared during the evaluation of plans, but staff recommends that the Board should not require any definite commitment from applicants on these costs. Construction costs will be reviewed in the leave to construct application, and it would be premature to expect accurate estimates before development work is complete.

## **Process: Issues 17 – 23**

- 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 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?***

Board staff proposes that phase 2 of the hearing should remain a written hearing. It is not clear to staff what advantage would be obtained through an oral hearing. Concerned parties are invited to identify what information necessary to the Board's decision cannot be obtained through a written hearing.

Staff recommends that the phase 2 hearing contain the following elements:

- Applications for designation filed with the Board
- All parties file with the Board proposed interrogatories (not directly sent to applicants)

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- Interrogatories to applicants from the Board, informed by suggestions from all parties
- Answers to interrogatories from all applicants
- Oral questions from Board if necessary
- Written submissions from all parties
- Reply submissions from applicants

Staff acknowledges that this process differs from the Board's standard hearing process in at least two fundamental ways: the funnelling of interrogatories through the Board (which may involve culling and editing) and the absence of cross-examination by the parties of the applicants. Staff is recommending this process due to the unique nature of this proceeding.

The process is competitive and, although not a procurement, has certain elements that resemble procurement. It will be vital to treat all applicants fairly and equally and, to the extent possible, treat them identically. Staff recommends that the same questions be sent to the applicants from the same source (i.e. the Board), and that the questions to applicants differ only to the extent that their applications differ.

Secondly, staff recommends that the Board exercise a significant degree of control over the process, partly to ensure fairness, but also to reduce the possibility of an expensive and drawn-out process. Neither applicants nor ratepayers would benefit from inefficiencies. Staff recommends that the Board select the process elements that it needs to obtain the information to make an informed and well-reasoned choice between applicants.

With respect to the role of the Board's expert advisor, it is staff's understanding that this person will act as an advisor to Board staff as necessary, not as a private advisor to the Board panel. His advice will therefore be provided in the same manner as that of Board staff, and will be made known to the parties in the proceeding through the medium of interrogatories and submissions.

Board staff invites the other entities named in issue 18 to file a submission outlining their intended role in the designation process. Staff suggests that the IESO would propose interrogatories and make submissions in phase 2 where proposals from applicants will affect the system. In addition, during the plan

preparation period, the IESO will need to assist potential applicants with the feasibility of non-Reference Option proposals.

The OPA may choose to propose interrogatories, provide information and make submissions to clarify matters related to the OPA's mandate. Board staff suggests that neither the IESO nor the OPA would make submissions supporting a particular applicant for designation, but remain neutral as between applicants.

Hydro One Networks Inc. has a special role in the process as the transmitter to whose system the new East-West Tie line will attach. Hydro One Networks Inc. will need to provide information, including costing information for station work, to assist potential applicants with plan preparation. In phase 2, staff expects that Hydro One Networks Inc. could choose to propose interrogatories and make submissions on proposals that affect its infrastructure. Similarly, staff suggests that Great Lakes Power Transmission LP would provide any relevant information it has to potential applicants and propose interrogatories and make submissions on any proposals that affect its infrastructure. Board staff believes that it is very important that these two transmitters do not favour any particular applicant for designation, but provide the same information and assistance to all potential applicants.

Hydro One Networks Inc. and Great Lakes Power Transmission LP have each filed lists of documents and information in their possession that relate to any preliminary development work previously undertaken in relation to the proposed East-West Tie line or were previously requested or discussed among the parties. As Board staff understands the context of these lists, this was information gathered or produced within the regulated utility. It is staff's submission that all the listed information relevant to the development of the East-West Tie line should be produced. Staff believes that such information would be of assistance to potential applicants and the Board in understanding the challenges presented by construction and maintenance of the EW Tie.

On April 20, 2012 counsel for TransCanada Power Transmission Ltd., on behalf of his client and four other registered transmitters, wrote a letter to the Board seeking that the Board direct Hydro One Networks Inc. and Great Lakes Power Transmission LP to advise of their position on the production of documents and to produce whatever documents that they do not object to producing by April 25, 2012. The stated reason for this request is that all parties could have the

information in time to inform their submissions for the scheduled date of May 7, 2012.

Board staff notes that Hydro One Networks Inc. and Great Lakes Power Transmission LP are intervenors in this proceeding. Rather than make the direction sought in the letter of April 20, 2012, the Board could direct Hydro One Networks Inc. and Great Lakes Power Transmission LP to address these matters in a submission filed May 7, 2012. Staff notes that all parties would have a chance to respond to this submission on May 16, 2012. Board staff recommends that the Board, in its phase 1 decision, set a date by which the information is to be produced. Staff does not understand why earlier production would be useful, as it appears that the listed information is related to plan preparation.

Board staff acknowledges that there may be reasons (for example, confidentiality or security concerns) why all the listed information cannot or should not be produced, or that production should be restricted. Staff recommends that the Board direct Hydro One Networks Inc. and Great Lakes Power Transmission LP to explain in detail, in their submissions, the reasons that any of the listed items should not be produced to all parties in the designation proceeding. Further, staff invites these utilities to indicate whether the Board's *Practice Direction on Confidential Filings*, and the form of declaration and undertaking provided in that Practice Direction, would provide sufficient protection for confidential documents.

Board staff recognizes that difficulties, and possibly disputes, may arise during the application preparation period (after the Board's decision on phase 1 and before the filing of applications for designation) as to what information should be produced. Staff suggests that reference to the level of detail required in the filing requirements that the Board approves in its phase 1 decision may be of assistance in determining what information is necessary to produce for the purpose of preparing applications for designation. Staff is willing to facilitate meetings between Hydro One Networks Inc. and Great Lakes Power Transmission LP and the registered transmitters, if those parties believe such facilitation would be helpful. If matters cannot be settled, staff suggests that the matters in dispute be brought to the Board for resolution by way of motion.

Board staff has no particular measures to suggest addressing the concerns raised by issues 20, 21 and 22. Staff asks that parties that are seeking

conditions or other measures explain the harm they are seeking to prevent, how the proposed condition or measure mitigates that harm without causing other harm, and whether the proposed condition or measure should apply to all similar participants in the interest of fairness. In addition, staff makes the following observations with respect to these issues.

Two of EWT LP's limited partners are incumbent transmitters; however, these limited partners are not "affiliates" of EWT LP within the meaning of the Board's *Affiliate Relationships Code for Distributors and Transmitters* (the "ARC"). The various rules regarding relationships with affiliates in the ARC therefore do not apply to the relationship between EWT LP and its limited partners. Board staff notes that these rules also do not apply to any registered transmitter whose licence is not yet in effect.

Issue 22 refers specifically to the relationship between licensed transmission utilities and their energy service providers. There are three types of restrictions in the ARC that are specifically targeted at this relationship: provisions regarding the sharing of employees in section 2.2.3, provisions regarding the endorsement of marketing activities in section 2.5.1 – 2.5.2, and provisions relating to the sharing of system planning information in sections 2.6.4 and 2.6.5. Board staff presumes that the concerns surrounding issue 22 relate to any informational advantage EWT LP may have as a result of its relationship with its partners; specifically preferential access to system planning and technical information related to the development of the East-West Tie line.

Board staff submits that equal access by all designation applicants to information held by incumbent transmitters relevant to the development of the East-West Tie line is vital to the fairness of the Board's designation process. Staff also accepts that Hydro One Networks Inc. and Great Lakes Power Transmission LP may have done work relating to the development of the East-West Tie line as regulated, ratepayer-funded utilities. As noted in staff's submission on issue 19, staff submits that all such information should be disclosed, unless there are serious confidentiality or security concerns that militate against its disclosure. However, staff does not understand why a Board order made pursuant to issue 19, along with the protocols mentioned in issue 21, are inadequate to ensure equal access by all designation applicants to information that the incumbent

transmitters may have. Board staff invites all parties to address the adequacy of these measures.

Finally, staff proposes that the Board consider a date for the filing of applications for designation. The Board's Policy at page 12 indicated that three months would be the default period for filing after notice was given, although the period could be as long as six months. The original notice for the designation proceeding was given on February 2, 2012, but staff regards the issuance of the Board's phase 1 decision as equivalent to notice in the circumstances of this particular designation process. Some aspects of the Board's phase 1 decision, particularly relating to the filing requirements and any prerequisites to designation, will have to be taken into account in setting the date for filing. In the absence of any significant additional issues arising in the phase 1 decision, Board staff proposes that the Board require the filing of applications for designation four months after it renders its phase 1 decision.

However, Board staff acknowledges there may be issues that the Board cannot anticipate at the time of its phase 1 decision. An alternative to setting a date in the phase 1 decision could be a requirement on registered transmitters, or all parties, within 60 days of the Board's phase 1 decision, to propose a filing date for applications. Board staff invites all parties, but particularly the registered transmitters, the IESO, the OPA and Hydro One Networks Inc. to comment on this issue.

All of which is respectfully submitted to the Board.

**FILING REQUIREMENTS FOR THE DESIGNATION PROCESS  
FOR THE EAST-WEST TIE LINE**

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## **FILING REQUIREMENTS FOR THE DESIGNATION PROCESS FOR THE EAST-WEST TIE LINE**

An application for designation will contain two main sections. Together, these sections of the application address the Board's decision criteria for the East-West Tie line:

- Evidence addressing the capability of the applicant to carry out the East-West Tie line project;
- The applicant's Plan for the East-West Tie line.

In addition to the items listed in these Filing Requirements, the applicant may choose to file any other information that it considers relevant to its application for designation.

### **CAPABILITY OF THE APPLICANT**

#### **1. Background Information**

The applicant must provide the following information:

- 1.1 The applicant's name.
- 1.2 The applicant's OEB transmission licence number.
- 1.3 Any change in information provided as part of the transmitter's licence application.
- 1.4 Confirmation that the applicant has not previously had a licence or permit revoked and is not currently under investigation by any regulatory body.
- 1.5 Confirmation that the applicant is committed to the completion of the development work for the East-West Tie line, and to the filing of a leave to construct application for the line, to the best of its ability.
- 1.6 A statement from a senior officer that the application for designation is complete and accurate to the best of his/her information and belief.

## 2. Organization

The applicant shall identify how, from an organizational perspective, it intends to undertake the East-West Tie line project. In particular, the applicant, if it intends to involve First Nation or Métis communities as participants in the East-West Tie line project, the must file evidence of its experience with Aboriginal participation in development, construction or operation of transmission line projects. If the applicant has no direct experience with such participation, the applicant must describe its plan to source that experience for the East-West Tie line project. To that end, the applicant must file:

2.1 An overview of the organizational plan for undertaking the project, including:

- any partnerships or contracting for significant work;
- identification and description of the role of any third parties that are proposed to have a major role in the development, construction, operation or maintenance of the line; and
- a chart to illustrate the organizational structure described.

2.2 Identification of the specific management team for the project, with resumes for key management personnel.

2.3 An overview of the applicant's experience with:

- the management of similar transmission line projects; and
- regulatory processes and approvals related to similar transmission line projects.

In addition, the applicant must file evidence of one of the following:

2.4 If arrangements for First Nation and Métis participation have been made, a description of:

- The First Nation and Métis communities that will be participating in the project;
- The nature of the participation (e.g. type of arrangement, timing of participation);
- Benefits to First Nation and Métis communities arising from the participation;
- Benefits to transmission ratepayers of the First Nation and Métis participation;

- Costs of First Nation and Métis participation included in the development and construction budgets for the line; and
- Whether participation opportunities are available for other First Nation and Métis communities in proximity to the line.

2.5 If arrangements for First Nation and Métis participation have not been made but are planned, a description of:

- The plan for First Nation and Métis participation in the project, including the method and schedule for seeking participation;
- The nature of the planned participation;
- Planned benefits to First Nation and Métis communities arising from the participation;
- Planned benefits to transmission ratepayers of the First Nation and Métis participation; and
- Estimated costs of First Nation and Métis participation included in the development and construction budgets for the line.

2.6 If no First Nation or Métis participation in the project is planned, detailed reasons for this choice.

### **3. Technical Capability**

The applicant must demonstrate that it has the technical capability to engineer, plan, construct, operate and maintain the line, based on experience with projects of equivalent nature, magnitude and complexity. To that end, the following must be filed:

3.1 A discussion of the type of resources, including relevant capability (in-house personnel, contractors, other transmitters, etc.) that would be dedicated to each activity associated with developing, constructing, operating and maintaining the line, including:

- design;
- engineering;
- material and equipment procurement;
- licensing and permitting;

- construction;
  - operation and maintenance; and
  - project management.
- 3.2 Resumes for key technical team personnel.
- 3.3 A description of sample projects, and other evidence of experience in Ontario and other jurisdictions in developing, constructing and operating transmission lines involving similar:
- terrain;
  - climate and other environmental conditions; and
  - reliability requirements.
- 3.4 Evidence that the applicant's business practices are consistent with good utility practices for the following:
- design;
  - engineering;
  - material and equipment procurement;
  - right-of-way and other land use acquisitions;
  - licensing and permitting;
  - consultations;
  - construction;
  - operation and maintenance; and
  - project management.
- 3.5 A description of:
- the challenges involved in achieving the required capacity and reliability of the EW Tie line, including challenges related to terrain and weather; and
  - the plan for addressing these challenges through the design and construction of the line (e.g. number and spacing of towers, planned resistance to failure).

#### **4. Financial Capacity**

The applicant must demonstrate that it has the financial capability necessary to develop, construct, operate and maintain the line. To that end, the applicant shall provide the following:

- 4.1 Evidence that it has capital resources that are sufficient to develop, finance, construct, operate and maintain the line.
- 4.2 Evidence that the financing, construction, operation, and maintenance of the line will not have a significant adverse effect on the applicant's creditworthiness or financial condition.
- 4.3 The applicant's financing plan, including:
  - the estimated proportions of debt and equity; and
  - the estimated cost of debt and equity, including:
    - the use of variable and fixed cost financing;
    - short-term and long-term maturities; and
    - a discussion of how the project might impact the applicant's cost of debt.
- 4.4 If the financing plan contemplates the need to raise additional debt or equity, evidence of the applicant's ability to access the debt and equity markets.
- 4.5 Evidence of the applicant's ability to finance the project in the case of cost overruns, delay in completion of the project and other factors that may impact the financing plan.
- 4.6 Evidence of the applicant's experience in financing similar projects.
- 4.7 The identification of any alternative mechanisms (e.g., rate treatment of construction work in progress) that the applicant is requesting or likely to request.<sup>1</sup>

## **PLAN FOR THE EAST WEST TIE LINE**

### **5. PLAN OVERVIEW**

The applicant must provide an overview of its Plan for the East-West Tie line. The overview must include:

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<sup>1</sup> See Report of the Board on The Regulatory Treatment of Infrastructure Investment in connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario, [http://www.oeb.gov.on.ca/OEB/Documents/EB-2009-0152/Board\\_Report\\_Infrastructure\\_Investment\\_20100115.pdf](http://www.oeb.gov.on.ca/OEB/Documents/EB-2009-0152/Board_Report_Infrastructure_Investment_20100115.pdf)

5.1 A summary description of how the Plan meets the specified requirements for the East-West Tie Line. This description should include, for example:

- the length of the proposed transmission line;
- terminal points;
- number of circuits;
- voltage class;
- load carrying capacity;
  - summer continuous rating (MVA)<sup>2</sup>; and
  - summer emergency rating (MVA)<sup>3</sup> ;
- resulting total transfer capability for the East-West Tie (MW);
- anticipated lifetime of the line (minimum 50 years);
- Structures and conductors (to the extent known at the time of filing the application for designation. If unknown, describe method and criteria for selection):
  - number and average spacing of towers;
  - tower structure types (lattice, monopole, etc.) and composition (wood, steel, concrete, hybrid, etc.);
  - conductor size and type; and
  - protection against cascading failure and conductor galloping; and
- Other relevant transmission facility characteristics.

The applicant must also file:

5.2 Confirmation that the line will interconnect with the existing transformer stations at Wawa and Lakehead, and an indication of whether the line will be switched at the Marathon transformer station.

5.3 A signed affidavit from an officer of the licensed transmitter to confirm:

- that the line will meet the existing NERC, NPCC and IESO reliability standards; and
- that the line will meet the Board's Minimum Technical Requirements; or documentation of where the applicant seeks to differ from the Minimum Technical Requirements and evidence as to the equivalence or superiority of the proposed alternative option.

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<sup>2</sup> Based on an operating voltage of 240 kV, ambient temperature of 30°C and conductor temperature of 93°C

<sup>3</sup> Based on an operating voltage of 240 kV, ambient temperature of 30°C and conductor temperature of 127 °C

- 5.4 An indication as to whether the Plan will be based on the Reference Option for the East-West Tie line. Where the Plan is not based on the Reference Option, the applicant must file:
- a description of the main differences between the applicant's Plan and the Reference Option;
  - a description of the interconnection of the line with the relevant transformer stations; and
  - a Feasibility Study performed by the IESO, or performed to IESO requirements.
- 5.5 A brief description which highlights the strengths of the Plan, which may include:
- any technological innovation proposed for the line;
  - reduction of ratepayer risk for the costs of development, construction, operation and maintenance;
  - local benefits (e.g. employment, partnerships); and
  - enhanced reliability for the transmission grid.
- 5.6 The estimated total costs associated with the Plan, broken down as follows:
- development;
  - construction; and
  - operation and maintenance.
- 5.7 An indication as to whether the applicant's present intention is to own and operate the line once the line is in service.

## **6. Schedule**

The applicant must file, as part of its Plan:

- 6.1 A project execution chart showing major milestones for both line development and line construction phases of the project.
- 6.2 For the development phase of the project:
- A detailed line development schedule identifying significant milestones, and proposed dates for completing the milestones, for significant activities that are part of the development phase of the project;

- Proposed reporting requirements for the development phase;
- Proposed consequences for failure to meet the required performance milestones and reporting requirements for the development phase;
- A chart of the major risks to achievement of the line development schedule, indicating the likelihood of the item (e.g. not likely, somewhat likely, very likely) and the severity of its effects on the schedule (e.g. minor, moderate, major); and
- A description of the applicant's strategy to mitigate or address the identified risks.

6.3 For the construction phase of the project:

- A preliminary line construction schedule identifying significant activities that are part of the construction phase of the project, and estimates of time required to complete those activities;
- A chart of the major risks to achievement of the construction schedule, indicating the likelihood of the item (e.g. not likely, somewhat likely, very likely) and the severity of its effects on the schedule (e.g. minor, moderate, major); and
- A description of the applicant's strategy to mitigate or address the identified risks.

6.4 Evidence of the applicant's past success in completing similar transmission line projects within planned time frames. Such evidence could include a comparison of the construction schedule filed with a regulator when seeking approval to proceed with a transmission line project and the actual completion dates of the milestones identified in the schedule.

6.5 Any innovative practices that the applicant is proposing to use to ensure compliance with, or accelerate the line development and line construction schedules.

## 7. Costs

As part of its Plan, the applicant must file a detailed budget for the development of the line up to the filing of the leave to construct application, and supporting evidence for that budget. This section of the Plan must include:

- 7.1 The amount already spent for preparation of an application for designation, and an estimate of remaining costs to achieve designation.
- 7.2 The estimated total development costs of the line, broken down by category of cost, including, where relevant:
  - permitting and licensing;
  - engineering and design;
  - procurement of material and equipment;
  - consultations;
  - First Nation and Métis participation costs;
  - land use rights;
  - contingency budget; and
  - other significant expenditures.
- 7.3 The basis for and assumptions underlying the cost estimates.
- 7.4 A schedule of development expenditures.
- 7.5 A chart of the major risks that could lead the applicant to exceed the line development budget, indicating the likelihood of the item (e.g. not likely, somewhat likely, very likely) and the severity of its effects on the budget (e.g. minor, moderate, major), and a description of the applicant's strategy to mitigate or address the identified risks.
- 7.6 A proposed threshold of materiality for prudence review of cost overruns for the costs of development.
- 7.7 A statement as to the allocation between the applicant and transmission ratepayers of risks relating to costs of development. For example:
  - if the costs of development are less than budgeted, does the applicant propose to recover only spent costs, or all budgeted costs (spent and unspent) or spent costs plus a portion of unspent cost (savings sharing); and

- If the costs of development exceed budgeted costs, does the applicant plan to seek recovery of the excess costs.
- 7.8 An estimated budget for the construction of the line, noting any significant anticipated contingencies.
- 7.9 If the Plan is not based on the Reference Option, evidence as to the difference in cost (positive or negative) of work required at the transformer stations to which the line connects and at any other location identified by the IESO.
- 7.10 A list of the major risks that could lead the applicant to exceed the line construction budget, and the applicant's strategies to mitigate or address those risks.
- 7.11 The estimated average annual cost of operating and maintaining the line.
- 7.12 Evidence of the applicant's past success in completing similar transmission line projects within planned budgets. Such evidence could include a comparison of the budget filed with a regulator when seeking approval to proceed with a transmission line project and the actual costs of the project.

## **8. Land Owner and Other Consultations**

The applicant must demonstrate the ability to conduct successful consultations with landowners, First Nations and Métis communities and other relevant parties. In addition, the designated transmitter will be required to satisfy environmental and other requirements that are outside the jurisdiction of the Board.

As part of its Plan, the applicant must file:

- 8.1 An overview of:
- the rights-of-way and other land use rights, presented by category, that would need to be acquired for the purposes of the development, construction, operation and maintenance of the line;
  - the applicant's plan for obtaining those rights; and
  - a description of any significant issues anticipated in land acquisition or permitting and a plan to mitigate them.
- 8.2 A consultation plan for the line, including:

- identification of the categories of parties to be consulted;
  - the applicant's plan for consultation for each party or category of party, including method and tentative schedule in relation to the overall project schedule;
  - a list of First Nation and Métis communities that may have interests affected by the project; and
  - A description of any significant issues anticipated in consultation and a plan to mitigate them.
- 8.3 If the applicant has identified a proposed route for the line, the applicant must file:
- General description of the planned route for the line;
  - Approximate right-of-way width;
  - Approximate portion of the route that is:
    - adjacent to the existing corridor (%); or
    - along a new corridor (%):
  - A brief description of the environmental challenges posed by the proposed route; and
  - An estimate of ownership by category of lands along the proposed route:
    - Crown (federal or provincial) (%);
    - Private (%);
    - First Nation or Métis (%); and
    - Other (%);
- 8.4 If a proposed route for the line has not been identified, the applicant must file:
- a list of alternative routes;
  - an explanation of the method and decision criteria for route analysis and selection; and
  - the planned schedule for route selection.
- 8.5 The applicant must file evidence of its experience with:
- the acquisition of land use rights from private landowners and the Crown;
  - the acquisition of necessary permits from government agencies;
  - successfully obtaining environmental approvals similar to the environmental approvals that will be necessary for the East West Tie line;

- community consultation; and
- successful completion of the procedural aspects of Crown consultation with First Nation and Métis communities.

**ADDITIONAL INFORMATION**

The applicant should include any other information that it considers relevant to its application for designation.