

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.

TRANSCANADA POWER TRANSMISSION (ONTARIO) L.P.

Phase 1 Submissions

These submissions are filed by TransCanada Power Transmission (Ontario) L.P. ("TPT") on the phase one issues in this proceeding.

Decision Criteria

- 1. Should any of the general decision criteria listed by the Board in its policy Framework for Transmission Project Development Plans (EB-2010-0059), be refined?***

The Board released its policy (the "Policy") on Transmission Project Development Plans on August 26, 2010. The policy sets out the framework for new transmission investment in Ontario and transmission project development planning. The general decision criteria (the "Decision Criteria") listed by the Board in the Policy constitute, in no particular order: Organization; technical capability; financial capacity; schedule; costs; landowner and other consultations; and "other factors". The Decision Criteria will be weighted by the Board based on the evidence in the proceeding and taking into account the individual circumstances of the project.¹

TPT submits that the fundamental Decision Criteria should not change. The Board developed those criteria to achieve the purposes of the designation proceeding, which should continue to be the animating objective. These purposes are:

- (i) Allow transmitters to move ahead on development work in a timely manner;
- (ii) Encourage new entrants to transmission in Ontario bringing additional resources for project development; and

¹ EB-2010-0059, *Transmission Project Development Planning*, dated August 26, 2010, at p. 13.

- (iii) Support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

The Board should not, at this stage, depart from those purposes.

Subject to this, TPT submits that a refinement is required to clarify the expectation for cost estimates associated with the construction and operation phase of the project. Prior to the development stage and the carrying out of detailed engineering, costs associated with construction and O&M are indicative estimates only with a relatively high degree of imprecision. It is not possible or prudent to have suppliers provide definitive construction costs at this early stage. If one were to try, a significant risk premium would need to be included to address uncertainties related to final routing, escalation, underlying commodity prices and foreign exchange that cannot be accurately forecasted and will no doubt change significantly on a project which is to be implemented 5-7 years out.

As a result, there is little to be gained in speculating on those costs at this time. Given that the consequence of approval relates to the expenditure of development funds, the Decision Criteria should be restricted to development costs, and the ability to manage construction costs. Regarding the latter point, this is necessary given that the majority of the construction work will be subcontracted to third parties. TPT submits that the Board should consider the ability of the applicant transmitters (the “Applicants”) to manage contractors to ensure that costs are incurred prudently. In assessing this ability, an Applicant’s knowledge of markets, experience in managing large-scale linear energy infrastructure projects, familiarity with regulatory processes and approvals, and breadth of experience are all important factors.

2. *Should the Board add the criterion of First Nations and Métis participation? If yes, how will that criterion be assessed?*

TPT submits that these criteria should not be added for the following reasons:

- (i) The designation proceeding is not the appropriate place to define or evaluate participation activities of First Nations and Métis groups in the Project.
- (ii) An applicant’s commitment to participation must be treated with equal weight to the existing participation of the Bamkushwada First Nations² in EWT LP.
- (iii) Board staff’s additions in Section 2.4, Section 2.5 and Section 2.6 of its proposed filing guidelines should not be accepted by the Board.

(i) Designation process not appropriate to define and evaluate participation

The designation process is not the appropriate process to define and evaluate participation.

² The Bamkushwada First Nations are Red Rock Indian Band, Pays Plat First Nation, Ojibways of Pic River First Nation, Pic Moberg First Nation, Michipicoten First Nation and Fort William First Nation, all of whom have partnered with Hydro One Networks Inc. and Great Lakes Power Transmission EWT LP to create EWT LP.

There are many different ways that First Nations and Métis communities may participate in the development, construction and operation of the facilities. This could include an equity stake, but there are other methods as well. If the Board determines that it will define and evaluate participation in this proceeding, the participation opportunities may be reduced to the “lowest common denominator” of equity participation and, effectively become an auction where participants are expected to bid for this participation. This would not further the purposes of the Board’s mandate generally or the designation process in particular.

TPT submits that participation arrangements are most appropriately arranged after designation. Issues related to First Nations and Métis participation cannot be unilaterally declared by a transmission proponent. Rather, any participation arrangement will be determined based on negotiations between the designated transmitter and individual communities. This will take time and should respect the negotiation process. This negotiation should not be conducted in an adversarial hearing process or adjudicated upon by the Board. Furthermore, with the exception of Pic River First Nation, the First Nations and Métis communities that may wish to participate in the Project are not party to the designation proceeding. Neither the Board nor a transmitter should unilaterally conclude what constitutes “participation” without input from relevant First Nations and Métis communities.

Furthermore, it is not prudent to define and evaluate competing proposals for participation from First Nations and Métis groups during the designation process. Rather, the Board should structure its approach to this issue in order to facilitate the designation of a transmitter that can include Aboriginal participation in a manner that achieves cost-effectiveness and reliability. This can be done by the Board stating its expectation that a designated transmitter is expected to make a good faith effort to work with Aboriginal communities to achieve a participation arrangement that is consistent with a cost effective and reliable transmission solution. The designated transmitter would be required to report back regularly on progress in that regard. The requirement to settle Aboriginal participation arrangements could also be included as a performance milestone. TPT would be prepared to accept the reporting and performance milestone for Aboriginal participation if the Board chooses to accept the foregoing methodology. Given the location of the Project and the surrounding First Nations and Métis communities, TPT has no doubt that many of the communities will seek to participate in some manner in the Project and looks forward to facilitating such participation.

(ii) A commitment to establish participation arrangements must given equal weight

An Applicant’s commitment to provide for First Nation and Métis participation in the Project must be accorded equal weight to any pre-existing participation by the Bamkushwada First Nations in EWT LP. This is due primarily to the fact that, at this stage in the process, there are practical limitations on the ability to discuss participation, and possibly even consultation with 6 of the 18 First Nations and Métis communities (collectively, the “Project FNM”) identified by the Ministry of Energy in its letter (the “Consultation Letter”) dated May 31, 2011. It is not realistic to expect that the Bamkushwada First Nations are willing, or able, to engage in participation discussions with competitors to their own entity until after a designated transmitter has been chosen. Prior to designation of the transmitter, and due to the fact that the Bamkushwada First Nations do not have the ability to discuss participation with other parties, the Bamkushwada First Nations must be treated strictly as investors to EWT LP.

TPT also submits that a certain precedent has been set with the participation of the Bamkushwada First Nations in EWT LP. TPT submits that it would be to the benefit of the designation process to disclose, at a high level, the terms of such participation. Such disclosure should take place prior to the Phase II process in order to allow the Board to pose the questions directly to the Applicants (other than EWT LP) as to whether they would be prepared to meet such terms, as part of a plan to incorporate Aboriginal participation into the development of the Project, in the event they are designated.

(iii) *Staff Guidelines – Participation Criteria*

We note that Staff has made considerable changes to the Panel Guidelines (defined herein), which affect participation of First Nations and Métis communities in the Project. Please see our response in Issue 7.

3. *Should the Board address 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?*

In addition to identifying the Project FNM, the Consultation Letter clarified that the OPA has the responsibility for carrying out the procedural aspects of consultation prior to any Board transmitter designation decision.

TPT agrees that consultation and accommodation will be an important part of this Project. As Staff notes, the Crown has explicitly delegated the consultation on the Project to the OPA for all Project-related matters leading up to designation. The express delegation to the OPA is a clear indication that actual consultation by Applicant transmitters that takes place prior to designation should not be considered by the Board. TPT agrees with Staff's position on this issue 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.³ While consultation prior to the designation is not something that can be weighted by the Board in this designation proceeding, that is not to say that the Applicants should refrain from consulting until the Board has designated a transmitter. TPT recognizes that consultation is an ongoing activity that should be initiated by proponents early in the process to the extent possible.

While consultation prior to designation should not be accorded any weight, the Board may properly evaluate the Applicant's ability to carry out consultation, and possibly accommodation, with the Project FNM (and possibly others that self-identify). In particular, the Board should assess whether Applicants have experience consulting with First Nations and Métis groups in the context of the development of large-scale, linear infrastructure projects. The Board should take into account an Applicant's experience and programs aimed at carrying out consultation and engage all affected communities in the development of a project.

³ Staff Submissions, at p. 6 – 7.

TPT further submits that, while the Board is well placed to assess the ability of a proponent to carry out the procedural aspects of consultation with Aboriginal groups, the Board does not have the expertise to carry out a proper assessment of the actual consultation that is carried out. Aboriginal consultation is generally delegated to a proponent through the environmental assessment process. The environmental assessment process is the natural choice of regulatory process to evaluate consultation and accommodation, since the environmental assessment process evaluates all matters related to the land. By their very nature, Aboriginal rights are related to the natural environment and specifically, land.

4. *What is the effect of the Minister's letter to the Board dated March 29, 2011 on the above two questions?*

There are two elements to this question. The first is how to address the relevance of the Minister of Energy's letter to the Chair of the OEB dated March 29, 2011 (the "March Letter") and the second is addressing the participation issue on its merits.

Relevance of March Letter

With respect to the significance of the March Letter, it should be borne in mind that the Minister has the authority to issue directives to the Board to implement government policy in a number of areas. These directives must comply with statutory requirements respecting their issuance to ensure that, from a governance perspective, the government has the ability to identify policies that the Board should consider. There is no directive power with respect to the subject matter of the March Letter, and the Minister has not purported to rely upon a directive power.

This may be contrasted with s. 25.35(2) of the *Electricity Act, 1998* which permits the Minister to provide directions to the OPA respecting FIT procurements, including "the participation by Aboriginal peoples in the development and establishment of renewable energy projects." The legislature has thus granted the Minister the ability to provide the OPA with directives respecting participation by Aboriginal peoples in renewable energy projects. It has not granted the Minister the ability to provide the OEB with directives respecting participation by Aboriginal peoples respecting transmission projects. That omission must be given meaning. Specifically, the legislature expects the OEB to address issues by reference to its statutory objectives, not by correspondence with the government. For the OEB to act otherwise would set a dangerous precedent. It would effectively allow the government to provide informal direction to the OEB to favour one applicant over another. This is particularly concerning given that the government has an indirect ownership interest in one of the participants.

Further, there is no reason for the Board to treat the contents of the March Letter as even a non-binding statement as government policy. This type of issue arose in a previous occasion when the Board evaluated the need for a transmission expansion to carry electricity from the Bruce-Milton facility. The Government had issued a statement on its expectations for future energy production from the facility, but the Board would not

give effect to it, stating that, while it “may be an indication of the government’s intentions it is not a formal expression of government policy.”⁴

In light of all of this, the March Letter addresses little more than a position that the Board should consider. In the normal course of considering positions, the Board hears from all relevant participants and addresses issues on their merits and does not give the views of one participant more weight than the views of anyone else. Otherwise, the risk is that the Minister has a “parallel directive power”, one which does not require a directive, only a letter. This would be an unfortunate precedent.

Facilitating First Nations and Métis Participation

With respect to the substance of the March Letter, and the relevance of participation for this proceeding, it is helpful to consider the contents of the letter in greater detail than the sentence fragment that was excerpted in Board staff’s submission. The March Letter stated the following with respect to First Nations and Métis participation:

“A designation process for the East-West Tie also promotes the Board’s electricity objectives of *protecting the interests of consumers with respect to prices and of promoting cost-effectiveness in the transmission of electricity*. In respect of those particular ends, and given the location and value of the East-West Tie in ensuring *reliability and maintaining efficiency and flexibility* of the system, 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.”

Thus, the March Letter is proposing that the significance of Aboriginal participation should be considered in light of:

- the objectives of protecting the interests of consumers with respect to prices and of promoting cost-effectiveness in the transmission of electricity; and
- ensuring reliability and maintaining efficiency and flexibility of the system.

As a result, to the extent that Aboriginal participation in the delivery of the East-West line does further the achievement of any of these objectives, then, in the Minister’s view, it is a relevant consideration. TPT would agree with this proposition.

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?***

⁴ Decision on Bruce-Milton Leave to Construct, September 15, 2008 (EB-2007-0050), pl 19.

The issue of rankings of the Decision Criteria and the accompanying assessment methodology are directly linked and have been addressed as a single issue.

Regarding weightings specifically, TPT acknowledges that the Board has already ruled on this subject matter, however TPT submits that ranking the Decision Criteria will benefit the designation process. This will allow Applicants to focus on the aspects of the proposals considered most critical by the Board. In the alternative, if the Board is weighing one set of the Phase I Criteria more heavily than another, then that weighing should be explicitly stated.

In terms of rankings, given that the Board is evaluating a large-scale, linear infrastructure project, project management and an organizational ability to successfully develop such projects should be weighted the most heavily. Experience in dealing with a large number of landowners should also fall into this first bucket of criteria. In this regard, the Board should put particular weight on an Applicant's demonstrated commitment to investing in the Ontario energy sector. This recognizes the fact that this process will choose a company that will have a long term obligation to providing a public utility for the benefit of the province. It is not a one-off project but, in part, a new partner to the regulatory compact between the OEB and public utilities. It is therefore important that the Board choose a partner who has already demonstrated a significant commitment to the province.

The second bucket of criteria should be weighted less heavily than the first and consist of the Applicants' proposed schedule, costs and financing capability. Lastly, technical capability should be given the least weight. The reality is that the designated transmitter will outsource the various components of the technical design and construction to expert, third party suppliers. Therefore, the Applicant's technical capability will be a direct result of their ability to project manage large-scale linear infrastructure. TPT submits the following with respect to ranking the Decision Criteria:

- (i) **Organization and Experience:** It is critical that a proponent have the requisite competencies to properly plan the Project, manage its design and oversee the development and construction of the Project. Furthermore, Applicants that have a history of successfully executing linear energy infrastructure projects should be recognized as having the organization and experience to deliver a credible proposal. Only fully competent parties will be capable of ultimately delivering a properly designed and built asset at a competitive price and within budget.
- (ii) **First Nations and Métis Consultation and Landowner and Other Stakeholder Consultations:** Given that the Project is being built within the traditional territories of many First Nations and harvesting territories of certain Métis groups, a proven ability to carry out consultation is one of the most important ones in successfully siting an energy infrastructure project. The amount of time, resources and cost attributed to this category has grown exponentially in recent years. Linear infrastructure projects such as transmission lines require a much more extensive program than that typically needed for a static site project. Applicants that are able to leverage already established Aboriginal engagement programs should be weighted favourably. Apart from having dedicated personnel to carry out a high level of engagement, internal cultural

education programs, and proactive policies aimed at hiring local Aboriginal peoples to work on the Project should also be considered. As such, parties with that type of expertise (especially in dealing with landowners and Aboriginal communities over the operating life of an asset) are necessary in order to prosecute a siting plan.

- (iii) Financing: This is an issue that cannot be deferred until a project has reached the construction phase. Parties must be able to demonstrate that they can finance a particular project under various capital market scenarios. The recent change in the credit markets and reduced access to capital underlines the need to select parties who can finance in even the most difficult markets. By providing a general assessment on capabilities of the prospective licensed transmitters (see response to issue 1 above); this specific criteria can be limited to an assessment of a proponent's ability to finance a specific project.
- (iv) Costs: At this early stage, costs will also be relatively imprecise. However, there needs to be a distinction between the costs estimated to prepare carry out development work and the expected capital costs to construct the Project.
- (v) Schedule: At this early stage of a project, any schedule will be a relatively imprecise estimate. Experienced parties will understand the complexity of major projects and will submit estimate based on real experience. It is important that parties are not incentivized to submit aggressive (and unachievable) schedules in order to offset other deficiencies.
- (vi) Technical Capability: The design and technical capabilities are widely available in the marketplace; it is the oversight and management of those skills that distinguish proponents.

TPT notes that while Staff states that no particular ranking should be accorded to the Decision Criteria, Staff recommends 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.” This basic criteria is essentially reflective of organization and experience, which TPT submits should be accorded the heaviest weight, along with First Nations and Métis and landowner consultations.

Other than a suggested ranking of the criteria, TPT does not propose that an assessment methodology be put in place. The Board has specifically chosen not to run a formal request for proposals for the Project, and therefore has not provided Applicants with a transparent points system. To impose one at this stage with little or no transparency would not be efficient or fair to Applicants. Furthermore, inasmuch as the designated transmitter process is a new process for the Board, transparency of process will be essential.

Regarding Staff's suggestion that the Board should select a “runner-up” for designation, TPT respectfully submits that, for a Project of this scale, it would be pointless to appoint a “contingency” designated transmitter. The deployment of economic resources, human and intellectual capital required for such a large-scale infrastructure project are

significant and cannot be put on-hold. TPT trusts that the Board will only designate a transmitter if the Board feels that it has a solid foundation for doing so. Apart from a decision by the OPA or its predecessor that vitiates need, TPT has every confidence that the Project can be built.

Filing Requirements

7. What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?

Applicants have been asked to provide additions, deletions or changes to the Board panel's Filing Requirements published in G-2010-0059 (the "Panel Guidelines").⁵ Staff has substantively revised the Panel Guidelines in Appendix A (the "Staff Guidelines") to its submissions. As a matter of process, TPT has used the Panel Guidelines as the basis for its submissions rather than the Staff Guidelines in order to facilitate review by the Board panel. TPT's amendments to the Panel Guidelines (the "Amended Guidelines") is provided at Appendix A attached hereto. In addition to the specific amendments to the Amended Guidelines TPT submits two high-level comments regarding (i) Staff Guidelines, and (ii) Costs and Scheduling.

Regarding the Staff Guidelines, TPT submits that the formatting and increased detail contained in the Staff Guidelines will be helpful for Applicants when submitting their applications. TPT respectfully submits that Applicants will benefit from any increased detail and structure the Board is able to provide in advance of Phase II.

While TPT commends the Staff Guidelines for increased detail, TPT submits that the Staff Guidelines' requirements for the Applicant to provide examples of experience specific to "transmission lines" should be replaced with the broader term "large-scale linear energy infrastructure projects".⁶ This is a logical amendment to the Staff Guidelines since the consultation, participation, land-use requirements, permitting, project management and construction of large scale linear infrastructure projects such as hydrocarbon pipelines has many similarities to electricity transmission infrastructure. Furthermore, the increased breadth of permissible experience ties in directly with the Board's mandate in this designation process to encourage new entrants to transmission in Ontario and support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.⁷

With respect to Costs and Scheduling, TPT submits that information on costs and scheduling with respect to development may be evaluated by the Board on a quantitative basis in Phase II. However, insofar as costs and scheduling are related to construction and operation and maintenance of the Project, TPT cautions that any quantitative analysis (i.e. direct comparison of numbers) may not be indicative of the most cost-efficient and capable transmitter. At such an early stage in the Project development, TPT submits that it is not feasible to provide cost and scheduling estimates for construction and operation with a high degree of certainty. Rather, TPT submits that an

⁵ Other criteria are identified in the Guideline, however they have not been mentioned since the Applicant has no comment on them.

⁶ The exception of course is in instances where the use of "transmission lines" is specific to the technology being used, etc.

⁷ EB-2010-0059, *Board Policy: Framework for Transmission Project Development Plans*, at Section 1.1.

indicative schedule and cost estimate may be used by the Board to evaluate the Applicant's organizational and project management capabilities.

Applicant Information and Plan Overview

Staff have chosen to combine and replace the filing guidelines under the headings *Applicant Information* and *Plan Overview* with a single section entitled "1. Background Information". TPT agrees with Staff's proposed changes. In particular, TPT submits that much of the information requested under the Guideline's *Plan Overview* has become irrelevant due to the fact that there is now only one project to consider in this designation process.

Organization and Applicant's Experience

With the exception of the Panel Guideline's filing requirement related to participation by First Nations and Métis groups, TPT does not propose any changes to this particular section of the filing requirements.

Regarding the Aboriginal participation-related filing requirement, TPT submits that, as outlined in Issue 2, the designation process is not the appropriate process for evaluating or assessing an Applicant's current participation arrangements with First Nations and Métis groups. Rather, the Applicant's commitment to enter into participation arrangements for the Project and experience in developing participation arrangements for completed linear infrastructure projects should be evaluated. The Panel Guideline filing requirement should be replaced with the following filing requirements:

- A commitment by the Applicant to achieve a participation arrangement with affected First Nations and Métis communities that is consistent with a cost effective and reliable transmission solution.
- The Applicant's proposed method and schedule for seeking participation by First Nations and Métis groups.
- The Applicant's experience in achieving participation arrangements with Aboriginal communities in completed linear energy infrastructure projects, including the nature of the participation and the benefits to Aboriginal communities arising from such participation.

Staff Guideline Section 2.4, Section 2.5 and Section 2.6⁸ should not be included as filing requirements. TPT has a practice of working closely with First Nations and Métis groups throughout Canada and would work with First Nations and Métis to identify mutually agreeable and appropriate opportunities in the development, construction and operations components of the project at hand. However, as noted in Issue 2, this requires a dialogue with First Nations and Métis groups, not a unilateral decision by TPT. This dialogue can only be commenced in a meaningful way when the designation is granted. Otherwise, the opportunities are hypothetical. Further, requiring each Applicant to enter into separate negotiations on a hypothetical arrangement would not be

⁸ Regarding Section 2.6, TPT does not see how the Project could go forward without the participation of First Nations and Métis communities and therefore believes this criterion is not necessary.

productive or cost efficient (for any of the parties involved). From the Board's perspective, TPT does not believe that the Board is in a position to evaluate participation in this designation proceeding, especially with no input from the affected communities.

More particularly, as noted in Issue 2, the Bamkushwada First Nations are shareholders in EWT LP and have entered into confidentiality agreements with the other partners in EWT LP. It follows that Applicants other than EWT LP are not able to discuss potential participation in the development of the Project with this particular group. If EWT LP is not ultimately designated, the Bamkushwada First Nations should be free to negotiate with the transmitter that is designated. Staff's approach to attempt to solidify Aboriginal participation at this early stage in the process could have the effect of freezing current arrangements and thus precluding the possibilities of Aboriginal participation under different future scenarios. Given the early stage of the designation process, this approach is more likely to limit the prospects of arrangements with Aboriginal communities than facilitate them. Furthermore, as noted above, the Bamkushwada First Nations comprise only six of the eighteen Aboriginal communities identified by the Minister in the Consultation Letter.

In the event that the Board adopts the Staff Guidelines Section 2.4 – 2.6, TPT submits that the participation of the Bamkushwada First Nations should not be given any more weight than a commitment by Applicants to enter into participation arrangements with First Nations and Métis communities.

In the event that the Board chooses not to accept commitment to Ontario as a new Decision Criterion, this evaluation criterion could be added as a filing guideline. Therefore, in the alternative, and in addition to the foregoing changes, TPT suggests an additional filing guideline related to Applicant's experience: "Demonstrated commitment to investing in the Ontario energy sector." To re-iterate, the purpose of adding this criterion is to recognize the fact that this process will choose a company that will have a long term obligation to providing a public utility for the benefit of the province. It is not a one-off project but, in part, a new partner to the regulatory compact between the OEB and public utilities. It is therefore important that the Board choose a partner who has already demonstrated a significant commitment to the province.

Project Identification

TPT submits that the first filing requirement in this section regarding general routing should be replaced with Staff Guidelines Section 5.1 – 5.3 given that the structure and required detail will be beneficial to the Board in evaluating applications.

The second filing requirement regarding primary route should be amended to only refer to route alternatives and it should be characterized as initial alternatives only given that route selection as a result of a comprehensive alternatives analysis will be conducted at the leave to construct stage. TPT proposes that, at the designation stage, it is more relevant to consider potential corridors and a routing criteria methodology that will be applied post designation. The second filing requirement should read as follows:

- The Applicant should provide a preliminary list of alternatives and an explanation of the basis and method for route analysis and decision criteria and planned schedule for route selection.

Technical Capability

Generally speaking, the criteria under the “Technical Capability” filing guideline should be reframed so as to refer to the ability of the Applicant to contract for and manage key technical teams that will be involved in the design, construction and operation of the Project. The reality is that the designated transmitter will outsource the various components of the technical design and construction to expert, third party suppliers and service providers. This approach provides a level of cost control in the execution of the Project that is of benefit to the ratepayer since risks associated with Project costs can be managed through binding contracts. Therefore, the Applicant’s technical capability will be a direct result of their expertise in project management, particularly for large, linear infrastructure projects.

TPT further submits that the following amendment be made to the filing requirement regarding evidence of experience in other jurisdictions:

- Evidence of experience in other jurisdictions in constructing and operating large scale linear infrastructure projects in similar terrain and climatic environmental conditions.

TPT’s concern with Staff Guideline Section 3.3, is that it favours the incumbent transmitters that are involved in this designation proceeding as partners in EWT LP. Such a criterion is contrary to the Board’s stated purpose in the designation proceeding, which is to encourage the new entrants and competition in Ontario electricity sector.

Schedule

TPT appreciates the further delineation between the development schedule and the construction schedule in the Staff Guidelines in Sections 6.1 to 6.3. As per TPT’s observations with respect to costs, TPT submits that the Board should refrain from putting significant weight on the construction schedule provided in a development plan and any specific date associated with bringing the project into service as the schedule, by its nature, will be a floating one that is a function of when leave to construct is obtained, which, in turn, is a function of when designation will occur, among other things.

In light of the foregoing, TPT agrees with the filing requirements established by Staff in Sections 6.1, 6.2 and 6.3 with a minor exception. In Section 6.1, Staff proposes that the Applicant submit “proposed consequences for failure to meet the required performance milestones and reporting requirements for the development phase.” TPT submits that Applicants will require certainty on this issue and that it should be settled by the Board in advance of the Phase II process.

Regarding Staff Guideline Section 6.4, for the reasons noted in the introductory paragraph of this Issue No. 7, TPT submits that the filing requirement should be expanded to “large-scale linear infrastructure energy projects” rather than limited to “transmission lines”.

Regarding the Board Guidelines’ filing requirement around sequencing of projects, TPT agrees with Staff’s submissions that this criterion should be deleted since the designation process is limited to a single transmission line, i.e. the Project.

Finally, it is important to bear in mind the fairness and transparency of process. Construction schedule is directly tied to the timing to complete pre-feasibility studies in order to develop project alternatives. In the event that the incumbent transmitters have carried out preliminary studies with respect to project routing - apart from the fact that these were developed at rate-payer expense - TPT submits that the Board should require disclosure of these documents to ensure that Applicants are working from the same basis and that the best transmitter is chosen.

Costs

TPT appreciates the clarity that the Staff Guidelines have provided in their Sections 7.1 through to 7.7 and adopts same in the Amended Guidelines.

Regarding construction and operation costs, as indicated above, it is not possible to provide meaningful and precise information on such costs at this early stage of the process. A more useful piece of information would be the basis for the construction and operation estimates that support the reference case (the "Reference Case") costs of the Project (which may have been developed by Hydro One Networks Inc.; if this is incorrect, the OPA may advise). Once Applicants have been provided with the Reference Case, the applications that are filed with the Board can provide an analysis and comparison of the Reference Case. In areas where the Reference Case has made contestable assumptions, an experienced developer will be able to point these out to the Board. As such, TPT does not adopt the Staff Guidelines at Sections 7.8 and instead proposes that the Applicant be required to submit the methodology and criteria for developing a detailed construction budget.

TPT has also proposed an amendment to Staff Guideline Section 7.12, which is consistent with TPT's expansion of an Applicant's experience to include all large-scale linear infrastructure projects.

TPT wishes to comment on a particular Board Guideline, which states:

- If applicable, review how the project fits within the Applicant's existing transmission network and economies that can be realized given its existing transmission system and location of maintenance centers.

The purpose of the Designation Process, as stated by the Board in EB-2010-0059, is to encourage new entrants to transmission in Ontario bringing additional resources for project development; and support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers. As such, criteria that clearly favour incumbent transmitters should not be considered as a standalone criterion in this process. There are many ways to realize economies of scale and improve upon the budget, however in a criterion worded as above, an Applicant transmitter is not necessarily provided with the platform to speak to such economic efficiencies. Rather, the Applicant's overall ability to keep costs within budget, manage a project effectively and address concerns raised by interested landowners and affected communities should be assessed overall.

Financing

TPT has no submissions on the Financing guidelines set out in the Board Guidelines. TPT notes that the Staff Guidelines appear to provide further structure and has no issue with Staff's changes.

Landowner and other consultations

TPT does not have any substantive revisions to the Panel Guidelines under this particular section. TPT also adopts Staff Guideline Section 8.5, as it views this information as helpful.

TPT submits that the information being requested in Section 8.3 of the Staff Guidelines is too detailed at this stage of development. An Applicant would not realistically be able to provide a proposed route at this stage of the development process given that none of the feasibility studies or assessment of alternatives has been carried out. An Applicant may be able to provide the information in Section 8.3 for a conceptual route, however TPT cautions the Board that this type of information will not have a reasonable degree of certainty associated with it. However, to the extent that the incumbent transmitters have carried out feasibility studies that would help the Applicants provide relevant information on the criteria proposed in Section 8.3, TPT submits that such studies should be disclosed to the Board and the Applicants. This ensures fairness of process, and also ensures that any studies developed at the expense of ratepayers are disclosed in order to ensure increased competition and ratepayer efficiency.

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?*

TPT takes no position on this particular issue, other than to note that it will inevitably elevate the level of complexity of any decision rendered by the Board.

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 (subject matter and timing)? When should these obligations be determined? When should they be imposed?*

TPT submits that it is reasonable for the designated transmitter to report on the status of achieving milestones outlined in the application and any issues that arise that would have an effect of changing the schedule or development costs outlined in the original application.

Staff submits at page 11 of their submission that one of the key purposes of designation is to encourage timely development of infrastructure. This is slight misstatement of what

the Policy actually states, which is to allow transmitters to move ahead on development work in a timely manner. While TPT expects that any development work it undertakes will move ahead in a timely manner, the Board must refrain from establishing a process that would place emphasis on meeting aggressive timelines at the expense of cost efficiency and the ability to carry out proper consultation with affected communities.

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?*

TPT is not adverse to providing in its application reasonable milestones that the Board can use to measure performance of a designated transmitter in delivering a leave to construct application. This suggestion was made by Staff in its submission. TPT does not object to this proposal. Below are suggested milestones that, subject to further refinement by transmitters in the development of plans, may be useful to the OEB in monitoring progress of a designated transmitter as it develops a leave to construct application.

- Determination of Alternatives
- Completion of Alternatives Analysis
- System Impact Assessment and Customer Impact Assessment
- Leave to Construct Filing

The milestones related to the construction period are theoretically more relevant for a subsequent leave to construct proceeding, however, if current practice by the Board is to refrain from imposing milestones on incumbent transmitters post leave to construct, then these milestones should not be considered at all.

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?*

TPT adopts Staff's alternative position on this issue, specifically, that the Board should determine the consequences of failure or delay as part of its Phase 1 decision. TPT also agrees with Staff that delays and difficulties may arise that could not have been anticipated by a diligent transmitter. TPT equally 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. As proposed by TPT in Issue 9, where the designated transmitter anticipates unavoidable sources of failure or delay, the designated transmitter should report to the Board as soon as it has exhausted its ability to mitigate the problem.

Consequences of Designation

13. *On what basis and when does the Board determine the prudence of budgeted development costs?*

TPT's assumption is that the development costs itemized in the application will be deemed prudent upon designation. TPT also expects that any application will include a contingency budget for development costs, which would also be approved by the Board upon designation. Development costs itemized in the application would therefore not require a second approval from the Board. Development costs that go beyond contingency estimates provided for in the application will have to be justified by the designated transmitter before the Board. TPT does not take a position as to when such further approval should take place.

Regarding the basis for determining the prudence of development costs, TPT submits that the Board will have to take a holistic view and rely on its independent expert. The Board will be required to first assess if an Applicant has provided the appropriate development costs, and then secondly, assess whether the costs of such line items are reasonable.

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?*

TPT submits that, in the event the Board designates a transmitter, all Applicants, including the Applicant that has been designated, should bear the costs of participating in the designation application and not be eligible for cost recovery.

15. *To what extent will the designated transmitter be held to the content of its application for designation?*

TPT agrees with Staff's submissions at page 17 that designated transmitters should be required to adhere to, at a minimum, IESO required standards, Minimum Technical Requirements and performance milestones and reporting requirements imposed. As noted above in Issue 14, TPT agrees that the designated transmitter should also adhere to its budgeted development costs and that recovery of funds beyond this must be justified to the Board. TPT believes that it should be within the Board's discretion to determine the consequences of failure to meet these commitments.

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?*

Prior to ruling on the prudence of budgeted development costs, TPT respectfully submits that the Board should first define what those development costs are. The Board's statement on what constitutes development costs to date are "route planning,

engineering, site/environmental reports and some (but not all) consultation”.⁹ Given the importance of the issue, the Board may wish to provide parties with further guidance on the matter, or alternatively, provide parties with an opportunity to make submissions on this particular issue in their reply submissions. In this regard, TPT submits that Eligible costs should also include costs associated with parallel regulatory processes, including environmental assessments.

In the event the Project does not move forward to a successful application for leave to construct for reasons beyond the designated transmitter's reasonable control, the designated transmitter should be entitled to recover all prudently incurred development costs and reasonably incurred wind-up costs.

In the event the Project does not move forward to a leave to construct hearing due to the negligence of the designated transmitter, TPT submits that the Board should work with the designated transmitter to develop a commercially reasonable approach to determine which development costs are recoverable. Further, the specific details of the circumstances under which an Applicant will be responsible for the costs where an LTC is not brought forward should be specified as a negotiated condition of a designation order so that all parties fully understand the expectations in that regard.

In the event the Project does move forward due to the bankruptcy of the designated transmitter, none of the development costs should be recoverable.

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)?***

Subject to its comments relating to issue 18, below, and to the potential need to revisit this issue if unanticipated consequences arise, TPT does not oppose a written hearing for phase 2 of the process.

- 18. *Should the Board clarify the roles of the Board's expert, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission Inc. in the designation process? If yes, what should those roles be?***

TPT proposes that Board's expert advisor, staff, the IESO, the OPA, Hydro One and GLPT communicate to the panel on the record so that all parties are aware of the information provided and can respond to it. TPT supports the innovative processes that are being tested in this process. However, there is also the need for transparency and fairness between the participants in what is a contested proceeding. This is particularly the case here, where there is a range of government mandated, owned and controlled entities involved in the process, both as advisors to the Board and as competitive participants.

⁹ EB-2010-0059, *Transmission Project Development Planning*, dated August 26, 2010, at p. 15.

Staff states that its expert advisor should provide information on the record, and that the Incumbent Utilities should provide disclosure of documents (see below). TPT agrees with this and proposes that this requirement should also apply to the communications between the other public agencies and utilities, namely the IESO, the OPA and Board staff.

The IESO and the OPA have put some materials on the public record that address reliability and need. However, it appears that the OPA has additional relevant material respecting need. Need in this case is defined as “economic” as opposed to “reliability” in the sense that the system costs of expanding the transmission line are less than the system costs of generation. However, the OPA has not provided any detailed breakdown for these numbers nor an indication of the relative value of various in-service dates. This information would be of assistance in developing and evaluating alternative plans and should be provided on the public record.

TPT is concerned that this proceeding has contained panel decisions that addressed the make up of the issues list and evaluating procedural proposals may have relied upon information provided by Board staff and not the submissions or parties. With all respect, this approach is not consistent with the expected level of transparency in a hearing. Staff communications with the panel should therefore be provided on the public record.

Further, Board staff appears to be taking a fairly extensive role in this proceeding. For example, it is not clear if staff will be involved in what it refers to as the “funneling of interrogatories”. If staff is involved, it is not clear who will be providing staff with instructions. It is also not clear whether the other agencies (the OPA, the IESO and the Incumbent Utilities) will be involved in “funneling interrogatories” and, if so, who will be providing *them* with instructions. Given that interrogatories may well be aimed at those agencies, their role in the “funneling process” and with Board staff generally should be transparent and on the record.

19. *What information should Hydro One Networks Inc. and Great Lakes Power Transmission be required to disclose?*

The Incumbent Utilities should be required to disclose all materials that may be relevant to any issue in the proceeding.

After weeks of prodding by new entrant transmitters, the Incumbent Utilities have each produced a list of documents that they prepared in the course of providing utility services. TPT submits that all these documents may be relevant and should be disclosed. Given that the Incumbent Utilities have not made submissions, or even articulated a rationale for not disclosing documents, TPT is not in a position to address any specific documents and will do so in reply submissions.

20. *Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?*

TPT does not propose that any special conditions regarding participation in the designation process be placed on registered transmitters. The Board’s focus should be on the Incumbent Utilities.

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?***

The Incumbent Utilities are in a conflict of interest in these proceedings. The conflict arises because the transmission designation process is aimed at attracting new participants to the province to provide transmission services – these new participants directly compete with the Incumbent Utilities.

This conflict of interest has already become manifest in that both Incumbent Utilities have failed or refused to voluntarily provide any documents that they have prepared respecting the East-West Tie line. They have taken the position that they will only provide assistance as ordered by the Board. In this sense, seeking their supportive participation in this proceeding is like “pushing a string.” It is simply not realistic, nor fair to the new entrants, to allow the Incumbent Utilities to operate on the basis of an honour system when it comes to addressing their competitive advantage.

The Board has used the ARC and ARC like instruments to regulate the conflict of interest that arises when utilities compete with non-utilities for contestable business for over 15 years – well before it had explicitly authority to pass ARC rules and codes. It is a standard method of addressing this issue and is particularly apt here.¹⁰ Where the ARC has not applied, the Board has prevented utilities from leveraging their utility status for the benefit of competitive enterprises in a number of cases. Indeed, in *every instance* where the Board has permitted utilities to participate in contestable activities, it has required them to comply with regulatory requirements to ensure that they cannot make use of information and resources acquired in the course of providing utility services to their competitive advantage. The Board has *never* accepted a voluntary compliance approach.

Yet, so far, for some reason, the honour system has been the operative practice. By letter dated December 22, 2011, the Board sent the following request to the Incumbent Utilities:

¹⁰ The objectives of the ARC, which are equally applicable here, are:

- (i) protecting ratepayers from harm that may arise as a result of dealings between a utility and its affiliate;
- (ii) preventing a utility from cross-subsidizing affiliate activities;
- (iii) protecting the confidentiality of information collected by a utility in the course of provision of utility services;
- (iv) ensuring there is no preferential access to utility services;
- (v) preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider; and
- (vi) preventing customer confusion that may arise from the relationship between a utility and its affiliate.

“Given your status as Ontario’s major incumbent electricity transmitters, please provide to the Board a complete description of any rules, policies, practices, IT infrastructure and other protocols that you have in place to ensure that any information and resources that you have developed or acquired relevant to the development of the East-West Tie Line cannot be accessed by any registered transmitter. In addition, please describe the protocols you have developed (or propose to develop) regarding the sharing of information necessary to prepare an application for designation with all registered transmitters.”

Both of the Incumbent Utilities responded to this letter by describing the sincerity of their intentions with respect to facilitating this process and by pointing to various voluntary internal protocols respecting the handling of information requests from all transmitters. However, they did not address how to prevent the employees from Incumbent Utilities that are also employees, officers or directors of their affiliates from making use of confidential information or system planning information for the benefit of EWT.

EWT’s Key Individual’s include Andy McPhee, Jeff Rosenthal, Sandy Struthers and Carmine Marcello. These individuals are well known in the sector but their professional information is treated as confidential in this proceeding. It does not violate any confidentiality order for the Board to note the fact that these persons are leaders within the Incumbent Utilities. Permitting these persons to hold senior positions with both the Incumbent Utilities and with EWT represents a perceived or real conflict of interest and does not leave one with confidence that information obtained in the course of providing utility services is being kept confidential from EWT.

This sharing would clearly not be permitted under the ARC. Specifically, s. 2.2.3 of the ARC provides that “A utility shall not share with an affiliate that is an energy service provider employees that are directly involved in collecting, or have access to, confidential information.”

The Incumbent Transmitters have chosen to participate in the designation process through EWT. If they had structured their participation through affiliates, they would be bound by all of the rules governing their relationships with their affiliates, including the Affiliate Relationships Code. If the Incumbent Utilities had separately created companies through which they can participate in this process, they would be governed by these instruments. It is hard to see why they should not be governed by combining their interests.

Further, the Board has not been deterred by technical ARC avoidance in the past.

The Board’s requirements have been imposed on utilities seeking to engage in contestable activities, such as electrical contracting¹¹, natural gas storage,¹² and smart metering.¹³

¹¹ Hydro One Rates Decision, May 26, 2000. (RP-1999-0044). The Board eventually ordered both of the Incumbents to exit the contracting market, see: Hydro One and Great Lakes Power Connection Procedures, September 7, 2007 (EB-2006-0189; EB-2006-0200).

¹² Natural Gas Electricity Interface Decision, November 7, 2006, p. 75 (EB-2005-0551).

¹³ See: Power Stream distribution rates for 2009, July 27, 2009 (EB-2008-0244).

With respect to electrical contracting, the Board stated that the facilitation of competition in that sector required the elimination of subsidies of any contracting activities of the incumbent transmitter. The Board put it as follows:¹⁴

“The timing of eliminating the OHNC-provided option however very much depends on how quickly the competitive market for construction of these facilities develops. This in turn depends on three things. First, the OHNC-provided option must not be subsidized in any way. In this regard, while the objective of holding the respective pools harmless is laudable, it should not be the only objective. The other objectives must be to ensure that choice of a costing policy will not discourage the development of the competitive market. If, for example, the hold harmless objective leads to a financial contribution that, in total, represents a cost to the load customer well below market alternatives, the connection facilities market may never develop as envisaged by OHNC. It is therefore important that OHNC adopt a costing policy for connections that represents fully allocated costing.”

With respect to natural gas storage, the Board agreed with Board’s staff submissions that utility participation in this market would be conditional upon the Board pursuit of rules aimed at the achievement of the following four key principles:¹⁵

"Create a level playing field for market participants,

Adopt rules and practices to govern affiliate behaviour that protect the public interest,

Support open and non-discriminatory access to transmission, and

Establish a transparent storage/transmission market so market participants can make informed decisions.”

With respect to suite metering, the Board stated:¹⁶

“An existing condominium wishing to be smart metered or a developer of a new condominium building has the choice of choosing suite metering with PowerStream or sub-metering with another company, such as one of the SSMWG member companies. So, the metering market is contestable. *The fact that PowerStream is allowed to carry this activity as part of its distribution business does not take away from the fact that the metering of condominium units is a contestable market. To the extent that there is a cost subsidy as the SSMWG alleges, and if material, the SSMWG may be legitimately concerned.*”

Thus, in every instance where the Board has permitted utilities to participate in contestable activities, it has required them to comply with regulatory requirements to

¹⁴ EB-1999-0044, para. 35.17 (emphasis added).

¹⁵ Natural Gas Electricity Interface Decision, November 7, 2006, p. 75 (EB-2005-0551).

¹⁶ Power Stream distribution rates for 2009, July 27, 2009 (EB-2008-0244), at p. 5(emphasis added).

ensure that they cannot make use of information and resources acquired in the course of providing utility services to their competitive advantage.

23. *What should be the required date for filing an application for designation?*

TPT assumes here that the Board is referring to the development plan when it references the application for designation. TPT suggests that a six month period of time be chosen for transmitters to develop their plans as this is the first time this process has been carried out by the Board. That timing assumes that sufficient information is provided to prospective participants in order to prepare the application, including adequacy of information filed by the incumbent transmitters, Great Lakes and Hydro One.

All of which is respectfully submitted.

APPENDIX A – AMENDED FILING REQUIREMENTS

Background Information

The applicant must provide the following information:

- The applicant's name.
- The applicant's OEB transmission licence number.
- Any change in information provided as part of the transmitter's licence application.
- Confirmation that the applicant has not previously had a licence or permit revoked and is not currently under investigation by any regulatory body.
- 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.
- A statement from a senior officer that the application for designation is complete and accurate to the best of his/her information and belief.

Organization and Applicant's Experience

The Applicant shall identify how, from an organizational perspective, it intends to undertake the project(s) in its plan.

- An overview of the organizational plan for undertaking the project(s), including any partnerships or contracting for significant work. If there are third parties that are proposed to have a major role in the development, construction, operation or maintenance of the projects, these third parties must be identified and their role in the project(s) described.
- An organizational chart to illustrate the information above.
- A commitment by the Applicant to achieve a participation arrangement with affected First Nations and Métis communities that is consistent with a cost effective and reliable transmission solution.
- The Applicant's proposed method and schedule for seeking participation by First Nations and Métis groups.
- The Applicant's experience in achieving participation arrangements with Aboriginal communities in completed linear energy infrastructure projects, including the nature of the participation and the benefits to Aboriginal communities arising from such participation.
- An overview of the Applicant's experience with regulatory processes, the acquisition of land use rights and landowner and other required consultations.
- The specific management team for each project must be identified, and resumes provided for key management personnel.

- [Evidence of the Applicant's demonstrated commitment to investing in the Ontario energy sector.][NTD: To be considered if not adopted as a Decision Criterion.]

Transmission Project(s)

This section is generally intended to solicit information regarding the Applicant's plan for each specific project in its transmission project development plan. Where the relevant information is the same for more than one project, that fact should be noted with appropriate cross-references. In such a case, the information need not be repeated in detail.

Project Identification

The Applicant must identify the project by reference to the description provided in the Notice issued by the Board to initiate the designation and plan approval proceeding, and provide an overview of each project. For each project, the following should be provided:

- The Applicant should provide a list of alternatives and an explanation of the basis and method for route analysis and decision criteria and planned schedule for route selection.
- 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)²; and
 - summer emergency rating (MVA)³ ;
 - 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.
- 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.

- 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.

Technical Capability

The Applicant must demonstrate the technical capability to engineer, plan, construct, operate and maintain the project, based on experience with projects of equivalent nature, magnitude and complexity. To that end, the following should be provided in relation to the project:

- A discussion of the type of resources, including relevant capability (in-house personnel, contractors, other transmitters, etc.) contemplated for use by the Applicant for the following: design, engineering, material and equipment procurement, licensing and permitting, construction, operation and maintenance, and project management.
- Resumes for key technical team personnel.
- The project team's relevant experience and the available resources that would be dedicated to each activity associated with developing, constructing, operating and maintaining the project, including design, engineering, material and equipment procurement, licensing and permitting, construction, operation and maintenance, and project management.
- A description of any anticipated permitting issues and a plan to mitigate them.
- A description of any technological innovation that is proposed in relation to the project.

An Applicant that does not, at the time of filing, have transmission assets in the Province of Ontario should also provide the following:

- Evidence of experience in other jurisdictions in constructing and operating large scale linear infrastructure projects in similar terrain and climatic environmental conditions.
- 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.
- Confirmation that the Applicant has not previously had a licence or permit revoked and is not currently under investigation by any regulatory body.

Schedule

The applicant must file, as part of its Plan:

- A project execution chart showing major milestones for both line development and line construction phases of the project.
- 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;
 - 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.
- 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.
- Evidence of the applicant's past success in completing large-scale linear infrastructure 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 large-scale linear infrastructure project and the actual completion dates of the milestones identified in the schedule.
- Any innovative practices that the applicant is proposing to use to ensure compliance with, or accelerate the line development and line construction schedules.

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:

- The amount already spent for preparation of an application for designation, and an estimate of remaining costs to achieve designation.

- 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.
- The basis for and assumptions underlying the cost estimates.
- A schedule of development expenditures.
- 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.
- A proposed threshold of materiality for prudence review of cost overruns for the costs of development.
- 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.
- A methodology for estimating the budget for the construction of the line, noting any significant anticipated contingencies.
- 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.
- The methodology for estimating the average annual cost of operating and maintaining the line.
- Evidence of the applicant's past success in completing large-scale linear energy infrastructure projects within planned budgets. Such evidence could include a comparison of the budget filed with a regulator when seeking approval to proceed with the linear infrastructure project and the actual costs of the project.

Financing

The Applicant must demonstrate that it has the financial capability necessary to develop, construct, operate and maintain the project. The Applicant shall demonstrate its existing financial capacity, its ability to access the debt and equity markets and the terms and conditions of any financing.

In this section, the Applicant shall provide the following:

- Evidence that it has capital resources that are sufficient to develop, finance, construct, operate and maintain the project, when considered individually and in conjunction with all other projects in the plan.
- Evidence that the financing, construction, operation, and maintenance of the project, when considered individually and in conjunction with all other projects in the plan, will not have a significant adverse effect on the Applicant's creditworthiness or financial condition.
- 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, and short-term and long-term maturities.
- 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 and the terms and conditions applicable to the debt or equity financing.
- The Applicant's current cost of debt, and a discussion of how the project, when considered individually and in conjunction with all other projects in the plan, might impact this cost of debt.
- The identification of any alternative mechanisms (e.g., rate treatment of construction work in progress) that the Applicant is requesting or likely to request.¹⁷

Land Owner and Other Consultations

The Applicant must demonstrate the ability of its management team to conduct successful consultations with landowners, First Nations and Métis and other relevant parties.

In this section, the Applicant shall identify:

- An overview of the rights-of-way and other land use rights that would need to be acquired for the purposes of the development, construction, operation and maintenance of the project, and the Applicant's schedule and proposal for obtaining those rights.
- A consultation plan for the project, including:

¹⁷ 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

- Identification of the parties to be consulted;
- A schedule for consultations with each party; and
- The method of consultation for each party or class of party.
- A description of the project team's consultation experience, broken down by reference to each class of party to be consulted.
- A description of any significant issues anticipated in consultation and a plan for mitigation.

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 plan.