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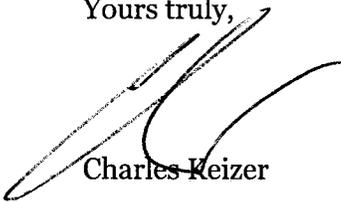
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2011-0140 -- EWT LP submissions pertaining to the issues in Phase 1 of the East West Tie Designation Proceeding

We are counsel to EWT LP. In accordance with the Board's Procedural Order No. 2, attached are EWT LP's submissions pertaining to the issues in Phase 1 of the East West Tie designation proceeding.

Yours truly,



Charles Keizer

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cc: A. McPhee, GLPT-EWT LP
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Enclosure

EWT LP SUBMISSION

EB-2011-0140

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

Phase 1

May 7, 2012

Introductory Remarks

EWT LP is a newly formed Ontario entity that has been established for the purposes of planning, developing, constructing, owning, operating and maintaining electricity transmission facilities associated with the proposed East West Tie Line project. EWT LP is controlled by its general partner East West Tie Inc. The shares of East West Tie Inc. are held equally by each of Great Lakes Power Transmission Inc., Hydro One Inc. and Bamkushwada L.P. As such, none of these shareholders has control over EWT LP or its general partner. Rather, EWT LP is comprised of equal, arm's length partners, each with its own, distinct commercial interests, and each on its own unable to control EWT LP.

The limited partnership interests of EWT LP are held equally by three limited partners, Hydro One Inc., Great Lakes Power Transmission EWT L.P. ("GLPT EWT LP") and Bamkushwada LP.

- Hydro One Inc. is a holding company wholly-owned by the Province of Ontario.
- GLPT EWT LP is indirectly controlled by Brookfield Infrastructure Partners L.P. through GLPT EWT LP's general partner. In particular, all of the shares of GLPT EWT LP's general partner, as well as all of the limited partnership interests in GLPT EWT LP, are held by Brookfield Infrastructure Holdings (Canada) Inc., which is in turn controlled by Brookfield Infrastructure Partners L.P.
- Bamkushwada LP. is a newly formed limited partnership, the interests of which are held equally by each of six limited partners: (1) Fort William First Nation, (2) Red Rock Indian Band, (3) Pays Plat First Nation, (4) Ojibways of Pic River First Nation, (5) Pic Moberg First Nation, (6) Michipicoten First Nation. The traditional territories of these six First Nations are situated along the East West Tie Line project corridor.

Each of the limited partners brings unique skills, resources and experience to the limited partnership, including with respect to technical and financial capabilities, project development capabilities and stakeholder relationship capabilities.

Before making its submissions, EWT LP would like to highlight that the designation process is about selecting an applicant's plan to complete the *development* of the East West Tie, and ultimately to make a leave to construct application. In demonstrating its ability to successfully develop this project, each designation applicant will have to prepare a development plan that attests to a broader range of capabilities and challenges, such as the ability to carry out consultations, technical studies and an environmental assessment. The outcomes of these consultations, studies and assessments will ultimately shape the leave to construct application but are unknown at the outset of the development process. As a result, in establishing criteria for the selection of a designation plan, the Board must recognize that the details that will form part of a leave to construct application will vary depending on the results of the East West Tie development work. Therefore, the key aspect to consider in selecting the designated transmitter

will be the applicant's approach to and understanding of project development rather than its commitment to certain line construction or routing choices or other technical parameters.

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)?

EWT LP's proposed additions, deletions and changes to the general decision criteria are noted below.

Additions

EWT LP suggests the addition of a new criterion: Regulatory Expertise. This criterion would be used to assess the applicant's experience in developing major linear infrastructure and energy projects in a substantially similar legislative and regulatory environment, e.g., in Canada. For example, the ability to complete the environmental assessment and to obtain the necessary permits will be fundamental to the project's timely and cost-effective completion. As a result, expertise in a substantially similar legislative and regulatory environment will be critical component of a proponent's successful development of the East West Tie.

Deletions

None.

Changes and Clarifications

1 Technical Capabilities

The development of the proposed East West Tie will require the acquisition of new right of way and the completion of one or more environmental assessments. The technical capability to manage the acquisition of a new right of way and undertake environmental assessments -- particularly in similar geographic/topographic conditions (e.g., in terrain similar to the Canadian Shield featuring forest zones with dense vegetation and steep elevations -- should therefore be recognized within the criterion *technical capability*.

2 Landowner and other consultations

The development of the proposed East West Tie will require consultation with a number of distinct groups including Aboriginal peoples, land owners and the public. EWT LP

suggests that the criterion *landowner and other consultations* should be split into two separate criteria:

- (i) Land owner and public consultation; and
- (ii) Aboriginal consultation

EWT LP believes splitting this criterion properly recognizes and respects the constitutional nature of Aboriginal consultation arising from the Crown's fiduciary duty towards Aboriginal peoples. For further detail on why Aboriginal consultation should be a separate criterion, please see EWT LP's submissions on issue #3 below.

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

Aboriginal participation concerns the economic involvement of Aboriginal communities in a project. This involvement can take a variety of forms, ranging from an equity interest in, to employment in connection with, the project.

EWT LP believes that participation by those Aboriginal communities most affected by the East West Tie is fundamental to the success of the project. Aboriginal participation must therefore be woven throughout a number of designation plan aspects and not just treated in isolation. For example, Aboriginal participation relates directly to the how an applicant fulfills the Filing Requirements relating to Organization; Strength of Plan; Schedule; and Costs. This is because the participation of directly affected Aboriginal communities in the East West Tie project helps ensure that their particular knowledge and expertise is used to achieve the most timely and cost-effective project possible.

Therefore, EWT LP submits that it is not appropriate to treat Aboriginal participation as a separate criterion, which compartmentalizes it without due regard to how it might impact the other criteria. Rather, it is preferable to treat participation by directly affected Aboriginal communities as an overarching consideration. Doing so allows the Board to assess, on the merits, how such participation is addressed in each proponent's designation plan, which shifts the focus from the nature of participation to the effect of participation on the delivery of a cost-effective transmission project. The onus should be on each transmitter to show how it will address Aboriginal participation in a manner which enhances its ability to satisfy each of the key filing requirements.

This approach is consistent with the Minister's letter to the Board of March 29, 2011 which referred to the significance of Aboriginal participation to the delivery of the transmission project. It is also consistent with Board Staff's recommendation to expand the informational requirements in the "Organization and Applicant's Experience" and "Landowner and Other Consultation" sections of the Filing Requirements in recognition of the importance of the Minister's letter.

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?*

Yes, the Board should add the criterion of the ability to carry out the procedural aspects of Aboriginal consultation.

Aboriginal consultation is a Constitutional duty of the Crown that results from the honour of the Crown and its fiduciary duty towards Aboriginal peoples. In discharging this duty, the Crown may choose to delegate the procedural aspects of the duty to project proponents. When that delegation occurs, a proponent's ability to carry out the procedural aspects of Aboriginal consultation is essential to a project's successful completion. If consultation and appropriate accommodation is done incorrectly or insufficiently, the Crown's duty is not discharged, and the project's permitting is vulnerable in a regulatory setting and on any judicial review. In this regard, Aboriginal consultation is fundamentally different than Aboriginal participation.

Because Aboriginal consultation is so fundamental to the completion of a successful project, it should be included as its own criterion. This approach is consistent with the Minister's letter of March 29, 2011, which emphasized the importance of a proponent's ability to carry out the procedural aspects of Crown consultation. It also recognizes recent past practice, such as where the procedural aspects of Crown consultation were delegated to Hydro One Networks Inc. in the Bruce to Milton transmission project.

In terms of assessing this criterion, a proponent should submit a consultation plan as part of its designation filing. Given that each consultation is unique and must take into account the concerns of the affected Aboriginal communities, the submitted consultation plan should be tailored for the specific consultation necessary for the East West Tie. This plan should allow the Board to determine how well the proponent has considered the matter of consultation, and the reasonableness, quality and comprehensiveness of its plan. In particular, EWT LP submits that the Board should assess the criterion by reviewing the reasonableness, quality and comprehensiveness of the consultation plan, considering factors such as how and when and with whom consultation will occur.

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

The Minister's letter recognizes the existence of the Constitutional duty of Aboriginal consultation and the practical importance of Aboriginal participation. Consultation and participation are fundamental to the success of the East West Tie and must be considered regardless of the legal effect of the Minister's letter. See EWT LP's submissions on issues #2 and #3 above.

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?*

No, the Board should not assign relative importance to the decision criteria.

Designation of a transmitter to undertake development work on the proposed East West Tie is a regulatory proceeding, not a commercial procurement. EWT LP notes that the Board is a regulatory tribunal and as such should base its decision on the evidence in the proceeding taking into account the individual circumstances of the project. The Board should not fetter its discretion by assigning quantitative rankings, groupings or weightings to the relative importance of the decision criteria before hearing the evidence.

Instead, the Board should use its judgment to determine the relative importance of the evidence. The evidence will speak to where the greatest challenges will likely arise in the development of the East West Tie; having heard the evidence, the Board will be better situated to consider whether an applicant's designation plan is sufficiently robust to meet those challenges. EWT LP submits that the Board should not assign relative importance to the decision criteria in the absence of the evidence. This approach is consistent with Board staff's submission that, at this stage, the evidentiary record may still be insufficient for the Board to understand fully the relative importance of the decision criteria.

6 *Should the Board articulate an assessment methodology to apply to the decision criteria? If yes, what should this methodology be?*

No, the Board should not articulate a formulaic assessment methodology.

Designation of a transmitter to undertake development work on the proposed East West Tie is a regulatory proceeding, not a commercial procurement. As such, and remembering that the Board is a regulatory tribunal, EWT LP believes the Board should base its decision on the evidence in the proceeding taking into account the individual circumstances of the project and not fetter its discretion by adopting any particular assessment methodology.

Generally speaking, rather than being a product of a formulaic assessment methodology, the Board's decision should be based on a standard such as whether a particular designation plan accurately identifies challenges in developing the East West Tie, and ways to overcome those challenges so that, on the balance of probabilities, the plan is most likely to result in the successful development of the East West Tie. This would be similar to the Board's decisions in rate applications, where the Board considers whether the rates are just and reasonable.

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

EWT LP's comments are based on the detailed filing requirements set out in the Board Staff Submission, Appendix A, filed April 24, 2012. Suggested additions, deletions and changes are noted below.

Additions

1.5A A statement from a senior officer that the applicant has not coordinated or communicated with any other designation applicant with respect to the preparation of development plans or strategy in the designation process, and that the applicant has not shared information about its development plan or its participation in the designation process with any other applicant. For further background on this addition, please see EWT LP's submission on issue #20.

Deletions

Section 6.3 At the time of designation, the designated transmitter will not have undertaken any environmental assessment work. This work will determine key aspects of the project, such as the routing and the construction methodology, that will affect the construction schedule. Therefore, EWT LP questions the value of providing a preliminary construction schedule for a line that has yet to be designed. In fact, it will be important not to provide such information before the environmental assessment has been initiated so as not to prejudice the outcomes of the environmental assessment and the associated consultations.

Section 7.8 EWT LP questions the value of providing a preliminary construction cost estimate for a line that has yet to be designed, especially given that no consultation with land owners or the public would have been completed to determine the right of way.

Changes

Section 5.1. The parameters highlighted in the proposed filing guideline section 5.1 e.g. choice of tower structure type and composition, voltage, choice of conductor etc. will be determined by the designated transmitter once designated. Many of these parameters cannot be meaningfully determined without having first undertaken public consultation. EWT LP suggests the filing

guidelines should be amended to require the transmitter to describe the development activities planned to determine these parameters.

Section 5.2 Whether the new line should be switched at Marathon transformer station would seem to be an output of the designated transmitter's development work determined after a rigorous consideration of the associated costs and benefits. EWT LP suggests the section should be revised to require the transmitter to describe the development plan to determine these parameters.

Section 5.3 This section should be revised to require the transmitter to confirm that the line will be designed to meet or exceed the relevant NERC etc. standards expected to be in force when the line enters service.

Section 5.4 EWT LP believes the Reference Option has been of value helping intervenors and transmitters understand the scope and scale of the project. However the Reference Option presumes answers to parameters, such as the choice of conductor, that the designated transmitter will be required to determine as part of its development work and will be responsible for justifying as part of any future application for leave to construct. Rather than indicate in detail where the proposed plan differs from the Reference Option, EWT LP suggests that transmitters can be required to indicate only where there are material changes from the Reference Option in terms of route, capacity or technology. The rest of section 5.4 can then be used for transmitters to describe their development methodology.

Section 6.1 The plan should distinguish between milestones that form part of the development plan and milestones relating to construction activities. The Board is being asked to approve development milestones as part of this application. Milestones for construction activities will be subject to the Board's future review and approval in an application for leave to construct.

Section 8 As per our response to Issue #1 above, this section should be split in two to distinguish between (i) *landowner and public consultation* and (ii) *Aboriginal consultation*.

Clarification

EWT LP would appreciate the Board's guidance on whether the content of transmission project development plans should follow the order as set out in the approved filing guidelines i.e. do the guidelines set both the minimum contents and the format or only the minimum contents?

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?*

No. EWT LP believes transmitters should not be allowed to submit plans for separate segments of the East West Tie line.

We believe that allowing transmitters to submit plans for separate segments will significantly increase the complexity, cost and duration of the designation process to the detriment of ratepayers. The designation process is already administratively complex, given the number of designation applicants and intervenors, even if the applicants each only present one plan for development. Allowing applicants to submit multiple plans for separate segments of the project would likely require further assessment and examination of those options, making the designation process lengthier, more challenging to administer and consequently less efficient.

EWT LP notes the East West Tie will use the same technology from end to end and has been contemplated as a single project, as opposed to other recent major projects, such as the CREZ transmission projects in Texas, which involve significantly longer transmission lines.

Ultimately, we believe allowing different transmitters to develop separate segments will introduce new risks for ratepayers (e.g., one segment of the project is of no value without the other); result in confusion amongst land owners, Aboriginal communities and the public; and result in unnecessary duplication during the permitting process.

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?*

Reporting obligations should be sufficient to give the Board comfort that the designated transmitter is making reasonable progress against his approved transmission project development plan. As a minimum, the reports should indicate whether planned milestones have or will be met in the current reporting period and, if not, the remedial actions the transmitter intends to undertake to stay on schedule and on budget. The report should also state if any significant new risks have occurred outside those in the original plan.

Reporting should be sufficiently frequent for the Board to track the designated transmitter's process but not so frequent as to result in an unnecessary administrative burden (at ratepayers' cost) for either the transmitter or Board staff. Although the decision as to the reporting obligation is at the Board's discretion, EWT LP suggests time-based (quarterly or half-yearly) reporting plus on exceptions would be appropriate.

Reporting obligations for development work should be determined during the designation process, and for construction work as part of any future application for leave to construct.

Reporting obligations could be imposed through conditions in the designation decision (for development work) or the granting of leave to construct (for construction).

10 *What performance obligations should be imposed on the designated transmitter? When should these obligations be determined? When should they be imposed?*

Designation of a transmitter to undertake development work on the proposed East West Tie is a regulatory proceeding, not a commercial procurement. As such, EWT LP agrees with Board Staff's position that it would not be appropriate for the Board to require the designated transmitter to post performance bonds or other security.

Instead, EWT LP believes that the designation process provides ratepayers the necessary confidence that the designated transmitter has sufficient financial capacity to complete development work. EWT LP also suggests the regulatory risk of cost disallowance provides a sufficiently strong deterrent. In the case of a serious performance shortfall, such as an inability to complete the project, designation could be revoked and all of the designated transmitter's actual development costs could be at risk.

- 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?"*

Development period

Transmitters should propose appropriate milestones for the development period in their transmission project development plan, as suggested by Board Staff. The milestones should be consistent with how they propose to undertake project development. The performance milestones should provide logical markers to enable the Board and ratepayers to determine whether the designated transmitter's development activities are still on schedule and on budget.

The Board should consider the reasonableness of the transmitter's proposed performance milestones as part of its review of the transmitter's plan. In this regard, EWT LP agrees with Board staff's submission that the Board might differentiate between designation applicants based on the quality of the milestones proposed in their applications.

The milestones should be imposed when the Board designates the transmitter by approving or modifying the designated transmitter's development plan.

Construction period

Transmitters should propose appropriate milestones for the construction period in their application for leave to construct.

The Board should consider the reasonableness of the transmitter's milestones as part of its review of the transmitter's application for leave to construct.

The milestones should be imposed as a condition when the Board grants leave to construct.

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?"*

EWT LP suggests that there should be two consequences for failure to meet milestones – the risk of cost disallowance, and the risk of revocation of the designation. Three consequences are evident in the following situations:

- The designated transmitter will be required to prove the necessity and prudence of any development costs. If the designated transmitter were to miss a milestone and, in so doing, incur additional development costs, those costs (like any others) would have to be justified. If the milestone was missed and additional costs incurred for reasons beyond the designated transmitters control, this would be strong evidence supporting cost recovery.
- If the designated transmitter failed to meet a milestone such that it could no longer complete with project without incurring unreasonable costs or delays, the Board would have the ability to revoke the designation.

In addition, EWT LP suggests that if the designated transmitter were to miss a key milestone, it would be required to notify the Board and, if necessary, update its development plan to ensure that future milestones would be met. Then:

- If the Board determined the designated transmitter's updated plan for completing development work were **satisfactory**, the Board would approve the updated plan and the transmitter should be allowed to continue to develop the project in accordance with the updated plan;
- If the Board determined the designated transmitter's updated plan for completing development work were **unsatisfactory**, then the Board could either (i) require the designated transmitter to further amend its plan, or (ii) select another transmitter to complete development work. In the first instance, the designated transmitter should be at risk of recovering its incremental costs if it could not later justify an additional costs associated with the amended plan. In the second instance, the designated transmitter should be at risk of recovering its entire costs.

Cost recovery should be subject to a future application to the Board, such as an application for the approval of just and reasonable rates.

EWT LP believes the risk of cost disallowance for missing performance milestones is an appropriate surrogate for the liquidated damages that might be payable in a commercial procurement.

In proposing above that failure to meet a key milestone would trigger an additional requirement to notify the Board and potentially update the plan, EWT LP suggests that the key milestones for the achievement of any designation plan should be limited to those that are truly key to its successful achievement. In EWT LP's view, the key milestones that relate to the development period might include the filing of a leave to construct application, the approval of the environmental assessment Terms of Reference and/or the successful negotiation of procurement agreements for long lead-time material and equipment.

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

Budgeted development costs will have undergone a prudence review in the designation proceeding and as such they should be recoverable. This is consistent with the Board's findings in EB-2010-0059 that budgeted development costs are assured of recovery. In particular, page 15 of the Board's report in that proceeding 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. Threshold materiality for amounts beyond the approved budget could be established in the order and would likely be in relation to the total budget.

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?*

Yes, the designated transmitter should be permitted to recover its prudently incurred designation costs.

As per the Board's findings in EB-2010-0059, the costs of plan preparation should be recoverable by the designated transmitter.¹ Recovery can be deferred to a later point. EWT LP supports the option highlighted by Board staff of using a deferral account for this purpose. Upon designation, the designated transmitter's deferral account could be discharged upon an application to the Board or as part of the transmitter's first rate case. If the project does not proceed to construction, the costs can be included in any wind-up costs and recovery mechanisms determined at that point. In both cases, post-designation the costs would include carrying charges consistent with existing practice

Board staff suggested that the designated transmitter's designation costs incurred prior to the Board's phase 1 decision should not be recoverable. EWT LP believes that this cut off is an artificial one. The real test should be whether the costs at issue were reasonably incurred for the preparation of a designation application that would benefit ratepayers. As such, EWT LP submits that the designated transmitter should be entitled to seek to recover these costs to the extent they were prudently and reasonably incurred. This recognizes that (a) interested transmitters have been aware that Ontario wished the Board to designate a transmitter to undertake the proposed East West Tie since November 2010²; (b) the draft filing guidelines have been available since August 2010; and (c) ratepayers benefit by informed transmitters participating in the Board staff's pre-designation discussions prior to the Board's phase 1 decision, which will result in a more efficient designation process.

¹ . Board Report p. 11 and 12: "Only the transmitter that is successful in being designated will be able recover the costs of preparing a plan."

² "The East West tie will be submitted to the OEB to carry out a designation process to select the most qualified and cost-effective transmission company to develop the line." p46, Ontario's Long-Term Energy Plan, Ministry of Energy, November 2010

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

EWT LP suggests the designated transmitter's approved transmission project development plan is a comprehensive and binding statement of its development work plan. The approved plan tells ratepayers what the transmitter will do, when it will do it and how much ratepayers should expect it to cost them.

Although ratepayers should have a reasonable expectation that the transmitter will deliver its approved plan both on budget and on schedule, they should however recognize the need for the plan to be flexible to adapt to changing circumstances.

See also EWT LP's answer to issue #12 and 13 regarding the expectation of cost recovery.

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?*

The designated transmitters should be entitled to recover its prudently incurred plan preparation and pre-Phase 1 costs, budgeted development costs, any variances determined to be prudently incurred, plus reasonable wind-up costs associated with terminating the project. The above costs would also include carrying charges for the post-designation period consistent with existing practice. This is consistent with the development of the East West Tie being a regulated activity.

EWT LP respectfully notes that ratepayers will benefit as much from the designated transmitter concluding that a new line is not required (and thus avoiding unnecessarily spending significant amounts on an unneeded new line) as from confirming that a new line is required.

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)?*

EWT LP agrees with Board staff's recommendation that Phase 2 should proceed by way of a written hearing. Phase 2 will involve seven transmitters seeking to be designated, as well as many intervenors and observers. The number of parties alone makes the designation process administratively complex. Each designation plan will be equivalent to a separate application to the Board. As a result, the Board will essentially have to administer seven proceedings at once, despite the common issues in each. To essentially have seven oral hearings would be very time consuming, administratively burdensome and likely result in the unfair and unequal treatment of designation applicants.

In the course of a written hearing, EWT LP supports Board staff's recommendation to have all designation applicants file proposed interrogatories with the Board, and then to have the Board consolidate and edit these interrogatories so that, ultimately, the same interrogatories are submitted by the Board to each designation applicant. This would ensure a fair and equitable treatment.

Likewise, a written hearing would avoid the prejudice that might occur in an oral hearing with so many competing parties where intervenors and designation applicants would be able to pose questions to designation participants based upon information obtained from participants that had testified earlier. The Board can avoid the prejudice that might arise as a result of the sequencing of the parties' cases, and therefore ensure all participants are subject to uniform examination, by adopting Board staff's recommended process for a written hearing.

In addition, EWT LP agrees with Board staff's suggestion that Phase 2 can include scheduled deadlines for proposed interrogatories and responses. This schedule could be set with greater certainty than in an oral hearing, where hearing dates are often subject to scheduling difficulties and delays. With these deadlines in mind, parties could work to prepare concise written submissions and responses in a format that is conducive to review and comment by a large number of parties.

The designation process must also be considered in the broader context of the East West Tie development. The Ontario Power Authority has envisioned an ambitious schedule for the construction of this project, and the designation process is one of the first steps in its completion. Any effort to make the designation process as efficient as possible will therefore help ensure the East West Tie can be constructed to meet an ambitious timetable. A written hearing could, more easily than an oral hearing, be structured to encourage an efficient designation process that enables the designated transmitter's work to begin in the timeliest fashion.

Importantly, a written hearing in no way prevents the Board from effectively assessing the parties' designation plans. The Board can still require designation applicants to respond to focused interrogatories and to provide additional submissions as necessary. The detailed, prescriptive filing guidelines will also help ensure that the appropriate information is before the Board when making its designation decision. A written hearing has the advantage of being the most efficient process and the one that best ensures that all designation applicants are treated fairly and equally, all without sacrificing the Board's ability to effectively review the designation plans.

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?*

Yes, the Board should clarify the roles of its expert advisors.

EWT LP respectfully suggests the Board clarifies that the IESO, the OPA, Great Lakes Power Transmission LP and Hydro One Networks Inc.:

- (i) act as amicus to the Board in the designation proceeding, and may provide such information to the Board from time to time as the Board considers appropriate in the circumstances; and
- (ii) are neutral participants in the designation proceeding that should not take a position with respect to which of the designation applicants should become the designated transmitter for the East West Tie.

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

Hydro One Networks Inc. and Great Lakes Power Transmission LP should be required to disclose technical information relating to the interconnection of the East West Tie to Hydro One Networks Inc. or Great Lakes Power Transmission LP's existing assets. Hydro One Networks Inc. and Great Lakes Power Transmission LP have provided lists of the technical information in their possession and EWT understands that they are prepared to make the information available to all designation applicants, subject to a Board order. These are the lists referred to in Board Staff's email dated April 9 and the Board's letter dated April 26, 2012, respectively.

To the extent the Board requires disclosure now, or going forward, of this technical information, it should ensure that the disclosure process is set out clearly and that the process for requesting any additional disclosure is transparent and applied in the same way to all designation applicants. In order to ensure the fair treatment of all designation applicants, Hydro One Networks Inc. and Great Lakes Power Transmission LP technical information should be shared through a Board-approved process and not on an ad hoc basis.

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

Yes, special conditions should be placed on all registered transmitters participating in the designation process.

The designation process was designed in part to foster a competition in the Board's selection of a designated transmitter. To ensure the competitiveness of the process, the Board should mandate that designation applicants may not coordinate or communicate with each other with respect to the preparation of their development plans or their strategy in the designation process. EWT LP further submits that the Board should condition each designation applicant's participation in the designation process such that any party found to be coordinating or communicating with other designation applicants with respect to their designation plans or designation strategy should be disqualified. The Board should also require transmitters to confirm in their transmission project development plan that no such cooperation or communications have occurred.

The foregoing would prevent two or more designation applications from coordinating their participation to enhance the chance that one of the coordinating parties will be successful, and then entering into co-development arrangements once the designated transmitter has been selected.

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?*

Yes, the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP are adequate.

Hydro One Networks Inc. and Great Lakes Power Transmission LP submitted to the Board information protocols dated January 9 and 10, 2012, respectively (the "Information Protocols") in response to the Board's letter of December 22, 2011. The Information Protocols voluntarily put in place processes to guard against even the perception of any undue relationship between EWT LP and Great Lakes Power Transmission LP or Hydro One Networks Inc., and to ensure a level playing field in the designation process.

EWT LP can confirm that the Information Protocols have been and continue to be effective in achieving this purpose, and therefore do not require modification. In particular, the Information Protocols prevent any information about the East West Tie from being provided by either Great Lakes Power Transmission LP or Hydro One Networks Inc. to EWT LP, except for such information that has been provided to all designation applicants. The Information Protocols also prevent EWT LP from having any influence over Great Lakes Power Transmission LP or Hydro One Networks Inc. in their neutral role with respect to the designation process.

EWT LP can confirm that because of the Information Protocols, it has no better access to information from Hydro One Networks Inc. or Great Lakes Power Transmission LP about the East West Tie than do other designation applicants.

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?*

No, the EWT LP's relationship with the incumbent transmitters should not be specially governed by the aforementioned regulatory requirements of the Board.

First, this question is premised on a false statement. EWT LP does not share a common parent with Great Lakes Power Transmission LP or Hydro One Networks Inc. EWT LP is structured as a limited partnership. Its general partner, East West Tie Inc., has three shareholders (the "Shareholders") – Hydro One Inc., Great Lakes Power Transmission Inc. and Bamkushwada LP – none of which have control over EWT LP. In fact, even though Hydro One Inc. is the sole controlling shareholder of Hydro One Networks Inc., and Great Lakes Power Transmission Inc. the sole controlling general partner of Great Lakes Power Transmission LP, neither Hydro One Inc. nor Great Lakes Power Transmission Inc. has a controlling interest in East West Tie Inc. In other words, neither Hydro One Inc. nor Great Lakes Power Transmission Inc. is a parent of EWT LP because neither entity has a controlling interest in EWT LP's general partner. This corporate relationship has been repeatedly clarified in EWT LP's licensing proceeding. In this regard, EWT LP would also like to clarify a statement made on page 22 of Board staff's submissions that two of EWT LP's partners are incumbent transmitters. This is not true. Great Lakes Power Transmission LP and Hydro One Networks Inc. are not limited or general partners of EWT LP, and neither has control over EWT LP.

Setting aside the false premise in the question above, there are a number of reasons why Great Lakes Power Transmission LP and Hydro One Networks Inc. should not be governed by the Board's Affiliate Relationship Code ("ARC") or any other of the Board's regulatory requirements that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates. First, the Board designed the ARC to govern affiliate relationships. The ARC adopts the definition of "affiliate" from the *Business Corporations Act* (Ontario). Under that Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, (i) one of them is the subsidiary of the other or (ii) both are subsidiaries of the same body corporate or (iii) each of them is controlled by the same person. As indicated above, East West Tie Inc. is not an affiliate of the Shareholders because it is not a subsidiary of or controlled by any of these entities. This is because each of the Shareholders holds only 33 1/3% of the outstanding shares in East West Tie Inc., meaning that no subsidiary or control relationship arises under the *Business Corporations Act* (or the ARC) vis-à-vis the Shareholders

and East West Tie Inc. Consequently, East West Tie Inc. is not an affiliate of any entities to which the Shareholders are subsidiaries or by which they are controlled.

Second, to use the ARC or similar requirements to govern the relationship between arm's length parties would be inappropriate. EWT LP is comprised of three equal, arm's length partners, each with its own, distinct commercial interests, and each unable to control EWT LP. Given the inherent checks and balances in an arm's length structure, there is nothing unusual -- and certainly nothing improper -- about the fact that the structure is not subject to the ARC. To suggest that arm's length contracting is somehow untenable in the circumstances would be to imply that it would be preferable for EWT LP to be comprised of affiliates and subject to the ARC than to be a partnership of arm's length parties. This implication is clearly contrary to the intent of the ARC, which is that affiliate relationships require more Board supervision than arm's length relationships because the former lacks the internal checks and balances of the latter.

Third, the activities of EWT LP are not analogous to the activities of energy service providers: EWT LP will only operate as a regulated transmitter whereas energy service providers are not regulated by the Board. In the past, the Board has required incumbent utilities whose affiliates wish to participate in energy service businesses -- such as electrical contracting, natural gas storage and smart metering -- to comply with certain regulatory restrictions on cost allocation and information sharing. However, unlike the activities of these non-regulated energy service providers, EWT LP would be a licensed transmitter that is wholly under the control of the Board. An example is useful for clarification. In the Natural Gas Electricity Interface Decision (EB-2005-0551, the "NGEIR Decision"), the issue was whether and how the Board, *in refraining from regulating storage*, must ensure consumer protection within the *competitive market* for storage in Ontario.³ In the present case, EWT LP is not an incumbent utility, nor is the Board refraining from regulating EWT LP. Thus, the fundamental concern that is addressed by applying the ARC -- in particular, that non-regulated affiliates of a regulated entity might set rates that weaken competition in a competitive market -- is not relevant in the present context. In the case at hand, a regulated transmitter, which is not an affiliate of incumbent transmitters, will operate in a regulated market for transmission services. The circumstances for which the ARC was developed do not exist here, and the ARC does not and should not apply to EWT LP.

Put another way, the designation process is not a competitive unregulated market for services, as some of the intervenors in EWT LP's license application have suggested. Rather, the designation process is a regulated process available only to regulated entities. It was established so that the Board can direct and evaluate the development plans of licensed transmitters. All aspects of the process are under the control of the Board, and only by virtue of Board policy is the process made competitive. The ARC was not meant to apply to such a process that is wholly under the control of the Board.

³NGEIR Decision, November 7, 2006 (EB-2005-0051), page 75.

Finally, to use the ARC to interfere with the contractual relationships of arm's length third parties would extend the application of the ARC beyond its intended purpose and bring into issue when and to what extent it should apply to non-affiliate relationships. This is beyond the scope of the Designation Proceeding and to our knowledge has not been considered by the Board in any other proceeding. In any event, this need not be considered in the current context when the Board is fully in control of all aspects of the process.

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

EWT LP suggests that transmitters be allowed three to four months (3-4 months) from the Board's phase 1 decision.

EWT LP believes this is appropriate because

- the plan is for a single project based on well-established technology;
- little fieldwork will be required for preparing the plans;
- no consultation is required prior to designation; and
- the 2010 Long-Term Energy Plan proposed a 2017 in-service date.