

Canadian Niagara Power Submission
EB-2011-0140 East-West Tie Line Designation
Phase 1

In accordance with Procedural Order No. 2 in this proceeding, these are the submissions of Canadian Niagara Power Inc. ("CNPI"). CNPI's submissions have been organized to correspond with the issues set out in the Issues List appended to Procedural Order No. 2, as well as the specific questions raised by Board Staff in its submission. Furthermore, CNPI has attached at Exhibit 1 to these submissions specific comments on the filing requirements G-2010-0059, as updated by Board Staff in its submission.

Decision Criteria

- 1. What additions, deletions or changes, if any, should be made to the general decision criteria listed by the Board in its policy Framework for Transmission Project Development Plans (EB-2010-0059)?**

CNPI acknowledges that there are currently seven criteria: organization, technical ability, financial capacity, schedule, costs, landowner and other consultations; and other factors. CNPI submits that the following three criteria should be added as "other factors": (i) Aboriginal participation; (ii) ability to carry out Aboriginal consultation; and (iii) enhanced competition.

- 2. Should the Board add the criterion of Aboriginal participation? If yes, how will that criterion be assessed?**

CNPI submits that the Board should add the criteria of Aboriginal participation for the following reasons:

Achieves Goals of Board Policy EB-2010-0059: Aboriginal participation is key to achieving the following goals set out in Board Policy EB-2010-0059:

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

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

Aboriginal participation advances the goal of allowing transmitters to move ahead in a timely manner since upfront participation would result in a faster more cost effective development process. Since the Aboriginal communities through their participation would be knowledgeable about the project, and would have considered relevant issues (and possibly solutions) for the subsequent (i.e., post designation proceeding) consultation process, this would speed up the consultation process and possibly result in shorter duration and lower costs. These efficiencies shorten the project timeline for completion and result in savings that can be passed onto ratepayers. Aboriginal participants are new entrants to transmission and bring a diversity of resources for project development and support competition.

If yes, how will that criterion be assessed?

The criterion of Aboriginal Participation should be assessed by the Board considering to what extent the proponent in its application (i) demonstrates an understanding of the importance of Aboriginal participation; (ii) demonstrates experience in entering into participation arrangements with Aboriginal groups on transmission projects; and (iii) has developed and implemented a plan for Aboriginal participation in respect of the East West Tie line project. CNPI submits further that this criterion should be given a heavier weighting consistent with the Minister's letter to the OEB dated March 29, 2011 (See attached Exhibit 2).

3. Should the Board add the criterion of the ability to carry out the procedural aspects of Aboriginal consultation? If yes, how will that criterion be assessed?

CNPI submits that the Board should add the criterion of the ability to carry out the procedural aspects of Aboriginal consultation. It has always been CNPI's understanding that this criterion would be assessed by the Board, either as part of "landowner and other consultations" or as a separate criterion, since the ability to carry out such consultations was required by the original filing requirements.

As well, the Minister's letter to the Board dated March 29, 2011 specifically identified "a proponent's ability to carry out the procedural aspects of Crown consultation" to affect the weighting of the decision criteria. This particular criterion is important because the success of the EWT project depends on successful Aboriginal consultations. For these reasons, CNPI submits that this criterion should be given a heavier weighting, as set out in CNPI's submission on Issue #5 below. We note that in assessing an applicant's ability to carry out Aboriginal consultations, the Board should not consider any consultations that have been undertaken by the applicants or their representatives to date, as suggested by Board Staff in its submission:

"It is Board staff's submission that applicants who have commenced consultation with Aboriginal 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." [page 6]

The criterion of ability to carry out the procedural aspects of Aboriginal consultation should be assessed by the Board by considering to the extent the applicant demonstrates in its designation plan: (i) an understanding of the importance of carrying out Aboriginal consultation; (ii) its experience in carrying out effective consultations; and (iii) setting out a comprehensive plan to carry out the procedural aspects of Aboriginal consultation for the East West Tie line.

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

CNPI submits that the Minister's letter should be followed by the Board, regardless of whether it is a legal directive or simply a request. It is obvious from the March 29, 2011 letter (the "Minister's Letter") that the Minister expects the Board to run a designation process that gives weight to Aboriginal participation and ability to carry out the procedural aspects of Crown consultation. This proceeding was commenced by the Board in response to the Minister's Letter, despite the fact that the Minister's Letter may not have been a legal directive. CNPI questions why the Board would comply with the Minister's Letter by commencing this proceeding, but stop short of complying with the specific expectations contained in the Minister's Letter. In any event, CNPI submits that it

would be unreasonable for the Board to exclude Aboriginal participation and ability to consult as criteria for a number of reasons, including the fact that both of these criteria are necessary to facilitate the timely construction of the EWT line.

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?

The following table illustrates CNPI's proposed weightings:

Decision Criteria	Board Staff Weighting *	CNPI Proposed Weighting
Organization	14%	15%
Technical Ability	14%	15%
Financial Capability	14%	10%
Schedule	14%	5%
Costs	14%	5%
Landowner	15%	15%
Other Considerations	15%	5%
Aboriginal Participation		10%
Aboriginal Consultation Capability		10%
Enhanced Competition/Economic Efficiency		10%
Total	100%	100%

* Note based on Board Staff Submission of equal weighting

CNPI submits that the decision criteria should not be given equal weight. The decision criteria are all necessary to provide adequate evidence for the Board panel to make its decision, however, the relative importance to the outcome sought is not equal. The criteria that focus on competence or capability should be weighted the highest. Those criteria are organization, technical ability, financial capability, landowner, Aboriginal participation and Aboriginal consultation capability. The successful transmitter needs to be able to demonstrate that they are capable of construction, operations and maintenance in the context of the East West Tie line as specified. The relative importance of the Schedule, Cost and Other Considerations (not specifically mentioned) is less given the stage in which the project is at. At this stage, the Board is not evaluating the economics nor the need for the project, therefore the accuracy of

the cost and schedule estimates should not be at the same level as would be required in a Section 92 Leave to Construct application. Accordingly, the less precise estimates are only indicative of the project magnitude and overall timelines.

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

CNPI is in agreement with the Boards Staff's submission that the Board will generally need to evaluate the evidence and exercise judgment in assessing the applicants against each decision criterion.

Board Staff Submission Question: “Board staff invites parties views on whether the Board should select one or more “runners-up” for designation. The Board will likely choose one successful designated transmitter. Should alternates also be selected?”

CNPI does not support the concept of runners-up who can step-in should the designated transmitter fail to file a leave to construct application. As set out in CNPI's submission on Issue #8, CNPI believes that the board should consider designating more than one transmitter to develop the separate segments of the EWT line. CNPI submits that if two transmitters are designated to develop different portions of the EWT line and one fails to file a leave to construct application, the other designated transmitter is in the best position to step-in to file a leave to construct application and construct the line.

Filing Requirements

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

CNPI submits that there should be some changes to the Filing Requirements G-2010-0059 as shown in the attached Exhibit 1. CNPI has made suggestions based on the Board Staff's submission Appendix A.

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?

CNPI submits that the Board should consider alternate plans for the separate segments of the East-West Tie line. By splitting the line, the Board will be able to encourage competition in both the designation process, by which the Board is able to designate to more than one licensed transmitter; and the procurement stage when more than one supplier will be engaged to fulfill the construction requirements of the project. As well, the Board will help ensure that timing and scheduling are met with multiple efforts occurring at the same time. This option would also reduce the overall risk of the project by diversifying between qualified transmitters. If one should not be able to complete its segment, the other designated transmitter may be able to extend its capacity to allow for timely completion without having to turn back to a new designation process.

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

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

CNPI submits that the Board Staff appended filing requirements are too specific to be available at the time of an application. CNPI has made suggested changes with comments in Exhibit 1 to this submission.

Obligations and Milestones

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

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

The following submissions are in response to issues 9, 10 and 11:

CNPI submits that the Board should not impose any specific reporting obligations on the designated transmitter. Rather, the Board should include a condition in its designation order that the designated transmitter is required to file a Section 92 leave to construct application within a specified period of time. Because there are minimum filing requirements for Section 92 leave to construct applications, the one milestone of filing a leave to construct application will ensure that the designated transmitter will undertake the activities contemplated by the minimum filing requirements for leave to construct applications. If the designated transmitter fails to meet this milestone without reasonable justification, the Board may wish to consider denying the transmitter's development costs.

Further, a construction milestone is not necessary since a standard condition of a Section 92 order is that construction must commence within a specified period of time. There are also reporting requirements in the standard conditions that accompany a Section 92 order.

- 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?**

CNPI agrees with the first alternative identified in the Board Staff submission. In this approach, Board staff suggest that the applicant would identify their proposal for consequences of failure to complete the development in their

respective application. The specific consequences would be set out in the designation order.

Consequences of Designation

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

CNPI agrees with Board Staff that the prudence of budgeted development costs should be assessed through the hearing process in phase 2 of this proceeding. Development costs will be detailed in the applicants' applications, those costs will be subject to discovery through an interrogatory process, and final submissions will be made. As such, the Board will have the opportunity to sufficiently evaluate the prudence of the applicants' development costs in phase 2 of this proceeding. CNPI submits that it would be duplicative to undergo a separate prudence review in a subsequent hearing such as a leave to construct or rates proceeding. However, if the successful applicant's development costs exceed those described in its designation application, the applicant should be required to justify the prudence of those incremental costs in a subsequent proceeding.

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?

CNPI submits that the designated transmitter should be able to recover its prudently incurred costs associated with preparing its application for designation. Board Staff submitted that the successful applicant for designation should be able to recover its cost for preparing an application for designation, with the qualification that these costs would begin to be incurred only after the issuance of the Board's phase 1 decision. It appears that Board Staff is suggesting that all costs incurred prior to the Board's phase 1 decision are imprudent. CNPI submits that Board Staff's proposed demarcation is arbitrary, as some costs incurred prior to the Board's phase 1 decision may, in fact, be prudent. While the creation of applicant companies and licence application costs described by Board Staff may not be prudent from a cost recovery perspective, the fact that such costs were incurred prior to the phase 1 decision is not determinative of prudence. The Board should evaluate the prudence of costs based on a prudence analysis, and not based on an arbitrary basis such as the date of the Board's phase 1 decision.

If the Board agree that the designated transmitter should be permitted to recover its prudently incurred costs associated with preparing its application for designation, CNPI is indifferent about the accounting mechanism required to enable recovery, as long as the designated transmitter is kept whole.

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

CNPI submits that if a transmitter's leave to construct application departs from its designation application without reasonable justification, the Board should consider rejecting the leave to construct application.

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?

CNPI submits that the Board should not deviate from its policy in which it states on p15:

"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."

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)?

CNPI agrees with Board Staff that phase 2 should be conducted in writing. Although parties have objected to a written proceeding, no valid reasons have been provided to explain why an oral hearing is necessary. Further, CNPI wishes to minimize costs and believes that an oral proceeding will be costlier than a written proceeding.

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?

CNPI submits that the Board should clarify the roles of the parties named in this issue. CNPI agrees with Board Staff that the role of the Board's expert advisor should be to advise Board Staff, and not to act as a private advisor to the Board Panel. Any advice provided by the Board's expert advisor should be made available to all parties in the proceeding. In regard to the other entities named in this issue, CNPI submits that their roles should be restricted to those of neutral information providers, whose information is made available to all parties in the proceeding.

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

CNPI submits that Hydro One Networks Inc. ("HONI") and Great Lakes Power Transmission LP ("GLPT") should be required to disclose all documentation and information related to the project. Further, all information provided by HONI or GLPT to EWT LP, provided directly or indirectly, should be disclosed to all parties in the proceeding. Included in CNPI's definition of "information", would be all communications including memos, reports, database files, emails, descriptions of conversation, minutes of meetings, etc. The relevance of any information should be determined by the Board, and not by HONI or GLPT. Also, in order for applicants to review the documentation prior to submission of pre-filed evidence, CNPI submits that the information be shared in advance of the application deadlines by at least two months.

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

Please refer to CNPI's submission in response to Issue #21.

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?

CNPI makes the following submissions on the protocols put in place by HONI and GLPT:

- HONI's directive requires that all inquiries directed at it be forwarded to the Ontario Energy Board (the "Board"), whereas GLPT's protocol does not. GLPT stated in its January 9, 2012 letter to the Board that it is open to having the Board act as a clearing house for any inquiries. CNPI submits that Board should take GLPT up on its suggestion.
- Both the HONI and GLPT protocols seem to apply on a go-forward basis, but do not address the treatment of any past inquiries that may have been made (from either internal or external sources). In order to ensure that all past inquiries and responses provided by both HONI and GLPT are disclosed to all participants in this proceeding, CNPI submits that the Board should direct HONI and GLPT to: (i) undertake internal investigations of past communications; (ii) disclose the results of the investigations; and (iii) confirm by affidavits that they undertook such investigations and disclosed all results.
- Neither the HONI nor GLPT protocol seems to address informal (i.e. water cooler-type) discussions between the members of the EWT LP team and HONI and GLPT personnel. To that end, CNPI submits that every member of the EWT LP team should be required to swear affidavits that they have not, nor will they, communicate in any manner with HONI and GLPT's personnel and consultants about any matter related to the EWT project. Those affidavits should be filed with the Board.

Since both HONI and GLPT have expressed that they both want to ensure a fair designation process, CNPI submits that they should be amenable to these suggestions.

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?

CNPI submits that the relationship between EWT LP and each of GLPT and HONI should be governed by the Board's regulatory requirements if the Board believes that such governance is necessary for a fair and transparent designation process.

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

designation?

CNPI submits that the designation applications should be filed within 2 months of the Board decision on the Phase 1 proceeding.