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May 7, 2012

VIA COURIER, RESS, EMAIL

Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON, M4P 1E4

Dear Board Secretary:

RE: EB-2011-0140 – EAST-WEST TIE TRANSMISSION LINE

I am legal counsel for the Métis Nation of Ontario (MNO) in the abovementioned manner.

In accordance with the Board's Procedural Order No. 2, attached are the MNO's submissions with respect to Phase 1 of the East-West Tie Line designation hearing.

Yours very truly,

A handwritten signature in black ink that reads 'JMadden' with a stylized flourish at the end.

Jason Madden

Enc.

c.c. Alex Monem, Pape Salter Teillet
Doug Wilson, MNO
Melanie Paradis, MNO

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

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

MÉTIS NATION OF ONTARIO

WRITTEN SUBMISSION ON PHASE I

1. Decision Criteria (Issues 1 to 4)

1.1 Two Distinct Criteria: Aboriginal Participation and Aboriginal Consultation

The Issues List identifies two potential criteria for addition to the Decision Criteria for designation proceedings: (1) First Nation and Métis participation (“Aboriginal Participation”), and (2) the ability to carry out procedural aspects of First Nations and Métis consultation (“Aboriginal Consultation”).

The Métis Nation of Ontario (“MNO”) submits that these are two distinct issues, and that both must be included in the Decision Criteria for the East-West Tie Line designation process based on Ontario’s current law and policy with respect to renewable energy and transmission development.

1.2 Inclusion of Criteria Required by Ontario Law and Policy

The Minister of Energy’s Letter of March 29, 2011, to the Board on the East-West Tie Line designation hearing (the “Minister’s Letter”) states:

“...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.”

The letter articulates both that Aboriginal Participation and Aboriginal Consultation are two distinct issues, and that they are part of the decision criteria capable of being weighed in the overall designation process. Board Staff submissions raised the question about the legal significance of the letter and concluded that, while important, the letter is not a Directive within the meaning of sections 27 and 28 of the *Ontario Energy Board Act, 1998*.

The MNO agrees that the Minister's Letter is not a Directive. The MNO submits, however, that the Minister's Letter is an articulation and re-statement to the Board of existing and applicable Ontario law and policy respecting Aboriginal issues in the context of renewable energy project development, and that Ontario law and policy require that both Aboriginal Consultation, flowing from the Crown's constitutional duty, and Aboriginal Participation, flowing from government policy, must be considered in the current designation process.

Section 1(1) of the *Ontario Energy Board Act*, which was amended by the *Green Energy Act, 2009*, now includes the following new objective for the Board:

5. To promote the use and generation of electricity from renewable energy in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. [emphasis added]

The East-West Tie Line is a project that falls squarely within “the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.”¹ As such, the MNO submits its development, including its transmitter designation process by the Board, and potential future authorization by the Board, must be undertaken “in a manner consistent with the policies of the Government of Ontario”.

On November 23, 2010, the Government of Ontario released its Long-Term Energy Plan (“LTEP”). The LTEP is the Government of Ontario's clearest articulation of its policy with respect to energy planning and development in the province. It has guided and continues to guide the decisions and actions of the Ministry of Energy, along with Ontario's energy related agencies, authorities and corporations (i.e., OEB, OPA, IESO, Hydro One, OPG, etc.).

Notably, the LTEP dedicates an entire section to Aboriginal Communities, along with other key energy policy areas such as: Demand, Supply, Conservation, Reliable Transmission/Modern Distribution, Capital Investments, and Electricity Prices. More specifically, in the Aboriginal Communities section, the LTEP sets out the Government of Ontario's clear policy objective to encourage and support First Nation and Métis participation in both energy generation and transmission projects:

The Ontario government is committed to encouraging opportunities for Aboriginal participation in the energy sector and has launched several initiatives to support participation of First Nations and Métis community in energy projects, including:

- *The Aboriginal Energy Partnerships Program*

¹ The need for the East-West Tie Line is articulated as followed in the LTEP at p. 46: “Maintain system reliability, allow more renewables, accommodate electricity requirements for new mineral processing projects.”

- *The FIT Program: 17 aboriginal-led or partnered projects have secured contract offers*
- *The \$250-million Aboriginal Loan Guarantee Program²*

...

Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest. The government will also work with the OPA to adjust the Aboriginal Energy Partnerships Program – currently focused on renewable energy projects – to provide capacity funding for aboriginal communities that are discussing partnerships on future transmission projects.³

Further, since November 23, 2010, the Minister of the Energy has issued various Directives to the OPA in furtherance of the government's Aboriginal Participation policy, as set out in the LTEP.⁴

The MNO submits that Aboriginal participation in energy generation and transmission projects is now a fundamental tenet in Ontario's energy policy, similar to other key policy goals such as the phasing out of coal, reduction of greenhouse gas emissions, conservation and the establishment of a new economy around renewable energy technologies.

In addition to Aboriginal Participation, it is well-established that the Crown has a duty to consult and accommodate Aboriginal peoples in the context of energy projects where those project have the potential to negatively impact Aboriginal and treaty rights. This is a constitutional obligation.

Based on the above, the MNO submits that both Aboriginal Participation and Aboriginal Consultation must be incorporated into the Decision Criteria for the East-West Tie Line designation hearing in order for the Board to implement and operationalize the law and policy of Ontario, as required by its new, expanded mandate.

The MNO disagrees with Board Staff's submissions that the inclusion of Aboriginal Participation and Aboriginal Consultation in the proposed Filing Requirements would be sufficient to meet the Board's legal and policy implementation obligations with respect to these matters.

Decision Criteria articulate and frame how the Board will fulfil its legal mandate in arriving at a decision. They form a part of the Board's decision-making framework. Filing requirements are not a part of the Board's decision-making framework. Rather, they are simply advice to applicants with respect to the informational expectations for

² LTEP, p. 48.

³ LTEP, p. 49.

⁴ For example see: Minister of Energy's Directive to the OPA dated August 25, 2011 directing the OPA to expand the Aboriginal Energy Partnerships Program to include capacity funding for participation in transmission projects; Minister of Energy's Directive to the OPA dated April 5, 2012 dealing with the Feed-in Tariff Program Review which, inter alia, prioritizes applications that include Aboriginal communities.

applications. Filing Requirements provide direction, or practical requirements, to proponents and attempt to ensure a sufficient informational foundation for Board decision-making. However, Filing Requirements alone can create no assurance that legal requirements respecting Aboriginal Participation and Aboriginal Consultation will be met in the final decision.

1.3 Distinction between Aboriginal Participation and Aboriginal Consultation

It is critical to recognize that the government's policy commitment to First Nation and Métis participation in energy projects (i.e., Aboriginal Participation), and its constitutional and legal obligations flowing from the Crown's duty to consult and accommodate affected First Nations and Métis communities in relation to energy projects (i.e., Aboriginal Consultation) are inter-related, but distinct from one another.

These two issues must not be conflated in the East-West Tie Line designation process.

Aboriginal Participation

The support and encouragement of Aboriginal Participation in energy projects is a distinct policy-based commitment of the Government of Ontario. The policy seeks to remedy part of the difficult history of energy development in Ontario and its disproportionate impacts on First Nations and Métis communities. Part of this history is the systematic exclusion of Aboriginal people from decision-making and benefits relating to energy project planning and development. While these policies may have their origins in Canadian constitutional and common law respecting Aboriginal and treaty rights, they are now stand-alone policy goals and operate independently of any other legal obligations of the Crown respecting a duty to consult.

This distinction between Aboriginal Participation and other consultation obligations is acknowledged in the LTEP:

Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nations and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely affected. Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities. [emphasis added]

This distinction is also reiterated in the Minister's Letter, as discussed above.

Aboriginal Consultation

The adequacy of Aboriginal Consultation is a constitutional obligation that applies to any and all government decisions that stand to affect the Aboriginal or treaty rights (recognized, proven or asserted) of an Aboriginal people. The Crown's duty flows from

the honour of the Crown and “a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution.”⁵

Consultation is to be conducted “with the intention of substantially addressing the concerns of Aboriginal peoples whose lands are at issue” and potentially impacted. The “controlling question in all situations is to maintain the honour of the Crown and to effect reconciliation between the Crown and Aboriginal people with respect to the interests at stake.”⁶

Aboriginal Participation and Aboriginal Consultation may be related in the sense that significant or meaningful participation in a project may act to satisfy some or all aspects of the Crown’s duty to consult and accommodate owing to a First Nation or Métis community. For example, financial or operational participation in a project may be considered by the affected Aboriginal community as well as the Crown as a fair and reasonable accommodation for any impacts on Aboriginal rights flowing from a project. A participation arrangement may also address protection and remediation of environmental or other impacts and may likewise be considered a fair and reasonable accommodation of impacts on Aboriginal rights.

These arrangements may ultimately be considered by the Crown decision-maker in its overall assessment of whether the duty has been met in a given situation. However, their existence cannot be used to conclude that all Aboriginal consultation or accommodation obligations have been met. As directed by the courts, each project must be assessed on a case-by-case basis in relation to the Crown’s duty.

Further, it is important to recognize that there may be other potential impacts from a given project that are not addressed by a participation arrangement, either because they are not issues between the affected Aboriginal community and the proponent or because the parties have chosen not to address them. These situations might include specific environmental impacts that are outside a proponent’s control or cumulative effects issues, which require a separate process or arrangement with the Crown. As such, a participation arrangement may not, in and of itself, satisfy all Crown related consultation or accommodation obligations.

1.4 Application of the Criteria in Designation Proceedings

Description of Criterion

As set out above, and consistent with Ontario law and policy as re-stated in the Minister’s Letter, Aboriginal Participation and Aboriginal Consultation must be included as separate and distinct criteria in the Board’s decision-making framework. MNO submits that the Board should adopt the general language contained in the Minister’s Letter, and reflected in part, in the Issues List:

- *The significance of First Nations and Metis participation*

⁵ Haida Nation v. British Columbia [2004] 3 S.C.R. 511, par. 32.

⁶ Mikisew Cree First Nation v. Canada [2005] 3 S.C.R. 388, paras. 61, 62, 64.

- *The ability to carry out the procedural aspects of First Nations and Metis consultation*

Assessment of Criterion

The Board has sought submissions on how these criterion should be applied, or assessed, in the proceedings. MNO submits, as discussed in more detail under “Use of Criteria” below, that Aboriginal Participation and Aboriginal Consultation criteria be treated like all other criteria and assessed using the decision-making framework set out in the Board’s Policy on Transmission Project Development Plans.

The MNO further submits that the final Decision Criteria must be weighed with other decision criteria, in a manner that recognizes the significance and complexity of a given project, and its locational significance to Aboriginal rights and interests. Further, revising and supplementing the Filing Requirements to reflect the addition of the two distinct criteria will ensure that the Board has a sufficient informational basis on which to make its decision. Our submissions on Filing Requirements are below.

In its submissions at page 6, Board Staff raises the question of whether the Board will “look with favour on an applicant that has already commenced consultation before filing an application for designation?”. MNO respectfully submits that this question fails to take into consideration the distinction between Aboriginal Participation and Aboriginal Consultation, and the unique requirements of both.

As stated in the Board Staff submissions, the duty to consult is the responsibility of the Crown. An applicant has no self-standing obligation to consult. The Crown may explicitly delegate certain “procedural” aspects of the duty to a proponent. However, prior to such a delegation, discussions between an applicant and an Aboriginal group, whatever the goal or outcome, cannot be construed as “consultation” for the purposes of the Crown’s constitutional duty to consult and accommodate. At this stage, an applicant is neither expected to, nor legally capable of, carrying out consultations.⁷

As a result, the Board should not consider such discussions as part of the Aboriginal Consultation criterion. MNO submits that the Board was correct in removing this from its Policy, as highlighted in the Board Staff submissions at page 6. The Board, instead, should consider the adequacy and quality of an applicant’s Aboriginal consultation plan to assess whether it has the capacity to carry out the procedural aspects of the duty if those are delegated to it, and how that plan compares with the plans proposed by other applicants.

However, the MNO submits that with respect to the criterion of Aboriginal Participation, it is open to an applicant and a First Nations or Métis community to engage in discussions prior to designation with the aim of exploring models or arrangements

⁷ In its submissions at page 7, the Board Staff notes that the Crown has delegated certain aspects of the duty in relation to the East-West Tie project to the OPA by letter of May 31, 2011 and further that Board Staff understands that the OPA has completed its activities in regard. The MNO submits that the Board is not required to make any assessment of the adequacy of such activities as part of Phase 1 of the current designation process.

relating to Aboriginal Participation in the project. These discussions are not consultation, but rather negotiations with the aim of establishing a mutually beneficial commercial relationship aligned with Ontario's policy direction on Aboriginal Participation.

The MNO submits that the Board should consider an applicant's plan or proposal for Aboriginal Participation as it would any other aspect of its application. Where an applicant presents a complete or well-defined proposal or plan based on prior discussions with Aboriginal groups, this may weigh in favour of the application. However, an applicant may present an equally strong application based on a comprehensive and complete plan to achieve Aboriginal participation, along with other appropriate indicia of success (e.g., a proven track record of successful partnerships), without having completed prior discussions with Aboriginal groups.

2. Use of Decision Criteria (Issues 5 to 6)

The MNO submits that all Decision Criteria, including Aboriginal Participation and Aboriginal Consultation, be considered on the same basis. No single criterion, or grouping of criteria, should be regarded as more or less significant. As such, the MNO does not support the use of rankings, groupings or weightings. Nor does it support the use of any threshold or pass/fail determinations in applying the Decision Criteria. The MNO agrees with the Board Staff recommendation that the Board assess the applications, in the course of the designation process, in the same manner it does in any hearing, weighing and testing the evidence.

The MNO generally agrees with the Board Staff's submissions that the goal of the designation process should be to choose the applicant who best understands the challenges of the Project, has the best plan for meeting those challenges, and has the best track record of meeting similar challenges in the past. However, the MNO wishes to emphasize that each applicant must be required to demonstrate that it has the competence and experience to fulfil all components of the Decision Criteria, not only financial capacity and technical capability.

The MNO agrees with the Board's approach, as set out in EB-2010-0059, that the final Decision Criteria should "be weighed by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project." This framework will allow the Board to choose the best plan based on the evidence and proposals before it.

3. Filing Requirements (Issues 7 to 8)

Consistent with adding Aboriginal Participation and Aboriginal Consultation as Decision Criteria, the MNO submits that these criteria be included as separate sections within the Filing Requirements. These are unique and distinct criteria, and their inclusion under the headings of "Organization" and "Land Owner and Other Consultations" (as proposed by Board Staff) will lead to confusion and inefficiencies in the preparation and review of applications.

For example, Aboriginal Consultation has a different legal and constitutional basis, along with different obligations and responsibilities, than standard consultations with land owners or other stakeholder groups. As such, the inclusion of Aboriginal Consultation in general consultation requirements will prove problematic to assessing whether the Crown's unique consultation obligations owing to Aboriginal groups can be met through the applicant's plan.⁸

Likewise, Aboriginal Participation (as described in the LTEP) may include employment and contracting opportunities, environmental remediation or protection agreements, and financial participation models that do not depend on, or relate to, the "Organization" of the applicant.

Based on its submissions above, the MNO attaches a revised Filing Requirements document, based on the Board Staff's proposal, as Appendix A for consideration by the Board.

4. Obligations and Milestones (Issues 9 to 12)

The MNO makes no submissions on issues 9 to 12.

5. Consequences of Designation (Issues 13 to 16)

5.1 Recoverability of Costs

The MNO submits that costs associated with engagement, negotiations and arriving at arrangements in relation to Aboriginal Participation, which are incurred by an applicant in preparing its proposal for designation, should be recoverable by the successful designated transmitter.

If these costs are not recoverable by the successful designated transmitter, this will create a disincentive for prospective transmitters to engage First Nations and Métis parties early in the process and prior to designation. Such an approach would be inconsistent with explicit Ontario government policy promoting Aboriginal participation and partnership in transmission projects.

The MNO, therefore, submits that the reimbursement of pre-designation plan development costs related to Aboriginal Participation should be recoverable, providing they are: (1) directly attributable to activities undertaken to achieve Aboriginal participation (i.e. not costs that would be incurred in the normal course by the transmitter), and (2) are prudently incurred.

⁸ The MNO notes that in several Issues Lists and Decisions from the Board, Aboriginal Consultation has consistently been listed and addressed as distinct from other consultations.

5.2 Designated Transmitter Held to Content of Application

The MNO supports the submissions of Board Staff respecting Issue 15, that the successful transmitter must give and meet commitments respecting the matters listed at p. 17 of its submissions. For consistency, the MNO submits a further matter must be added: *“Adherence to planned First Nation and Metis consultations”*.

6. Process Issues (Issues 17 to 23)

The MNO submits that Phase II of the designation proceedings must include an oral hearing in order to provide First Nation and Métis communities a full opportunity to participate in the designation proceedings, and to ensure critical evidence is before the Board.

Matters relating to Aboriginal Participation and Aboriginal Consultation are unique. First Nations and Métis communities ought to be given the opportunity to provide critical evidence to the Board by way of oral submissions. This evidence could include the testimony of Elders and Traditional Resource Users concerning the area in which the project is being proposed, evidence on the significance of Aboriginal Participation proposals and plans, and the suitability and adequacy of Consultation plans. On all of these matters, evidence is best provided, understood and tested through an oral hearing.

MNO submits that such evidence is essential for the Board to understand and take account of the “individual circumstances of the project” and determine the “best plan” for the project.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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

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

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

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

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

CAPABILITY OF THE APPLICANT

1. Background Information

The applicant must provide the following information:

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

Deleted: Board Staff Submission

2. Organization

The applicant shall identify how, from an organizational perspective, it intends to undertake the East-West Tie line project. To that end, the applicant must file:

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

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

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

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

2.3 An overview of the applicant’s experience with:

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

3. Technical Capability

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

Deleted: In addition, the applicant must file evidence of one of the following:¶
 2.4 . If arrangements for First Nation and Métis participation have been made, a description of:¶
 <#>The First Nation and Métis communities that will be participating in the project;¶
 <#>The nature of the participation (e.g. type of arrangement, timing of participation);¶
 <#>Benefits to First Nation and Métis communities arising from the participation;¶
 <#>Benefits to transmission ratepayers of the First Nation and Métis participation;¶
 <#>Costs of First Nation and Métis participation included in the development and construction budgets for the line; and¶
 <#>Whether participation opportunities are available for other First Nation and Métis communities in proximity to the line.¶
 2.5 . If arrangements for First Nation and Métis participation have not been made but are planned, a description of:¶
 <#>The plan for First Nation and Métis participation in the project, including the method and schedule for seeking participation;¶
 <#>The nature of the planned participation; ¶
 <#>Planned benefits to First Nation and Métis communities arising from the participation;¶
 <#>Planned benefits to transmission ratepayers of the First Nation and Métis participation; and¶
 <#>Estimated costs of First Nation and Métis participation included in the development and construction budgets for the line.¶
 2.6 . If no First Nation or Métis participation in the project is planned, detailed reasons for this choice.¶

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

- design;
- engineering;
- material and equipment procurement;
- licensing and permitting;
- construction;
- operation and maintenance; and
- project management.

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

4. Financial Capacity

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

- 4.1 Evidence that it has capital resources that are sufficient to develop, finance, construct, operate and maintain the line.

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

PLAN FOR THE EAST WEST TIE LINE

5. PLAN OVERVIEW

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

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

¹ 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

- 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.

The applicant must also file:

- 5.2 Confirmation that the line will interconnect with the existing transformer stations at Wawa and Lakehead, and an indication of whether the line will be switched at the Marathon transformer station.
- 5.3 A signed affidavit from an officer of the licensed transmitter to confirm:
- that the line will meet the existing NERC, NPCC and IESO reliability standards; and
 - that the line will meet the Board's Minimum Technical Requirements; or documentation of where the applicant seeks to differ from the Minimum Technical Requirements and evidence as to the equivalence or superiority of the proposed alternative option.
- 5.4 An indication as to whether the Plan will be based on the Reference Option for the East-West Tie line. Where the Plan is not based on the Reference Option, the applicant must file:

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

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

- a description of the main differences between the applicant’s Plan and the Reference Option;
- a description of the interconnection of the line with the relevant transformer stations; and
- a Feasibility Study performed by the IESO, or performed to IESO requirements.

5.5 A brief description which highlights the strengths of the Plan, which may include:

- any technological innovation proposed for the line;
- reduction of ratepayer risk for the costs of development, construction, operation and maintenance;
- local benefits (e.g. employment, partnerships); and
- enhanced reliability for the transmission grid.

5.6 The estimated total costs associated with the Plan, broken down as follows:

- development;
- construction; and
- operation and maintenance.

5.7 An indication as to whether the applicant’s present intention is to own and operate the line once the line is in service.

6. Schedule

The applicant must file, as part of its Plan:

6.1 A project execution chart showing major milestones for both line development and line construction phases of the project.

6.2 For the development phase of the project:

- A detailed line development schedule identifying significant milestones, and proposed dates for completing the milestones, for significant activities that are part of the development phase of the project;
- Proposed reporting requirements for the development phase;
- Proposed consequences for failure to meet the required performance milestones and reporting requirements for the development phase;

- A chart of the major risks to achievement of the line development schedule, indicating the likelihood of the item (e.g. not likely, somewhat likely, very likely) and the severity of its effects on the schedule (e.g. minor, moderate, major); and
- A description of the applicant’s strategy to mitigate or address the identified risks.

6.3 For the construction phase of the project:

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

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

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

7. Costs

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

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

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

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

8. Land Owner and Other Consultations

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

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As part of its Plan, the applicant must file:

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

- a list of First Nation and Métis communities that may have interests affected by the project; and
- A description of any significant issues anticipated in consultation and a plan to mitigate them.

8.3 If the applicant has identified a proposed route for the line, the applicant must file:

- General description of the planned route for the line;
- Approximate right-of-way width;
- Approximate portion of the route that is:
 - adjacent to the existing corridor (%); or
 - along a new corridor (%);
- A brief description of the environmental challenges posed by the proposed route; and
- An estimate of ownership by category of lands along the proposed route:
 - Crown (federal or provincial) (%);
 - Private (%);
 - First Nation or Métis (%); and
 - Other (%);

8.4 If a proposed route for the line has not been identified, the applicant must file:

- a list of alternative routes;
- an explanation of the method and decision criteria for route analysis and selection; and
- the planned schedule for route selection.

8.5 The applicant must file evidence of its experience with:

- the acquisition of land use rights from private landowners and the Crown;
- the acquisition of necessary permits from government agencies;
- successfully obtaining environmental approvals similar to the environmental approvals that will be necessary for the East West Tie line;
- community consultation; and
- successful completion of the procedural aspects of Crown consultation with First Nation and Métis communities.

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9. First Nation and Métis Participation

The applicant must address its approach to First Nation or Métis participation in the East-West Tie line project. To that end, the applicant must file evidence of **one of the following**:

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

- The First Nation and Métis communities that will be participating in the project;
- The nature of the participation (e.g. type of arrangement, timing of participation);
- Benefits to First Nation and Métis communities arising from the participation;
- Benefits to transmission ratepayers of the First Nation and Métis participation;
- Costs of First Nation and Métis participation included in the development and construction budgets for the line; and
- Whether participation opportunities are available for other First Nation and Métis communities in proximity to the line.

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

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

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

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If an applicant has chosen to include First Nation and Métis participation in their plan, the applicant should also file evidence of its experience with such participation in the development, construction or operation of transmission or other large constructions projects. If the applicant has no direct experience in such participation, the application must describe in its plan to source that experience for the East-West Tie Line project.

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10. First Nation and Métis Consultation

The applicant must demonstrate the ability to conduct successful consultations with First Nations and Métis communities, as may be delegated by the Crown.

As part of its Plan, the applicant must file:

10.1 A proposed First Nation and Métis consultation plan, including:

- A list of First Nation and Métis communities that may have interests affected by the project;
- A general description of First Nation and Métis history and contemporary presence along the line;
- An approach for engaging with affected First Nations and Métis communities, along with rationale or other justification for such an approach;
- A description of any significant First Nation or Métis issues anticipated in consultation and a plan to mitigate them;
- An overview of expected outcomes from the proposed consultation plan.

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10.2 Evidence of experience in undertaking procedural aspects of consultation in the development, construction or operation of transmission or other large constructions projects. If applicable, previous engagement of existing relationships with the First Nation and Métis communities to be engaged. If the applicant has no direct experience in such participation, the application must describe in its plan to source that experience for the East-West Tie Line project.

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ADDITIONAL INFORMATION

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