

SUBMISSION OF THE CONSUMERS COUNCIL OF CANADA
Re: Ontario Energy Board Proceeding to Designate a Transmitter to Carry Out
Development Work for the East-West Tie Line - EB-2011-0140

INTRODUCTION:

On August 26, 2010 the Ontario Energy Board ("Board") released its policy *Framework for Transmission Project Development Plans* (EB-2010-0059) dealing with transmission project development to accommodate the connection of renewable energy generation. The Policy Framework described a process to designate a licensed transmitter to undertake development work on any transmission network expansions or enabler lines identified by the Ontario Power Authority ("OPA") as necessary to connect renewable generation. The process outlined in the Policy was intended to allow transmitters to move ahead on development work in a timely manner; to encourage new entrants to transmission in Ontario; and to support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers. The Policy also set out decision criteria and specific filing requirements for transmitters seeking to be designated for transmission development.

On March 29, 2011, the Minister of Energy suggested that the designation process could be used to select the most qualified and cost-effective transmission company to develop the East-West Tie Line. In response to a request by the Board, the OPA provided a report setting out a preliminary assessment of the need for the line. In addition, the Independent Electricity System Operator ("IESO") provided a feasibility study identifying potential solutions.

On December 20, 2011, the Board provided to all interested transmitters an information package setting out a "Reference Option" and Minimum Technical Requirements to be used in the design of the Reference Option. Although the Reference Option was identified as the preferred solution by the OPA, the Board indicated its intent to consider alternative solutions as well.

The Board has established two phases for this proceeding. The first phase will determine decision criteria, filing requirements, obligations and milestones, consequences of the designation, and the process for Phase #2. In Phase #2 the Board will assess the applications and determine which transmitter will be approved to undertake the development work. Ultimately,

approval to build the line will be undertaken through a further leave to construct process following a re-evaluation of project need by the OPA.

In its Procedural Order No. 2, dated April 16, 2012, the Board approved an issues list for Phase 1 and established filing dates for submissions. Board Staff filed its submission on April 24, 2012, and through that submission has elicited comment from interested parties on certain issues. In its submissions Board Staff set out filing requirements for the designated process which are intended to supersede the filing requirements established in the original policy framework report (G-2010-0059).

These are the submissions of the Consumers Council of Canada ("Council") on the issues approved by the Board.

The Council's primary interest in this proceeding is to ensure that the Board selects the transmitter that is most capable of undertaking the development work in the most efficient and cost-effective manner. Ultimately the costs of the development work will be recovered from Ontario ratepayers. Ensuring that the work will be done efficiently and effectively will minimize the cost to ratepayers. As noted by the Board in its Decision on Intervention and Cost Eligibility dated March 30, 2012, "The focus of this proceeding is on selecting the applicant which offers best value for ratepayers taking into account a number of criteria."

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)?**
- 2. Should the Board add the criterion of First Nations and Metis participation? If yes, how should that criterion be assessed?**
- 3. Should the Board add the criterion of the ability to carry out the procedural aspects of First Nations and Metis consultation? If yes, how should that criterion be assessed?**
- 4. What is the effect of the Minister's letter to the Board dated March 29, 2011 on the above two questions?**

In its Policy Framework the Board set out the decision criteria it intends to use in the designation process. These are: organization; technical capability; financial capacity; schedule; costs; landowner and other consultations; and other factors. The Board indicated that it will weight these factors, based on the evidence in the proceeding, taking into account the individual circumstances of the project.

Although the Council is supportive of the proposed criteria the Council submits that the Board be more explicit about the criteria it intends to use. For example, what will the Board be assessing with respect to "organization"? Although some additional detail is provided in the new proposed filing requirements it would be helpful for the Board to be more specific in advance. There may also be criteria relevant to this specific project that may not be relevant to other projects given that the need for the project arises primarily from the changing supply mix in Northwestern Ontario.

With respect to organization the Council submits that the criterion should be defined as, "Is the applicant sufficiently organized to undertake the project?" The filing requirements, as proposed by Board Staff, should provide the Board with sufficient information to assess the answers to this question. In response to those requirements applicants will have to identify potential partnerships, the proposed management team and relevant experience.

As set out by Board Staff in its submissions, the Minister of Energy's letter, dated March 29, 2011, expresses an expectation by the Minister that the Board consider the significance of aboriginal participation as well as the proponent's ability to carry out the procedural aspects of Crown consultation. The Council is not taking a position on how the Board should assess First Nations and Metis involvement in a project and the ability of the proponent to consult. However, the Board should clearly articulate how it will factor this in when assessing whether a proponent is sufficiently organized to undertake the project. It is not required, in our view, to have a separate issue dealing with First Nations and Metis participation and consultation.

With respect to technical capability, the Council suggests that the criterion be defined as, "Does the applicant have the technical capability to engineer, plan, construct, operate and maintain the line?" The filing requirements, as currently proposed, will provide the Board with the right information to assess that capability.

On the issue of financial capacity, the Council suggests that the criterion be defined as, "Does the applicant have the financial capability to develop, construct, operate and maintain the line?" From the Council's perspective the new filing requirements will provide the Board with sufficient evidence to assess the financial viability of the applicants and to determine if they have the appropriate financial capacity to proceed. One of the most critical requirements will be for the applicants to provide evidence as to their experience in financing projects that are similar in scope and scale to the East-West Tie line. The Council believes that a proven track record will be critical to the Board's assessment of financial capacity.

With respect to schedule, the Council submits that Board Staff has set out appropriate filing requirements. The Board will have to assess whether the proposed schedules for line development and line construction are reasonable. This assessment will be based on the Board's previous experience with respect to approving development costs and leave to construct applications such as Hydro One's Bruce to Milton Line.

From a ratepayer perspective cost is a critical issue for the Board to consider in the designation process. It is not clear from Board Staff's submission, whether, at this stage in the process, the Board will be considering only the reasonableness of the development costs, or an applicant's projection of the construction costs associated with building the line. The Board will need to clarify how it intends to consider the "cost" criterion.

In its original Policy Framework the Board had included "Other Factors" as a criterion. It is Board Staff's view that this remains appropriate. The Council submits that the Board should be explicit about other criteria it intends to include and develop filing requirements to obtain the information it needs to assess those criteria. Applicants should be informed, prior to filing their applications, of all of the criteria that will be used by the Board in assessing those applications.

USE OF THE DECISION CRITERIA:

- 5. Should the Board assign relative importance to the decision criteria through rankings, groupings or weightings? If yes, what should those rankings groupings or weightings be?**
- 6. Should the Board articulate an assessment methodology to apply the decision criteria? If yes, what should this methodology be?**

The Council does not support the adoption by the Board of a rigid assessment methodology that includes rankings and weightings. All of the selected criteria are important and interrelated. The Council agrees with Board Staff that the Board "assess the applications in the same manner it does in any hearing, weighing and testing the evidence." In addition, we agree with the statement, "the Board will generally need to evaluate the evidence and exercise judgement in assessing the applicants against each decision criterion." As noted by staff the overarching consideration will be for the Board to choose the transmitter who best understands the challenges of the East-West Tie Line project, who has the best plan for meeting those challenges, and has the best track record of meeting similar challenges.

Board Staff has invited parties to comment on whether or not the Board should select one or more "runners-up" for designation. The Council agrees that this might be efficient to the extent the selected transmitter does not submit a leave to construct application, thereby eliminating the need for a further designation process. It will, however, be up to the transmitters to indicate whether they see value in the Board establishing a "runner-up". Being "on-call", if the designated transmitter pulls out, may not be a practical option for the transmitters.

FILING REQUIREMENTS:

- 7. What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?**
- 8. May applicants submit, in addition, or in the alternative to plans for the entire East-West Tie Line, plans for segments of the East West Tie Line?**

The Council is generally supportive of the revised Filing Requirements attached as Appendix A to Board Staff's Submission. As noted above, if the Board intends to include "Other factors" as part of its decision criteria it should be explicit about what criteria would be included. This may require additions to the proposed filing requirements. The filing requirements will provide the Board with useful evidence to assess the applications, but ultimately it will be up to the individual applicants to provide the information it needs to convince the Board why it should be the designated transmitter.

With respect to the question as to whether applicants may submit plans for separate segments of the East-West Tie Line, the Council is not necessarily opposed to the concept. However, from a practical perspective, such applications may overly complicate the selection process. The Council will assess the submissions of the transmitters on this issue and may include further comments in reply.

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?**
- 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?**

The Council submits that it will be important for the Board to impose reporting obligations on the designated transmitter. The Filing Requirements include a project execution chart and a detailed line development schedule identifying significant milestones, and proposed dates for completing the milestones. It would be reasonable to expect the transmitter to report on its progress to the Board on a quarterly basis. Ratepayers are funding the development work, so it will be incumbent on the Board to assess the progress of that work during the development phase, and the extent to which those funds are being used appropriately. If the progress does not meet the Board's expectations the Board may wish to stop the development work and assess other options. Regular reporting will allow the Board to effectively oversee the development work and the costs associated with that work.

The Council is not clear as to what type of "performance obligations" are envisioned and will consider the submissions of other parties on this issue in reply. Question 11 refers to

performance milestones that the designated transmitter should be required to meet for both the development period and for the construction period. With respect to performance milestones for the construction period, the Council submits that these should be determined through the leave to construct proceeding, and not determined through this process. With respect to performance milestones for the development work, transmitters should propose milestones for the Board's consideration in their respective applications.

If the Board sets milestones and performance obligations it should determine the consequences of failure to meet those obligations and milestones during Phase 2 of this proceeding. Having said that, to the extent a transmitter fails to complete the development work and/or fails to bring forward a leave to construct application due to circumstances within its control (not, for example, based on a re-evaluation of need by the OPA) recovery of the development costs from ratepayers would be at risk.

CONSEQUENCES OF DESIGNATION

- 13. On what basis and when does the Board determine the prudence of budgeted development costs?**
- 14. Should the designated transmitter be permitted to recover its prudently incurred costs associated with preparing its application for designation? If yes, what accounting mechanism(s) are required to allow for such recovery?**
- 15. To what extent will the designated transmitter be held to the content of its application for designation?**
- 16. What costs will a designated transmitter be entitled to recover in the event that the project does not move forward to a successful application for leave to construct?**

The Board has, in its Policy Framework indicated that the designated transmitter would be able to recover the budgeted costs of development work. In addition, the Board has determined that costs incurred in excess of budgeted amounts would be subject to a prudence review. The Council agrees that the prudence of the budgeted development costs will be assessed in Phase 2 of this proceeding. The Council expects the Board to undertake a rigorous review of those costs, just as it does in other proceedings. Once approved, they should be recorded in a deferral account for future recovery. With respect to costs in excess of the budgeted amounts they too

should be recorded in the deferral account subject to that future prudence review. The Council urges the Board to also consider the possibility that a transmitter may spend less than its approved costs and the extent to which the deferral account may be structured to deal with that possibility. In effect, should ratepayers only be responsible for the actual prudently incurred costs?

The Council agrees with Board Staff that transmitters should be able to recover the costs of preparing a plan for an application for designation. In addition, the Council agrees that these costs would begin to be incurred following the issuance of the Board's Phase 1 Decision. This is consistent with the Board's Policy Framework and its letter of December 20, 2011.

Regarding the question about to what extent the designated transmitter be held to the content of its application the Council agrees with Board Staff certain minimum commitments should be adhered to including IESO required standards, minimum technical requirements, and any performance milestones set by the Board.

To the extent the project does not move forward to a successful application for a leave to construct, the Board will have to assess, at the time, the reasons for not moving forward and what costs are recoverable. To the extent the OPA re-evaluates the need for the line and determines it is not needed this is clearly outside of the control of the transmitter. However, the transmitter will be at risk for cost recovery if it clearly failed to act in a prudent manner.

PROCESS ISSUES:

- 17. The Board has stated its intention to proceed by way of a written hearing and has received objections to a written hearing. What should the process be for the phase of the hearing in which a designated transmitter is selected (Phase 2)?**
- 18. Should the Board clarify the roles of the Board's expert advisor, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission LP in the designation process? If yes, what should those roles be?**
- 19. What information should Hydro One Networks Inc. and Great Lakes Power Transmission be required to disclose?**
- 20. Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?**

21. **Are the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP, and described in response to the Board's letter of December 22, 2011, adequate, and if not, should the Board require modification of the protocols?**
22. **Given that EWT LP shares a common parent with great Lakes Power and Hydro One Networks Inc. should the relationship between EWT LP and each of Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?**
23. **What should be the required date for filing an application for designation?**

Regarding process the Council agrees that the Board should proceed primarily by way of a written hearing. However, the Council is not in full agreement with the process proposed by Board Staff. That process envisions a step whereby Board Staff essentially "screens" the interrogatories. We agree that Board Staff should organize the questions to avoid duplication, but only for that purpose. We do not agree that Board Staff should be involved in "culling and editing", as this would compromise the procedural fairness of the process.

In addition, the Council submits that a decision to rely entirely on a written process should be deferred until the interrogatory process is complete. That process may be sufficient and provide a record that will allow parties to make final submissions. However, in many cases the interrogatory process is not sufficient. It may be necessary to provide for cross-examination, even if it is only required for certain issues. The Council suggests that the Board request submissions on the issue as to whether or not an oral process is required following the interrogatory process.

With respect to Question 18 Board Staff has indicated that its expert will act as an advisor to Board Staff as necessary. The Council agrees that, prior to Phase 2 the Board should clarify the roles of the IESO, the OPA, Hydro One Networks Inc. ("HON") and Great lakes Power Transmission LP ("GLP").

At the issues conference on March 23, it became clear that several of the licensed transmitters are concerned about the roles of HON and GLP in this process. The Council will make any

submissions it has on these issues, in reply, after reviewing the submissions of the other parties where those concerns will be addressed.

At this time the Council has no submissions regarding filing dates for the applications.