

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

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

**PHASE 1 REPLY SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

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A. INTRODUCTION

1. AltaLink Ontario, L.P. (“**AltaLink**”) makes these written reply submissions in accordance with Procedural Order No. 3. AltaLink has reviewed the submissions of the other parties in respect of the Phase 1 issues, affirms its own submissions made on May 7, 2012, and limits these submissions to replying directly to concerns that arise in light of the other parties’ submissions. AltaLink’s reply submissions follow the format set out in the issues list for Phase 1.

B. ALTALINK’S REPLY SUBMISSIONS

Decision Criteria and Use of the Decision Criteria (Issues 1 - 6)

2. AltaLink submits that the Board should not adopt criteria or propose rankings in this designation proceeding which would put one registered transmitter at an automatic advantage vis-à-vis other registered transmitters. In this regard, AltaLink notes that numerous parties have made submissions on the decision criteria and proposed weighting methodologies that attempt to give a particular registered transmitter a competitive

advantage vis-à-vis other registered transmitters. AltaLink submits that these obvious attempts to skew the Board's processes should be rejected outright. Specifically:

3. AltaLink disagrees with the Power Workers' Union (the "PWU") recommendation that the filing requirements should include "relevant Ontario and Canadian experience" and the PWU's proposed assessment methodology which explicitly favours incumbent Ontario utilities at the expense of new entrants to Ontario, and incumbent utilities with experience on a similar line, terrain and size at the expense of those transmitters with other experience with transmission assets of similar magnitude and complexities. Specifically, AltaLink submits that this approach would unfairly bias the designation proceeding in favour of EWT LP and should be rejected by the Board.
4. AltaLink also disagrees with the submissions of TransCanada Power Transmission (Ontario) L.P. ("TCT") which emphasises an applicant's "demonstrated commitment to investing in the Ontario energy sector" and an applicant's experience successfully executing "liner infrastructure projects" while downplaying an applicant's demonstrated technical capabilities in designing, operating and maintaining electricity transmission infrastructure. AltaLink submits that in addition to being self-serving, this approach is inconsistent with the Board's June 22, 2011 Decision and Order in TCT's transmission licence application (EB-2010-0324) (the "TCT Decision") and should be rejected. Specifically, the Board states at page 7 of the TCT Decision that (emphasis added):

"The issuance of a transmission licence will enable TransCanada Transmission to participate in the designation process. The Board notes, however, that the granting of a transmission licence does not endorse the applicant's technical and financial capabilities in relation to the development of a **specific transmission project** in the future. As set out in the Filing Requirements, licensed transmitters who file plans to develop a transmission project under the Board's designation process **will be required to provide a significantly more detailed demonstration** of their **technical and financial capabilities** in relation to the development **of a specific transmission project**. These expectations are reflected on page 2 of the Board's Filing Requirements, which states that organization, technical capability, financial capacity, schedule, costs, landowner and other consultations and other factors will be evaluated by the Board, based on the evidence in the proceeding, taking into account the individual circumstances of the project. Additionally, on page 4, the Filing Requirements state that entrant transmitters should provide **evidence of**

experience in other jurisdictions, evidence that business practices are consistent with good utility practices for design, engineering, land acquisition, licensing and permitting, construction and operation amongst other things. Entrant transmitters will also be required to confirm that they have not previously had a licence or permit revoked and are not currently under investigation by any regulatory body.”

5. The Board made the TCT Decision after having considered vague evidence from TCT about its “linear infrastructure project” technical experience in response to HONI IR#1. The TCT Decision is noteworthy because Board determined: (1) a need for a significantly more detailed demonstration of TCT’s technical and financial capabilities; (2) in relation to the development of a specific transmission project (not a vague linear infrastructure project), including (3) evidence of experience in other jurisdictions, not focusing on demonstrated Ontario commitment. AltaLink supports this approach and submits that TCT’s proposals should be rejected as being contrary to this approach.
6. AltaLink disagrees with the submission of Upper Canada Transmission, Inc. (“UCT”) at paragraph 32 that the Board should not “admit any evidence regarding the quality or quantity of discussions with First Nations or Métis groups related to participation in this particular project.” AltaLink acknowledges UCT’s concern at paragraphs 19-26 of its submissions that the Board should not select criteria which unfairly favour the incumbents’ designate, EWT LP, because of its ability to use its existing monopoly advantages to secure exclusive participation with six First Nation communities along the East-West Tie line at the expense of other registered transmitters. However, AltaLink submits that the UCT approach errs too far in favour of excluding potentially relevant information from the Board’s consideration.
7. That being said, AltaLink also disagrees with EWT LP’s submission at page 5 that participation by Aboriginal communities should constitute an “overarching consideration” to address Aboriginal participation as part of each of the key filing requirements. No First Nation or Métis participant in this proceeding, including Pic River, suggested this approach (rather, for the most part, they favoured the adoption of a discrete criterion, which AltaLink supports). AltaLink submits that EWT LP is seeking

to be unfairly advantaged in this designation proceeding because, through its non-arm's length relationship with the incumbent utilities and their monopoly advantage, it was able to secure the apparently exclusive participation of six (6) First Nation communities located along the East-West Tie line.¹ AltaLink submits that the Board should not knowingly grant EWT LP a competitive advantage during the designation proceeding by favouring EWT LP over other registered transmitters when the playing field was never fairly balanced to begin with.

8. It is in this context that AltaLink submits that its proposal at paragraphs 12 and 13 of its May 7, 2012 submissions represents a fair, in that it does not undermine the efforts of the incumbent utilities to obtain First Nations and Métis participation, and practical solution to ensure that incumbents are not unfairly privileged during the competitive designation process. AltaLink submits that the Board should determine that applicants who have participation of First Nations and Métis groups before they apply for designation must not be regarded more favourably than those who may or may not have commenced discussions about participation but have a comprehensive and practical plan for such participation that would be initiated upon designation.
9. The Ojibways of Pic River First Nation ("Pic River"), one of the six First Nation communities that hold a beneficial interest in EWT LP, suggests in their submissions that aboriginal participation and the capacity to carry out the procedural aspects of aboriginal consultation be identified as discrete criteria (which AltaLink agrees with). Pic River goes on to suggest that these criteria should be afforded "substantial weight" and that the impacted aboriginal communities should be given the opportunity to assign the "relative

¹ AltaLink says "apparently exclusive relationship" on the basis of EWT LP's non-responsive answer to AltaLink Interrogatory number 4(a) in EB-2011-0350 which asked, explicitly, "Is the Applicant's relationship with the Bamkushwada LP, or any of the six participating First Nations, exclusive?". EWT LP stated in response to part (b) of the same interrogatory that "There is nothing in the structure of the Applicant, or agreements in its formation, which prohibits the six participating First Nations from i) participating in consultation and accommodation with the Crown in respect of the East-West Tie Line; ii) providing information about their communities, history, people and asserted and actual rights to any person for any purpose, or iii) participating in any consultation or negotiating any form of accommodation **with a designated transmitter** that is not the Applicant." What this implies is that there is something in the structure of the Applicant, or agreements in its formation which prohibits the six participating First Nations from participating in any consultation or negotiating any form of accommodation with a transmitter other than EWT LP before being designated by the Board, which would constitute an apparently exclusive relationship for the purposes of this designation proceeding.

weights” to each of these criteria based on their particular requirements. AltaLink submits that the Board’s statutory authority to delegate any power or duty of the Board is limited under Section 6 of the *Ontario Energy Board Act, 1998* to delegations to an employee of the Board. AltaLink acknowledges the importance of First Nation and Métis involvement in the proposed East-West tie line, however AltaLink submits that the Board should not, nor can it based on its statutory authority, delegate its ultimate responsibility to make decisions in the public interest on one or more of its decision criteria to any particular group of interested third parties. AltaLink submits that the Board’s typical decision making process, which allowed each of the impacted aboriginal communities to intervene in this proceeding (and Pic River did so) and will allow each intervenor to make submissions on each of the proposals, represents a transparent and fair way to ensure that affected and interested aboriginal community input on each of the proposals is part of the record and is considered by the Board in assessing the public interest.

10. AltaLink disagrees with the submission of EWT LP at page 3 that the Board should emphasize, in considering technical capabilities, “similar geographic/topographic conditions (e.g., in terrain similar to the Canadian Shield featuring forest zones with dense vegetation and steep elevations)” for the same reason AltaLink disagreed with the inclusion of those criteria in Section 3.3 of the Filing Requirements. The ultimate assessment relates to a proponent’s capabilities to develop, own, finance, operate and maintain critical transmission infrastructure assets of similar magnitude and complexities – not whether or not previous projects involved similar terrain or climate. AltaLink submits that EWT LP’s proposal tends to limit the Board’s analysis by focusing exclusively on and favouring one particular way a proponent can demonstrate its ability to handle projects of similar magnitude and complexities (because it did a project on similar terrain or in a similar climate) at the expense of other evidence a proponent may rely upon. AltaLink submits that this approach should be rejected because it favours the incumbent utility experience of EWT LP at the expense of other registered transmitters’ experience.

11. AltaLink also disagrees with CNPI's proposal at page 4 to dramatically reduce the weightings of the schedule and cost criteria, and to a lesser extent to reduce the weighting of financial capability of an applicant. AltaLink submits that this approach should be rejected by the Board. It is inconsistent with the Minister's March 29, 2011 letter which emphasized the importance of the cost criterion, to protect the interests of consumers with respect to prices and of promoting cost-effectiveness in the transmission of electricity, and the schedule criterion, to allow transmitters to move ahead on development work in a timely manner.

12. AltaLink disagrees with the submission of Icon Transmission, Inc. ("Icon") at paragraph 44 that the Board should not place an emphasis on "the transmitter who has the best plan for meeting those challenges" and later at paragraph 47 that the Board should not emphasize "plan-specific details" and later at paragraph 56 that the Board should not emphasize a "detailed project schedule" AltaLink submits that beyond general experience and track record, the particular plans and project schedules that are proposed by registered transmitters represent the most relevant information the Board will have to differentiate prospective transmitters. AltaLink submits that plan specific details and schedules will assist the Board in understanding the details that underpin a registered transmitter's cost estimates. AltaLink believes it would benefit the Board's designation process to incentivize registered transmitters to prepare as high a quality plan as is possible in the circumstances. It is in this context that AltaLink takes note of Icon's emphasis on the importance of capital and operating costs at paragraphs 51-53 of its submissions. It is entirely unclear to AltaLink how Icon would propose to be held accountable to its construction and operating costs, unless it has completed the necessary preliminary planning work and is able to forecast costs associated with plan-specific details. In this context, it is not clear to AltaLink why Icon proposes to increase the emphasis on construction and operating costs, while decreasing the importance of the plan-specific details and schedule. AltaLink submits that such an approach could encourage registered transmitters to propose unrealistic costs on the premise that the registered transmitter will not be scrutinized on their plan-specific details or schedule.

13. Finally, AltaLink disagrees with the Northwatch submissions to add new criteria related to environmental and socio-economic impacts because those concerns are more appropriately addressed as part of the environmental impact assessment process. AltaLink acknowledges that both of these concerns are very important to consider as part of actual design work as part of an environmental assessment which itself is a condition of obtaining leave to construct. However, AltaLink's view is that this designation proceeding is not the appropriate forum to address these particular concerns in a meaningful way. AltaLink believes these important considerations will be addressed later in the process, once a transmitter has been designated and begins more specific design work.

14. In conclusion, AltaLink submits that the Board should be reluctant to accept the numerous suggestions to modify the decision criteria and proposals to fix the weighting methodologies in a way that would unfairly favour one registered transmitter over others because to do so would be inconsistent with what AltaLink view's as a central objective of Phase 1 of this proceeding: to implement a designation process that is both fair and impartial as between all registered transmitters. This is why AltaLink strongly supports the inclusion of only two specific "other criteria" in response to the Minister's letter: (i) an applicant's proposal(s) regarding proposed aboriginal participation; and (ii) a proponent's ability to carry out the procedural aspects of Crown consultation. This is also why AltaLink agrees with Board Staff's suggestion that the Board should not propose any particular ranking or weighting for the decision criteria the Board selects, and rather that the Board should assess the applications in the same manner it does in any hearing, weighing and testing the evidence.

Filing Requirements (Issues 7 - 8)

15. In general, AltaLink disagrees with the revisions to Board Staff's proposed Filing Requirements suggested by each of the other parties. AltaLink notes that many of the parties have fundamentally changed the Filing Requirements, in some cases deleting numerous requirements which AltaLink submits will provide helpful information to the

Board, and in other cases by deleting, editing or adding requirements in a way that would favour one registered transmitter over others in the designation proceeding. AltaLink submits that such approaches should be rejected by the Board unless there is a clear and compelling policy or practical reason to justify specific changes.

16. It is in this context that AltaLink disagrees with the addition proposed by EWT LP at page 10 and page 20 that the Board should require, as part of the Filing Requirements, “a statement by 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.”
17. AltaLink submits the Board should reject this proposal as an attempt by EWT LP to ask the Board to, in essence, favour the coordination that has already occurred between HONI and GLPT as permissible (because it occurs within EWT LP) while excluding any coordination on any of the issues in this proceeding by all other new entrant transmitters in the designation proceeding before it even gets started. The letter dated April 20, 2012 from TPT, UCT, AltaLink, Icon and RES would, in EWT LP’s formulation of this requirement, render each of these new entrants ineligible to participate in this designation proceeding because it reflects “coordination” and “communication” in respect of an issue in Phase 1 of this designation process. AltaLink submits that this is EWT LP’s underlying objective in proposing this requirement, and it should be rejected. Each of the new entrant transmitters are arms-length commercial parties participating in a competitive designation process that stand to gain nothing by divulging detailed strategy on their designation applications. However, parties with similar interests and concerns (such as the disclosure of the Documents from the incumbent utilities) regularly coordinate their participation in Board proceedings on such issues of common concern so as to minimize duplication of effort when raising substantive issues to the Board’s attention. AltaLink submits it is not appropriate for the Board to change its typical approach in this proceeding.

18. AltaLink submits that this prescriptive proposal by EWT LP represents an attempt that is now on the record in this proceeding by the incumbent monopoly utilities to use their designate, EWT LP, to discourage competition and new entrants in Ontario in a way that would undermine the objectives of the Board's designation process. The Board should keep this in mind when assessing the unfair access rules and information sharing protocols proposed by HONI and GLPT – where if the Board chooses not to regulate will leave considerable discretion to the incumbent utilities to further discourage competition.
19. Finally, AltaLink disagrees with CNPI's submission that the Board should consider alternate plans for separate segments of the East-West Tie line for the same reasons AltaLink provided in its Phase 1 submissions. The proposed East-West Tie Line is a single project. If the entire line is not completed, the system benefits will not accrue. AltaLink submits that it does not make sense to add risk to the development process and complexity to the designation process by trying to determine how to allow for multiple designated transmitters for certain segments of the East-West Tie Line. If the Board were to allow proposals for separate segments of the line, then the Board would have to address a whole new set of complexities including determining how to address circumstances when one segment may proceed to leave to construct but another segment does not, possibly due to the fault of the segment's designated transmitter.

Obligations and Milestones (Issues 9-12)

20. AltaLink disagrees with the inclusion of “absent extraordinary circumstances” in UCT's submission at paragraph 70 for the same reasons AltaLink raised concerns about the inclusion of those words in Board Staff's submissions (see paragraph 25 of the AltaLink May 7, 2012 submissions). AltaLink's view is that costs that are prudently incurred should be recoverable subject to the Board's typical prudence review. There should not be an additional “extraordinary circumstances” requirement in addition to the Board's typical prudence review.
21. AltaLink disagrees with the suggestion of the School Energy Coalition (“SEC”) at paragraph 5.2.6 that a designated transmitter that does not bring forth a leave to construct

application should be both denied recovery of its approved development costs but also “must relinquish ownership of all information and intellectual property it created during the development effort.” AltaLink submits that this approach is both punitive and confiscatory and contrary to the public interest. A subsequent OPA assessment that the project has ceased to be needed or economically viable would mean the project would fail despite a designated transmitter’s best efforts, and the transmitter should be entitled to automatically recover budgeted development costs already expended and reasonable wind-up costs (as recommended by Board Staff). If the reason a designated transmitter fails to successfully obtain leave to construct is due to some failure within the transmitter’s control, AltaLink submits that recovery of any budgeted amount would not be automatic but rather such recovery should be subject to a subsequent re-assessment of prudence of the designated transmitter’s activities. This subsequent prudence review will, in AltaLink’s view, incentivize prudent behaviour of registered transmitters and will protect ratepayers’ interests (including placing documents evidencing its prudent development efforts onto the public record) without the forced loss of ownership of any intellectual property.

Consequences of Designation (Issues 13 – 16)

22. AltaLink disagrees with TCT’s submission that all applicants, including the designated transmitter, should bear the costs of participating in the designation application and not be eligible for cost recovery. AltaLink submits that the TCT proposal is inconsistent with the Board's policy Framework for Transmission Project Development Plans (EB-2010-0059) (the “Framework”) and should be rejected. The Board’s policy justification for allowing the recovery of costs of preparing a designation application was articulated in the Framework and was: to ensure that a newly designated transmitter would be on an equal footing with an incumbent transmitter that, if required to prepare a plan, would automatically be eligible to recover those costs from ratepayers. If the Board expects a designated transmitter to prepare a high quality plan during the designation process, then the Board should allow for cost recovery for that designated transmitter. To a certain extent, ratepayers will get exactly what they pay for using this approach.

23. AltaLink disagrees with the SEC submission at paragraph 6.1.3 that the Board should retain the ability to “designate a transmitter and make adjustments on the amount of the proposed development costs that can be recovered from ratepayers.” SEC appears to be concerned that a designated transmitter’s proposed development budget would not, in its view, be just and reasonable – and therefore the Board should retain the discretion to make adjustments to the transmitter’s proposal. It is not clear to AltaLink how a transmitter could proceed with the development work it proposed if a material portion of its proposed development costs were denied. AltaLink submits that if the Board’s conclusion is that the proposed development costs of a registered transmitter are not just and reasonable, then the Board should not designate that transmitter and should move on to considering other proposals. It is also not clear how the Board could select one transmitter’s proposal over another if the Board retained the discretion to modify any of the proposed development costs prior to designating a transmitter. Each registered transmitter is going to put forth their best plan to complete the development work, and their proposed development costs are directly tied to work necessary to complete that plan. Unlike typical rate proceedings, in this designation proceeding ratepayers can rely on competition as between the registered transmitters as a mechanism to incentivize the inclusion of only just and reasonable development costs. A transmitter is entitled to certainty on the recovery for its budgeted development costs once it is designated by the Board. Any amounts beyond its budgeted development costs quantum approved by the Board at the time of designation would be subject to a subsequent prudence review.
24. Finally, AltaLink takes note of the SEC submission at paragraph 6.2.3 that “estimated construction costs are going to be a major part of this designation process.” AltaLink understands that ratepayer groups are going to be concerned about development costs as well as the potential construction costs of the project. However, as has been noted by several of the registered transmitters, it is not possible for a registered transmitter to provide anything more than an indicative or preliminary estimate of construction costs for this designation proceeding. This is because construction costs cannot be reliably estimated until the design, development and routing work has been completed. Because of this, AltaLink strongly recommends that there is very limited value in emphasizing the

importance of estimated construction costs in this designation proceeding. Those costs will be subject to a detailed prudence review at leave to construct, after the development work is complete.

Process (Issues 17 - 23)

25. AltaLink disagrees with the proposal of the PWU that the Board should “reconsider an applicants’ intervenor status for Phase 2 of this hearing” because such a status is purportedly problematic because it “will necessarily create an adversarial process that will interfere with the discovery process and assessment of the applications.” AltaLink submits that each of the registered transmitters is expected to make a contribution to this proceeding that should not be ignored in Phase 2 by arbitrarily removing intervenor status from all registered transmitters. AltaLink has previously raised concerns about the disproportionate number of intervenors with beneficial interests in the EWT LP entity which would be unduly advantaged if this approach were accepted. AltaLink is supportive of Board Staff’s proposal to allow the Board to review all interrogatories and re-issue those IRs to each of the applicants because it allows registered transmitters to add their valuable insights into the process while presenting a practical solution to the concerns about creating an overly adversarial process during Phase 2. As long as parties intend to submit interrogatories that are relevant to the Board’s considerations during Phase 2, it is difficult to see how a party would be prejudiced by the Board’s proposed methodology.

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

26. AltaLink has reviewed the submissions of Great Lakes Power Transmission LP (“GLPT”) and Hydro One Networks Inc. (“HONI”) regarding the lists of documents provided March 26, 2012 and March 30, 2012, which were described as “documents relating to the development of the East-West Tie” (the “Documents”).

27. GLPT takes the position that the GLPT Documents are not “relevant enough” to be helpful to proponents in the designation proceeding, and therefore should not be disclosed. AltaLink submits that it is not up to the disclosing party to determine the relevance of particular documents, particularly when that party has not given either the Board or any of the other parties copies of those documents to make an assessment of relevance themselves. Ultimately, it is the Board that must determine the relevance of any particular Documents. AltaLink submits the Board should not do so on the basis of the vague and largely unsubstantiated submissions (not evidence) of GLPT alone. AltaLink questions why GLPT provided the information in the first place if their view was that it was not relevant. AltaLink suspects that there is a semblance of relevance of this information, which is why GLPT elected to disclose the list. Now the Board and the other parties in this proceeding are in a very difficult position, because we are unable to assess the relevance of the information because GLPT is asking for that assessment to be made without actually giving the parties the benefit of reviewing the actual documents. GLPT listed all the Documents because they had a semblance of relevance to this proceeding, and now it appears that GLPT is seeking to have the Board determine that the material is not relevant and should not be disclosed based solely on GLPT’s submissions on the material. AltaLink submits that the Board should err on the side of caution to order disclosure of all of the GLPT Documents unless GLPT can clearly demonstrate some harm it may suffer from such equal access and disclosure.
28. HONI took a slightly different approach, noting that is “generally prepared” to file the Documents without any special filing arrangements, however HONI awaits the Board’s further direction regarding scope and timing of such disclosure. AltaLink submits that in light of HONI and GLPT’s positions, the Board should order each of HONI and GLPT to produce all of the listed Documents.
29. AltaLink disagrees with the submissions of the PWU that HONI and GLPT should only be required to disclose information “that is required to assist applicants with their plan preparation.” AltaLink submits that all of the information in the Documents should be ordered to be disclosed on the record in this proceeding. If the Board fails to do this, then

it will be giving EWT LP an unfair competitive advantage because the key personnel of EWT LP will have had prior access to and knowledge of this ratepayer funding information while no other registered transmitter will. In AltaLink's view, this fundamental concern about unfair access to information overrides all of the other objections raised by HONI and GLPT - the information must be produced. To do otherwise would be to cast a pall of unfairness over these proceedings

30. AltaLink also disagrees with the submissions of EWT LP at page 26 that the information sharing protocols put in place by HONI and GLPT are adequate. Notwithstanding EWT LP's apparent support of the purported rigor of the information sharing protocols proposed by the incumbent utilities, EWT LP also argues at the end of page 25 that "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." AltaLink could not agree more. The processes proposed by HONI and GLPT are at their best ad hoc solutions, and represent an insufficient response to the concerns underlying the Unfair Access Rules and the Information Sharing Protocols. The Board should step in and regulate the Unfair Access Rules and Information Sharing Protocols related to the incumbent utilities.
31. AltaLink does not object to GLPT's request (at paragraph 19) and EWT LP's request (at page 25) for a more formal process to be put in place by the Board regarding requests for and sharing of information by GLPT and HONI on a going forward basis. AltaLink submits that this request reflects an implicit acknowledgement by GLPT and EWT LP that the information sharing protocols and unfair access rules previously proposed by GLPT and HONI are insufficient in the circumstances, and that is why EWT LP and GLPT are now asking the Board to step in and regulate the information sharing protocols related to both incumbent utilities. AltaLink submits that this is an important admission, particularly given that the protocols proposed by GLPT and HONI related exclusively to the Information Sharing Protocol concerns raised by the Board and were notably silent in respect of Unfair Access Rules. AltaLink submits that the Board should keep this in

mind when determining whether it must also step in to regulate to address the unfair access concerns related to HONI and GLPT's involvement in EWT LP.

32. AltaLink does however disagree with the "reverse onus" proposed by GLPT – that a request for information must demonstrate relevance before a document is ever seen or produced. AltaLink submits that this proposal is entirely unworkable. As a registered transmitter, AltaLink has no knowledge about the content of any of the requested documents, and would be unable to demonstrate relevance until being given an opportunity to review the requested documents. AltaLink submits that given GLPT and HONI's involvement in EWT LP, the incumbent utilities should be required to list and disclose any and all information that may be of relevance to this proceeding. Otherwise, the incumbent utilities would be given an opportunity to hold back information for the exclusive advantage of their designate, EWT LP.
33. In short, AltaLink submits that each of GLPT and HONI should be required to confirm, in writing, that the Documents represent all of the information and records in their respective possession, or under their power or control, with any semblance of relevance to proposed East-West Tie line or any other matter at issue in this proceeding. HONI and GLPT should further be required to disclose all of those Documents unless they can demonstrate some harm to the incumbent utilities that may arise from such disclosure.

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?

34. AltaLink notes that the factual assertion made in argument by EWT LP at page 27 that "EWT LP can confirm that because of the Informational 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." This is a bold and untenable assertion to make in light of EWT LP's reliance on the key personnel of HONI

and GLPT, each of whom regularly have access to potentially relevant information outside of the information sharing protocols through their senior roles managing the operations and affairs of the incumbent utilities. AltaLink submits that the Board cannot rely upon this factual assertion, which was improperly made in argument, and has not been tested by way of either interrogatory questions or cross-examination.

35. AltaLink does not disagree with EWT LP's clarification of the record in regards to the factual legal relationship between GLPT, HONI and EWT LP. However, AltaLink does not believe that this clarification in itself means that the issue the Board proposed on this issues list has a "false premise" as suggested by EWT LP. Neither of HONI and GLPT are at arm's length with EWT LP. It is this non-arm's length relationship between EWT LP and each of the two incumbent utilities that the Board must carefully consider in this proceeding (not the arm's length relationship directly between HONI and GLPT, which EWT LP focuses on in its submissions and which AltaLink does not have any concern with). In AltaLink's view, it is the specific non-arm's length relationships between EWT LP and the incumbent utilities, and the unfair informational and resource advantages that EWT LP gains from these relationships that necessitates Board regulation.
36. EWT LP argues that ARC should only apply to entities that legally meet the definition of "affiliate" and since EWT LP does not meet this definition in respect of either HONI or GLPT individually, EWT LP argues that the Board should cease to consider the implications of the non-arm's length relationships that do exist. In this way, GLPT and HONI seek to achieve through clever structuring of a limited partnership a circumstance (non-compliance with ARC restrictions) which neither could hope to achieve individually.
37. AltaLink submits that creative legal structuring of the partnership should not be permitted by this Board to circumvent the underlying public interest policy objectives of its rules and codes. If AltaLink is designated in this proceeding, its transmission licence will become effective and it must immediately comply with the resource and information sharing restrictions in ARC for the duration of the development work. By contrast, even

if designated EWT LP will not have to comply with the resource and information sharing restrictions in ARC. This, AltaLink submits, results in an unfair advantage in this designation proceeding. AltaLink submits that it is in the public interest of the Board to take a closer look at regulating the relationships between each of GLPT and HONI, and EWT LP, to ensure the monopoly incumbents cannot use their informational and resource advantages to unfairly compete in this designation proceeding. In this way, the Board should enforce its own “General Anti Avoidance Rule” by taking a substantive, and policy oriented approach, to addressing the substantive concerns raised AltaLink and numerous other new entrants about how the relationship between the incumbent utilities and EWT LP should be regulated.

38. The Board already has a code of conduct which it uses to regulate the relationship between incumbent monopolies and non-arm’s length entities participating in competitive markets – the ARC. ARC relates to affiliate relationships. In this proceeding the Board is being asked to consider another type of non-arm’s length relationship, with the unique structuring of EWT LP. However there is no reason the Board cannot consider its own ARC as a model approach to address the substantive concerns about EWT LP’s unfair informational and resource advantages that it gains due to its non-arm’s length relationships with the incumbent utilities. ARC demonstrates restrictions on the sharing of certain information and certain employees that would give a company an unfair advantage in a competitive process. ARC also illustrates restrictions on the sharing of resources at less than fair market value, which would otherwise give a company an unfair advantage in a competitive process if those resources could be obtained at less than FMV.
39. In this regard, AltaLink raised the Board’s own ARC as illustrative of the types of solutions that the Board has previously used to regulate the relationship between incumbent utilities and non-arm’s length related entities participating in competitive processes.
40. AltaLink submits that EWT LP’s focus and emphasis on the arm’s length relationship between HONI, GLPT and BLP intentionally obfuscates the concerns raised by AltaLink

and others. AltaLink acknowledges that both HONI and GLPT are at arm's length – AltaLink does not seek to impose any ARC like restrictions on the relationship as between the arm's length incumbents. However, AltaLink notes that neither HONI nor GLPT are at arm's length with EWT LP, their designate in this proceeding. Further, AltaLink observes that both HONI and GLPT have the same interest in ensuring the success of EWT LP in the designation proceeding – at the expense of all other registered transmitters. It is the presence of these non-arm's length relationships, and this anti-competitive interest – that gives rise to the need of the Board to step in and regulate this relationship.

41. EWT LP argues that the Board should not step-in and regulate the relationship between EWT LP and each of the incumbent utilities because “the designation process is not a competitive unregulated market for services” but rather “the designation process is a regulated process available only to regulated entities.” While this designation proceeding may be a regulated process, AltaLink disagrees that this observation in itself somehow means the Board should not regulate concerns raised by AltaLink and others about the non-arm's length relationship between EWT LP and each of the incumbent utilities. One of the Board's fundamental objectives in this proceeding is to facilitate and support competition in transmitter designations for Ontario to drive economic efficiency for the benefit of ratepayers. AltaLink submits that in this first proceeding in particular, it is very important for the Board to establish very clear rules regarding the relationship between EWT LP and the incumbent utilities, otherwise the Board risks undermining its ultimate objective by allowing the incumbent's designate an unfair informational and resource advantage in this proceeding.
42. Finally, AltaLink takes note of EWT LP's submission that the Board should not impose ARC-like restrictions to “interfere with contractual relationships of arm's length third parties.” AltaLink disagrees. EWT LP readily acknowledges that this is a regulated designation proceeding, and that each of the registered transmitters and the incumbent utilities are regulated by this Board. AltaLink submits that private commercial

relationships should not be used to fetter or undermine the Board's regulatory authority or objectives in this proceeding.

43. AltaLink submits that a set of well understood and objective rules – such as those contained in ARC (information sharing, employee sharing and resource sharing restrictions) and applied to numerous other non-arm's length relationships between Ontario utilities and their affiliates engaged in competitive ventures – represents a practical solution to this dilemma. EWT LP, HONI and GLPT will readily understand the rules and Board's expectations, as will the other registered transmitters and intervenors. As long as EWT LP complies with the "ARC-like" rules imposed by the Board in this Phase 1, it will be able to participate in Phase 2 on an equal footing with other registered transmitters. With this approach, the Board will greatly limit the scope of concerns that might be raised during Phase 2 about EWT LP's participation to whether or not EWT LP complied with those "ARC-like" requirements in preparing its application for designation.
44. There is nothing in the contracts as between GLPT and HONI that would limit the Board's authority to impose license terms on the incumbent utilities in respect of their relationship with EWT LP.
45. In terms of implementing the "ARC-like" rules, AltaLink submits that the Board has the statutory authority to require the incumbent utilities to comply with ARC in respect of their relationship with EWT LP as a term of their existing transmissions license. This would impose the requirements immediately, and would ensure the integrity of Phase 2 of this proceeding. AltaLink submits that the Board could similarly require EWT LP to comply with the ARC-like restrictions in respect of its relationship with HONI and GLPT, once its transmission license becomes effective. This will ensure that EWT LP would also have to comply with ARC-like limitations once designated, just like AltaLink and all other registered transmitters.

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

46. Parties have proposed a number of possible dates for the filing of an application for designation, ranging from an aggressive proposal of 2 months (which AltaLink submits is entirely unreasonable) to a cautious proposal of 12 months. AltaLink notes that the majority of registered transmitters support a 6 month deadline following the Phase 1 decision. AltaLink submits that this timing reflects a reasonable compromise between the need to proceed with designation promptly, on the one hand, with the reality that this is the first designation proceeding in Ontario and registered transmitters will need a reasonable period of time to prepare their plans that are sufficiently informed to add value to the Board's decision making process.

C. CONCLUSIONS

47. AltaLink would like to conclude its submissions by re-iterating its support for the Board's new policy objectives of supporting competition in transmission in Ontario. This important policy initiative will drive economic efficiency in transmission for the benefit of Ontario ratepayers. AltaLink appreciates the opportunity to work with the Board as it seeks to address the various policy issues that inevitably have arisen when pursuing such an important new policy objective. AltaLink looks forward to the Board's decision on these Phase 1 issues.

All of which is respectfully submitted this 22nd day of May, 2012.

Original signed by J. Mark Rodger

J. Mark Rodger

Original signed by John A.D. Vellone

John A.D. Vellone