



Fraser Milner Casgrain LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511
FAX 416 863 4592

VIA E-MAIL

May 22, 2012

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON M4P 1E4

Helen Newland
DIRECT 416 863-4471
helen.newland@fmc-law.com

Dear Ms. Walli:

**Re: RES Canada Transmission GP Inc.; Phase 1 Reply Submission;
Board File No.: EB-2011-0140**

We are writing to file the Reply Submission of RES Canada Transmission LP pertaining to the Phase 1 issues.

Yours very truly,

(signed) H.T. Newland

HTN/ko

Encls.

cc: All Intervenors

ONTARIO ENERGY BOARD

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.

REPLY SUBMISSION

of

RES CANADA TRANSMISSION LP

on

PHASE 1 ISSUES

May 22, 2012

Introduction

1. RES Canada Transmission LP ("**RES Transmission**") is a registered transmitter and an intervener in this proceeding. RES Transmission intends to submit an application for designation in Phase II. RES Transmission filed a submission ("**Submission**") on Phase I issues on May 12, 2012 with the Ontario Energy Board ("**OEB**" or "**Board**").
2. This submission replies to: (i) a number of common themes that emerged from our review of the submissions of other intervenors in this proceeding; and (ii) certain specific submissions of a number of intervenors.

Production of Information

3. It is critical that the designation process be perceived as transparent, fair and truly competitive. Based on the submissions received, most intervenors agree that Great Lakes Power Transmission LP ("**GLPT**") and Hydro One Networks Inc. ("**Hydro One**") should be required to provide full and complete disclosure of all information within their possession related to the East-West Tie, subject to reasonable protections for confidentiality and security.
4. In its submission, Hydro One indicated that it was not prepared to file a number of the documents identified in its Documents List, namely, a Project Definition Report, an SNC Lavalin Study Estimates Report, easement agreements with private landowners and certain agreements with First Nations. The Project Definition Report, Study Estimate Report and First Nation agreements, in particular, appear to be highly relevant to the matters at issue in this proceeding.
5. The basis of Hydro One's objections to the production of the Project Definition Report and the Study Estimates Report is its concern that these two documents could "reduce the creativity and diversity" of designation proposals. In addition, Hydro One submits

that a confidentiality agreement with SNC Lavalin prohibits the release of the Study Estimate Report.

6. Hydro One's concern about "skewing" the designation process ignores the very reason why new entrant transmitters are asking the Board to order production of all East-West Tie documents in the possession of Hydro One and GLPT; namely, to minimize the skewing of the designation process in favour of EWT by ensuring, to the greatest extent possible, that information and knowledge possessed by parties related to EWT, is available to all parties in this proceeding. Given the corporate relationship between EWT and the incumbent utilities and given that EWT's key employees are also executives employees of the incumbent utilities, it is a reasonable implication that information and knowledge possessed by the incumbents is also possessed by EWT. For this reason alone, the Board should not hesitate to order production of the Project Definition Report and the Study Estimates Report. If further reason is required, however, RES Transmission would point to the fact that the two studies at issue were funded by Ontario ratepayers.
7. Hydro One also objects to filing the Study Estimate Report, certain information related to easements with private landowners and certain agreements with First Nations on the basis of confidentiality. RES Transmission believes that, as a matter of principle, there should be no exceptions to the obligations of Hydro One and GLPT to produce all East-West Tie documents in their possession. Hydro One is a regulated utility and, as such, should not be permitted to circumvent its disclosure obligations by relying on confidentiality agreements with third parties. Moreover, the Board's Practice Direction on Confidential Filings prescribes a number of different arrangements that may be used to protect the confidential information that Hydro One objects to filing.

Unduly Specific Filing Requirements Favour the Incumbents

8. Some interveners are urging the Board to place inordinate weight on Ontario-specific expertise and experience as decision criteria. The proposals of EWT, in particular, place a great deal of emphasis on experience in constructing and operating transmission lines in Ontario and expertise in a “substantially similar legislative and regulatory environment”. The Power Workers’ Union also proposes that assessment criteria should weight Ontario-based experience more highly than relevant experience in other jurisdictions.
9. While the Board needs to take a hard look at the relevant experience and expertise of each applicant, RES Transmission is concerned that overly prescriptive, jurisdiction-specific Filing Requirements will invariably tilt the playing field in favour of certain applicants, particularly EWT who, by virtue of its relationship with and access to the incumbents, is one of the few registered transmitter with Ontario-based electricity transmission experience. The Board must strike a balance between ensuring that the designated transmitter has the necessary expertise and experience to successfully develop and construct the East-West Tie and ensuring that the designation is a truly competitive process that does not favour EWT.

How Will the Filing Requirements Be Used to Select the Designated Transmitter?

10. It is clear from the submissions of other intervenors that there is no common understanding of how some of the information specified by the Filing Requirements and, in particular, construction cost estimates and an Aboriginal participation plan, will inform the Board’s selection of a designated transmitter. The Board Staff’s submission acknowledges (at p. 17) that construction cost estimates developed at the pre-designation stage cannot be expected to be accurate. In its Submission, RES Transmission agreed that the quality of available cost information at the designation state will not be high. Similarly, while RES Transmission agrees that designation

applicants should be required to provide information regarding their plan for First Nations and Métis participation, much of the information required by section 2.5 of the Filing Requirements will not be available, in precise form, until an actual participation agreement is negotiated and concluded – a process which, for most applicants, will occur after an applicant has been designated.

11. In light of these circumstances, it would be very helpful to applicants if the Board could clarify exactly how construction cost estimates and the Aboriginal participation plan will inform its designation decision. To be clear, RES Transmission is not arguing that this information should not be required or that the Board should rank, group or assign weight to the construction cost estimates or the Aboriginal participation plans. Such a precise methodology would be overly prescriptive and would hamper the Board's ability to judge each proposal as a whole. RES Transmission is simply requesting that the Board address, in its Phase 1 decision, how these components of the Filing Requirements will inform its selection of the designated transmitter, having regard to the reliability of such information at this stage.

Recovery of Phase I Costs

12. As stated in the Submission (at pp. 13-14), RES Transmission does not agree with the Board Staff submission that the designated transmitter should not be permitted to recover costs incurred prior to the issuance of the Board's Phase I decision (Issue 14). Phase I costs are legitimate costs of doing business and should be eligible for recovery by the successful designee. In this regard, RES Transmission endorses the proposal and underpinning reasons of Upper Canada Transmission, Inc. (at p. 14) to the effect that the start date for determining recoverable costs be the deadline for transmitter registration for this designation process – September 20, 2011.

Applicants Must Not be Involved in Evaluating Applications

13. RES agrees with the Ojibways of Pic River First Nation (“**PRFN**”) (at pp. 9-11) that potentially impacted aboriginal communities must be fully consulted and involved in the designation process. The need to consult and involve, however, does not require that aboriginal communities participate in the evaluation of designation applications. All aboriginal communities will have the opportunity to interrogate and comment on each applicant’s designation application through the hearing process proposed for Phase 2 of this proceeding. Moreover, it is always open to the OEB to consult with expert agencies and organizations such as the Ontario Power Authority, the Ministry of Aboriginal Affairs, members of a First Nation’s Political Territorial Organization, and other non-conflicted parties, in order to assist it in assessing the Aboriginal participation plans of the various applicants.
14. RES Transmission is concerned with the proposal of PRFN that those Aboriginal communities that may be impacted by the development of the East-West Tie should be involved in the evaluation of each applicant’s Aboriginal participation plan. There are two problems with this proposal. The first is that the Board may not delegate its duties to a third party. The second problem is that PRFN and several of the potentially impacted Aboriginal communities along the East-West Tie corridor are also investors in Bumkuswada LP, a participant in EWT. Involving these communities in the evaluation of designation applications would amount to a clear conflict of interest.

Do Not Bar Communications Between Applicant’s Counsel

15. In its submission (p. 26) EWT proposes that applicants should be disqualified if they coordinate or communicate with each other in the preparation of designation plans or designation strategy.

16. RES Transmission opposes this proposal. The designation proceeding is a complex and evolving process. There is nothing untowards or anti-competitive in discussions among parties or their counsel as they navigate their way through the process, especially during Phase 1 where procedural and fairness issues have been at the forefront. Such communications do not discourage competition. On the contrary, they facilitate a fair and competitive designation process and complete and well thought out submissions from all applicants.

Milestones

17. In the submissions received by the Board, several parties, including TransCanada Power Transmission (Ontario) LP (at p. 15), have suggested that the designated transmitter should be held to specific performance milestones (Issue 11).
18. RES Transmission reiterates the view expressed in its Submission that specific milestone dates will not provide the Board with greater certainty regarding the completion of the project in a timely manner. Any milestones prescribed at this stage of the proceeding will, of necessity, be arbitrary and will not reflect evolving circumstances that are, in large measure, outside the control of the designated transmitter (e.g. environmental assessment and permitting timelines). Moreover, given uncertainties related to the in-service date of the East-West Tie, it is not clear how specific milestone dates could be prescribed at this stage. The requirement to file quarterly reports that provide updates on the status towards the completion of defined tasks, coupled with the Board's power to withhold the recovery of all or a portion of the designated transmitter's development costs should be more than adequate to encourage the designated transmitter to complete the project on time.

Timelines

19. Regarding the application filing date, RES would like to reiterate its submission (at p. 17) that four months from the Phase 1 decision is sufficient time to assemble a designation

application. Given the passage of time since the Minister's March 2011 letter, it will be challenging for the designated transmitter to achieve the in-service date. The longer the period of time before a designated transmitter is selected, the more problematic this date will become.

20. It would also be helpful if the Board could issue its designation decision as quickly as possible following the end of Phase 2 and, in any event, no longer than two months from that date. There is a cost to delay. All applicants have project teams on standby, awaiting the decision of the Board. The more expeditious the Board's decision making process, the lower the project costs and the more likely timelines will be met.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22TH DAY OF MAY 2012

(signed) Helen T. Newland

Helen T. Newland
Nalin Sahni
of Counsel to RES Canada
Transmission LP