



EB-2011-0140

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.

BEFORE: Cynthia Chaplin
Presiding Member and Vice-Chair

Cathy Spoel
Member

PHASE 1 PARTIAL DECISION AND ORDER

PRODUCTION OF DOCUMENTS

June 14, 2012

INTRODUCTION

The Ontario Energy Board initiated a 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. The Board assigned File No. EB-2011-0140 to the designation proceeding. Seven transmitters registered their interest in the designation process.

The East-West Tie line will run between Thunder Bay and Wawa, and connect to the bulk transmission system in Northern Ontario. Both Hydro One Networks Inc. ("HONI") and Great Lakes Power Transmission LP ("GLPT") operate transmission systems in Northern Ontario.

Following an all parties meeting on March 23, 2012, HONI and GLPT each provided a list of documents in their possession which may be relevant to the development of the East-West Tie line. The lists are included as Appendices A and B to this decision. The Board approved an issues list for Phase 1 of this proceeding (which was included as Appendix A to Procedural Order No. 2 dated April 16, 2012). Issue 19 on the Issues List reads as follows:

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

These two utilities, and all other parties, filed submissions in response to the Board's procedural order. Several of the registered transmitters and other intervenors emphasized the need for the Board to ensure that all potential designation applicants have equal access to information held by HONI and GLPT, in order to provide the foundation for a fair designation process. These concerns are heightened in this case as a result of the relationship between one of the registered transmitters, EWT LP, and HONI and GLPT.

Having considered the submissions of all parties, the Board finds it desirable to make an early, partial decision on issue 19.

HONI DOCUMENTS

HONI, in its Phase 1 submission, indicated it was generally prepared to file the documents listed in Appendix A. However, HONI raised two concerns related to the disclosure of some of the documents.

Confidentiality issues

Four of the documents on HONI's list; namely 1b, c, d and e, consist of reports or plans prepared for HONI by independent consultants. HONI submits that these documents contain information that is commercially sensitive. In one case, a confidentiality

agreement between HONI and the consultant prevents HONI from offering to provide the report. Two further types of documents, easements with landowners and real estate agreements with First Nations, disclose contractual arrangements with landowners and First Nation groups. HONI recommends that these documents not be produced due to the confidential nature of these arrangements.

As set out in the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*"), it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The *Practice Direction* seeks to balance these objectives with the need to protect information properly designated as confidential. In the context of this proceeding, confidentiality concerns should not prevent access by the Board and parties to this proceeding to information in the possession of HONI and GLPT relevant to the development of the East-West Tie line. The fairness of the process is a primary consideration in this case. Moreover, the Board is not bound by confidentiality agreements entered into by the utilities it regulates, and regulated utilities may be ordered to produce documents that are the subject of such agreements. The *Practice Direction* provides adequate mechanisms for the protection of confidential material.

Process issues

With respect to two documents on its list, the HONI Project Definition Report (1a) and the SNC Lavalin Study Estimates Report (1b), HONI recommended that the Board not require production on the basis that:

...the comprehensive and detailed nature of the information contained in [the two documents] could unintentionally skew the proposals by building on work previously completed by HONI. If this reduces the creativity and diversity of proposals, it could be inconsistent with the objectives of the designation process. Furthermore, it may also render it more difficult for the Board to differentiate and assess proponents based on the sophistication and merit of their filed plans. (*HONI submission dated May 7, 2012*).

The Board appreciates HONI's concern for maintaining the integrity of the designation process. However, the Board finds that the integrity of the designation process is best served by ensuring that there exists equal access to relevant information by all potential

applicants. Moreover, this interest outweighs any potential difficulties that may arise in the Board's assessment of designation plans as a result of those applicants receiving comprehensive information relating to the development of the East-West Tie line.

Production Required from HONI

The Board requires that HONI file with the Board and serve on all parties the following documents in their entirety, as the Board understands that there are no confidentiality concerns related to these documents:

- 1a) HONI Project Definition Report
- 1f) Inergi LP Map & Tiles
- 2a) Presentation on North and Central Transmission Projects
- 2b) Presentation on Transmission Expansion in NW Ontario
- 3a) GPS Coordinates of existing East-West Tie line tower structures
- 3b) Aerial "flyover" video of existing East-West Tie line
- 3c) Station graphics showing existing line entrances
4. Transmission line maintenance practices
- 5a) Categories of land rights and percentages
- 5b) Licences and permits
6. Historical outage data

The Board accepts HONI's submission that the following documents contain commercially sensitive confidential information:

- 1b) SNC Lavalin Study Estimates Report
- 1c) Dillon Consulting Limited Services Plan
- 1d) Stantec Inc. Environmental Assessment Plan
- 1e) Senes Consultants Limited Socio-Economic Assessment Plan

The Board requires the following with respect to these documents:

- i. In accordance with section 5.1.4(b) of the *Practice Direction*, a confidential unredacted version of each document must be filed with the Board and served on each person from whom the Board accepts a Declaration and Undertaking in this proceeding (see below).

- ii. A non-confidential version of each document, with the commercially sensitive information redacted, must be prepared in accordance with section 5.1.4(c)(i) of the *Practice Direction*, filed with the Board and served on all parties.

With respect to the agreements with private landowners (5c) and First Nations (7), the Board, in its *Rules of Practice and Procedure*, requires that personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), not be disclosed to any person unless the Board determines that disclosure would be in accordance with the requirements of that Act. The Board will not require the disclosure of the personal information in these documents. The Board will also not require the disclosure of the amount of compensation paid under each agreement. However, the Board will require the filing of the agreements with the personal and compensation information redacted, as well as the filing of aggregated compensation information. This reflects the Board's view that the form of the agreements, and the aggregated information with respect to the costs under the agreements, are relevant to the preparation of an application for designation. The Board therefore requires the following with respect to these documents:

- i. HONI must file with the Board and serve on all parties copies of the agreements with private landowners and First Nations, with two types of information redacted: personal information and information relating to compensation amounts for the easements or land rights.
- ii. With respect to compensation amounts, HONI must file with the Board and serve on all parties a separate document setting out this cost information aggregated into suitable categories, such as by type of easement or geographic area, such that no individual compensation amount is revealed.

If any of the documents are voluminous, HONI may wish to consider the options outlined in the "Practical Considerations" section below.

GLPT DOCUMENTS

GLPT, in its Phase 1 submission, indicated that the majority of the items on its list (Appendix B to this decision and order) would be neither helpful to potential designation applicants nor relevant to the development of the East-West Tie line. Other parties argued that the determination of relevance is not GLPT's to make, and that the Board

should require production of all documents with even marginal relevance to the development of East-West Tie line.

Production Required from GLPT

As stated above, the Board finds that fairness of the designation process is an overriding consideration in this case. Although the Board accepts that some of the information listed by GLPT may eventually prove not to be of significant relevance to the development of the East-West Tie line, the Board requires GLPT to file with the Board and serve on all parties the following information for GLPT's W23K circuit: outage statistics, vegetation management program overview information, transmission line condition assessment program information and the PLS CADD "Plan and Profile" drawings. The Board will not require GLPT to produce this data for its entire system, as the Board accepts that the information for circuits other than W23K would not be relevant to the development of the East-West Tie line.

The Board also requires GLPT to file with the Board the LIDAR data for GLPT circuits emanating from, and the Ortho View of GLPT's circuits connected to, Anjigami TS and Wawa TS, and the GIS data related to the W23K transmission line. The Board appreciates GLPT's security concerns with respect to this data, and requires the following with respect to these documents:

- i. In accordance with section 5.1.4(b) of the *Practice Direction*, a confidential unredacted version of each document must be filed with the Board and served on each person from whom the Board accepts a Declaration and Undertaking in this proceeding (see below).
- ii A non-confidential version of each document, with the system security-sensitive information redacted, must be prepared in accordance with section 5.1.4(c) of the *Practice Direction*, filed with the Board and served on all parties. If the security concerns relate to the entire data sets, GLPT may file and serve a non-confidential description or summary of the data sets in lieu of a non-confidential, redacted version.

If any of the documents are voluminous, GLPT may wish to consider the options outlined in the "Practical Considerations" section below.

OTHER PRODUCTION ISSUES

The Board notes the submission of Great Lakes Power Transmission EWT LP (“GLPT EWT LP”), in which it describes information in its possession and requests that the Board not order production of either publicly available or strategic information that was gathered or prepared in contemplation of an application for designation by EWT LP. The Board also notes the argument made at page 14 of the reply submission of EWT LP, that Canadian Niagara Power Inc. (“CNPI”) should disclose any documents it may have in its possession relevant to the designation proceeding.

The Board’s Policy Framework for Transmission Project Development (EB-2010-0059) contemplated the participation in a designation process of incumbent transmitters under their existing licences. The Board, since that Policy, has not placed any restrictions on the manner through which incumbent transmitters may participate. To require a participating incumbent transmitter to reveal its strategic information to competing applicants could prevent incumbent transmitters from effectively competing for designation. On this question, the Board believes that fairness to all potential applicants dictates that neither CNPI nor GLPT EWT LP (through an order to GLPT) be required to produce strategic information created for the purpose of preparing a designation application.

ACCESS TO INFORMATION FILED IN CONFIDENCE

Representatives of parties to this proceeding who wish access to the confidential versions of the documents for which production has been ordered must file with the Board a Declaration and Undertaking as set out in section 6 of the Board’s *Practice Direction*. The form of Declaration and Undertaking provided in Appendix C to the *Practice Direction* must be used by a person that is external counsel of record or a consultant for a party. The Board may in appropriate cases accept a Declaration and Undertaking from a person who is neither external counsel to, nor a consultant for, a party. If any such person wishes access to the confidential information, the person must file with the Board a request for access to the information and set out the reasons why access cannot be restricted to external counsel of record or a consultant for the party. It will be of assistance to the Board if HONI and GLPT, in the cover letter for the filings required by this decision and order, outline any objections in principle they may have to the acceptance of a Declaration and Undertaking from persons who are neither external counsel to, nor a consultant for, a party. The Board will provide HONI and

GLPT with an opportunity to object to the acceptance of any Declaration and Undertakings the Board receives, pursuant to section 6.1.4 of the *Practice Direction*.

Persons who are granted access to confidential information should note that the Board considers violations of a Declaration and Undertaking given to the Board to be a matter of very serious concern. Such violations can be, and will continue to be, subject to sanctions imposed by the Board. Representatives of parties, before signing a Declaration and Undertaking, should carefully consider whether they require access to the information and are prepared to accept the responsibility for strict maintenance of confidentiality. For example, no information received in confidence should enter the public record as part of an application by any registered transmitter.

CONFIRMATION OF COMPLETENESS OF LISTS

Several parties submitted that HONI and GLPT should be required to either confirm that the lists they have provided disclose all information related to the East-West Tie line, or provide updated lists. The Board will require that counsel or a senior executive for each of HONI and GLPT confirm, by way of an affidavit filed with the filings ordered in this decision, that the utilities have disclosed all information in their possession related to the development of the East-West Tie line. If investigation by HONI or GLPT reveals that additional information of this nature exists which was not included on the original lists, an updated list must be filed and served on all parties, after which the Board will establish a process to determine relevance and address any confidentiality issues, if necessary.

PRACTICAL CONSIDERATIONS

The Board recognizes that some of the information for which it has ordered production may be voluminous, and it may not be practical to serve hard copies of this information on all parties. At the same time, it is important to the integrity of the East-West Tie line designation process that any party that needs to see the information may do so, subject to the confidentiality constraints as discussed above.

The Board will require that one complete electronic and two complete hard copies of the information be filed with the Board at the address below. If filing a hard copy is impractical due to the volume of the material, HONI or GLPT should provide the information in electronic form on a CD.

Where the material is confidential, the electronic version should not be filed through the Board's portal, but must be filed on a CD and clearly marked by the filer in accordance with section 5.1.4 of the *Practice Direction*. The filer must provide 2 CDs: one CD containing the redacted, non-confidential version, and one CD clearly marked as confidential, containing the unredacted, confidential version. Two hard copies of the confidential and non-confidential versions, clearly marked as required in the *Practice Direction*, must be filed, unless the volume of the material makes this requirement impractical.

Where providing a copy of the information to all parties is not practical, HONI and GLPT must make arrangements to allow parties to have access to the information, and to make copies if they wish, subject to the confidentiality constraints discussed above. Options include viewing the information at the utilities' offices, and/or arranging with Board staff for a secure electronic site through which parties can access the information. As some of the parties to this proceeding are based in the northern part of the province, accommodation must be made to allow these parties access to the information if it is needed. The Board will expect all parties to co-operate to facilitate reasonable access to the information, with the assistance of Board staff if necessary.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than **4:45 p.m.** on the required date.

THE BOARD ORDERS THAT:

1. On or before **June 28, 2012**, HONI shall file with the Board, and copy to all parties in this proceeding, all the documents listed in Appendix A to this decision and order, subject to the rulings in this decision and order with respect to confidentiality and practicality. In addition and at the same time, HONI shall file the aggregated compensation information as described in this decision and order.
2. On or before **June 28, 2012**, GLPT shall file with the Board and serve on all parties in this proceeding, all the documents listed in Appendix B to this decision and order, subject to the rulings in this decision and order with respect to confidentiality and practicality.
3. On or before **June 28, 2012**, HONI and GLPT must each file with the Board, and serve on all parties, an affidavit confirming that the lists they provided, (included in

this decision and order as Appendices A and B), contain all the information in their possession related to the development of the East-West Tie line.

4. On or before **July 6, 2012**, a party wishing to access any of the confidential unredacted versions of the documents listed in Appendices A and B shall execute and file with the Board a Declaration and Undertaking in accordance with section 6 of the *Practice Direction*. Where the person that is the representative of the party is neither external counsel to nor an expert or consultant for the party, the person must file with the Board a request for access to the information and set out the reasons why access cannot be restricted to external counsel of record or a consultant for the party.
5. The Board will notify HONI and GLPT no later than **July 11, 2012** of the persons from whom the Board intends to accept a Declaration and Undertaking. HONI and GLPT may object to the acceptance of a Declaration and Undertaking by filing the objection with the Board and serving it on the person to whom the objection relates on or before **July 18, 2012**. The person to whom the objection relates may reply to the objection on or before **July 25, 2012**.

The Board:

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Non-confidential Filings: <https://www.err.ontarioenergyboard.ca/>

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, June 14, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

Hydro One Networks Inc.

East-West Tie – Documents List

Board File No: EB-2011-0140

EB-2011-0140

East-West Tie – Documents List

This list has been produced for discussion purposes only. The documents identified in this list will not necessarily be released by Hydro One Networks Inc. (“HONI”) in this proceeding.

1. Preliminary Development

- a) HONI Project Definition Report¹
 - **study estimates** for various project implementation options for proposed East-West Tie line
 - contains: scope of work; assumptions (line, station, environmental, real estate, corporate communication); technical comparison tables (line, station); risk assessment; preliminary schedule; cost breakdown (development, implementation)
 - prepared: June 4, 2010
- b) SNC Lavalin Study Estimates Report¹
 - **study estimates** for various line options and associated breaker installations and line terminations for proposed East-West Tie line
 - contains: engineering sketches; bill of major materials; assumptions; scope description; project schedule; cost estimate; work breakdown structure; analysis (contingency, risk, escalation)
 - prepared: May 19, 2010
- c) Dillon Consulting Limited Services Plan
 - **work plan and budget** for consultation activities for proposed East-West Tie line in relation to Terms of Reference and Individual Environmental Assessment, including Canadian Environment Assessment Agency screening, OEB section 92 submission activities, First Nations and Métis consultation, and Biodiversity Initiative activities
 - prepared: January 26, 2010
- d) Stantec Inc. Environmental Assessment Plan
 - **proposal** for consulting services for proposed East-West Tie line in relation to pre-EA work, Terms of Reference, Environmental Assessment, general support (CEAA screening, OEB application, Biodiversity Initiative, orthophotography, other permits/approvals)
 - contains: cost estimate and assumptions
 - prepared: February 9, 2010
- e) Senes Consultants Limited Socio-Economic Assessment Plan
 - **work plan** for activities for proposed East-West Tie line relating to: socio-economic, cultural and heritage sections of Terms of Reference and Environmental Assessment; socio-economic studies; conducting public information centres on socio-economic matters
 - prepared: January 26, 2010
- f) Inergi LP Map & Tiles
 - **map tiles** of existing East-West Tie line by sections
 - **overview map** of existing East-West Tie line
 - prepared: May 7, 2010

¹ Sensitivity around release timing and recipients.

2. **HONI Presentations**
 - a) North and Central Transmission Projects
 - **presentation** on North-South transmission expansion, Algoma-Sudbury transmission expansion, East-West transmission tie, and Manitoulin Island enabler
 - prepared: January 27, 2010
 - b) Transmission Expansion in NW Ontario
 - **presentation** on Northwest transmission expansion and East-West Tie expansion
 - prepared: April 22, 2010
3. **Existing Facilities**
 - a) GPS Coordinates of existing East-West Tie line tower structures
 - **longitude and latitude** for each tower structure of existing line
 - b) Aerial “flyover” video of existing East-West Tie line
 - **video** of aerial view of existing line (Wawa TS x Lakehead TS)
 - c) Station graphics showing existing line entrances (Wawa TS, Marathon TS, Lakehead TS)
 - **photos** (top-down view) of transformer stations with line entrances superimposed
4. Typical transmission line maintenance practices
 - **HONI’s typical practices** for transmission line maintenance and vegetation/right-of-way management
5. **Real Estate**
 - a) Categories of land rights and percentages along existing East-West Tie line
 - **land type percentages** (Crown, park, private, First Nation)
 - b) Licences and permits
 - **licences and permits** for provincial Crown lands and Pukaskwa National Park
 - c) Other real estate info
 - **easements** with private landowners
6. Historical outage data (weather events)
 - **line outage statistics** (forced momentary, forced sustained, planned outages) from 2002 to 2011 along existing line
7. Real Estate Agreements with First Nations
 - **agreements** with First Nations for land rights along existing line

APPENDIX B

Great Lakes Power Transmission LP

East-West Tie – Documents List

Board File No: EB-2011-0140

March 26, 2012

EB-2011-0140

Document List Requested of Great Lakes Power Transmission LP (GLPT)

GLPT has in its possession the following information that it can provide following approval from the Board for release:

- Outage statistics with respect to the W23K portion of its 230kV system
- Vegetation Management Program Overview
- Transmission Line Condition Assessment Program Overview
- LIDAR data for GLPT circuits emanating from Anjigami TS and Wawa TS
- PLS CADD “Plan and Profile” drawings for its 230kV circuit (W23K) connected to Wawa TS
- Ortho View of its 230kV circuit connected to Wawa TS and Anjigami TS
- GIS data related to W23K the transmission Line