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**VIA ELECTRONIC FILING & COURIER**

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

Dear Ms. Walli:

**Re: RES Canada Transmission LP;  
East-West Tie Line Designation Application;  
Confidential Information;  
Ontario Energy Board File No. EB-2011-0140**

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We are writing on behalf of RES Canada Transmission LP (“**RES Transmission**”) and pursuant to Procedural Order 5 to respond to the submissions of EWT LP (“**EWT**”), AltaLink Ontario L.P. (“**AltaLink**”) and the School Energy Coalition (“**SEC**”) objecting to RES Transmission’s request for confidential treatment of certain proprietary and financial information.

**The Special Treatment Argument**

Each of the objecting parties makes much of the fact that of the six applicants in this proceeding, only RES Transmission has sought to file information in confidence. AltaLink and EWT go so far as to refer to this as a request for “special treatment”.

There are two responses to the “special treatment” argument. The first is that this argument is irrelevant. The fact that no other applicant has sought to file information in confidence does not mean that the information in question should not be protected. The Board’s *Practice Direction on Confidential Filings* (“**Practice Direction**”) recognizes that information that is relevant to its decision in any particular proceeding may be of a confidential nature and should be protected as such. The party seeking to file on this basis must meet the onus of demonstrating that confidential treatment is warranted; it

is not required – nor should it be required – to explain why no other party in the proceeding has sought to file information on the same basis.

The second response to the “special treatment” argument is that no other applicant in this proceeding has filed proprietary information of the type for which RES Transmission seeks protection. The materials referred to in Altalink’s objection letter (Appendix 15 of Altalink’s application and s. 9.4 of the Icon/TransCanada application) are qualitatively different than the access road and staging information that RES Transmission has filed on a confidential basis. The AltaLink materials relate to how it selected its preliminary transmission line route and the different considerations that will bear on the selection of a final route. These materials are similar to the Project Corridor Analysis and Critical Environmental Issues Assessment that RES has filed (and made publicly available) at Exhibit J and Exhibit L-3-1 of its application. They are not similar to the information RES Transmission seeks to file in confidence.

The other designation applications do not include the detailed information on access road quality or potential staging locations that RES has filed on a confidential basis. Aside from the Altalink application which includes some limited detail, the other applications refer only, generally, to access roads and staging locations. For example, in its application, EWT repeatedly makes the general assertion that “staging yards and access road plans will be organized accordingly,” without providing any supporting evidence or information.

This stands in contrast to RES Transmission’s application which identifies potential staging locations and, for the entire 400 kilometer (“km”) length of the transmission line, provides detailed information on over 150 different route segments, on average 3 to 4 km in length each. RES Transmission has given careful thought to construction logistics, including how workers and equipment would access construction sites and where towers could be assembled before being anchored into place. This information was obtained through on-the-ground field work.

The fact remains that in its application, RES Transmission has provided a level of detail that has not been provided by any other applicant. It has done so in order to demonstrate the robustness of its bid price construction proposal and to reduce the risk of cost overruns in the construction phase. No other applicant has presented a bid price proposal for the construction of the East-West Tie to which it is willing to commit as a condition of designation.

**Is the Information Confidential?**

Both SEC and EWT object to RES Transmission's request on the basis that it has not demonstrated why confidential treatment is warranted. Both dispute RES Transmission's assertion that disclosure of the proprietary information would harm its competitive position in connection with its commercial activities in Ontario.

The detailed development and construction information included in RES Transmission's application was generated as part of its pre-designation activities. Despite the Board's Phase I decision that the successful applicant is entitled to recover its pre-designation costs from February 2012, RES Transmission is not seeking recovery of such costs. RES Transmission expects the proprietary information that it seeks to file in confidence may be used by affiliates in connection with future renewable energy projects located in proximity to the East-West Tie Line.

With respect to the financial information of Renewable Energy Holdings Limited, RES Transmission relies on the submissions in its January 4<sup>th</sup> letter. RES Group is a private entity in a highly competitive global industry and is not listed on any trading exchange. Wide and full disclosure of its financial information: would be detrimental to RES Group and its affiliate; could breach existing confidentiality agreements; and could convey a significant advantage to competitors of the Applicant and its affiliates, all to the detriment of the RES Group and its affiliates.

We note that while RES Transmission has requested that the financial statements of Renewable Energy Holdings Limited be disclosed only to external counsel and consultants it has included, in its Application, 247 pages of financial information for MidAmerican Energy Holdings Company (at Exhibit O-1-3), a listed company and the co-owner of RES Transmission.

We also note that of the other applicants, only Iccon Transmission, Inc. ("**Iccon**") and its parent, Isolux Infrastructure Netherlands B.V. ("**Isolux**") are private companies that are not listed on an exchange. RES Transmission is not aware whether Iccon and/or Isolux operate under constraints that are similar to those under which the RES Group operates. In any event, Iccon has not objected to RES Transmission's request to file audited financial statements in confidence.

**Who Will Be Harmed?**

EWT, AltaLink and SEC stress the importance of giving the “public” access to the confidential information. In the context of this issue, who is the “public”? Who will suffer harm if access to the information in question is limited to external counsel and consultants? Other than AltaLink, EWT and SEC, no other party in this proceeding objects to RES Transmission’s request. From this, it is reasonable to imply that all other parties do not believe they will be harmed. Moreover, each of the objectors – EWT, AltaLink and SEC – has engaged sophisticated and experienced counsel to support its participation in this proceeding. EWT has also engaged external consultants to assist it. These counsel and consultants would have access to the information that RES Transmission seeks to file in confidence.

The objectors submit that their ability to prepare interrogatories will be impaired without full access, by their employees, to the confidential information. This is difficult to accept. Unlike the case in other proceedings, only the Board will direct interrogatories to each applicant, albeit informed by the suggestions of parties.

It is important to remember that of the total of 1360 pages in RES Transmission’s application, it seeks to restrict access to only 49 of these pages. It is difficult to conceive how this request would impugn the integrity of the competitive designation proceeding. Moreover, public access to all information is not the only consideration at play in connection with this issue. As the Practice Direction makes clear, a balance needs to be struck “between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential.”

Yours truly,

***(SIGNED) HELEN T. NEWLAND***

HTN/ko

c.c. All Registered Transmitters  
All Intervenors  
Mr. Jerry Vaninetti  
Mr. Darrell Gerrard  
Ms. Jennifer Lea