



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

Emad Elsayed
Member

**DECISION AND ORDER ON REQUEST FOR CONFIDENTIALITY FROM
RES CANADA TRANSMISSION LP
JANUARY 23, 2013**

RES Canada Transmission LP (“RES”) is an applicant in the East-West Tie Designation proceeding before the Ontario Energy Board. In the cover letter to its application, filed with the Board on January 4, 2013, RES asked that certain documents, or portions of documents, be held in confidence.

There are two categories of documents RES sought to keep confidential:

- information regarding a potential route for the East-West Tie line (Access Road Classification Map, Access Road Inventory Report, staging Locations Map and portions of the Environmental Assessment Plan) described as proprietary information (referred to in this decision as the “non-financial information”); and

- the financial statements of Renewable Energy Systems Holdings Limited and its subsidiaries.

RES asked that the non-financial information remain off the public record of the hearing, but indicated that it would be willing to provide this information to external counsel and consultants of other parties who had signed the Board's Declaration and Undertaking. RES originally asked that only the Board and its staff have access to the financial statements, but modified its request in response to the Board's Procedural Order No. 5 to offer access to external counsel and consultants who signed a Declaration and Undertaking.

The Board received three objections to RES' request for confidential treatment of the documents: from AltaLink Ontario L.P. ("AltaLink") and EWT LP, who are both applicants in the proceeding, and from the School Energy Coalition ("SEC"), an intervenor in the proceeding. Each objector argued that if RES wishes to have the Board consider the documents in designating a transmitter to build the East-West Tie line, the documents should be on the public record of the hearing. RES responded to these objections on January 18, 2013.

As the Board has stated in its *Practice Direction on Confidential Filings*, it is the Board's general policy that all evidence should be on the public record unless disclosure is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. At the same time, the Board recognizes that some information may be of a confidential nature and should be protected. In making decisions on confidentiality, the Board seeks to balance the general public interest in transparency and openness with the need to protect information properly designated as confidential. The onus is on the person requesting confidentiality to demonstrate that confidential treatment is warranted.

The Board has applied this policy to the two categories of information that RES has asked to be held confidential. Recognizing the unique nature of this competitive proceeding, the Board will not afford confidential treatment to information in the absence of compelling circumstances.

Non-Financial Information

The Board finds that the non-financial information, specifically exhibits B-3-3, H-6-2, H-6-3, H-6-4 and L-4-1 in the RES application, will not be held in confidence. The Board agrees with EWT LP that the cost and effort involved in preparing information is not a reason to keep it confidential. Nor does the Board find the argument that the information is more detailed than that filed by other applicants, even if this statement is true, a compelling reason for holding the information in confidence. RES has chosen to provide this detailed information to support its application.

The Board also finds that the potential harm to RES from disclosure of this information is outweighed by the need for transparency in this competitive proceeding. RES has argued that disclosure of the route-related information could harm the competitive

position of RES in connection with its commercial activities in Ontario, and that the information could be used by affiliates of RES in connection with future renewable energy projects in proximity to the East-West Tie line. The Board agrees with EWT LP and SEC that the information appears to be specifically related to the development of the East-West Tie line, and prepared for that specific project. Even if some of the information could be used by RES or its affiliates in future projects, the Board does not find that this possibility is a compelling argument for holding the information in confidence.

RES has two options: it can choose to withdraw the information from the record by notifying the Board Secretary of that choice within five business days of the date of this decision, or it can choose to rely on the information as part of its application, recognizing that the Board will place the information on the public record of the proceeding.

Financial Statements

The Board finds that there are compelling reasons to grant the request of RES to hold the audited financial statements filed as exhibit O-1-2 in confidence. The Board recognizes that other applicants have filed their financial statements on the public record. However, RES is different than four other applicants in that it is a privately held company, not listed on any trading exchange, and not subject to public disclosure requirements for its audited financial statements. The other private entity that has participated in a designation application in this proceeding has not filed complete audited financial statements, and the information that has been filed appears to be in the public domain. While transparency is very important to the integrity of the Board's designation process, it is also important to maintain a process that does not create barriers to applications from private companies.

The financial statements filed by RES are not specific to the East-West Tie project, but contain information relevant to all of the business activities of Renewable Energy Systems Holdings Limited. The Board accepts that public disclosure of the financial statements would create a significant potential for harm to RES and its affiliates. In these circumstances, the Board does not find that full public disclosure is necessary to ensure fairness in this proceeding. The financial statements are available to external counsel and consultants for parties who sign or have signed the Board's Declaration and Undertaking in this proceeding. The Board finds that this level of disclosure is acceptable, given the nature of the financial information and the potential harm to RES of broad disclosure.

The Board therefore orders that:

1. If RES chooses to withdraw any information that the Board has ruled will be placed on the public record, it shall do so by way of a letter to the Board Secretary filed no later than 4:45 p.m. on January 30, 2013.

DATED at Toronto, January 23, 2013
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary