

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.

**FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF
CANADA**

I. INTRODUCTION:

On February 2, 2012, the Ontario Energy Board (“Board”) issued notice that it was initiating 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 (“EWT Line”) was identified in the Minister of Energy’s Long Term Energy Plan, issued in 2010, as one of five priority transmission projects required to address reliability, renewable energy growth and changing demand in Ontario.

The designation process was developed as part of the Board’s Framework for Transmission Project Development Plans (released August 26, 2010). The Board’s policy set out in the framework was intended to:

- Allow transmitters to move ahead on development work in a timely manner;
- Encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- Support competition in transmission on Ontario to drive economic efficiency for the benefit of ratepayers. (Board Policy: Framework for Transmission Project Development Plans, EB-2010-0059, dated August 26, 2010).

In Phase 1 of the proceeding the Board established decision criteria, filing requirements, obligations and consequences arising on designation, the hearing process for Phase 2 and the schedule for filing of applications for designation. In this Phase, the Board intends to select a designated transmitter.

These are the submissions of the Consumers Council of Canada ("Council"). The Council does not intend to take a position as to which of the six applicants is best suited to be the designated transmitter. We have not retained expert advice to assess the various elements of the Applications like design, schedule, route and cost. The Council will provide the Board with its views as to what it believes are the most important considerations for the Board in making its decision from the perspective of ratepayers. It is critical, from our perspective, to ensure that the Board has sufficient evidence to ensure that it makes the best decision in the public interest. Accordingly, the Council is proposing an additional step in the proceeding.

The Council will also provide brief comments on the Submissions made by Board Staff. With respect to the issues related to First Nations and Metis participation and consultation, and landowner, municipal and community consultation the Council will not be making any submissions. Other groups have specifically intervened to address those issues.

The Council is cognizant of the Board's comments in the Phase 1 Decision regarding scope of the proceeding:

It is important to remind participants of the limited scope of this process, which is the selection of a designated transmitter to do development work for the East-West Tie line. The final determination of the need for the new line will be considered in a subsequent leave to construct proceeding. In general environmental matters are not within the mandate of the Board and the necessary environmental assessment will be conducted in another forum. (Phase 1 Decision and Order, July 12, 2012, p. 2)

In its Decision on Intervention and Cost Award Eligibility the Board also commented on the scope of the proceeding:

This proceeding has, therefore, a relatively narrow component in regard to costs implications for ratepayers. The focus on this proceeding is on selecting the applicant which offers best value for ratepayers taking into account a number of criteria. (Decision, EB-2011-0140, March 30, 2012, p. 8)

The Council has set out its submissions in the following sections:

1. General observations about the proceeding and the issues
2. Comments on the Ontario Energy Board Staff Submissions
3. Conclusions
4. Costs

2. GENERAL OBSERVATIONS:

The Board has made it clear that the intent of this proceeding is to select a transmitter, among the applicants, that is the most qualified to develop and bring a leave to construct application for the East-West Tie Line. In its Phase 1 Decision the Board indicated that providing benefit to ratepayers through economic efficiency is a core objective of the Board's EB-2010-0059 Policy, and the reasonableness of the total costs of the project will be a critical component in achieving that objective.

From the Council's perspective it is critical that the development of the EWT Line, and the eventual construction and operation of the line, be done in the most cost-effective way possible. In addition, ratepayers need to be assured that the line is developed and constructed in a way that ensures the transmission of reliable and safe electricity across Ontario. These are the most important considerations for ratepayers. The line is expected to be built for one reason, to serve the needs of Ontario electricity consumers.

Although all of the criteria are important, to the extent the applicants can adequately prove technical capability, financial capacity and the meet the other requirements cost should be a significant factor for the Board.

This is consistent with the first two stated objectives as set out in the Ontario Energy Board Act:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry. (Ontario Energy Board Act 1998, S.O. 1998, c 15 Schedule B 1. (1))

The Board has received six application with pre-filed evidence submitted by all six applicants on January 4. The process allowed for a submission first by Board Staff. The Applicants filed Arguments in Chief and, following the submissions of the intervenors, they will be filing reply submissions.

This process is distinguishable from a typical Board proceeding in that there have not been any provisions for a discovery process. There was a circumscribed, Board - led interrogatory process. There was no opportunity for further scrutiny through a technical conference or cross-examination in an oral hearing. In addition,

intervenors were precluded from filing evidence. From the Council’s perspective this has made the Board’s decision-making process difficult. The evidence provided in support of the Applications has not been tested in the normal course. In addition, the critiques by each applicant of the other applicants have not been subject to a discovery process.

The Council acknowledges that the unique nature of the designation proceeding has dictated the need for a unique approach in terms of putting the relevant information before the Board. It is important to recognize, however, that this unique approach may impact the weight that the Board places on the “evidence” provided by each of the applicants and the submissions of all parties.

Below are excerpts from the Arguments submitted on April 18. Each of the Applicants has set out why they believe they are the most qualified transmitter for designation:

1. AltaLink Ontario

“AltaLink Ontario submits that, when objectively comparing it Application against those of other registered transmitters, AltaLink Ontario is clearly the most qualified and cost effective transmission company to develop the East-West Tie Line” (Argument in Chief, p. 8)

“For all of the foregoing reasons, the Applicant submits that the Board should find that AltaLink Ontario is the most qualified and cost-effective transmitter to be designated to develop that East West Tie line, as is evidenced by its Application.” (Argument in Chief, p. 39)

2. CNPI

“For the reasons set out herein, CNPI submits that it should be designated to develop the East-West Tie Project. To summarize:

- CNPI’s Aboriginal equity participation is the strongest;
- All of the other applicant have proposed or started EA field work before submission of environmental ToR, which implies a lack of respect for the Aboriginal process;
- CNPI’s estimated project costs are the most desirable for the following reasons:
 - CNPI’s total project costs are neither troubling high or suspiciously low;
 - CNPI has submitted the lowest OM&A estimate, which represents a significant portion of total project costs over the 50-

- year life of the line. OM&A is more reliably estimated at this stage of project than are construction costs;
 - Because of multiple unknowns in the construction costs at this stage, CNPI put forward maximum construction cost estimates with the expectation of reducing costs as the project moves into the design phase (i.e., as opposed to providing unrealistically competitive costs that will likely increase in the design phase). As construction cost estimates are reduced through design, the total CNPI total cost becomes even more competitive.
- CNPI's project schedule is the most realistic because it involves meaningful consultations before ToR are developed." (Argument in Chief, p. 41)

3. EWT LP

"Many of the Applicants have approached to preparation of their designation applications from the perspective of wishing to distinguish their plans in one or two aspects, such as a short schedule or an innovative design, whereas EWT LP has focused on preparing a balanced and comprehensive plan that will be most cost-effective for ratepayers.

EWT LP's development plan demonstrates more than any other applicant:

- A detailed and reliable project schedule and reasonable costs to help ensure the project is on time and on budget;
- An innovative and feasible suite of technical design alternatives that will ensure that the most cost effective project is ultimately built;
- Comprehensive Aboriginal and public consultation plans, and a land acquisition strategy that will ensure EWT LP achieves the social license necessary to develop and construct and operate the project." (Argument in Chief, pp. 9-10)

4. Iccon/TPT

"In summary, the Board should designate Iccon/TPT to develop the East-West Tie for the following reasons:

- Iccon/TPT has unmatched expertise an experience in developing, building and operating major electric transmission projects and it has assembled qualified project teams that are ready to commence work immediately upon designation;
- Iccon/TPT has prepared a credible and well-resourced plan for First Nations and Metis engagement and participation; this plan reflects Iccon/TPT's substantial experience engaging and working with Aboriginal communities;

- Iccon/TPT has a long history of working in Northern Ontario where TransCanada's Mainline Pipeline traverses the same area as the proposed East-West Tie; it is familiar with the terrain and weather challenges and has developed strong relationships with Northern communities including First Nations and Metis;
- Iccon/TPT has the unquestioned financial capability to develop and construct the project;
- Iccon/TPT has extensive experience navigating the requisite regulatory landowner, municipal and community consultation processes;
- Iccon/TPT is relying on a proven design that will be further adapted and refined as appropriate through the design process;
- Iccon/TPT has prepared competitive and prudent development and construction cost estimates and schedules which the Board and Ontario ratepayers can reasonably rely upon; and
- Iccon/TPT's track record demonstrates its commitment and capacity to manage costs and complete projects on schedule." (Argument in Chief, pp. 4-5)

5. RES

"RES Transmission is the only applicant in the proceeding that has offered Ontarians a real alternative: a new transmission line that meets all reliability and performance requirements at a low, firm cost underpinned by a Risk Sharing proposal, and meaningful opportunities for First Nation and Metis communities to share in the economic benefits of the Project.

The other applicants offer only speculative proposals or variations on the status quo: conventional designs at estimated costs or worse, ranges of estimated costs.

...In sum, RES Transmission has demonstrated that it is the best qualified applicant to develop, construct, own and operate the EWTL on a long-term basis. It requests that the Board designate it as such."

6. UPPER CANADA TRANSMISSION/NEXTBRIDGE

"Critical review of the six applications, together with applicants' responses to the Board's interrogatories, leads to the conclusion that designating Nextbridge as the developer of the East West Tie-line provides the greatest benefit to Ontario.

Nextbridge:

- Presents the lowest cost proposal;

- Will meet or exceed the Ontario Power Authority (OPA) specified technical requirements;
- Can achieve the targeted in-service date and that proposed cost;
- Demonstrates the best overall track record of meeting combined cost and schedule from among all the applicants and has brought forward a robust First Nation and Metis consultation and engagement plan based on extensive expertise and proven ability to carry it out.” (Argument in Chief, UCP, pp. 1-2)

Throughout these submissions each of the Applicants have set out, in significant detail, how their applications represent the most qualified team, the lowest cost, the best design, the most reasonable schedule and the most appropriate route. In addition, they are all claiming extensive experience with respect to transmission development and the ability to manage projects within pre-defined budgets. They also submit that they have sufficient plans for the various required consultation processes.

Furthermore, most of the critical issues are currently being debated by the Applicants through the argument process. The Council has attempted to capture most of the issues where there are conflicting submissions. These include:

1. Can the project be constructed using a single circuit design despite the IESO’s Feasibility Study recommendation that a double circuit design is superior?
2. Are “Guyed-Y” transmission structures suitable for the EWT line?
3. Will each of the proposed designs be suitable for Northern Ontario climate and terrain?
4. Are the development costs proposed comparable and sufficiently comprehensive?
5. Are the development costs proposed by each applicant justified?
6. Are the construction costs comparable and sufficiently comprehensive?
7. Are the construction costs proposed by each applicant justified?
8. Are the O&M costs comparable and sufficiently comprehensive?
9. Are the O&M costs proposed by each applicant justified?
10. Have the Applicants provided sufficient risk mitigation measures for Ontario ratepayers?
11. Is sole sourcing construction or operations to an affiliate cost-effective, appropriate (relative to a competitive bidding process) and permitted under the Board’s Affiliate Relationships Code (“ARC”)?
12. Do each of the Applicants have a sufficient track record in terms of project success (completion of projects, adherence to budgets etc.)?
13. Are the various schedules proposed reasonable?
14. Are the consultation plans provided by each Applicant sufficient?

Most of the Applicants have provided critiques of the other Applicants specifically addressing these issues. The reply argument process will allow the Applicants to

address the critiques provided by others. It is unclear how, with respect to many issues the Board will determine, who is right. (i.e., costs are understated, certain technologies are not appropriate, applicants have insufficient Ontario operational experience etc.)

From the Council's perspective it appears that each of the Applicants have provided the Board with sufficient information to establish that they all have both the technical capability and financial resources to develop, construct and operate large transmission projects. The fundamental question for the Board is which of these Applicants can develop, construct and operate the EWT Line in the best interest of Ontario ratepayers.

The Council submits that given the conflicting evidence and arguments presented in this proceeding, the following additional steps in the process may provide the Board with further information that could assist it in its decision-making process, specifically with respect to the issues set out above:

1. Seek formal, independent input from the OPA and the IESO in reports, to be filed with the Board, on specific elements of each the Applications related to scheduling, routing, technical design, and if applicable, costs. This will ensure the Board has information as to whether or not the proposals will be compatible with Ontario's electricity system; and
2. Convene an oral process for the Board and/or Board Staff to ask questions of the applicants regarding issues where there are conflicting positions and/or contradictory "evidence".

The Council is of the view that these extra steps in the process will ensure that, to the extent possible, the record is complete. In the absence of a further opportunity to clarify the record, the Board's decision-making process may be much more difficult. The Board may also want to consider narrowing the number of applicants available for designation prior to holding an oral process.

3. BOARD STAFF SUBMISSIONS:

On April 8, 2013, Board Staff provided submissions setting out components that could be included by the Board in its final order designating a transmitter to undertake the EWT Line development work. The Council is supportive of those recommendations, specifically the requirement that the designated transmitter be required to adhere to quarterly reporting and milestones.

Board Staff has suggested that the Board require that the designated transmitter, within a reasonable time after designation, file a new development schedule including the milestones that the Board deems necessary and having regard to the timing of the designation decision. The Council also supports this suggestion.

In order to ensure that ratepayers are not burdened with significant cost overruns at the end of the development process, the Council submits that a 10% materiality threshold regarding overruns would be appropriate. The threshold would trigger a review of the costs and require the designated transmitter to provide an explanation as to why the overrun has occurred. This too is an acceptable addition to the reporting requirements.

4. CONCLUSIONS:

The Council has participated in this proceeding at a relatively high level, providing the Board with considerations for its decision making and pointing to concerns about process. This is a new type of proceeding for the Board, and it is critical that it be undertaken in a way that best facilitates a decision in the public interest. The designated transmitter should be the one, from the Board's perspective, that is most qualified and will provide the best value for ratepayers

The Council has observed that the Applicants have made submissions regarding their proposals that are conflicting. This could make the Board's decision-making process difficult. The Council has suggested that the Board consider two further steps in this process: requesting independent input from the IESO and the OPA on the specific proposals; and convening an oral process for the Board and/or Board Staff to ask further questions of the Applicants to ensure the record is complete and sufficient for a designation decision.

5. COSTS:

The Council submits that it be permitted to recover its reasonably incurred costs for participating in Phase 2 of this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED