

**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.

**EB-2011-0140**

**EWT LP**

**Reply Submissions**

**June 3, 2013**

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1 **INTRODUCTION**

2 These are the Reply Submissions of EWT LP.

3 In their arguments in chief and submissions, applicants and intervenors have raised issues  
4 regarding EWT LP on the following topics:

- 5 • Promoting New Entry and the Treatment of EWT LP;
- 6 • Completion of the Proceeding;
- 7 • Cost and Cost Control;
- 8 • Technical Design;
- 9 • Schedule; and
- 10 • Aboriginal Engagement.

11 In the submissions that follow, EWT LP has addressed each of the issues raised.

12 **PROMOTING NEW ENTRY AND THE TREATMENT OF EWT LP**

13 In its Phase 1 Decision and Order, the Board clearly stated that its “primary objective in this  
14 proceeding is to select the most qualified transmission company to develop, and to bring a leave  
15 to construct application for, the East-West Tie Line.”<sup>1</sup> In its Decision, the Board considered and  
16 dismissed adding a specific additional criterion relating to facilitating competition and new  
17 entrants. Instead, the Board invited applicants, as part of the “other factors” criterion, “to bring  
18 evidence of any advantage to Ontario ratepayers of the designation of a new entrant.”<sup>2</sup> In  
19 general, the Board invited applicants to demonstrate the relevance to the East-West Tie project  
20 (the “Project”) of their experience in other jurisdictions and did not automatically give credit just  
21 because an entity was new to Ontario. With respect to its primary objective stated above, the  
22 Board recognized that the key to achieving this objective was the establishment of an efficient

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<sup>1</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), p. 3.

<sup>2</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), p. 6.

1 and transparent process that “avoids bestowing any unfair advantage upon a particular applicant  
2 or group of applicants.”<sup>3</sup>

3 For these reasons, EWT LP believes I/TC was wrong in asserting that “the Board should  
4 designate a new transmitter to develop the East-West Tie unless the plans of the incumbent  
5 utilities (ELP and CNPI) present a compelling and overwhelming advantage.”<sup>4</sup> I/TC’s argument  
6 that the Board should look for a compelling and overwhelming advantage before designating  
7 EWT LP places an extra and unwarranted onus on EWT LP and CNP but no other applicant. To  
8 propose such a decision criteria directly and unfairly discriminates against EWT LP and CNP.  
9 When the Board commenced this proceeding, it did not preclude from participation existing  
10 licensed transmitters or related parties. In any event, I/TC’s suggested criterion is unrelated to  
11 and does not advance the Board’s objective of selecting the most qualified transmitter to cost-  
12 effectively bring a leave to construct application. Submissions were made by I/TC and others in  
13 this regard in Phase 1 of the proceeding and the Board clearly rejected this proposition.<sup>5</sup>

14 Other attempts were also made by applicants to distinguish EWT LP and place a greater burden  
15 on EWT LP on the basis that it is an incumbent. In its Phase 1 Decision, the Board explicitly  
16 considered the relationship of HONI and Great Lakes Power Transmission LP (“GLPTLP”) to  
17 EWT LP. Through the protocol established by the Board in Phase 1, any informational  
18 advantage to EWT LP of a relationship with HONI was eliminated. The Board also  
19 acknowledged that GLPTLP has no “advantage of owning and operating an existing line in this  
20 specific area or of determining the conditions and costing related to connection of the new line to  
21 the existing transmission system.”<sup>6</sup> GLPTLP also established protocols to prohibit information  
22 exchanges between its designation and operational teams.<sup>7</sup> Any suggestion that the indirect  
23 relationships of EWT LP’s partners would cause undue preference has been addressed by the  
24 Board’s protocols.

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<sup>3</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), p. 3.

<sup>4</sup> I/TC Argument in Chief, p. 4, para. 8.

<sup>5</sup> See Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), pp. 21-24.

<sup>6</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), p. 23.

<sup>7</sup> See Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), pp. 22-24.

1 Given the Board's objective to conduct a fair and transparent proceeding, the Board would have  
2 explicitly indicated in its Phase 1 Decision and Order if it had an intention to treat EWT LP  
3 differently. It did not and, as such, EWT LP respectfully submits that its application should be  
4 considered on the same basis as all other applications.

5 In the context of the foregoing, EWT LP addresses below certain allegations made by AOLP  
6 with respect to EWT LP's compliance with the Board's Phase 1 Decision and Order. EWT LP  
7 has always been, and continues to be, in compliance with the Board's Phase 1 Decision and  
8 Order. Contrary to the concern expressed by AOLP, EWT LP did not obtain any information  
9 from HONI in respect of any tower designs. The information that AOLP highlights in its  
10 argument in chief – namely, information related to the X10 and X7 tower families, including a  
11 reference to an Ontario Hydro data sheet in Power Engineer Inc.'s *Engineer's Report on the*  
12 *EWT Transmission Line OEB Reference Option*<sup>8</sup> is based on documentation possessed by Power  
13 Engineers that has been in its library for over 10 years. No communication occurred either  
14 directly or indirectly between EWT LP and HONI and no HONI documentation was provided to  
15 EWT LP either directly or indirectly by HONI.

16 Furthermore, EWT LP notes that its compliance with the Phase 1 Decision and Order has  
17 necessitated that it make certain proposals at this designation stage without the input of HONI.  
18 In particular, because it was unable to and did not communicate with HONI in this proceeding,  
19 EWT LP has developed proposed project management structures without consulting with HONI.  
20 Therefore, the Board should dismiss UCT's criticism that EWT LP's proposed project  
21 management structure has little or no engagement with HONI.<sup>9</sup> Until designation, EWT LP is  
22 unable to discuss, and has not discussed, such synergies with HONI. As stated in its application,  
23 EWT LP fully expects to do so upon designation.<sup>10</sup> EWT LP also requests that the Board should  
24 dismiss RES's criticism that EWT LP's proposed management structure has little or no  
25 engagement with BLP. This is clearly false. BLP has been integral to the development of  
26 EWT LP's designation application. As indicated in EWT LP's designation application, BLP has

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<sup>8</sup> EWT LP Designation Application, Exhibit 6, Appendix 6A.

<sup>9</sup> UCT Argument in Chief, p. 39, para. 140(a).

<sup>10</sup> EWT LP Designation Application, Exhibit 2, p. 10, lines 9-10.

1 equal rights in the governance of EWT LP as the other partners.<sup>11</sup> BLP will continue to have that  
2 control through the development of the Project.

### 3 **COMPLETION OF THE PROCEEDING**

4 Contrary to the suggestion by the Consumers Council of Canada, EWT LP does not believe that  
5 it is necessary to hold an oral hearing or to hold a hearing on certain issues of contention.  
6 Thousands of pages of development information have been filed by the applicants, in addition to  
7 interrogatory responses and extensive submissions on the issues. EWT LP believes that there is  
8 more than sufficient information on the record for the Board to make its decision with respect to  
9 designation.

### 10 **COST AND COST CONTROL**

11 To clarify a question raised by the School Energy Coalition,<sup>12</sup> EWT LP is seeking the Board's  
12 approval for recovery of its development costs as set out in Appendix 8A of its designation  
13 application.<sup>13</sup>

#### 14 **Operating Cost Estimate**

15 Various applicants made inaccurate statements with respect to EWT LP's estimated OM&A  
16 costs. EWT LP provided a detailed estimate of OM&A costs in respect of the Project. The  
17 estimate mirrored the Board's uniform system of accounts and was similar to the summary  
18 information provided in a transmission rate application. Unlike other applicants, EWT LP  
19 included all direct and indirect operating and maintenance costs in its estimate, including the  
20 proper allocation of administrative and regulatory costs.

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<sup>11</sup> EWT LP Designation Application, Exhibit 3, p. 4.

<sup>12</sup> SEC Intervenor Submissions, p. 22, para. 7.1.5.

<sup>13</sup> EWT LP Designation Application, Exhibit 8, Appendix 8A, p. 1.

Item	Cost Category - USoA Account number	Budget
Operations	Operation Supervision & Engineering - 4805 System Supervisions & Control (Load Dispatching) - 4810 Buildings & Fixtures Expenses - 4815 Overhead Line Expenses - 4830 Rents - 4850	\$0.51m
Maintenance	Maintenance of Overhead Conductors & Devices - 4935 Maintenance of Overhead Lines - ROW - 4940 Maintenance of Overhead Lines - Roads & Trails - 4945	\$1.8m
Regulatory Expenses	Regulatory Expenses - 5655	\$0.25m
Administrative & General	Management Salaries & Expenses - 5605 General Administrative Salaries & Expenses - 5615 Office Supplies & Expenses - 5620 Outside Services Employed - 5630 Insurance - 5635 Electrical Safety Authority Fees - 5680	\$1.23m
Contingency		\$0.38m
<b>Total</b>		<b>\$4.17m</b>

1  
 2 In response to Board Interrogatory #29 to All Applicants, EWT LP confirmed that its OM&A  
 3 estimate was calculated on a standalone basis and, also in response to that interrogatory,  
 4 EWT LP set out the above estimate of OM&A costs on the basis that shared services were  
 5 established with GLPTLP and HONI.<sup>14</sup> This response is consistent with the interrogatory, since  
 6 it was not clear from various applicants' evidence as to whether OM&A costs were on a  
 7 standalone or shared basis and whether the Board could do a "like-for-like" comparison. It is  
 8 also consistent with EWT LP's evidence, in which EWT LP stated that there may be  
 9 opportunities to significantly reduce operations and maintenance costs by contracting with  
 10 EWT LP partner-related entities.<sup>15</sup> Contrary to the assertions of AOLP, the statement of OM&A  
 11 costs of \$4.1 million on a shared basis is entirely consistent with EWT LP's evidence and is an  
 12 appropriate interrogatory response to enable full consideration and comparison by the Board.

<sup>14</sup> EWT Response to Board Interrogatory #29 to All Applicants, p. 50.

<sup>15</sup> See EWT LP Designation Application, Exhibit 8, p. 31, lines 1-5.

1 The thoroughness of EWT LP's estimate is in contrast to the estimates posed by other applicants.  
2 EWT LP is the only applicant to have presented its estimated OM&A costs in a manner  
3 consistent with rate regulation. EWT LP agrees with the submissions of I/TC that "[i]t is evident  
4 that several of the applicants have not included significant cost categories in their estimates" and  
5 that to compare these costs would not be on an "apples-to-apples" basis.<sup>16</sup> AOLP, CNP and RES  
6 have taken a very narrow interpretation of the Board's requirement to file "the estimated average  
7 annual cost of operating and maintaining the line"<sup>17</sup> and would appear to have made no  
8 allowance for the unavoidable administrative and regulatory costs associated with line operations  
9 and maintenance, for example book keeping, audits, general liability insurance, electrical safety  
10 authority fees, participating in the Board's regulatory initiatives, etc.<sup>18</sup>

11 Both AOLP and CNP argued that the Board should consider the present value of ongoing  
12 OM&A cost estimates over the fifty year life of the Project when evaluating applicants' plans.  
13 EWT LP submits and agrees with I/TC that it would not be appropriate to simply calculate the  
14 present value of ongoing OM&A cost estimates when evaluating each applicants' plan, because  
15 the estimates have not been prepared on a consistent basis and, as I/TC noted, "they have not  
16 been tested through the Board's usual hearing processes."<sup>19</sup>

17 CNP compared EWT LP's cost to that of HONI and indicated that economies of scale were not  
18 present. As EWT LP stated in its application, "[g]iven that the Project reinforces an existing  
19 transmission line owned by a subsidiary of one of EWT LP's partners (HONI) and is in close  
20 proximity to the network assets of GLPTLP, a related entity to Great Lakes Power Transmission  
21 EWT LP, EWT LP believes that there may be opportunities to significantly reduce operations  
22 and maintenance costs by contracting with one or more EWT LP partner-related entities."<sup>20</sup>

23 Unlike the other applicants, because of the Board's protocol, EWT LP was unable to discuss  
24 with HONI and GLPTLP the opportunities to seek economies of scale by contracting services  
25 from one or both of them. Instead, EWT LP provided two estimates, one assuming EWT LP was

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<sup>16</sup> I/TC Argument in Chief, p. 29, para. 79.

<sup>17</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), Appendix A - Filing Requirements for Designation Process, s. 8.12.

<sup>18</sup> See EWT LP Argument in Chief, p. 34, lines 8-12.

<sup>19</sup> I/TC Argument in Chief, pp. 29-30, para. 80.

<sup>20</sup> EWT LP Designation Application, Exhibit 8, p. 31, lines 1-5.

1 a fully integrated independent stand-alone business, the other assuming it was able to contract  
2 certain services to HONI and/or GLPTLP to achieve the economies of scale identified by CNP.

### 3 **Construction Cost Estimates**

4 UCT has wrongly asserted that EWT LP has sought to amend its construction cost proposal.<sup>21</sup>  
5 The additional construction cost information provided by EWT LP was a factual, transparent and  
6 complete response to a Board interrogatory to all applicants.

7 In Interrogatory #26 to All Applicants, the Board required applicants to restate their construction  
8 costs in a prescribed format. In so doing, EWT LP identified one additional cost category,  
9 contingency, that had not been included in EWT LP's initial application. The entire purpose of  
10 Interrogatory #26 was to permit the Board to assess construction costs in a uniform way.  
11 EWT LP responded to the question in a fulsome and transparent manner. AOLP, RES and UCT  
12 chose not to provide the Board with estimates for IDC/AFUDC. AOLP chose not to provide the  
13 Board with an estimate for contingency costs.

14 UCT's assertions regarding the credibility of EWT LP's construction cost estimates are therefore  
15 unfounded. EWT LP notes that unlike all other applicants, EWT LP has provided a detailed  
16 breakdown of the quantities and per-unit costs that underlie its construction cost estimate. To  
17 illustrate, whereas UCT stated that its construction cost was \$288,751,000 to \$302,968,000 but  
18 provided no evidence to explain how these number had been derived,<sup>22</sup> EWT LP provided a  
19 detailed explanation for the basis of its construction costs. For example, EWT LP explained it  
20 had assumed it would require six conductors for the 168 km between Wawa and Marathon, a 4%  
21 allowance for overage (i.e. wastage), and that phase conductor would cost \$7.53/metre.<sup>23</sup> Unlike  
22 other transmitters' construction costs, each assumption underlying EWT LP's estimate can be  
23 independently tested and verified, and EWT LP's construction cost estimate independently  
24 validated.

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<sup>21</sup> UCT Argument in Chief, p. 27, para. 91.

<sup>22</sup> See UCT Designation Application, Exhibit 8, p. 118.

<sup>23</sup> EWT LP Designation Application, Exhibit 6, Appendix 6A, p. 7.

## 1 **Historical Budget Variances**

2 In its submissions, SEC wrongly asserts that for each of the completed projects that fall within  
3 the scope of Board Interrogatory #32 to All Applicants, EWT LP has come in over-budget.<sup>24</sup>  
4 This statement fails to acknowledge that the costs for these projects have been prudently incurred  
5 and largely resulted from factors outside of the proponent's control.

6 In response to that interrogatory, EWT LP identified three projects. The first, GLPT LP's Third  
7 Line Reinforcement Project, had a \$2.82 million variance above an \$80.89 million budgeted  
8 cost. That the actual expenditures were so close to the forecasted amount reflects prudent  
9 budgeting by GLPT LP, particularly given that \$2.54 million of the overage resulted from the  
10 expansion of the scope of the project to include additional structures that could not have been  
11 identified at the time the budget was being prepared. Significantly, the Board found that all of  
12 the expenditures were prudently incurred.<sup>25</sup>

13 The Board similarly found that all \$734 million of HONI's expenditures in Bruce to Milton were  
14 prudently incurred,<sup>26</sup> which is evidence that the additional expenditures in this project (which  
15 related to permitting delays, increased commodity costs and an accelerated schedule to meeting  
16 the OPA's early in-service date) were not the result of imprudent project management.

17 Also in the context of EWT LP's response to Interrogatory #32, UCT argues that Wind Energy  
18 Transmission Texas LLC ("WETT") budget changes have resulted from factors that WETT  
19 could have addressed as part of project execution, and that this has implications for EWT LP's  
20 ability to control cost.<sup>27</sup> UCT's submission is not correct and is based on misleading  
21 information. The following is a more accurate explanation of WETT's costs:

- 22       • The increase in WETT's budget is consistent with the budget increase in the budget for  
23       all of the Competitive Renewable Energy Zone ("CREZ") projects;

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<sup>24</sup> SEC Intervenor Submissions, p. 25.

<sup>25</sup> See EB-2009-0408.

<sup>26</sup> See EB-2012-0031.

<sup>27</sup> UCT Argument in Chief, p. 26, para. 85.

- 1 • WETT’s cost increases are comparable to those of Lone Star Transmission, LLC (“Lone  
2 Star”), an affiliate of NextEra Energy, Inc. with WETT’s costs being comparable to Lone  
3 Star’s costs on a dollar per mile of transmission basis;
- 4 • WETT’s outturn costs have been affected by scope and other changes outside of WETT’s  
5 reasonable management control;
- 6 • WETT frequently reports budgetary changes to the Texas Public Utility Commission  
7 (“PUC”), which has not raised any concerns about WETT’s updated cost estimates;
- 8 • Where WETT has sought approval for costs incurred, the PUC has found all of these  
9 actual costs to be have been prudent, reasonable and therefore recoverable.

10 The cost pressures experienced by WETT are similar to those experienced by most other  
11 transmission service providers, including by UCT’s affiliate, Lone Star. This is not apparent  
12 from UCT’s response to Interrogatory #32 or its submission since it has not completed a “like-  
13 for-like” comparison between Lone Star and WETT. In particular, UCT has argued that the  
14 CREZ projects undertaken by Lone Star were “completed on time and under budget”.<sup>28</sup> In its  
15 interrogatory responses, UCT indicates that Lone Star’s CREZ projects were completed for  
16 \$731.6 million, \$62.5 million less than the budget of \$794.1 million that was included in Lone  
17 Star’s Certificate of Convenience and Necessity (“CCN”) filing.<sup>29</sup>

18 However, the budget of \$794.1 million quoted by UCT is not the budget approved by the PUC in  
19 granting the CCN. In fact, in granting the CCN the total budgeted amount for Lone Star’s  
20 expenditures was \$681.1 million.<sup>30</sup> Furthermore, the PUC’s current estimate for Lone Star’s  
21 portion of the CREZ program is \$768.9 million.<sup>31</sup> Using the CCN approved amount and most  
22 recent PUC quarterly report as provided by EWT LP in respect of WETT in response to Board

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<sup>28</sup> UCT Argument in Chief, p. 26, para. 86.

<sup>29</sup> See the budget variance table in UCT Response to Board Interrogatory #32 to All Applicants, p. 4. Note that although UCT claims in its response that the filing was made in “April 2010”, the Utility Commission records show that the application was received at 9:04am on 24 May 2010.

<sup>30</sup> See Application of Lone Star Transmission LLC for a Certificate of Convenience and Necessity for the Central A to Central C to Sam Switch / Navarro Proposed CREZ Transmission Line, PUC Docket 38230, Order of the Commission (November 17, 2010), paras. 31(a). 143 and 200-202, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38230\\_1658\\_683596.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38230_1658_683596.PDF) and Application of Lone Star Transmission LLC for a Certificate of Convenience and Necessity for the Sam Switch to Navarro Proposed CREZ Transmission Line (severed from Docket No. 38230), PUC Docket 38642, Order of the Commission (November 17, 2010), para. 102, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38642\\_5\\_678844.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38642_5_678844.PDF).

<sup>31</sup> Competitive Renewable Energy Zone Program Oversight, CREZ Progress Report No. 11 (Apr. 2013), at p. 10.

1 Interrogatory #32 to All Applicants is the appropriate and consistent basis with which to compare  
2 Lone Star and WETT. UCT's use of amounts established on a completely different basis is not  
3 helpful.

4 When calculated on this basis, Lone Star is 12% above its CCN approved budget. Contrary to  
5 the assertion of UCT, Lone Star's costs compared to budget have actually risen and not fallen.

6 As EWT LP discussed in its response to Board Interrogatory #32 to All Applicants, WETT's cost  
7 increases have been driven in part by generic factors that have affected all transmitters, such as  
8 material and labour shortages, and by WETT-specific factors including the construction of an  
9 additional substation, the use of additional and more costly monopole structures as ordered by  
10 the Commission, and the decision to reduce costs to ratepayers by building a new control centre  
11 (a capital cost) instead of procuring control services under contract (a future revenue expense).  
12 The fact that all CREZ transmitters have been affected by cost increases driven by material and  
13 labour shortages should not be a surprise given the scope and scale of the CREZ Program –  
14 3,593 miles (5,800 km) of new 345 kV lines at a total estimated cost of US\$6.84 billion in a five  
15 year period.<sup>32</sup> This represents more transmission construction in 5 years than has been  
16 constructed in Ontario in the last 35 years.<sup>33</sup>

17 Moreover, although WETT and Lone Star have both experienced generic cost increases, their  
18 costs on a cost-per-mile of built transmission basis remain highly comparable. Based on the  
19 April 2013 RS&H report provided on behalf of the PUC, Lone Star's estimated cost per mile is  
20 currently \$1.90 million whereas WETT's is \$1.80 million. On completion, WETT expects its  
21 final construction cost to be comparable with CREZ program costs.<sup>34</sup>

22 The PUC has not raised any objection to the WETT's updated estimates, despite having many  
23 opportunities to do so. CREZ transmission service providers, including WETT, are tasked with  
24 "providing regular status updates to the Commission, and immediately reporting to the  
25 Commission any significant changes in the estimates reported by the TSPs, particularly

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<sup>32</sup> See Competitive Renewable Energy Zone Program Oversight, CREZ Progress Report No. 11 (Apr. 2013).

<sup>33</sup> See Report of the Royal Commission on Electric Power Planning, Volume 1, February 1980, Table 2.2; and Hydro One Inc., Annual Report 2011.

<sup>34</sup> See Competitive Renewable Energy Zone Program Oversight, CREZ Progress Report No. 11 (Apr. 2013) at p. 10 (total current estimate: \$6.839 billion for a total of 3593 miles, results in an average cost of \$1.93 million/mile).

1 regarding any schedules, financing methods or costs, or cost estimates.”<sup>35</sup> These reported cost  
2 estimates are detailed. In addition to these reports, CREZ TSPs also report to RS&H, which  
3 provides its own quarterly reports to the PUC.<sup>36</sup>

4 As required, WETT has filed updates on its costs for all three of its CREZ projects, for a total of  
5 eleven update filings to date.<sup>37</sup> WETT has also regularly reported to the project oversight  
6 monitor RS&H as required. If the PUC believed WETT was not complying with its orders, it  
7 could sanction WETT, including by revoking WETT’s CCN pursuant to PUC Substantive Rule  
8 25.216(f)(4). However, the Commission has not raised any concerns with respect to WETT.

9 WETT has demonstrated through its rate cases the prudence of its incurred costs. WETT’s first  
10 rate case (to recover part of its expenditures) was recently resolved in PUC Docket No. 40606.  
11 In its order, the Commission found that all of WETT’s construction costs had been prudently  
12 incurred. Furthermore, whereas Lone Star was awarded only 50% of its requested revenue  
13 requirements,<sup>38</sup> WETT, after adjustments for an agreed recalculation of AFUDC, self-insurance  
14 reserve and administrative and general expenses, was granted 90% of its requested revenue  
15 requirement.<sup>39</sup> The rate case outcome is perhaps the strongest evidence that WETT’s owners are  
16 managing its projects well: WETT’s investment through the date of the filing of its rate case was  
17 determined to be prudent, reasonable, and recoverable to a higher degree than its similarly  
18 situated competitors.

19 SEC also unfavourably compares EWT LP’s performance to that of RES. This comparison is  
20 misleading for two reasons. Firstly, RES stated in response to Board Interrogatory #32 to All  
21 Applicants that its Populus-Terminal project was completed for \$53 million under budget, i.e.  
22 6%. This is misleading because it compares RES’s actual cost with its budget after permitting

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<sup>35</sup> Docket No. 35665, *Commission Staff’s Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Order on Rehearing (May 15, 2009) at p. 20.

<sup>36</sup> Docket No. 35665, *Commission Staff’s Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Order on Rehearing (May 15, 2009) at p. 54.

<sup>37</sup> See PUC Project No. 37858.

<sup>38</sup> See PUC Project No. 37858.

<sup>39</sup> See PUC Docket No. 40606.

1 whereas EWT LP compared its actual cost with its budget at the time of its certificate of public  
2 convenience and necessity / leave to construct, i.e. much earlier in the development process.

3 Measured against its budget at the time of its certificate of public convenience and necessity /  
4 leave to construct, RES's Populus-Terminal project was somewhere between 11% and 19% over  
5 budget.<sup>40</sup>

6 Secondly, RES's Populus-Terminal project cost roughly \$6.05 million/mile,<sup>41</sup> which is  
7 approximately three times the cost of similar transmission lines recently built in Texas under  
8 similar conditions.<sup>42</sup>

9 SEC is therefore mistaken to suggest EWT LP's cost management is poor compared to RES or  
10 UCT given that SEC is comparing distinctly different performance metrics.

### 11 **Hydro One's Financial Capacity**

12 UCT wrongly asserted that "the Board should conclude that the participation of Hydro One as a  
13 1/3<sup>rd</sup> investor in EWT LP is not optimal, from the perspective of the province's electricity  
14 ratepayers."<sup>43</sup> This assertion was made on the basis that no explanation of how Hydro One  
15 would fund its equity participation in EWT LP was provided, raising the prospect that such  
16 funding would be raised by borrowing and that would be a concern to rating agencies.<sup>44</sup>

17 EWT LP believes that on the face of the public record, there is good reason to believe that Hydro  
18 One would not be in any adverse position to fund its one-third equity stake in the Project. It is

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<sup>40</sup> On April 18<sup>th</sup>, 2008, MidAmerican/Rocky Mountain Power filed an application for public convenience and necessity with the Idaho Public Utility Commission stating the total project cost was estimated to be \$750 million. Seven days later, MidAmerican filed a similar application for the same line with the Public Service Commission for the State of Utah stating the total project cost was estimated to be \$700 million. See <http://www.puc.idaho.gov/internet/cases/elec/PAC/PACE0803/20080418APPLICATION.PDF> and <http://www.psc.utah.gov/utilities/electric/08docs/0803542/57203Application.doc>.

<sup>41</sup> Western Electricity Coordinating Council, "Transmission and Substation Capital Costs" (August 15, 2012), p. 24, [http://www.wecc.biz/committees/BOD/TEPPC/SPSG/120807/Lists/Presentations/1/120801\\_BV\\_TransmissionCapitalCost\\_PPT.pdf](http://www.wecc.biz/committees/BOD/TEPPC/SPSG/120807/Lists/Presentations/1/120801_BV_TransmissionCapitalCost_PPT.pdf).

<sup>42</sup> Public Utility Commission of Texas, CREZ Quarterly Report (April 2013) – seven separate new lines totalling 461 miles using 345kV double circuit steel monopoles with calculated per mile costs between \$1.76 million and \$2.29 million.

<sup>43</sup> UCT Argument in Chief, p. 31, para. 112.

<sup>44</sup> UCT Argument in Chief, p. 31, para. 112.

1 important to note that the Project will take approximately five years to complete, with equity  
2 contributions being made over time. In addition, Hydro One is responsible for contributing only  
3 one-third of the equity required, i.e. \$62 million.<sup>45</sup>

4 More particularly, as indicated in EWT LP's application, Hydro One will generate sufficient  
5 capital over the next five years to develop, finance, construct, operate and maintain the Project.  
6 Specifically, in 2011, Hydro One earned revenue of \$2.8 billion (net of power purchase),  
7 incurred OM&A of \$1.1 billion, generated cash from operations of \$1.1 billion and invested  
8 more than \$1.4 billion in capital expenditures. In addition to capital generated through existing  
9 operations, Hydro One has available to it a \$1.25 billion committed unused revolving credit  
10 facility to fund any short-term capital requirements. For long-term capital requirements, Hydro  
11 One has experience with raising capital in the open market, and in 2011 Hydro One raised  
12 \$700 million in the open market.<sup>46</sup> Hydro One has an A+/Negative long-term credit rating.<sup>47</sup>

13 EWT LP therefore finds no merit in UCT's argument that Hydro One's participation is not  
14 optimal from the perspective of ratepayers, or the suggestion that Hydro One will not be able to  
15 fund its equity contribution.

## 16 **TECHNICAL DESIGN**

17 EWT LP based its development plan and cost estimates on the Reference Option – a  
18 conventional double circuit line with lattice towers.<sup>48</sup>

19 However, employing prudent project development practice, EWT LP was also aware that further  
20 development work may reveal that other technical designs are preferable. EWT LP therefore (i)  
21 proposed three other design alternatives: an additional double circuit design that would revisit  
22 the need for the galloping criteria, and two single circuit designs, one of which would use cross  
23 rope suspension (“CRS”) structures; and (ii) built into its schedule and development budget

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<sup>45</sup> EWT LP Designation Application, Exhibit 5, p. 1, line 7.

<sup>46</sup> EWT LP Designation Application, Exhibit 5, s. 5.1.1, pp. 5-6.

<sup>47</sup> See Standard & Poor's, Hydro One Inc. (July 12, 2012), located at EWT LP Designation Application, Exhibit 5, Appendix 5A, Attachment 10.

<sup>48</sup> See EWT LP Designation Application, Exhibit 5, p. 3, lines 13-15, ft 2 (“based upon the Board's Reference Option using X10 towers”) and Exhibit 6, p. 1, lines 7-10 (“for the purposes of this Application, EWT LP has adopted the X10 tower family proposed by Hydro One Networks Inc.”).

1 provision for the study of and consultation about these alternatives as part of its development  
2 plan and preparation for leave to construct.

### 3 **Reasonable Range of Alternatives**

4 RES and UCT have already committed to a single technical recommendation prior to greater  
5 study in the development phase. In their arguments in chief, AOLP, RES and UCT argued that  
6 the Board should not consider EWT LP's single circuit options because the designs are only  
7 identified as alternatives for further study in the development phase.<sup>49</sup>

8 RES and UCT's criticisms are unfounded and reveal a weakness in the applications of those  
9 applicants. It is critical that any designated transmitter study a range of technically feasible  
10 alternatives in order to (i) bring a credible leave to construct application, and (ii) submit a  
11 comprehensive environmental assessment. This is not simply good practice; it is a legal  
12 requirement. In particular, section 6.1(2) of the *Environmental Assessment Act* requires  
13 proponents in their environmental assessments to consider alternatives to the undertaking and  
14 alternative methods of carrying out the undertaking.<sup>50</sup> A proponent cannot obtain approval of its  
15 environmental assessment unless this comparative analysis is completed. Furthermore, the  
16 Board's Minimum Filing Requirements for Leave to Construct Applications state that applicants  
17 must file a rationale for selecting the proposed project as opposed to alternative options.<sup>51</sup>  
18 Therefore, a transmission project cannot proceed without first having considered a range of  
19 alternatives during the development phase.

20 Considering a range of alternatives during project development is also key to building a social  
21 license for the Project and achieving value for ratepayers. It will be challenging for applicants  
22 like RES and UCT, which have committed to one technical design prior to designation, to  
23 meaningfully incorporate feedback from stakeholders relating to fundamental aspects of the  
24 Project's design. For example, if further studies indicate that a double circuit line is preferable,

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<sup>49</sup> See, for example, UCT Argument in Chief, p. 14, para. 45 and p. 16, para. 53.

<sup>50</sup> *Environmental Assessment Act*, R.S.O. 1990, c. E.18, ss. 6.1(2)(b)(ii) and (iii).

<sup>51</sup> Ontario Energy Board, *Filing Requirements for Electricity Transmission and Distribution Applications*, "Chapter 4: Filing requirements for leave to construct electricity transmission projects under section 92 of the Act" (June 28, 2012), pp. 10-11.

1 as the IESO and OPA have suggested from a technical perspective,<sup>52</sup> RES would have no plan  
2 for constructing that design (as its plan depends wholly on the construction of a single line  
3 alternative). Furthermore, having already committed to one technical design, RES and UCT will  
4 be unable to meaningfully complete a comprehensive cost-benefit comparison between technical  
5 designs that incorporates the field data and other information received during the development  
6 phase. UCT may criticize EWT LP for identifying multiple options but the fact remains that it is  
7 EWT LP, and not UCT, that has presented a comprehensive development plan that considers the  
8 relative cost-effectiveness of alternative designs before making a recommendation.

9 Therefore, the position that EWT LP should not have proposed a range of technically feasible  
10 alternatives is indicative of a project development approach by UCT and RES that disregards  
11 stakeholder feedback and potential cost-savings. In RES's case, it also disregards the feedback  
12 from the IESO and OPA on the potential importance of a double circuit design. In contrast,  
13 EWT LP has not only identified the need to study a range of design alternatives but also set out  
14 in its application the methodology for evaluating those alternatives in consultation with  
15 stakeholders.<sup>53</sup> That methodology will quickly allow the preferred design to come into focus. As  
16 stated in EWT LP's response to Board Interrogatory #3 to EWT LP:

17 EWT LP expects to have completed the studies to determine if a single circuit line  
18 should be studied further as early as November 2013, assuming that designation  
19 happens on or about August 1st 2013. EWT LP plans to have completed the  
20 environmental studies and public engagement necessary to confirm the preferred  
21 tower design, which could be a CRS design given its technical suitability and low  
22 cost, by February 2015. These activities in the context of EWT LP's overall  
23 development plan are shown in Part B, Exhibit 7, Appendices 7A and 7B.<sup>54</sup>

24 This comparative evaluation is an essential and logical first step in the execution of any credible  
25 development plan. Any applicant that has not properly identified the potential number and range  
26 of alternative designs and routes or its development methodology for evaluating them will have  
27 no basis on which to justify the prudence and accuracy of its proposed development budget, or  
28 the credibility of its proposed development schedule.

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<sup>52</sup> See IESO Intervenor Submissions, p. 3 and OPA Intervenor Submissions, p. 3.

<sup>53</sup> See the detailed engineering methodology included at Appendix 6C of EWT LP's application. See also EWT LP's Consultation Plan included as Appendix 10A of its Designation Application.

<sup>54</sup> EWT LP Response to Board Interrogatory #3 to EWT LP, p. 62, lines 6-12.

1 In this context, UCT’s criticism is unfounded. UCT suggested that “a lack of commitment to a  
2 preferred option indicates a lack of rigor in analysis of the appropriate solution for the line”.<sup>55</sup>  
3 UCT then described EWT LP’s design and route alternatives as lacking discipline. In these  
4 statements, UCT revealed its misunderstanding not only of the regulatory process (which  
5 *requires* proponents to consider a range of alternatives) but also its dismissiveness of any  
6 feedback that may be received during the development phase. UCT’s commitment to a single  
7 design and a single route before it has even begun its environmental studies, consultation, and  
8 detailed technical assessments is imprudently inflexible. Such an approach does not facilitate the  
9 acquisition of the social and regulatory licenses necessary to develop the Project, nor the  
10 comparative evaluation necessary to achieve the greatest value for ratepayers.

### 11 **Validity of Single Circuit Line as an Alternative for Detailed Evaluation**

12 In their arguments in chief, AOLP, RES and UCT suggested that the Board should reject  
13 EWT LP’s proposed single circuit alternatives because EWT LP has not obtained an IESO  
14 feasibility study for these alternatives.<sup>56</sup> CNP also argued that the single circuit alternatives  
15 identified by EWT LP and RES that are not supported by evidence of their equivalent or superior  
16 reliability should be disregarded.<sup>57</sup>

17 These concerns are unfounded. In its filing requirements, the Board stated that applicants must  
18 include:

19 an indication as to whether the Plan will be based on the Reference Option for the East-  
20 West Tie line. Where the Plan is not based on the Reference Option, the applicant must  
21 file:

- 22 .....
- 23 • a Feasibility Study performed by the IESO, or performed to IESO  
24 requirements.<sup>58</sup>
- 25

26 EWT LP has complied with the Board’s filing requirements. As stated in its designation  
27 application, “EWT LP is proposing the Reference-Based Design for the purposes of this

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<sup>55</sup> UCT Argument in Chief, p. 16, para. 53.

<sup>56</sup> See AOLP Argument in Chief, p. 29, para. 59 and RES Argument in Chief, p. 96, para. 194(xi) and UCT  
Argument in Chief, p. 14, para. 43.

<sup>57</sup> CNP Argument in Chief, p. 36, lines 25-26.

<sup>58</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), s. 6.4 [emphasis added].

1 Application and as a starting point for its development work”.<sup>59</sup> In addition, as noted in its  
2 designation application, EWT LP has adopted the Board’s Reference Option for its Reference-  
3 Based Design.<sup>60</sup> Therefore, EWT LP has made it clear that its development plan is based on the  
4 Reference Option – a conventional double circuit line with lattice towers.

5 In their arguments in chief, AOLP and RES took contrasting positions on the cost of the control  
6 actions necessary to ensure that a single circuit line has equivalent reliability to a double circuit  
7 line. AOLP, for example, asserted that EWT LP’s estimate of the cost of control actions  
8 required by a single circuit design was low.<sup>61</sup> In contrast, RES argued that EWT LP’s estimate  
9 was “extremely unrealistic” in *overestimating* the cost of such control actions.<sup>62</sup> Neither  
10 applicant filed an alternative analysis of the likely cost of control actions.

11 Unlike AOLP and RES, EWT LP prepared an estimate on the cost of control actions to assist the  
12 Board in evaluating single circuit alternatives.<sup>63</sup> In doing so, EWT LP avoided making overly  
13 aggressive or conservative assumptions but rather sought to estimate an accurate cost of control  
14 actions, insofar as possible at this stage. In contrast, AOLP and RES seem only to question  
15 EWT LP’s estimate without providing much rationale for their own conclusions on control cost.  
16 In this regard, EWT LP notes that RES conclusively endorsed the adoption of a single circuit  
17 steel H-frame design, even though it has not provided any indication that it has considered the  
18 cost of the control actions that would be required.

19 AOLP criticized EWT LP’s preliminary analysis for not having considered the cost of either  
20 system losses or standby capacity. The IESO considered system losses in its feasibility study<sup>64</sup>  
21 and concluded a compensated single circuit line would increase losses by 1.9 MW with the East-  
22 West Tie Interface loaded to 650 MW westwards and a total system load of 26,100 MW.  
23 EWT LP notes that this is a high case, that the Project will likely be operated part-loaded for

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<sup>59</sup> EWT LP Designation Application, Exhibit 6, p. 5, line 8.

<sup>60</sup> EWT LP Designation Application, Exhibit 6, p. 3, line 2.

<sup>61</sup> AOLP Argument in Chief, p. 17, para. 56.

<sup>62</sup> RES Argument in Chief, p. 56, para. 132.

<sup>63</sup> See EWT LP Response to Board Interrogatory #5 to EWT LP, pp. 64-66.

<sup>64</sup> IESO, Feasibility Study: An assessment of the westward transfer capability of various options for reinforcing the East-West Tie (18 August 2011), p. 25, Table 4.

1 much of the time,<sup>65</sup> and that losses are non-linear (i.e. halving the power flow reduces the losses  
2 by a factor of four). Furthermore, IESO did not identify the cost of losses as being a material  
3 factor in its conclusion.<sup>66</sup> AOLP did not expand on what it meant by “the additional costs  
4 associated with holding the necessary capacity on standby throughout the year awaiting an N-1-1  
5 contingency”.<sup>67</sup> EWT LP notes that the short-term provision of operating reserve to ensure post-  
6 contingency local area reliability is an integral feature of the IESO-administered electricity  
7 market: there are no annual capacity payments as AOLP erroneously suggests.

8 UCT argued that its hypothetical double circuit guyed-Y structures would be more cost effective  
9 than EWT LP’s single circuit alternatives once the cost of control actions was included.  
10 EWT LP suggests that a more valid comparison would be between the cost of EWT LP’s double  
11 circuit proposal and EWT LP’s CRS alternative, the two estimates having been prepared using  
12 the same assumptions. Note that unlike UCT’s estimates,<sup>68</sup> EWT LP’s cost estimates include  
13 interest during construction, and they also include incremental substation costs which UCT  
14 erroneously stated EWT LP had not included.

15 As can be seen from EWT LP’s application,<sup>69</sup> the cost difference between the two options,  
16 \$116 million, is greater than the estimated \$104 million discounted cost of control actions. It is  
17 on this basis, and contrary to the assertion of Schools Energy Coalition,<sup>70</sup> that EWT LP believes  
18 it is in the interests of ratepayers for a CRS single circuit alternative to be considered further in  
19 the development phase.<sup>71</sup>

## 20 **Suitability of Guyed Structure Designs**

21 Both CNP and RES attempted to argue that guyed transmission towers are not suitable for the  
22 Project, particularly with respect to public safety, durability and experience. For example, RES

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<sup>65</sup> See, for example, the flow duration curves for the existing East-West Tie Interface: Ontario Transmission System, IESO\_REP\_0265v22.0 (November 23, 2012), p. 10, [http://www.ieso.ca/imoweb/pubs/marketReports/OntTxSystem\\_2012nov.pdf](http://www.ieso.ca/imoweb/pubs/marketReports/OntTxSystem_2012nov.pdf).

<sup>66</sup> As an order-of-magnitude estimate, EWT LP estimates the discounted incremental lifetime cost of losses based on the IESO feasibility study to be \$2 million.

<sup>67</sup> AOLP Argument in Chief, pp. 17-18, para. 56.

<sup>68</sup> UCT Response to Board Interrogatory #26 to All Applicants, Attachment 1.

<sup>69</sup> EWT LP Designation Application, Exhibit 6, p. 17, Table 6.1.

<sup>70</sup> See SEC Intervenor Submissions, p. 12.

<sup>71</sup> UCT Argument in Chief, p. 13, para. 39.

1 asserted, “[i]t is significant that guyed transmission structure[s] have never been used in Ontario  
2 by any of the applicants in this proceeding.”<sup>72</sup> RES also asserted that “a guyed tower design is  
3 simply not viable in these circumstances”.<sup>73</sup>

4 These arguments are not sustainable. The evidence on the record clearly indicates that guyed  
5 structures are technically viable and may in fact be the best option for the Project. In particular,  
6 EWT LP filed extensive evidence demonstrating the successful use and evaluating the potential  
7 use of single circuit guyed structures in Ontario.<sup>74</sup> UCT also filed a picture of HONI’s existing  
8 500 kV single circuit guyed North-South line in its argument in chief (in fact, it was a picture of  
9 a single circuit guyed line, not of the double circuit option that UCT is proposing).<sup>75</sup> RES is  
10 clearly incorrect in its assertion that guyed tower designs have not been used in similar terrain  
11 and climate as the Project.

12 RES made other assertions regarding why guyed towers are unsuitable for the Project.<sup>76</sup> These  
13 assertions related to visual impact, effect on avian wildlife, annual operating and maintenance  
14 costs and right of way requirements of a guyed structure. RES did not, however, substantiate  
15 these assertions. There is evidence already on the record regarding why RES’s concerns are  
16 unfounded.

17 Finally, EWT LP has not, as RES suggests, committed to a single tower design over the entire  
18 route. Through development, EWT LP will determine not only which technical design is  
19 preferable, but also which complementary technical designs are necessary in specific areas or  
20 circumstances. In this regard, EWT LP recognizes that it may be necessary to use different  
21 structures for particular locations – such as for river crossings, steep cliffs, and semi-urban areas.  
22 The need for these complementary structures will become apparent as the Project is developed  
23 and as stakeholder consultation begins.

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<sup>72</sup> RES Argument in Chief, p. 36, para. 90.

<sup>73</sup> RES Argument in Chief, p. 36, para. 89.

<sup>74</sup> See the CRS Report included at Appendix 6D of EWT LP’s Designation Application and EWT LP’s Response to Board Interrogatory #15 to All Applicants, pp. 22-23.

<sup>75</sup> UCT Argument in Chief, Attachment 1.

<sup>76</sup> RES Argument in Chief, p. 35.

## 1 **Unproven Double-circuit Guyed-Y Structures**

2 In its argument in chief, UCT states that its recommended plan specifies guyed-Y towers and that  
3 “this sort of guyed tower structure is in use in Ontario, Quebec, Manitoba and British Columbia,  
4 in climatic and terrain conditions similar to those present for the East-West Tie.”<sup>77</sup> EWT LP  
5 strongly disagrees with UCT’s assertion. As EWT LP submitted in its argument in chief, “UCT  
6 did not provide any evidence that its recommended design had ever been successfully  
7 constructed. Although UCT is recommending a double circuit Y-frame structure, all the towers  
8 referred to in its response to Board Interrogatory #15 appear to be conventional single circuit 3-  
9 conductor AC or 2-conductor DC guyed ‘Y’ structures.”<sup>78</sup>

10 EWT LP notes a consensus on this point. Other applicants have reached the same conclusion  
11 regarding UCT’s proposed tower structures as EWT LP:

- 12 • AOLP wrote in its closing argument: “There is nothing in UCT’s response to indicate that  
13 the proposed guyed structures have been successfully used in terrain and weather  
14 conditions similar to that of Northern Ontario for a double circuit project similar to the  
15 UCT recommended plan.”<sup>79</sup>
- 16 • I/TC wrote: “When asked by the Board, [UCT doing business as] NextBridge failed to  
17 provide a single example of double circuit guyed-Y design.”<sup>80</sup>
- 18 • RES wrote: “There is no precedent anywhere in North America for the use of guyed  
19 towers in combination with a double circuit design.”<sup>81</sup>

20 On the balance of the evidence filed by four of the five other transmitters, there is no evidence to  
21 support UCT’s claims as to the suitability of its recommended design. Therefore, EWT LP  
22 respectfully suggests that the Board dismiss UCT’s technical design.

## 23 **ACSS Conductor**

24 In its argument in chief, RES stated, “[t]he ACSS Trapezoidal Conductor’s high tensile strength-  
25 to-weight ratio and their greater capacity to handle high winds and ice make them an ideal choice

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<sup>77</sup> UCT Argument in Chief, p. 18, para. 59(c).

<sup>78</sup> EWT LP Argument in Chief, p. 68, para. 4-6.

<sup>79</sup> AOLP Argument in Chief, p. 39, para. 122.

<sup>80</sup> I/TC Argument in Chief, p. 23, para. 61.

<sup>81</sup> RES Argument in Chief, p. 45, para. 110.

1 for the harsh environmental conditions of northern Ontario.”<sup>82</sup> EWT LP disputes this claim.  
2 According to American conductor manufacturer Southwire, the Grackle ACSR/TW proposed by  
3 other applicants has a rated breaking strength of 18 959 kg and weighs 2 300 kg/km. Its  
4 strength-to-weight ratio is therefore 8.24.<sup>83</sup> The Potomac ACSS/TW proposed by RES has a  
5 rated breaking strength of 12 353 – 14 842 kg and weighs 2 600 kg/km. Its strength-to-weight  
6 ratio is therefore 5.7.<sup>84</sup> According to this data, RES’s recommended ACSS conductor is inferior  
7 to the Grackle conductor proposed by EWT LP and other applicants because it has a  
8 demonstrably lower strength-to-weight ratio.

9 Moreover, as EWT LP noted in its application, a comprehensive conductor selection study forms  
10 part of EWT LP’s proposed development plan and is necessary to properly address all the factors  
11 in order to determine the most technically sound and cost-effective conductor choice.<sup>85</sup> Given  
12 that no applicant has completed such a conductor study at this time, no applicant is in a position  
13 to endorse the selection of a single conductor choice.

#### 14 **SCHEDULE**

15 For the most part, the other applicants have not challenged the reliability of EWT LP’s  
16 development and construction schedules. Furthermore, as SEC notes, EWT LP was the only  
17 applicant to propose a schedule based on a reasonable designation date.<sup>86</sup>

18 UCT did, however, criticize certain aspects of EWT LP’s proposed schedule.<sup>87</sup> In particular,  
19 UCT suggested that EWT LP’s proposed in-service date of November 2018 did not compare  
20 favorably to its own proposed in-service date of late 2017.<sup>88</sup> In making this assertion, UCT  
21 omitted mentioning that its development schedule is predicated on a designation date of April 26,  
22 2013. Given that this date has past, and a designation decision is still some time away, UCT can

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<sup>82</sup> RES Argument in Chief, p. 26, para. 64.

<sup>83</sup> See technical specifications at EWT LP Argument in Chief, pp. 55-56.

<sup>84</sup> See technical specifications at EWT LP Argument in Chief, pp. 55-56.

<sup>85</sup> See EWT LP Designation Application, Exhibit 6, Appendix 6A, p. 3.

<sup>86</sup> SEC Intervenor Submissions, p. 30.

<sup>87</sup> EWT LP Argument in Chief, p. 33.

<sup>88</sup> UCT Argument in Chief, p. 36, para. 127(c).

1 no longer rely on a proposed in-service date based on an erroneous assumption about the  
2 designation date.

3 Were UCT to be designated on a more realistic date – for example, on August 1, 2013 – then a  
4 day-for-day adjustment to UCT’s schedule would translate into a new in-service date of  
5 April 2018. However, this assumes that development schedules can be adjustment on a day-for-  
6 day basis to reflect a new designation date. As set out in EWT LP’s argument in chief, this is not  
7 necessarily true;<sup>89</sup> a day-for-day adjustment to UCT’s development activities based on an  
8 August 1, 2013 designation date would result in UCT starting its proposed spring environmental  
9 field studies in November 2013, which of course cannot happen. Any adjustment to UCT’s  
10 development schedule must take into account the seasonality of these field studies, and therefore  
11 would likely result in a significantly later in-service date than that being provided by UCT. A  
12 similar observation can be made about AOLP’s in-service date given that its development plan,  
13 too, is based on a designation date now past.

14 SEC notes that the designated transmitter should be allowed to adjust its development schedule  
15 to reflect the actual date of designation, so as to avoid missing a milestone date at the outset of  
16 the development phase.<sup>90</sup> As mentioned above, EWT LP stresses that day-for day adjustments to  
17 development schedules are not appropriate. Yet even if a transmitter’s development schedule is  
18 adjusted, the Board should not allow the transmitter to revisit its proposed development costs.  
19 Each applicant is currently being evaluated on its cost estimates, and the present hearing has  
20 allowed those estimates to be scrutinized on behalf of ratepayers. Any administrative adjustment  
21 to a designated transmitter’s development schedule should not enable that transmitter to increase  
22 its development cost estimate and thereby circumvent the public review of that estimate that has  
23 taken place in this proceeding.

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## 25 **ABORIGINAL ENGAGEMENT**

26 Applicants have raised two main criticisms of EWT LP’s Aboriginal engagement plan. First,  
27 applicants argued that EWT LP is unfairly denying participation opportunities to Aboriginal

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<sup>89</sup> EWT LP Argument in Chief, p. 33.

<sup>90</sup> SEC Intervenor Submission, p. 30.

1 communities outside of BLP. Second, applicants asserted that EWT LP had an unfair advantage  
2 in partnering with the communities in BLP. These assertions are incorrect.

### 3 **Participation Opportunities for All Aboriginal Communities**

4 Other applicants have misconstrued the concepts of participation and consultation in their  
5 criticism of BLP's equity participation in EWT LP. Their critiques disregard the clear  
6 distinction between the two concepts as recognized by the Board and the Ministry of Energy.  
7 Consultation is a duty imposed by law, whereas participation is a commercial arrangement.

8 In its Phase 1 decision, the Board created two separate criteria to evaluate "First Nation and  
9 Métis participation" and "First Nation and Métis consultation".<sup>91</sup> The Board recognized that  
10 "First Nation and Métis consultation is unique in being a constitutional obligation on the Crown,  
11 certain aspects of which may be delegated to the designated transmitter."<sup>92</sup> It also noted that  
12 "[p]articipation' can mean many things" and indicated it would "not restrict its consideration to  
13 any particular type of participation."<sup>93</sup>

14 Similarly, the Minister of Energy recognized the distinction between consultation and  
15 participation in his March 29, 2011 letter to the Board:

16 "Consistent with the intents identified in the Long-Term Energy Plan, I am  
17 writing to express the Governments interest that the Ontario Energy Board ("the  
18 Board") undertakes a designation process to select the most qualified and cost-  
19 effective transmission company to develop the East-West Tie.

20 ...I would expect that the weighting of decision criteria in the Board's designation  
21 process takes into account the significance of Aboriginal participation to the  
22 delivery of the transmission project, as well as a proponent's ability to carry out  
23 the procedural aspects of Crown consultation."<sup>94</sup>

24 Providing context for the Minister's letter and the East-West Tie designation process was the  
25 Ministry of Energy's Long-Term Energy Plan ("LTEP") for Ontario, which also recognized the  
26 distinction between consultation and participation.

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<sup>91</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), pp. 7-8.

<sup>92</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 8.

<sup>93</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 8.

<sup>94</sup> Brad Duguid, former Minister of Energy, letter to Ontario Energy Board (March 29, 2011), p. 1.

1 *Consultation*

2 Regarding consultation, the LTEP stated that:

3 “Where new transmission lines are proposed, Ontario is committed to meeting its  
4 duty to consult First Nation and Métis communities in respect of their Aboriginal  
5 and treaty rights and accommodate where those rights have the potential to be  
6 adversely impacted.”<sup>95</sup>

7 If designated, EWT LP will engage in consultation and, if appropriate, accommodation with all  
8 18 potentially affected Aboriginal communities identified by the Ministry of Energy,<sup>96</sup> including  
9 the six First Nation communities that are partners in BLP. As noted in EWT LP Response to  
10 Board Interrogatory #9 to All Applicants, the appropriate accommodation will be based on the  
11 strength of any Aboriginal claim in the Project area and the effect the Project may have on any  
12 such claim. Potential impacts on the affected First Nation and Métis communities will be  
13 evaluated in this context.

14 In its designation application, EWT LP provided a detailed, 32-page Consultation Plan which set  
15 out step-by-step how EWT LP will engage in meaningful consultation with all potentially  
16 affected Aboriginal communities.<sup>97</sup> As noted in EWT LP Response to Board Interrogatory #12  
17 to All Applicants,<sup>98</sup> EWT LP’s Consultation Plan treats engagement with all potentially-affected  
18 Aboriginal communities on an equivalent basis. One of the Consultation Plan’s guiding  
19 principles is to ensure that all Aboriginal communities with existing or asserted Aboriginal or  
20 treaty rights that could be adversely affected by the Project are meaningfully consulted on  
21 reasonable approaches to avoid or mitigate any such adverse impacts.<sup>99</sup> Consultation  
22 expectations will be discussed with all interested and potentially affected Aboriginal  
23 communities. All of EWT LP’s consultation activities will be grounded in these expectations

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<sup>95</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49.

<sup>96</sup> Ministry of Energy, letter to Ontario Power Authority (May 31, 2011), p. 3.

<sup>97</sup> See EWT LP Designation Application, Exhibit 10, Appendix 10A.

<sup>98</sup> EWT LP Response to Board Interrogatory #12 to All Applicants, p. 19.

<sup>99</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 3.

1 including, where appropriate, the execution of memorandums of understanding regarding  
2 consultation approaches and programs with individual communities.<sup>100</sup>

3 EWT LP has also recognized the potential issue of variable community consultation capacity,  
4 which was raised by one of the identified Aboriginal communities, Red Sky Métis Independent  
5 Nation (“RSMIN”).<sup>101</sup> As discussed further below, EWT LP will hold four community meetings  
6 with potentially affected Aboriginal communities, including a meeting specifically with RSMIN,  
7 to discuss the proposed Consultation Plan and to revise and adapt the plan as appropriate,  
8 including, if appropriate, entering into specific MOUs with particular communities.<sup>102</sup> In  
9 addition, as noted in its plan for mitigating Aboriginal community consultation risks, EWT LP  
10 will provide access to funding and programs for appropriate training and capacity development,  
11 including training, orientation and costs for Aboriginal Liaison Officers and for archeological  
12 and environmental monitor training, and will provide participant funding for community  
13 participation in consultation programs.<sup>103</sup>

#### 14 *Participation*

15 Regarding Aboriginal participation in transmission projects, the LTEP states:

16 “There are a number of ways in which First Nation and Métis communities could  
17 participate in transmission projects. Where a new transmission line crosses the  
18 traditional territories of Aboriginal communities, Ontario will expect  
19 opportunities be explored to:

- 20 • Provide job training and skills upgrading to encourage employment on the  
21 transmission project development and construction.
- 22 • Further Aboriginal employment on the project.
- 23 • Enable Aboriginal participation in the procurement of supplies and  
24 contractor services.”<sup>104</sup>

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<sup>100</sup> See EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 6 and EWT LP Response to Board Interrogatory #12 to All Applicants, p. 19.

<sup>101</sup> RSMIN Intervenor Submissions, p. 2.

<sup>102</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, pp. 24-25, Task #5 - Understand how First Nations and Métis communities want consultation and communication activities to proceed.

<sup>103</sup> EWT LP Designation Application, Exhibit 10, p. 7.

<sup>104</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49 [emphasis added].

1 As discussed in greater detail below, other applicants have incorrectly asserted that EWT LP's  
2 participation plan excludes certain potentially affected First Nation and Metis communities from  
3 participating in the Project. The EWT LP Aboriginal participation plan provides opportunities  
4 for all potentially affected First Nation and Métis communities to engage in the abovementioned  
5 forms of participation. The plan also notes EWT LP's intention to prioritize Aboriginal  
6 community members and businesses in its contracting and sets out ways in which EWT LP will  
7 enhance Aboriginal participation in the Project, including by:

- 8 • Complet[ing] community resource assessments identifying, among other things,  
9 Aboriginal community businesses which may assist EWT LP. These businesses will be  
10 invited to participate in EWT LP's competitive procurement processes. These businesses  
11 may provide specialized consulting services such as environmental and engineering  
12 consulting services, guiding services, field equipment, administrative and logistical  
13 support, as well as a variety of other services relating to forestry management and  
14 planning, forestry harvesting and clearing, fire services, remote field office services,  
15 human resources, power line services and health and safety services.
- 16 • Facilitat[ing] sourcing from Aboriginal community businesses and members by  
17 structuring bidding and work requests to better align with the capacities of qualified  
18 Aboriginal community businesses and members.
- 19 • Pre-qualify[ing] Aboriginal community businesses and members for the provision of  
20 certain goods and/or services. Provide feedback on any gaps in qualifications and  
21 information on how to remedy those gaps and become more competitive bidders.
- 22 • Provid[ing] lead time for Aboriginal community businesses and members to develop or  
23 enhance their ability to qualify and compete for the opportunity to provide the goods and  
24 services in question.
- 25 • Hold[ing] workshops for Aboriginal community businesses and members on bidding  
26 procedures for the provision of goods and/or services to facilitate their effective pursuit  
27 of business opportunities. Offer to provide feedback to unsuccessful bidders to facilitate  
28 more effective future bids.
- 29 • Requir[ing] bidders on major contracts to include plans for Aboriginal content and/or  
30 participation, as applicable, in their bids and give particular consideration to such plans  
31 when evaluating bids. Monitor the implementation of Aboriginal content and  
32 participation plans by successful bidders.

- 1 • Ensur[ing] Aboriginal businesses and members are kept informed of contracting and  
2 employment opportunities during the construction of the Project by collaborating with  
3 First Nation Economic Development and Employment Officers.<sup>105</sup>

4 The LTEP further notes that “Ontario will encourage transmission companies to enter into  
5 partnerships with Aboriginal communities, where commercially feasible and where those  
6 communities have expressed interest.”<sup>106</sup> EWT LP is a partnership with six First Nations  
7 communities. This partnership with Aboriginal communities is consistent with Ontario’s  
8 encouragement as expressed through the LTEP. Note that the LTEP does not require  
9 transmitters to enter into partnerships with Aboriginal communities; it does not require  
10 transmitters to negotiate or offer partnerships to all interested Aboriginal communities; nor does  
11 it require that the Aboriginal partnership include representatives from all Aboriginal Peoples.  
12 EWT LP qualifies as an Aboriginal partnership, as encouraged under the LTEP.

13 The Board’s objective in this proceeding is to select the most qualified transmission company to  
14 develop, and to bring a leave to construct application for, the Project.<sup>107</sup> EWT LP’s partners  
15 freely came together in acknowledgement of the unique skills and experience of each partner,  
16 and to offer what they believe is the most qualified transmission company to develop and to  
17 bring a leave to construct application for the East-West Tie Line. As such, the Participating First  
18 Nations’ equity participation in EWT LP is entirely consistent with the Long-Term Energy Plan  
19 and the Board’s objective.

## 20 ***Other Applicants***

21 In their arguments in chief, other applicants criticized EWT LP’s plans for Aboriginal  
22 participation. RES asserted that “[a]ll potentially affected First Nation and Métis communities  
23 should be given an equal opportunity to participate in the Project” and that “any participation  
24 plan that discriminates among affected First Nation and Métis communities, on any basis, is  
25 susceptible to legal challenge under the *Canadian Charter of Rights and Freedoms* and  
26 otherwise.”<sup>108</sup> Forming a commercial partnership among private entities is not a constitutional

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<sup>105</sup> EWT LP Designation Application, Exhibit 3, pp. 7-8.

<sup>106</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49 [emphasis added].

<sup>107</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 3.

<sup>108</sup> RES Argument in Chief, p. 19.

1 right, and RES offered no support or explanation for this claim.<sup>109</sup> It is imperative to distinguish  
2 between economic participation, which is offered by the project proponent, and appropriate  
3 accommodation, which is required by the Crown as a condition of issuing permits. As reiterated  
4 above, EWT LP will be engaging in consultation with and offering economic participation  
5 opportunities - including training, employment and procurement as encouraged under the LTEP -  
6 to all potentially affected Aboriginal communities.

7 AOLP asserted that BLP's equity participation in EWT LP is a "divisive approach" that  
8 "demonstrates that EWT LP does not have a good understanding of and sensitivity to First  
9 Nation and Métis issues."<sup>110</sup> BLP is an equal, active partner in EWT LP. AOLP is effectively  
10 asserting that BLP, a First Nation-controlled entity, does not have a good understanding of and  
11 sensitivity to First Nation and Métis issues.

12 AOLP also suggested that Aboriginal communities should be prevented from forming utilities to  
13 seek to build regulated infrastructure in their traditional territories.<sup>111</sup> It should go without  
14 saying that Aboriginal communities are sophisticated players with the right and the capability to  
15 form commercial partnerships and actively engage as project proponents in designation  
16 proceedings before the Board. AOLP's suggestion clearly views the role of Aboriginal  
17 communities in energy infrastructure and transmission projects as confined to that of passive  
18 investors, without the opportunity for project leadership or commercial self-determination. In  
19 other words, AOLP expects Aboriginal communities to wait on the sidelines until non-  
20 Aboriginal entities ask them to participate. EWT LP fundamentally disagrees with this  
21 approach. It is difficult to understand how the public interest would be served by preventing  
22 Aboriginal peoples with the unique cultural, historical and topographical knowledge of the  
23 Project area from arranging amongst themselves, partnering with others, and bringing a  
24 designation application to the Board. Nor is it clear how such an approach would be fair to such  
25 Aboriginal peoples.

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<sup>109</sup> RES included a reference to *Daniels v. Canada*, 2013 FC 6, but *Daniels* was not concerned with private commercial relationships and is not relevant. The Federal Court in *Daniels* dealt with whether Métis and non-status Indian individuals were included in the term "Indians" in ss. 91(24) of the *Constitution Act, 1867* and were therefore under the jurisdiction of the federal government of Canada.

<sup>110</sup> AOLP Argument in Chief, p. 31, para. 101.

<sup>111</sup> AOLP Argument in Chief, p. 30, para. 98 ("the Board should, in future designation proceedings, prohibit parties from establishing participation arrangements prior to being designated by the Board").

1 In addition, AOLP has raised concerns that the Crown has an indirect ownership interest in  
2 EWT LP and that this could result in additional Aboriginal-related issues, such as those  
3 experienced by HONI in the Niagara Reinforcement Project.<sup>112</sup> AOLP appears to be  
4 misinformed regarding the nature of Hydro One, which is not a Crown corporation.<sup>113</sup> The  
5 Aboriginal issues that arose with respect to the Niagara Reinforcement Project were regarding an  
6 unrelated Aboriginal land claim in the Caledonia area.<sup>114</sup> These issues did not arise as a result of  
7 HONI's actions, and the Board has concluded that the resolution of these issues was beyond the  
8 control of HONI.<sup>115</sup>

9 BLP's early participation in EWT LP has helped EWT LP undertake the necessary detailed  
10 project planning work to ensure it has budgeted appropriate time and resources to provide  
11 ratepayers with a comprehensive, cost-effective and prudent plan for the development,  
12 construction, operation and maintenance of the Project. As such, BLP's early participation has  
13 been to the benefit of ratepayers and will continue to be to the benefit of ratepayers throughout  
14 the various project stages. BLP's participation in EWT LP mitigates development risk. In  
15 addition, as summarized on pages 26 and 27 above, EWT LP's participation plan has a reach that  
16 extends beyond the current equity participation to provide opportunities that are available to all  
17 potentially affected First Nations and Métis communities.

18 In Phase 1 of this proceeding, the Board explicitly asked for submissions on the issue of how the  
19 criterion of First Nation and Métis participation would be assessed. The Board in its Phase 1  
20 decision indicated that participation could mean many things and that it would not restrict its  
21 consideration to any particular type of participation.<sup>116</sup> It would be unfair for the Board to adopt  
22 at this stage, as suggested by some applicants and intervenors, strict requirements of the timing,

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<sup>112</sup> See AOLP Argument in Chief, pp. 31-32, para. 102 ("This risk is particularly problematic for proponents like EWT LP, in which the Crown has an indirect ownership interest, as is evidenced by the still unresolved problems HONI encountered with the Niagara Reinforcement Project which HONI was unable to complete and/or bring into service due to First Nations concerns").

<sup>113</sup> *Electricity Act, 1998*, SO 1998, c 15, Sch A, s. 48(2).

<sup>114</sup> Hydro One Inc., EB-2008-0272, Rate Application, Exhibit D1, Tab 3, Schedule 1, pp. 7-8,  
[http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2008-0272/Exhibit%20D1/D1-03-01 -  
\\_Summary\\_of\\_Capital\\_Expenditures.pdf](http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2008-0272/Exhibit%20D1/D1-03-01_-_Summary_of_Capital_Expenditures.pdf).

<sup>115</sup> Ontario Energy Board, EB-2006-0501, Decision re Hydro One Networks Inc. 2007/2008 Rate Application, p. 63. See also EWT LP Response to Board Interrogatory #4 to All Applicants, p. 9.

<sup>116</sup> Ontario Energy Board, Phase 1 Decision and Order (July 12, 2012), p. 8.

1 amount, nature and distribution of equity. With respect, it would not be appropriate, as AOLP,  
2 RES and MNO appear to assert, that the Board's objective in this proceeding be extended to  
3 include the Board's regulation of Aboriginal communities, including when and with whom they  
4 may enter into commercial relationships.

5 The Board in its Phase 1 decision invited applicants to demonstrate the advantages of whatever  
6 type and level of First Nation and Métis participation they proposed. EWT LP has done so.  
7 EWT LP has complied with the Board's filing guidelines for First Nation and Métis participation  
8 by providing a participation plan that is consistent with the LTEP and benefits ratepayers.  
9 EWT LP submits that this is the standard that applicants should be required to meet for purposes  
10 of designation.

### 11 **Equal Opportunity to Negotiate with Aboriginal Communities**

12 In September 21, 2009, the Minister of Energy and Infrastructure issued a letter to Hydro One  
13 identifying an East-West Tie line between Nipigon to Wawa as a priority transmission project for  
14 the province.<sup>117</sup> Five First Nations in the Nipigon to Wawa area and Great Lakes Power  
15 Transmission Inc. ("GLPT") saw this letter as indicating an opportunity for the eventual  
16 development of transmission infrastructure in the area. The five First Nations voluntarily chose  
17 to organize as a single group and enter into an arrangement with GLPT. This original  
18 partnership was later joined by Fort William First Nation (when the proposed East-West Tie line  
19 was extended to Thunder Bay) and also Hydro One.

20 By November 2010, it was clear that the new East-West Tie line would be subject to a  
21 designation proceeding. The LTEP stated that "[t]he East-West tie will be submitted to the OEB  
22 to carry out a designation process to select the most qualified and cost-effective transmission  
23 company to develop the line."<sup>118</sup> As discussed above, the LTEP was also clear that transmission

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<sup>117</sup> George Smitherman, Minister of Energy and Infrastructure, letter to James Arnett, Chair of Hydro One (September 21, 2009), <http://news.ontario.ca/mei/en/2009/09/expanding-transmission-to-better-harvest-renewable-energy.html>.

<sup>118</sup> Ministry of Energy, Ontario's Long-Term Energy Plan (November 2010), p. 46.

1 companies should engage with Aboriginal communities and explore opportunities for economic  
2 participation and partnerships.<sup>119</sup>

3 Other applicants, such as UCT, have asserted that “incumbent transmission monopolies” had an  
4 advantage in entering into participation arrangements with Aboriginal communities and that any  
5 advantages or benefits associated with the involvement of BLP in EWT LP should be effectively  
6 disregarded by the Board.<sup>120</sup> However, these applicants did not have to wait until the  
7 commencement of this designation proceeding to engage with Aboriginal communities regarding  
8 the Project. All of the applicants had a presence in Ontario in November 2010 - many in the  
9 Project area itself - and could have initiated discussions with Aboriginal communities.<sup>121</sup> They  
10 did not do so. Similarly, the 6 First Nation partners in BLP could have initiated discussions with  
11 the other applicants but did not.

12 It is also incorrect and dismissive of BLP’s commercial sophistication for UCT to suggest that  
13 BLP was coerced into the EWT LP partnership by “incumbent transmission monopolies”.<sup>122</sup> As  
14 discussed above, all of the applicants had a presence in Ontario at this time. BLP chose to  
15 partner with GLPT and later with Hydro One in order to form what they believed to be the most  
16 qualified transmission company to develop and bring a leave to construct application for a new  
17 East-West Tie line.

## 18 **Response to Métis Nation of Ontario**

19 The Métis Nation of Ontario (“MNO”) has raised concerns with EWT LP’s plans for Aboriginal  
20 participation and consultation.

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<sup>119</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49.

<sup>120</sup> See UCT Argument in Chief, p. 46, paras. 176-177 and 186.

<sup>121</sup> RES was developing its Greenwich wind farm in the Project area north of Thunder Bay. I/TC partner TransCanada had a pipeline through the Project area. UCT partners Enbridge, Borealis Infrastructure and NextEra were all present in Ontario: Enbridge had been providing natural gas services in the province for over 160 years; NextEra was developing renewable energy projects around Ontario at that time; and Borealis Infrastructure was an investor in provincial electricity generator Bruce Power. AOLP parent SNC-Lavalin had various active infrastructure projects in the province, including the Highway 407 Express Toll Route.

<sup>122</sup> See UCT Argument in Chief, p. 47, paras. 175-176.

1 *Participation*

2 In its submissions, MNO stated that EWT LP's participation plan "in relation to Métis  
3 participation is deficient and inconsistent with Ontario policy,"<sup>123</sup> on the basis that it "does not  
4 meet any of the Aboriginal participation opportunities set out in the LTEP"<sup>124</sup> and "does not  
5 meet the basic filing requirements" in this designation proceeding.<sup>125</sup> MNO warned that  
6 "designat[ing] a transmitter that precludes the meaningful implementation and application of  
7 Ontario policy for the benefit of proximate Métis communities" would be "discriminatory."<sup>126</sup>

8 Essentially, MNO has asserted that, because Métis communities do not have an equity stake in  
9 EWT LP, the EWT LP Aboriginal participation plan (i) does not reflect Ontario policy as  
10 expressed under the LTEP, (ii) does not meet the Board's filing guidelines, (iii) does not offer  
11 "meaningful" opportunities for participation, and (iv) would make it discriminatory for the Board  
12 to designate EWT LP. As discussed below, all of these assertions are patently incorrect.

13 *LTEP*

14 At the root of MNO's critique is a mischaracterization of the LTEP's policy regarding  
15 Aboriginal participation and its application to this designation proceeding. As discussed on  
16 page 25 above, the LTEP states "[t]here are a number of ways in which First Nation and Métis  
17 communities could participate in transmission projects", including "job training and skill  
18 upgrading", "employment", and "participation in the procurement of supplies and contractor  
19 services."<sup>127</sup> The EWT LP Aboriginal participation plan provides opportunities for all  
20 potentially affected First Nation and Métis communities to engage in all of the above mentioned  
21 forms of participation and sets out ways in which EWT LP will enhance First Nation and Métis  
22 participation in the Project.<sup>128</sup>

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<sup>123</sup> MNO Intervenor Submissions, p. 16.

<sup>124</sup> MNO Intervenor Submissions, p. 17.

<sup>125</sup> MNO Intervenor Submissions, p. 17.

<sup>126</sup> MNO Intervenor Submissions, p. 15.

<sup>127</sup> Ministry of Energy, Ontario's Long-Term Energy Plan (November 2010), p. 49 [emphasis added].

<sup>128</sup> EWT LP Designation Application, Exhibit 3, pp. 7-8.

1 The LTEP also encourages partnerships with Aboriginal communities “where commercially  
2 feasible”.<sup>129</sup> BLP’s equity participation in EWT LP is entirely consistent with Ontario’s LTEP.

3 *Filing Requirements*

4 In accordance with sections 3.1 of the Board’s filing guidelines,<sup>130</sup> the EWT LP designation  
5 application describes (i) the First Nations equity participants in the Project,<sup>131</sup> (ii) the nature of  
6 their participation,<sup>132</sup> (iii) the benefits of this participation,<sup>133</sup> and (iv) the fact that other  
7 economic participation opportunities are available for other First Nation and Métis communities  
8 in proximity to the line.<sup>134</sup> In accordance with section 3.2 of the filing guidelines, the EWT LP  
9 application also describes (i) a detailed plan for additional economic participation by First  
10 Nations and Métis communities in the Project,<sup>135</sup> (ii) the nature of the planned participation,<sup>136</sup>  
11 and (iii) the planned benefits to First Nation and Métis communities resulting from their  
12 participation.<sup>137</sup>

13 As previously noted, EWT LP’s plan provides an opportunity for all potentially affected First  
14 Nations and Métis communities to engage in economic participation in the Project.

15 *Meaningful Participation*

16 MNO appears to suggest that equity ownership in the designated transmitter is the only  
17 meaningful form of participation in this Project for Métis communities. This position is contrary  
18 to the filing guidelines, which do not prescribe the form Aboriginal participation must take, and  
19 the LTEP, which primarily expects opportunities to be explored for Aboriginal participation in

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<sup>129</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49 [emphasis added].

<sup>130</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), Appendix A - Filing Requirements, s. 3, pp. 2-3.

<sup>131</sup> See EWT LP Designation Application, Exhibit 3, p. 2, lines 3-10.

<sup>132</sup> See EWT LP Designation Application, Exhibit 3, p. 3.

<sup>133</sup> See EWT LP Designation Application, Exhibit 3, pp. 4-6.

<sup>134</sup> See EWT LP Designation Application, Exhibit 3, p. 1, lines 6 and 20-21.

<sup>135</sup> See EWT LP Designation Application, Exhibit 3, pp. 7-8.

<sup>136</sup> See EWT LP Designation Application, Exhibit 3, pp. 7-8.

<sup>137</sup> See EWT LP Designation Application, Exhibit 3, pp. 7-8.

1 transmission projects through training, employment and procurement, while encouraging  
2 Aboriginal partnerships where economically feasible.<sup>138</sup>

3 MNO has also mischaracterized the scope of participation opportunities offered under the  
4 EWT LP participation plan.<sup>139</sup> As discussed above, the EWT LP participation plan provides  
5 opportunities for all First Nations and Métis communities to participate in the Project through a  
6 wide variety of education and training opportunities, employment opportunities, and  
7 procurement opportunities.<sup>140</sup>

8 The Board's filing guidelines do not make equity participation mandatory or mandate who can  
9 be an equity participant or the extent of that participation. EWT LP complies with all aspects of  
10 the filing guidelines and, as such, meets the Board's requirements for the purpose of designation.  
11 Furthermore, contrary to MNO's stated concern that EWT LP's commitment to offer  
12 procurement opportunities to all potentially affected Aboriginal communities "is likely  
13 hollow",<sup>141</sup> the procurement needs for a transmission project of this size are so large that there  
14 will be ample opportunities for Métis communities to participate in the procurement of goods  
15 and/or services for the Project.

16 MNO has also raised a concern that Métis communities will not be able to access employment or  
17 contracting opportunities related to the Project "without related supports" for meeting the  
18 requisite technical and professional standards. However, as discussed above and in its  
19 designation application, EWT LP has expressly provided for training supports to enhance  
20 participation by all interested First Nation and Métis community members and businesses,  
21 including by (i) pre-qualifying Aboriginal community businesses and members for the provision  
22 of certain goods and/or services and providing feedback on any gaps in qualifications and  
23 information on how to remedy those gaps and become more competitive bidders, and (ii) holding  
24 workshops for Aboriginal community businesses and members on bidding procedures for the  
25 provision of goods and/or services to facilitate their effective pursuit of business opportunities

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<sup>138</sup> Ministry of Energy, Ontario's Long-Term Energy Plan (November 2010), p. 49.

<sup>139</sup> MNO Intervenor Submissions, p. 16.

<sup>140</sup> EWT LP Designation Application, Exhibit 3, pp. 7-8.

<sup>141</sup> MNO Intervenor Submissions, p. 16.

1 and offering to provide feedback to unsuccessful bidders to facilitate more effective future  
2 bids.<sup>142</sup>

3 *Non-discrimination*

4 In its submissions, MNO readily acknowledges and accepts that not “all [A]boriginal  
5 communities must ultimately be offered identical partnership or participation agreements” and  
6 that “it is well-recognized that ‘one-size-fits-all’ approaches do not work for First Nation and  
7 Metis communities”.<sup>143</sup> MNO also indicates that it “is not arguing that private commercial  
8 arrangements made between First Nations and prospective transmitters are discriminatory”.<sup>144</sup> Its  
9 principle concern is “the non-discriminatory application of Ontario policy through this  
10 designation process - not how private actors choose to arrange their affairs.”<sup>145</sup> MNO submits  
11 that the Board cannot designate “a transmitter that precludes the meaningful implementation and  
12 application of Ontario policy for the benefit of proximate Metis communities” as that would be  
13 discriminatory.<sup>146</sup> On this basis, and predicated upon its erroneous interpretation of the LTEP,  
14 MNO has alleged that it would be discriminatory for the Board to designate EWT LP in this  
15 proceeding. MNO’s assertion is unsubstantiated, incorrect and not supported by Ontario law or  
16 policy.

17 Through its submissions, MNO has mischaracterized the LTEP policy regarding Aboriginal  
18 participation. Taking the broad concept of participation as expressed in the LTEP, MNO  
19 eliminates from consideration training, employment and procurement as forms of participation  
20 on the basis they are not meaningful. MNO then narrowly and selectively construes the policy  
21 by asserting that equity partnership is the only meaningful form of participation in the  
22 Project.<sup>147</sup> In MNO’s view, it is discriminatory if Metis are not equity partners or are not invited

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<sup>142</sup> See EWT LP Designation Application, Exhibit 3, p. 8, lines 8-10 and 14-17.

<sup>143</sup> MNO Intervenor Submissions, p. 15.

<sup>144</sup> MNO Intervenor Submissions, p. 15.

<sup>145</sup> MNO Intervenor Submissions, p. 15.

<sup>146</sup> MNO Intervenor Submissions, p. 15.

<sup>147</sup> See MNO Intervenor Submissions, p. 17 (“the Board should prefer plans that maximize partnership opportunities for proximate aboriginal communities”); and Gary Lipinski, President of Métis Nation of Ontario, Transcript of Oral Proceedings (May 2, 2013), p. 65, lines 8-10 (“Aboriginal ownership in energy development in Ontario...is a fundamental tenet of the Ontario government policy”) and p. 68, lines 2-5 and 7-11 (“the Board cannot interpret the Ontario government policy to allow a designation in the East-West Tie that would completely exclude even the possibility of a Métis community partnership...what is clear is that a designating [sic] partner who refuses to even

1 to engage in negotiations of a partnership interest. However, not only does the LTEP  
2 contemplate a variety of forms of participation, which EWT LP submits are meaningful, it  
3 provides that “Ontario will encourage transmission companies to enter into partnerships with  
4 Aboriginal communities, where commercially feasible and where those communities have  
5 expressed interest.”<sup>148</sup> This is exactly what occurred for EWT LP. With the expressed interest of  
6 the communities forming BLP, the parties established a partnership on commercially feasible  
7 terms. The LTEP does not state either explicitly or implicitly that equity partnership for all  
8 interested Aboriginal communities is required or that communities should postpone their interest  
9 in partnering until offers are made to all Aboriginal communities.

10 MNO’s position is logically inconsistent with the LTEP and the Board’s guidelines. It is not  
11 logically consistent to correctly assert that a “one-size-fits-all” approach does not work for First  
12 Nation and Metis communities and that commercial arrangements between private actors are not  
13 discriminatory, while at the same time, asserting that it is the basis of Ontario policy that  
14 designating a transmitter that does not have or engage with a Metis partner is discriminatory. It  
15 is the very nature of the LTEP that there will not be a “one-size-fits-all” template and that private  
16 parties will choose how they conduct their commercial affairs and with whom they will conduct  
17 those affairs. This is a choice to be exercised by both Aboriginal communities and transmitters,  
18 based on many factors, including trust, mutual respect, and an alignment of approach.

19 In its incorrect framing of the issue and of government policy, MNO mischaracterizes the role  
20 and jurisdiction of the Board. In carrying out its responsibilities in relation to the regulation of  
21 electricity in Ontario, the Board is guided by the objectives set out in s. 1(1) of the *Ontario*  
22 *Energy Board Act, 1998*.<sup>149</sup> In this proceeding, the Board’s primary responsibility is to select the

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discuss the possibility of a partnership with impacted Métis communities would be a breach of Ontario government policy. Moreover, the MNO believes that such a result would amount to discrimination against Métis.”)

<sup>148</sup> Ministry of Energy, Ontario’s Long-Term Energy Plan (November 2010), p. 49 [emphasis added].

<sup>149</sup> 1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives: 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service. 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. 3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances. 4. To facilitate the implementation of a smart grid in Ontario. 5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government

1 most qualified transmitter to develop and bring a leave to construct application for the Project.<sup>150</sup>  
2 While the Board may consider commercial relationships in the context of rate setting, the  
3 application of the Affiliate Relationships Code, and in merger, amalgamation, acquisition or  
4 divestiture applications, the Board does not have the authority to impose a commercial  
5 relationship on a transmitter or to regulate the private affairs of parties. On this basis, the Board  
6 should not deny EWT LP designation on the basis of the commercial choices parties have made  
7 to establish a partnership or the choices they have made as to which parties to include in that  
8 partnership. If EWT LP is the most qualified transmitter to develop and bring a leave to  
9 construct application for the Project, the Board should designate it.

10

11 Participation is a flexible concept as it has to be when considering diverse groups and interests.  
12 There should be opportunities for all affected Aboriginal groups, as in the case of EWT LP's  
13 plan. Participation should not be construed narrowly where specific elements of a plan are  
14 isolated and the criteria of uniformity is applied or imposed, especially where the choices and  
15 commercial dealings of private parties based on commercial realities and trust are fundamental,  
16 such as in the case of partnership.

17 EWT LP's Aboriginal participation plan provides a variety of economic participation  
18 opportunities and associated training and support for all proximate or potentially affected First  
19 Nations and Métis communities.<sup>151</sup> These are meaningful participation opportunities that reflect  
20 the LTEP's policy of exploring Aboriginal participation in transmission projects through  
21 training, employment and procurement, while encouraging Aboriginal partnerships where  
22 economically feasible.<sup>152</sup> As a result, EWT LP's participation plan is not discriminatory and is  
23 wholly consistent with Ontario policy and the Board's guidelines. It would in no way be  
24 discriminatory for the Board to designate EWT LP in this proceeding.

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of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

<sup>150</sup> Ontario Energy Board, EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), p. 3.

<sup>151</sup> EWT LP Designation Application, Exhibit 3, pp. 7-8.

<sup>152</sup> Ministry of Energy, Ontario's Long-Term Energy Plan (November 2010), p. 49.

1 *Consultation*

2 It is important to note that the implementation of an effective consultation plan is an iterative  
3 process.<sup>153</sup> The current EWT LP Consultation Plan is a detailed starting point that will be  
4 finalized in conjunction with all potentially affected First Nations and Métis communities. As  
5 stated in EWT LP's Consultation Plan:

6 The consultation plan and activities will need to be grounded in the consultation  
7 expectations of the First Nations and Métis communities. EWT LP will coordinate  
8 meetings with interested communities to discuss the consultation activities and  
9 approach proposed for this project. EWT LP expects to undertake one such  
10 meeting with each of the Robinson Superior Treaty First Nation Communities, the  
11 other First Nation communities, the MNO, and the Red Sky Métis for a total of  
12 four meetings. **The consultation program will be revised and improved with**  
13 **input received from these face-to-face meetings.** EWT LP expects to hold these  
14 meetings in Thunder Bay. They will be arranged with the assistance of the  
15 community ALOs. Participant funding will be provided to community  
16 representatives who do not live in Thunder Bay to encourage participation.  
17 **Findings from these meetings may alter the consultation program proposed**  
18 **in this document to some degree. Where appropriate, MOUs on consultation**  
19 **approaches and programs will be developed with individual communities.**<sup>154</sup>

20 One of the guiding principles of the EWT LP Consultation Plan is “[t]o build working  
21 relationships with interested parties, area municipalities and First Nation and Métis communities  
22 during the environmental assessment and to continue those relationships through construction  
23 and operations as a basis for gaining community acceptance and promoting long-term project  
24 success”.<sup>155</sup> EWT LP is encouraged that RSMIN, for example, appears to welcome consultation  
25 and the opportunity to provide feedback on consultation plans.<sup>156</sup>

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<sup>153</sup> See EWT LP Designation Plan, Exhibit 10, p. 4, lines 22-26.

<sup>154</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 24 [emphasis added].

<sup>155</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 3.

<sup>156</sup> See RSMIN Intervenor Submissions, p. 2 (“Given the potential size and cost of this undertaking, RSMIN would deem consultation to be a high priority. RSMIN has NOT been adequately consulted. RSMIN has worked extremely hard to increase consultation capacity... RSMIN recommends that the Consultation Plans developed by the Crown or designate of the Crown include determination of capacity and assurance that process and procedure are thoroughly explained and the unique needs of each community are considered. Projects of this capacity should have a very detailed Consultation Plan. Provision of information by itself does not constitute consultation. RSMIN recommends the designate and transmitter applicants have a thorough understanding of the Ontario document, *Draft Guidelines for Ministries on Consultation with Aboriginal Peoples*, June 2006 and the federal document, *Aboriginal Consultation and Accommodation; Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* and that the guidance provided in these documents be reflected in their Consultation Plan and consultation activities. RSMIN

1 As noted above, EWT LP's Consultation Plan is a living and flexible plan that not only includes  
2 consultation about the plan itself, but also is responsive and adaptable throughout the process.  
3 EWT LP appreciates the detailed comments provided by MNO regarding the EWT LP  
4 Consultation Plan. These are the types of comments that may be received during the four  
5 planned community meetings regarding the proposed consultation activities and approach. In  
6 this regard, EWT LP appreciates the opportunity to respond to MNO's concerns within the  
7 context of EWT LP's Consultation Plan.

8 EWT LP has responded to MNO's specific concerns regarding the EWT LP Consultation Plan in  
9 the chart below and, if designated, will continue to work with MNO and the other potentially  
10 affected First Nation and Métis communities to resolve any outstanding concerns.

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believes that the consultation activities and the content within consultation plans should be a weighted factor in determining eligibility criteria.”).

*EWT LP Responses to MNO Concerns with EWT Consultation Plan*<sup>157</sup>

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
<p>An Aboriginal Liaison Officer (“ALO”) will be identified in each of the 6 First Nations to assist in consultations.</p>	<p>No equivalent ALO in any Métis community.</p>	<p>The MNO and its communities do not want or feel comfortable with a member of a First Nation being unilaterally identified to “provide ongoing support for consultation activities” within Métis communities for the project. This prescriptive approach to consultation is contradictory to EWT LP’s claims that it will respect how other Aboriginal communities want to be consulted. It demonstrates the lack of equity and fairness in the EWT LP Consultation Plan.</p>	<p>As noted above, the development of a consultation plan is an iterative process, and the current EWT LP Consultation Plan will be developed and refined in conjunction with all potentially affected First Nations and Métis communities.<sup>158</sup></p> <p>To clarify, the EWT LP Consultation Plan identifies hiring six ALOs to provide ongoing support for consultation activities, with one ALO located in each BLP community. These ALOs would provide ongoing support for consultation activities with both the BLP communities and with other First Nation and Métis communities.<sup>159</sup> The intention to locate the ALO in the BLP communities was based on logistics and the ability to make use of existing infrastructure and administrative support across the Project area. The Consultation Plan does not restrict the ALO positions on the basis of race to individuals of First Nations heritage. The ALO positions are open to individuals of Métis heritage and also to individuals of non-Aboriginal heritage.</p> <p>However, EWT LP acknowledges and appreciates MNO’s feedback regarding a preference for an ALO based in a Métis community in the Project area. As noted in the Consultation Plan, “EWT LP will take direction from the community leadership on how best to select these ALOs.”<sup>160</sup> EWT LP has no objection in principle to identifying an ALO based in a Métis community in the Project area. EWT LP does not anticipate any associated budget increase.</p>
<p>Training, orientation and costs for</p>	<p>No training, orientation or costs for any Métis</p>	<p>This commitment further illustrates the lack of equity and</p>	<p>EWT LP’s planned training, orientation and costs for community participation is available for all Aboriginal peoples, in this instance both</p>

<sup>157</sup> MNO Intervenor Submissions, Appendix B.

<sup>158</sup> See EWT LP Designation Application, Exhibit 10, p. 4, lines 22-26 and Appendix 10A, p. 24.

<sup>159</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 24.

<sup>160</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 24.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
Aboriginal Liaison Officers.	community.	fairness within the EWT LP Consultation Plan in relation to MNO and its communities. Métis communities will be excluded from this training and ability to build internal capacity, while the 6 First Nations will.	<p>First Nations and Métis. MNO is incorrect in its understanding to suggest that MNO-represented communities will be excluded from any training or orientation, or from seeking recovery of legitimate project participation costs. This interpretation is not consistent with EWT LP's filed evidence.</p> <p>In addition, EWT LP's Consultation Plan also provides opportunities for Métis community members to receive training, orientation and costs as archeological and environmental monitors.<sup>161</sup> EWT LP's plan explicitly notes that "[a]rcheological and environmental monitors will be trained in connection with the Project and will help provide assurance to the local communities that the EWT LP is protecting significant sites appropriately. If required, training opportunities will be arranged and funding provided for interested First Nations <b>and Métis</b> people to build their capacity to take part in environmental and archaeological monitoring."<sup>162</sup></p>
Because of the "far-reaching traditional knowledge and traditional ecological knowledge within the project study area ... [the 6 First Nations] will have a representative present at all meetings with the	No similar acknowledgement of Métis knowledge in project study area and Métis community. No Métis participation in meetings with public or other Aboriginal communities.	The MNO and its communities do not want the identified First Nation ALOs attending Métis meetings given the UOI Resolution and the fact that Métis citizens will not feel comfortable or be willing to speak freely. Moreover, the MNO will not feel comfortable discussing its rights and legal	The complete sentence to which MNO refers reads as follows: " <b>EWT LP</b> will have a representative present at all meetings with the public and with Aboriginal communities." <sup>163</sup> One of the guiding principles of the EWT LP Consultation Plan is "[t]o provide opportunities for meaningful and informed input into the environmental assessment and a forum to discuss the Project with project managers face-to-face". <sup>164</sup> If EWT LP is designated by the Board, EWT LP believes it would be both respectful and cost effective to have a member of EWT LP's management team represent EWT LP at every meeting with the public and with Aboriginal communities, and has accounted for this attendance

<sup>161</sup> EWT LP Designation Application, Exhibit 10, page 7.

<sup>162</sup> EWT LP Designation Application, Exhibit 10, page 7. See also EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 26 ("EWT will initiate the training of Aboriginal community environmental monitors who will be able to participate and report back to the communities during and after the construction phase of the project. Having trained Aboriginal monitors assisting during these project phases will reduce the likelihood of inadvertent environmental impacts and will reduce the potential community concern about those environmental impacts. It is proposed that eight (8) individuals be trained. This training to commence during the Environmental Assessment phase of the project so that the communities are prepared for the construction phase.").

<sup>163</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 6.

<sup>164</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 3.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
public and with Aboriginal communities.”		claims in the presence of groups that are adverse in interest to those claims and could use that information in a detrimental manner against the MNO.	<p>in its consultation budget. EWT LP believes that providing opportunities for the public and Aboriginal community members to engage with members of the Project management team will facilitate more meaningful consultation.</p> <p>As previously noted, EWT LP intends to coordinate meetings with interested communities, including the MNO, to discuss consultation activities and approaches. Part of the rationale for consulting with these communities is to understand the process by which they prefer to be consulted and engaged in the Project. For example, in its Consultation Plan EWT LP noted that “the MNO has developed its own specific consultation protocols that involve transferring ongoing consultation to Regional Métis Consultation Committees” and is committed to respecting these protocols. The proposed EWT LP Consultation Plan also notes that in all cases EWT LP will arrange meetings with Métis communities by mutual agreement with “Métis community(s) elected officials, or their formally authorized designate, to discuss appropriate means of engagement recognizing community specific requirements.”<sup>165</sup></p> <p>As stated in EWT LP’s Consultation Plan and reiterated above, “[t]he consultation plan and activities will need to be grounded in the consultation expectations of the First Nations and Métis communities.”<sup>166</sup> EWT LP appreciates MNO’s feedback and will refine its plan for consulting with the Métis communities represented by the MNO in conjunction with the MNO to resolve any concerns raised.</p>
“EWT LP will work to understand the Traditional Territories of all potentially affected First Nation	“EWT LP will work to understand the traditional land use of potentially affected Métis communities in	The plan does not acknowledge that Métis communities also have traditional territories. This lack of understanding or deliberate prejudice permeates	EWT LP’s Consultation Plan has been prepared in conformity with Ontario’s <i>Code of Practice: Consultation in Ontario’s Environmental Assessment Process</i> (Ontario Ministry of the Environment, 2007) and is consistent with good practice including <i>Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the</i>

<sup>165</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 6.

<sup>166</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 24.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
communities early in the project.”	accordance with the above mitigation strategy.”	the plan and approach to Métis consultation. This will contribute to mistrust and likely a failed consultation process.	<p><i>Duty to Consult (Government of Canada, Aboriginal Affairs &amp; Northern Development Canada, 2011).</i><sup>167</sup> EWT LP notes that these federal consultation guidelines were specifically recommended by RSMIN for transmitter applicants to thoroughly understand and reflect in their Consultation Plans and consultation activities.<sup>168</sup></p> <p>The guiding principles of the EWT LP Consultation Plan include (i) “[t]o ensure that First Nation and Métis communities with existing or asserted Aboriginal or Treaty rights that could be adversely affected by the East-West Tie Project are meaningfully consulted” and (ii) “to identify potential adverse impacts to relevant Aboriginal and Treaty Rights and traditional uses, and to consult with Aboriginal communities on reasonable approaches to avoiding or minimizing identified impacts, including the ability to hunt, fish and trap for food and carry out traditional land uses”.<sup>169</sup> The EWT LP Consultation Plan also notes that, “[u]pon designation, EWT LP will commence an early consultation phase to: ... Obtain and analyze information on areas where First Nations and Métis currently exercise their Treaty and Aboriginal rights and traditional uses”.<sup>170</sup></p> <p>EWT LP’s Consultation Plan is built on the premise of working with communities and mitigating any potential impacts on their rights and interests. In consultation with Métis communities, EWT LP will be able to identify those lands within the Project area considered to be traditional territory of the respective communities and EWT LP will work with each community to mitigate any potential impacts to those lands or land uses. All consultation and accommodation, as appropriate, will be undertaken fairly, properly, and respectfully and in accordance with federal and provincial practice and a memorandum of understanding with the Crown.</p>
“The communities of	There is no recognition	Consistent with the UOI	MNO is incorrect to suggest that EWT LP will not engage in fulsome

<sup>167</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 22.

<sup>168</sup> RSMIN Intervenor Submissions, p. 2.

<sup>169</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, pp. 3-4.

<sup>170</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 4.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
<p>the Participating First Nation are all located with 40 km of the existing East-West Tie line, which lies entirely within their traditional territories ...”</p>	<p>of the fact that the East-West Tie will cross areas that are common traditional territories with Métis communities.</p>	<p>Resolution, the plan portrays a level of exclusivity of the 6 First Nations and that the rights and interests of other Aboriginal groups are subordinate. This approach cannot be sanctioned by a Crown actor. The MNO is also concerned that EWT LP’s partners may be beholden to the political and legal positions of the 6 First Nations to Métis rights, consultation and accommodation (i.e. UOI Resolution) and given the governance structure of EWT LP this bias and discrimination may be institutionalized and affect consultation.</p>	<p>consultation as a result of the Union of Ontario Indians (“UOI”) Resolution. EWT LP is not a member of UOI and does not endorse the position of the UOI. As demonstrated in its Consultation Plan, EWT LP intends to consult equally with all identified Aboriginal communities in the Project area.<sup>171</sup></p> <p>The duty to consult with Aboriginal Peoples and, if appropriate, accommodate their interests is grounded in the honour of the Crown.<sup>172</sup> If designated, EWT LP would enter into an MoU with the Crown setting out the respective roles and responsibilities of the Crown and EWT LP in consultation on the Project. It is the responsibility of the Crown to ensure that a designated transmitter’s consultation plan will satisfy the Crown’s consultation obligations.</p>
<p>“EWT LP plans to produce a traditional knowledge and land use report as a part of the environmental assessment process.” (EWT LP Plan, Exhibit 10, Part B, p. 8) EWT LP will initiate an Aboriginal</p>	<p>Métis traditional knowledge will be collected by First Nation ALOs as a part of an overall TK/LUO study. The distinct impacts of the project on Métis use and occupancy will not be understood or assessed.</p>	<p>The MNO and its communities will not participate in the TK/LUO study proposed by EWT LP. The methodology is unsound (see below). Métis will not feel comfortable providing sensitive traditional knowledge to ALOs whose communities deny Métis right or the need to consult and accommodate</p>	<p>The Court has found that “[t]he duty to consult is a reciprocal duty and the Crown as well as the Aboriginal party involved must approach this duty by showing ongoing good faith efforts to reach a consensus”.<sup>173</sup> Furthermore, the Court has found that Aboriginal communities “cannot frustrate the consultation process by refusing to meet or participate, or by imposing unreasonable conditions”.<sup>174</sup></p> <p>As noted above, the development of a consultation plan is an iterative process. EWT LP plans to revise and finalize its consultation plan in conjunction with the potentially affected Aboriginal communities and the</p>

<sup>171</sup> See EWT LP Designation Application, Exhibit 10, Appendix 10A.

<sup>172</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73.

<sup>173</sup> *Platinex Inc v. Kitchenuhmaykoosib Innuniwug First Nation* (2006), 272 DLR (4th) 727 (Ont. Sup. Ct.) at para. 133.

<sup>174</sup> *Halfway River Nation v British Columbia (Ministry of Forests)*, 1999 BCCA 470 at para. 161.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
<p>Land Use and Occupancy study (“TK/LUO”) for the region.</p>	<p>Métis will not be allowed to complete their own TK/LUO study through an adequate representative sampling of the Métis community, interviews being conducted in an environment where Métis do not need to feel guarded or free from judgment and a level of confidence over the security and quality of the study completed.</p>	<p>Métis. The Métis should not be forced to disclose confidential information to ALOs that are adverse in interests to Métis rights and claims. Nor will MNO allow the distinct use and occupancy of Métis to be subsumed under one “Aboriginal” TK/LUO study. The MNO objects to a process that does not allow for an independent Métis TK/LUO study to inform routing, environmental assessment, etc. The MNO also believes that the costs associated with creating a documentary film are a waste of ratepayer resources and diverts resources away from undertaking more interviews to better understand First Nation and Métis use.</p>	<p>Crown. As such, there is built-in flexibility in EWT LP’s plan to address MNO’s concerns about EWT LP’s consultation plan to the extent that they are reasonable.</p> <p>EWT LP suggested the use of a documentary film on its Consultation Plan because it noted that documentary films have been found in many instances to be very effective tools for recording and communicating traditional knowledge. For example, the Métis Nation of Ontario released a documentary film in February 2011 as part of a traditional knowledge study on Métis plant and vegetation use in southern Ontario and noted that “this study will be an important resource for our people today and generations to come”.<sup>175</sup></p> <p>EWT LP has therefore budgeted for this activity within its Consultation Plan, but will consult on its use as part of its community consultations on the Consultation Plan.<sup>176</sup> If the identified Aboriginal communities do not find value in this tool, EWT LP will not pursue it.</p>
<p>A total of 96 TK/LOU interviews will be undertaken with the 6 First Nations.</p>	<p>Less than 31 TK/LOU interviews will be undertaken with the MNO and its communities. Given the fact that these 31 interviews are to be</p>	<p>The methodology proposed by EWT LP is professionally and methodologically unsound. By and large, professionals agree that a sampling of 5-10% of an Aboriginal community’s population is required for a</p>	<p>EWT LP has prepared its budget on the basis of conducting 127 interviews, which is consistent with MNO’s suggested sample size.<sup>177</sup> According to data from Statistics Canada, the population of the Project area is approximately 25,010 of whom 3,226 are First Nation (13%) and 1,273 are Métis (4%). The non-Aboriginal population is therefore 83% compared to the non-Aboriginal population for Ontario as a whole of 98%. 30% of the Aboriginal population of Ontario is 14 years or</p>

<sup>175</sup> Métis Nation of Ontario, News Release, *MNO Releases Groundbreaking Documentary for Educational Use* (February 17, 2011), <http://www.Métisnation.org/news--media/news/mno-releases-groundbreaking-documentary-for-educational-use>.

<sup>176</sup> See EWT LP Designation Application, Exhibit 10, Appendix 10A, pp. 24-25, Task #5 - Understand how First Nations and Métis communities want consultation and communication activities to proceed.

<sup>177</sup> EWT LP notes that the availability of 127 willing and knowledgeable interviewees in the Project area has yet to be confirmed.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
	<p>allocated amongst other First Nation as well, it is likely MNO and its communities could have less than 15 interviews.</p>	<p>credible TK/LUO study. The number of interviews proposed are arbitrary and do not correlate with obtaining an adequately samplings from the distinct First Nation and Métis populations in the study area. This type of inadequate sampling data would not result in a study that could assist with effective routing avoidance, identification of Métis community values and interests in the environmental assessment process, etc.</p>	<p>younger. EWT LP therefore provisionally estimates the study population to be in the range 2,500-3,000. This would give a sample size of 125 – 150 individuals.</p> <p>EWT LP believes that its planned approach strikes a reasonable balance between obtaining credible results to inform the environmental assessment while making efficient use of ratepayers’ money.</p>
<p>“EWT will initiate the training of Aboriginal community environmental monitors ...”</p>	<p>There is no commitment to Métis community monitors.</p>	<p>The MNO is concerned that consistent with the rest of the EWT LP’s Consultation Plan, the Métis community will be excluded. Instead of indicating First Nation and Métis monitors will be hired, the term “Aboriginal” is used. Based on EWT LP’s overall approach to Aboriginal consultation, the MNO does not trust that these consultation commitments will be implemented in an equitable</p>	<p>As noted above, EWT LP’s Consultation Plan provides opportunities for Métis community members to receive training, orientation and costs as archeological and environmental monitors.<sup>178</sup> EWT LP’s plan explicitly notes that “[a]rcheological and environmental monitors will be trained in connection with the Project and will help provide assurance to the local communities that the EWT LP is protecting significant sites appropriately. If required, training opportunities will be arranged and funding provided for interested First Nations <b>and Métis</b> people to build their capacity to take part in environmental and archaeological monitoring.”<sup>179</sup></p> <p>EWT LP has no objection to committing at this time to one monitor being drawn from a Métis community. However, EWT LP respectfully</p>

<sup>178</sup> EWT LP Designation Application, Exhibit 10, p. 7.

<sup>179</sup> See EWT LP Designation Application, Exhibit 10, p. 7 and EWT LP Designation Application, Exhibit 10, Appendix 10A, p. 26 (“EWT will initiate the training of Aboriginal community environmental monitors who will be able to participate and report back to the communities during and after the construction phase of the project. Having trained Aboriginal monitors assisting during these project phases will reduce the likelihood of inadvertent environmental impacts and will reduce the potential community concern about those environmental impacts. It is proposed that eight (8) individuals be trained. This training to commence during the Environmental Assessment phase of the project so that the communities are prepared for the construction phase.”).

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
		or fair manner towards the Métis community. Explicit commitments for MNO community monitors are required.	suggests it would be inappropriate for the Board to impose a minimum quota for any particular Aboriginal community or Aboriginal Peoples in advance of having determined the final route for the line and the likely impact on individual communities.
<p>“EWT LP wishes to develop an MOU with the Crown on the delegation of the procedural aspects of consultation”</p>	<p>MNO will object to procedural aspects of the Crown’s duty being delegated to EWT LP based on the inequity and unfairness of the current Consultation Plan as well as the apprehension of bias by EWT LP’s partners against Métis consultation and accommodation.</p>	<p>Given the lack of fairness and equity within the EWT LP’s Consultation Plan and the apprehension of bias towards Métis consultation and accommodation by partners in the EWT LP (i.e., the UOI Resolution), the MNO will ask that procedural aspects of Crown consultation not be delegated to EWT LP.</p>	<p>In its letter to the Board regarding this proceeding, the Crown expressed its “expectation that the designated transmitter will enter into a memorandum of understanding (MOU) with the Ministry that will set out the respective roles and responsibilities of the Crown and the transmitter in consultation”, and that the MOU would be “on terms and conditions to be determined by the Ministry and which will be similar in principle to the MOU in the public record on the application for leave to construct the Bruce to Milton transmission reinforcement project.”<sup>180</sup></p> <p>The Bruce to Milton MOU between the Crown and HONI states:</p> <p><i>11. The Crown will be responsible for the following aspects of any S. 35 Duty in relation to the Project:</i></p> <p><i>a. the determination of the Aboriginal communities to be consulted in relation to the Project;</i></p> <p><i>b. the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal communities identified;</i></p> <p><i>c. satisfying itself that the consultation process in relation to the Project has been adequate;</i></p> <p><i>d. the determination of appropriate accommodation of the established rights and asserted rights of Aboriginal communities in relation to the Project, where accommodation may be required.</i></p>

<sup>180</sup> Ministry of Energy, letter to Ontario Energy Board (November 26, 2012), pp. 1-2.

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
			<p>...</p> <p>24. HONI will prepare the Plan and present it to the Minister within 30 days of the execution of this MOU.</p> <p>25. The Plan shall set out in detail the manner in which HONI proposes to carry out its responsibilities under this MOU, including particularly under section 9, from the date of this MOU forward, such Plan to include the identification of all significant steps and a timetable for their completion, including, for example, a description of:</p> <p>a. the steps remaining to complete the consultations undertaken to satisfy any S.35 Duty that arises in the application under s. 92 of the Ontario Energy Board Act;</p> <p>b. the steps for carrying out the consultations required to satisfy any S. 35 Duty that arises in the Environmental Assessment required under the Environmental Assessment Act;</p> <p>c. the steps for carrying out the consultations required to satisfy any S. 35 Duty that arises in the permitting process under the Public Lands Act.</p> <p>EWT LP respectfully suggests that it is the Crown’s role to determine whether the designated transmitter’s Aboriginal consultation plan is sufficient to discharge any procedural aspects of the Crown’s duty to consult that are delegated to the designated transmitter.</p> <p>EWT LP respectfully suggests that it is the Board’s role to determine whether each transmitter has complied with the Board’s filing guidelines by preparing a consultation plan that:</p> <ul style="list-style-type: none"> <li>- lists the communities that may have interests affected by the project;</li> <li>- proposes an approach for engaging with the communities along with rationale or other justification for such an approach;</li> </ul>

Consultation with 6 First Nations	Consultation with the Métis	Métis Concerns with Consultation Plan	EWT LP Response
			<ul style="list-style-type: none"> <li>- provides a description of any significant issues anticipated in consultation and a plan to address them;</li> <li>- gives an overview of expected outcomes from the proposed consultation plan; and</li> <li>- provides evidence of experience in undertaking procedural aspects of consultation.<sup>181</sup></li> </ul> <p>Unlike other transmitters, EWT LP has filed a comprehensive and flexible First Nation and Métis Consultation Plan that complies with the Board's filing guidelines and reflects relevant standards and good industry practice. The Consultation Plan will be further refined and finalized in consultation with the potentially affected First Nations and Métis communities following designation.</p>

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<sup>181</sup> EWT LP Designation Application, Exhibit 10, Appendix 10A.

1 **CONCLUSION**

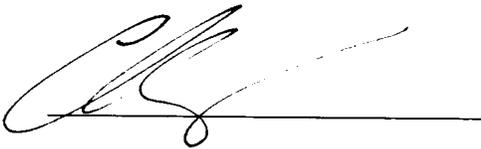
2 EWT LP has prepared a comprehensive and thoughtful development plan that satisfies the  
3 Board's filing guidelines and achieves the Board's objectives of ensuring the Project is  
4 developed in a cost-effective and timely manner for ratepayers' benefit. In these Reply  
5 Submissions, EWT LP has fully and appropriately responded to the issues raised by other  
6 applicants and intervenors with respect to its development plan for the Project, particularly in  
7 relation to promoting new entry and the treatment of EWT LP; technical design; cost and cost  
8 management; schedule; and Aboriginal engagement. As such, EWT LP respectfully submits that  
9 it is the most qualified applicant to develop, and to bring a leave to construct application for, the  
10 Project.

11

12 All of which is respectfully submitted this 3rd day of June, 2013.

13

14

A handwritten signature in black ink, appearing to read 'C. Keizer', is written over a horizontal line. The signature is fluid and cursive.

15 Charles Keizer

16 Counsel to EWT LP