

IN THE MATTER OF sections 70 and 78 of the
Ontario Energy Board Act, 1998;

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.

**Reply by Iccon Transmission Inc. /
TransCanada Power Transmission (Ontario) LP**

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I. OVERVIEW

1. This is the reply submission of Icon Transmission Inc. (“**Icon**”) and TransCanada Power Transmission (Ontario) LP (“**TPT**”) (jointly, “**Icon/TPT**”) for designation by the Ontario Energy Board (the “**OEB**” or the “**Board**”) to undertake development work on the East-West Tie Line (“**East-West Tie**” or “**the project**”). Icon/TPT’s joint proposal brings together TransCanada Corporation (“**TransCanada**”) and Isolux Infrastructure Netherlands B.V. (“**Isolux Infrastructure**”), which is jointly owned by Grupo Isolux Corsán, S.A. (“**Isolux Corsán**”) and the Public Sector Pension Investment Board (“**PSP Investments**”).

2. In its reply submission, Icon/TPT has limited its submissions to responding to arguments made by other applicants and intervenors. Icon/TPT specifically addresses the following points in reply:

- Icon/TPT’s joint application fully complies with the Board’s eligibility requirements and organization filing criteria.
- Icon/TPT’s early engagement of Isolux Ingeniería, the engineering affiliate of Isolux Corsán, brings substantial benefits, including the commitment to enter into a fixed fee engineering, procurement and construction contract (“**EPC contract**”), and does not violate the Board’s *Affiliate Relationships Code* (“**ARC**”).
- Icon/TPT appropriately emphasizes capability as the most credible and reliable measures of an applicant’s capability to cost effectively develop, build and operate the East-West Tie.
- Icon/TPT presented the only reliable and realistic estimate of First Nations and Métis consultation and participation costs during the development phase; the amounts other applicants have allocated are inadequate and demonstrate a lack of understanding of the scope and cost of work required.
- Icon/TPT is committed to carrying out good faith Aboriginal engagement through which it will mutually determine appropriate participation opportunities for First Nations and Métis communities.

- Icon/TPT has unparalleled experience developing major transmission projects around the world and has had a presence in Northern Ontario for over 60 years; no other applicant can match Icon/TPT's combined development experience.

3. In contrast to other applicants, Icon/TPT was not criticized for core inadequacies or flaws in its approach to the development and construction of the project – it was not, for instance, critiqued for:

- Premising the application on premature conclusions about First Nations and Métis partners and the appropriate forms of participation (EWT LP, CNPI, RES, AltaLink).
- “Deciding first, consulting later” on preferred design choices for the project such as a single circuit or the use of guyed towers (RES, NextBridge).
- Presenting unrealistic development/construction schedules, including a failure to appreciate the timing of key steps in the environmental assessment or other regulatory processes (NextBridge, AltaLink).
- Relying upon overly aggressive development or construction costs estimates (AltaLink, NextBridge).
- Possessing insufficient capability and resources (technical, financial, regulatory, etc.) to undertake a major transmission project in Ontario (CNPI, NextBridge).
- Having a poor record for exceeding budgeted costs (AltaLink, EWT LP) or schedules (AltaLink, CNPI, RES) on major projects.

4. The relatively mild criticism of Icon/TPT's plan by other applicants and intervenors reinforces that it is the most capable applicant to develop, build and operate the East-West Tie. Icon/TPT's application is competitive on all scores, but equally important, is realistic and credible. Icon/TPT's approach to development minimizes the risks that could threaten the completion of the project while maximizing economic efficiency and cost effectiveness

for Ontario ratepayers. This approach is ultimately rooted in Isolux Infrastructure's and TransCanada's corporate values and unmatched capabilities developing, building and operating major projects and working in Northern Ontario with local communities, including First Nations and Métis.

II. REPLY SUBMISSIONS

A. Icon/TPT's joint application is eligible for designation

5. EWT LP argues that Icon/TPT's joint application is ineligible for designation because the partnership Icon/TPT will create to undertake the project was not formally registered as a transmitter on September 21, 2011.¹ EWT LP proposed interrogatories to Icon/TPT on this precise point, but the panel determined they did not warrant inclusion in the Board-issued interrogatories.² EWT LP nonetheless persists in pressing this meritless issue.

6. In its Phase 1 decision, the Board stated that it "would consider a joint venture or joint application from two or more parties who together propose to complete the entire East-West Tie line."³ Icon and TPT united pursuant to the Board's direction to combine their complementary strengths and put together the strongest possible proposal. Far from being a deficiency, this is a key attribute of Icon/TPT's application.

7. Further, both Icon and TPT are licensed transmitters who registered for designation prior to September 21, 2011. Unlike other applicants, Icon/TPT did not add new partners post-September 21, 2011 that were not licensed transmitters or registered applicants - NextBridge (Enbridge and Borealis) and RES Canada Transmission (MidAmerican).

8. The SEC questions Icon/TPT for not including the terms of its partnership in the application;⁴ however, this was not a filing requirement and, to Icon/TPT's knowledge, no other applicants composed of multiple parties (EWT LP, NextBridge and RES) have publicly disclosed the detailed terms of their partnership agreements. There is no basis for the

¹ EWT LP Argument-in-Chief dated April 18, 2013 at pp. 102-103.

² EWT LP Interrogatories dated January 30, 2013, Proposed Interrogatories 2 and 3.

³ Phase 1 Decision and Order, July 12, 2012, EB-2011-0140 ("**Phase 1 Decision**") at pp. 13.

⁴ Phase 2 Final Argument on behalf of the Schools Energy Coalition dated May 9, 2013 at pp. 5-6.

supposition implicit in SEC's argument that Icon/TPT's partnership is less advanced or requires more scrutiny than those proposed by EWT LP, NextBridge or RES.

9. Nor, as suggested by EWT LP and SEC, does the need to formalize Icon/TPT's partnership arrangement pose a risk to Icon/TPT's development schedule.⁵ Icon/TPT has made a commitment to the Board that it is ready and able to begin development work immediately upon designation.⁶ The important commercial terms of Icon/TPT's partnership are defined; Isolux Infrastructure and TransCanada are sophisticated commercial parties who have entered into many similar partnerships; and, formalizing further partnership arrangements can be done promptly and will be undertaken concurrently with development work on the project.

10. Contrary to the suggestions of AltaLink and SEC,⁷ Icon/TPT's partnership status has not impeded it in preparing a more detailed organizational chart. Icon/TPT provided the required organizational charts for its proposed project structure⁸ and has identified deep pools of qualified and experienced personnel who may be immediately drawn upon to fulfill Icon/TPT's responsibility to develop, construct and operate the project.⁹ The Board's focus in evaluating the applications should be on the quality of personnel available to carry out the project.

11. Lastly, Icon/TPT disagrees with CNPI's assertion that a single developer/operator is the preferred choice for designation.¹⁰ The "joint developer" risks identified by CNPI are not borne out by any evidence and are aimed to distract the Board from the complementary strengths offered by Icon/TPT's joint proposal. Isolux Infrastructure has unparalleled experience and expertise developing, building and operating major electric transmission projects. TransCanada is very familiar with Canadian regulatory processes and has extensive experience engaging and working with local stakeholders and Aboriginal

⁵ EWT LP Argument-in-Chief dated April 18, 2013 at p. 103; Phase 2 Final Argument on behalf of the Schools Energy Coalition dated May 9, 2013 at pp. 5-6.

⁶ Icon/TPT's Joint East-West Tie Designation Application ("**Icon/TPT Application**"), Appendix "B" to section 7.

⁷ Argument-in-Chief of AltaLink Ontario L.P. at p. 33; Phase 2 Final Argument on behalf of the Schools Energy Coalition dated May 9, 2013 at p. 6.

⁸ Icon/TPT Application, section 2 at p. 4; Icon/TPT Response to Interrogatories, Board Interrogatory 1 and Appendix "A".

⁹ Icon/TPT Application, section 2.2 at pp. 4-5 and section 4.2, pp. 9-10.

¹⁰ CNPI Argument-in-Chief at p. 38.

communities in Northern Ontario. No other applicant can claim these combined strengths, which are the most credible measures of an applicant's capability to cost effectively develop, build and operate the East-West Tie.

B. Iccon/TPT's application complies with the *Affiliate Relationships Code*

12. Iccon/TPT intends to enter into a fixed fee EPC contract at market-based rates with Isolux Ingeniería at the leave to construct stage. The EPC contract will not be an "Affiliate Contract" as defined in the ARC. The new general partner ("GP") who will control the Iccon and TPT limited partnership will not have any "affiliates" as that term is defined in the ARC. EWT LP, which now alleges that Iccon/TPT may violate the ARC,¹¹ explained in its own submissions in EB-2011-0350 why ARC does not apply where a company is not controlled by a single shareholder:

The ARC adopts the definition of "affiliate" from the *Business Corporations Act* (Ontario). Under that Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, (i) one of them is the subsidiary of the other or (ii) both are subsidiaries of the same body corporate or (iii) each of them is controlled by the same person. As mentioned above, East-West Tie Inc. is not an affiliate of the Shareholders, as it is not a subsidiary of or controlled by any of these entities. This is because each of the Shareholders holds only 33 1/3% of the outstanding shares in East-West Tie Inc., meaning that no subsidiary or control relationship arises under the *Business Corporations Act* (or the ARC) vis-à-vis the Shareholders and East-West Tie Inc. Consequently, East-West Tie Inc. is not an affiliate of any entities to which the Shareholders are subsidiaries or by which they are controlled.¹²

13. Ownership of the new GP will be analogous to the structure of East-West Tie Inc. Isolux Infrastructure (through Iccon) and TransCanada (through TPT) will each indirectly hold 50% of the outstanding shares of the GP; neither will have sufficient voting securities to elect a majority of the board of directors. This does not meet the definition of "control" under the *Business Corporations Act*:

¹¹ EWT LP Argument-in-Chief at pp. 100-101 and footnote 209. This allegation was also leveled against Iccon/TPT by the Schools Energy Coalition: Phase 2 Final Argument on behalf of the Schools Energy Coalition dated May 9, 2013 at p. 26.

¹² Written Motion Submissions of EWT LP in its Application for an Electricity Transmission Licence, EB-2011-0350 dated January 31, 2012 ("**EWT LP Licence Submissions**") at pp. 14-15.

Control

(5) For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, but only if,

(a) voting securities of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

(b) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate.¹³

14. As neither Isolux Infrastructure nor TransCanada will “control” the GP, the GP will not qualify as a “subsidiary” of either Isolux Infrastructure or TransCanada under the *Business Corporations Act*. It follows that the new GP will also not qualify as a subsidiary of Isolux Corsán, which will indirectly hold a roughly 40% interest in the GP.¹⁴ This is not sufficient to establish a subsidiary relationship as defined in the *Business Corporations Act*:

Interpretation: subsidiary body corporate

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, but only if,

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more bodies corporate each of which is controlled by that other, or

(iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other’s subsidiary.¹⁵

¹³ *Business Corporations Act*, RSO 1990, c B.16, s. 1(5).

¹⁴ Isolux Corsán owns 81% of the shares of Isolux Infrastructure, which in turn holds 50% of the shares of the GP through Icon; the other 19% is owned by PSP Investments: Icon/TPT Application, section 1.3.

¹⁵ *Business Corporations Act*, RSO 1990, c B.16, s. 1(2).

15. Because the new GP will not be a subsidiary of Isolux Corsán or otherwise controlled by Isolux Corsán, the new GP will not have an “affiliate” relationship with Isolux Corsán or the subsidiaries of Isolux Corsán (including Isolux Ingeniería) as defined in the ARC.

16. This distinction is not merely a formality. EWT LP’s allegation ignores its own caution in EB-2011-0350 not to “neglect the fact that EWT is comprised of three equal, arm’s length partners, each with its own, distinct commercial interests, and each unable to control EWT.”¹⁶ The same will be true of the new GP, which will ultimately be controlled by three large sophisticated parties acting at arm’s length – TransCanada, Isolux Corsán and PSP Investments – in accordance with their own distinct commercial interests. It should not be presumed that TransCanada and PSP Investments would forsake their own commercial interests to favour those of Isolux Corsán’s subsidiary Isolux Ingeniería. To again borrow from EWT LP’s own submissions, “[g]iven the inherent checks and balances in an arm’s length structure, there is nothing unusual – and certainly nothing improper – about the fact that the structure is not subject to the ARC.”¹⁷

17. In this regard, the Icon/TPT relationship to Isolux Ingeniería can be contrasted with that of AltaLink and AltaLink’s proposed contractor SNC Lavalin. SNC Lavalin owns 100% of AltaLink, which qualifies as “control” and gives rise to an “affiliate” relationship between AltaLink and the other subsidiaries of SNC Lavalin. There are no arm’s length third parties with their own distinct commercial relationships to balance the interests of SNC Lavalin. In such circumstances, the protections of the ARC are needed to ensure that the interests of ratepayers are balanced with those of the controlling shareholder. Moreover, AltaLink’s application makes it clear that the SNC Lavalin is the *de facto* applicant and will be responsible for undertaking most phases of the project, including design, engineering, material and procurement, licencing and permitting (including the environmental assessment), First Nations and Métis consultation, and construction.¹⁸

18. There are substantial benefits to engaging an experienced EPC contractor at an early stage, including provision of more accurate and realistic cost estimates, early identification of risks and mitigation strategies and early identification of efficient procurement plans.

¹⁶ EWT LP Licence Submissions at p. 15.

¹⁷ EWT LP Licence Submissions at p. 15.

¹⁸ AltaLink Application for Designation at p. B-23 to B-28.

Because Isolux Ingeniería has been involved in the project from the earliest stages, it has sufficient familiarity with the scope of work to commit to entering into a fixed fee EPC contract at market-based rates at the leave to construct stage. As noted above, Icon/TPT acknowledges that it will need to prove in a future proceeding that any costs incurred under the EPC contract with Isolux Ingeniería were prudently incurred.¹⁹ Icon/TPT is comfortable accepting this risk because the bulk of the work will be subcontracted on a competitive basis and the fee paid to Isolux Ingeniería will be market-based and a relatively small portion of the overall cost of the EPC contract.

19. EWT LP further insinuates that there is impropriety in Icon/TPT's proposal because the EPC contract, unlike other service agreements with TransCanada or Isolux Corsán (or their respective affiliates), will not be at cost without mark-up for profit.²⁰ There is no obligation on Isolux Ingeniería to offer its services at cost, nor any impropriety in an EPC contractor earning a profit. TransCanada and Isolux Corsán offered to provide other services at cost in recognition of the fact that many of those services would have been available in-house if Icon/TPT was an incumbent utility. Icon/TPT is confident that it will be able to establish that its EPC costs, including its EPC contractor's fees, are prudent and are in the best interests of ratepayers.

C. Icon/TPT appropriately emphasizes the capability of the applicant

20. Icon/TPT has urged the Board to focus on the capability of the applicants, measured by reference to their expertise and track records, when evaluating the designation applications.²¹ NextBridge criticizes Icon/TPT's approach because of its "focus on the applicant, and the specific solution is de-emphasized".²²

21. Icon/TPT disagrees with NextBridge's approach to the designation process. The single most important consideration in designating a transmitter should be an applicant's ability to deliver – all of the promises made in a designation plan are meaningless if an applicant does not have the ability to deliver. The best indicator of an applicant's ability to successfully deliver the project is its track record in delivering major linear infrastructure

¹⁹ Icon/TPT intends to utilize commonly accepted methodologies to demonstrate the fee for the EPC contractor is market based.

²⁰ EWT LP Argument-in-Chief at pp. 100-101.

²¹ Icon/TPT Argument-in-Chief at pp. 5-9.

²² Upper Canada Transmission, Inc. (NextBridge) Argument in Chief at p. 46.

projects on schedule and on budget. Icon/TPT's past success demonstrates that it knows how to address project risks while also maintaining the project budget and schedule.

22. NextBridge also touts its application as superior for offering the earliest in-service date and lowest cost; however, the application also stands out as the highest risk proposal in this proceeding – it rests on the premature decision to use a guyed tower design prior to stakeholder consultation, an unrealistic in-service date that is a full year in advance of any other applicant, and an aggressively low estimate of construction costs (\$370 million, which is 10% lower than the average estimates of other applicants).²³ Icon/TPT agrees with EWT LP's observation that NextBridge's schedule does not align with the reality of major project development in Ontario and evidences the lack of experienced Ontario resources on its team.²⁴

23. With respect to capability, NextBridge favourably compares its "Aggregated Past Project Cost Variance" and "Average Past Project Schedule Variance" with the similar figures for Icon/TPT.²⁵ However, NextBridge's average variances of -2% and 1.1 months are derived from 5 major electricity transmission projects totaling less than 1,500 km;²⁶ by comparison, Icon/TPT's average variances of +5% and 4.4 months are premised on 24 projects totaling over 10,000 km of major electricity transmission line and over 3,500 km of natural gas pipelines.²⁷ NextBridge claims the variances are evidence of its "significantly greater ability to meet schedule for project development and construction" than the other applicants²⁸ while ignoring the wide disparity between its experience and that of Icon/TPT. In Icon/TPT's view, the total number of kilometers that an applicant has brought into service on time and on budget is a far more reliable indicator of capability than minor distinctions in average past project variance.

²³ Icon/TPT Argument-in-Chief at pp. 28-30.

²⁴ EWT LP Argument-in-Chief at pp. 64-80.

²⁵ Upper Canada Transmission, Inc. (NextBridge) Argument in Chief at pp. 3-5.

²⁶ NextBridge Responses Interrogatories, Board Interrogatory 32.

²⁷ Icon/TPT Responses to Interrogatories, Board Interrogatory 32.

²⁸ Upper Canada Transmission, Inc. (NextBridge) Argument in Chief at pp.4-5.

D. Iccon/TPT has the only reliable and realistic estimate of development costs

24. Iccon/TPT estimates its pre-leave to construct development costs at \$30,745,000.²⁹ Contrary to the arguments made by EWT LP and SEC,³⁰ Iccon/TPT's development costs estimate is reasonable and competitive when presented on a comparable basis (in 2012 dollars and excluding IDC, AFUDC and Contingency) and net of estimated Aboriginal participation and consultation costs.³¹

25. Iccon/TPT takes strong exception to EWT LP's allegation that Iccon/TPT supplemented its development costs estimate in its response to the Board's Interrogatory 26. Under Iccon/TPT's project schedule (and that of all of the other applicants), development work on the project does not end with the filing of a leave to construct application; there still remains significant environmental assessment and permitting activities post-filing.³² Iccon/TPT presented a development costs estimate that included the full scope of development so that it would align with Iccon/TPT's development schedule. In response to Board Interrogatory 26, Iccon/TPT transparently broke-down its estimate to answer the Board's question and in order to allow the panel to make a more informed comparison of applicants' development costs.

26. Once properly adjusted to be comparable with other applicants, it is evident that Iccon/TPT's First Nations and Métis consultation and participation costs are the sole reason why its estimated development costs are higher than those of other applicants.³³ Therefore, the crucial task for the Board is not to distinguish differences in development costs estimates – which, absent First Nations and Métis consultation and participation costs, are relatively immaterial – but to determine whether amounts allocated by the other applicants to First Nations and Métis consultation and participation during the development process are reliable and realistic.

²⁹ Iccon/TPT Responses to Interrogatories, Board Interrogatory 26; Iccon/TPT's estimated development costs for all phases of the project (pre and post leave to construct) is \$45,541,000.

³⁰ EWT LP Argument-in-Chief at pp. 99-100; SEC Phase 2 Final Argument at p. 22.

³¹ Iccon/TPT's Argument-in-Chief, Figure 5. The \$2.2 million reduction Iccon/TPT's construction costs estimate noted by EWT LP in its Argument-in-Chief was also due to a reduction in IDC to present the estimate in 2012 dollars as directed by the Board.

³² It should be noted that even if the project is denied leave to construct for reasons beyond the control of the applicant, the applicant will likely be seeking recovery for costs higher than the amounts provided for in response to Board Interrogatory 26 because development work (and costs) will continue while the leave to construct application is proceeding before the Board.

³³ Iccon/TPT Argument-in-Chief at p. 27.

27. Iccon/TPT's estimate is premised on TransCanada's recent experience engaging with First Nations and Métis communities on large linear infrastructure projects. Iccon/TPT understands the scope of the work required and appreciates the costs involved. By contrast, the amounts allocated by other applicants to these critical tasks are insufficient to undertake the level of engagement needed for a project of this size. It is unrealistic to premise thorough and credible consultation with not less than 18 affected (and many more interested) Aboriginal communities on the relatively low amounts proposed by other applicants, which are all less than \$2 million and range as low as \$760,000 in the case of RES.³⁴ These amounts will barely cover the costs of travel and logistics for ongoing engagement, let alone the cost of studies and other steps required to properly engage with affected and interested communities.

28. A useful benchmark for assessing credibility is the \$15,592,000 that HONI identified in 2010 as the costs for "First Nations & Métis Relations" for the development phase of the project. The considerable discrepancy between HONI's estimate and those of the other applicants begs the question of whether the applicants truly understand the scope of the Aboriginal engagement work required for this project (or have underestimated their costs in order to win designation).³⁵ As MNO notes:

[T]he MNO is concerned in relation to why disparities between the Aboriginal consultation budgets proposed [*sic*] some designated transmitters in comparison to others. Given significance of Aboriginal consultation in relation to the EWT, the MNO believes plans that have limited consultation budgets should be closely scrutinized by the Board in order to assess whether they are realistic.³⁶

29. The Board should be wary of the dangers of selecting an applicant on the basis of a low estimate for First Nations and Métis consultation and participation. Because the designee's estimated development costs are assumed to be prudent, the designee will be incented to meet that estimate, which may mean short-cutting necessary development work.

³⁴ The amounts allocated for First Nations and Métis consultation during the development phase are: AltaLink \$1,640,000; RES \$760,000; EWT LP \$1,710,000; CNPI \$1,923,000; NextBridge \$1,723,375.

³⁵ In its Response to Interrogatory 6, EWT LP stated that it has taken almost three years to develop the underlying relationships with the six participating First Nations in EWT LP. EWT LP has not indicated if the costs of this effort have been included in its estimated First Nations and Métis participation and consultation costs for the development phase.

³⁶ Métis Nation of Ontario Written Submission – Phase II dated May 9, 2013 at p. 23.

This is a large complex project that will benefit from rigorous and comprehensive development work. If this is not done, the price will inevitably be paid later. As SEC observed in commenting on the inadequacy of AltaLink's consultation budget:

Inadequate resources directed at consultation activities increases the risk of oppositions [*sic*] and delays quite significantly. Experience has shown that this leads to greater long-term costs for ratepayers.³⁷

30. First Nations and Métis engagement is critical to project success and significant time and resources must be committed. Icon/TPT has allocated an amount for First Nations consultation and participation during the development phase that is reasonable. If the necessary time and resources are not devoted during development, the long-term consequences may prove much more costly.

E. Icon/TPT is committed to good faith First Nations and Métis engagement

31. Icon/TPT's Aboriginal and Stakeholder Engagement Plan commits Icon/TPT to carrying out comprehensive and good faith Aboriginal engagement to identify appropriate and mutually agreeable participation opportunities for this project. AltaLink criticizes Icon/TPT for not making a "definitive commitment" to equity participation in advance of "discussions with each of the communities".³⁸ Contrary to the position taken by AltaLink, Icon/TPT does not believe in committing to fixed participation solutions for Aboriginal communities in advance of adequate engagement and does not regard equity as a "magic bullet" solution that negates the need to properly engage.

32. Icon/TPT understands that successful Aboriginal participation hinges on effective engagement. This approach is built upon TransCanada's decades of experience in constructing and operating 60,000 km of linear infrastructure throughout North America. The most effective way to involve Aboriginal communities in energy projects is to reach out and engage with Aboriginal communities, listen to how the communities will be affected by a proposed project, understand what concrete result they want, and work together with them to identify and implement mutually acceptable participation arrangements. There are no shortcuts to this process. The substantial amount Icon/TPT has budgeted for

³⁷ Phase 2 Final Argument on behalf of the Schools Energy Coalition dated May 9, 2013 at para. 6.2.2.

³⁸ Argument-in-Chief of AltaLink Ontario L.P. at pp. 33-34.

Aboriginal engagement and participation throughout the development and construction phases is a testament to its commitment.

33. Equity is one of many forms of participating in a project. Provincial policy (as set out in the Long Term Energy Plan) and the Board's Phase 1 Decision both acknowledge this. They state that there are "a number of ways in which First Nations and Métis communities could participate in transmission projects"³⁹ and "the Board will not restrict its consideration to any particular type of participation".⁴⁰ As the Métis Nation of Ontario states in its submissions, there is no "one size fits all".⁴¹

34. The rationale for not presupposing specific Aboriginal participants or simple equity solutions was put convincingly by Pic River First Nation in its Thunder Bay submissions, where it critiques other applicants for, in effect, "putting the cart (accommodation/participation) before the horse (consultation)":

Suggesting that ownership as part of accommodation is required at this time is to predict the outcome of a consultation process that has yet to occur...

The emphasis at this stage of the designation proceeding should be on the evaluation of consultation plans before the Board, not the assumed accommodation required...

Further, proponents cannot simply provide equity as a means to avoid or shorten Aboriginal consultation. Equating Aboriginal participation with Aboriginal consultation is extremely dangerous, and can lead to challenges, misunderstandings, and a failure to carry out Aboriginal consultation adequately or properly.⁴² [Emphasis added.]

35. In stark contrast to Icon/TPT, AltaLink has "put the cart before the horse" by offering up to 49% equity without specifying any of the terms necessary to make its offer meaningful or binding. AltaLink has also failed to allocate sufficient time or money to engage First Nations and Métis communities and to work through the varied and complex

³⁹ *Ontario's Long Term Energy Plan - Building Our Clean Energy Future* at p. 49.

⁴⁰ Phase 1 Decision at p. 8.

⁴¹ Métis Nation of Ontario Written Submission - Phase II dated May 9, 2013 at p. 15.

⁴² Transcript, Oral Sessions dated May 2, 2013, EB-2011-0140 at pp. 105 - 109.

issues that will inevitably arise (at \$2,360,000 AltaLink's consultation budget is less than 20% of Icon/TPT's budgeted amount).⁴³

36. Moreover, AltaLink's estimate of \$1,510,000 for First Nations and Métis participation⁴⁴ indicates that it is placing all of its eggs in the equity basket and has not properly planned or budgeted for other potential forms of participation. AltaLink should not assume that equity will offer the greatest benefit to all First Nations and Métis communities or best serve the province's electricity objectives. It has presented no evidence as to what an equity interest divided amongst as many as 18 communities might actually be worth to individual communities. Other forms of participation may provide more immediate and direct benefits to affected First Nations and Métis communities without the risk of value being diverted to third parties, incurring debt obligations, or deferring returns (possibly for decades).⁴⁵

37. Icon/TPT is resolute that the most principled, realistic and cost-effective approach to Aboriginal engagement and participation is to start with an open/comprehensive and well-resourced engagement plan executed in good faith by experienced personnel. It is only through appropriate *processes* that appropriate *outcomes* are achieved.

38. Icon/TPT also strongly objects to AltaLink's mischaracterization of TransCanada's ability to fulfill the delegated aspects of Crown consultation based on a recent judicial review application filed by Fort Nelson First Nation ("FNFN"). The FNFN's application sought judicial review of a report of the National Energy Board ("NEB") in respect of the Northwest Mainline Komie North Extension project where the Board concluded:

The Board considers that NGTL's [Nova Gas Transmission Limited]⁴⁶ Aboriginal engagement program, including NGTL's process to identify potentially affected Aboriginal groups was appropriate given the nature, scope and setting of the Project. The Board is satisfied that all Aboriginal groups potentially affected by the Project were provided with sufficient

⁴³ AltaLink's estimates for consultation are \$1,640,000 for the development phase and \$720,000 for the construction phase: AltaLink, Response to Board Interrogatory 26.

⁴⁴ AltaLink's estimates for participation are \$510,000 for the development phase and \$1,000,000 for the construction phase: AltaLink, Response to Board Interrogatory 26.

⁴⁵ Icon/TPT Argument-in-Chief at pp. 20-21.

⁴⁶ NGTL is a wholly-owned subsidiary of TransCanada PipeLines Limited.

information about the Project, and had an opportunity to make their views known to NGTL and the Board.⁴⁷

39. The FNFN's judicial review application related to the absence of any direct Crown involvement in consultation and in the Board process; it did not seek a review of NGTL's engagement program or the manner in which NGTL carried out the Crown delegated aspects of consultation through the Board process. In late May 2013, the FNFN sought to discontinue the proceedings and the Crown and NGTL agreed.

F. Icon/TPT's combined development experience is unparalleled

40. Despite Icon/TPT's unmatched experience developing and constructing linear infrastructure projects across the world, EWT LP criticizes Icon/TPT's proposed team as not having "sufficient relevant experience" in Ontario or experience relevant to Ontario.⁴⁸ This criticism is self-serving and inaccurate.

41. EWT LP's criticism is an attempt to win designation by virtue of its inherent incumbency advantages. Distilled to its essence, EWT LP's application is a request that the Board select it because HONI/GLP have operated in Ontario for decades and as a result have knowledge of Northern Ontario terrain and climate, are familiar with Ontario regulatory requirements, have relationships with Ontario First Nations (and have spent several years negotiating a partnership for the East-West Tie). EWT LP criticizes all of the other applicants for lacking these inherent incumbency advantages. This simply cannot be a legitimate basis for favourably distinguishing EWT LP from Icon/TPT or any other applicant.

42. In its Phase 1 decision, the Board decided not to make Ontario experience a prerequisite to participating in the designation process or a separate decision criteria. The Board stressed the importance of an applicant's demonstrable ability to undertake large complex transmission projects in challenging environments, regardless of where that experience may have been gained:

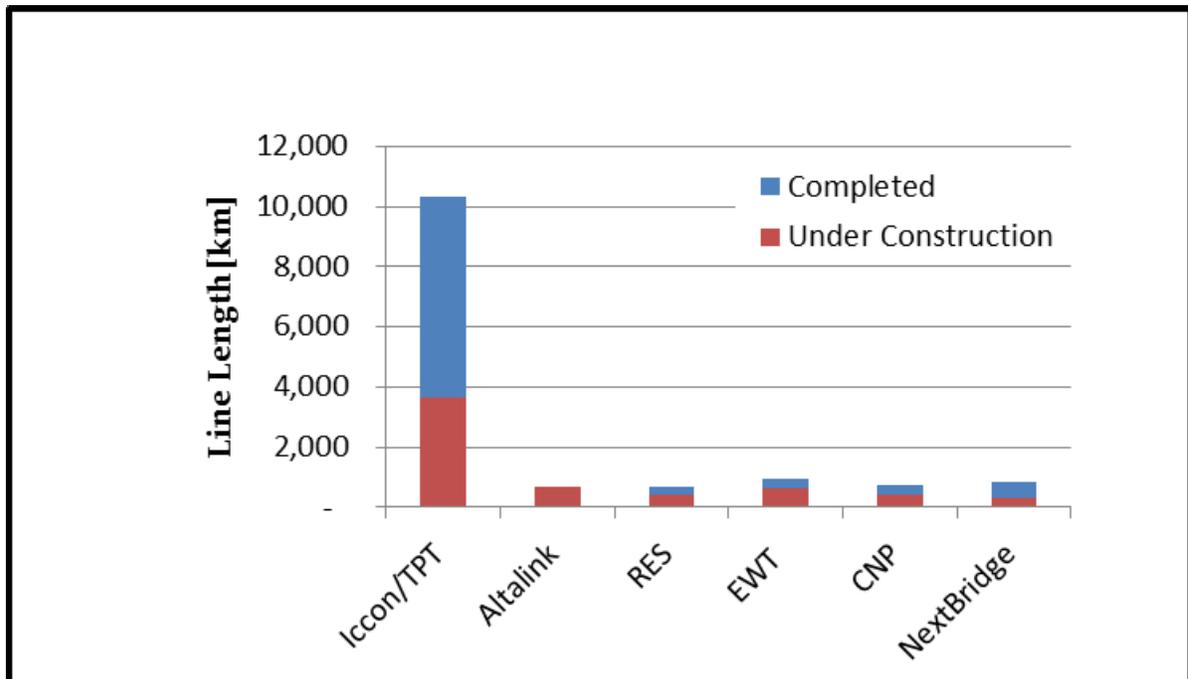
⁴⁷ National Energy Board, Report for Proceeding GH-001-2012 (January 2013) at p. 72.

⁴⁸ EWT LP Argument-in-Chief at p. 104-105.

The Board will not necessarily favour experience in Ontario over experience in other jurisdictions. It is important that the designated transmitter be fully capable of constructing and operating an electricity transmission line that meets the needs identified by the OPA and the Independent Electricity System Operator (“IESO”) in the location proposed in the transmitter’s plan. However, the experience necessary to achieve this capability may have been gained in other jurisdictions. The Board invites applicants to bring evidence of their experience and to demonstrate its relevance to the East-West Tie line project.⁴⁹

43. As demonstrated by Figure 1 of Icon/TPT’s Argument-in-Chief (reproduced below),⁵⁰ Isolux Infrastructure leads all applicants by a wide margin measured by recent development and construction experience of major electricity transmission lines in all jurisdictions. Notwithstanding EWT LP’s incumbency advantage, outside of the Bruce-to-Milton line, HONI/GLP have undertaken virtually no major transmission development work in the past decade.

Figure 1: Applicants' Experience with Recent Transmission Projects >100 km



⁴⁹ Phase 1 Decision at p. 6.

⁵⁰ This figure is based on the responses to Board Interrogatory 32 which asked applicants to identify transmission projects greater than 100 km undertaken in the past 10 years. The total kilometers shown for Icon/TPT is premised on the experience of Isolux Infrastructure and does not include Isolux Corsán’s additional experience in constructing turnkey transmission projects or TransCanada’s experience with oil and gas transmission lines.

44. Unlike the other applicants, Isolux Infrastructure's experience developing major transmission lines is not limited to a single province or a handful of North American jurisdictions. Isolux Infrastructure can genuinely claim global scope and expertise. Its success developing and constructing major projects in many jurisdictions with diverse environments and challenges is a strength that recommends designation, not a weakness as EWT LP suggests.

45. Icon/TPT also understands the value of local experience. In this regard, Isolux Infrastructure's experience in developing and building transmission is complemented by TransCanada's substantial experience developing, building and operating large complex linear infrastructure projects in Ontario and throughout North America. TransCanada has over 60 years of experience developing and operating major linear infrastructure in Northern Ontario.⁵¹ The proposed East-West Tie traverses the same area as TransCanada's Mainline pipeline system; TransCanada has facilities in Nipigon and Thunder Bay; and, it has decade-long relationships with local governments, First Nations and Métis communities and landowners (many of whom have property proximate to the proposed East-West Tie). TransCanada is also currently developing the Energy East Pipeline Project in that same area. Icon/TPT brings a wealth of Ontario experience to the table.

III. CONCLUSION

46. Icon/TPT is the preferred choice to develop the East-West Tie.

47. Icon/TPT has unmatched global expertise and experience developing, building and operating major electricity transmission lines that is complemented by local experience developing, constructing and operating major linear infrastructure. It has assembled qualified project teams that are ready to commence work immediately upon designation and has secured a commitment from Isolux Ingeniería to enter a fixed fee EPC contract at the leave to construct stage.

48. Icon/TPT has prepared the most credible and well-resourced plan for First Nations and Métis engagement and participation based on Icon/TPT's substantial experience engaging and working with Aboriginal communities. No other applicant has

⁵¹ Icon/TPT Application, sections 2.3.2 and 4.3.2

presented a realistic and reliable estimate of undertaking this task despite its critical importance to the success of the project.

49. Icon/TPT also brings a true developer's mindset to the table with a commitment to cost discipline as demonstrated by its track record of completing projects on schedule and on budget. In designating Icon/TPT, the Board (and Ontario ratepayers) can be assured that it has selected an applicant whose approach to development will minimize the risks that could threaten the project while maximizing economic efficiency and cost effectiveness for Ontario ratepayers.

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

Handwritten signature in black ink, appearing to read "DZ-PG".

Glenn Zacher
Patrick G. Duffy
Lawyers for Icon/TPT