

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15,
(Schedule B);

AND IN THE MATTER OF an application under section 60 of the *Ontario
Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B for an electricity
transmission licence.

**REPLY SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

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DELIVERED AUGUST 3, 2011

A. INTRODUCTION

1. These Reply Submissions are filed with the Board in accordance with Procedural Order No. 1 in response to the submissions received from Board Staff, Great Lakes Power Transmission LP (“GLPT”), and Hydro One Networks Inc. (“HONI”) on July 22, 2011 and the supplementary submissions from HONI contained in a letter received on July 27, 2011. These Reply Submissions are organized to address the following three issues raised by these parties:

- (a) technical capability and financial viability;
- (b) the temporary exemption request; and
- (c) ensuring a level playing field.

B. TECHNICAL CAPABILITY AND FINANCIAL VIABILITY

2. As a newly created Ontario entity, the Applicant is relying upon the technical and financial capabilities of its affiliate, AltaLink, L.P. AltaLink, L.P., through its General Partner, AltaLink Management Ltd. is a Transmission Facility Owner which owns and operates regulated electricity transmission facilities in Alberta. AltaLink, L.P. owns and operates approximately 12,000 kilometres of transmission lines forming part of Alberta’s high voltage electricity transmission system. AltaLink, L.P.’s transmission facilities are used to supply most major urban centres in Alberta and approximately 85% of Alberta’s

population. AltaLink, L.P. also owns and operates the facilities which interconnect its network with the transmission system in British Columbia. The territory served by AltaLink, L.P. includes 13 First Nations reserves and is largely included within First Nations traditional territory. AltaLink, L.P. has developed a very strong working relationship with First Nations in Alberta which will serve as the foundation and assist in developing similar relationships in Ontario. These facts are undisputed.

3. The Applicant has provided the Board with detailed evidence of AltaLink, L.P.'s technical and financial capabilities (Application, Section 5(a), Section 7 and Attachment 2; Response to Board Staff IR#1 and 2). The Applicant submits this evidence is sufficient to demonstrate that it is in the public interest to grant the requested transmission licence to the Applicant. Board staff agree (Board Staff submissions at pg. 2) and GLPT made no submissions on this point.
4. It is in this context that HONI aggressively argues that there is an insufficient evidentiary basis for the Board to make a finding in respect of the Applicant's technical capabilities. HONI's argument is premised on what, in its view, is the Applicant's incomplete and insufficient response to HONI Interrogatory #4. HONI argues that the Applicant has failed to meet the evidentiary standard of a licence application with respect to proving its case (apparently notwithstanding the evidence above), and suggests that the Board "should be concerned about applicants skirting its process and hiding behind affiliates in order to avoid subjecting evidence to scrutiny."
5. The Applicant submits that the Board should reject HONI's submissions in this regard. It is HONI, not the Applicant, that has chosen to ignore the Board's standard interrogatory process in this regard. In proceedings of this nature it is open for parties, including the Applicant and HONI, to have reasonable disagreements about the relevance or availability of requested information. The substance of this disagreement is fully detailed in the letters between HONI and the Applicant dated July 15th, July 26th and July 27th, 2011. If HONI was not satisfied with the response provided by AltaLink to any interrogatory question, Section 29.03 of the Board's Rules provides HONI's remedy. It

was open to HONI to bring a motion seeking direction from the Board. HONI chose not to do this, consequently avoiding the spotlight of the Board's scrutiny of its request. HONI instead chose to file its submission with the dual aim of (i) discrediting and (ii) delaying the entrance into Ontario of one of its primary competitors.

6. HONI's principle argument is that other transmission licence applicants have provided similar information in other proceedings. The Applicant submits that HONI's characterization deliberately obfuscates the clear differences in this proceeding from those other cases. SNC-Lavalin is not a publicly regulated utility (such as Chatham-Kent, TransCanada, or Icon). As a competitive EPC contractor, SNC-Lavalin's customer project specific information is sensitive confidential and competitive information. SNC-Lavalin operates in a very competitive environment for the provision of EPC services. As a result SNC-Lavalin has not disclosed its commercially sensitive customer information. The Applicant has no authority to compel this information from SNC-Lavalin and is therefore unable to obtain the requested information.
7. It is worth noting that this concern regarding competitive and confidential information has arisen because of SNC-Lavalin's unique role as a contractor for EPC services. It would not have arisen had HONI requested project specific information from the Applicant's other affiliate, AltaLink L.P., which is a publicly regulated utility. HONI was free to request this information if it thought it relevant, but HONI chose not to do so. The Applicant cannot now be faulted for HONI's oversight. In any event, HONI notes in its July 27th letter that it "considers the matter closed and the evidentiary base, such as it is, set."
8. The Applicant again confirms that it intends to contract with SNC-Lavalin for the provision of engineering design and construction services (Application, Section 6(b)). This is not uncommon. SNC-Lavalin is widely known as a leading provider of EPC services for power facilities and infrastructure (Application, Section 5(a)). SNC-Lavalin has provided EPC services to various customers in respect of transmission related projects in Ontario including transmission related projects for HONI and Brookfield

Renewable (Response to HONI IR#4, as amended July 26, 2011). The Applicant submits that this evidence, in itself, is sufficient to demonstrate that its intended reliance on SNC-Lavalin as an EPC contractor is fully justified.

C. THE TEMPORARY EXEMPTION REQUEST

9. Pursuant to Board's Framework, which provides that "if a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of their application process", the Applicant has formally requested a temporary exemption to transmission licence conditions that are not currently applicable because the Applicant does not own or operate transmission assets in Ontario (the "Temporary Exemption"). The proposed Temporary Exemption would only be effective until the date the Applicant is designated by the Board to undertake development work in Ontario or the date the Applicant otherwise owns or operates transmission assets in Ontario (the "Designation Date").
10. Because of the substantive differences in the requested Temporary Exemption from Section 2.3 of ARC and the remaining Temporary Exemptions from other provisions of the transmission licence, the Applicant submits that the two requests should be considered and addressed as separate and distinct requests.

1. The Temporary Exemption (Tx licence conditions excluding ARC)

11. For the purposes of this subsection C.1 only, reference to the "Temporary Exemption" will mean the requested Temporary Exemption excluding the requested exemption from Section 2.3 of ARC.
12. As part of the interrogatory process, the Applicant went through no small effort to analyse and identify for the Board those specific provisions that are particularly problematic and impractical for a new entrant transmitter applying pursuant to the Framework (See response to Board Staff Interrogatory #3(b)). In this Interrogatory

response, the Applicant identified the specific transmission licence provisions for which it proposes the Temporary Exemption until the Designation Date:

- (a) In the actual transmission licence, the obligation to enter into an Operating Agreement (s. 6.1), obligations to provide non-discriminatory access (s. 7), the obligation to connect (s. 8), and the obligation to maintain system integrity (s. 9).
 - (b) The obligation on a transmitter to prepare, file and execute on a smart grid plan and a plan to accommodate the connection of renewable energy generation facilities under Section 70(2.1) of the Ontario Energy Board Act, 1998.
 - (c) Under the Transmission System Code, the obligation to maintain and make available to customers a list of transmission services and associated rates (4.2.1), to develop, file, and publish performance standards that apply at a customer delivery point level (4.5.1, 4.5.2, 4.5.5), to prepare, file, and get approval of, publish on its website and make available upon request Board-approved connection procedures (6.1.5, 6.1.3, 6.1.5), to design and construct new or modified connection facilities on a timely basis and in accordance with the Board-approved connection procedures (6.1.1), to enter into agreements with neighbouring Ontario transmitters (6.8.1), to maintain complete and accurate records of all economic evaluations and file those records with the Board on request (6.9.1 and 6.9.2), to inspect, test and monitor facilities to ensure continued compliance with all applicable standards and instruments (7.1.1), and to maintain complete and accurate records of the results of such tests for a minimum of seven years (7.1.2).
13. In arguing that the Applicant's request for a Temporary Exemption be denied, Board staff cite the Board's decision to deny TransCanada's request for an exemption from Section 2.2.3 of ARC. The Applicant was unable to locate the specific quote from the decision relied upon by Board staff at page 3 of their submissions. What is characterized as a quote appears in-fact to be Board staff's effort to paraphrase the Board's actual decision. The Applicant submits that much is lost in Board staff's translation.
14. The TransCanada Decision dated June 22, 2011 (EB-2010-0324) actually states at Page 9 (emphasis added):

"The Board is generally very reluctant to grant exemptions **from the ARC**. The ARC, like all Codes, was developed according to specific statutory provisions and safeguards and was the product of highly transparent consultation processes

involving a wide range of interests. In 2008, significant revisions were made to **the ARC** that relaxed certain rules to allow utilities greater flexibility where appropriate, but that retained other provisions as being key to ensuring an appropriate level of protection of from various harms that might arise from the activities of utilities relative to their affiliates. Section 2.2.3 of the ARC is in this latter category. **Exemptions from the ARC should therefore be granted only in the clearest case where the risk of harm is slight.** The Board does not believe that this threshold has been met in this case.”

15. Leaving aside the requested ARC exemption, which is addressed separately below, the Applicant has requested a very practical Temporary Exemption from specific distribution licence requirements that should not be applicable when a licensee does not yet own or operate transmission facilities in Ontario. These licence requirements are not hypothetical, they are binding legal obligations imposed by the Board upon licenced transmitters requiring in several instances that new entrant transmitters take positive steps, at considerable expense, to comply with those provisions when the justification for imposing those obligations is absent until the Designation Date.
16. For example, what reason is there to require the Applicant to prepare, file within a year, get approval of, publish on its website, make available upon request, and comply with Board-approved connection procedures if it does not or is not yet designated to own or operate transmission facilities in Ontario?
17. The Board’s current regulatory framework for licensing transmitters (including its transmission licence conditions, the Transmission System Code (dated June 10, 2010), and its Reporting and Recordkeeping Requirements (effective May 1, 2010)) were all developed prior to and without consideration of the Province’s goals concerning new transmission entrants in Ontario and the Board’s new policy framework for transmission investment created on August 6, 2010 (the “Framework”). This is likely why the Board wisely provided in its Framework that “if a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of their application process.”

18. No party in this proceeding has identified any risk of harm arising as a result of the proposed Temporary Exemption. The Applicant submits that this is because the proposed exemption is narrow in scope and will automatically expire on the Designation Date, making the risk of harm in granting the exemption slight. Practically speaking, the policy reasons to impose the conditions for which the Temporary Exemption is sought occur only if a new entrant transmitter is designated to or actually does own or operate a transmission system in Ontario. In this circumstance, the requested Temporary Exemption will, by design, fall away automatically.
19. Finally, it is worth recognizing that the IESO agreed with this common sense and practical approach in respect of the Applicant's requested Temporary Exemption to the obligation to enter into an IESO Operating Agreement (s. 6.1). See the response to Board staff interrogatory 3(c):

"The IESO is content to allow new entrant transmitters, i.e. AltaLink and other licence applicants not currently carrying on a transmission business in Ontario, to defer entering into an operating agreement with the IESO until such time as the transmitter is designated by the Ontario Energy Board to develop transmission facilities in Ontario. AltaLink understands that if a new entrant transmitter makes certain assumptions about the contents of the Operating Agreement for the purposes of determining project economics in preparing their bids - those assumptions are entirely the risk of the new entrant transmitter should the actual terms of the Operating Agreement with the IESO differ."

2. The Temporary Exemption from Section 2.3 of ARC

20. As part of the interrogatory process, the Applicant narrowed the scope of its requested Temporary Exemption to Section 2.3 of the Board's *Affiliate Relationship Code* (HONI Interrogatory #2). This Temporary Exemption would only last until the Designation Date. The Applicant understands, based upon its review of the TransCanada decision cited above, that the Board's view is that exemptions from ARC should be granted only in the clearest case where the risk of harm is slight.

21. The Applicant explained its view of the risk of harm in response to HONI Interrogatory #2. Specifically, the Applicant noted that prior to the Designation Date, it expects that it will be necessary to retain the services of its affiliates to assist in developing and filing a Transmission Project Development Plan. Because of the requirements under Section 2.3 of ARC, this would oblige the Applicant to undergo the expense of preparing a formal business case analysis (s. 2.3.2.1), conduct a fair and open competitive bidding process (s. 2.3.3.2), and retain an independent evaluator to report on how the competitive bids meet the established criteria (s. 2.3.3.4). The effect of these requirements is to mandate that the Applicant must comply with a costly and cumbersome public tendering process prior to preparing a Transmission Project Development Plan even though no ratepayer money is being used to fund that effort.
22. The Applicant would like to clarify its position for the record. It is not reasonable to conclude (as HONI does) that the Applicant does not intend to attempt to recover any of its costs to prepare and file a Transmission Project Development Plan from ratepayers if it is successfully designated. The Applicant's quote, taken out of context by HONI, is intended to specify the consequences to the Applicant if it is not successfully designated, in which case, any of the costs associated with developing and filing a Transmission Project Development Plan will be to the account of the Applicant's unit holders. This fact alone provides an important safeguard for ratepayers, helping to reduce the risk of harm.
23. In their submissions, both HONI and GLPT correctly identify that the Board's Framework allows the transmitter that is successful in being designated to be able to recover its costs of preparing a plan. This provision does not, in the Applicant's view, give a designated transmitter a "blank cheque" to recover any and all of its costs of preparing the successful plan from ratepayers. At a minimum, in the Applicant's view, the designated transmitter must still demonstrate to the Board that the costs were prudently incurred prior to approval for recovery in rates. This subsequent prudence review provides another important check-and-balance on transmitters during the

designation process. It also significantly reduces the risk of harm to ratepayers for any costs incurred prior to the Designation Date.

24. For these reasons, the Applicant submits that the risk of harm of granting the requested Temporary Exemption from Section 2.3 of ARC is slight, and that the Board should therefore approve the requested Temporary Exemption from Section 2.3 of ARC.

D. ENSURING A LEVEL PLAYING FIELD

25. GLPT suggests in their submissions that the need to ensure there will be a level playing field for all participants in a proceeding to designate a transmitter to develop a transmission project should be a primary consideration in the Board's review of the requested Temporary Exemptions (GLPT submission at para. 4). The Applicant agrees. The Applicant anticipates that the issue of ensuring that a level playing field exists between new entrants and incumbent transmitters will be a critical issue for review in the upcoming designation process, so the Applicant is pleased that GLPT acknowledges this concern.
26. Unlike the dominant incumbent licenced transmitters in Ontario (GLPT and HONI), new entrants like the Applicant are unable to draw upon existing ratepayer funded resources to comply with the Board's regulatory requirements. The Applicant does not have existing Board-approved connection procedures for Ontario, it does not already have to file a smart grid or renewable generation plan, and it does not have an army of existing Ontario regulatory personnel to draw upon. It is worth noting that the only two active intervenors in this proceeding are the two dominant incumbent transmitters, both of which can draw on existing ratepayer funded resources to participate.
27. The Applicant submits that it is not open to the Board in this proceeding to extend the Applicant's requested Temporary Exemption to all other participants in a designation process (as suggested by GLPT). The Board clearly outlined in its Framework that requests for exemptions would be considered on a case-by-case basis upon the request of

a new entrant applicant within the scope of a specific transmission licence application. This is what the Applicant has done, and the issue for the Board to determine in this proceeding is limited to whether or not to grant the specific Temporary Exemption requested by the Applicant. If GLPT or any other transmitter would like to benefit from a similar exemption, then it is free to apply to the Board for an amendment to its transmission licence and should be prepared to fully justify its requested exemption given its unique circumstances.

28. Under the Framework the Board decided that new entrant transmitters need to obtain a transmission licence so the Board can assess the new entrant's technical and financial capabilities. However, that transmission licence includes in it numerous regulatory obligations that effectively serve as a barrier to new entrants coming into Ontario (See paragraphs 12 and 21 above). That is not to say that new entrants like the Applicant will not come (See the Applicant's response to Board Staff Interrogatory #3(a)). But if the Board fails to grant the practical temporary exemption requested by the Applicant in this proceeding, all of the costs of compliance with these regulatory requirements will necessarily be included directly in the Applicant's costs of preparing its Transmission Project Development Plan. In contrast, incumbent transmitters can (and will likely) account for many of these costs of compliance under existing ratepayer funded regulatory budgets, thereby unfairly increasing the competitive advantage of their bids during a subsequent designation process.
29. The Applicant notes that the Board has control over whether or not it chooses to give incumbent transmitters (which already have significant informational and other advantages) this additional unfair competitive advantage in its pending designation processes. One way to reduce this risk is to grant the requested practical Temporary Exemptions until the Designation Date. This will help create a more level playing field for all participants, including new entrants, in any future designation proceeding. This is consistent with the Board's policy objectives of encouraging new entrants to transmission

in Ontario and supporting competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

E. CONCLUSIONS

30. For all of the forgoing reasons, the Applicant submits that the Board should issue the requested transmission licence and should approve the requested Temporary Exemption which would only be effective until the Designation Date.

All of which is respectfully submitted this 3rd day of August, 2011.

Original signed by J. Mark Rodger

J. Mark Rodger

Original signed by John A.D. Vellone

John A.D. Vellone

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