



**EB-2011-0126**

**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.

**By delegation, before: Jennifer Lea**

## **DECISION AND ORDER**

AltaLink Ontario Management Ltd. on behalf of AltaLink Ontario L.P. ("AltaLink") filed an application with the Ontario Energy Board, received on April 29, 2011, under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") for an electricity transmission licence.

AltaLink, a newly created Ontario entity, is an affiliate of AltaLink L.P. which owns and operates regulated electricity transmission facilities in Alberta. The applicant has no existing transmission assets in Ontario, although its intended business activity is to develop, construct, own and operate transmission assets in the province. AltaLink has stated that it is making this application in order to participate in any upcoming Board transmitter designation process for new transmission investment in Ontario.

The Board's Notice of Application and Hearing was issued on May 16, 2011. Hydro One Networks Inc. ("Hydro One") and Great Lakes Power Transmission L.P. ("GLPT") sought and were granted intervenor status. AltaLink responded to interrogatories from Board staff and Hydro One. Hydro One expressed concern regarding the answer to one interrogatory, and AltaLink replied to that concern with some additional information and reasons why no further information would be provided. Following that reply, no motion was brought to the Board to compel production. Hydro One, GLPT and Board staff filed submissions on the application, and AltaLink filed a reply submission on August 3, 2011.

The record of the proceeding is available at the Board's offices and on the Board's website. I have summarized the record in this proceeding only to the extent necessary to provide context to my findings.

### **Request for Confidentiality**

AltaLink claimed confidentiality, pursuant to the Board's *Practice Direction on Confidential Filings*, for the Key Individual Information contained in section B, item 10 of the application, Attachment 1 – Corporate Organization Chart and Attachment 2 – AltaLink Investments L.P.'s Consolidated Financial Statements. AltaLink stated that these items contain information which is not publicly available and is subject to pre-existing confidentiality agreements. No intervenors objected to AltaLink's claim for confidentiality.

The Board's *Practice Direction* seeks to strike a balance between the objectives of transparency and openness in Board proceedings and the need to protect information that has been properly designated as confidential. I find that the three documents for which AltaLink has sought confidentiality will be held in confidence.

Key Individual Information is identified in the licence application form as information that the Board shall keep confidential, and in accordance with section 4.1.1 of the *Practice Direction*, it will be held in confidence. It has been the Board's practice to retain in confidence financial information provided by applicants in support of licence applications. With regard to the organizational chart, the Board in previous licence application proceedings (TransCanada Power Transmission (Ontario) L.P. (EB-2010-0324) and Iacon Transmission Inc. (EB-2010-0403)) has treated corporate organizational charts as confidential, and I will do so in this application.

### **Technical Capability, Financial Viability and Conduct**

The Board assesses a licence application by reviewing the evidence filed by the applicant and parties who participated in the proceeding. Based on the evidence filed, I have determined that it is in the public interest to grant an electricity transmission licence to AltaLink for a period of five years.

The key areas reviewed by the Board in any licence application are the financial viability, technical capability and conduct of an applicant. In the case of electricity

transmission licence applications, the Board's review is also guided by the Board's Policy "Framework for Transmission Project Development Plans" (EB-2010-0059).

The Board's policy seeks to encourage new transmission entrants to Ontario, thereby bringing additional resources for project development and supporting competition in the transmission sector to drive economic efficiency for the benefit of ratepayers. The Board stated in its Chatham-Kent Transmission Inc. licence decision (EB-2010-0351) that obtaining a transmission licence is intended to be a threshold qualification step, and is not intended to be unduly onerous.

No party raised concerns with regard to the financial resources or conduct of the applicant. I have reviewed the evidence filed with the application on these two issues, and find that AltaLink has provided sufficient evidence of its financial capability and good conduct to meet the threshold qualification requirements for the licensing process.

Hydro One argued that AltaLink failed to provide adequate evidence of technical capability. AltaLink, being a newly created entity with no technical expertise of its own, intends to rely on the technical expertise of its affiliates AltaLink L.P. and SNC-Lavalin. In section 5 of the application form, and through interrogatory answers, the applicant described the transmission facility expertise of these affiliates. AltaLink L.P. is the largest transmission facility owner in the province of Alberta, supplying electricity to approximately 85% of Alberta's population over more than 12,000 km of high-voltage transmission lines. SNC-Lavalin was described as a leading provider of engineering, procurement and construction for transmission facilities, having planned, designed or constructed over 90,000 km of transmission and distribution lines, including high-voltage facilities in Ontario.

Hydro One, through an interrogatory, requested examples of high-voltage transmission projects SNC-Lavalin had completed in Ontario, and cost variances, complaints and First Nations consultation information for each project. AltaLink initially refused to provide the information requested, but in subsequent correspondence provided a high-level summary of some recent assignments of SNC-Lavalin in Ontario. In its submission on the licence application, Hydro One argued that AltaLink had failed to adequately support its case in relation to its technical expertise, and urged the Board to deny the licence application.

Hydro One pointed out that previous transmission licence applicants had provided the type of information Hydro One requested from AltaLink, and submitted:

“In Hydro One’s view, project construction experience, including such things as landowner and First Nations / Metis relations and cost and schedule outcomes, is a key issue to be determined in the licence application process, especially one which is focused on determining eligibility to become a potential builder of major transmission projects in the province. In Hydro One’s view, AOLP has simply not met the evidentiary standard of a licence application with respect to proving its case, even in an application like this one where there are no actual facilities involved and a lower evidentiary standard could be considered to apply.”

I do not agree that information at the level of detail sought by Hydro One is necessary to demonstrate the technical capability of this applicant. I find that the evidence of technical capability filed by the applicant is sufficient to support an application for a transmission licence. As the Board noted in the TransCanada decision cited above, the granting of a transmission licence does not endorse the applicant’s technical and financial capabilities in relation to the development of a specific transmission project. Applicants in a designation process will be required to provide a significantly more detailed demonstration of their technical and financial capabilities in relation to the development of a specific transmission project. The nature and quantity of evidence filed by AltaLink is sufficient to meet the threshold test contemplated in the Board’s licensing process.

As AltaLink presently has no facilities in Ontario, the Board will not include any listed facilities in Schedule 1 of the licence. The Board will amend the licence to add the specific facilities that AltaLink is authorized to own and operate at such time as the applicant develops or acquires transmission facilities in the province. AltaLink may be required to provide detailed evidence of financial and technical capability as part of any application to amend Schedule 1.

A transmission licence is typically granted for a term of 20 years, recognizing the long term nature of transmission assets. However, the Board has found in the transmission licence decisions referred to above that a shorter term of licence is appropriate for entrant transmitters who presently have no facilities in Ontario. Consistent with those decisions, the term of the licence will be 5 years. The term of the licence may be amended and extended to the standard 20 year term in the event that AltaLink develops or acquires transmission facilities in Ontario.

## Request for Temporary Exemptions

As part of its licence application, AltaLink requested a temporary exemption from certain regulatory instruments and licence conditions until such time as it becomes designated by the Board to undertake development work or owns or operates transmission assets in Ontario. I will deal with these proposed exemptions in two parts: exemptions from provisions other than the *Affiliate Relationships Code for Electricity Transmitters and Distributors* (“ARC”), and the exemption from section 2.3 of the ARC.

### Non-ARC exemptions

AltaLink generally objects to being required to comply with certain conditions of the transmission licence and certain provisions in the Transmission System Code because they are impractical or impossible to comply with by an entity that does not as yet own or operate transmission assets in Ontario.

The Board, in its *Framework for Transmission Project Development Plans*, said:

“The Board notes that some of the requirements in the transmission licence may not apply unless a transmitter has assets in Ontario. 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 its application process” (emphasis added).

In two decisions, the Board has recognized that some sections of the Board’s regulatory instruments are inapplicable until a licensed transmitter owns or operates facilities in the province. In the TransCanada decision, the Board said:

“The Board acknowledges that some of the reporting and record-keeping requirements under section 3 of the RRR will, by definition, not apply to TransCanada Transmission unless and until it has transmission assets in the Province. However, a number of these requirements by their terms can, and, in the Board’s view, should apply as of the date of licensing.”

In its decision on a transmission licence application by Iacon Transmission Inc. (EB-1020-0403) the Board recognized that not all obligations under Board codes, rules and guidelines applicable to licensed transmitters may apply to those transmitters without transmission assets in the province.

As I interpret the quote from the Board policy document and the findings in these decisions, those sections of the Board's regulatory instruments that cannot be complied with by a transmission licence holder without assets in the province are simply inapplicable, and no specific exemption is necessary. If, in addition, a transmission licence applicant seeks to avoid compliance with provisions that are applicable to a transmission licence holder without assets, an exemption request is necessary as part of the licence application.

Dealing with the specific sections listed by AltaLink in its application and answers to interrogatories, it appears that the following sections cannot practically apply to a licensed transmitter who does not own or operate transmission assets in the province and is not yet designated to develop transmission assets:

- Sections 7, 8 and 9 of the transmission licence;
- Sections 4.2.1, 4.5.1, 4.5.2, 4.5.5, 6.1.1, 6.1.3, 6.1.5, 6.8.1, 6.9, and 7.1 of the Transmission System Code; and
- Sections 3.3.1, 3.3.2 and 3.3.7 of the Electricity Reporting and Record Keeping Requirements (as noted in the Iacon Transmission decision referred to above).

These provisions would apply immediately upon designation or ownership or operation of a transmission system.

AltaLink also sought to be exempt from section 6.1 of the transmission licence, which requires a licensee to enter into an operating agreement with the Independent Electricity System Operator ("IESO"). AltaLink provided, in answer to a Board staff interrogatory, a statement from the IESO that new entrant transmitters not currently carrying on a transmission business in Ontario could defer entering into such an operating agreement until such time as the transmitter is designated to develop transmission facilities in Ontario. I note that section 6.1 of the licence requires the agreement to be entered into within a period of 90 days "following a request made by the IESO". Given the position of the IESO, I find that no exemption should be granted, as the IESO will make the necessary request at the relevant time.

With respect to the request for an exemption from section 70(2.1) of the Act, this is a deemed licence condition imposed by legislation, and the Board does not have the authority to grant such an exemption. However, it should be noted that the obligation to prepare plans arises only "in the manner and at the times mandated by the Board", and it is presumed that the Board will consider the status of the licensee at the time it requires plans to be prepared.

## ARC Exemption

Although AltaLink initially requested exemption from several sections of the ARC, in its interrogatory answers the applicant narrowed its exemption request to section 2.3 of the ARC, the transfer pricing provisions. The applicant indicated that the exemption should expire on the date AltaLink is designated to develop transmission assets in Ontario.

AltaLink argued that the temporary exemption is necessary to ensure that a new entrant transmitter such as Altalink is not disadvantaged in the Board's designation process. The applicant submitted that complying with the transfer pricing provisions of the ARC, which it anticipates will be necessary in preparing a Transmission Project Development Plan for any designation process, would be costly and cumbersome. AltaLink, which is not currently a rate-regulated transmitter in Ontario, would not have access to ratepayer funds to finance this compliance. In contrast, AltaLink submitted, incumbent rate-regulated transmitters such as Hydro One or GLPT can draw on existing ratepayer funded resources to participate in the designation process.

As GLPT noted in its submission, the Board considered this issue in its *Framework for Transmission Project Development Plans*. At page 11 of that policy, the Board noted that during the development of the policy "some stakeholders commented that the ability of the incumbent transmitter to recover the cost of preparing a plan as directed by the Board could provide an unfair advantage for the incumbent". In dealing with this issue, the Board said:

"..the Board does not consider it appropriate for consumers to fund a transmitter's efforts to expand its commercial business through preparation of a plan seeking designation.

Therefore, when the Board receives an ECT report from the OPA and issues a Notice of a designation hearing, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. The incumbent transmitter is not obligated to file a plan at this point. Only the transmitter that is successful in being designated will be able to recover the costs of preparing a plan...In this way, the Board seeks to ensure that all transmitters will be on [an] equal footing when submitting plans and ratepayers will not pay for multiple plan preparation.

If there are no plans filed for a particular project, the Board will direct the incumbent to file a plan. The incumbent will then be able to recover the costs of plan preparation.”

This quote indicates that the Board will not permit recovery from ratepayers of the costs of preparing a plan by an unsuccessful designation applicant, whether or not that applicant is an incumbent rate-regulated transmitter. All transmitters submitting plans are at risk for the costs of preparing a plan, including the costs of compliance with section 2.3 of the ARC. Were AltaLink to be successful in a designation process, its costs of preparing a plan, including necessary compliance with the ARC, would be recoverable (if prudently incurred). Ratepayers are therefore at risk if AltaLink, or any other successful designation applicant, has failed to comply with the transfer pricing provisions of the ARC.

As AltaLink itself noted in its submission, the Board is generally very reluctant to grant exemptions from the ARC. I agree that it is important that no applicant for designation have an unfair advantage over other applicants in that process. However, I do not accept AltaLink’s submission that the way to ensure this equality is by granting a temporary exemption from the ARC. I find that the Board’s policy enunciated in its *Framework for Transmission Project Development Plans* contemplates an alternative method of ensuring that there is a level playing field: no transmitter that is unsuccessful in the designation process will be permitted to recover from ratepayers the costs of preparing a plan.

The requested temporary exemption from the ARC is denied.

I was greatly assisted by the high quality of the submissions filed by the applicant and other parties in this matter.

#### **IT IS THEREFORE ORDERED THAT:**

The application by AltaLink for an electricity transmission licence is granted on such conditions as are contained in the attached licence.



**DATED** at Toronto August 31, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Jennifer Lea  
Counsel, Special Projects