

ONTARIO ENERGY BOARD

IN THE MATTER OF *The Ontario Energy Board Act, 1998;*

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

UPPER CANADA TRANSMISSION, INC.

NOTICE OF MOTION

For Further and Better Interrogatory Responses

Upper Canada Transmission, Inc. (UCT) hereby brings a motion to the Board pursuant to Rule 8.01 of the Board's *Rules of Practice and Procedure* for an order directing East-West Tie Limited Partnership (EWT) to provide further and better responses to UCT's interrogatories numbered 2 part b., 4 and 5 part a.

THE GROUNDS FOR THE MOTION ARE:

1. With respect to UCT interrogatory 2, part b., which asks EWT to describe for each key individual named in the application their current role and responsibilities with any of the partners of EWT or any associated entity that holds a licence under the *Ontario Energy Board Act, 1998*:
 - a. EWT has not requested confidential treatment of this information (EWT response to TransCanada Power Transmission interrogatory 15).
 - b. The information is relevant to understanding the degree to which EWT's key and controlling individuals have access to resources of, or information in the possession of, either of Ontario's two incumbent transmitters, both

of whom are directly associated with the applicant, which resources or information may be relevant to, or required for, application for designation as the transmission developer in EB-2011-0140, and in respect of which the Board may wish to consider what conditions of licence may be appropriate to ensure that the applicant, if licenced, does not obtain any undue advantage in respect of the EB-2011-0140 proceeding by virtue of its association with Ontario's two incumbent transmitters.

- c. The information is also relevant to considering the role of Great Lakes Power and Hydro One in EWT and the extent to which, in light of that role, granting the applied for licence would be in accord with the Board's policies towards facilitation of competition, economic efficiency and new entry in to Ontario's electricity transmission sector.
 - d. The information is also relevant to considering whether licence conditions would be appropriate in order to preclude entities associated with the province's two incumbent utilities from gaining an undue advantage, by virtue of that association, in contestable energy service business such as competitively designated transmission development.
 - e. Section 70 of the *Ontario Energy Board Act, 2008*.
 - f. The Board's *Framework for Transmission Project Development Plans* (EB-2010-0059) and associated Filing Requirements (G-2010-005).
 - g. The Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters*, including section 1 (Purpose) thereof.
 - h. *Ontario Energy Board Act, 1998*, section 1.
2. With respect to UCT interrogatory 4, which asks EWT to provide information on its financial resources and access to capital, including its access to the financial resources of, and capital from, its partners:
- a. A transmission licence applicant's financial status, ability to finance transmission development and operations, and potential to access further financial resources are relevant considerations at the licencing stage.
 - b. EWT asserts (response to Altalink interrogatory 5) that it "*will have the ability to raise financing through equity and debt as would typically be done for transmission projects in Ontario*", but provides no particulars beyond this bald assertion, other than noting its relationship to the two incumbent Ontario transmitters.

- c. The information requested is also relevant to understanding the role of Great Lakes Power and Hydro One in financing the intended operations and capitalization of EWT, and the extent to which granting the applied for licence on this basis would be in accord with the Board's policies for facilitating competition, economic efficiency and new entry in to Ontario's electricity transmission sector, and fairness in transmission development designation processes.
3. With respect to UCT interrogatory 5, which seeks more information related to the ability of Bumkushwada L.P. or its partner communities to participate in consultations and, as appropriate, accommodations with other proponents for the East-West Tie Line project:
- a. EWT has declined to provide a copy of the EWT partnership agreement, on the basis that it is not relevant to the application (UCT interrogatory 5, part a).
 - b. EWT has indicated that its intention in applying for a transmission licence is to participate in the East-West Tie Line designation process (Application, section 4).
 - c. EWT has confirmed that neither Bumkushwada L.P. nor any of its constituent partners or their communities is commercially or contractually constrained, by virtue of their involvement in EWT, from entertaining full consultations with UCT or any other East-West Tie transmission development "proponents" (UCT interrogatory 5, part b).
 - d. However, in its response to Altalink interrogatory 4, part b, EWT appears to place emphasis on the status of "designated transmitter" in respect of the liberty of the six First Nations involved in EWT to participate in consultation or negotiation of accommodations with transmission proponents.
 - e. Clarity on what constraints, if any, are placed on the First Nations communities participating in EWT in respect of the communities' liberty to entertain discussions and, as warranted, accommodations and/or proposals for participation with other East-West Tie Line transmission proponents is in the public interest, and relevant to the Board's consideration of whether granting of the applied for transmission licence is in the public interest.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The EWT Application.
2. The interrogatory responses as filed.
3. Such further material as UCT may advise and the Hearing Panel permit.

December 13, 2011

Ian Mondrow
GOWLING LAFLEUR HENDERSON LLP

Phone: 416-369-4670
E-Mail: ian.mondrow@gowlings.com

Counsel to Upper Canada Transmission, Inc.

To: Charles Keizer, Torys LLP, Counsel to EWT LP

To: Andy McPhee, Great Lakes Power Transmission EWT LP

To: Pierre Pelletier, Bamkushwada L.P.

To: Mike Penstone, Hydro One Inc.

To: Kate Kempton, Olthuis Kleer Townshend LLP

To: Registered Intervenors