

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* for an electricity transmission licence.

NOTICE OF MOTION

AltaLink Ontario L.P. (“AltaLink”) will make a Motion to the Ontario Energy Board (the “Board”) on a date and at a time to be determined by the Board.

THE MOTION IS FOR:

1. An Order of the Board under Rule 23.03 of the Board’s *Rules of Practice and Procedure* directing EWT LP (the “Applicant”) to provide further and better responses to AltaLink interrogatories 1(c), (e) and (l) and interrogatories 3, 4, and 5; or
2. In the alternative, a Decision of the Board that the issues raised by the intervenors in this proceeding will be added as part of the formal issues list in the East-West Tie Line Designation Process (EB-2011-0140). This would include the following issues:
 - (a) Whether there is a reasonable perception that EWT LP may have preferential access to confidential system planning and technical information related to the East-West Tie Line that will create an unfair informational advantage because no other participant in EB-2011-0140 will have access to such information;
 - (b) Whether the Board should add a new term and condition to the Applicant’s license that would prohibit the sharing of confidential, system planning or technical information, or employees or ratepayer funded resources between EWT LP and dominant incumbent utilities (HONI and GLP); and
 - (c) Whether the Board should limit the Applicant and its related incumbent transmitters from using their existing relationships with First Nations communities located near the East-West Tie project

corridor in an attempt to exclude new entrant transmitters from developing the East-West Tie line.

THE GROUNDS FOR THE MOTION ARE:

3. It is worth clarifying at the outset that EWT LP appears to have paraphrased or made some transcription errors in reproducing AltaLink's IR questions in their responses.¹ As a result, we would ask the Board and the Parties to reference the AltaLink IRs directly when considering the specific questions in dispute.

AltaLink Interrogatory Number 1

4. The Applicant is a newly created legal entity that consists of multiple limited partners and multiple affiliates. According to the Applicant, it is relying upon the "combined expertise, experience and resources" of its limited partners and their respective affiliates to provide the Applicant with the technical capability, expertise and experience needed to obtain a transmission licence.²
5. It is in this context that AltaLink asked a series of question intended to better understand what areas of capability, expertise and experience the Applicant is relying upon each of its limited partners for. AltaLink's intent with these questions was to ask the Applicant to elaborate on their "black box" answer, to provide additional information for the record to help the Board and the parties better understand the specifics. Because it was entirely unclear to AltaLink what limited partner or affiliate was being proposed to do what activities – AltaLink asked a detailed series of questions about each.

¹ See, for instance, AltaLink IR#1(a) which asks about both Hydro One Inc. or Hydro One Networks Inc. (collectively referred to as "Hydro One"); which EWT LP appears to have inadvertently limited to Hydro One Inc. in reproducing the question.

² See the Cover Letter, pg. 2, Section 3 titled "Technical and Financial Expertise, Experience and Resources" and the Application, Part 6, Technical Capabilities and Experience.

6. The Applicant refused to answer all of the itemized questions directly. Instead, by merging all the answers into a single response the Applicant has obfuscated the fact that its response has failed to respond to several relevant questions.
7. In its response, the Applicant explains that it “intends to contract with Great Lakes Power Transmission LP or a related entity for the development and management of any future new EWT LP transmission facilities” and “the Applicant may engage specialist third parties to undertake design work.”³
8. However, the Application does not detail any of Great Lakes Power Transmission LP’s transmission development experience. It is in this context that AltaLink asked in interrogatory 1(e):

To what extent is the Applicant relying upon GLPT’s transmission planning experience? Please describe this experience (if any). Will the Applicant be drawing upon GLPT’s employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?

9. The Applicant failed to respond to these questions even though they are directly relevant in light of the Applicant’s response. If Great Lakes Power Transmission LP has no previous experience or capability developing, planning or managing the development of new transmission facilities, then the Applicant should simply say so. This is directly relevant to the Board’s determination in this licensing matter. If the Applicant will be drawing on GLPT’s employees or resources in this regard, the Applicant should clearly say so. Finally, if the Applicant intends to draw on the ratepayer funded resources of GLPT, it should clearly explain how it will compensate GLPT for use of those resources (particularly since the GLPT and the Applicant may not be governed by fair market value rules contained in ARC).

³ EWT LP Response to AltaLink IR#1.

10. In its response, the Applicant also explains that “the Applicant intends to contract with Hydro One Networks Inc, the largest licensed electricity transmitter in Ontario, to undertake systems operations for any new EWT LP transmission facilities.”⁴

11. However, the Applicant fails to respond to the balance of AltaLink interrogatory 1(c), which asks:

Will the Applicant be drawing upon Hydro One’s employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?

12. If the Applicant will be drawing on Hydro One’s employees or resources in this regard, the Applicant should clearly say so. Finally, if the Applicant intends to draw on the ratepayer funded resources of Hydro One, it should clearly explain how it will compensate Hydro One for use of those resources (particularly since Hydro One and the Applicant may not be governed by fair market value rules contained in ARC).

13. Finally, in its response the Applicant explains that it “intends to contract with third parties, including First Nation owned businesses, to provide inspection and maintenance services for any new EWT LP transmission facilities.”⁵

14. However, the Applicant fails to respond to the balance of AltaLink interrogatory 1(l), which asks:

To what extent is the Applicant relying upon BLP’s transmission maintenance experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP’s employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?

15. The Applicant failed to respond to these questions even though they are directly relevant in light of the Applicant’s response. If BLP or other First

⁴ Ibid.

⁵ Ibid.

Nations owned businesses have no previous experience or capability maintaining or inspecting transmission facilities, then the Applicant should simply say so. This is directly relevant to the Board's determination in this licensing matter. If the Applicant will be drawing on BLP's or other First Nations owned businesses' employees or resources in this regard, the Applicant should clearly say so. Finally, if the Applicant intends to draw on the resources of BLP or other First Nations owned businesses, it should clearly explain how it will compensate them for use of those resources.

AltaLink Interrogatory Number 3

16. The sole special purpose of the Applicant is to participate in the EB-2011-0140 competitive designation process.⁶
17. Because of the Applicant's reliance upon and relationships with Hydro One Networks Inc. and Great Lakes Power Transmission LP,⁷ AltaLink asked a series of questions based on its concern that the Applicant has and will have unfair preferential access to confidential system planning and technical information related to the East-West Tie Line that will create an unfair informational advantage because no other participant in the EB-2011-0140 will have access to such information.
18. AltaLink explained its concern in considerable detail in its IR request. AltaLink's hope was that by providing the Applicant with a full and complete description of its concern, the Applicant would then take steps to evidence that the concern was unfounded.
19. EWT LP chose not to do so. Instead, EWT LP refused to respond to AltaLink's questions and instead took the position that "This interrogatory

⁶ See Application at Sections 4, 6, 9.

⁷ See Cover Letter, pg. 2, Section 3 titled —Technical and Financial Expertise, Experience and Resources; Application, Part 6, Technical Capabilities and Experience; and Response to AltaLink IR#1.

is irrelevant to the Application. See the response to TransCanada's Interrogatory 1."⁸

20. However, in response to AltaLink IR#1 the Applicant explained that "the Applicant has not used any of the nonexecutive staff and information resources of the transmission development, construction or maintenance groups of Hydro One Networks Inc, an affiliate of EWT LP partner Hydro One Inc., to assist in developing its plans."⁹
21. This response is noteworthy for two reasons. First, the response is strictly limited to use of any "nonexecutive staff" and members of specified groups of HONI, and does not extend to include executive staff or any of the other groups of HONI that could provide the Applicant with preferential access to confidential system planning and technical information related to the East-West Tie Line that would lead to an unfair informational advantage. Second, and more tellingly, the response was not at all required to address any of the carefully crafted questions in AltaLink IR#1. Instead, this specific response appears to be intended in part to address the concern raised by AltaLink in its IR#3.
22. The Board typically relies on its *Affiliate Relationship Code* ("**ARC**") to address concerns about unfair preferential access to confidential system planning and technical information with other utilities. The ARC provides, among other things, explicit restrictions on the sharing of confidential and system planning information and resources as between a dominant monopoly utility and an affiliated energy services provider that participates in competitive energy services markets.
23. The Applicant's response to AltaLink Interrogatory Number 2 confirms that EWT LP was carefully designed so as to avoid the application of ARC's regulatory restrictions to its activities. In any event, the definition

⁸ See EWT LP Response to AltaLink IR#3(a)-(e).

⁹ See EWT LP Response to AltaLink IR#1.

of energy services provider in ARC is too narrow because the ARC was crafted before the Board initiated its policy initiative to encourage competition in the transmission sector.

24. The Board itself acknowledged concerns similar to the one raised by AltaLink in this IR in the EB-2010-0059 *Board Policy: Framework for Transmission Project Development Plans*. The Board notes at pg. 12 that **(emphasis added)**:

“Some stakeholders also felt that the knowledge advantage of the incumbent transmitter with respect to the technical configuration of connections points created an unfair advantage and suggested that the Board create rules regarding the timing and information that must be provided to proponents. The TSC primarily references requirements for the incumbent transmitter to provide connection information to customers (loads); the IESO; and neighbouring transmitters and primarily for the purposes of connection impact assessments, system operations or third party design. **The Board agrees that the incumbent could frustrate other transmitters by delay in providing technical information on the relevant potential connection points and thus gain a competitive advantage.** The Board therefore intends to begin a process to amend the TSC in order to provide specific instruction to incumbent transmitters on the level and timing of information to be provided. Comment on these issues will be received in the Notice and Comment process for those TSC amendments.”

25. To the best of our knowledge the TSC amendment process referenced in the passage above does not appear to have commenced. However, on August 22, 2011 the Board issued a letter announcing a designation process for the East-West Tie and inviting transmitters to register to participate. It appears that the East-West Tie designation process is scheduled to proceed in short order – yet the Board appears to have not yet taken any steps to address the generic concern raised by stakeholders in the EB-2010-0059 policy consultation or the specific concerns raised by the parties in this EB-2011-0350 licensing proceeding.

26. AltaLink suggested in its IR that one option available to the Board in this licensing proceeding to address this concern would be to add new terms to the Applicant's license that would prohibit the sharing of confidential, system planning or technical information, or employees that possess this information, between the Applicant and these related incumbent utilities.
27. AltaLink submits that the Applicant's licensing proceeding is the right forum within which to consider and craft these new license terms. As noted above, the Applicant is a special purpose entity with a singular purpose to participate in the competitive EB-2011-0140 designation process.
28. AltaLink acknowledges that this issue could also be addressed in the EB-2011-0140 proceeding (see AltaLink's request for alternative relief). This appears to be what the Applicant suggests at the end of its response to TransCanada IR#1 by noting that: "[s]uch interrogatories should not be considered in this licensing proceeding, nor should they be considered, if at all, until the process and filing requirements of the designation proceeding are known and fairly applied to all participants." However, this might not be an ideal solution because the Applicant could between now and then conduct its affairs in a way that would later be found to be in breach of the new license terms. The only remedy at that late stage in the process might be to disqualify EWT LP from the designation process. As a result, AltaLink submits that it would be prudent to address this issue now as part of this proceeding.
29. The Applicant argues in its response to TransCanada IR#1 that "if such interrogatories were allowed, it would be possible for the intervening transmitters to secure an unfair informational advantage over EWT LP as there is not yet a full understanding from the Board as to the scope of the disclosure required from the participants in the designation process or to the filing requirements in general." AltaLink submits that it is entirely

unclear how this could possibly be the case. All parties, including the Applicant and all other participants in the designation process, would have full and equal access to this information as it would be filed on the public record in this proceeding. In fact, it is the status quo situation, where EWT LP is the only party to the designation process with access to this information that creates a dramatically unfair informational advantage. Consider the specific questions that AltaLink asked in its IR:

- (a) *Did Hydro One Inc. or Hydro One Networks Inc. (“Hydro One”) discuss its plan with respect to the Applicant with the Ministry of Energy, the OPA or the IESO prior to submitting this application? Did any of these entities express any concerns with this approach in light of Hydro One’s role as the dominant incumbent transmitter in Ontario?*
- (b) *Was Hydro One involved in any discussions with the Ministry of Energy, the OPA, or the IESO relating to the transmission project known as the “East-West Tie Line”? Please describe each such discussions, including the date of the discussion, where it took place, the specific people involved, and the subject matter of the discussions?*
- (c) *Please provide copies of all correspondence, reports, analysis and other documents prepared or received by Hydro One with the Ministry of Energy, the OPA, or the IESO in connection with the transmission project known as the “East-West Tie Line”?*
- (d) *Did Hydro One provide any input into or assistance with the OPA Report or the IESO Study?*
- (e) *Please answer parts (a) – (d) again as it relates to Great Lakes Power Transmission LP.*

30. Each of these questions relate directly to strategic system planning and policy information relating to the “East-West Tie Line” that would give the Applicant an unfair informational advantage during the EB-2011-0140 designation proceeding. By putting this information onto the public record, all parties to the designation process would have equal access to the information.

31. It is well known that Hydro One has strategically focused on developing working relationships with Ontario First Nations and Métis communities.¹⁰ Hydro One frequently consults with Ontario First Nations and Métis communities using ratepayer funded resources, and includes these consultation reports in its rate applications.¹¹ Hydro One owns, operates and maintains the existing East-West Tie transmission line, and very likely has existing relationships with First Nations and Métis communities located near that line.
32. AltaLink generally applauds the involvement of First Nations communities in new transmission project development initiatives. However, AltaLink is concerned about what appears to be an attempt by incumbent transmitters to use their existing relationships with First Nations communities located near the East-West Tie project corridor in an attempt to exclude new entrant transmitters from developing the East-West Tie line.
33. It is in this context that AltaLink clearly articulated its concern in its IR and sought to know only (a) whether the Applicant's relationship with the Bamkushwada LP, or any of the six participating First Nations is exclusive and (b) to what extent would the six participating First Nations be willing to cooperate with other new entrant transmitters on development of the East-West Tie line.
34. In response to part (b) the Applicant explains "There is nothing in the structure of the Applicant, or agreements in its formation, which prohibits the six participating First Nations from i) participating in consultation and accommodation with the Crown in respect of the East-West Tie Line; ii) providing information about their communities, history, people and

¹⁰ See the Letter from the President and CEO at pg. 5 of Hydro One's 2009 Annual Report.

¹¹ See (1) Hydro One's "Stakeholder Consultation" report filed as Exhibit A, Tab 15, Schedule 1 in its EB-2010-0002 rate application, and (2) Hydro One's "Stakeholder Consultation" report filed as Exhibit A, Tab 17, Schedule 1 in its EB-2008-0272 rate application.

asserted and actual rights to any person for any purpose, or iii) participating in any consultation or negotiating any form of accommodation with a designated transmitter that is not the Applicant.”

35. Notably, this response provides a non-exhaustive list of activities that the six participating First Nations could do - but it does not address AltaLink’s fundamental concern that the arrangement with the Applicant is exclusive. The Applicant refused to answer the question of whether or not the relationship is exclusive on the basis of relevance. AltaLink is concerned that this is perhaps the most clear example of the Applicant taking advantage of its dominant incumbent position to the detriment of new entrants, which may, in the extreme circumstances (if the arrangements are indeed exclusive) serve to create such an insurmountable barrier to entry to any and all new entrants that it would in effect undermine the goals underpinning the Board’s designation process for the East-West Tie line.
36. AltaLink acknowledges that this is one issue which could also be addressed in the EB-2011-0140 designation proceeding. AltaLink submits that if the Board elects this route, that it should issue a decision in this proceeding indicating that this issue will be included in the EB-2011-0140 designation process.

AltaLink Interrogatory Number 5

37. Finally, AltaLink filed a series of questions that were intended to clarify to what extent the Applicant is relying upon each of its limited partners and affiliates for financial resources.
38. The Applicant does not dispute that the Board uses the licensing application to look into the financial and technical capabilities of the Applicant. However, the Applicant argues that “particular information about how EWT LP relies on the financial resources of the listed entities is irrelevant to the Application.”

39. AltaLink disagrees. The Applicant has provided the financial statements of Hydro One and Great Lakes Power Transmission Inc. However, these financial statements are meaningless without a corresponding statement indicating the extent to which the Applicant can in-fact rely upon the financial resources of these related entities. Because the Applicant is not a wholly owned subsidiary of either of these entities, it is not at all clear whether the Applicant can in-fact rely on either Hydro One or Great Lakes Power Transmission Inc. for financial support.
40. AltaLink submits that the Applicant should be required to answer questions related to the extent to which the Applicant is relying on the financial resources of each of its limited partners or its affiliates to finance the venture, and to describe that limited partner's or affiliates' financial commitment to the Applicant.
41. In the event of a dispute between Hydro One and Great Lakes, how will the Applicant be funded and can the Applicant actually require either of these entities to support the funding required? AltaLink submits that the Applicant should provide a description of the extent the Applicant's limited partners or affiliates is legally obligated to provide necessary financing to EWT LP – even in the event of a dispute.

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

42. Exhibit “A”: AltaLink’s IRs Numbers 1-5;
43. Exhibit “B”: EWT LP’s Response to AltaLink IRs Numbers 1-5; and

44. Such further evidence as counsel may submit and the Board allow.

All of which is respectfully submitted this 15^h day of December 2011.

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AND TO: EWT LP

AND TO: INTERVENORS OF RECORD IN EB-2011-0350

Exhibit “A”

Interrogatories of AltaLink Ontario L.P.

Electricity Transmission Licence Application of EWT LP

EB-2011-0350

November 21, 2011

1. Technical capabilities and experience

References:

Cover Letter, pg. 2, Section 3 titled "Technical and Financial Expertise, Experience and Resources"

Application, Part 6, Technical Capabilities and Experience

Background:

We understand that the Applicant is relying upon the combined expertise, experience and resources of its limited partners and their respective affiliates to provide the Applicant with the technical capability, expertise and experience needed to obtain a transmission licence.

Since there are multiple limited partners and affiliates, the following series of questions is intended to clarify what areas of capability, expertise and experience the Applicant is relying upon each of its limited partners for.

Questions:

Hydro One

We understand that Hydro One Networks Inc. ("Hydro One") is experienced in planning, constructing, operating and maintaining transmission and distribution networks across Ontario.

- (a) To what extent is the Applicant relying upon Hydro One's transmission planning experience? Will the Applicant be drawing upon Hydro One's employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (b) To what extent is the Applicant relying upon Hydro One's transmission constructing experience? Will the Applicant be drawing upon Hydro One's employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (c) To what extent is the Applicant relying upon Hydro One's transmission operating experience? Will the Applicant be drawing upon Hydro One's employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (d) To what extent is the Applicant relying upon Hydro One's transmission maintenance experience? Will the Applicant be drawing upon Hydro One's employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?

GLPT

We understand that Great Lakes Power Transmission LP ("GLPT") has experience operating and maintaining a transmission system in northern Ontario.

- (e) To what extent is the Applicant relying upon GLPT's transmission planning experience? Please describe this experience (if any). Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?
- (f) To what extent is the Applicant relying upon GLPT's transmission constructing experience? Please describe this experience (if any). Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?
- (g) To what extent is the Applicant relying upon GLPT's transmission operating experience? Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?
- (h) To what extent is the Applicant relying upon GLPT's transmission maintenance experience? Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?

Bamkushwada LP

We understand that Bamkushwada LP ("BLP") does not have any specific experience or expertise with transmission facilities, instead they do represent six First Nations groups whose traditional territories are situated along the East-West Tie Line project corridor.

- (i) To what extent is the Applicant relying upon BLP's transmission planning experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?
- (j) To what extent is the Applicant relying upon BLP's transmission constructing experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?
- (k) To what extent is the Applicant relying upon BLP's transmission operating experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?

- (l) To what extent is the Applicant relying upon BLP's transmission maintenance experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?

2. No exemptions and no affiliates

Reference:

Cover Letter, pg. 4, Section 5 titled "No Exemptions"

Application, Part 7, Affiliates of the Applicant

Background:

We understand that the Applicant is not seeking any exemptions from any licence or code requirements in connection with the Application. We understand that under Section 7(b) of the Application the Applicant states "As indicated in 7(a), the Applicant has no affiliates." We have a number of questions intended to clarify our understanding of how the *Affiliate Relationships Code* ("ARC") licence requirements will apply in light of the Applicant's unique organizational structure.

To put our line of questioning into context, we include the following excerpts for ease of reference.

Under ARC:

"affiliate", with respect to a corporation, has the same meaning as in the *Business Corporations Act* (Ontario);

Under the *Business Corporations Act* (Ontario):

"affiliate" means an affiliated body corporate within the meaning of subsection (4);

[...]

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.

Holding body corporate

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, but only if, that other is its subsidiary.

Affiliated body corporate

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

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.

Questions:

- (a) The *Affiliate Relationship Code* defines an affiliate with specific reference to a corporation. Is the Applicant's view that it does not need to comply with ARC because of this definitional oversight?
- (b) If the answer to part (a) is no, what is the Applicant's understanding of the appropriate definition of "affiliate" for use in ARC when the Board is considering how ARC should apply to the Applicant?
- (c) In light of the Applicant's organizational structure, please explain whether each of the following related legal entities is an "affiliate" of the Applicant within the meaning of ARC? If yes, why? If no, why not?
 - (i) East West Tie Inc.
 - (ii) Hydro One Inc.
 - (iii) Hydro One Networks Inc.

- (iv) Great Lakes Power Transmission EWT LP
 - (v) Bamkushwada LP and each of the six Participating First Nations
 - (vi) Great Lakes Power Transmission Inc.
 - (vii) Brookfield Infrastructure Holdings (Canada) Inc.
 - (viii) Brookfield Asset Management
 - (ix) Great Lakes Power Transmission LP
- (d) Please confirm our understanding that, to the extent that any of the above related legal entities is not an “affiliate” within the meaning of ARC, the Applicant and that related legal entity would not be obligated to comply with the provisions under ARC, including:
- (i) the requirement that at least one-third of a utility’s Board of Directors is independent from any affiliate;
 - (ii) the requirement for a Services Agreements, for services, and any resource, product or use of assets provided to or received from an affiliate;
 - (iii) the requirement for the term of a contract between utility and affiliate not to exceed 5 years, unless approved by the Board;
 - (iv) the requirement for a prescribed form of business case analysis for services, products, resources, or use of assets outsourced by the utility to an affiliate;
 - (v) where a market exists, the prescribed methodology for establishing the fair market value for a service, product, or use of asset from an affiliate;
 - (vi) the additional threshold for utility assets sold or transferred to an affiliate;
 - (vii) the restrictions on a utility’s ability to provide financial support to its affiliates;
 - (viii) the restrictions on the disclosure by a utility of confidential information to an affiliate; and
 - (ix) the restrictions on a utility on providing system planning information to an affiliate that is an energy services provider?

3. The East-West Tie Line

Reference:

Cover Letter, pg. 2, Section 2 titled "Designation Process for the East West Tie Line"

Application, Part 4, Transmission Facilities

Application, Part 14, Location of Facilities

Background:

We understand that the Applicant intends to participate in the Board's designation process in respect of the transmission project known as the "East-West Tie Line" as described in the Board's August 22, 2011 letter (EB-2011-0140) in the OPA's *Long Term Electricity Outlook for the Northwest and Context for the East-West Tie Expansion* dated June 30, 2011 (the "**OPA Report**") and the IESO's Feasibility Study titled *An assessment of the westward transfer capability of various options for reinforcing the East-West Tie* dated August 18, 2011 (the "**IESO Study**").

In its August 26, 2010 *Framework for Transmission Project Development Plans* (EB-2010-0059), at pg. 12, the Board acknowledged that the knowledge advantage of the incumbent transmitter with respect to the technical configuration of connections points created an unfair advantage. At the time, the Board planned to initiate a process to amend the TSC in order to provide specific instruction to incumbent transmitters on the level and timing of information to be provided to new entrants.

The concern that underlies our next set of questions arises because of the Applicant's reliance upon and relationships with Hydro One Networks Inc. and Great Lakes Power Transmission LP. Our concern is that the Applicant has and will have unfair preferential access to confidential system planning and technical information related to the East-West Tie Line that will create an unfair informational advantage because no other participant in the EB-2011-0140 will have access to such information.

One option available to the Board in this licensing proceeding to address this concern would be to add a new term of the Applicant's license that would prohibit the sharing of confidential information or system planning or technical information, or employees that possess this information, between the Applicant and these related entities.

Our intent is to ensure that Hydro One Networks Inc. and Great Lakes Power Transmission LP are required to share equally all relevant information with all of the participants in the East-West Tie designation process at the same time, and ultimately to ensure that the Applicant does not gain any unfair informational advantage because of its relationship with or reliance upon these incumbent transmitters.

The following line of questioning is intended to assist the Board in determining whether such a license term is appropriate in the circumstances.

Questions:

- (a) Did Hydro One Inc. or Hydro One Networks Inc. (“Hydro One”) discuss its plan with respect to the Applicant with the Ministry of Energy, the OPA or the IESO prior to submitting this application? Did any of these entities express any concerns with this approach in light of Hydro One’s role as the dominant incumbent transmitter in Ontario?
- (b) Was Hydro One involved in any discussions with the Ministry of Energy, the OPA, or the IESO relating to the transmission project known as the “East-West Tie Line”? Please describe each such discussions, including the date of the discussion, where it took place, the specific people involved, and the subject matter of the discussions?
- (c) Please provide copies of all correspondence, reports, analysis and other documents prepared or received by Hydro One with the Ministry of Energy, the OPA, or the IESO in connection with the transmission project known as the “East-West Tie Line”?
- (d) Did Hydro One provide any input into or assistance with the OPA Report or the IESO Study?
- (e) Please answer parts (a) – (d) again as it relates to Great Lakes Power Transmission LP.

4. Bamkushwada LP

Reference:

Cover Letter, pg. 2, Section 1 titled "The Applicant"

Application, Part 6, Technical Capabilities and Experience

Background:

We understand that the Bamkushwada LP is a newly formed limited partnership that is equally held by six participating First Nations whose traditional territories are situated along the East-West Tie Line project corridor.

While we generally applaud the involvement of First Nations communities in new transmission project development initiatives, we are concerned that incumbent transmitters are using their existing relationships with these First Nations communities in an attempt to exclude new entrant transmitters from developing projects along the East-West Tie project corridor.

Questions:

- (a) Is the Applicant's relationship with the Bamkushwada LP, or any of the six participating First Nations, exclusive?
- (b) To what extent will the six participating First Nations be willing to cooperate with other new entrant transmitters on development of the East-West Tie line?

5. Financial resources

Reference:

Cover Letter, pg. 2, Section 3 titled "Technical and Financial Expertise, Experience and Resources"

Application, Part 2, Applicant

Application, Part 11, Financial Information

Background:

We understand the Applicant is a newly formed Ontario limited partnership that was formed on September 19, 2011. As a result, we understand that the Applicant is relying on the financial resources of its limited partners and their respective affiliates.

Since there are multiple limited partners and affiliates, the following series of questions is intended to clarify to what extent the Applicant is relying upon each of its limited partners and affiliates for financial resources. Please provide a distinct answer for each separate legal entity.

Questions:

- (a) To what extent, if any, is the Applicant relying on the financial resources of each of its limited partners or its affiliates to finance the venture? Please describe each limited partner's and affiliate's financial commitment to EWT LP. Please answer for each of:
 - (i) Hydro One Inc.
 - (ii) Hydro One Networks Inc.
 - (iii) Great Lakes Power Transmission EWT LP
 - (iv) Bamkushwada LP and each of the six Participating First Nations
 - (v) Great Lakes Power Transmission Inc.
 - (vi) Brookfield Infrastructure Holdings (Canada) Inc.
 - (vii) Brookfield Asset Management
 - (viii) Great Lakes Power Transmission LP
- (b) To what extent is the Applicant's limited partners or affiliates legally obligated to provide necessary financing to EWT LP? For instance, can EWT LP demand

additional capital contributions from its limited partners without an obligation to obtain consent, or will additional financing require the consent of the limited partners? In the event of a dispute between the limited partners, what processes are in place to ensure EWT LP can obtain all necessary financing? Please answer for each of:

- (i) Hydro One Inc.
- (ii) Hydro One Networks Inc.
- (iii) Great Lakes Power Transmission EWT LP
- (iv) Bamkushwada LP and each of the six Participating First Nations
- (v) Great Lakes Power Transmission Inc.
- (vi) Brookfield Infrastructure Holdings (Canada) Inc.
- (vii) Brookfield Asset Management
- (viii) Great Lakes Power Transmission LP

TOR01: 4777054: v1

Exhibit “B”

EWT LP
Interrogatory Responses
Electricity Transmission Licence Application
EB-2011-0350

December 5, 2011

Responses to AltaLink Ontario L.P.'s Interrogatories

Interrogatory 1 – Technical Capabilities and Experience

Reference:

Cover Letter, pg. 2, Section 3 titled “Technical and Financial Expertise, Experience and Resources”

Application, Part 6, Technical Capabilities and Experience

Preamble:

Since the Applicant has multiple limited partners and affiliates, the following series of questions is intended to clarify what areas of capability, expertise and experience the Applicants relying upon each of its limited partners for. We understand that Bamkushwada LP (“BLP”) does not have any specific experience or expertise with transmission facilities, instead they do represent six First Nations groups whose traditional territories are situated along the East-West Tie Line project corridor.

Questions:

Hydro One Inc. (“Hydro One”)

- (a) To what extent is the Applicant relying upon Hydro One’s transmission planning experience? Will the Applicant be drawing upon Hydro One’s employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (b) To what extent is the Applicant relying upon Hydro One’s transmission constructing experience? Will the Applicant be drawing upon Hydro One’s employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (c) To what extent is the Applicant relying upon Hydro One’s transmission operating experience? Will the Applicant be drawing upon Hydro One’s employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?
- (d) To what extent is the Applicant relying upon Hydro One’s transmission maintenance experience? Will the Applicant be drawing upon Hydro One’s employees or resources in this regard? How will the Applicant compensate Hydro One for use of these resources?

Great Lakes Power Transmission LP (“GLPT”)

- (e) To what extent is the Applicant relying upon GLPT’s transmission planning experience? Please describe this experience (if any). Will the Applicant be drawing

upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?

- (f) To what extent is the Applicant relying upon GLPT's transmission constructing experience? Please describe this experience (if any). Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?
- (g) To what extent is the Applicant relying upon GLPT's transmission operating experience? Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?
- (h) To what extent is the Applicant relying upon GLPT's transmission maintenance experience? Will the Applicant be drawing upon GLPT's employees or resources in this regard? How will the Applicant compensate GLPT for use of these resources?

BLP

- (i) To what extent is the Applicant relying upon BLP's transmission planning experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?
- (j) To what extent is the Applicant relying upon BLP's transmission constructing experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?
- (k) To what extent is the Applicant relying upon BLP's transmission operating experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?
- (l) To what extent is the Applicant relying upon BLP's transmission maintenance experience? Please describe this experience (if any). Will the Applicant be drawing upon BLP's employees or resources in this regard? How will the Applicant compensate BLP for use of these resources?

Responses:

In response to Interrogatories 1 (a) to (l), as set out in the Applicant's licence application (EB-2011-0350) (the "Application"), the combined expertise, experience and resources of the Applicant through its partners and possibly their respective affiliates provides the Applicant with a very high level of technical capability, expertise and experience with respect to the activities that are associated with the Application, including transmission development, stakeholder, First

Nations and Métis consultations, project development, project management, as well as the construction, ownership, operation and maintenance of electricity transmission facilities.

More specifically,

- the Applicant intends to contract with Great Lakes Power Transmission LP or a related entity for the development and management of any future new EWT LP transmission facilities – the Applicant may engage specialist third parties to undertake design work;
- the Applicant intends to contract with a specialist construction contractor for the construction of any new EWT LP transmission facilities;
- the Applicant intends to contract with Hydro One Networks Inc, the largest licensed electricity transmitter in Ontario, to undertake systems operations for any new EWT LP transmission facilities; and
- the Applicant intends to contract with third parties, including First Nation owned businesses, to provide inspection and maintenance services for any new EWT LP transmission facilities.

In the development of the Application to date, the Applicant has not used any of the non-executive staff and information resources of the transmission development, construction or maintenance groups of Hydro One Networks Inc, an affiliate of EWT LP partner Hydro One Inc., to assist in developing its plans.

Exactly which technical capabilities the Applicant will require, in what amounts, from which sources and at what cost will be determined once the scope and scale of the facilities to be developed, owned and/or operated have been defined.

Interrogatory 2 - No exemptions and no affiliates

Reference:

Cover Letter, pg. 4, Section 5 titled "No Exemptions"

Application, Part 7, Affiliates of the Applicant

Preamble:

We have a number of questions intended to clarify our understanding of how the *Affiliate Relationships Code* ("ARC") licence requirements will apply in light of the Applicant's unique organizational structure. To put our line of questioning into context, we include the following excerpts for ease of reference.

Under ARC:

"affiliate", with respect to a corporation, has the same meaning as in the *Business Corporations Act* (Ontario);

Under the *Business Corporations Act* (Ontario):

"affiliate" means an affiliated body corporate within the meaning of subsection (4);

[...]

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.

Holding body corporate

(3) For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, but only if, that other is its subsidiary.

Affiliated body corporate

(4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

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.

Requests:

- (a) The *Affiliate Relationship Code* defines an affiliate with specific reference to a corporation. Is the Applicant's view that it does not need to comply with ARC because of this definitional oversight?
- (b) If the answer to part (a) is no, what is the Applicant's understanding of the appropriate definition of "affiliate" for use in ARC when the Board is considering how ARC should apply to the Applicant?
- (c) In light of the Applicant's organizational structure, please explain whether each of the following related legal entities is an "affiliate" of the Applicant within the meaning of ARC? If yes, why? If no, why not?
 - (i) East West Tie Inc.
 - (ii) Hydro One Inc.

- (iii) Hydro One Networks Inc.
 - (iv) Great Lakes Power Transmission EWT LP
 - (v) Bamkushwada LP and each of the six Participating First Nations
 - (vi) Great Lakes Power Transmission Inc.
 - (vii) Brookfield Infrastructure Holdings (Canada) Inc.
 - (viii) Brookfield Asset Management
 - (ix) Great Lakes Power Transmission LP
- (d) Please confirm our understanding that, to the extent that any of the above related
- (i) legal entities is not an “affiliate” within the meaning of ARC, the Applicant and that related legal entity would not be obligated to comply with the provisions under ARC, including:
 - (ii) the requirement that at least one-third of a utility’s Board of Directors is independent from any affiliate;
 - (iii) the requirement for a Services Agreements, for services, and any resource, product or use of assets provided to or received from an affiliate;
 - (iv) the requirement for the term of a contract between utility and affiliate not to exceed 5 years, unless approved by the Board;
 - (v) the requirement for a prescribed form of business case analysis for services, products, resources, or use of assets outsourced by the utility to an affiliate;
 - (vi) where a market exists, the prescribed methodology for establishing the fair market value for a service, product, or use of asset from an affiliate;
 - (vii) the additional threshold for utility assets sold or transferred to an affiliate;
 - (viii) the restrictions on a utility’s ability to provide financial support to its affiliates;
 - (ix) the restrictions on the disclosure by a utility of confidential information to an affiliate; and
 - (x) the restrictions on a utility on providing system planning information to an affiliate that is an energy services provider?

Responses:

- (a) The Board has reviewed the ARC on a number of occasions, and as such it is not appropriate to refer to the definition of affiliate as an “oversight”. EWT LP is controlled by its general partner East-West Tie Inc., which is an Ontario corporation. East-West Tie Inc. has no affiliates, as that term is used in the ARC. 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. East-West Tie Inc. is not an affiliate of Great Lakes Power Transmission Inc., Hydro One Inc. or Bamkushwada Inc. (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 33.33% 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. cannot be an affiliate of any entities to which the Shareholders are subsidiaries or by which they are controlled.
- (b) See the response to Interrogatory 2(a) immediately above.
- (c)
- (i) No. East-West Tie Inc. is the general partner of the EWT LP.
 - (ii) No. See the response to Interrogatory 2(a) above.
 - (iii) No. See the response to Interrogatory 2(a) above.
 - (iv) No. See the response to Interrogatory 2(a) above.
 - (v) No. See the response to Interrogatory 2(a) above.
 - (vi) No. See the response to Interrogatory 2(a) above.
 - (vii) No. See the response to Interrogatory 2(a) above.
 - (viii) No. See the response to Interrogatory 2(a) above.
 - (ix) No. See the response to Interrogatory 2(a) above.
- (d)

In response to Interrogatories 2(d) (i)-(x), Section 1.4 of the ARC states that all utilities are obligated to comply with the ARC in dealing with affiliates. We can confirm that the ARC does not apply to any of the dealings of a Utility that does not have affiliates. Because the entities identified in Interrogatory 2(c) above are not affiliates of EWT LP, they each act at arm’s length

with respect to EWT LP, as do the partners of EWT LP act at arm's length with regard to each other. There is therefore no reason for the ARC to apply with respect to those arm's length relationships.

Interrogatory 3 - The East-West Tie Line

Reference:

Cover Letter, pg. 2, Section 2 titled "Designation Process for the East West Tie Line"
Application, Part 4, Transmission Facilities
Application, Part 14, Location of Facilities

Preamble:

- (a) Our concern is that the Applicant has and will have unfair preferential access to confidential system planning and technical information related to the East-West Tie Line that will create an unfair informational advantage.
- (b) One option available to the Board in this licensing proceeding to address this concern would be to add a new term of the Applicant's license that would prohibit the sharing of confidential information or system planning or technical information, or employees that possess this information, between the Applicant and these related entities.
- (c) Our intent is to ensure that Hydro One Networks Inc. and Great Lakes Power Transmission LP are required to share equally all relevant information with all of the participants in the East-West Tie designation process at the same time, and ultimately to ensure that the Applicant does not gain any unfair informational advantage because of its relationship with or reliance upon these incumbent transmitters.
- (d) The following line of questioning is intended to assist the Board in determining whether such a license term is appropriate in the circumstances.

Questions:

- (a) Did Hydro One Inc. or Hydro One Networks Inc. ("Hydro One") discuss its plan with respect to the Applicant with the Ministry of Energy, the OPA or the IESO prior to submitting this application? Did any of these entities express any concerns with this approach in light of Hydro One's role as the dominant incumbent transmitter in Ontario?
- (b) Was Hydro One involved in any discussions with the Ministry of Energy, the OPA, or the IESO relating to the transmission project known as the "East-West Tie Line"? Please describe each such discussions, including the date of the discussion, where it took place, the specific people involved, and the subject matter of the discussions?
- (c) Please provide copies of all correspondence, reports, analysis and other documents prepared or received by Hydro One with the Ministry of Energy, the OPA, or the IESO in connection with the transmission project known as the "East-West Tie Line"?

- (d) Did Hydro One provide any input into or assistance with the OPA Report or the IESO Study?
- (e) Please answer parts (a) – (d) again as it relates to Great Lakes Power Transmission LP.

Responses:

Hydro One

- (a) This interrogatory is irrelevant to the Application. See the response to TransCanada Power Transmission (Ontario) L.P.'s ("**TransCanada's**") Interrogatory 1.
- (b) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.
- (c) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.
- (d) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.

GLPT

- (e) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.
- (f) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.
- (g) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.
- (h) This interrogatory is irrelevant to the Application. See the response to TransCanada's Interrogatory 1.

Interrogatory 4 – BLP

Reference:

Cover Letter, pg. 2, Section 1 titled “The Applicant”
Application, Part 6, Technical Capabilities and Experience

Preamble:

We are concerned that incumbent transmitters are using their existing relationships with these First Nations communities in an attempt to exclude new entrant transmitters from developing projects along the East-West Tie project corridor.

Questions:

- (a) Is the Applicant’s relationship with the Bamkushwada LP, or any of the six participating First Nations, exclusive?
- (b) To what extent will the six participating First Nations be willing to cooperate with other new entrant transmitters on development of the East-West Tie line?

Responses:

- (a) The Applicant is in no way attempting to exclude new entrant transmitters from developing projects along the East-West Tie project corridor. The question of whether the Applicant’s relationship with Bamkushwada LP, or any of the six participating First Nations, is exclusive is not relevant to the Application. See the response to TransCanada’s Interrogatory 1.
- (b) There is nothing in the structure of the Applicant, or agreements in its formation, which prohibits the six participating First Nations from i) participating in consultation and accommodation with the Crown in respect of the East-West Tie Line; ii) providing information about their communities, history, people and asserted and actual rights to any person for any purpose, or iii) participating in any consultation or negotiating any form of accommodation with a designated transmitter that is not the Applicant.

Interrogatory 5 – Financial resources

Reference:

Cover Letter, pg. 2, Section 3 titled “Technical and Financial Expertise, Experience and Resources”

Application, Part 2, Applicant

Application, Part 11, Financial Information

Preamble:

Since there are multiple limited partners and affiliates, the following series of questions is intended to clarify to what extent the Applicant is relying upon each of its limited partners and affiliates for financial resources. Please provide a distinct answer for each separate legal entity.

Questions:

- (a) To what extent, if any, is the Applicant relying on the financial resources of each of its limited partners or its affiliates to finance the venture? Please describe each limited partner's and affiliate's financial commitment to EWT LP. Please answer for each of:
- (i) Hydro One Inc.
 - (ii) Hydro One Networks Inc.
 - (iii) Great Lakes Power Transmission EWT LP
 - (iv) Bamkushwada LP and each of the six Participating First Nations
 - (v) Great Lakes Power Transmission Inc.
 - (vi) Brookfield Infrastructure Holdings (Canada) Inc.
 - (vii) Brookfield Asset Management
 - (viii) Great Lakes Power Transmission LP
- (b) To what extent is the Applicant's limited partners or affiliates legally obligated to provide necessary financing to EWT LP? For instance, can EWT LP demand additional capital contributions from its limited partners without an obligation to obtain consent, or will additional financing require the consent of the limited partners? In the event of a dispute between the limited partners, what processes are in place to ensure EWT LP can obtain all necessary financing? Please answer for each of:
- (i) Hydro One Inc.

- (ii) Hydro One Networks Inc.
- (iii) Great Lakes Power Transmission EWT LP
- (iv) Bamkushwada LP and each of the six Participating First Nations
- (v) Great Lakes Power Transmission Inc.
- (vi) Brookfield Infrastructure Holdings (Canada) Inc.
- (vii) Brookfield Asset Management
- (viii) Great Lakes Power Transmission LP

Responses:

- (a) In response to Interrogatories 5(a) (i)-(viii), we note that the Board “typically examines the applicant’s financial information to get *some appreciation* of its ability to operate as a transmitter.”¹ EWT LP has filed, with the Application, the financial statements of Hydro One and Great Lakes Power Transmission Inc. It can also confirm that EWT LP will have the ability to raise financing through equity and debt as would typically be done for transmission projects in Ontario. Particular information about how EWT LP relies on the financial resources of the listed entities is irrelevant to the Application. See also the response to TransCanada’s Interrogatory 1.
- (b) See the response to Interrogatory 5(a) immediately above.

¹ See the Board’s Decision and Order in the Chatham-Kent application (EB-2010-0351), at 5. Emphasis added.