

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.

Submissions on Motion for Further and Better Interrogatory Responses

Factual Context

1. By Application dated September 20, 2011 EWT LP has applied for an electricity transmission licence. EWT LP's stated purpose in applying for the licence¹ is to allow EWT LP to participate in the Board's proceeding (East-West Tie Designation Proceeding) to designate a transmission developer in respect of the East-West Tie Line².
2. The East-West Tie Line is a transmission project that has been identified as a priority by the Government of Ontario and the Ontario Power Authority. The purpose of the project is to increase transfer capacity between the transmission system in the northwest of Ontario and the rest of Ontario.³

¹ Application, section 4.

² EB-2011-0140.

³ Application, section 4

3. The East-West Tie Line would run in parallel to an existing Hydro One Networks Inc. (Hydro One) transmission line, and would connect at both ends to Hydro One's existing transmission system.⁴
4. By letter dated March 29, 2011, the Ontario Minister of Energy wrote to the Chair of the OEB to express the interest of the Ontario Government in the OEB undertaking a designation process to select the most qualified and cost-effective transmission company to develop the East-West Tie Line. The Minister's letter to the Board includes the following passage:

*The Board's Policy Framework for Transmission Project Development Plans is well suited to apply to the East-West Tie project. Such an approach would allow transmitters to move ahead on development work in a timely manner, **encourage new entrants to transmission in Ontario and bring additional resources for project development. It will also support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.*** [Emphasis added.]

5. The *Policy Framework for Transmission Project Development Plans* referred to in the Minister's letter (*Transmission Development Designation Policy*) is the OEB policy pursuant to which the Board invites applications for designation as developer for an identified transmission project⁵. The East-West Tie Designation Proceeding that is the driver for the EWT LP licence application is the first such designation process for Ontario.
6. The *Transmission Development Designation Policy* cites three objectives⁶:
 - *Allow transmitters to move ahead on development work in a timely manner;*
 - ***encourage new entrants to transmission in Ontario*** bringing additional resources for project development; and
 - ***support competition in transmission in Ontario*** to drive economic efficiency for the benefit of ratepayers. [Emphasis added.]

⁴ IESO Feasibility Study: An Assessment of the Westward Transfer Capability of Various Options for Reinforcing the East-West Tie, 18 August 2011, p.2.

⁵ Developed in the recent EB-2010-0059 proceeding.

⁶ *Transmission Development Designation Policy*, page 1.

EWT LP

7. EWT LP is a newly formed limited partnership ultimately controlled by 3 entities; Hydro One Inc.; Great Lakes Power Transmission Inc. and Bumkushwada L.P..⁷
8. Hydro One Inc. (Hydro One) owns and operates the bulk of Ontario's electricity transmission system, and is owned by the Province of Ontario.⁸ The entity designated by the Board to develop the East-West Tie Line will ultimately have to connect to, and operate within the same area as, Hydro One's existing transmission facilities.
9. Great Lakes Power Transmission Inc. (Great Lakes Power), through a limited partnership controlled by it, owns and operates the balance of Ontario's extant electricity transmission system.
10. Given the incumbent status of Hydro One and Great Lakes Power, by letter dated December 22, 2011 the Board has issued a letter in the East-West Tie Designation Proceeding requesting each of Hydro One and Great Lakes Power to provide descriptions of; i) protocols for ensuring that any pre-existing information developed by these entities and relevant to the East-West Tie project cannot be accessed by any registered transmitter; and ii) protocols regarding the sharing of information necessary for preparation of applications to be filed in the East-West Tie Designation Proceeding. The Board's letter specifically notes the registration in the designation proceeding of EWT LP.

Context for UCT's Interrogatories and this Motion

11. In reference to the foregoing facts, UCT submits that:
 - a. it is a policy of the government of Ontario, and a policy of this Board, and thus "in the public interest", that the competition and new-entry in Ontario's

⁷ Application, Appendix A.

⁸ Application, section 9.

electricity transmission sector be encouraged through the East-West Tie Designation Process; and

- b. the Board has recognized that the incumbent positions of two of the three entities ultimately controlling EWT LP raises concerns regarding the role of Hydro One and Great Lakes Power as Ontario's incumbent transmitters, and the position of their newly formed entity EWT LP, in the East-West Tie Designation Proceeding.

UCT Interrogatory 2

- 12. In Part b. of UCT's Interrogatory 2, EWT LP is asked to describe, for each "key individual" named in the application, their current role and responsibilities with any of the partners of EWT LP or any associated entity that holds a licence under the *Ontario Energy Board Act, 1998*.
- 13. EWT LP responds to this interrogatory by reference to its response to TransCanada Power's Interrogatory 15. In its response to TransCanada Power EWT LP addresses part a. to UCT's Interrogatory 2, but does not expressly address part b.
- 14. While EWT LP has indicated its expectation that the information provided in response to section 10 of the Board's transmission licence application form regarding the experience of its "key individuals" in the electricity sector would be held in confidence, EWT LP has not provided any reasons for maintaining in confidence the specific information requested by UCT Interrogatory 2b., nor any basis upon which to conclude that public disclosure of such information would be detrimental.
- 15. In responding to UCT's Interrogatory 2, part b., EWT LP has not sought confidential treatment of the information requested.⁹
- 16. UCT submits that the information is relevant to, and probative of, the degree to which EWT LP's key and controlling individuals have access to resources of, and

⁹ EWT LP response to TransCanada Interrogatory 15, as referenced in response to UCT's Interrogatory 2, part b.

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;

- a. relevant to, or required for, preparation of applications by EWT LP's competitors in the East-West Tie Designation Proceeding; or
 - b. may, or may be perceived to, provide EWT LP with an undue advantage in the upcoming competitive East-West Tie Designation Proceeding.
17. UCT submits that the concern regarding access by EWT LP to such information through its association with Hydro One and Great Lakes Power, and the impact of such association to the question of information access and the fairness of the upcoming East-West Tie Designation Proceeding, has been recognized by the Board in its December 22, 2011 letter to Hydro One and Great Lakes Power, as referenced in paragraph 10, above.
18. In responding to transmission licence applications by others intending to participate in the East-West Tie Designation Proceeding, Hydro One has asserted that it has information that is confidential, and is relevant to the East-West Tie Designation Proceeding.¹⁰
19. The entity designated to develop the East-West Tie Line will require connection to Hydro One's existing transmission system.¹¹
20. EWT LP has taken the position that the Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters* (ARC) does not apply to the relationship as between Hydro One and Great Lakes Power, on the one hand, and EWT LP, on the other.¹²

¹⁰ The Board's most recent transmission licencing decision statement on the issue of information sharing by Hydro One is found in its EB-2011-0260 Decision on TransCanada Power's application to amend its recently issued transmission licence, see page 9.

¹¹ Ibid, note 4.

¹² EWT LP response to AltaLink Interrogatory 2a.

21. The stated purposes of the *ARC* include¹³:
- a. preventing a utility from cross-subsidizing affiliate activities;
 - b. protecting the confidentiality of information collected by a utility in the course of provision of utility services;
 - c. ensuring that there is no preferential access to utility services; and
 - d. preventing a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider.
22. Among the *ARC* provisions addressing the foregoing *ARC* objectives are:
- a. a requirement to ensure that at least one-third of the Board of Directors of a utility is independent of any affiliate (*ARC* section 2.1.2);
 - b. a prohibition on the sharing of employees that have access to confidential information obtained by the utility in the course of providing utility services (*ARC* section 2.2.3);
 - c. requirements to ensure equal access to all applicants for utility services and to take steps to ensure that affiliates are not provided with preferential access (*ARC* sections 2.5.5 and 2.5.6).
23. UCT submits that information regarding the positions held with Ontario's incumbent electricity transmitters by the EWT LP "key individuals" is relevant to, and probative of, determining:
- a. the extent to which such individuals have access to confidential utility information relevant to applicants in the East-West Tie Designation Proceeding ; and
 - b. the extent to which the positions of such individuals could, or could be perceived to, provide EWT LP with an undue advantage in respect to information regarding, and/or processes for, connection to Ontario's existing transmission system.
24. UCT submits that in light of EWT LP's stated objective for the applied for licence as enabling EWT LP's participation in the East-West Tie Designation Proceeding, information about the current roles and responsibilities of EWT LP's "key individuals" with Ontario's incumbent electricity transmitters would inform the

¹³ *ARC* section 1.1.

Board and interested parties as to the advisability of considering whether a grant of licence to EWT LP should include conditions of similar effect to those included in the *ARC* and referenced above.

25. Section 4.1.4 of the Board's *Practice Direction on Confidential Filings* allows for application to the Board to request access to information that a Board template or filing guideline indicates will be treated in confidence. EWT LP has stated its expectation that information regarding the relevant experience of "key individuals" named in its transmission licence application would be held by the Board in confidence pursuant to the Board's Transmission Licence Application Form instructions.¹⁴ To the extent required, UCT hereby requests access to that information, and submits that it has addressed the Board's requirements related to such request in these submissions.

UCT Interrogatory 4

26. In UCT's Interrogatory 4 EWT LP is asked to provide information on its financial resources and access to capital, including its access to the financial resources of, and capital from, its partners.
27. The Board has found that 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.¹⁵
28. EWT LP asserts¹⁶ 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 with the two incumbent Ontario transmitters.

¹⁴ Ibid, note 9.

¹⁵ For example, see EB-2010-0351 Decision with Reasons, p.5, first paragraph.

¹⁶ Response to AltaLink Interrogatory 5, as referenced in response to UCT Interrogatory 4.

29. UCT submits that information regarding whether EWT LP intends to raise financing from, or through, Hydro One and or Great Lakes Power is relevant to considering whether granting EWT LP's application, the stated purpose of which is to allow EWT LP to participate in the competitive East-West Tie Designation Proceeding, would;
- a. help to facilitate competition, economic efficiency, and new entry in to Ontario's electricity transmission sector in accord with the Board's and the Ontario government's objectives for the East-West Tie Designation Process;
 - b. impact the fairness of the upcoming East-West Tie Designation Process; and/or
 - c. *"promote economic efficiency and cost effectiveness with respect to prices and the adequacy, reliability and quality of electricity service"* in accord with the Board's legislative objectives in carrying out its responsibilities, including its responsibilities under its licencing authority, related to electricity¹⁷;
- and would thus be in the public interest.
30. UCT respectfully submits that interested parties should have the opportunity to consider and, as warranted by the evidence, argue these points at the stage of substantive submissions on EWT LP's licence application, and that the requested information is relevant to such considerations and arguments, and should be provided.

UCT Interrogatory 5

31. In UCT's Interrogatory 5, EWT LP is asked to provide more information, including copies of the EWT LP partnership agreement and any other agreements involving Bumkushwada L.P. or its partner communities, related to the ability of Bumkushwada L.P. or its partner communities to participate in consultations and, as appropriate, accommodations with proponents for the East-West Tie Line project other than EWT LP.

¹⁷ Ontario Energy Board Act, 1998, section 1.(1).

32. EWT LP has not claimed confidentiality in respect of the requested agreements, but rather has asserted that the requested agreements are not relevant.
33. EWT LP's application indicates that the traditional territories of the six limited partners in Bumkushwada L.P. lie along the East-West Tie Line project corridor.¹⁸ As such, and as recognized by the Board's G-2010-0059 *Filing Requirements: Transmission Project Development Plans* (page 10), all other applicants for designation to develop the East-West Tie line will be required to develop plans for consultation with and, as appropriate, accommodation of, the Bumkushwada L.P. partner communities.
34. In the Ontario Minister of Energy's March 29th letter of direction to the Board regarding the East-West Tie Designation Proceeding, the Minister writes:
- A designation process for the East-West Tie also promotes the Board's electricity objectives of protecting the interests of consumers with respect to prices and of promoting cost-effectiveness in the transmission of electricity. In respect of those particular ends, and given the location and value of the East-West Tie in ensuring reliability and maintaining efficiency and flexibility of the system, I would expect that the weighting of decision criteria in the Board's designation process takes into account the significance of aboriginal participation to the delivery of the transmission project, as well as the proponent's ability to carry out the procedural aspects of the Crown consultation.* [Emphasis added.]
35. UCT submits that both the Board's transmission development designation *Filing Requirements* and the Ontario government's directions for the East-West Tie Designation Proceeding contemplate pre-application discussions between transmission development designation applicants and affected First Nations communities.
36. Accordingly, any restrictions on the ability of the Bumkushwada L.P. partner communities to participate in discussions with competing East-West Tie designation proponents are directly relevant to considering whether granting

¹⁸ EWT LP Application, Section 9.

EWT LP's application, the stated purpose of which is to allow the applicant to participate in the competitive East-West Tie Designation Process, would;

- a. impact the fairness of the upcoming East-West Tie Designation Process;
- b. help to facilitate competition, economic efficiency, and new entry in to Ontario's electricity transmission sector in accord with the Board's and the Ontario government's objectives for the East-West Tie Designation Process; and/or
- c. "*promote economic efficiency and cost effectiveness with respect to prices and the adequacy, reliability and quality of electricity service*" in accord with the Board's legislative objectives in carrying out its responsibilities, including under its licencing authorities, related to electricity¹⁹;

and would thus be in the public interest.

- 37. UCT acknowledges that EWT LP 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 LP, from entertaining full consultations with UCT or any other East-West Tie transmission development "*proponents*".²⁰
- 38. However, in its response to Altalink interrogatory 4, part b., EWT LP appears to place emphasis on the status of "*designated transmitter*" in respect of the liberty of the six First Nations involved in EWT LP to participate in consultation or negotiation of accommodations with transmission proponents. As noted above, pre-application discussions with affected First Nations could be a significant decision criteria for the Board in the designation process.
- 39. UCT thus submits that clarity on what constraints, if any, are placed on the First Nations communities participating in EWT LP in respect of the communities' liberty to entertain discussions and, as warranted, accommodations and/or proposals for participation with East-West Tie Line proponents other than EWT LP is directly relevant to the Board's consideration of whether granting of the applied for transmission licence is in the public interest.

¹⁹ Ontario Energy Board Act, 1998, section 1.(1).

²⁰ UCT Interrogatory 5, part a.

40. UCT respectfully submits that provision of the requested agreements is the most robust way to ensure the Board's ability to review the facts relating to this consideration, and that the filing of these agreements should be directed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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