



**Fraser Milner Casgrain LLP**

77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511

FAX 416 863 4592

**VIA E-MAIL**

January 24, 2012

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
PO Box 2319, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Helen Newland  
DIRECT 416 863-4471  
helen.newland@fmc-law.com

Dear Ms. Walli:

**Re: RES Canada Transmission GP Inc.; Intervention;**  
**Board File No.: EB-2011-0350**

We are writing to file the Written Submissions of RES Canada Transmission GP Inc., made on behalf of RES Canada Transmission LP ("RES Transmission"), in the EB-2011-0350 proceeding, convened to hear and decide an application by EWT LP for an Electricity Transmission Licence.

Yours very truly,

*(signed) H.T. Newland*

HTN/ko

cc: Jeff Becker  
Cory Blair  
Jerry Vaninetti  
Charles Keizer

**ONTARIO ENERGY BOARD**

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

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

**WRITTEN SUBMISSIONS**

**of**

**RES CANADA TRANSMISSION LP**

**on**

**MOTIONS BY ALTALINK ONTARIO L.P. ,  
TRANSCANADA POWER TRANSMISSION AND  
UPPER CANADA TRANSMISSION, INC.**

**Introduction**

1. Each of AltaLink Ontario L.P. (“**AltaLink**”), TransCanada Power Transmission (“**TPT**”) and Upper Canada Transmission, Inc. (“**UCT**”) (together, the “**Moving Parties**”) filed Notices of Motions seeking Ontario Energy Board (“**OEB**” or “**Board**”) orders requiring EWT LP (“**EWT**”) to respond to certain interrogatories in connection with EWT’s application for a transmission licence and, in the case of the TPT and AltaLink Motions, alternative relief in the form of direction from the Board addressing concerns about preferential access, by EWT, to utility information, resources and relationships. RES Canada Transmission LP (“**RES Transmission**”) supports the Motions of the Moving Parties and urges the Board to grant the relief sought.
2. RES Transmission is a new Canadian entity formed for the purpose, *inter alia*, of participating in the East-West Tie Line Designation Process in Proceeding EB-2011-0140 (the “**Designation Proceeding**”). RES Transmission holds Transmission Licence ET-2011-0282 and is a registered participant in the Designation Proceeding. It has also been accepted by the Board as an intervenor in this proceeding (EB-2011-0350).

3. RES Transmission endorses and adopts – without repeating – the submissions of AltaLink, TPT, and UCT in support of their Motions regarding why EWT should be required to respond to certain specific interrogatories. It also makes the additional overarching submissions that are set out below.

**Requested Information is required to answer threshold question**

4. EWT's application for an electricity transmission licence raises a threshold question, not raised by the licence applications of other designation participants, namely, whether it should be permitted to participate in the Designation Proceeding at all, and if so, on what terms and conditions. This threshold question arises by virtue of the fact that two of the three limited partners of EWT are incumbent transmitters who, together, own and operate Ontario's electricity transmission network.
5. The Board should not grant EWT's application for a transmission licence unless it is satisfied that EWT will not be competitively advantaged, *vis à vis* other designation participants, by virtue of receiving in the future, or having already received in the past (directly, or through its limited partners), preferential access to utility information, expertise, resources and/or relationships. The information that has been requested by the Moving Parties is required in order for the Board and intervenors to make the assessment required to satisfy themselves in this regard.
6. In its Application, EWT acknowledges that it is relying upon the "combined expertise, experience and resources" of its limited partners and their respective affiliates to provide it with the technical capability, expertise and experience required to qualify for a transmission licence. No other participant in the Designation Proceeding has the ability to leverage a relationship with the incumbent utilities who are most familiar with the East-West Tie Line, possibly at the expense of ratepayers and, most certainly, at the expense of taxpayers. The other participants, including RES Transmission, are themselves assuming the financial risk that is inherent in a competitive process where there can be only one winner.
7. In order to preserve the integrity of the Designation Proceeding, the Board must ensure that all participants begin the process at the same starting line, on the same playing field. To do this, it requires the information requested by the Moving Parties and refused by EWT. Only then can the Board and intervenors determine to what extent EWT has already benefited from its

relationship with the incumbent utilities and whether, going forward, it should be constrained by the imposition of appropriate licence conditions.

**Requested information is required to determine appropriate degree of regulatory oversight**

8. Regulators – including the OEB – routinely constrain both the behaviour of utilities who themselves engage in contestable businesses and the behaviour of utilities *vis à vis* their relationship with related parties or “affiliates” engaged in such businesses. The principal tool that the Board uses to regulate utilities in their dealing with related parties is the *Affiliate Partnerships Code for Electricity Distributors and Transmitters (“ARC”)*. EWT takes the position that it is not subject to the ARC because its general partner, East-West Tie Inc., is not an affiliate of any of its three shareholders, being neither a subsidiary of or controlled by these shareholders. In the result, by joining forces with each other, the two incumbent Ontario utilities appear to have put themselves beyond the reach of the ARC.
9. This state of affairs, in and of itself, should give the Board pause. Add to this, EWT’s refusal to answer many of the Moving Parties’ questions and its raises legitimate questions about fairness and motive and presents a compelling reason for requiring EWT to produce the requested information. It is regrettable that EWT would take an litigious position with respect to the production of information – presumably paid for by ratepayers –instead of voluntarily contributing to a fair, open and transparent process.

**Protocols filed by incumbent facilities do not alleviate fairness concerns**

10. RES Canada has reviewed the responses of Great Lakes Power Transmission L.P. and Hydro One Networks Inc. to the Board’s letter of December 22, 2011 requesting information regarding the “rules, policies, practices, IT infrastructure and other protocols” that the incumbent utilities have established to prevent access by registered participants in the Designation Proceeding to utility information and resources. The protocols described in these responses do not alleviate RES Canada’s concerns about preferential and, thus, unfair access to utility information, resources and relationships and do not relieve EWT from its duty to produce the information requested by the Moving Parties. In this regard, RES Canada specifically endorses and adopts AltaLinks submissions of January 17, 2012.

**Preferential access should be dealt within this proceeding**

11. The issue of preferential access, which is front and centre in the motions of the Moving Parties, can and should be addressed by the Board in this proceeding (EB-2011-0350) and not deferred to the Designation Proceeding (EB-2011-0140). The Board has the power to prevent or constrain EWT's participation in the Designation Proceeding through the use of its licensing authority, should it conclude that such participation is contrary to the public interest or will, without the imposition of conditions, impair the conduct of a fair process. The Board's powers in the Designation Process, itself, are far less certain. The first step toward dealing with this issue is to require EWT to produce the information requested by the Moving Parties.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED ON THIS 24<sup>TH</sup> DAY OF JANUARY, 2012**

**Fraser Milner Casgrain LLP**

***(signed) Helen Newland***

Helen Newland  
Counsel to RES Canada Transmission LP