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COURIER, RESS, EMAIL

Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: EB-2011-0350 - Written Motion Submissions of EWT LP in its Application
for an Electricity Transmission Licence**

We are counsel to EWT LP. Further to the Board's Procedural Order No. 2 in the above noted proceeding, please find enclosed a copy of EWT LP's written submissions in response to the motions of AltaLink Ontario L.P., Upper Canada Transmission, Inc. and TransCanada Power Transmission (Ontario) L.P.

Yours truly,

A handwritten signature in black ink, appearing to read "Charles Keizer", with a long, sweeping horizontal line extending to the right.

Charles Keizer

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cc: A. McPhee, GLPT-EWT LP
P. Pelletier, BLP
M. Penstone, Hydro One

Enclosure

ONTARIO ENERGY BOARD

EB-2011-0350

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

AND IN THE MATTER OF an application by EWT LP
("EWT") under section 60 of the *Ontario Energy Board Act*,
1998 for an electricity transmission license;

AND IN THE MATTER OF motions by AltaLink Ontario,
L.P. ("AltaLink"), TransCanada Power Transmission
(Ontario) L.P. ("TransCanada") and Upper Canada
Transmission, Inc. ("UCT" and, together with AltaLink and
TransCanada, the "Moving Parties") regarding the
interrogatory responses by EWT LP in its transmission license
application.

WRITTEN SUBMISSION OF EWT

JANUARY 31, 2012

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1
2 **IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O.
3 1998, c. 15, (Schedule B);

4
5 **AND IN THE MATTER OF** an application by EWT LP
6 (“**EWT**”) under section 60 of the *Ontario Energy Board Act, 1998*
7 for an electricity transmission license;

8
9 **AND IN THE MATTER OF** motions by AltaLink Ontario, L.P.
10 (“**AltaLink**”), TransCanada Power Transmission (Ontario) L.P.
11 (“**TransCanada**”) and Upper Canada Transmission, Inc. (“**UCT**”
12 and, together with AltaLink and TransCanada, the “**Moving**
13 **Parties**”) regarding the interrogatory responses by EWT LP in its
14 transmission license application.

15
16
17 **WRITTEN SUBMISSION**

18 In accordance with Procedural Order No. 2 of the Ontario Energy Board (the “**Board**”) dated
19 December 22, 2011, EWT makes this written submission in response to the motions of the
20 Moving Parties in the above noted proceeding (together, the “**Motions**”).

21 EWT submits that the interrogatories, filed by the Moving Parties on November 21, 2011
22 (together, the “**Interrogatories**”) and objected to by EWT, are irrelevant to EWT’s license
23 application (the “**Application**”) and that the responses to the Interrogatories that EWT filed on
24 December 5, 2011 (the “**IR Responses**”) are proper. EWT therefore requests that the Board
25 issue a Decision and Order dismissing the Motions, confirming the sufficiency of the IR
26 Responses and strictly limiting the scope of the Application to those matters appropriately dealt
27 with in a licence proceeding.

28 In support of the requests above, and as elaborated on in the body of this Submission, EWT
29 further submits that:

1. The Moving Parties have misconstrued EWT's licencing proceeding in EB-2011-0350 (the "**Licensing Proceeding**") and its relationship to the designation process initiated by the Board for the development of the East-West Tie (the "**Designation Process**");
2. Based on Board precedent and policy, the issues underlying the disputed Interrogatories are not relevant to the issuance of a licence to EWT and should be dealt with in the Designation Process, to the extent they are relevant in the Designation Process;
3. The Moving Parties have asked a series of irrelevant Interrogatories, which request information of EWT that, if disclosed, would provide the Moving Parties with the opportunity to use that information for the collateral purpose of preparing their development plans, even though the Moving Parties would not be subject to the same level of disclosure. This departs from the Board's principle of treating participants in the designation process ("**Designation Participants**") fairly, equally and in a non-discriminatory manner;
4. In asserting their Interrogatories are relevant, the Moving Parties have incorrectly asserted that the ARC applies to EWT by mischaracterizing the Designation Process as a competitive unregulated market or contestable business activity instead of its legislatively correct characterization as a regulated process under the full control of the Board in which there are multiple applications;
5. The Moving Parties incorrectly conclude that somehow EWT has an unfair advantage relative to other Designation Participants and therefore requires different treatment. This is false since EWT is no different from any other Designation Participant regarding its ability to access information under the Information Protocols established by HONI and GLPT and recover its development costs;
6. The Moving Parties have ignored the important distinction between the participation of First Nations in a project from a commercial perspective and the ability of First Nations to carry out consultation as part of the duty to consult. In doing so, the Moving Parties have wrongly concluded that the Board should regulate, oversee or seek to fetter the lawful commercial activities of First Nations; and
7. If the Motions are granted and disclosure is required either in the Licensing Proceeding or prior to the filing of development plans as part of the Designation Process, this will be to the prejudice of EWT and to the advantage of the Moving Parties.

Based upon the above and the submissions that follow, the Motions should be dismissed.

1.0 EWT

In their Motion Submissions, the Moving Parties routinely mischaracterize EWT. Therefore a proper characterization of EWT is necessary at the outset of these submissions. First, contrary to

1 the Moving Parties allegations, EWT is not an incumbent transmitter. EWT is in fact a new
2 entrant transmitter in Ontario, just like the Moving Parties.

3 EWT is also not under the control of an incumbent transmitter.¹ In fact, EWT is controlled by its
4 general partner, East-West Tie Inc., which is an Ontario corporation. Under the ARC, East-West
5 Tie Inc. is not an affiliate of Great Lakes Power Transmission Inc., Great Lakes Power
6 Transmission LP, Hydro One Inc., Hydro One Networks Inc. (“**HONI**”), Bamkushwada Inc. or
7 Bamkushwada LP (“**BLP**”), as it is not a subsidiary of or controlled by any of these entities. This
8 is because each of the shareholders in East-West Tie Inc. -- Great Lakes Power Transmission
9 Inc., Hydro One Inc. and Bamkushwada Inc. (together, the “**Shareholders**”) -- hold only 33
10 1/3% of the outstanding shares in East-West Tie Inc., meaning that no subsidiary or control
11 relationship arises under the *Business Corporations Act* vis-à-vis the Shareholders and East-West
12 Tie Inc.

13 The Moving Parties routinely suggest that EWT is under the control of GLPT or HONI. This
14 argument ignores the facts above, which were provided with EWT’s transmission license
15 application (the “**Application**”) and restated in the response to AltaLink Interrogatory #2(a).
16 More importantly, it also ignores the fact that Bamkushwada Inc. is an equal Shareholder in
17 East-West Tie Inc. and that Bamkushwada L.P. (“**BLP**”) is an equal partner in EWT. In failing
18 to acknowledge those facts, the Moving Parties have chosen to ignore or diminish the role of
19 BLP and have incorrectly and unfairly failed to acknowledge the important role of BLP in the
20 partnership. The structure simply reflects the result of three equal ownership partners.

21 As a new entrant transmitter that is not under the control of an incumbent transmitter, EWT is
22 subject to the same cost recovery risk as the Moving Parties. In particular, the Board has
23 indicated that it will consider the reimbursement of development costs, whether incurred by a
24 newly licensed transmitter or an incumbent transmitter, only after such party is successfully
25 licensed and designated (i.e. becomes a “**Designated Transmitter**”). If a Designation
26 Participant is unsuccessful, there will be no cost recovery. In this regard, EWT and the Moving

¹ This is contrary to TransCanada’s allegation that EWT is under the control of HONI and GLPT. See TransCanada Notice of Motion, page 2.

Parties are subject to the same cost recovery risks. Like the Moving Parties, with respect to development activities, EWT takes the risk that it will not be able to recover the costs associated with those activities unless and until it becomes a Designated Transmitter.

With respect to historical information about the East-West Tie, GLPT and HONI submitted to the Board information protocols dated January 9 and 10, 2012, respectively (the “**Information Protocols**”). Contrary to the Motion Submissions of AltaLink, the Information Protocols identify strict walls that prevent, for example, the sharing of information about the East-West Tie by GLPT and HONI with EWT without all Designation Participants having access to the same information. Information can only fairly be shared through the Information Protocols and not on an ad hoc basis.

In sum, the Moving Parties incorrectly characterize EWT throughout their Motion Submissions as similar to, or under the control of, incumbent utilities when that is in fact not true. Rather, EWT is a new entrant transmitter like the Moving Parties that is subject to the same cost recovery risks. Finally, the Information Protocols address any potential advantage arising from the information described above in the possession of HONI and GLPT.

2.0 THE PROPER CONTEXT OF THE TRANSMISSION LICENCING PROCESS

The key issue before the Board in the Motions is the relevance of the Interrogatories to the Board’s consideration of the Application.² Instead, the Moving Parties mischaracterize the Licence Proceeding’s purpose as the means by which EWT’s role in the designation proceeding will be determined and the terms upon which HONI and GLPT will participate.³ The Moving Parties premise their arguments on the relevance of the Interrogatories on this mischaracterization. Yet those arguments ultimately fail because the Moving Parties have ignored the facts that (i) the Licensing Proceeding and the Designation Process are two separate processes; and (ii) the Board has clearly ruled on the scope of a licensing proceeding of a prospective Designation Participant.

² Note that the Moving Parties have not disputed EWT’s responses to all of the Interrogatories, only to those listed in Appendices A, B and C.

³ See, for example, TransCanada’s Notice of Motion, page 2 and AltaLink’s Notice of Motion, para. 28.

1 Licensing proceedings and designation proceedings have separate and distinct purposes. As
2 discussed further below, the Board has clearly determined that licensing proceedings for new
3 entrants that intend to participate in the Designation Process are a preliminary or threshold step
4 that precedes the Designation Process for the East-West Tie or any other transmission project. In
5 fact, the Board always intended the transmission licensing process to be a precondition for
6 parties wishing to be Designation Participants. In the Framework for Transmission Project
7 Development Plans (EB-2010-0059, the “**Framework**”), the Board states that it is “reasonable to
8 require that new entrant transmitters be licensed in order to participate in the designation process.
9 The licensing process will allow the Board to evaluate the financial viability and technical
10 capabilities of the new entrant transmitters”.⁴ This approach was drawn from Board Staff’s
11 Discussion Paper on Transmission Project Development Planning (EB-2010-0059, the “**Staff**
12 **Discussion Paper**”), in which Board Staff recommended that, “in order to file a transmission
13 project development plan requesting to be designated for any particular project, a new entrant
14 must be licensed by the Board as a transmitter. ... the licensing process can be used to ensure
15 that a new entrant meets certain **minimum requirements** in relation to financial and technical
16 capability, and can therefore provide comfort that the new entrant is both qualified and
17 committed to doing business in Ontario should it be designated”.⁵

18 In its comments on the Staff Discussion Paper, TransCanada Corporation, among others, agreed
19 that transmission licensing would be an appropriate precondition to participation in a
20 Designation Process because it would ensure that Designation Participants met certain minimum
21 standards. In particular, TransCanada Corporation submitted that “new entrants should be
22 required to be licensed as transmitters in order to participate in the designation process. The
23 requirement to be licensed will ensure that participants in the designation process have met the
24 Board’s **minimum standards** of financial and technical capability. This would assist in
25 streamlining the designation process **for any particular project**.”⁶ These comments are in line
26 with the Board’s view, discussed below, that an applicant’s ability to meet certain minimum

⁴ See page 5.

⁵ April 19, 2010, pages 9-10. Emphasis added.

⁶ TransCanada Corporation’s Stakeholder Comments on EB-2010-0059, May 31, 2010 (“TransCanada’s Comments”), page 1. Emphasis added.

1 requirements should not be assessed in relation to a particular transmission project given that
2 licensing is a general precondition to participation in any Designation Process.

3 In deciding the license applications of new entrant transmitters, including those of the Moving
4 Parties, the Board has consistently confirmed the purpose of licensing espoused in the Staff
5 Discussion Paper and the Framework -- i.e. that licensing is a preliminary precondition to
6 participation in a Designation Process. In particular, in its Decisions and Orders on the licensing
7 of new transmitters, the Board has determined that transmission licensing is a **“threshold
8 qualification step”**.⁷ It has also clearly stated the criteria it will use in assessing transmission
9 license applications in the circumstances: **“[t]he key areas reviewed by the Board in any
10 license application are the financial position, technical capability and conduct of an
11 applicant.”**⁸ This assessment is not meant to be an exhaustive review of financial capacity and
12 technical capability, but rather “a preliminary review” of the applicant in these respects.⁹

13 With respect to an applicant’s financial position, the Board “typically examines the applicant’s
14 financial information to get **some appreciation** of its ability to operate as a transmitter.”¹⁰ The
15 Board has found it sufficient for the applicant to have provided recent audited financial
16 statements for a parent company where the applicant was newly created and without its own
17 financial statements at the time.¹¹ In other licensing proceedings, the Board has found the
18 ability to access capital was sufficient evidence of the applicant’s financial position, and that the

⁷ See the Board’s Decisions and Orders in the Chatham-Kent Transmission Inc. (“Chatham-Kent”) license application (EB-2010-0351), page 7. Emphasis added. See also the Icon Transmission Inc. (“Icon”) license application (EB-2010-0403), pages 3-4 (regarding the “threshold qualification step”); the TransCanada license application (EB-2010-0324) (regarding the Board’s “preliminary review” of an applicant’s financial and technical capacities), page 7; and the AltaLink license application (EB-2011-0126), page 3 (regarding the “threshold qualification step”).

⁸ See the Board’s Decision and Order in the transmission license applications of TransCanada, AltaLink and Icon (EB-2010-0324, EB-2011-0126 and EB-2010-0403, respectively). Emphasis added.

⁹ See the Board’s Decision and Order in TransCanada’s license application (EB-2010-0324), page 7.

¹⁰ See the Board’s Decision and Order in the Chatham-Kent application (EB-2010-0351), at 5. Emphasis added.

¹¹ See the Board’s Decision and Order in the Icon application (EB-2010-0403), at page 4.

1 financial viability of an applicant's development of a particular project was not the focus of the
2 licensing process.¹²

3 With respect to an applicant's technical capability, the Board will examine the information
4 provided "to assess *at a preliminary stage* its ability to execute a predictable range of
5 transmission development projects".¹³ The Board has considered suitable evidence that
6 applicants or their affiliates have constructed transmission lines in other jurisdictions.¹⁴ In its
7 Decision and Order in the AltaLink Application, the Board determined that detailed technical
8 information, including regarding landowner and First Nations and Métis relations and cost and
9 schedule outcomes, was unnecessary to demonstrate the technical capability of the applicant.¹⁵

10 With respect to their conduct, applicant transmitters are also required to confirm that they have
11 not previously had a license or permit revoked and are not currently under investigation by any
12 regulatory body.¹⁶

13 Thus, the Board has clearly established that the transmitter licensing process is meant only as a
14 threshold qualification process to help the Board undertake a preliminary review of the
15 applicant's financial position, technical capability and past conduct. Because licensing is a
16 precondition to participation in any Designation Process, the Board has not evaluated any license
17 application in relation to a specific project; as stated by the Board, the licensing process is not
18 meant to "endorse the applicant's technical and financial capabilities in relation to the
19 development of a specific transmission project".¹⁷ The Board will only undertake that more

¹² See, for example, the Board's Decision and Order in the Chatham-Kent application (EB-2010-0351), at page 7-8; See the Board's Decision and Order in the Icon application (EB-2010-0403), at page 4.

¹³ See the Board's Decision and Order in the Chatham-Kent Application, at page 5. Emphasis added.

¹⁴ See the Board's Decision and Order in the Icon application (EB-2010-0403), at page 3; see also the Board's Decision and Order in the AltaLink application (EB-2011-0126), at page 3.

¹⁵ See the Board's Decision and Order the AltaLink application (EB-2011-0126), at page 4.

¹⁶ See the Board's Decision and Order in the TransCanada application (EB-2010-0324), at page 7.

¹⁷ See the Board's Decision and Order in the AltaLink application (EB-2011-0126), at page 4; the Board's Decision and Order in the Icon application (EB-2010-0403), at page 4; and the Board's Decision and Order in the TransCanada application (EB-2010-0324), at page 7.

1 detailed assessment during a Designation Process.¹⁸ AltaLink appeared to have accepted this
2 approach in its July 26, 2011 letter to the Board in which it submitted that:

3 “the project specific information requested by Hydro One may be relevant during
4 a specific designation process in contemplation of a specific new transmission
5 project, but that the information is simply not relevant to the Board’s assessment
6 of whether [AltaLink], *as a company*, has the commensurate financial resources,
7 or access to them, and the technical capability to own and operate a transmission
8 system in the public interest.¹⁹

9 EWT agrees that the project-specific information requested by AltaLink and the other Moving
10 Parties is similarly irrelevant to the EWT Licensing Proceeding.

11 Given the Board’s rulings, the Interrogatories in question are irrelevant. Contrary to the
12 suggestions of the Moving Parties, the Board does not require information about the contractual
13 arrangements of EWT and its partners to complete a preliminary assessment of EWT’s technical
14 capability and financial capacity. Again contrary to the Moving Parties’ suggestions, the Board
15 does not require a license applicant to prove project-specific expertise in its application. These
16 questions are more appropriately and thoroughly considered in a Designation Process.
17 Furthermore, what constitutes a fair Designation Process is not a subject for the threshold
18 Licensing Proceeding. The Licensing Proceeding is simply the means by which EWT comes
19 under the Board’s jurisdiction, enabling it to participate, like the Moving Parties, in a Board-
20 regulated process.

21 EWT notes that if a licenced transmitter (such as HONI, GLPT or Canadian Niagara Power)
22 sought to be designated, none of the questions asked by the Moving Parties would be considered
23 in a licensing proceeding because such a proceeding would not be required. The fact that EWT
24 requires a licence and has partners related to licenced transmitters is not sufficient reason to deal
25 with these issues in a licence proceeding.

¹⁸ See the Board’s Decision and Order in the TransCanada application (EB-2010-0324), at page 7; and the Board’s Decision and Order in the Chatham-Kent application (EB-2010-0351), at page 5.

¹⁹ July 26, 2011 Letter from AltaLink to the Board (EB-2011-0126). Emphasis original.

1 Thus, based upon the Board's rulings in the licence proceedings cited above, and given the
2 Board's intention for the Designation Process, the Designation Process is the appropriate forum
3 to consider the relevance of the issues raised by the Moving Parties. It is not prejudicial to the
4 Moving Parties to consider the relevance of the issues raised by the Moving Parties in that forum
5 because the Designation Process is yet to be finalized. Given the recent all-transmitter meetings
6 conducted with Board Staff, there is still sufficient opportunity to establish guidelines for the fair
7 preparation and evaluation of East-West Tie development plans.

8 However, the consideration of these issues in the Licencing Process would be prejudicial to
9 EWT. Doing so would not only conflict with the regulatory regime described above but also
10 impose considerable procedural unfairness on EWT as the only applicant seeking a licence to
11 participate in the East-West Tie Designation Process on which such a burden has been placed.
12 By way of analogy, it would be procedurally unfair to require a license applicant to respond to
13 interrogatories about a future rate application in the course of its licensing proceeding. It would
14 be similarly unfair to require EWT to respond to the Interrogatories that EWT identified as
15 irrelevant in its interrogatory responses (the "**Irrelevant Interrogatories**"). Rate applications
16 and designation proceedings are functions of being a licensed transmitter, not of the licensing
17 process itself.

18 **3.0 IT IS UNIQUELY PREJUDICIAL TO EWT TO REQUIRE THE**
19 **REQUESTED DISCLOSURE IN THE PRESENT CONTEXT**

20 In requesting that EWT disclose the information in the disputed Interrogatories, the Moving
21 Parties appear to be exploiting the fact that it is uniquely prejudicial to EWT to disclose that
22 information in the present context. In a typical Board hearing, the Board may choose to require
23 the disclosure of certain information and let the question of its relevance go to the weight the
24 Board will give the information when making its decision. In the present context, it would be
25 seriously prejudicial to EWT to require the requested disclosure and allow its relevance to go to
26 its weight. This is because the Interrogatories demand information that the Moving Parties can
27 use for collateral purposes in the Designation Process, even if the Board ultimately chose to give
28 it no weight in the Licensing Proceeding. Despite the best efforts of the Moving Parties to
29 suggest the Board needs this information to make an informed decision on the Application, it

would appear that the Moving Parties are instead demanding responses to the disputed Interrogatories to advantage their own prospects in the Designation Process. Allowing the Motions would allow the Moving Parties to exploit information for this collateral purpose while in no way assisting the Board in assessing the criteria it has established for threshold license applications. Requiring disclosure at this time would be seriously prejudicial to EWT and unfair.

4.0 MOVING PARTIES MISCHARACTERIZE THE DESIGNATION PROCESS

In mischaracterizing the Licencing Proceeding, the Moving Parties have also mischaracterized the Designation Process. The Moving Parties have done this in at least three ways:

1. the Moving Parties fail to treat the Designation Process as separate and distinct from the Licence Proceeding;
2. the Moving Parties incorrectly attempt to elicit information from a licence applicant that is only potentially relevant to the Designation Process, thereby imposing a premature and unfair burden on EWT; and
3. the Moving Parties incorrectly treat the Designation Process as analogous to a competitive unregulated market.

1. Separate Processes

As set out above, the Board has clearly delineated the scope of the License Proceeding for purposes of designation participation. In so doing, the Board established its intention to conduct the Designation Process separate from the License Proceeding and to have the Designation Process play a different role than the License Proceeding. The Board has demonstrated this intention in its licensing decisions, its report in EB-2010-0059 and in its letter of August 22, 2011 in which it invited licensed transmitters to participate.

In the Designation Process, the Board will assess development plans using a variety of project-specific criteria. Under the Framework, the Board has indicated that it will consider, among other things, organization, technical capability, financial capacity, schedule, costs and landowner and other consultations, all while taking into account the individual circumstances of the

1 project.²⁰ Indeed, these are the very subject of the irrelevant Interrogatories at issue in the
2 Motions. This assessment is meant to ensure that a Designation Applicant is not only able to
3 carry out the development project in question, but also as to how and when the development will
4 occur. As such, it is a much more detailed and specific assessment than that required for a
5 licensing proceeding, where the Board need only form a preliminary view of an applicant's
6 capabilities.

7 **2. *Disclosure by All Parties***

8 Importantly, the issues and filing requirements for the Designation Process are yet to be
9 finalized. As noted below, many of the disputed Interrogatories are really requests for disclosure
10 by a Designation Participant. In addition, many of those Interrogatories are in respect of
11 disclosure requirements that, to the extent they are relevant in the Designation Process, should be
12 applicable to all Designation Participants, including the Moving Parties, and not just EWT. Until
13 those requirements are finalized for all Designation Participants, it is inappropriate and unfair to
14 develop ad hoc disclosure requirements in the context of one party's licensing proceeding, since
15 the disclosure obligations of all parties cannot be considered in that context. As such, it is
16 premature to require EWT to address the irrelevant Interrogatories before the disclosure
17 obligations of all Designation Participants are clarified in the Designation Process. Furthermore,
18 the Licensing Proceeding does not provide a forum for the *fair* adjudication of the issues raised
19 by the Moving Parties. The issues raised by the Moving Parties are closely intertwined with the
20 general disclosure and filing requirements that the Board intends to establish for the Designation
21 Process. Yet the Board has limited jurisdiction within a single licensing proceeding to
22 comprehensively consider and rule on the requirements applicable to others in addition to the
23 licence applicant. Only in the Designation Process can the Board consider the issues holistically,
24 both in terms of how disclosure and filing requirements affect all Designation Participants and in
25 terms of how those requirements might interact with other elements of the Designation Process.

²⁰ See the Framework, pages 13-14.

1 **3. *Designation is not a Competitive Market***

2 In their Motions, the Moving Parties appear to view the Designation Process as a competitive
3 unregulated market for services, and the Application as an attempt to exploit market power to the
4 detriment of other market participants. This analogy is flawed and the conclusion is incorrect.
5 Transmission is a regulated activity and especially so, in the case of a designated project, where
6 the cost will be recovered from rates. Based upon its legislative origins, the Designation Process
7 is a regulated process available only to regulated entities as licensed transmitters, and established
8 so that the Board may direct and evaluate the development plans of licensed transmitters. All
9 aspects of the process are under the control of the Board and only by virtue of Board policy is the
10 process made competitive. As discussed below, it is this aspect that invalidates the Moving
11 Parties submissions on the application of the ARC.

12 **5.0 GENERAL OBJECTIONS TO THE MOTIONS**

13 In asserting justification for the Interrogatories in question, the Moving Parties have put forward
14 various general propositions. EWT submits these propositions are incorrect and should not be
15 adopted by the Board for purposes of assessing relevance of the disputed Interrogatories.

16 **5.1 EWT IS NOT SUBJECT TO THE ARC**

17 The Moving Parties are wrong that EWT is, or should be made, subject to the ARC. EWT is
18 controlled by its general partner East-West Tie Inc., which is an Ontario corporation. East-West
19 Tie Inc. has no affiliates, as that term is used in the ARC. The ARC adopts the definition of
20 “affiliate” from the *Business Corporations Act* (Ontario). Under that Act, one body corporate
21 shall be deemed to be affiliated with another body corporate if, but only if, (i) one of them is the
22 subsidiary of the other or (ii) both are subsidiaries of the same body corporate or (iii) each of
23 them is controlled by the same person. As mentioned above, East-West Tie Inc. is not an
24 affiliate of the Shareholders, as it is not a subsidiary of or controlled by any of these entities.
25 This is because each of the Shareholders holds only 33 1/3% of the outstanding shares in East-
26 West Tie Inc., meaning that no subsidiary or control relationship arises under the *Business*
27 *Corporations Act* (or the ARC) vis-à-vis the Shareholders and East-West Tie Inc. Consequently,

1 East-West Tie Inc. is not an affiliate of any entities to which the Shareholders are subsidiaries or
2 by which they are controlled.

3 The Moving Parties attempt to cast a suspicious light on the fact that EWT has no affiliates. In
4 particular, the Moving Parties suggest that EWT's partners, in establishing EWT, intended to
5 circumvent the ARC for some improper purpose.²¹ TransCanada wrongly asserts that EWT was
6 created by, funded by and is under the control of the "incumbent utilities". As well,
7 TransCanada's Motion baldly alleges that "by *combining* their efforts, the Incumbent Utilities
8 are not bound by the ARC's restrictions on sharing information, resources and services. The
9 [EWT] structure is aimed at a *diminution* of the Board's regulatory authority brought about by
10 *increasing* the dominant position of the Incumbent Utilities [i.e. HONI and GLPT]".²²

11 The Moving Parties' bald allegations ignore a common way in which private parties may
12 structure their commercial relationships. They neglect the fact that EWT is comprised of three
13 equal, arm's length partners, each with its own, distinct commercial interests, and each unable to
14 control EWT. In doing so, the Moving Parties would regrettably appear to assert that BLP, a
15 partnership of First Nations, cannot have its own distinct and legitimate commercial interests.
16 Given the inherent checks and balances in an arm's length structure, there is nothing unusual --
17 and certainly nothing improper -- about the fact that the structure is not subject to the ARC. In
18 suggesting that arm's length contracting is somehow untenable in the circumstances, the Moving
19 Parties imply that it would be preferable for EWT to be comprised of affiliates and subject to the
20 ARC than to be a partnership of arm's length parties. This implication is clearly contrary to the
21 intent of the ARC, which is that affiliate relationships require more Board supervision than arm's
22 length relationships because the former lacks the internal checks and balances of the latter.

23 In arguing the ARC should apply to EWT, the Moving Parties also rely on analogies that
24 mischaracterize the Designation Process. For example, according to TransCanada, the ARC
25 should apply to EWT vis-à-vis its partners as it does vis-à-vis incumbent utilities and their
26 affiliates that engage in open, competitive markets. The Moving Parties indicate that the Board

²¹ See, for example, TransCanada's Motion Submissions, page 7.

²² TransCanada's Notice of Motion, pages 5-6.

1 has previously required incumbent utilities wishing to participate in contestable businesses --
2 such as electrical contracting, natural gas storage and smart metering -- to comply with certain
3 regulatory restrictions on cost allocation and information sharing. The suggestion is that
4 because certain of EWT's partners are related to incumbent utilities there is a competitive
5 advantage and the arm's length partnership should be made subject to similar restrictions
6 regarding its participation in a Designation Process.

7 Fundamentally, the Moving Parties' argument is misconceived.²³ The Designation Process is not
8 a competitive market or a contestable business. Instead, it is a regulatory process that is wholly
9 under the control of the Board. Through its filing guidelines and Procedural Orders, the Board
10 wholly regulates the Designation Process, including the costs of any Designated Transmitter.
11 Purported analogies to competitive or contestable businesses are inapposite.

12 An example is useful for clarification. In its Motion, TransCanada cites the Natural Gas
13 Electricity Interface Decision (EB-2005-0551, the "**NGEIR Decision**") as standing for the
14 proposition that where the Board has permitted incumbent utilities to participate in contestable
15 businesses, it has required them to comply with rules respecting cost allocation and information
16 sharing.²⁴ As a starting point, the NGEIR Decision does not stand for the asserted proposition;
17 the Board gave no directions in this respect. NGEIR did result in the eventual passage of the
18 Storage Access and Transmission Rule ("STAR"). That rule has nothing to do with cost
19 allocation. It requires, in general terms, that utilities report on storage and transportation activity
20 on their system and make available to the market their standard terms and conditions.

21 Moreover, in the NGEIR Decision, the issue was whether and how the Board, *in refraining from*
22 *regulating storage*, must ensure consumer protection within the *competitive market* for storage in
23 Ontario.²⁵ It is misleading for a number of reasons to analogize the NGEIR Decision to EWT's
24 participation in a Designation Proceeding. First, as discussed, EWT is not an incumbent utility,
25 such as those wishing to participate in natural gas storage market. Second, by initiating a
26 Designation Process, the Board will in no way be refraining from regulating transmission

²³ That argument is set out in TransCanada Notice of Motion, pages 3-6; Motion Submissions, pages 4-6.

²⁴ TransCanada's Motion, page 4.

²⁵ NGEIR Decision, November 7, 2006 (EB-2005-0051), page 75.

1 facilities by way of leave to construct, licenses or the rates charged for transmission. Rather,
2 even though the Designation Process has a competitive aspect in the sense that Designation
3 Participants compete for designation to develop a specific transmission project, the process is
4 still a wholly regulated one. Thus, the fundamental concern underlying the cited portion of the
5 NGEIR Decision -- namely, that an incumbent utility, through its affiliates, might set rates that
6 weaken competition in a competitive market -- is not relevant in the present context, where
7 GLPT or HONI cannot even control EWT on their own, much less do so in a way that interferes
8 with regulated transmission. The circumstance for which the ARC was developed does not exist
9 here, and the ARC does not and should not apply to EWT.

10 Finally, the ARC should not be used as a tool to interfere with the contractual relationships of
11 arm's length third parties, as the Moving Parties would have it. This would extend the
12 application of the ARC beyond its intended purpose and bring into issue when and to what extent
13 it should apply to non-affiliate relationships. This is beyond the scope of the Licensing
14 Proceeding and to our knowledge has not been considered by the Board in any other proceeding.
15 In any event, this need not be considered in the current context when the Board is fully in control
16 of all aspects of the process.

17 **5.2 EWT IS SUBJECT TO INFORMATION SHARING PROTOCOLS AND**
18 **THE BOARD'S PLATFORM FOR INFORMATION SHARING IN THE**
19 **DESIGNATION PROCESS**

20 The Moving Parties suggest that all of their Interrogatories are relevant because they believe that
21 incumbent transmitters -- namely, HONI and GLPT -- may use certain information in their
22 possession to aid EWT. However, EWT has no authority to control, obtain or disclose any
23 information that might be in the possession of GLPT or HONI. As such, the Board should not be
24 able to impose a license condition or other requirement on EWT to disclose information that is
25 not under its control; for in practice, EWT would be unable to comply with a requirement for
26 disclosure of information that is in the possession or control of GLPT or HONI.

27 In any event, protections have been voluntarily established by GLPT and HONI. In response to
28 the Board, GLPT and HONI filed with the Board the Information Protocols, which identify the

1 protocols that are in place for the fair treatment of all Designation Participants requesting certain
2 information from GLPT and HONI, respectively. The Information Protocols provide for a
3 separation of EWT from GLPT and HONI. They also contain procedures for the distribution of
4 information from GLPT and HONI to Designation Participants, while maintaining
5 confidentiality. Furthermore, EWT understands that the Board, through Board staff, is initiating
6 further disclosure of information relating to the existing East-West Tie line from HONI and
7 GLPT in a manner that is equally available to all Designation Participants. The Board's oversight
8 of those protocols will ensure that the appropriate information is disclosed from GLPT and
9 HONI to all Designation Participants, including EWT, making the Interrogatories relating to
10 disclosure of such information irrelevant.

11 GLPT and HONI's Information Protocols were filed in response to the Board's letter of
12 December 22, 2011. In this letter the Board inquired about protocols put in place by GLPT and
13 HONI. UCT incorrectly asserts that the letter is evidence of the fact that the Board has expressed
14 concern over the relationships between EWT, GLPT and HONI. The December 22, 2011 letter
15 is merely a request and not a ruling and cannot be relied on by UCT in the manner described.

16 In sum, EWT and the incumbent transmitters are subject to strict information protocols. Like
17 every other Designation Participant, EWT will have to rely on the same processes established by
18 the Information Protocols and the Board and facilitated by Board Staff to obtain information
19 from the OPA, IESO, HONI and GLPT in the preparation of its development plan. EWT is on
20 the same level as all other participants in this regard.

21 **5.3 THE FACT GLPT AND HONI OBTAIN REVENUE FROM RATES IS** 22 **NOT RELEVANT**

23 The Moving Parties wrongly assert that because HONI and GLPT are rate recovering entities any
24 information related to the development of the East-West Tie, including that in the possession of
25 EWT, should be disclosed to the benefit of all Designation Participants.

26 The nature of the information sought (particularly through TransCanada Interrogatories #1-13)
27 is, among other things, detailed information related to resources invested in the East-West Tie
28 and all associated development materials, agreements, costs and studies. As submitted above,

1 these Interrogatories are irrelevant since for the purposes of the Licensing Proceeding the
2 information requested is unnecessary for the Board to assess at a preliminary stage EWT's ability
3 to execute a predictable range of transmission projects and project-specific information has been
4 found to be irrelevant to a licensing proceeding.

5 Based upon the Interrogatories in question, the scope of disclosure sought by the Moving Parties
6 is all encompassing. However, to provide context, the information in the Designation
7 Proceeding could be divided into three parts: (i) historical documentation on the existing East-
8 West Tie line; (ii) documentation generated as part of the analysis done by the OPA and the
9 IESO for purposes of the Designation Proceeding; and (iii) proprietary documentation generated
10 to prepare a development plan for purposes of designation in respect of the new East-West Tie
11 line.

12 With respect to categories number (i) and (ii), as established in recent all transmitter meetings
13 chaired by Board Staff, in which HONI, OPA and IESO participated, all of these parties were
14 prepared to disclose information related to categories (i) and (ii) and respond to additional
15 questions.

16 Although guised in an overarching question for information relevant to the Licensing
17 Proceeding, the real focus of the Moving Parties is the information which falls into category
18 number (iii), since this information will advance the interests of the Moving Parties and assist in
19 the preparation of their development plans. However, information of this kind is proprietary
20 regardless of whether it is generated by a rate recovering entity such as HONI and GLPT or by
21 an ordinary designation participant such as EWT -- or TransCanada, UCT or AltaLink for that
22 matter.

23 Putting aside the issue of who is or is not an incumbent and the role of GLPT and HONI, at the
24 very heart of the Moving Parties position is the premise that a rate recovering entity is obliged to
25 share its property and has no proprietary interest. Based upon established law and regulatory
26 principles, this is not correct. The consumers of utilities pay for a service, but by such payment,
27 they do not receive a proprietary right in the assets of the utility company. Deployment of that

1 property in utility service does not create or transfer any legal or equitable rights in that property
2 to the rate payer.²⁶ Therefore, property, whether tangible or intangible, acquired as part of the
3 development of regulated transmission (whether part of designation or not) is the proprietary
4 interest of the transmitter. It is not appropriate for the Board to cause the disclosure of
5 information that is proprietary where the information is to be used by others for a collateral
6 purpose such as a designation filing.

7 In any event, the rate payer is not yet exposed to any costs associated with development of the
8 project in question. The Board has been clear about the recovery of costs related to participation
9 in a designation process and the preparation of a development plan. In particular, the Board has
10 indicated that it will consider any such costs, whether incurred by a newly licensed transmitter or
11 an incumbent transmitter, only after such party is successfully licensed and designated. If a
12 designation participant is unsuccessful, there will be no cost recovery. In this regard, all
13 designation participants are treated the same and are subject to the same cost recovery risks. The
14 risk is not diminished because costs are or will be recorded under a deferral account as the
15 accounts remain subject to a prudence review. There is no difference than the risks faced by all
16 designation participants whether they are rate recovering entities or not.

17 As a result, in the context of the Designation Process all “shareholders” or “owners” are at risk
18 for the costs related to the preparation of the development plan and participation in the
19 Designated Process. In this regard, EWT is the same as any other designation participant. In
20 addition, any rate recovering entity or incumbent transmitter participating would also be subject
21 to the same risk. Based upon the Board’s approach in the Framework, designation processes are
22 open to both incumbent and newly licensed transmitters. Other than possible disclosure
23 obligations relating to project-specific technical or reliability issues, the Framework and the
24 corresponding filing instructions do not contemplate additional disclosure obligations on
25 incumbent transmitters simply because they are rate recovering entities, and an incumbent rate
26 recovering transmitter would be free to participate in a designation process on its own without
27 being subject to additional disclosure requirements sought by the Moving Parties.

²⁶ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140, paras. 68-69.

As such, to the extent that parties have a proprietary interest in the results of their own development work and bear the risk of non-recovery, those parties have rights to retain that interest and not to be compelled to share it as common property. To treat any entity, including a rate recovering entity, differently, when it is subject to the same risk, would be unfair and discriminatory. Whether an entity is rate recovering or not, the disclosure of proprietary information would effectively be the same as the taking of property without compensation. The forgoing is consistent with the cost recovery regime established in the Designation Process and with rate making principles.

5.4 A PROPER AND SUFFICIENT ANSWER IS PROVIDED ON FIRST NATIONS CONSULTATION

Both AltaLink (Interrogatory 4) and UCT (Interrogatory 5) sought clarification of the ability of the participating First Nations forming BLP (the “**Participating First Nations**”) to cooperate with other Designation Participants and carry out consultation. EWT responded as follows:

The Applicant is in no way attempting to exclude new entrant transmitters from developing projects along the East-West Tie 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.²⁷

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.²⁸

EWT objected to Interrogatories about BLP’s commercial participation in EWT, which are irrelevant to the Licencing Proceeding. A review of EWT’s commercial arrangements does not relate to the Board’s preliminary assessment of the financial and technical capabilities of EWT.

Perhaps more fundamentally, both UCT and AltaLink appear to confuse the important distinction between “consultation” with First Nations and the “participation” of First Nations in a

²⁷ EWT Response to AltaLink Interrogatory 4(a).

²⁸ EWT Response to AltaLink Interrogatory 4(b). Emphasis added.

1 commercial arrangement.²⁹ The former relates to a specific legal obligation that rests with the
2 Crown and that may be delegated to the Designated Transmitter. The latter relates to a
3 commercial relationship between two parties. With respect to the duty to consult, EWT is clear
4 in its Interrogatory response that BLP's partnership in EWT does not impair or affect the
5 Participating First Nations' ability to consult. The First Nations are governing bodies whose
6 responsibility to entertain consultation on behalf of their peoples transcends commercial
7 relationships, and EWT respects that responsibility. With respect to the commercial aspect of
8 participation, UCT and AltaLink would appear to want the Board to regulate and fetter the
9 contractual relationships of First Nations. Doing so is not within the Board's jurisdiction, and
10 UCT and AltaLink's inappropriate assertion that the Board should involve itself in such affairs
11 suggests that those Moving Parties have little regard for the abilities of First Nations to undertake
12 self-determination from a commercial perspective.

13 Thus, although the nature of First Nations participation in a project may be a factor in the
14 Board's consideration of a development plan, it is not a relevant issue for the Licencing
15 Proceeding.

16 **5.5 LICENSE CONDITIONS ARE NOT A SUITABLE MECHANISM FOR** 17 **ADMINISTERING A DESIGNATION PROCESS**

18 Given that transmission licensing is a precondition to participation in a Designation Process,
19 license conditions are not a suitable mechanism for administering that Designation Process. The
20 Moving Parties suggest otherwise. TransCanada, for example, suggests that the Board should
21 include conditions in EWT's license that address the issue of "how the information and resources
22 respecting the East-West tie that the Incumbent Utilities acquired in the process of providing
23 utility services are to be used in the Designation Process"³⁰ Even more broadly, UCT
24 suggests that the Board should consider what conditions on EWT's license would be appropriate

²⁹ For example, this confusion seems apparent in AltaLink's Notice of Motion.

³⁰ TransCanada's Motion, page 1.

1 to ensure that EWT does not obtain an undue advantage in the East-West Tie Designation
2 Process.³¹

3 There are various reasons why the Board should not impose disclosure and other conditions
4 related to the East-West Tie in EWT's transmission license. First, the Board has granted many
5 of the Designation Participants transmission licenses that will only take effect if and when they
6 become a Designated Transmitter or obtain transmission assets in Ontario. As a result,
7 conditions in these licenses will have no effect until such time as the licenses themselves take
8 effect. For example, TransCanada will not be required to comply with the ARC in regards to its
9 affiliate relationships if and until it becomes a Designated Transmitter or obtains transmission
10 assets in Ontario -- in other words, this condition will not be imposed at all during the
11 Designation Process.³² EWT has requested that its license be issued with the same effective
12 date.³³ To impose license conditions on EWT's participation in the Designation Process would
13 require the Board to discriminate against EWT by departing from the Board's previous decisions
14 to grant the delayed effective date.

15 In addition, it would be contrary to the Board's stated principles of transmission planning --
16 namely those of administrative efficiency and predictability³⁴ -- to impose license conditions
17 relating to EWT's participation in the Designation Process. It is reasonable to expect that the
18 Board may need to clarify certain elements of the Designation Process, including aspects of any
19 disclosure and filing requirements, as the process unfolds. Yet it would be administratively
20 inefficient to effect such clarifications through amendments to EWT's transmission license.
21 Doing so would likely duplicate efforts; for each clarification the Board provides to all
22 Designation Participants, including EWT, it would then have to consider whether the
23 clarification affects the East-West Tie-specific conditions in EWT's license. If it does, EWT
24 would likely have to go through a license amendment proceeding before those conditions could
25 be amended. Furthermore, imposing such conditions on EWT's license would not support the

³¹ UCT's Motion, page 2.

³² See, for example, the Board's Decisions and Orders to Amend TransCanada's Transmission License (EB-2010-0324) and AltaLink's Transmission License (EB-2011-0406).

³³ November 18, 2011 Amendment Request in EB-2011-0350.

³⁴ Framework, page 3.

Board's guiding principle of regulatory predictability, whereby the Board seeks to implement "transparent processes leading to consistency in the determinations it makes and the orders that it issues".³⁵ Issuing a Procedural Order to all Designation Participants in a Designation Process, only then to undertake a separate process to apply the requirements of that order to a single transmitter, has the potential to lead to less consistent and less transparent determinations than if the Board simply relies on the force and effect of the Procedural Order for all parties.

Importantly, by refusing to impose East-West Tie-specific conditions in the Licensing Proceeding, the Board in no way prejudices its ability to impose such conditions in the future once a party is designated. The Board has already indicated that it will impose license conditions, including ARC conditions, on certain Designation Applicants after, and if they are successful in, the East-West Tie Designation Process.³⁶

6.0 SPECIFIC OBJECTIONS TO INTERROGATORIES AND MOTION SUBMISSIONS

6.1 SPECIFIC OBJECTIONS TO TRANSCANADA'S INTERROGATORIES

Appendix A contains a list of the TransCanada Interrogatories that are in dispute (i.e. TransCanada Interrogatories 1-15), as well as reasons why each of them has been sufficiently answered by EWT.

6.2 SPECIFIC OBJECTIONS TO UCT'S INTERROGATORIES

Appendix B contains a list of the UCT Interrogatories that are in dispute, as well as reasons why each of them has been sufficiently answered by EWT.

6.3 SPECIFIC OBJECTIONS TO ALTALINK'S INTERROGATORIES AND ADDITIONAL MOTION SUBMISSIONS

Appendix C contains a list of the AltaLink Interrogatories that are in dispute, as well as reasons why each of them has been sufficiently answered by EWT.

³⁵ Framework, page 3.

³⁶ See, for example, the Board's Decision and Order dated November 2, 2011 regarding TransCanada's license amendment application in EB-2011-0260.

1 We also note that AltaLink, by its own admission in its Motion submissions dated January 17,
2 2012 (the “**Additional Submissions**”), raises issues that were not raised in its Notice of Motion.
3 In making the Additional Submissions, AltaLink is attempting to raise an issue in the Licensing
4 Proceeding -- the sufficiency of the Information Protocols -- that is clearly already being dealt
5 with as part of the Designation Process, including through the Board’s request for HONI and
6 GLPT to produce their Information Protocols and through the Board’s development of a platform
7 for HONI, GLPT and the IESO to disclose information to all Designation Participants.

8 **6.4 SPECIFIC OBJECTIONS TO RES CANADA’S INTERVENOR**
9 **SUBMISSIONS**

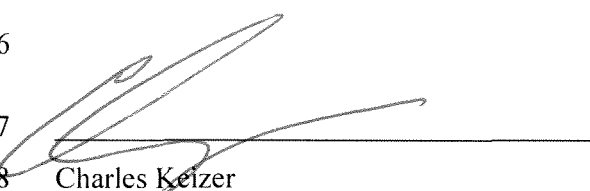
10 The intervenor submissions of RES Canada attempt to argue that EWT should not be permitted
11 to participate in the Designation Process at all. In doing so, RES Canada effectively restates the
12 submissions already made by the Moving Parties.³⁷ As such, based on the foregoing, EWT
13 submits that the Board should wholly reject RES Canada’s submissions. In particular, RES
14 Canada’s argument is that there should be a special threshold test of whether EWT should be
15 able to participate in the Designation Process. This is in no way relevant to the License
16 Proceeding. Rather, it essentially tries to argue that a licensed transmitter (which EWT is not in
17 any event) operating prior to the commencement of a Designation Process should not be entitled
18 to participate in such a process, in large part because its past experience may make it better
19 equipped to undertake the project in question. This notion is completely foreign to the
20 Framework, which clearly contemplates the participation of existing transmitters in designation
21 process. RES Canada’s argument is also not supported by any principles of cost effectiveness or
22 efficiency; experience should not disqualify a party from participating in a process where
23 experience is likely to bring with it competent and cost-effective proposals. Limiting the
24 Designation Process as suggested by RES Canada is the antithesis of the Board’s underlying
25 objective in establishing the Designation Process.

³⁷ In particular, RES Canada repeats arguments that EWT is somehow under the control of, and privy to undue information from, HONI and GLPT; that EWT should somehow be made subject to the ARC given RES Canada’s suggestion that the Designation Process is equivalent to a competitive market; that the Information Protocols are insufficient; and that the Board should impose license conditions on EWT to constrain EWT’s participation in the Designation Process. All of these issues are already addressed in these Submissions.

1 In this regard, EWT supports the submissions of the Power Workers Union set out at paragraphs
2 20 through 22. As a practical reality, all Designation Participants will have their strengths and
3 weaknesses with respect to establishing a development plan and as such while the process is
4 competitive, it does not mean the process is unfair. Based upon RES Canada's logic, if a
5 participant retained a person that had intimate knowledge of the East-West Tie, that participant
6 would have an undue advantage. This position is not tenable.

7 With respect to RES Canada's commentary at paragraph 9 of its submissions that EWT is taking
8 a litigious position, EWT notes that the rulings of the Board in respect of licencing were well
9 known to all the Moving Parties as well as RES Canada. Nevertheless, they posed
10 interrogatories that related directly to the Designation Process and the use of that information to
11 assist in the preparation of their plans and brought the corresponding motions when EWT
12 properly responded based on the Board's rulings that the Interrogatories were irrelevant in
13 respect of the Licensing Proceeding.

14 All of which is respectfully submitted this 31st day of January, 2012
15 by legal Counsel to EWT LP

16
17
18  Charles Keizer
19

APPENDIX A TRANSCANADA'S DISPUTED INTERROGATORIES

Disputed Interrogatory*	Reasons for the irrelevance of the Interrogatory and/or the sufficiency of EWT's response
1, 7, 8	These Interrogatories are irrelevant to the Licensing Proceeding. EWT already provided considerable detail based on Board rulings on why a narrow project-specific question such as these Interrogatories are irrelevant to the Board's assessment at a preliminary stage of EWT's ability to execute a predictable range of transmission development projects. The Board has also found that project-specific information is irrelevant to a licensing proceeding.
2	EWT's response to this Interrogatory is sufficient, given that the Interrogatory requests information on EWT's access to financial resources that is irrelevant to a licensing proceeding. The Board has clearly stated that it need only obtain some appreciation of an applicant's ability to operate as a transmitter during the licensing proceeding. The Board has also found that this appreciation can be gained by a review of recent audited financial statements for a parent company, which EWT has provided. Furthermore, TransCanada requests information specifically in relation to the East-West Tie. The Board has found that project-specific information is not relevant to a licensing proceeding.
3, 5 and 11	These Interrogatories are irrelevant to the Licensing Proceeding. EWT already provided considerable detail on why narrow project specific questions such as these Interrogatories are irrelevant to the Board's assessment at a preliminary stage of EWT's ability to execute a predictable range of transmission development projects. The Board has also found that project-specific information is irrelevant to a licensing proceeding. Furthermore, in asking these Interrogatories, TransCanada seeks to obtain an unfair advantage in the East-West Tie Designation Process through EWT's licensing proceeding. In particular, in these Interrogatories, TransCanada requests certain documentary materials and communications from EWT that by its nature will form the basis of TransCanada's and other Designation Participants designation filings. However, disclosure at this time by EWT would be prejudicial to EWT. As described in these submissions, there are already protocols established in the East-West Tie Designation Process for the fair disclosure of information among the parties.
4, 12, 13, 14	These Interrogatories are irrelevant to the Licensing Proceeding, given that EWT has already provided sufficient information on its financial and technical capability. The Board has clearly stated that it need only obtain some appreciation of an applicant's ability to operate as a transmitter during the

	<p>licensing proceeding. The Board has also found that this appreciation can be gained by a review of recent audited financial statements for a parent company, which EWT has provided. EWT has also shown that it has access to qualified personnel, which the Board has found to be evidence of sufficient technical capability for a licensing proceeding. EWT also noted in its response to Interrogatory 14 that its current intention is to establish a procurement process in which suitably qualified and experienced third parties may be invited to participate. The additional details requested by TransCanada -- including with respect to EWT's contractual arrangements (Interrogatories 4, 12 and 14) and its compensation arrangements (Interrogatory 13) -- are unnecessary for the Board to assess at a preliminary stage EWT's ability to execute a predictable range of transmission development projects.</p>
6, 9, 10	<p>These Interrogatories are irrelevant to the Licensing Proceeding. EWT already provided considerable detail on why a narrow project-specific question such as these Interrogatories are irrelevant to the Board's assessment at a preliminary stage of EWT's ability to execute a predictable range of transmission development projects. The Board has also found that project-specific information is irrelevant to a licensing proceeding. Moreover, in submitting these Interrogatories, TransCanada neglects the fact that information recorded in a rate recovering transmitter's deferral account is still subject to Board approval before it can be recovered. Furthermore, costs of a Designation Participant relating to the East-West Tie can only be recovered if that party becomes the Designated Transmitter, which means that amounts in a deferral account relating to the East-West Tie cannot be recovered if and until that time either. Thus, the requested project-specific information -- regarding cost allocation and the approach to costs included in certain deferral accounts and the differentiation of costs before and after such accounts were established -- is irrelevant to the Licensing Proceeding.</p>
15	<p>The information regarding key individuals that is the subject of this Interrogatory was kept confidential by the Board at its initiative. If TransCanada wishes to access this information, it should file a formal undertaking with the Board to view the confidential information in accordance with the Board's <i>Practice Direction on Confidential Filings</i>.</p>

* If a TransCanada Interrogatory is not listed here, TransCanada has not contested the sufficiency of EWT's response.

APPENDIX B UCT'S DISPUTED INTERROGATORIES

Disputed Interrogatory*	Reasons for the irrelevance of the Interrogatory and/or the sufficiency of EWT's response
2(b)	<p>UCT argues that EWT should be required to disclose certain information regarding key individuals named in the Application. The disputed information was kept confidential by the Board at the Board's initiative. Section 2 of the Application Instructions states that the "Board shall keep confidential the information in Item 10, Section B of this form, with the exception of the names and positions held of key individuals. All other information filed as part of this application will be considered public." EWT has been informed that the reference to Item 10, Section B in the Application Instructions is to the whole of Item 10, including paragraphs a) to c), within Section B (Corporate Information) of the Application Form. We understand that in posting the Application on its website, the Board posted a version where all of Item 10 was redacted except for the names and positions of key individuals, which is in accordance with the Application Instructions. If UCT wishes to access this information, it should file a formal undertaking with the Board to view the confidential information in accordance with the Board's <i>Practice Direction on Confidential Filings</i>. UCT appears to be willing to file such an undertaking,³⁸ but must do so in the correct form.</p>
4	<p>EWT's response to this Interrogatory is sufficient, given that the Interrogatory requests information on EWT's financial resources and access to capital that is irrelevant to a licensing proceeding. The Board has clearly stated that it need only obtain some appreciation of an applicant's ability to operate as a transmitter during the licensing proceeding. The Board has also found that this appreciation can be gained by a review of recent audited financial statements for a parent company, which EWT has provided. The project-specific information that UCT requests is not relevant to a licensing proceeding.</p>
5	<p>EWT's response to this Interrogatory is sufficient. It clearly states that the relevant First Nations are not impeded in their ability to participate in consultation and accommodation with all Designation Participants. EWT need not disclose any other information about its relationships with the participating First Nations. That information in no way relates to a preliminary assessment of the financial and technical capability and past conduct of EWT. UCT's request for that information intimates that BLP is not an equal partner in EWT, but rather a partner whose contractual arrangements the Board should carefully</p>

³⁸ UCT's Motion Submissions, para. 25.

	manage, even though the Board has no authority to do so. That position seems to question BLP's ability to enter into its own commercial relationships and misses the distinction between the participating First Nations' duties to consult and their ability to participate in commercial activities. Contrary to UCT's intimation, the Board should not and cannot supervise how First Nations chose to enter into commercial arrangements.
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* If a UCT Interrogatory is not listed here, UCT has not contested the sufficiency of EWT's response.

APPENDIX C

ALTALINK'S DISPUTED INTERROGATORIES

Disputed Interrogatory*	Reasons for the irrelevance of the Interrogatory and/or the sufficiency of EWT's response
1(c)	EWT's response to this Interrogatory is sufficient. EWT responded that it intends to contract with HONI to undertake systems operations for any new EWT transmission facilities. This shows EWT's access to qualified personnel, which the Board has found to be evidence of sufficient technical capability for a licensing proceeding. The additional details requested by AltaLink, including regarding how EWT will compensate HONI, are unnecessary for the Board to assess at a preliminary stage EWT's ability to execute a predictable range of transmission development projects, and thus irrelevant to the Licensing Proceeding.
1(e)	EWT's response to this Interrogatory is sufficient. EWT responded that it intends to contract with GLPT or a related entity for the development and management of any future new EWT transmission facilities. This shows EWT's access to qualified personnel, which the Board has found to be evidence of sufficient technical capability for a licensing proceeding. The additional details requested by AltaLink, including regarding how EWT will compensate GLPT, are unnecessary for the Board to assess at a preliminary stage EWT's ability to execute a predictable range of transmission development projects, and thus irrelevant to the Licensing Proceeding.
1(l)	EWT's response to this Interrogatory is sufficient. EWT responded that it intends to contract with BLP with third parties, including First Nation-owned businesses, to provide inspection and maintenance services for any new EWT transmission facilities. The additional details requested by AltaLink, including regarding how EWT will compensate BLP, are unnecessary for the Board to assess at a preliminary stage EWT's ability to execute a predictable range of transmission development projects, and thus irrelevant to the Licensing Proceeding.
3	EWT correctly stated that this Interrogatory is irrelevant to the Licensing Proceeding. This Interrogatory requests information that is relevant only to the East-West Tie. The Board has clearly stated in its licensing decisions that such project-specific information is irrelevant to a licensing proceeding. Project-specific information is only potentially relevant to a Designation Process. In particular, in this Interrogatory, AltaLink requests information about communications between HONI and GLPT and the Ministry of Energy, the OPA and the IESO. This question is asked in EWT's licensing proceeding,

	and based on the Board's rulings has no bearing on the issuance of the licence. In any event, AltaLink fundamentally neglects that this is EWT's licensing proceeding, and that EWT is not an affiliate of GLPT or HONI.
4	EWT's response to this Interrogatory is sufficient. It clearly states that the relevant First Nations are not impeded in their ability to participate in consultation and accommodation with all Designation Participants. EWT need not disclose any other information about its relationships with the participating First Nations. That information in no way relates to a preliminary assessment of the financial and technical capability and past conduct of EWT. AltaLink's request for that information intimates that BLP is not an equal partner in EWT, but rather a partner whose contractual arrangements the Board should carefully manage, even though the Board has no authority to do so. That position seems to question BLP's capacity and ability to enter into its own commercial relationships and misses the distinction between the participating First Nations' duties to consult and their ability to participate in commercial activities. Contrary to UCT's intimation, the Board should not and cannot supervise how First Nations chose to enter into commercial arrangements.
5	EWT's response to this Interrogatory is sufficient, given that the Interrogatory requests detailed information on EWT's reliance on the financial resources of its limited partners and the legal obligations of those partners to provide financing. EWT already confirmed in its Interrogatory response that it will have the ability to raise financing through equity and debt as would typically be done for transmission projects in Ontario. This is sufficient for the purposes of the Application, as the Board has clearly stated that it need only obtain some appreciation of an applicant's ability to operate as a transmitter during the licensing proceeding. In addition, the Board has found that this appreciation can be gained by a review of recent audited financial statements for a parent company, which EWT has provided. The detailed information that UCT requests is not relevant to a licensing proceeding.

* If an AltaLink Interrogatory is not listed here, AltaLink has not contested the sufficiency of EWT's response.