

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.

Reply Submissions on Motion for Further and Better Interrogatory Responses

1. Pursuant to Procedural Order No. 2, herein, Upper Canada Transmission, Inc. (UCT) provides brief reply to the Written Submission of EWT LP (EWT LP Response) on UCT's motion for further and better interrogatory responses.

General Reply

2. In its combined response to UCT, TransCanada and AltaLink (collectively the Moving Parties), EWT LP has asserted, *inter alia*, that:
 - a. The Moving Parties have sought information through the contested interrogatories that is irrelevant to the threshold considerations applicable to this transmission licence application. EWT LP has narrowly characterized those licence application considerations based on the Board's recent decisions regarding the applications of other transmitters seeking to participate in the Board's upcoming East-West Tie Line Transmission Development Designation Proceeding (Designation Proceeding).
 - b. The Moving Parties have conflated the distinction between the Designation Proceeding and this transmission licence application, improperly raising issues herein that are more appropriately raised in the Designation Proceeding.

3. UCT agrees with EWT LP that the issue before the Board on these interrogatory motions is whether the requested information is relevant to arguments that may reasonably be advanced in this licencing application.¹
4. However, UCT disagrees with EWT LP that, at this stage of this particular application, the Board should narrowly limit the scope of these arguments, with reference only to those considerations which the Board has recently articulated in other, factually distinct, applications.²
5. Given the identity of the EWT LP participating entities – Hydro One Networks Inc. (Hydro One) and Great Lakes Power Transmission Inc. (GLPT) in particular – the arguments that will be made in this licencing application, brought expressly in anticipation of participation by the applicant in the competitive Designation Proceeding, will be different than those considered by the Board in recent transmission licencing applications. This is already apparent from submissions filed on the interrogatory motions. In this context, the Board should not narrow, at this interlocutory stage, the basis upon which it will decide the substance of this licencing application.
6. UCT submits that provided that some reasonable basis for the relevance of the information sought on these motions has been provided, response should be directed. The Board should rule on the arguments to be advanced on the application only once the factual record is complete and the arguments on the application itself can thus be properly framed.

UCT Interrogatory 2, part b.

7. In its interrogatory 2, part b., UCT has sought basic information on the role of the EWT LP “Key Individuals” with Hydro One and GLPT, in order to be able to assess, and ultimately argue if it so chooses, whether conditions similar to those

¹ EWT LP Submission, page 6, lines 18 and 19.

² EWT LP Submission, page 3, lines 26 and 27.

required by the Board's affiliate relationships code are appropriately considered in this licencing application.

8. That the applicant is a limited partnership and thus avoids the application of the Board's *Affiliate Relationships Code for Electricity Transmitters and Distributors* on its face does not negate the fact that two of its three controlling partners are Ontario's two incumbent transmitters.
9. The relevance of the requested information to the arguments likely to be advanced in submissions on EWT LP's application is detailed at paragraphs 16 through 24 of UCT's January 17, 2012 Submissions in support of its motion (UCT Motion Submissions).
10. EWT LP has not indicated how placing the requested information on the public record would be prejudicial to it.
11. UCT submits that absent any basis for retaining the requested information from the public, the information should be put on the public record as evidence by EWT LP, and should be readily available for reference by UCT, and others, in substantive submissions on this application if the submitting party deems it appropriate.
12. UCT is fully prepared to execute a confidentiality undertaking as suggested by EWT LP³, if demonstrably required due to the nature of the information in question. However, EWT LP has provided no basis to retain such information in confidence. UCT submits that the Board should direct public disclosure of the information.

³ EWT LP Response, page 29.

UCT Interrogatory 4

13. In its interrogatory 4, UCT requested basic information on EWT LP's access to financial resources including EWT LP's access to the financial resources of, and capital from, its partners.
14. EWT LP has perhaps misunderstood this request to be East-West Tie Line project specific⁴. It is not.
15. The Board has previously stated that it may consider, on a transmission licencing application, an applicant's ability to finance transmission development and operation, and potential to access further resources.⁵ This is precisely the information which UCT's interrogatory requests.
16. EWT has not in fact addressed the question of its ability to access further financial resources, including those of its partners. Rather EWT LP⁶:
 - a. States that it will have the ability to raise financing "*as would typically be done*", without providing any factual support for this statement.
 - b. Notes that it has filed the financial statements of Hydro One and GLPT, without addressing the relationship of this information to its ability to access financial resources.
17. Further, and beyond the standard financial status considerations articulated by the Board in other recent transmission licence applications, UCT may choose to argue later in this proceeding, in light of information provided by EWT LP, that the Board should consider whether licencing EWT LP for the purposes of participating in the Designation Process is in the public interest as defined in this circumstance by the policies of the Ontario government and the Board. The potential relevance of such an argument, subject to what the facts reveal, is detailed at paragraph 29 of the UCT Motion Submissions.

⁴ EWT LP Response, page 29.

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

⁶ Response to AltaLink Interrogatory 5, part a, as referred to in response to UCT interrogatory 4.

UCT Interrogatory 5

18. In its interrogatory 5, UCT asks for copies of the EWT LP partnership agreement and any other agreements involving Bumkushwada L.P. or its partner communities.
19. UCT notes the acknowledgement in the EWT LP Response that *"the relevant First Nations are not impeded in their ability to participate in consultation and accommodation with all Designation Participants"*.⁷
20. Part c. of UCT's interrogatory expressly requests confirmation 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 participating in a transmission development project with another proponent. EWT LP has to date failed to address this question.
21. The relevance of pre-Designation Application discussions between transmission development designation applicants and the affected First Nations communities, and of any limits on such discussions that might be specified in the EWT LP partner agreements, is detailed at paragraphs 33 through 36 of UCT's Motion Submissions.
22. Contrary to EWT LP's assertion⁸, UCT does not seek the "fettering" or regulation of the contractual relationships of First Nations. Rather, UCT seeks to understand the extent to which the most directly affected First Nations are in fact constrained from participating freely in the development of the transmission proposals of others.

Conclusion

23. EWT LP has summarized the substance of its response to the Moving Parties at paragraphs numbered 1 through 7 at page 4 of the EWT LP Response.

⁷ EWT LP Response, page 29.

⁸ EWT LP Response, page 22, lines 7 through 12.

24. The second of EWT LP's summary paragraphs asserts that UCT's interrogatories are not relevant to the issuance of EWT LP's licence. The relevance of UCT's interrogatories was addressed in full in the UCT Motion Submissions, and are cross-referenced above.
25. UCT respectfully submits that the balance of EWT LP's responses, which go to whether EWT LP's licencing application or the Designation Proceeding is the appropriate forum to determine the concerns raised through the contested interrogatories, are matters that should be considered by the Hearing Panel herein on a complete record.
26. UCT renews its request for an order that EWT LP provide further and better response to UCT's interrogatories 2 part b., 4 and 5 part a. herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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for Ian A. Mondrow

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