



**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 under section 60 of the *Ontario Energy Board Act, 1998* for an electricity transmission licence.

**By delegation, before:** Theodore Antonopoulos

### **DECISION ON MOTIONS AND PROCEDURAL ORDER No. 3**

EWT LP filed an application with the Ontario Energy Board on September 20, 2011, under section 60 of the *Ontario Energy Board Act, 1998* for an electricity transmission licence. EWT LP is applying for a transmission licence so that it can file a project development plan in the Board's East-West Tie designation proceeding (EB-2011-0140) (the "Designation Proceeding"). In this context EWT LP (the "Applicant") is also sometimes referred to as a "new entrant transmitter" as are other entities recently licensed for the purpose of participating in the Designation Proceeding. The application was subsequently amended by letter dated November 18, 2011 to include the request that any transmission licence issued pursuant to this application be made effective as of the date on which EWT LP is designated as a developer of transmission assets in Ontario or the date on which EWT LP applies to amend Schedule 1 of its licence to specify the facilities to be owned and/or operated by EWT LP, whichever is earlier.

In accordance with the Board's Procedural Order No. 1, three intervenors, AltaLink Ontario, L.P. ("AltaLink"), TransCanada Power Transmission (Ontario) L.P. ("TransCanada") and Upper Canada Transmission, Inc. ("Upper Canada"), filed interrogatories on the application on November 21, 2011.

In filing its interrogatory responses on December 5, 2011, EWT LP declined to provide complete responses to some of the interrogatories, with supporting reasons that will be further elaborated on below.

## **THE MOTIONS**

Following their receipt of EWT LP's interrogatory responses, TransCanada, Upper Canada and AltaLink (collectively, the "Moving Parties") each filed a Notice of Motion with the Board, on December 12, 13 and 15, 2011, respectively. The motions generally assert that the Applicant should be required to produce further and better information in response to the Moving Parties' interrogatories in order to enable the Board to make a proper determination in respect of the financial position and technical capabilities of the Applicant, and to address concerns relating to the organizational structure of EWT LP that may allow the Applicant to avoid compliance with the Affiliate Relationship Code (the "ARC").

EWT LP declined to provide complete responses to some of the Moving Parties' interrogatories on the basis that the requested information was not relevant to the licence application review and rather, relates to the Designation Proceeding. EWT LP also responded that the disclosure of some of the information being sought is prejudicial to EWT LP's participation in the Designation Proceeding.

The Board determined that it would hear the motions in writing, and provided dates for the filing of additional materials and written submissions in Procedural Order No. 2.

## **THE SCOPE OF THIS PROCEEDING**

EWT LP is seeking a transmission licence so that it can participate in the Board's East-West Tie Designation Proceeding. The key areas reviewed by the Board in any licence application are the financial position, technical capability and conduct of an applicant.

The general criteria noted above have evolved to encourage the entry of new transmitters in recent Board decisions approving electricity transmission licence applications for TransCanada (EB-2010-0324), AltaLink (EB-2011-0126), Upper Canada (EB-2011-0222), Chatham-Kent Transmission Inc. ("CKT") (EB-2010-0351) and others.

In CKT's proceeding, the Board stated the following:

In the exercise of its licensing function in cases such as this one, the Board's practice is to review in some degree the applicant's apparent financial status, its potential for access to further financial resources, and its technical experience and demonstrated capability. The Board typically examines the applicant's financial information to get some appreciation of its ability to operate as a transmitter. The Board also examines the applicant's technical capability to assess at a preliminary stage its ability to execute a predictable range of transmission system development projects.<sup>1</sup>

The Board also found the project-specific concerns raised by intervenors to be out of scope of the licensing proceeding. The Board noted that:

[...] as the Pattern project evolves, a more thorough examination of the Applicant's suitability may be required. These elements will be examined in the necessary further regulatory steps contemplated for that project.

Similarly it is expected that as part of the designation process, very much more specific financial and technical/operational information will be required to meet the focused demands of specific projects. This review will be undertaken in connection with that process, not at this stage.<sup>2</sup>

The Board stated, in its policy *Framework for Transmission Project Development Plans* ("the policy Framework") (EB-2010-0059), that the licensing process is intended to allow the Board to evaluate the financial viability and technical capabilities of the new entrant transmitters. Moreover, the Board went on to state that, "[t]he Board's licensing process is neither unduly onerous nor time consuming."<sup>3</sup>

In considering the motions, I am therefore guided by the principles of relevance to the key areas reviewed by the Board in recent decisions on transmission licence applications, and as outlined in the policy Framework.

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<sup>1</sup> Decision and Order in the CKT application (EB-2010-0351), page 5

<sup>2</sup> Ibid

<sup>3</sup> Policy Framework, page 5

**MOTION BY TRANSCANADA POWER TRANSMISSION (ONTARIO) L.P.****Interrogatories 1 to 15 inclusive**

On December 12, 2011, TransCanada filed a Notice of Motion with the Board, for an order requiring EWT LP to provide responses to TransCanada interrogatories 1-15. In the alternative, TransCanada requested an order of the Board requiring EWT LP to disclose any information and resources respecting the East-West Tie Line that the incumbent utilities, Hydro One Networks Inc. ("Hydro One") and Great Lakes Power Transmission LP ("GLPT"), acquired in the process of providing utility services.

In its January 31, 2012 submission on the motions, EWT LP provided the grounds for its refusal to answer certain of the interrogatories ("IRs"):

*IRs 1, 3 and 5-11:* EWT LP states that the information requested in these IRs is irrelevant to the licensing proceeding. EWT LP submits that these IRs seek project specific information, which is the type of information that was previously found by the Board to be irrelevant to a transmitter licensing proceeding. In addition, EWT LP states that the disclosure of some of the requested information would provide TransCanada with an unfair advantage in the Designation Proceeding as TransCanada requests certain documentation and materials from EWT LP that will form the basis of the designation participants' filings.

*IRs 2, 4, 12-14:* EWT LP states that the information being requested in these IRs is irrelevant because EWT LP has already provided sufficient information on its technical capability (i.e. it has established that it will have access to qualified personnel of its limited partners, Hydro One and GLPT). And, in noting that it has provided information on its financial capability by filing its limited partners' annual reports, EWT LP also submits that the additional details requested by TransCanada are unnecessary because the Board has already established, in prior proceedings, that the transmitter licensing process is meant as a threshold qualification step.

*IR 15:* EWT LP notes that information in section 10 of the transmission licence application form was kept confidential by the Board in accordance with section 2 of the application form instructions and submits that, if TransCanada wishes to access redacted information in section 10 of the application form, TransCanada should file a

formal undertaking with the Board in accordance with the Board's *Practice Direction on Confidential Filings*.

In its reply submission, TransCanada states that the criteria applied to EWT LP should be different from the criteria the Board has applied to other transmission licence applicants. TransCanada's position is based on two principal reasons: first, because the two dominant transmitters in Ontario, Hydro One and GLPT, through their combined holding of a 66 2/3% interest in EWT LP, are using the Applicant as the means to participate in the Designation Proceeding and have also used rate payer funded resources to cover development costs respecting the East -West Tie transmission project; and, secondly, because EWT LP structured itself to be beyond the reach of the ARC due to the fact that each of its shareholders holds only 33.33% of the outstanding shares of East West Tie Inc., a general partner of EWT LP, and neither Hydro One nor GLPT is considered to be the Applicant's affiliate according to the definition of an affiliate in the ARC.

In its submission, TransCanada submits that EWT LP's refusal to answer TransCanada interrogatories 1-6, 9 and 10, has left it unclear as to when the incumbent utilities started to conduct development work on the East-West Tie transmission project, how their costs were determined and allocated, and the extent of rate payer subsidies of these costs, despite it being very clear from the application that EWT LP was created by, funded by and under control of the incumbent utilities.

With respect to EWT LP's organizational structure that allows the Applicant to avoid compliance with the ARC, TransCanada submits that the Board should exercise its power under section 70 of the Act to add conditions on EWT LP's licence that would impose the same obligations on the relationship between EWT LP and the incumbent utilities that otherwise would have been governed by the ARC.

## **MOTION BY UPPER CANADA TRANSMISSION, INC.**

### **Interrogatories 2(b), 4 and 5**

On December 13, 2011, Upper Canada filed a Notice of Motion for an order of the Board requiring EWT LP to provide further and better responses to Upper Canada's interrogatories 2 (b), 4 and 5.

In its January 31, 2012 submission on the motions, EWT LP provided the grounds for its refusal to answer certain Upper Canada's interrogatories:

*IR 2(b):* EWT LP states that the requested information to describe current roles of each key individual named in the application, has indeed been provided in the application. However, it was kept confidential by the Board in accordance with section 2 of the application form instructions. EWT LP states that if Upper Canada wishes to access this information, it should file a formal undertaking with the Board in accordance with the Board's *Practice Direction on Confidential Filings*.

*IR 4:* EWT LP states that its response to interrogatory 4 is sufficient and the additional information requested by Upper Canada is irrelevant to a licensing proceeding, noting that the Board can gain an appreciation of the applicant's financial position by reviewing financial statements of its partners and that such statements have been provided. EWT LP further states that any specific project related information is irrelevant to a licensing proceeding.

*IR 5:* EWT LP states that its response to this interrogatory confirms that neither the Applicant's structure nor its formation agreement prohibits relevant First Nations' from participating in consultation and accommodation with all designation participants and no other information needs to be disclosed in support of that assurance, especially the requested agreements between EWT LP and Bumkushwada L.P.

Upper Canada submits that information sought in interrogatory 2 (b) is required to understand the degree to which EWT LP's key individuals have access to the resources or information that may be relevant or required for an application for designation as a transmission developer in the Designation Proceeding and that the Applicant by virtue of its association with Hydro One and GLPT would not a) obtain any advantage in the designation process; b) would be in accord with the Board's policies towards facilitation of competition, economic efficiency and new entry in to Ontario electricity transmission sector; and c) gain an undue advantage in contestable energy service business such as competitively designated transmission development.

Upper Canada also submits that in its interrogatory 4 it requested information on EWT LP's financial resources and access to capital, including access to the financial resources of, and capital from its partners, arguing that such information is directly related to the Applicant's financial status and ability to finance transmission

development and operations. Upper Canada argued that such considerations have been identified by the Board in the previous licensing proceedings as relevant at the licensing stage.

Upper Canada further states that by asking interrogatory 5 it was seeking clarity whether the EWT LP and Bumkushwada L.P. partnership agreement imposes any constraints on the First Nations communities participating in EWT LP to participate in consultations with other proponents for the East-West Tie transmission project.

### **MOTION BY ALTALINK ONTARIO L.P.**

#### **Interrogatories 1 (c), (e), (l), 3, 4 and 5**

On December 15, 2011 AltaLink filed a Notice of Motion for an order of the Board requiring EWT LP to provide further and better responses to AltaLink interrogatories 1(c), (e) and (l) and 3 - 5 or, in the alternative, for an order of the Board to add issues raised by the intervenors in this proceeding to the formal issues list in the Designation Proceeding.

In its January 31, 2012 submission on the motions, EWT LP provided the grounds for its refusal to answer certain of AltaLink's interrogatories:

*IRs 1(c), (e) and (l):* EWT LP states that additional details requested in these interrogatories regarding the extent of EWT LP's reliance on technical capabilities and specific expertise of its limited partners, Hydro One, GLPT and Bamkushwada LP, and on compensation for use of those resources are unnecessary for the Board at the licensing stage to assess EWT LP's ability to execute a predictable range of transmission development projects.

*IR 3:* EWT LP states that in its interrogatory 3, AltaLink requests information that is relevant only to the East-West Tie designation project, in particular information about communications between Hydro One and GLPT and the Ministry of Energy, the OPA and the IESO, while the Board has already addressed in its previous licensing decisions that such project specific information is irrelevant to a licensing proceeding.

*IR 4:* EWT LP notes that its response to AltaLink interrogatory 4 provides sufficient information with respect to the relevant First Nations' lack of contractual restrictions to

participate in consultation and accommodation with all designation participants and no other information needs to be disclosed, specifically information about Bamkushwada LP's commercial participation in EWT LP. In addition, EWT LP states that the requested information does not relate to an assessment of financial and technical capability and past conduct of the Applicant, which are the only relevant issues in the licensing proceeding.

*IR 5:* EWT LP's response to AltaLink interrogatory 5 states that the financial statements of Hydro One and GLPT are sufficient for the Board to have some appreciation of the Applicant's financial ability to operate as a transmitter. EWT LP also confirms that it will have the ability to raise financing through equity and debt. EWT LP reiterates that the information that has been already provided is sufficient for the purposes of the application and any detailed additional information is not relevant to a licensing proceeding.

AltaLink replies that the information sought in its interrogatories 1(c), (e) and (l) is intended to better understand the technical capability, expertise and experience of EWT LP's limited partners, and the nature of the activities for which the Applicant, being a newly created entity with no experience of its own, will rely upon its partners. AltaLink submits that specific details respecting each of EWT LP's partners' experience in transmission development, planning or management of transmission projects, including compensation for use of resources, are directly relevant to the Board's determination in the licensing matter.

AltaLink states that although the questions in its interrogatory 3 relate directly to strategic planning and policy information relating to the East-West Tie transmission project, the fact that the sole purpose of the application is to enable the Applicant to participate in the Designation Proceeding raises concerns that the Applicant through its partnership with Hydro One and GLPT would have preferential access to confidential system planning and technical information related to the East-West Tie transmission project. Placing this information on the public record is appropriate to prevent an unfair informational advantage of the Applicant over the other new entrant transmitters.

AltaLink further submits that in the absence of the applicability of ARC's regulatory restrictions to EWT LP's activities, new licence terms prohibiting the sharing of confidential information and employees that possess such information, between the Applicant and Hydro One and GLPT would be appropriate to address and consider as

part of this licensing proceeding. AltaLink argues that it cannot rely upon the Board's usual rules regarding the sharing of employees between Hydro One, GLPT and the Applicant to address its concerns. AltaLink submits that the result is a regulatory void that AltaLink states the Board should step in to fill.

AltaLink acknowledges that EWT LP provided some information with respect to the structure of the Applicant and the formation agreements with the six participating First Nations in response to AltaLink interrogatory 4, stating that nothing in these agreements prohibits First Nations to participate in consultation and accommodation with a designated transmitter that is not EWT LP. AltaLink submits, however, that it is still not clear whether the Applicant's arrangement with relevant First Nations is exclusive, in which case it will serve to create a barrier to entry to the other new entrant transmitters and undermine the goals of the designation process. AltaLink suggests that the Board should indicate in the licensing decision that this issue should be included on the formal issues list in the Designation Proceeding.

AltaLink states that information sought in its interrogatory 5 was intended to clarify what legal obligations the limited partners have to provide necessary financing to EWT LP and the extent to which the Applicant is relying on the financial resources of each of its limited partners to finance the transmission project. AltaLink also submits that the financial statements of Hydro One and GLPT that EWT LP is relying upon do not provide answers to these questions, especially in light of the fact that EWT LP is not a wholly owned subsidiary of any of these entities.

## **SUBMISSIONS BY INTERVENORS**

On January 24, 2012, the Power Workers' Union ("PWU") and RES Canada Transmission GP Inc. ("RES Canada"), both intervenors in this proceeding, filed their respective submissions on the motions.

In its submission, PWU supports the Applicant's position with respect to the relevance to this proceeding of the information sought by the Moving Parties in the interrogatories in question. PWU submits that the motions should be dismissed. PWU argues that the Applicant has responded to all relevant interrogatories and has filed all the necessary information the Board needs to make a determination in EWT LP's application, which is a requirement to participate in the Designation Proceeding as per the Board's policy Framework.

RES Canada submits that it supports the motions and states that EWT LP should be required to respond to interrogatories identified by the Moving Parties. RES Canada states that the Applicant should not be granted a transmission licence unless the Board is satisfied that EWT LP will not have a competitive advantage over the other designation participants by virtue of receiving preferential access to information in the possession of the incumbent utilities with respect to the East-West Tie Line. RES Canada concludes that the issue of preferential access, being the main reason for the motions, should be addressed in this licensing proceeding and not deferred to the Designation Proceeding.

## **FINDINGS**

The information being sought by the Moving Parties from EWT LP can be characterized as falling into two general categories:

- (1) additional information relating to the sharing of information between the Applicant and its limited partners relating to the development of the East-West Tie transmission project, and the disclosure of such (and other related) information as part of the current licensing proceeding, and
- (2) additional information relating to the financial and technical capabilities of the Applicant.

I will first address each of these categories at a general level in order to clarify the principles that I have used in determining the outcome of the motions. Further reasons are provided regarding my findings on the sufficiency of certain interrogatory responses following this preamble.

Information in the first category relates to the Moving Parties' underlying concerns that the Applicant is constituted of three equal limited partners, two of whom are incumbent Ontario transmitters, and that those incumbents have been involved in the development of the East-West Tie transmission project planning. Moreover, the Moving Parties are concerned that the Applicant may be unfairly leveraging those relationships in developing its own plan for its designation filing. While these concerns may or may not be valid, their detailed review is beyond the scope of the current licensing proceeding. The Board has determined in prior new entrant transmission licence applications that

“[u]nder the new regime, applicants for such licences are simply qualified to participate in the designation process”.<sup>4</sup>

AltaLink argues that the Board has addressed, in previous new entrant transmission licence applications, unique issues regarding an applicant and that, in the current proceeding, the Board should do the same with respect to the corporate structure of the Applicant as it relates to the unfair informational advantage over other new entrant transmitters that may exist, among other related matters. I note however, that in the cases identified by AltaLink, the issues were principally concerning the applicants' organizational structures at a general level, and not related to a specific project. The concerns raised by the Moving Parties in the current proceeding with respect to the treatment of project-related information relate to the manner and extent to which this information will be used by the Applicant, or shared with other designation applicants, for the East-West Tie transmission project specifically.

It is clear that the Applicant was created solely for the purpose of owning and operating the East-West Tie transmission line. A typical licence proceeding could be the appropriate forum in which to consider any licence restrictions. However, any conditions or restrictions imposed on this Applicant's licence at this time would be for the purpose of addressing the Applicant's behaviour and participation in the Designation Proceeding. I agree with the Applicant that these considerations are beyond the scope of the current licensing proceeding. A detailed review regarding the nature and treatment of the subject information, how the Applicant leverages existing resources of its partners and what, if any, conditions should be imposed on the Applicant's participation in the Designation Proceeding, is premature at this stage.

AltaLink argues that as an alternative to directing EWT LP to file further and better responses to interrogatories, the Board should order that the issues raised by the intervenors in this proceeding be placed onto the formal issues list in the Designation Proceeding. TransCanada states that an alternative should be that the Board issue an order to make information and resources respecting the East-West Tie transmission project that the incumbent utilities acquired in the process of providing utility services, available for use by the Board and other parties in the Designation Proceeding.

Given that the Designation Proceeding has commenced and is moving forward contemporaneously with EWT LP's licensing proceeding, I find that it is not appropriate

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<sup>4</sup> Decision and Order in the CKT application (EB-2010-0351), page 5

for the Board to make such orders at this time. It would be premature to do so and, in any event, I cannot fetter the discretion of the Board panel presiding over the Designation Proceeding. It is open to the Moving Parties to bring these matters forward to the Board as part of the Designation Proceeding, at the appropriate time.

I note that in the Designation Proceeding, the Board issued information requests to Hydro One and GLPT with respect to the establishment of protocols regarding the sharing of information necessary to prepare an application for designation with all registered transmitters. The information requests were issued on December 22, 2011. Hydro One and GLPT filed their respective responses on January 9, 2012.

I also note that TransCanada filed additional correspondence dated February 24, 2012, on the record of this licensing proceeding, referencing the Board's Decision and Order on Suite Metering Issues in Toronto Hydro-Electric System Limited's 2011 cost of service proceeding (EB-2010-0142). While there was no provision made for additional correspondence by parties following the Moving Parties' reply submissions, I have reviewed the correspondence and will comment on it below.

Through that correspondence, TransCanada submits that the Board's recent Suite Metering decision is yet another example of the Board requiring utilities that participate in contestable activities to comply with regulatory requirements to ensure that they cannot make use of information and resources acquired in the course of providing utility services to their competitive advantage. While I agree that the Board has addressed such matters in the past, I also note that in the excerpt from the Suite Metering decision provided by TransCanada, it states that, "[t]he simple co-existence of the monopoly and competitive service necessitates a thorough and purposeful review."

Given the Board's policy framework and recent findings in licensing decisions for new entrant transmitters, a "thorough and purposeful review" is not intended to be undertaken in a licensing proceeding. In this case, EWT LP is not a utility undertaking a competitive activity, but an entity seeking a licence as a precondition to participating in a competitive process. Access to any information regarding the development of the East-West Tie transmission line that Hydro One and GLPT may have acquired in the course of providing utility services is a matter that TransCanada or other parties may choose to bring forward in the Designation Proceeding.

The second category of information sought by the Moving Parties relates to the provision of further and better responses regarding the Applicant's financial and technical capability. EWT LP filed the audited financial statements of two of its partners (Hydro One and GLPT) in support of its financial capability to carry out activities as a transmitter, and a list of certain key individuals (with a description of their experience) who will be involved in operating the subject facility should the Applicant be successful in the Designation Proceeding. The Applicant has argued that this is sufficient given the evolution of the Board's licensing tests for new entrant transmitters.

I agree that the extent of the Board's review in transmission licence applications by entrant transmitters has recently evolved to a preliminary review of entrant transmitters' technical capacity and some appreciation for their financial capability to operate as a transmitter, and not their ability to successfully finance and operate a specific project.

That said, the evolution of these tests does not absolve EWT LP from providing the minimum information required to satisfy the "threshold qualification requirements for the licensing process"<sup>5</sup>. The question is what satisfies these threshold requirements. Certain of the Moving Parties have argued that EWT LP should be held to the same standard in terms of the type of information required of them to support their licence applications. I agree. There is no compelling reason why EWT LP should be treated differently. By the same token, I do not agree that EWT LP should be held to a higher standard, as discussed earlier with respect to information sharing at the initial licensing stage.

The following example is intended to illustrate the standard that should be met by applicants regarding the nature and quantity of the evidence supporting a new entrant transmission licence application.

The Applicant argues that its three partners (Hydro One, GLPT and Bamkushwada L.P.) each own 1/3 of East-West Tie Inc. and, as such, no control relationship arises. Yet, the Applicant relies on the financial statements of two of its partners as evidence in order to meet the financial viability criteria. In my view, this creates a gap in the record, even at this preliminary licensing stage. While I acknowledge that in a limited partnership structure there is no parent company relationship *per se*, the fact that the Applicant and its partners chose to structure their relationship in such a manner should

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<sup>5</sup> Decision and Order in the AltaLink application (EB-2011-0126), page 3

not absolve the Applicant of the responsibility to file sufficient information such that the record demonstrates that the Applicant has access to the required financial resources to own and operate a transmission facility.

Previous applicants have filed financial statements of associated entities in support of their applications. For example, Upper Canada provided detailed descriptions of its affiliate's (NextEra Energy Capital Holdings) project financing experience as well as assurance that NextEra would be able to provide appropriate corporate guarantees to ensure the availability of financial resources to support the execution of financial obligations. AltaLink provided descriptions of equity and debt financing facilities of its direct owner AltaLink Investments, L.P in its transmission licence application.

EWT LP must file information that is comparable to the information the Board relied upon for determining the outcome of previous new entrant applications. The record must demonstrate that, in the absence of a controlling or direct affiliate relationship between EWT LP and its limited partners, EWT LP has access to the financial resources necessary to own and/or operate a transmission system.

I have addressed each of the motions below, based on the above principles. EWT LP should be guided by these principles in providing further and more detailed responses to the interrogatories identified below.

### **TransCanada - Interrogatories 1 to 15 inclusive**

For the reasons noted in the preamble above, I have determined that information sought in TransCanada's interrogatories 1-13 is not relevant to the licensing proceeding. In summary, TransCanada is seeking information related to the incumbent transmitters' involvement in the East-West Tie transmission project development and to the resources, both financial and human, that the incumbent transmitters invested in the East-West Tie project. These interrogatories in fact relate to the East-West Tie project specifically and are beyond the scope of the current licensing proceeding. TransCanada may choose to bring these issues forward in the Designation Proceeding.

I do not agree that EWT LP should be required to provide significantly more information than the other new entrant transmitters. Specifically, I disagree that project specific information is required to assess EWT LP's licence application. As the Board noted in the TransCanada decision (EB-2010-0324), the granting of a transmission licence does

not endorse the Applicant's technical and financial capabilities in relation to the development of a specific transmission project. Significantly more detailed demonstration of the Applicant's technical and financial capabilities in relation to the development of a specific transmission project may be required in the Designation Proceeding.

Although the questions asked in interrogatory 14 may relate to the Applicant's technical capability, I find that the level of detail sought by TransCanada to be unnecessary for such an assessment at this stage. It is therefore not required that EWT LP provides additional information in response to this interrogatory.

With respect to interrogatory 15, I find that EWT LP will not be required to publicly disclose information that is the subject of the interrogatory. This matter is addressed further in the findings relating to Upper Canada's interrogatory 2 (b) below.

#### **Upper Canada - Interrogatories 2(b), 4 and 5**

I find that EWT LP will not be required to publicly disclose information that is the subject of Upper Canada's interrogatory 2 (b). Upper Canada has requested information be placed on the public record that is related to the role of key individuals, which was in fact redacted by the Board in accordance with section 2 of the application form instructions. Upper Canada has argued that EWT LP has provided no basis for the confidential treatment of this information. I note that the Board's practice is to retain this type of information in confidence in accordance with the licence application form instructions and section 4.1.1 of the *Practice Direction on Confidential Filings*. Upper Canada has agreed that it is prepared to execute a confidentiality undertaking in order to review the information. I will allow access to the confidential information to counsel for intervenors who execute the appropriate undertaking. Upper Canada, or any other intervenor that may execute an undertaking in accordance with the Board's Practice Direction, should make every effort to draft any submissions related to this information in a manner that can be placed on the public record.

I have determined that EWT LP should provide the information requested in Upper Canada's interrogatory 4(a). Information sought in this interrogatory addresses the issue of access to adequate financial resources. In its decision granting a transmission licence to CKT, the Board indicated that in a licensing application, it would "review in some degree the applicant's financial status [and] its potential for access to further

financial resources”.<sup>6</sup> For the reasons noted in the preamble, the financial statements of Hydro One and GLPT, the only evidence filed by EWT LP in support of its financial position, are not sufficient to make a determination of the Applicant’s ability to access financial resources from its partners or from other entities.

I am of the view that information sought in interrogatory 4(b) is irrelevant to the licensing proceeding as it relates to the East-West Tie transmission project directly.

I find that EWT LP provided a sufficient response to Upper Canada interrogatory 5. Additional clarification sought by Upper Canada, including further details of the Applicant’s relationship with First Nations, is not required for determination of the transmission licence application.

### **AltaLink - Interrogatories 1 (c), (e), (l), 3, 4 and 5**

I find that information sought by AltaLink in its interrogatories 1(c), 1(e) and 1(l) with exception of the components related to compensation for use of the partners’ resources, is relevant to the test applied by the Board to assess new entrant transmission licence applications as they relate to technical expertise. In this application, the assessment is of the limited partners that the Applicant, being a newly created entity, intends to rely upon. In previous new entrant transmitter licensing proceedings, the applicants have provided more information with respect to transmission project experience of their partners and I find that EWT LP’s evidence on the record is not sufficient in this regard. Other entrant transmitters provided detailed information about technical resources they plan to rely upon and described specific projects their parent and affiliate companies have been involved with.

I have determined that the information requested in interrogatory 3 is specific to the East-West Tie transmission project and therefore is beyond the scope of the licensing proceeding.

I find that the response to interrogatory 4 is sufficient and that no additional information is required for the purpose of completing the record in EWT LP’s licensing proceeding. AltaLink’s request that the Board should address AltaLink’s assertions that the incumbent transmitters may be engaging in anticompetitive behaviour, and that their

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<sup>6</sup> Decision and Order in the CKT application (EB-2010-0351), page 5

actions represent an attempt to exclude new entrant transmitters from being designated to develop the East-West Tie transmission project and to undermining the goals underpinning the Board's policy Framework, is beyond the scope of the licensing proceeding for the reasons noted previously in this Decision.

I find that the information sought in interrogatory 5 should be provided by the Applicant as it is directly related to the Board's assessment of financial viability of EWT LP for the reasons described in the findings with respect to Upper Canada interrogatory 4(a) and in the preamble above.

### **NEXT STEPS**

I have made provisions for the remaining steps in this proceeding, as set out below. Parties are invited to file written submissions on the merits of the application, following the filing of further and more detailed responses by the Applicant to the interrogatories identified in this Decision.

### **IT IS THEREFORE ORDERED THAT:**

1. Parties that wish access to confidential information contained in section 10 of the EWT LP's transmission licence application, shall execute a Declaration and Undertaking pursuant to the Board's *Practice Direction on Confidential Filings* by March 30, 2012.

To the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be redacted accordingly and a complete unredacted version must be marked confidential and filed with the Board in confidence.

2. Parties in receipt of confidential information shall either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to the Applicant.

3. EWT LP shall file further and more detailed responses to the following interrogatories on or before April 5, 2012:
  - a. Upper Canada interrogatory 4 (a)
  - b. AltaLink interrogatory 1 (c), (e) and (l) except for the compensation components, and interrogatory 5
4. If Board staff or an intervenor wishes to make a submission on the merits of the application, Board staff or the intervenor must file that submission with the Board, and deliver it to EWT LP and other intervenors by April 20, 2012.
5. If EWT LP wishes to file a response to a submission on the merits of the application, the response must be filed with the Board and delivered to the intervenors by May 4, 2012.

All filings to the Board must quote file number EB-2011-0350, consist of one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca), and two paper copies mailed or delivered to the Board Secretary's office at the address below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available, parties may email their documents to the [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If parties have submitted through the Board's web portal an e-mail is not required. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**DATED** at Toronto, March 23, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Theodore Antonopoulos  
Manager, Electricity Rates