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VIA RESS AND COURIER

Ms. Kirsten Walli
ONTARIO ENERGY BOARD
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2011-0350 – EWT LP Application for Electricity Transmission Licence.

**Upper Canada Transmission, Inc. (UCT) Submission on the Merits of the
Licence Application.**

Pursuant to the Board's Procedural Order No. 3 herein, UCT provides these submissions on the merits of EWT LP's application for a transmission licence (Application).

Evaluation of the Application against the Public Interest.

In addition to the articulated criteria of financial viability, technical capabilities, and past conduct, the Board's overriding consideration in determining whether to grant a licence is whether such grant is in the public interest.¹ In the context of a transmission licence application made expressly for the purpose of enabling the applicant to participate in the OEB's transmission development designation process, the public interest is defined to include facilitating new entry into, and supporting competition in, the Ontario electricity transmission sector to drive economic efficiency for the benefit of ratepayers, in accord

¹ EB-2011-0222 November 28, 2011 *Decision and Order* in UCT's transmission licence application, page 3, top.

with the Board's *Framework for Transmission Development Plans* (EB-2010-0059).²

EWT LP submitted its Application expressly for the purpose of qualifying for participation in the Board's EB-2011-0140 process for designation of a transmission developer for the East-West Tie Line (Designation Process).³ In determining whether to grant the applied for licence, and if so what conditions might be warranted, the Board should consider the extent to which such grant or conditions would facilitate new entry and support competition in Ontario's transmission sector.

Granting the requested licence would not only not support new entry and competition in Ontario's transmission sector, it would undermine it. The applicant is effectively controlled by the parent entities of Ontario's two main incumbent transmitters; Hydro One Networks (HON) and Great Lakes Power Transmission (GLPTLP).⁴ Granting these two entities an additional vehicle through which to compete for the one Ontario transmission project to date that will be subject to any competition does not meet the Board's "public interest" test as it should be applied in this proceeding. While the third entity controlling the applicant would be a new entrant into Ontario's transmission sector, with all due respect to Bamkushwada L.P. (BLP) and its partners, the undeniable reality is that the First Nations involved in BLP, all of which are situated along the East-West Tie Line route⁵, will play an important, active and integral role in the East-West Tie Line project regardless of which transmitter is designated to develop it.

The formally raised concerns of the potential new entrant transmitters who have intervened in this application, and who have standing in the Designation Process, regarding the applicant's participation in Designation Process, present ample evidence that the participation through EWT LP of HON and GLPLT in that Designation Process has resulted in certain concerns from potential new entrant transmitters regarding the fairness, transparency and true competitiveness of that process. In the particular circumstances of this Application, granting the requested licence could only discourage new entry, and thus undermine the Board's stated policy, and that of the Ontario government⁶, and would thus be contrary to the public interest. It is open for the Board to deny the Application on this basis, and UCT submits that the Board should do so.

Licencing Conditions.

² EB-2011-0222 November 28, 2011 *Decision and Order* in UCT's transmission licence application, page 3, first full paragraph; March 23, 2012 *Decision on Motions* herein, page 2, last paragraph.

³ EWT LP Application transmittal letter dated September 20, 2011, paragraph 1, second full paragraph on page 2, Application section 4.

⁴ Application, Schedule A.

⁵ EWT LP Application transmittal letter dated September 20, 2011, page 3, second full paragraph; Application section 9.a).

⁶ March 29, 2011 letter from Ontario Minister of Energy to Ontario Energy Board, related to the Designation Process.

Licencing Conditions.

Should the Board determine that it is in the public interest to grant the Application, it may attach conditions to the licence pursuant to section 70 of the *Ontario Energy Board Act, 1998 (OEB Act)*. Such conditions may include rules governing the conduct of the licensee.⁷ Further, such conditions may include conditions governing the conduct of a transmitter as that conduct relates to its affiliates.⁸

EWT LP has been organized in such a manner that the Board's Affiliate Relationships Code for Electricity Distributors and Transmitters (*ARC*) may not technically apply to EWT LP's relationships with its owners and their affiliates (including HON and GLPTLP). Regardless of the technical merits of this position, EWT LP is clearly not at "arm's length" from these related entities.⁹ EWTLP's "key personnel" include senior executives of Hydro One and GLPTLP.¹⁰ Each of Hydro One and GLPTLP have designated "teams" to support EWT LP's application in the Designation Process.¹¹

The *ARC* is designed to, among other things¹²:

- Prevent a utility from cross-subsidizing affiliate activities.
- Prevent a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy service provider.

Perhaps most germane to the participation of EWT LP in the Designation Process, the *ARC* includes specific prohibitions on the sharing of system planning information.¹³

Given the clearly non-arm's length relationship between the applicant and Ontario's incumbent transmitters, the sharing of "key personnel" and other personnel between the these entities, and the direct and critical relevance of "system planning" information to participation in the Designation Process, if the Board grants EWT LP a transmission licence, for the purposes of enabling EWT LP to participate in the Designation Process, that grant should be conditioned on adherence by EWT LP to the *ARC vis a vis* the entities related to it.

⁷ *OEB Act*, section 70(2)d.

⁸ *OEB Act*, section 70(2)d(i).

⁹ Application, Schedule A.

¹⁰ Application, section 10 (unredacted).

¹¹ Letters to the Board dated January 9, 2012 from each of HON and GLPTLP as filed in EB-2011-0140 addressing information protocols.

¹² *ARC*, section 1.1.

¹³ *ARC*, sections 2.6.4 and 2.6.5.

Further, EWT LP's request to have the effective date of its licence deferred until it is designated to develop transmission or until it adds specific transmission assets to its licence should, in the circumstances of this Application as outlined above, be denied.

Respectfully,



Ian A. Mondrow

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