



Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

Charles Keizer
Tel 416.865.7512
ckeizer@torys.com

May 4, 2012

RESS, COURIER & EMAIL

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: EWT LP - Application for Electricity Transmission Licence (EB-2011-0350)
Reply Submissions of EWT LP**

We are counsel to EWT LP. Further to the Ontario Energy Board's Decision on Motions and Procedural Order No. 3 in the above-noted proceeding, please find enclosed a copy of EWT LP's Reply Submissions.

Yours truly,


for Charles Keizer

Tel 416.865.7512
ckeizer@torys.com

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

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

REPLY SUBMISSION OF EWT LP

May 4, 2012

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

REPLY SUBMISSION OF EWT LP

A. INTRODUCTION

EWT LP (the “Applicant”) filed an application on September 20, 2012 with the Ontario Energy Board (the “Board”), under section 60 of the *Ontario Energy Board Act, 1998*, for an electricity transmission licence. EWT LP is a newly established Ontario limited partnership and is seeking the licence so that it can file a project development plan in connection with the Board’s East-West Tie Designation Proceeding (EB-2011-0140). The limited partnership interests in EWT LP are held equally by each of the Applicant’s three limited partners, Hydro One Inc. (“Hydro One”), Great Lakes Power Transmission EWT L.P. (“GLPT-EWT LP”) and Bamkushwada LP (“BLP”). The general partner of EWT LP is East-West Tie Inc., the shares of which are held equally by Hydro One, Great Lakes Power Transmission Inc. and BLP.

EWT LP filed its interrogatory responses on December 5, 2011. Three of the intervenors - TransCanada, Upper Canada and AltaLink - subsequently filed Notices of Motion with the Board requesting that EWT LP provide further and more detailed responses to certain interrogatories. On March 23, 2012, the Board issued its Decision on Motions and Procedural Order No. 3. In this decision, the Board rejected most of the intervenor requests for further and more detailed interrogatory responses but ordered the Applicant to file additional information in response to certain interrogatories from Upper Canada and AltaLink. EWT LP filed the additional information in the form of Supplementary Interrogatory Responses on April 5, 2012.

The Board’s Decision on Motions and Procedural Order No. 3 also provided an opportunity for Board staff and intervenors to make submissions on the merits of EWT LP’s application and for

1 the Applicant to make responding submissions. On April 20, 2012 the Board received
2 submissions from Board staff, the Power Workers' Union ("PWU"), AltaLink Ontario, L.P.
3 ("AltaLink"), TransCanada Power Transmission (Ontario) L.P. ("TransCanada"), RES Canada
4 Transmission L.P. ("RES Canada") and Upper Canada Transmission Inc. ("Upper Canada").
5 The following are EWT LP's reply submissions in response to the submissions filed by
6 intervenors and Board staff on the merits of its application.

7 **B. SCOPE OF THE PROCEEDING**

8 In its Decision and Order on an application by Chatham-Kent Transmission Inc. for a
9 transmission licence (EB-2010-0351), the Board determined that the test for granting a
10 transmission licence, in circumstances where the applicant is requesting the licence so as to
11 participate in a designation process, will differ from the test set out in the Lexi decision (EB-
12 2009-0164). This development was foreshadowed by the Board's policy entitled *Framework for*
13 *Transmission Project Development Plans* (EB-2010-0059) (the "Policy Framework"), in which
14 the Board stated that it is "reasonable to require that new entrant transmitters be licensed in order
15 to participate in the designation process. The licensing process will allow the Board to evaluate
16 the financial viability and technical capabilities of the new entrant transmitters . . . The Board's
17 licensing process is neither unduly onerous nor time consuming."¹

18 In the Chatham-Kent Transmission decision (EB-2010-0351), the Board determined that where
19 the licence is being requested in order to participate in a designation process, transmission
20 licensing is considered a "threshold qualification step".² In such applications, "the Board's
21 practice is to review in some degree the applicant's apparent financial status, its potential for
22 access to further financial resources, and its technical experience and demonstrated capability.
23 The Board typically examines the applicant's financial information to get some appreciation of
24 its ability to operate as a transmitter. The Board also examines the applicant's technical

¹ Framework for Transmission Project Development Plans, EB-2010-0059, p. 5.

² Decision and Order, Chatham-Kent Transmission Inc., EB-2010-0351, p. 7.

1 capability to assess at a preliminary stage its ability to execute a predictable range of
2 transmission system development projects.”³

3 In its Decision and Order on an application by TransCanada (EB-2010-0324), the Board
4 summarizes its approach by stating that “the key areas reviewed by the Board in any licence
5 application are the financial position, technical capability and conduct of an applicant . . . the
6 process of licensing new entrant transmitters will enable the Board to evaluate the financial
7 viability and technical capabilities of new entrant transmitters. Once the financial resources and
8 technical capabilities of a new entrant transmitter are considered and found to be satisfactory, the
9 transmitter would be issued a licence . . . The licensing process allows the Board to undertake a
10 preliminary review of entrant transmitters’ financial and technical capabilities . . .”⁴

11 With respect to an applicant’s financial position, the Board stated in its Chatham-Kent
12 Transmission decision that it “typically examines the applicant’s financial information to get
13 some appreciation of its ability to operate as a transmitter.”⁵ In its Decision and Order in the
14 application by Icon Transmission Inc., the Board found it sufficient for the applicant to have
15 provided recent audited financial statements for a parent company where the applicant was
16 newly created and without its own financial statements at the time.⁶ In other proceedings, the
17 Board has found the ability to access capital was sufficient evidence of an applicant’s financial
18 position, and that the ability to successfully finance and operate a particular project was not
19 relevant to the review.⁷

20 With respect to an applicant’s technical capability, the Board will examine the information
21 provided “to assess at a preliminary stage its ability to execute a predictable range of
22 transmission development projects.”⁸ Detailed technical information, including with respect to
23 landowner and First Nation and Metis relationships and costs and schedule outcomes were found

³ Decision and Order, Chatham-Kent Transmission Inc., EB-2010-0351, p. 5.

⁴ Decision and Order, TransCanada Power Transmission (Ontario) L.P., EB-2010-0324, pp. 6-7.

⁵ Decision and Order, Chatham-Kent Transmission Inc., EB-2010-0351, p. 5.

⁶ Decision and Order, Icon Transmission Inc., EB-2010-0403, p. 4.

⁷ Decision and Order, Chatham-Kent Transmission Inc., EB-2010-0351, p. 7.

⁸ Decision and Order, Chatham-Kent Transmission Inc., EB-2010-0351, p. 5.

1 to be unnecessary for purposes of demonstrating the technical capability of an applicant.⁹ In its
2 decision on the motions in the current proceeding, the Board clarified its expectation that an
3 applicant will need to file detailed information about the technical resources the applicant plans
4 to rely upon and specific projects that the applicant's related companies have been involved
5 with.¹⁰

6 With respect to conduct, an applicant will need to confirm that they have not previously had a
7 license or permit revoked and are not currently under investigation by any regulatory body.¹¹

8 It is also notable that, with respect to licence conditions, in its decision on the motions in the
9 present proceeding the Board states that "a typical licence proceeding could be the appropriate
10 forum in which to consider any licence restrictions. However, any conditions or restrictions
11 imposed on this Applicant's licence at this time would be for the purpose of addressing the
12 Applicant's behavior and participation in the Designation Proceeding . . . (and) these
13 considerations are beyond the scope of the current licensing proceeding."¹² This will be
14 particularly relevant to the discussion, below, in response to the submissions of Upper Canada.

15 **C. EWT LP HAS MET ALL REQUIREMENTS FOR TRANSMISSION LICENCE**

16 The Applicant submits that it has provided sufficient evidence to demonstrate that it has the
17 financial position and technical capability necessary to develop, own and reliably operate
18 transmission facilities in Ontario and that it has therefore satisfied all applicable requirements for
19 a transmission licence.

20 With respect to its technical capabilities, the evidence filed by EWT LP in its application and
21 interrogatory responses is that the Applicant will have access to the unique capabilities of each of
22 the limited partners. In particular, if it is designated as the transmitter for the East-West Tie
23 project, then it would be the Applicant's intention to:

⁹ Decision and Order, AltaLink Ontario L.P., EB-2011-0126, p. 4.

¹⁰ Decision on Motions and Procedural Order No. 3, EWT LP, EB-2011-0350, p. 16.

¹¹ Decision and Order, TransCanada Power Transmission (Ontario) L.P., EB-2010-0324, p. 7.

¹² Decision on Motions and Procedural Order No. 3, EWT LP, EB-2011-0350, p. 11.

- 1 • contract with Hydro One for operating services. As described in section 9 of its
2 application and in the Applicant's response and its supplementary response to AltaLink
3 IR #1(c), Hydro One has extensive expertise in transmission operations as the owner and
4 operator of 97% of the transmission system in Ontario, including 29,000 circuit
5 kilometers of high-voltage transmission lines, 280 transmission stations and 26
6 interconnections with neighbouring jurisdictions. Hydro One would provide these
7 operating services using Hydro One personnel and facilities, including its grid control
8 centre;
- 9 • contract with Great Lakes Power Transmission LP ("GLPT") or a related Brookfield
10 entity for the development and management of any such transmission facilities. As
11 described in section 9 of the application and in the Applicant's response and its
12 supplementary response to AltaLink IR #1(e), GLPT has extensive experience as one of
13 the five licensed transmitters that currently own and operate Ontario's transmission
14 system. GLPT and its predecessors have owned and operated transmission facilities in
15 northern Ontario for nearly one hundred years. GLPT undertakes system planning for its
16 part of the integrated power system and recently completed construction of a 164 km 230
17 kV Transmission Reinforcement Project between Sault Ste. Marie and Wawa (EB-2003-
18 0162). GLPT also has established commercial relationships with professional service
19 firms and specialist consultants that can supplement GLPT's own expertise as needed.
20 With respect to related Brookfield entities, the Applicant may draw upon entities that are
21 part of the utilities group of Brookfield Infrastructure Partners L.P. ("BIP"), which is an
22 experienced operator that is involved in utility operations in Connecticut, Long Island
23 and South America, including in Columbia and Chile. Brookfield is also an experienced
24 developer and constructor of transmission projects in multiple jurisdictions, including a
25 large transmission development project currently being undertaken in Texas;
- 26 • Contract with BLP and/or with its related entities and First Nation community members
27 and businesses for services that draw upon their significant local knowledge and expertise
28 regarding the territory in which the East-West Tie will be located, particularly with

1 respect to the environmental and socioeconomic characteristics of the area. As described
2 in section 9 of the application and in the Applicant's response and its supplementary
3 response to AltaLink IR #1(l), these services will, for instance, relate to environmental
4 assessment and routing processes and the development of associated mitigation measures.
5 Other services will include maintenance activities on the East-West Tie and the
6 associated corridor, including vegetation management, civil works and forestry.

7 With respect to its financial position, the evidence filed by EWT LP is that the Applicant will
8 raise financing through debt and equity. As explained in the Applicant's response and
9 supplementary responses to AltaLink IR #5(a), the equity will be provided by the Applicant's
10 limited partners and each partner will be responsible for providing its own equity in relation to its
11 partnership interest. In this regard, the Applicant filed the audited financial statements of Hydro
12 One. For GLPT-EWT LP's equity contribution to the Applicant, it will rely on its relationship
13 with its parent company BIP, which is indirectly controlled by Brookfield Asset Management
14 Inc. In this regard, the Applicant filed the Form 20-F for BIP, which includes its recent audited
15 financial statements. As an example of how BIP is expected to make equity available to GLPT-
16 EWT LP for purposes of financing the Applicant, given that the corporate structure and
17 relationship between GLPT-EWT LP and BIP mirrors that of GLPT and BIP, the Applicant has
18 also filed the audited financial statements of GLPT. As BLP was formed recently, it does not
19 have relevant financial statements. BLP is, nevertheless, obligated to provide equity to the
20 Applicant in relation to its limited partnership interest. BLP will finance its equity interest on
21 commercial terms and, if it cannot obtain the appropriate funding, then GLPT-EWT LP with the
22 support of BIP, if needed, and Hydro One will provide financing for BLP's equity contribution
23 strictly on commercial terms. Moreover, it should be noted that the general partner of the
24 Applicant will determine whether the Applicant requires any additional financing and it can
25 request additional equity contributions from the Applicant's limited partners, as described in the
26 Applicant's response and supplementary responses to AltaLink IR #5(b).

1 Finally, with respect to the conduct of the Applicant, the Applicant has confirmed that neither it,
2 nor any of its limited partners has previously had a license or permit revoked or is currently
3 under investigation by any regulatory body.

4 **D. BOARD STAFF AND INTERVENOR SUBMISSIONS**

5 ***1. Submissions in Support***

6 In its submissions, Board staff expresses its view based on the application and evidence filed in
7 this proceeding that EWT LP has provided sufficient evidence to demonstrate that it has the
8 financial backing to undertake the development of transmission projects and that, through its
9 limited partners, EWT LP has adequate technical capability and grid experience to reliably
10 operate a transmission system. Board staff also indicated that it had no concerns with respect to
11 EWT LP's conduct. Based on the foregoing, Board staff found that EWT LP meets the technical
12 and financial requirements for a transmission licence.

13 The PWU submissions were also supportive of the Board granting the requested transmission
14 licence to EWT LP. In the PWU's view, the only relevant consideration for the Board is with
15 respect to the Applicant's financial viability and technical capability to undertake transmission
16 activity in Ontario. The PWU noted that this does not call for an exhaustive assessment but
17 rather a preliminary review of financial and technical capability, commensurate with the function
18 of the licensing process as a threshold qualification process. Based on its review of the evidence
19 in the proceeding, the PWU was of the view that EWT LP has demonstrated that it has the
20 requisite level of financial resources, technical capability and managerial expertise for the Board
21 to grant the requested transmission licence.

22 ***2. Submissions Taking No Position***

23 Three of the intervenors - AltaLink, TransCanada and RES Canada - take no position with
24 respect to EWT LP's transmission licence application. In their submissions, these intervenors
25 acknowledge the Board's March 23, 2012 decision on the motions with respect to the appropriate
26 scope for assessing EWT LP's transmission licence application and, consistent with that

1 decision, have indicated their intentions to address any remaining concerns through the East-
2 West Tie Designation Proceeding (EB-2011-0140).

3 **3. *Submissions in Opposition***

4 Upper Canada is the only intervenor that opposes EWT LP's application. In particular, Upper
5 Canada takes the position that it is open for the Board to deny the application on the basis of it
6 being contrary to the public interest and that the Board should deny the application for this
7 reason. In the alternative, should the Board decide to grant the licence, Upper Canada argues
8 that for the purposes of enabling EWT LP to participate in the Designation Proceeding the
9 licence should be conditional upon EWT LP being required to adhere to the Affiliate
10 Relationships Code (the "ARC"). Upper Canada further argues that the Applicant's request to
11 have the effective date of its licence deferred until such time as it is designated to develop
12 transmission facilities or until it adds specific transmission facilities to its licence should be
13 denied. For the reasons set out in the section below, the Applicant submits that the Board should
14 reject each of these submissions from Upper Canada.

15 **E. SPECIFIC RESPONSES TO UPPER CANADA SUBMISSIONS**

16 **1. *The Application Should Not be Denied Due to "Public Interest" Considerations***

17 Upper Canada argues that, beyond the established criteria of financial position, technical
18 capability and conduct, the Board should consider whether the granting of a licence is in the
19 public interest. Upper Canada then defines the public interest to include facilitating new entry
20 into and supporting competition in the Ontario electricity transmission sector to drive economic
21 efficiency for the benefit of ratepayers and then argues that EWT's application is not in the
22 public interest. The basis for the argument is Upper Canada's view that the Applicant is
23 "effectively controlled by the parent entities of Ontario's two main incumbent transmitters" and
24 that BLP would get to play an active role in the East-West Tie project regardless of which
25 transmitter is ultimately designated. In the Applicant's view, for the reasons that follow, the
26 Board should reject this argument.

(a) The issues raised have been dealt with in the motions, should not be re-argued and will be addressed in the Designation Proceeding

At its core, Upper Canada's argument concerning the public interest is an argument about the scope of the proceeding and the nature of the Board's review of the application. Upper Canada continues to take the position that EWT LP's licensing proceeding is the appropriate venue for the Board to consider issues concerning any potential impacts on competition or new entry that may arise from EWT LP's participation in the Designation Proceeding. This is merely an attempt by Upper Canada to reargue the motion. The scope of the application proceeding was thoroughly considered and clearly articulated in the Board's decision on the motions dated March 23, 2012. In that decision, the Board characterized the information being sought by the moving parties, including Upper Canada, 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 (2) additional information relating to the financial and technical capabilities of the Applicant. The Board found that information in the first category relates to the concerns among the moving parties that EWT LP is constituted of three equal limited partners, two of which are incumbent Ontario transmitters, and that the Applicant may be unfairly leveraging those relationships in developing its own plan for its designation filing. On this point, the Board found that "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 "under the new regime, applicants for such licences are simply qualified to participate in the designation process".¹³

The Board goes on to note that, in the Designation Proceeding, Hydro One and GLPT established protocols for the sharing of information necessary to prepare an application for designation with all registered transmitters and that those protocols were filed in January 2012. More recently in the Designation Proceeding (EB-2011-0140), the Board issued Procedural Order No. 2 in which it approved a revised Issues List for that proceeding. Notably, Issue Numbers 18, 19, 20, 21 and 22 are all related to the concerns raised by Upper Canada and the

¹³ Decision on Motions and Procedural Order No. 3, EWT LP, EB-2011-0350, pp. 10-11.

1 other moving parties in their motions, as well as to the underlying concerns that are again being
2 raised by Upper Canada in its final submissions. The Board has determined that these issues will
3 be considered in the Designation Proceeding and the Issues List in the Designation Proceeding
4 demonstrates that this will in fact be the case.

5 What makes Upper Canada's position particularly perplexing is that Upper Canada asserts that
6 the granting of this licence could only discourage new entry. This is difficult to believe given
7 that there are six other designation participants other than EWT LP. All are active participants in
8 the Designation Proceeding.

9 **(b) The "public interest" is not an additional overriding consideration**

10 Consideration of the public interest is not, as suggested by Upper Canada, a separate criteria that
11 the Board must consider in this context. Rather, the Board's review of the financial position,
12 technical capability and conduct of an applicant is the means by which the Board takes into
13 account the public interest in considering a transmission licence application. As submitted, EWT
14 LP satisfies these aspects and the granting of a licence to EWT LP is in the public interest. EWT
15 LP, through its financial strengths, technical resources and Aboriginal participation, can develop,
16 construct and operate the East-West Tie project. Upper Canada has not established an additional
17 or overriding consideration beyond the test that the Board has clearly and repeatedly articulated
18 in its recent decisions.

19 **(c) Upper Canada's position marginalizes BLP and the First Nations that**
20 **control it**

21 Upper Canada states that "with all due respect to Bamkushwada LP and its partners, the
22 undeniable reality is that the First Nations involved in BLP, all of which are situated along the
23 East-West Tie Line route, will play an important, active and integral role in the East-West Tie
24 Line project regardless of which transmitter is designated to develop it." Despite the Applicant's
25 clear evidence on the record as to its ownership structure, under which each of the three limited
26 partners hold equal interests in the limited partnership as well as in the general partner that
27 manages the limited partnership, Upper Canada continues to cling to the incorrect view that the
28 Applicant is "effectively controlled by" Hydro One and GLPT. More significantly, however,

1 Upper Canada's position in this respect marginalizes the role of Bamkushwada LP in EWT LP,
2 as well as the roles of each of the seven First Nations that are the limited partners in
3 Bamkushwada LP. As the evidence shows, BLP and Hydro One and GLPT-EWT LP are equal
4 partners that each bring unique and equally valuable resources and capabilities to EWT LP. BLP
5 is not, as Upper Canada seems to suggest, without a voice in the operation and governance of
6 EWT LP. Rather, the Applicant is a true partnership among the three limited partners. It has its
7 own unique qualities, distinct from the individual characteristics of its constituent partners and,
8 as such, EWT LP as a whole should be regarded for all intents and purposes in this licensing
9 proceeding as a new entrant transmitter.

10 **2. *The Licence Should Not be Conditional on ARC Compliance***

11 Upper Canada argues that should the Board decide to grant the licence then for the purposes of
12 enabling EWT LP to participate in the Designation Process the licence should be made
13 conditional upon EWT LP being required to adhere to the Affiliate Relationships Code (the
14 "ARC"). This alternative argument should be rejected as the Board has already considered and
15 decided upon this issue in the present proceeding. As noted above, with respect to licence
16 conditions, in its decision on the motions in the present proceeding the Board states that "a
17 typical licence proceeding could be the appropriate forum in which to consider any licence
18 restrictions. However, any conditions or restrictions imposed on this Applicant's licence at this
19 time would be for the purpose of addressing the Applicant's behavior and participation in the
20 Designation Proceeding . . . (and) these considerations are beyond the scope of the current
21 licensing proceeding. A detailed review regarding the nature and treatment of the subject
22 information, how the Applicant leverages existing resources of its partners and what, if any,
23 conditions should be imposed on the Applicant's participation in the Designation Proceeding, is
24 premature at this stage."¹⁴

25 **3. *The Licence Effective Date Should be Consistent With Other New Entrant Licences***

26 Upper Canada further argues that the Applicant's request to have the effective date of its licence
27 deferred, until such time as it is designated to develop transmission facilities or until it adds

¹⁴ Decision on Motions and Procedural Order No. 3, EWT LP, EB-2011-0350, p. 11.

1 specific transmission facilities to its licence, should be denied. EWT LP submits that the Board
2 should reject this argument. As explained in the Applicant's November 18, 2011 Request for an
3 Amendment to its application, in EB-2011-0260 the Board ordered that TransCanada's
4 transmission licence should be amended by changing the effective date to the date upon which
5 the licensee is designated as a developer of transmission assets in Ontario pursuant to a Board
6 designation process or the date upon which the licensee applies to amend Schedule 1 of its
7 licence to specify the facilities to be owned and/or operated by the licensee, whichever is earlier.
8 The Board also agreed in that proceeding that other new entrant transmitters should be afforded
9 similar relief. In particular, the Board directed that "[a] new entrant transmitter . . . whose
10 application is before the Board, may choose to seek the same relief granted in this Decision and
11 Order by way of . . . amendment to its application."¹⁵ EWT LP's request is made pursuant to and
12 consistent with those directions from the Board. Upper Canada has not established any
13 reasonable basis for treating EWT LP differently in this respect. Moreover, to impose a different
14 effective date on EWT LP's licence than that which applies to other new entrant transmitters
15 would give rise to an uneven playing field in the context of the East-West Tie Designation
16 Proceeding.

17 F. CONCLUSIONS

18 Based on the foregoing, EWT LP submits that it has provided sufficient evidence to demonstrate
19 that it has the financial position and technical capability necessary to develop, own and reliably
20 operate transmission facilities in Ontario and that it has therefore satisfied all applicable
21 requirements for an electricity transmission licence to be granted.

All of which is respectfully submitted this 4th day of May, 2012.



Charles Keizer

Counsel to the Applicant

¹⁵ Decision and Order, TransCanada, EB-2011-0260, p. 10.