

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

**PHASE 1 SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

May 7, 2012

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EB-2011-0140

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*, S.O. 1998, c. 15, Schedule B for an electricity transmission licence.

**PHASE 1 SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

DELIVERED MAY 7, 2012

A. INTRODUCTION

1. AltaLink Ontario, L.P. (“**AltaLink**”) makes these written submissions in accordance with Procedural Order No. 2 in respect of the issues in Phase 1 of this proceeding.
2. AltaLink is a new entrant in Ontario that has been created to participate in transmission development in this Province pursuant to the Board’s designation process under the Board's policy Framework for Transmission Project Development Plans (EB-2010-0059) (the “**Framework**”). AltaLink holds an Ontario transmission licence (ET-2011-0126) which was issued on August 31, 2011 and which has a contingent effective date, and is a registered transmitter in this East-West Tie designation proceeding.
3. AltaLink is an affiliate of AltaLink, L.P. which, through its General Partner is a Transmission Facility Owner which owns and operates regulated electricity transmission facilities in Alberta. AltaLink is also an affiliate of SNC-Lavalin (SNC), a leading provider of engineering, procurement, construction, commissioning and related services for power facilities and infrastructure, with the combined resources of more than 1,000 employees in the field of power transmission and distribution across Canada.

4. AltaLink is supportive of the policy goals articulated in the Board's Framework. AltaLink submits that in considering the Phase 1 issues, the Board should be guided by these goals:

"The goal is the implementation of a process that provides, among other things, greater regulatory predictability in relation to cost recovery for development work. The Board believes that this policy will:

- allow transmitters to move ahead on development work in a timely manner;
- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers."¹

5. The importance of these goals is reinforced by the Minister of Energy's March 29, 2011 letter to the Board (the "**March Letter**"). In the March Letter, the Minister explained that:

"The Board's Policy Framework for Transmission Project Development Plans is well suited to apply to the East-West Tie project. Such an approach would allow transmitters to move ahead on development work in a timely manner, encourage new entrants to transmission in Ontario and bring additional resources for project development. It will also support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers."²

6. To achieve these goals, AltaLink submits that Phase 1 of this proceeding should have as a central objective to implement a designation process that is both fair and impartial as between new entrant transmitters and incumbent utilities, the latter of which have a noteworthy informational advantage over new entrants in respect of the proposed East-West Tie line.

7. AltaLink's submissions follow the format set out in the issues list for Phase 1 and in Board Staff's submission. AltaLink does not intend to repeat the material covered by

¹ Framework at pg. 1.

² March Letter at pg. 1.

Board Staff in their submissions, and will limit these submissions to raising AltaLink's particular views and concerns.

B. ALTALINK SUBMISSIONS ON THE PHASE 1 ISSUES LIST

Decision Criteria (Issues 1 - 4)

8. AltaLink supports the inclusion of organization; technical capability; financial capacity; schedule; costs; proposed plans and approaches to landowner, First Nation, Metis and other consultations as factors to be weighted by the Board.
9. AltaLink submits that the inclusion of "other factors" among the general decision criteria listed by the Board in the Framework was intended as a catch-all to reflect the unique circumstances that may arise in a particular designation proceeding. AltaLink submits that the Board should clarify and expressly confirm, as part of Phase 1, exactly what "other factors" the Board intends to consider as part of its general decision criteria for this East-West Tie designation proceeding. It is important for the purposes of certainty and clarity among all of the participants in this proceeding for the Board to state exactly what the decision criteria are (and what they are not).
10. AltaLink submits that an applicant's proposal(s) regarding proposed aboriginal participation along with a proponent's ability to carry out the procedural aspects of Crown consultation should be given the specific status of "other criteria" for this East-West Tie designation proceeding, particularly in light of the importance the Minister places on these factors in the March Letter. AltaLink agrees with Board Staff that the lack of a present delegation of Crown responsibility to consult does not bar the Board from considering an applicant's (and for applicants that are newly formed entities, their affiliates') track record of constructive dialogue and positive working relationships with First Nations and Métis communities.
11. AltaLink supports Board Staff's submission that when contemplating adding new criteria, the Board should keep in mind the stated aims of the Board's Framework, which included timeliness of new work, encouragement of new entrants, the availability of additional

resources for project development, and the benefits of economic efficiency through the support of competition.

12. In respect of Issues 2 and 3, AltaLink supports Board Staff's submission (for many of the same reasons) that applicants who have commenced consultation with First Nations and Métis groups before they apply for designation must not be regarded more favourably by the Board than those who have not commenced consultation but have a comprehensive and practical plan for consultation that would be initiated upon designation. However, Board Staff's submission only addresses consultations (Issue 3). It is not clear whether Board Staff take a similar stance in respect of aboriginal participation (Issue 2).
13. AltaLink submits that applicants who have participation of First Nations and Métis groups before they apply for designation must not be regarded more favourably than those who have not commenced discussions about participation but have a comprehensive and practical plan for such participation that would be initiated upon designation. AltaLink submits that this approach is necessary to address a concern it has previously raised in the EWT LP licensing proceeding³ that the incumbent utilities may have had access to information identifying the relevant First Nations and Métis groups affected by the East-West Tie line (such as, but not limited to, the May 31, 2011 letter from Jon Norman) allowing those utilities to secure a binding commercial relationship with six (6) of the First Nation communities specified in the May 31st letter long before any other new entrant transmitters even knew identities of these communities. AltaLink submits that this approach is both fair, in that it does not undermine the efforts of the incumbent utilities to obtain First Nations and Métis participation, but it also does not privilege them because they were able to do so, because of the informational advantage they have due to their incumbent status, long before any other new entrant had access to the necessary information.

Use of the Decision Criteria (Issues 5 - 6)

³ See Appendix "A" for AltaLink's Reply Motion Submissions dated Feb. 7, 2012 in the EWT LP licensing proceeding (EB-2011-0350) at paras. 37-48.

14. AltaLink supports the assessment methodology set out in the filing requirements and articulated by Board Staff. The Board should seek to choose the transmitter who best understands the challenges the East-West Tie line project, who has the best plan for meeting those challenges, and has the best track record of meeting similar challenges in the past. Each applicant should be required to demonstrate it has the financial capacity, technical capability and experience necessary to complete the project – which would lend itself to a pass/fail assessment.
15. AltaLink agrees with Board Staff’s submission that the Board should not propose any particular ranking or weighting for the decision criteria the Board selects, and rather that the Board should assess the applications in the same manner it does in any hearing, weighing and testing the evidence.
16. Finally, AltaLink is of the view that there is no value in selecting “runners-up” for designation. Once the designation decision is made, the transmitters that are not designated need to be free to devote their attention and resources to other opportunities.

Filing Requirements (Issues 7 - 8)

17. AltaLink has carefully reviewed the filing requirements prepared by Board Staff and is generally supportive of these requirements, including the changes to the original filing requirements, subject to the following specific additions, deletions or changes:
 - i. Section 1 - Background Information. AltaLink submits that an additional requirement should be added that the application should include “A statement from a senior officer that the applicant is not in a position of an actual or perceived conflict of interest in respect to submitting its application, being designated, or, if designated, performing the work related to the East-West Tie line, other than those that are disclosed as a separate appendix to the application.” AltaLink submits that any actual or potential conflicts of interests should be clearly indicated on the record so that the Board and all parties can consider the implications of, and make submissions on, those conflicts.

- ii. Section 2 – Organization. Portions of this section of the filing requirement relate substantively to an assessment of the participation level of First Nations and Métis groups – an assessment that will likely vary on a spectrum of possible participation levels and would be difficult to apply a pass/fail assessment against. However Board Staff’s submissions appear to suggest that all of the first part of the filing requirements should be pass/fail. AltaLink submits that it would be appropriate to move these Subsections 2.4-2.6 into second part of the filing requirements as it relates to an applicants proposed transmission project plan and planned aboriginal participation levels, and should be assessed using the more flexible weighting methodology proposed above.
- iii. Section 3 - Technical Experience. AltaLink submits that the Board should confirm in its filing requirements that experience in Ontario will not be favoured over comparable experience in other jurisdictions. AltaLink disagrees with Board Staff’s proposal in Section 3.3 of the filing requirements to add specific considerations “involving similar terrain; climate and other environmental conditions.” These considerations were not present in the original filing requirements. AltaLink’s specific concern is the focus of these considerations on assessments of similar terrain, climate or other environmental conditions (for clarity, AltaLink has no concern with the reference to similar reliability requirements). AltaLink would refer the Board to a process AltaLink is quite familiar with. This is the Alberta experience in competitive infrastructure procurement – which requires a proponent to “demonstrate that it has appropriate experience, management and technical capabilities as applicable, to develop, own, finance, operate and maintain critical infrastructure assets of similar magnitude and complexities.” AltaLink submits that this is a more salient formulation of the relevant considerations. The ultimate assessment relates to a proponent’s capabilities to develop, own, finance, operate and maintain critical infrastructure assets of similar magnitude and complexities – not whether or not previous projects involved similar terrain or climate. AltaLink submits that Board Staff’s proposed language tends to limit the Board’s analysis by focusing exclusively on and favouring one particular way a proponent can demonstrate its ability to handle projects of

similar magnitude and complexities (because it did a project on similar terrain or in a similar climate) at the expense of other evidence a proponent may rely upon.

- iv. Section 5 – Plan Overview. In this section Board Staff has proposed a change to the Board’s *Minimum Technical Requirements for the Reference Option of the E-W Tie Line* (the “**Minimum Requirements**”) by not including a requirement to include as part of an application “all proposed design assumptions, including but not limited to the line structure loadings and line design clearances” which is a mandatory requirement set out in Section 2.1.5 of the Minimum Requirements. AltaLink did not understand Issue 7, which requested additions, deletions or changes to the G-2010-0059, to also encompass changes to the Minimum Requirements. AltaLink submits that applications would generally benefit from a statement of all applicable design assumptions, so that other transmitters can better review, assess, test and understand others’ proposals. AltaLink does not understand why Board Staff believes that this information will not be available at the time of application, and requests clarification from Board Staff. AltaLink submits that one formulation that may address Board Staff’s concern would be to require a statement of “all applicable design assumptions (to the extent available or otherwise relied upon in the proposal for designation).”
18. AltaLink submits that applicants should not be permitted to submit, in addition or in the alternative to plans for the entire East-West Tie Line, plans for separate segments of the East-West Tie Line. AltaLink views the proposed East-West Tie Line as a single project. If the entire line is not completed, the system benefits will not accrue. AltaLink submits that it does not make sense to add risk to the development process and complexity to the designation process by trying to determine how to allow for multiple designated transmitters for certain segments of the East-West Tie Line.

Obligations and Milestones (Issues 9-12)

19. AltaLink is supportive of Board Staff’s suggestion that the Board should require transmitters to propose performance milestones in their applications for designation as one area where the Board could differentiate transmitters applications in terms of the

judgment that they bring in proposing milestones and a schedule to their application. AltaLink submits that an applicant could also propose specific reporting commitments that would apply during the development phase as part of its application. This would give the Board a broad range of milestones and reporting commitments which at least one applicant is willing to stand behind.

20. AltaLink is also supportive of Board Board Staff's suggestion to impose performance milestones and reporting requirements related to those milestones through an amendment to a designated transmitter's license, which would apply only for the development phase until leave to construct is achieved.
21. AltaLink agrees with Board Staff that delays and difficulties may arise that could not have been predicted at the time of designation by a diligent transmitter. AltaLink agrees that the Board should include the opportunity for designated transmitters to seek amendments to the timelines, that the designated transmitter should be vigilant in identifying potential sources of failure or delay and to mitigate them to the extent possible.

Consequences of Designation (Issues 13 – 16)

On what basis and when does the Board determine the prudence of budgeted development costs?

22. AltaLink agrees with Board Staff's submissions that prudence of budgeted development costs will be assessed through the Phase 2 hearing process and that amount would be approved for recovery from ratepayers if the transmitter is designated. AltaLink supports the Board's intention that any development costs in excess of the budgeted development costs will be subject to a subsequent prudence review.

Should the designated transmitter be permitted to recover its prudently incurred costs associated with preparing its application for designation? If yes, what accounting mechanism(s) are required to allow for such recovery?

23. AltaLink supports Board Staff's submission that applicants should only be entitled to recover their costs to prepare its application for designation following the issuance of the Phase 1 decision.
24. AltaLink supports the use of a deferral account as a mechanism to account and allow for the recovery of approved costs in preparing a plan. AltaLink submits that the deferral account should allow the designated utility to earn a fair rate of return on capital invested.

To what extent will the designated transmitter be held to the content of its application for designation?

25. AltaLink submits that a designated transmitter should be held to its application for designation, as noted in paragraph 20 above, and further supports Board Staff's suggestions that a designated transmitter must meet the minimum commitments regarding adherence to IESO required standards, the minimum technical requirements, performance milestones and reporting requirements imposed, and planned First Nation and Métis participation, and recovery for no more than budgeted development costs. However, AltaLink notes Board Staff's addition of "(in the absence of extraordinary circumstances)" regarding recovery of no more than budgeted development costs at page 17 of the Board Staff submissions. AltaLink is concerned that the "extraordinary circumstances" threshold is quite a high threshold. AltaLink submits that if costs are prudently incurred by a utility to complete the necessary development work, then a utility should have an opportunity to demonstrate the prudence of the capital investment under the circumstances and subject to the Board's typical prudence review. There should not be an additional "extraordinary circumstances" requirement in addition to the Board's typical prudence review. AltaLink invites Board Staff to clarify their intent in making this statement.
26. AltaLink agrees with Board Staff that it would be difficult to provide an accurate estimate of construction costs before development work is complete, and that the Board should consequently not require any definite commitment from applicants on these costs.

What costs will a designated transmitter be entitled to recover in the event that the project does not move forward to a successful application for leave to construct?

27. AltaLink supports Board Staff's submission that if the project fails for reasons outside of the designated transmitter's control, such as a subsequent OPA assessment that the project has ceased to be needed or economically viable, the transmitter should be entitled to automatically recover budgeted development costs already expended and reasonable wind-up costs. In addition, AltaLink submits that in this instance the transmitter should also be entitled to recover its costs to prepare its application for this designation proceeding.
28. If the reason a designated transmitter fails to successfully obtain leave to construct is due to some failure within the transmitter's control, AltaLink submits that recovery of any budgeted amount should not be automatic. Rather, such recovery should be subject to a subsequent re-assessment of prudence of the designated transmitter's activities.

Process (Issues 17 - 23)

The Board has stated its intention to proceed by way of a written hearing and has received objections to a written hearing. What should the process be for the phase of the hearing in which a designated transmitter is selected (Phase 2)?

29. AltaLink supports Board Staff's proposal that Phase 2 of this proceeding be conducted by way of a written hearing, for the same reasons as have been articulated by counsel for EWT LP in its letter dated March 5, 2012 in support of a written hearing for this proceeding.⁴
30. Board Staff also suggest that "It will be vital to treat all applicants fairly and equally and, to the extent possible, treat them identically." AltaLink submits that the underlying objective of the Board should be to establish a fair and equal designation process. Below,

⁴ Available online at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/328518/view/EWT_LTTR_20120305.PDF

AltaLink details its concerns about the informational and other advantages EWT LP has in this designation proceeding because it does not need to comply with ARC, and AltaLink is asking the Board to remedy those concerns to ensure a fair and equal designation process. AltaLink submits that fairness and equality may mean treating some registered transmitters differently in specific circumstances. AltaLink details the circumstances where this should occur below.

Should the Board clarify the roles of the Board's expert advisor, the IESO, the OPA, Hydro One Networks Inc. and Great Lakes Power Transmission LP in the designation process? If yes, what should those roles be?

31. AltaLink supports Board Staff's recommendations regarding the role of the Board's expert advisor, the IESO, and the OPA.
32. In regards to the participation of Hydro One Networks Inc. ("HONI") and Great Lakes Power Transmission LP ("GLPT"), by letter dated March 16, 2012 AltaLink raised a concern regarding the scope of HONI's proposed participation in this proceeding. Specifically, AltaLink noted that while GLPT confirmed in its intervention request letter that it "does not propose to express preferences for any particular plan put forth in this proceeding, but merely to provide information and submissions where called for [...]", HONI made no similar commitment. In the same letter AltaLink requested clarification from HONI. HONI did not respond.
33. AltaLink submits that in light of the existing record, the Board should clearly articulate in its decision on Phase 1 the roles of HONI and GLPT. This will avoid confusion and provide clarity to both the incumbent transmitters and other parties. In this respect, AltaLink agrees with Board Staff's submissions that it is very important that HONI and GLPT do not favour any particular applicant for designation, and that their participation be limited in scope to providing the same information and assistance to all potential applicants and to proposing interrogatories and making submissions on proposals that directly affect their respective existing infrastructure. AltaLink submits that a Board order in this regard is necessary because of HONI and GLPT's indirect interests in one of

the registered transmitters in this proceeding. AltaLink is concerned that absent a clear order requiring GLPT and HONI to not favour any particular applicant for designation, it would be possible for an incumbent transmitter to over emphasize the adverse effects and under emphasize the benefits of some proposals on their existing infrastructure, while doing the reverse with other proposals. This would allow for an indirect favouring of one registered transmitter over another, which should be expressly prohibited.

What information should Hydro One Networks Inc. and Great Lakes Power Transmission LP be required to disclose?

34. On April 9, 2012 Board Staff circulated two lists of documents provided by HONI, dated March 30, 2012, and GLPT, dated March 26, 2012, which were described as "documents relating to the development of the East-West Tie" (the "Documents"). AltaLink supported a letter filed by counsel to TransCanada Power Transmission LTD on April 20, 2012 requesting direction from the Board in respect of this material and AltaLink notes the Board's response dated April 26, 2012. AltaLink agrees with Board Staff's submissions that all of the documents listed by HONI and GLPT should be produced. AltaLink agrees that such information would be assistance to all registered transmitters and the Board to help understand the challenges presented by construction and maintenance of the East-West Tie Line. AltaLink submits that if confidentiality is a concern, those concerns could be addressed through the Board's typical process, relying on the form of declaration and undertaking, as set out in its *Practice Direction on Confidential Filings*.

Are any special conditions required regarding the participation in the designation process of any or all registered transmitters?

35. AltaLink submits that there are special considerations regarding the participation in the designation process of EWT LP that arise because of the indirect interests the incumbent utilities, HONI and GLPT, have in respect of EWT LP.

36. AltaLink is concerned that EWT LP has and will have unfair preferential access to confidential system planning and technical information from HONI and GLPT related to the East-West Tie Line that will create an unfair informational advantage because no other participant in the EB-2011-0140 will have access to such information. AltaLink's concern encompasses the list of Documents provided by HONI and GLPT. If any of these documents are not disclosed, there is a risk that EWT LP alone would be privy to the information in those documents at the expense of all other registered transmitters.
37. AltaLink's concern extends beyond the list of Documents to the proposal to share very senior employees of the incumbent utilities with EWT LP. AltaLink is concerned that the sharing of these individuals is problematic because their responsibilities for much of the day-to-day operations of the incumbent utilities will give them regular and unfettered access to all of the commercially sensitive confidential information and system planning information of the incumbent utilities, including sensitive information related to the East-West Tie Line that goes beyond what is specified in the Documents.
38. AltaLink previously raised these concern to the Board's attention in a motion it brought in the EWT LP's licensing proceeding (EB-2011-0350).⁵ The Board's Decision on Motions dated March 23, 2012, made by delegation and attached as Appendix "B", at pages 11-12 states that:

"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.

[...]

⁵ See AltaLink's Motion dated December 15, 2011, Additional Motion Submissions dated January 17, 2012 and Reply Motion Submissions dated February 7, 2012 in the EB-2011-0350 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 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."

39. AltaLink submits that in light of this Decision, Phase 1 in this designation proceeding is the appropriate time for the Board to undertake a detailed review regarding the nature and treatment of the subject information, how EWT LP leverages existing resources of its partners and what, if any, conditions should be imposed on the EWT LP's participation in this designation proceeding.

Are the protocols put in place by Hydro One Networks Inc. and Great Lakes Power Transmission LP, and described in response to the Board's letter of December 22, 2011, adequate, and if not, should the Board require modification of the protocols?

40. AltaLink has carefully reviewed the Board's December 22, 2011 letter to HONI and GLPT requesting certain information from Ontario's major incumbent electricity transmitters (the "**Information Request Letter**") and the GLPT response filed on January 9, 2012 (the "**GLPT Response**") and the HONI response provided during an information meeting on January 10, 2012 (the "**HONI Response**"), and has arrived at the conclusion that in light of this information AltaLink continues to have serious concerns about EWT LP's unfair access to the information and resources of both incumbent Ontario transmitters.
41. AltaLink previously raised these concerns in its January 17, 2012 Additional Motion Submissions in EB-2011-0350. AltaLink summarizes those concerns again below.
42. AltaLink notes at the outset that in the Information Request Letter the Board asked HONI and GLPT to provide "a complete description" of two substantive categories of information:

- any rules, policies, practices, IT infrastructure and other protocols they have in place to ensure that any information or resources that those incumbent transmitters have developed or acquired relevant to the development of the East-West Tie Line cannot be accessed by any registered transmitter (the “**Unfair Access Rules**”); and
 - the protocols that they have developed (or are proposed to be developed) regarding the sharing of information necessary to prepare an applicant for designation with all registered transmitters (the “**Information Sharing Protocols**”).
43. AltaLink notes that this distinction between the two categories of information requested is important. For the reasons that follow, AltaLink submits that both the HONI Response and the GLPT Response focus primarily on the Information Sharing Protocols but fail to adequately address the Unfair Access Rule. In light of the deficient responses provided by the incumbent utilities, AltaLink submits that there is currently a lack of rules, policies, practices, IT infrastructure and protocols sufficient to address the substantive concerns raised by the Board related to the Unfair Access Rule.
44. In this circumstance, AltaLink submits that the Board should step-in and fill this gap through regulation, to ensure that the participation of EWT LP in this proceeding does not undermine the Board’s policy objectives of encouraging new entrants and facilitating competition in the transmission sector.
45. In the GLPT Response, GLPT explains the specific protocols it has developed, through Mr. Gary Gazankas, to respond to information requests relevant to the East-West Tie designation process. The GLPT Response focuses primarily on the Information Sharing Protocols but fails to adequately address the Unfair Access Rules. The GLPT Response notes that Mr. Gazankas is not part of the GLPT members of the EWT LP designation team, but fails to identify who are the GLPT members of the EWT LP designation team and it fails to address concerns related to their potential access to confidential and commercially sensitive information outside of a formal request made to Mr. Gazankas. This is particularly concerning in light of the HONI Response discussed below.

46. In the HONI Response, HONI notes that it “has identified specific employees to work on the Application for Designation and has issued a mandatory Directive to those employees.” The employees are identified expressly in the Directive and the accompanying email sent on behalf of Joseph Agostino, General Counsel of Hydro One Inc as: Peter Gregg, Sandy Struthers, Carmine Marcello, Mike Penstone, and Rhonda Wise.
47. The identities of the HONI employees that are part of the EWT LP team that will “work on the Application for Designation” gives AltaLink serious cause for concern. Peter Gregg is identified on Hydro One’s website as the “Executive Vice President, Operations” of HONI.⁶ Sandy Struthers is identified as “Executive Vice President and Chief Financial Officer, Corporate Support” of HONI and is also an officer of Hydro One Inc. together with Laura Formusa.⁷ Carmine Marcello is identified as the “Executive Vice President, Strategy” of HONI.⁸ We understand that Mike Penstone is “Vice President, Transmission Project Development” of HONI. Finally, we understand that Rhonda Wise is “Associate General Counsel” of HONI.
48. There can be no denying that these individuals represent some of the most senior executives of HONI. Because of their senior roles at Ontario’s largest incumbent transmitter and their responsibility for much of the day-to-day operations of HONI, it is hard to conceive how these individuals could fail to have regular and unfettered access to all of the commercially sensitive confidential information and system planning information of HONI, including sensitive information related to the East-West Tie Line.
49. It is also very likely these same senior executives would have engaged in sensitive discussions with the IESO, the OPA and the Ministry regarding the proposed East-West

⁶ *Hydro One, Our Company, Senior Management* available online at: <http://www.hydroone.com/OurCompany/Pages/SeniorManagement.aspx> (last accessed January 15, 2012).

⁷ Ibid.

⁸ Ibid.

Tie Line. Mr. Penstone, for instance, has previously received correspondence from Mr. Amir Shalaby at the OPA related to other provincial transmission development projects.⁹

50. It is in this context that the HONI Response indicates that collectively its September 30, 2011 Directives and the Hydro One *Code of Conduct* provide HONI's "complete response" to the Unfair Access Rules and the Information Sharing Protocols.
51. AltaLink submits that HONI's Response may be read as a complete response to the Information Sharing Protocols (which AltaLink understands and appreciates) but AltaLink submits that HONI's Response, much like GLPT's Response, fails to directly address the substantive concerns raised by the Board in regards to the Unfair Access Rules. The HONI Directives are incredibly narrow and relate primarily to the Information Sharing Protocols. They do not address the detailed knowledge that the HONI employees that are members of the EWT LP already have as a result of their senior roles with HONI, nor does it address information that may have been shared with them prior to September 20, 2011. They do not address any information that HONI members of the EWT LP team may otherwise gain (possibly inadvertently) outside of a formal information request in the course of their ongoing employment at HONI. They do not specify any steps to ensure physical separation nor any IT infrastructure that was put in place to ensure that HONI members of the EWT LP team could not access any relevant confidential information or system planning information. AltaLink submits that HONI's Response is simply insufficient to address substantive concerns raised in respect of the Unfair Access Rules.
52. AltaLink submits the Board should consider HONI's submissions dated February 23, 2011 in respect of TransCanada's original licence application (EB-2010-0324) , and HONI's submissions dated September 13, 2011 in respect of TransCanada's licence application amendment (EB-2011-0260). In its February 23, 2011 submissions, HONI

⁹ See, for instance, the June 30, 2011 and October 3, 2011 correspondence between the Mr. Amir Shalaby of the OPA and Mr. Penstone of HONI regarding the West of London Upgrade and the Southwestern Ontario Reactive Compensation transmission projects. Available online at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/301089/view/H1_quarterly%20update_20111011.PDF (last accessed January 15, 2012).

stated its concern that TransCanada would be in “receipt of potentially confidential and commercially sensitive technical and connection information that is required to be provided by incumbent transmitters to all bidders as part of the designation process.”

53. While HONI does not specify exactly what information it is referring to, nor does HONI specify whether TransCanada would in-fact receive such information as part of the designation process, what is clear from this statement is that HONI is in possession of confidential and commercially sensitive technical and connection information related to the East-West Tie Line. In fact, it was the existence of this very information that must have formed the basis of the concern HONI raised in the EB-2010-0324 proceeding.
54. The issue is to what extent do the HONI employees and GLPT employees that are members of the EWT LP team have access to this “potentially confidential and commercially sensitive technical and connection information” when other proponents in the East-West Tie Designation Process will not have equal access to similar information. In this regard, AltaLink submits that both the HONI Response and the GLPT Response are deficient.
55. In its September 13, 2011 submissions in EB-2011-0260, HONI, in response to TransCanada’s invitation to clarify why HONI believes it will be required to provide customer-specific confidential information, submits “that the nature of any information disclosure will be driven by the transmitter designation process, which is new and largely untested. It is therefore difficult to foresee what confidential information Hydro One or others may be required to produce in the course of the designation process, in relation to the current East-West Tie or any other future projects. It is similarly difficult at this stage to predict what information might come into TPT’s possession during the designation process.”
56. HONI acknowledges in this submission that it simply does not know what type of information will be asked of it during the East-West Tie designation process, and as a result HONI found it difficult to predict what type of information would be shared with participants in the East-West Tie designation process. AltaLink submits that this creates

a fundamental cause for concern. On the one hand, HONI seeks to utilize key senior HONI employees who have direct and unfettered access to all potentially confidential and commercially sensitive technical and connection information as part of the EWT LP designation team, but on the other hand, HONI cannot say whether all such information will be provided to all of the participants in the East-West Tie designation process.

57. Notably, neither HONI nor GLPT have provided representations that the list of Documents represents a full and complete listing of all information related to the East-West Tie designation process that is in the possession or otherwise under their control. Furthermore, neither HONI nor GLPT have provided assurances that the employees they propose to share with EWT LP do not have and cannot gain access to any “potentially confidential and commercially sensitive technical and connection information” that is not accessible by all other registered transmitters.

Given that EWT LP shares a common parent with Great Lakes Power Transmission LP and Hydro One Networks Inc., should the relationship between EWT LP and each of Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board’s regulatory requirements (in particular the Affiliate Relationships Code) that pertain to the relationship between licensed transmission utilities and their energy service provider affiliates?

58. AltaLink submits that it is helpful in this respect to refer to the employee sharing restrictions contained in Section 2.2.3 of the Board's *Affiliate Relationship Code for Electricity Distributors and Transmitters* (“ARC”) which states in respect of the sharing of employees that “[a] utility shall not share with an affiliate that is an energy service provider employees that are directly involved in collecting, or have access to, confidential information.” In *Compliance Bulletin 200604*, the Board's Chief Compliance Officer explains that “It is my opinion that sections 2.2.3 and 2.2.4 of the Code are intended to ensure that confidential information will not be accessible to an affiliate in a manner that might result in the use of that information in unregulated activities.” Mr. Hewson goes on to explain “In my view, in order to comply with the employee sharing provisions, a [utility] must ensure that employees (whether of the distributor or the affiliate) who have access to confidential information or carry out the day-to-day operation of the [utility] network are not

involved in the provision of the affiliate's unregulated activities in the [utility]'s licensed service area.”

59. In addition, Section 2.3.3.6 of ARC provides that "[w]here a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall charge no less than the greater of (i) the market price of the service, product, resource or use of asset and (ii) the utility's fully-allocated cost to provide service, product, resource or use of asset, when selling that service, product, resource or use of asset to an affiliate."
60. EWT LP was carefully designed so as to avoid the application of ARC's regulatory restrictions to its activities. As a result, AltaLink cannot rely upon the Board's usual rules regarding the sharing of employees between HONI, GLPT and EWT LP. In any event, the definition of energy services provider in ARC is too narrow because the ARC was crafted before the Board initiated its policy initiative to encourage competition in the transmission sector.
61. The HONI Response makes reference to the HONI Code of Conduct, including the provision that requires all employees to "[r]ecognize the value of competition and to not engage in practices that seek to reduce the openness and fairness of competition. We do not prevent others from competing freely and fairly with us, except when constrained by law." AltaLink submits that this is insufficient.
62. AltaLink takes note of the submissions made by Board Staff that the rules in ARC do not apply to the relationship between EWT LP and either of the incumbent utilities.
63. The fact that ARC does not apply to the relationship between EWT LP and the incumbent utilities serves to increase, not lessen, AltaLink's concern. If ARC did apply, HONI would be required to comply with regulatory imperatives that the Board has imposed to address a fundamental concern that incumbent monopolies will tend to, when left to their own devices, use their incumbent market power and informational advantages to inhibit and discourage competition. Utility regulators have witnessed monopoly utility abuses over history, and as a best practice most utility regulators, including this Board, have imposed binding and mandatory restrictions on employee sharing and what constitutes

adequate compensation for services shared between a dominant incumbent utility and a related entity that is a participant in the competitive markets.

64. AltaLink submits that the mere fact that EWT LP, HONI and GLPT are not technically “affiliates” does not alleviate the fundamental and underlying concerns related to incumbent utilities using their incumbent informational advantage to unfairly compete in a competitive designation process, nor should it forestall the Board’s accepted approach to imposing clear and unambiguous regulatory requirements regarding the sharing of employees and resources as between two monopoly utilities and EWT LP that is seeking to participate in this competitive designation process.
65. Finally, AltaLink takes note of Board Staff’s observation that the rules in ARC do not currently apply to transmitters whose licenses are not yet in effect. As has been explained above, EWT LP will have unfair access to privileged information that no other registered transmitter will have because EWT LP and the incumbent utilities are not bound by the employee sharing provisions of ARC. This, in AltaLink’s view, will give EWT LP an unfair informational advantage over other registered transmitters during the designation proceeding. For example, EWT LP’s key employees will likely know exactly what concerns HONI may have about the impact of any specific proposal on the HONI grid – allowing EWT LP to customize a solution that favours their proposal when no other utility would have equal access that type of information.
66. In addition, once AltaLink is designated, its transmission licence will immediately take effect and AltaLink will be required by the terms of its license to comply with the employee sharing and market pricing provisions of the ARC. By contrast, EWT LP would not have to comply with the ARC even after designation. As a result, AltaLink will be subject to additional regulatory burdens that EWT LP will not need to comply with. The net effect of this circumstance results in EWT LP being treated differently from all other registered transmitters, and thereby gaining an unfair advantage over all other registered transmitters.

67. In conclusion, HONI and GLPT alone are seeking to circumvent the information sharing and resource sharing restrictions in ARC, and are seeking to obtain preferential treatment for EWT LP as a result. AltaLink submits that the Board should step in and impose ARC on the relationships between each of HONI and GLPT, and their designate registered transmitter in this proceeding - EWT LP – to ensure that all registered transmitters participate in the competitive designation process on a fair and equal footing.

What should be the required date for filing an application for designation?

68. AltaLink submits that the required date for filing an application for designation should be at least 6 months from the date of the Board’s decision on this Phase 1. This will give all registered transmitters the time necessary to prepare quality proposals for the Board’s consideration, and is reflective of the fact that this is the first time the Board has held a designation process and as a result no precedents or comparables exist.

C. OTHER ISSUES

The IESO / OPA Merger

69. On April 18, 2012 the Government of Ontario announced its proposal to merge the Ontario Power Authority (the “OPA”) and the Independent Electricity System Operator (the “IESO”) into a single organization. On April 26, 2012 the Ontario Minister of Energy introduced Bill 75, the *Ontario Electricity System Operator Act, 2012* (“**Bill 75**”) for first reading. Bill 75 was debated in the legislature on May 3, 2012.
70. The IESO and the OPA are registered intervenors in this proceeding, and have an important role to play in this designation process which is based at least in part on the OPA Report and the IESO Feasibility Study that were included with the Board’s August 22, 2011 letter to registered transmitters.
71. AltaLink would request that the IESO and the OPA comment in reply on the anticipated affect of Bill 75 on this designation process and any future leave-to-construct application for the East-West Tie transmission line. In particular:

- Will the newly merged entity be bound by and support the preliminary assessment of need made by the OPA for this designation proceeding?
- Will the newly merged entity undertake the OPA's delegated responsibility regarding the duty to consult First Nations and Métis prior to designation as set out in the May 31, 2011 letter?
- Will the newly merged entity continue to be responsible for preparing feasibility studies for each option other than the Reference Option?
- Will the newly merged entity be responsible for assessing the need for the East-West Tie line as part of any future leave to construct proceeding?

D. CONCLUSIONS

72. AltaLink concludes by re-iterating its support of the Board's policy Framework. By ensuring a fair and unbiased designation process for the East-West Tie Line, which addresses the informational advantages of incumbent transmitters, the Board can ensure that over the long-term its Framework will succeed in supporting competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

THE FOLLOWING DOCUMENTARY EVIDENCE is relied upon in these submissions:

- (a) Appendix "A" - AltaLink's Reply Motion Submissions dated Feb. 7, 2012 in the EWT LP licensing proceeding (EB-2011-0350)
- (b) Appendix "B" - The Board's Decision on Motions dated March 23, 2012 in the EWT LP licensing proceeding (EB-2011-0350).

All of which is respectfully submitted this 7th day of May, 2012.

Original signed by J. Mark Rodger

J. Mark Rodger

Original signed by John A.D. Vellone

John A.D. Vellone

TOR01: 4909280: v8

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*, S.O. 1998, c. 15, Schedule B for an electricity transmission licence.

**REPLY MOTION SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

February 7, 2012

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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*, S.O. 1998, c. 15, Schedule B for an electricity transmission licence.

**REPLY MOTION SUBMISSIONS
OF ALTALINK ONTARIO, L.P.**

DELIVERED FEBRUARY 7, 2012

A. INTRODUCTION

1. AltaLink Ontario, L.P. (“**AltaLink**”) makes these written submissions in accordance with Procedural Order No. 2 in reply to the written submissions of EWT LP (the “**Applicant**”) filed January 31, 2012 (the “**EWT Submissions**”) in respect of AltaLink’s motion to compel further and better interrogatory responses from the Applicant filed December 15, 2011 (the “**AltaLink Motion**”) and AltaLink’s additional written submissions filed January 17, 2012 (the “**Additional Submissions**”).

A.1 The EWT Submissions obfuscate the differences between the AltaLink Motion and the other motions.

2. The EWT Submissions detail the Applicant’s responses to the AltaLink Motion as well similar motions brought by each of TransCanada Power Transmission (Ontario) L.P. (“**TransCanada**”) on December 12, 2011 (the “**TransCanada Motion**”) and Upper Canada Transmission, Inc. (“**Upper Canada**”) on December 13, 2011 (the “**Upper Canada Motion**”). Throughout the EWT Submissions, the Applicant refers to all three motions as the “**Motions**” and refers collectively to AltaLink, TransCanada and Upper

Canada as the “**Moving Parties**”.¹ In doing so the Applicant has obfuscated key differences between the AltaLink Motion and the other two Motions. Furthermore, throughout the EWT Submissions the Applicant frequently cites the argument of one Moving Party it disagrees with, but then proceeds to purposefully attribute adverse conclusions to all three Moving Parties rather than simply to the party it disagrees with.

3. AltaLink submits that this argument style is deliberately misleading. The Applicant is, in effect, trying to paint all of the Moving Parties with the same brush. This is inappropriate. Each of the Motions seek distinct relief from the Board, and each of the Moving Parties have advanced their own unique arguments in support of their specific Motions. AltaLink does not think it is appropriate for the Applicant to deliberately misattribute any of AltaLink’s positions to either TransCanada or Upper Canada, and similarly AltaLink submits that it is inappropriate for the Applicant to have deliberately misattributed the positions of TransCanada and Upper Canada to AltaLink and the AltaLink Motion.

A.2 The Applicant’s suggestion that requiring disclosure would be “uniquely prejudicial” is unsubstantiated and unfounded.

4. In Section 3 of the EWT Submissions, the Applicant argues that it would be “uniquely prejudicial” to the Applicant to require the requested disclosure in the context of the licensing proceeding because “the Moving Parties can use [it] for collateral purposes in the Designation Process.” The Applicant argues that “[d]espite the best efforts of the Moving Parties to 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.” The Applicant concludes “[r]equiring disclosure at this time would be seriously prejudicial to EWT and unfair.”²

¹ EWT Submissions at pg. 1, lines 9-20.

² EWT Submissions at pg. 11, line 18 to pg. 12, line 5.

5. The Applicant does not provide any specific explanations as to why it believes that requiring full and complete responses to AltaLink interrogatories 1(c), (e) and (l) and interrogatories 3, 4, and 5 (the “**Disputed Interrogatories**”) would be seriously prejudicial and unfair to the Applicant.
 6. Rather the Applicant limits its argument to a bald assertion (which AltaLink will respond to directly in respect of each of the Disputed Interrogatories below), based upon an allegedly common, although unproven, motivation of all three of the Moving Parties to seek information “for collateral purposes in the Designation Process.”
 7. AltaLink cannot tell the Board what motivated TransCanada or Upper Canada to bring their respective Motions. However, AltaLink can confirm that its motivation in bringing the AltaLink Motion was to ensure that there is sufficient evidence on the record to ensure the Board has the information it needs to make a determination in respect of the financial position, technical capability and past conduct of the Applicant and to ensure the Board clearly understands and is equipped to address the unique issues in this Application which arise because of the Applicant’s non-arm’s length relationship with two of Ontario’s incumbent electricity transmitters.
 8. However, the Applicant’s view that the Moving Parties are seeking information “for collateral purposes in the Designation Process” is particularly concerning to AltaLink. Both HONI and GLPT have been allowed by this Board to fully participate in the licensing applications of not only AltaLink, but also of TransCanada, Upper Canada, and ICCON. In each of these proceedings, HONI and/or GLPT asked and received responses to numerous detailed interrogatories. In light of the Applicant’s framing of the Moving Parties’ substantive concerns, AltaLink has to ask whether HONI and/or GLPT were only seeking the information requested in the other licensing applications for collateral purposes in the Designation Process.
- A.3 *The Applicant is seeking preferential treatment by the Board when compared to onus other new entrant transmitters have had to discharge.***

9. AltaLink submits that the Applicant is seeking preferential treatment from the Board when compared against how the Board has previously treated all other new entrant's transmission licence applications, including AltaLink's licence application. The Applicant seeks to obtain this preferential treatment by relying on its non-arm's length relationship with Great Lakes Power Transmission LP ("GLPT") and Hydro One Networks Inc. ("HONI") to meet the Board's requirements for technical and financial capabilities. The Applicant is clearly relying on the fact that the Board is already familiar with both GLPT and HONI, and is hoping that the Board would therefore be unlikely to ask any specific questions or to investigate too deeply into its Application.
 10. The Applicant appears to have been successful, at-least in part. While Board Staff asked a series of very similar interrogatories of all of the other new entrant transmitters (including AltaLink) to assist the development of the evidentiary record, Board Staff chose not file any written interrogatories in this Application.
 11. The consequence of the lack of interrogatories from Board Staff together with the Applicant's outright refusal to answer many of the interrogatories that it did receive is that there is an evidentiary void on the record in this proceeding compared to the evidence that was available to the Board in the other licensing proceedings for other new entrant transmitters. AltaLink identifies, in respect of each of the Disputed Interrogatories below, the specific circumstances where the Applicant is seeking differential and preferential treatment vis-à-vis the information that has been required on the record of other new entrant transmitters in Ontario.
- A.4 The Applicant is unilaterally trying to narrow the scope of this proceeding by refusing to answer relevant interrogatories in an attempt to withhold relevant information from the Board.***

12. The Applicant readily acknowledges that “[t]he key areas reviewed by the Board in any license application are the financial position, technical capability and conduct of an applicant.”³
13. However, the Applicant then goes to argue that since the Board has previously determined that the licensing application is merely a “threshold qualification step”,⁴ that the Board will only assess the applicant “at a preliminary stage”⁵ to get “some appreciation”⁶ of its ability to operate as a transmitter – the Applicant should not be required to answer questions that are directly relevant to its financial position, technical capabilities, and past conduct because the Applicant has unilaterally determined that the questions simply *are not relevant enough*.
14. AltaLink submits that this is not a proper or allowable basis upon which the Applicant may refuse to answer relevant interrogatory questions under the Board’s *Rules of Practice and Procedure*. Responses must be provided to every interrogatory relevant to any matter in issue in a proceeding. The Applicant’s discovery obligations is not limited by *degrees of relevance*, such that the Applicant can pick and choose which interrogatories to answer – those that are sufficiently relevant (and in the Applicant’s view, to its advantage) and those that are not sufficiently relevant (and in the Applicant’s view, to its disadvantage). If the Applicant has concerns as to the level of relevance of a particular interrogatory response, those concerns can be addressed by the Applicant in submissions and would go to the weight the Board ascribes to the evidence.

B. THE DISRUPTED INTERROGATORIES

B.1 AltaLink Interrogatory #1(c), (e) and (l)

15. AltaLink asked a series of question intended to better understand what areas of technical capability, expertise and experience the Applicant is relying upon each of its limited

³ EWT Submissions at pg. 8, ln. 8-11.

⁴ Ibid. at pg. 8, ln. 7-8.

⁵ Ibid. at pg. 9, ln. 4.

⁶ Ibid. at. pg. 8, ln. 14.

partners for.⁷ No party disputes that the purpose of this license proceeding is to allow the Board an opportunity to evaluate the technical capabilities of the Applicant.

16. In its interrogatory response, the Applicant refused to answer all of the itemized questions directly. Instead, by merging all the answers into a single response the Applicant has obfuscated the fact that its response has failed to respond to several relevant questions.⁸
17. AltaLink carefully considered the Applicant's response and identified in the AltaLink Motion three specific interrogatories, 1(c), (e) and (l), which the Applicant has failed to provide a full and complete response to even though the questions are directly relevant in light of the Applicant's partial response to AltaLink Interrogatory #1.⁹
18. The Applicant detailed its reasoning for continuing to refuse to respond to AltaLink Interrogatories 1(c), (e) and (l) at Appendix C of the EWT Submissions. AltaLink respectfully disagrees with the Applicant's ongoing refusal for five reasons:
 - (a) First, the Applicant's response to 1(c) and (e) fails to indicate the extent to which it will be drawing upon HONI's and GLPT's employees or resources. AltaLink is concerned that the Applicant's unfair access to the personnel, information and resources of the incumbent Ontario transmitters, (HONI and GLPT), could cause an unfair competitive advantage in respect of the East-West Tie Line designation proceeding unless the Board takes steps to regulate this relationship. AltaLink explained its concern in considerable detail in its Additional Submissions. We understand from HONI's January 9, 2012 letter filed in the EB-2011-0140 proceeding that several very senior employees of HONI have been identified to work for the Applicant, including Peter Gregg, Sandy Struthers, Carmine Marcello, Mike Penstone, and Rhonda Wise. It is unclear whether this is a complete list for HONI, and there is no similar list for GLPT. AltaLink submits that the Board should order the Applicant to explain on the record the extent to which it will be drawing upon HONI's and GLPT's employees or resources.

⁷ AltaLink Interrogatory #1 is attached as Exhibit A to the AltaLink Motion.

⁸ The Applicant's response to AltaLink Interrogatory #1 is attached as Exhibit B to the AltaLink Motion.

⁹ See paragraphs 4-15 of the AltaLink Motion.

- (b) Second, the Applicant's response to 1(c) and (e) fails to address how the Applicant will compensate HONI and GLPT for use of its employees or resources. Since, according to the Applicant, its relationships with HONI and GLPT are not governed by ARC,¹⁰ the Board cannot rely on the transfer pricing restrictions in ARC to ensure that HONI and GLPT are fully compensated for, and the Applicant pays for, the Applicant's use of HONI's and GLPT's ratepayer funded resources. The Applicant repeatedly argues that it is subject to the same cost recovery risk as other new entrant transmitters under the Board's designation framework.¹¹ This misses the point. If the Applicant does not compensate HONI and GLPT for use of ratepayer funded employees and resources, then the Applicant has will have incurred no costs to prepare its proposal and would have nothing at risk to participate in the designation proceeding. In fact, if the Applicant fails to compensate HONI and GLPT an amount equal to fair market value for use of ratepayer funded employees and resources, then Ontario ratepayers will be improperly subsidizing the Applicant's participation in the Board's designation proceeding. AltaLink submits that the Board should order the Applicant to explain on the record how it will compensate HONI and GLPT for use of their employees or resources.
- (c) Third, the Applicant indicates that it intends to rely on GLPT for the development of any future EWT transmission facilities, but the Applicant has refused to answer AltaLink's question in 1(e) asking it to describe GLPT's experience in this regard. This is directly relevant to the Board's assessment of the technical capabilities of the Applicant. If GLPT does not have any transmission development experience, the Applicant should admit as much, and the Applicant should justify its reliance on GLPT in evidence to demonstrate that the Applicant will in-fact have access to qualified transmission development personnel. AltaLink submits that the Board should order the Applicant to explain on the record GLPT's transmission

¹⁰ Section 5.1 of the EWT Submissions.

¹¹ EWT Submissions at pg. 5 ln. 21 to pg. 6 ln. 15 and pg. 20 ln. 32.

development experience, or if there is none, to justify its assertion that it will have access to qualified transmission development personnel.

- (d) Fourth, the Applicant indicates that it intends to rely on First Nations owned businesses to provide inspection and maintenance services for any future EWT transmission facilities, but the Applicant has refused to answer AltaLink's question in 1(l) asking it to describe those First Nations owned business' experience in this regard. This is directly relevant to the Board's assessment of the technical capabilities of the Applicant. It is unclear exactly what First Nations owned businesses are being referred to, and whether that includes or excludes Bamkushwada LP ("BLP").¹² In any event, if the First Nations owned businesses referenced do not have any transmission inspection or maintenance experience, the Applicant should admit as much, and the Applicant should justify its reliance on those businesses in evidence to demonstrate that the Applicant will in-fact have access to qualified transmission inspection and maintenance personnel. AltaLink submits that the Board should order the Applicant to explain on the record the inspection and maintenance experience of the First Nations owned businesses, or if there is none, to justify its assertion that it will have access to qualified transmission inspection and maintenance personnel.
- (e) Fifth, the Applicant's response fails to indicate the extent to which it will be drawing upon BLP's employees or resources and fails to address how the Applicant will compensate BLP for use of its employees or resources. However, the Applicant relies upon its relationship with BLP as an "equal, arm's length partner" to argue that the Applicant should not be subject to the ARC.¹³ It is difficult for AltaLink to assess the credibility of the Applicant's assertion that BLP constitutes an "equal, arm's length partner" absent information about the extent to which the Applicant intends to draw upon BLP's employees or resources and how BLP will be compensated for the same. AltaLink submits that the Board

¹² This remains unclear despite the fact that AltaLink asked "To what extent is the Applicant relying upon BLP's transmission maintenance experience?"

¹³ EWT Submissions at pg. 15, ln. 11-22.

should order the Applicant to explain on the record the extent to which it will be drawing upon BLP's employees or resources and how the Applicant will compensate BLP for use of its employees or resources.

19. The Applicant has provided no justification for its assertion that requiring the Applicant to provide the specific responses to any of the above noted inquiries would in any way prejudice the Applicant in the designation proceeding. AltaLink has limited its requests to several discrete, detailed, specific questions aimed at eliciting information directly relevant to the concerns raised in this licensing proceeding.
20. The information requested of the Applicant is very similar in nature to the information requested of, and provided by, other new entrant transmitters during their licensing applications. However, the Applicant appears to be seeking preferential treatment compared to the onus other new entrant transmitters have had to discharge. For instance:
 - (a) AltaLink was asked and provided a full and complete response to Board Staff Interrogatory #1 and HONI Interrogatory #3 in EB-2011-0126, providing detailed additional information about the specific technical resources for the operations and maintenance of new transmission facilities.¹⁴ HONI thought this specific information important enough to ask of AltaLink, but the Applicant now refuses to respond to similar inquiries arguing that in its special circumstances the questions are not relevant. At HONI's insistence, AltaLink even disclosed in response to HONI Interrogatory #4 a detailed listing of projects that SNC Lavalin has completed in Ontario, even though this information is commercially sensitive and confidential and even though SNC Lavalin's general experience in transmission facility development was fully detailed on the record.¹⁵
 - (b) TransCanada was asked and provided a full and complete response to HONI Interrogatories #1 to 11 in EB-2010-0324, providing *very detailed* additional information about its technical resources and experience for the development,

¹⁴ AltaLink's Interrogatory Responses to Board Staff Interrogatory #1 and HONI Interrogatory #3 in EB-2011-0126.

¹⁵ AltaLink Response to HONI Interrogatory #4 in EB-2011-0126 (Updated July 26, 2011).

construction and operations of new transmission facilities.¹⁶ This included a listing of specific projects that TransCanada had been involved with. HONI thought this specific information important enough to ask of TransCanada, but the Applicant now refuses to respond to similar inquiries, arguing that in its special circumstances the questions are not relevant.

- (c) Upper Canada was asked and provided a full and complete response to HONI Interrogatories #2 and 3 in EB-2011-0222, providing detailed additional information about its technical resources for the development, construction and operations of new transmission facilities.¹⁷ This included a listing of specific projects that Upper Canada had been involved with. HONI thought this specific information important enough to ask of Upper Canada, but the Applicant now refuses to respond to similar inquiries, arguing that in its special circumstances the questions are not relevant.

21. A copy of the above referenced interrogatory responses are attached as Appendix “A”.
22. The Applicant appears to be relying upon the Board’s familiarity with both HONI and GLPT to exempt it from having to answer numerous interrogatories relevant to the Board’s assessment of the technical capabilities of the Applicant. Instead the Applicant argues that the Board should strictly limit the information the Applicant must produce to a level of detail that is significantly less transparent than what the Board required of other new entrant transmitters. AltaLink submits that this is inappropriate, and that the Board should order the Applicant to provide full and complete responses to AltaLink Interrogatories #1(c), (e) and (l).

B.2 AltaLink Interrogatory #3

23. AltaLink continues to be concerned that the Applicant has and will have unfair preferential access to confidential system planning and technical information related to

¹⁶ TransCanada’s Response to HONI Interrogatory #1-11 in EB-2010-0324.

¹⁷ Upper Canada’s Response to HONI Interrogatories #2 and 3 in EB-2011-0222.

the East-West Tie Line that will create an unfair informational advantage because no other participant in the EB-2011-0140 will have access to such information.

24. The Board has regularly acknowledged that as part of a transmission licence application, it will also consider issues that are particular to an applicant. In AltaLink's and TransCanada's transmission licence proceedings, the unique issues revolved principally around the applicant's existing inter-corporate codes of conduct and related exemption requests to particular transmission licence provisions. In the present proceeding, the particular issue revolves around the how the Board will regulate the Applicant to ensure that it will not gain an unfair informational advantage over other new entrant transmitters because of its non-arm's length relationship with HONI and GLPT.
25. In this context, AltaLink asked a series of specific question intended to clarify to what extent the Applicant has or could gain access to information that would give it an unfair informational advantage in the EB-2011-0140 designation proceeding.¹⁸
26. In its interrogatory response, the Applicant refused to answer the questions on the basis that they were "irrelevant", and referred to the reasons it gave for refusing to answer TransCanada Interrogatory #1.¹⁹
27. AltaLink explained its concern in considerable detail and the reasons why it disagrees with the Applicant in both its Notice of Motion at paragraphs 16-30 and throughout its Additional Submissions.
28. In response, the Applicant detailed its reasoning for continuing to refuse to respond to AltaLink Interrogatory #3 at Appendix C of the EWT Submissions. Specifically, the Applicant argues that the "Interrogatory requests information that is relevant only to the East-West Tie", that "project-specific information is irrelevant to a licensing proceeding", and "is only potentially relevant to a Designation Process." In addition, the Applicant suggests that AltaLink neglects "that EWT is not an affiliate of GLPT or HONI."

¹⁸ AltaLink Interrogatory #3 is attached as Exhibit A to the AltaLink Motion.

¹⁹ The Applicant's Response to AltaLink Interrogatory #3 is attached as Exhibit B to the AltaLink Motion.

29. AltaLink disagrees. AltaLink does not neglect “that EWT is not an affiliate of GLPT or HONI.” Rather AltaLink expressly acknowledges the Applicant's position that ARC does not currently apply to the relationship between the Applicant, HONI and GLPT.²⁰ This is, in-fact, the problem. AltaLink cannot rely upon the Board’s usual rules regarding the sharing of employees between HONI, GLPT and the Applicant to address its concerns. In effect, two incumbent transmitters, HONI and GLPT, are attempting to do jointly something that they would be unable to do individually without regulatory oversight. The result is a regulatory void that AltaLink submits the Board should step in to fill.
30. Similarly, AltaLink has not mischaracterized the purpose of this license proceeding and the designation process. AltaLink notes that the Board issued a letter on December 22, 2011 as part of the Board’s East-West Tie Designation Process (EB-2011-0140) requesting additional information about the Unfair Access Rules and Information Sharing Protocols (each as defined in the Additional Submissions) of HONI and GLPT. AltaLink openly acknowledges that the Board’s EB-2011-0140 is another forum within which this issue could be addressed.²¹ This is contrary to assertions of the Applicant that AltaLink is trying to mischaracterize this licensing proceeding and confuse it with the Board’s designation proceeding.²²
31. However, as is more fully detailed in the Additional Submissions, both HONI and GLPT has failed to provide any information that would in a meaningful way address the Board’s and AltaLink’s concerns related to the Unfair Access Rules. AltaLink has provided in considerable detail its concerns with the lack of Unfair Access Rules in its Additional Submissions.
32. It is in this context that AltaLink proposed a reasonable solution at paragraph 27 of its Additional Submissions. Specifically, the Board could issue a decision regulating the relationship between the Applicant and each of GLPT and HONI in this licensing

²⁰ See AltaLink’s Notice of Motion at para. 23 and Additional Submissions at para. 22.

²¹ See AltaLink’s alternative request for relief found at paragraph 2 of the AltaLink Motion.

²² EWT Submissions at pg. 6, ln. 18-26.

proceeding by either formally amending the terms of the Applicant's license or by issuing a ruling in this licensing decision that the Applicant, HONI and GLPT will be required to comply with the provisions of ARC.²³

33. This solution could immediately trigger an obligation on each of HONI and GLPT to comply with the information and employee sharing provisions of ARC (which is a condition of their licenses) as well as the provisions related to fair market compensation for use of ratepayer funded resources. The same obligation would be imposed on the Applicant if it is designated and issued a transmission license.
34. In this way, the Board would provide its clear requirements regarding its expectations around the Unfair Access Rules in this proceeding. Then, the question of whether or not the Applicant, HONI and GLPT comply with those clearly stipulated requirements could be addressed as part of the EB-2011-0140 designation proceeding.
35. It is in this context that AltaLink submits that it would continue to be beneficial for the Board to compel a further and better response to AltaLink Interrogatory #3 in this proceeding. AltaLink submits that the Board should clearly understand the type of high-level policy and system planning information that the Applicant had and has access to through its reliance on key HONI and GLPT personnel.
36. AltaLink will limit itself to one substantive illustration of the concerns that Interrogatory #3 is intended to address.
37. On January 21, 2012 the Board issued a website update for documents from the OPA regarding aboriginal consultations for the East-West Tie line. This update provided to all new entrant transmitters public access to, for the first time, a copy of a letter from the Director of the Transmission and Distribution Policy Branch at the Ontario Ministry of Energy to the General Counsel of the Ontario Power Authority dated May 31, 2011 setting out a list of fourteen (14) First Nations and four (4) Métis communities that are subject to the Crown's duty to consult in respect of the East-West Tie Line (the "**May**

²³ AltaLink will address the exact wording of the ruling in final submissions in this proceeding, but will limit these motion submissions to simply raising possible solutions.

- 31st Duty to Consult Letter**”). A copy of the May 31st Duty to Consult Letter is as Appendix “B”.
38. Between the date the May 31st Duty to Consult Letter was issued to the OPA and the date it was released to all other new entrant transmitters on the Board’s website – both incumbent Ontario utilities have entered into a binding and exclusive commercial relationship with BLP, which represents six (6) of the First Nation communities identified in the May 31st Duty to Consult Letter. The commercial relationship involved HONI, GLPT and BLP joining together to create a limited partnership, which in-turn is the Applicant in this proceeding. The question naturally arises – did any person at either HONI or GLPT have access to the May 31st Duty to Consult Letter before January 21, 2012?
39. If the answer to this question is yes, and AltaLink is concerned that it is, then AltaLink submits that there is a very real risk that the incumbent transmitters have used this informational advantage to secure a binding commercial relationship with six (6) of the First Nation communities specified in the May 31st Duty to Consult Letter long before any of the other new entrant transmitters even knew of the specific First Nations and Métis communities that were subject to the Crown’s duty to consult in respect of the East-West Tie Line.
40. AltaLink submits that if this true, then the incumbent utilities’ actions are fundamentally unfair to new entrant transmitters and represent an attempt to exclude new entrant transmitters from being designated to develop the East-West Tie line and to undermine the goals underpinning the Board’s designation process for the East-West Tie line.
41. Finally, the Applicant has provided no justification for its assertion that requiring the Applicant to provide the specific responses to any of the above noted inquiries would in any way prejudice the Applicant in the designation proceeding. AltaLink addressed this issue directly at paragraph 29 of the AltaLink Motion, however rather than directly addressing AltaLink’s submissions the Applicant has chose to ignore those submissions and simply re-iterate its unsubstantiated concerns.

B.3 AltaLink Interrogatory #4

42. AltaLink asked two specific questions intended to better understand only (a) whether the Applicant's relationship with BLP, or any of the six (6) participating First Nations is exclusive and (b) to what extent would the six (6) participating First Nations be willing to cooperate with other new entrant transmitters on development of the East-West Tie line.²⁴
43. In its interrogatory responses dated December 5, 2011, more than a month before the May 31st Duty to Consult Letter was released to all of the other participants in the designation proceeding, the Applicant refused to answer AltaLink's interrogatory on the basis of relevance and indicated that "[t]here 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."²⁵ It is unclear to AltaLink how the Applicant knew that the Crown's duty to consult obligation applied to all six (6) First Nations participating in BLP at this time, unless of course the Applicant already had access to the May 31st Duty to Consult Letter.
44. However, it is the final part of the Applicant's response that is most noteworthy. In it the Applicant states that "[t]here is nothing in the structure of the Applicant, or agreements in its formation, which prohibits the six participating First Nations from [...] iii) participating in any consultation or negotiating any form of accommodation with a designated transmitter that is not the Applicant." This answer suggests that there is something in the structure or agreements that *could* prohibit the six participating First Nations from participating in any consultation or negotiating any form of accommodation with a new entrant transmitter that is not the Applicant *prior to being designated by the Board*.
45. It appears that the incumbent transmitters have used their informational advantage and their existing relationships with First Nations communities located near the East-West

²⁴ AltaLink Interrogatory #4 is attached as Exhibit "A" to the AltaLink Motion

²⁵ The Applicant's Response to AltaLink Interrogatory #5 is attached as Exhibit B to the AltaLink Motion.

Tie project corridor in an attempt to exclude new entrant transmitters from being designated to develop the East-West Tie line and to undermine the goals underpinning the Board's designation process for the East-West Tie line.

46. It is in this context that AltaLink explained the reasons why it disagrees with the Applicant in its Notice of Motion.²⁶ AltaLink is concerned that this is perhaps the most clear example of the Applicant taking advantage of HONI's and GLPT's dominant incumbent position and unfair informational advantage to the detriment of new entrants.
47. The Applicant detailed its reasoning for continuing to refuse to respond to AltaLink Interrogatory #4 at Appendix C of the EWT Submissions. The Applicant argues that *"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."*
48. AltaLink disagrees. Whether or not the incumbent utilities had access to and used the May 31st Duty to Consult Letter to identify and subsequently secure exclusive commercial relationships with six of the First Nations communities identified in that letter relates directly to the "past conduct of EWT." AltaLink is not suggesting that the Board should supervise how First Nations such as BLP choose to enter into commercial arrangements. AltaLink generally applauds the involvement of First Nations communities in new transmission project development initiatives. However, AltaLink is fundamentally concerned that the dominant incumbent utilities have engaged in anticompetitive practices by relying upon privileged access to sensitive information about the East-West Tie line to identify and then enter into exclusive arrangements with the six participating First Nations.
49. The Applicant has provided no justification for its assertion that requiring the Applicant to provide the specific responses to any of the above noted inquiries would in any way prejudice the Applicant in the designation proceeding. AltaLink has limited its requests

²⁶ AltaLink Motion at para. 35.

to two discrete, detailed, specific questions aimed eliciting information directly relevant to the concerns raised in this licensing proceeding.

B4. AltaLink Interrogatory #5

50. AltaLink asked a series of question intended to clarify to what extent the Applicant is relying upon each of its limited partners and affiliates for financial resources.²⁷ No party disputes that the purpose of this license proceeding is to allow the Board an opportunity to evaluate the financial resources of the Applicant.
51. In its interrogatory response, the Applicant refused to answer the questions on the basis that the “particular information about how EWT LP relies on the financial resources of the listed entities is *irrelevant* to the Application.”²⁸
52. AltaLink explained the reasons why it disagrees with the Applicant in its Notice of Motion.²⁹ In general, the Applicant has provided the financial statements of HONI and GLPT – which *implies* that the Applicant can rely on the financial resources of these entities. However, the Applicant has not indicated the extent two which the Applicant can in-fact rely upon the financial resources of any of its parent companies. Because the Applicant is not a wholly owned subsidiary of any of its parent entities, it is not at all clear whether the Applicant can in-fact rely on HONI, BLP or GLPT for direct financial support or parental guarantees.
53. The Applicant detailed its reasoning for continuing to refuse to respond to AltaLink Interrogatory #5 at Appendix C of the EWT Submissions.
54. AltaLink disagrees with the Applicant’s assertion that its purported “ability to raise financing through equity and debt as would typically be done for transmission projects in Ontario” provides a sufficient response for the purposes of the application. The Applicant does not specify the *source* of the equity or debt financing. It could be GLPT,

²⁷ AltaLink Interrogatory #5 is attached as Exhibit A to the AltaLink Motion.

²⁸ The Applicant’s Response to AltaLink Interrogatory #4 is attached as Exhibit B to the AltaLink Motion.

²⁹ AltaLink Motion at para. 39.

HONI or BLP (they don't say) or it could be through another third party such as a bank, life insurer, pension plan, state or the public markets. If this level of ambiguity is permitted in a license application, any new entrant transmitter could enter Ontario with no true financial resources and simply assert that it would be able to "raise financing through equity and debt as would typically be done for transmission projects in Ontario." AltaLink submits this is simply not sufficient to discharge the Board's threshold, as set out in the Lexi Decision (EB-2009-0164), to evidence the financial capabilities of the Applicant. The audited financial statements of GLPT and HONI are meaningless unless the Applicant is going to rely directly on those financial statements to obtain debt and equity financing by way of a parent company guarantee or other financial arrangement.

55. The Applicant has provided no justification for its assertion that requiring the Applicant to provide the specific responses to this interrogatory would in any way prejudice the Applicant in the designation proceeding. AltaLink has limited its requests to discrete questions aimed eliciting information directly relevant to assessing the financial resources of the Applicant for the purposes of the licensing proceeding.
56. The information requested of the Applicant is very similar in nature to the information requested of, and provided by, other new entrant transmitters during their licensing applications. However, the Applicant appears to be seeking preferential treatment compared to onus other new entrant transmitters have had to discharge. For instance:
- (a) AltaLink was asked and provided a full and complete response to Board Staff Interrogatory #2 in EB-2011-0126, providing detailed additional information about its specific plans for financing.³⁰ As a new entrant, Board Staff also asked AltaLink to demonstrate a direct linkage between the financial statements of the parent companies filed on the record and AltaLink (the applicant in that proceeding) by asking for a commitment to a parent company guarantee if requested by the Board. This commitment demonstrates the direct financial support of AltaLink's activities by its parent company.

³⁰ AltaLink's Interrogatory Responses to Board Staff Interrogatory #2 in EB-2011-0126.

- (b) Upper Canada was similarly asked and provided a full and complete response to Board Staff Interrogatory #1 in EB-2011-0222, providing detailed additional information about its specific plans for financing.³¹ Upper Canada also committed to agree to the Board's form of parent company guarantee, demonstrating the direct financial support of Upper Canada by its parent NextEra.
- (c) ICCON Transmission Inc. ("ICCON") was similarly asked and provided a full and complete response to Board Staff Interrogatory #3 in EB-2010-0403, committing to agree to the Board's form of parent company guarantee and demonstrating the direct financial support of ICCON by its parent company.³²

- 57. A copy of the above referenced interrogatory responses are attached as Appendix "C".
- 58. Board Staff has chosen not to file interrogatories in this proceeding and the Applicant now refuses to respond to AltaLink's interrogatory, arguing that in its special circumstances the question "about how EWT LP relies on the financial resources of the listed entities is *irrelevant* to the Application." Nothing could be further from the truth. The extent to which the Applicant relies directly upon the financial resources of each of its parent companies is directly relevant to Board's assessment of the financial capabilities of the Applicant. If, for instance, the Applicant can only rely upon the full financial support and guarantee from BLP, but not from GLPT or HONI, the Board would have insufficient information on the record to grant the license because there is no information available on the record about the financial resources of BLP.

C. CONCLUSIONS

- 59. For all of the forgoing reasons, together with the reasons specified in the Notice of Motion and the Additional Submissions, AltaLink submits that the Board should require the Applicant to provide further and better responses to the disputed interrogatories.

³¹ Upper Canada's response to Board Staff Interrogatory #1 in EB-2011-0222.

³² ICCON's Response to Board Staff Interrogatory #3 in EB-2010-0403.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

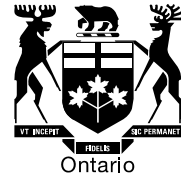
- (a) Appendix “A” – Other New Entrant IRRs Similar to AltaLink IR#1;
- (b) Appendix “B” – The May 31st Duty to Consult Letter; and
- (c) Appendix “C” – Other New Entrant IRRs Similar to AltaLink IR#5.

All of which is respectfully submitted this 7th day of February, 2012.

Original signed by John A.D. Vellone

John A.D. Vellone

TOR01: 4844781: v1



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.¹

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.²

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."³

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.

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

² Ibid

³ 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”.⁴

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

⁴ 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"⁵. 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

⁵ 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”.⁶ 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

⁶ 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, 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. If the web portal is not available, parties may email their documents to the 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