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BY EMAIL and RESS

May 7, 2012

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2011-0140 – East-West Tie Line Designation – Phase 1 Submissions

Please find enclosed the Phase 1 submissions of the School Energy Coalition (SEC).

Should you require additional information, please do not hesitate to contact me.

Yours very truly,
Jay Shepherd P.C.

Originally signed by

Mark Rubenstein

cc: All Parties (by email)

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EB-2011-0140

ONTARIO ENERGY BOARD

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.

SUBMISSIONS ON PHASE 1
ON BEHALF OF THE
SCHOOL ENERGY COALITION

May 7, 2012

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1 GENERAL COMMENTS

1.1 *Overview*

1.1.1 The Ontario Energy Board ("OEB" or "the Board") has initiated a proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between the Northeast and Northwest Ontario: the East-West Tie Line. AltaLink, L.P, Canadian Niagara Power Inc., EWT L.P, Iccon Transmission Inc., RES Canada Transmission L.P., TransCanada Power Transmission (Ontario) L.P. and Upper Canada Transmission Inc. (collectively the "proponents") registered to take part in this proceeding.

1.1.2 The East-West Tie (EWT) Line Designation Process is the first proceeding which will apply the Board's policy on *Framework for Transmission Project Development* (the "Policy"). The goal of the Policy is timely development of new major transmission projects while promoting economic efficiency, protecting consumers with respect to price through competition, and encouraging new entrants into the Ontario transmission market.

1.1.3 This proceeding is in some practical respects a test case. Many of the issues determined during the process may be applied in future designation proceedings. The Board has bifurcated the proceeding into two phases. Phase 1 will determine the criteria for designation, process for Phase 2, filing requirements and all other preliminary issues. Phase 2 will be the review and evaluation of the designation applications.

1.1.4 These are the Phase 1 submissions of the School Energy Coalition ("SEC").

1.2 *The Interest of Schools in the Proceeding*

1.2.1 SEC and its member school boards are participating in this proceeding to ensure that a cost-effective, financially and technically sound plan is approved, and a transmitter is designated who has the capability to execute that plan.

1.2.2 In this context, SEC's focus is on robust competition and its potential benefits. SEC supports encouraging competition in the development of transmission projects. In an industry like transmission, encouraging competition in the development and ownership of parts of the transmission system can help to lower the cost to consumers, likely in

the short term, but more importantly in the longer term.

1.2.3 This proceeding is important for a number of reasons with respect to competition, of which perhaps the most critical is both the reality and perception of access to new entrants. Regardless of who is selected as the designated transmitter, it is important that the process be fair and transparent, so that in subsequent designation proceedings new entrants are encouraged to apply. A process that is seen to favor the incumbent transmitters (in this case EWT LP who has two-thirds of its ownership sharing common parents with Great Lakes Power Transmission LP and Hydro One Networks Inc.) would be problematic. Others may elect not to take part in future designation proceedings if they feel that they did not receive a fair opportunity from the Board in this proceeding.

1.2.4 Although encouraging new entrants is important, they must not be given an unfair advantage themselves. The Board must select for designation the transmitter proponent that best meets the decision criteria set out in the Board's Policy and the Phase 1 decision.

1.2.5 While the developments cost will be small compared to the ultimate constructions costs, whose prudence will be determined during leave to construct, it still represent significant amount to ratepayers. The Board must ensure they are "just and reasonable".

.

2 DECISION CRITERIA

2.1 *Issues 1-4*

1. ***What additions, deletions or changes, if any, should be made to the general decision criteria listed by the Board in its policy Framework for Transmission Project Development Plans (EB-2010-0059)***
2. ***Should the Board add the criterion of First Nations and Métis participation? If yes, how will the criterion be assessed?***
3. ***Should the Board add the criterion of the ability to carry out the procedural aspects of First Nations and Métis consultation? If yes, how will that criterion be assessed?***
4. ***What is the effect of the Ministers letter to the Board dated March 29, 2011 on the above two questions?***

2.1.1 SEC submits that the Board should keep the current criteria in its Policy, and add First Nations and Métis participation pursuant to the Minister's letter to the Board Chair dated March 29, 2011.

2.1.2 In his March 29, 2011 letter to the Chair, the then Minister wrote "…I would expect that the weighting of the decision criteria in the Board's designation process takes into account the significance of aboriginal participation to the delivery of the transmission project…"[emphasis added]

2.1.3 SEC supports First Nations and Métis participation in the proposed transmission project. While there was dispute among some parties at the All-Parties Meeting about the status of the letter, SEC submits the Board should add First Nations and Métis participation as a specific criterion. The Ministers Letter is not, it is submitted, a Directive. However, while non-binding on the Board, it should in SEC's view be given the utmost consideration in this designation process.

2.1.4 SEC submits that the Board should not limit at this stage the scope of what is included in First Nations and Métis participation. While 'aboriginal participation' (the wording used in the Minister's Letter) has a specific meaning under OPA's Feed-in-Tariff program, SEC submits that the Minister's Letter and good policy would suggest a broader definition than 'Economic Interest'.[1] The Board should consider many different arrangements and benefits that may be presented in a proponent's application. This could include, separately or in combination: direct economic benefits, employment guarantees, pre-arranged equity stakes, equity set-asides, and/or other forms of participation.

2.1.5 With respect to the issue of First Nations and Métis consultation and the procedural aspects related to Crown's duty to consult[2], SEC submits that whether it is a separate criterion, or is contained within the current criteria of 'landowner and other consultations', is immaterial. The issue of the designated transmitter's ability and willingness to undertake procedural aspects of the duty, which will likely be delegated to them, will and should be a major consideration for the Board in this process.

2.1.6 SEC submits that the assessment of the criterion should be flexible, and take into account the variety of proponents. Factors such as past experience and conduct, internal and external expertise, and their specific consultation plan, will all be important. In considering these factors, the Board should in SEC's view be cognisant of the fact that proponents will not have the same experience and expertise, due to the location of their existing infrastructure and transmission assets. In those cases where the proponent does not have specific experience, the Board may have to place greater emphasis on the proposed plan, their willingness to meaningfully consult, and the external expertise that they are planning to obtain for the purposes of the EWT Line. At the same time, a proponent who does have significant past experience and expertise should not have that discounted.

2.1.7 During the All Parties Meeting, there seemed to be confusion, primarily between the

[1] The OPA's Feed-in-Tariff program provides certain benefits for Aboriginal participation. Under the current Feed-in-Tariff program rules, certain benefits accrue to 'Aboriginal Participation Projects'. Participation in this context refers to Economic Interest. Economic Interest is defined as … "with respect to any Person other than a natural person, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, membership in a Co-op, or, in the sole and absolute discretion of the OPA, other similar ownership interest (see Appendix I: Standard Definitions http://fit.powerauthority.on.ca/sites/default/files/FIT%20Standard%20Definitions%20Version%202.0.pdf)

[2] *Haida Nation v. British Columbia (Minister of Forests),* [2004] 3 S.C.R. 511

transmitters, regarding the Board's treatment of consultations with First Nations and Metis before designation.

2.1.8 SEC has long advocated a more proactive approach by utilities in reaching out to those who will be affected by their actions. Consultation is not just about meeting a legal duty. It is about working as closely as possible with stakeholders, including in particular First Nations and Métis communities, to ensure that there is a real and thorough dialogue, with a goal of consensus wherever possible. In this case, whether pre-designation consultation was for the purpose of understanding the needs and concerns of the affected parties, or was for the purpose of developing First Nations and Métis participation in the project, it is a positive step and should be recognized by the Board.

2.1.9 In this context, SEC understands that valuing pre-designation consultations may benefit the incumbents, at the expense of new entrants. As indicated earlier, SEC does not want to propose additional barriers for new entrants. On the other hand, if incumbents through EWT LP have the ability or willingness to do some things better than new entrants, and those things are valuable, they should not be devalued solely because they are carried out by incumbents.

3 USE OF THE DECISION CRITERIA

3.1 *Issues 5-6*

5. Should the Board assign relative importance to the decision criteria through rankings, groupings or weightings? If yes, what should those rankings, groupings or weightings be?

6. Should the Board articulate an assessment methodology to apply to the decision criteria? If yes, what should this methodology be?

3.1.1 SEC is in broad agreement with Board Staff on these issues.

3.1.2 With respect to the issue of whether criteria should be ranked, weighted, or otherwise prioritized, SEC believes that such a step is not appropriate in this proceeding. Since this is the first process of this kind, the Board does not have a history of reviewing designation applications, and more importantly in adjudicating between competing applications. In this context, SEC believes that the Board must keep the decision and assessment methodology as flexible as possible within the defined decision criteria. Issues and concerns might arise in the applications when filed that are not now foreseen, in part because everyone involves is doing this for the first time.

3.1.3 In a normal Board proceeding, a guideline can be established, and then changed later if it proves problematic. That may not be the case here. If a rigid decision-making methodology is determined during Phase 1, then the Board may not have the flexibility to alter it later if it becomes necessary to do so. If it did, then it might be unfair to proponents who have relied on the published guidelines in filing their application. This could ultimately lead to an issue with the decision on grounds of procedural fairness.

3.1.4 Of course, the Board should by way of its filing guidelines, articulate what information it will consider as part of each criterion. SEC submits that in most cases Board Staff's proposed updating Filing Requirements accomplish this.

3.1.5 Regarding Board Staff submissions on the appropriateness of pass/fail requirements, SEC generally agrees with their comments. While some requirements will, for statutory reasons, be judged by the Board on a pass/fail basis (e.g. does the proponent have a transmitters license), others should not. The Board's Policy's comments regarding threshold tests are informative. The proponents' licensing process is akin to a threshold test for certain requirements, and all but EWT LP have already met them.[3] When it comes to the designation proceeding, no pass/fail or threshold tests besides those required by statute, regulation or code should be applied.

[3] At the time of filing this argument, no decision has been issued in EB-2011-0350.

4 FILING REQUIREMENTS

4.1 *Issue 7*

7. What additions, deletions or changes should be made to the Filing Requirements (G-2010 0059)?

4.1.1 SEC agrees with the proposed changes to the original Filing Requirements proposed by Board Staff. SEC recommends the following additional changes to Staff's proposals:

4.1.2 *Additions*

4. Financial Capacity

…..

4. X Information on the current credit-rating of the applicant, its parent company, and its affiliates.

8. Landowner and Other Consultations

……

8.X Evidence regarding experience in undertaking First Nations and Métis consultations should include:

…..

- History of undertaking procedural aspects of consulting First Nations and Métis communities
- Current and past disputes (including but not limited to litigation) regarding consultation with First Nations and Métis communities
- If the applicant has no experience in undertaking procedural aspects of First Nations and Métis consultations, evidence regarding the experience of organizations, if any, that are to be retained by the applicant to provide expertise on these aspects.

4.2 *Issue 8*

8. May the applicants 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?

4.2.1 SEC submits that the proponents should be allowed to submit either a plan for the entire East-West Tie Line, or plans for separate segments. While it is very unlikely that the Board will designate two transmitters to carry out development work on the line (unless they are working effectively in partnership), it does have that option. A proponent should have to provide detailed reasons in their application to justify why

choosing them to complete a segment only would be a preferable than having only one designated transmitter undertake development of the entire East-West Tie Line.

5 OBLIGATIONS AND MILESTONES

5.1 *Issue 9*

9. What reporting obligations should be imposed on the designated transmitter (subject matter and timing)? When should these obligations be determined? When should they be imposed?

5.1.1 SEC submits that the Board should impose specific reporting obligations on the designated transmitter so that is the Board can be satisfied that it can properly track the development progress. The reason for this is that all parties, including proponent s who are not designated, need to be aware as early as possible about factors that may lead to changes in the schedule and/or the expected filing date of the leave to construct application. SEC submits that the Board's Policy is still appropriate: [4]

> If a designated transmitter is failing to make progress on developing the project and is not making progress toward bringing a leave to construct application, the Board needs the ability to rescind the designation both to limit the exposure of the ratepayer and to allow a different transmitter to be designated. Therefore, the Board order of designation will have conditions such as performance milestones (in particular, a deadline for application for leave to construct) and reporting requirements on progress and spending that, if not met, will result in the designation being rescinded and will put further expenditures at risk. Designated transmitters who are having trouble meeting the milestones for any reason, but intend to carry through with the work may apply to the Board for an amended schedule.

5.1.2 SEC submits that it would be reasonable to require the designated transmitter to file with the Board on a quarterly basis a detailed update on its development work. It should provide information on what has been completed in its development schedule and its consultations, as well as any other specific areas on which Board feels it necessary to be kept apprised.

5.1.3 SEC agrees with Board staff that it would beneficial for the designated transmitter to report to the Board as soon as possible details of any sources of failure and delay that it cannot mitigate. This would allow the Board to step in if it felt it necessary, e.g. because the issue could prevent completion of the development phase and filing of a leave to construct.

5.1.4 There are two reasons for early warning of problems. First, the amount of ratepayer

funds being approved for use in the development phase by the designated transmitter is significant. The Board needs to be kept abreast of any factors that may lead to the project not going forward, so that the Board can protect ratepayer funds that have not yet been spent by the designated transmitter.

5.1.5 Second, ratepayers are depending on timely completion of the East West Tie Line for reliability and other benefits it will generate. If the Board has early information about problems in reaching that goal, it has maximum ability to make changes that will keep the project moving forward.

5.2 ***Issue 10***

10. What performance obligations should be imposed on the designated transmitter? When should these obligations be determined? When should they be imposed?

5.2.1 SEC interprets "performance obligations" as being wider than just financial obligations, such as paying a performance bond. SEC submits that performance obligations also go to the mechanism through which the Board can, influence the designated transmitter's development plan. The Board has the power to set specific conditions in the designated transmitter's licenses. Those conditions may include, if the Board finds it warranted, that the designated transmitter must do certain things, or refrain from doing others, thus allowing the Board to set specific non-financial obligations and milestones relating to the development plan. The Board should not at this stage, where there is no experience in this type of proceeding, limit its statutory authority to place conditions on the designated transmitter's license.

5.2.2 The performance obligations required in any given case likely would not be known until the time the designation decision is made. At that time, the Board could, and in SEC's view should, conclude that if for any specific proponent is to be designated, it should be subject to specific obligations and milestones tailored to their strengths and weaknesses, and to the details of their development plan.

5.2.3 SEC recognizes that the imposition of such conditions, depending on their nature and scope, could ultimately lead the designated transmitter to withdraw after the conclusion of the process. It is a legitimate concern. SEC proposes that the best way to mitigate this would be that any proposed conditions which a party seeks to include, should be substantially laid out during the party's argument, so that the affected proponent has an opportunity to respond. Further, as much as possible, during the

[4] *Framework for Transmission Project Development* at 16.

interrogatory stage, parties who *may* seek to argue for conditions on a designated transmitter, should ask if the affected proponent(s) would undertake development if they were imposed.

5.2.4 Board Staff has suggested possibly designating a "runner-up" transmitter.[5] SEC submits that one benefit of that might arise in the case of an obligation placed on the designated transmitter which leads to their withdrawal. At that point, having a "runner-up" transmitter would greatly reduce the potential of having another hearing to designate another transmitter.

5.2.5 With respect to financial performance obligations, such as the requirement to provide a performance bond, SEC believes the Board could do so under its licencing power, but that the benefit of doing so is minimal.

5.2.6 A better approach may be that a designated transmitter who does not perform suffers the natural consequences of that failure. SEC believes that, if the designated transmitter ultimately does not bring forth a leave to construct application, not only should it not be allowed to recover its approved development costs, but it must relinquish ownership of all information and intellectual property that it created or acquired during the development phase of the EWT Line.

5.2.7 While any party may ultimately bring a leave to construct application, it should be recognized that unless the designated transmitter withdraws, that is very unlikely. If the designated transmitter, due to reasons other than force majeure, chooses later not to submit an application, consumers of electricity will be harmed. While the development costs in such a situation would be unrecoverable by that transmitter, significant time will have been lost. By mandating that the information be turned over to someone else willing to complete the project, the delay may be mitigated in whole or in part.

5.3 *Issue 11*

11. What are the performance milestones that the designated transmitter should be required to meet for both the development period and the construction period? When should these milestones be determined? When should they be imposed?

5.3.1 SEC submits that there should be performance milestones of which the most important is the deadline for the leave to construct application. The designated transmitter should

[5] Board Staff Submissions at 9.

have to apply to the Board to extend the deadline for submission of the application for leave to construct. The Board will then be in a position to make sure that the reason for any extension is in the public interest.

5.4 Issue 12

12. What should the consequences be of failure to meet these obligations and milestones? When should these consequences be determined? When should they be imposed?

5.4.1 The reporting obligations and milestones should be incorporated into the license conditions of the designated transmitter. This would allow for a full range of potential sanctions. In the case of the most severe breach, the Board could revoke the designated transmitter's license as it would be in breach of its license conditions, although clearly this should only occur in the case of the most blatant and reckless of breaches. More likely would be lesser sanctions that penalize unjustified delays and failures, but still allow the designated transmitter to proceed.

5.4.2 In general SEC does not believe that predetermining the consequences of each breach of an obligation or milestone is appropriate. The Board should retain flexibility to deal with any actual breach on the basis of the circumstances of the case.

6 CONSEQUENCES OF DESIGNATION

6.1 <u>*Issues 13-14*</u>

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

14. 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?

6.1.1 The determination of prudent budgeted development costs should be made during Phase 2. In approving the prudent budgeted development costs, the Board must of course be mindful of its statutory obligations in setting just and reasonable rates pursuant to section 78 of the *OEB Act.* The most appropriate method of recovery is through a deferral account attached to the designated transmitter's license. All parties must recognize that the Board is doing more than just approving the account. It is approving the specific amount to be recorded, with the expectation that unless the conditions are not met, it will be included in the designated transmitter's rates once they are established. This is not a normal deferral account application, because a decision is being made now for rate recovery in the future. The normal process for approving future test year expenses pursuant to section 78 of the *OEB Act* should therefore be followed.

6.1.2 SEC disagrees with Board Staff, that "competition will, in a sense be a surrogate for regulation; the applicants for designation will be compared in part on the level of risk their plans for the East-West Tie line poses for ratepayers."[6]

6.1.3 SEC has long supported competition as a method of creating cost discipline, but competition, in and of itself, cannot determine prudence. While it will be a useful indicator, the Board must still retain the ability to designate a transmitter and make adjustments on the amount of their proposed budgeted development costs that can be recovered from ratepayers. The designated transmitter's proposed budget may be neither just nor reasonable. Just as companies procuring goods or services through an RFP process do not necessarily treat the selection of a winning bid as conclusive of the bid amount, so too the Board should retain the flexibility to assess critically the proposed development budget of the designated transmitter with a view to approving only the amount that is just and reasonable.

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[6] Board Staff submission at 15.

6.1.4 SEC notes that this is especially important in setting expectations for future designation proceedings, where there might only be one applicant. Even in this proceeding, the Board may not receive the same number of applications as there are registered proponents.

6.1.5 SEC does agree with Board Staff, that the Board should reiterate its intention that any development costs in excess of the budgeted amount approved will generally not be recoverable, but will instead be subject to a thorough review to determine if they are prudent. The review is not simply for general prudence, but also that those expenses could not reasonably be foreseen at the time of filing the application for designation. The Board is seeking in this process, an accurate forecast of development costs, not a lowball bid that can be inflated in the future.

6.1.6 SEC submits that designated transmitter should be able to recover its costs incurred to become designated. It is in the interest of the Board and ratepayers that the best applications be submitted, and that the designated transmitter have the incentive to prepare an application that is as accurate and detailed as possible. Board Staff recommends that only those application costs that begin to be incurred after the Phase 1 decision be recoverable. SEC understands this position. Ratepayers should not be expected to pay for costs regarding the licensing, or any preliminary work done by the designated transmitter in determining *if they* were going to become a proponent, but in our view costs for the actual creation of the development plan should be recoverable, whenever they were incurred. Where the problem arises is that it is likely that many of those expenses have already been incurred. In fact, it is probably wise for the proponents to have already begun preparing their applications. The proponents should be expected to provide details of these costs upon filing of their Phase 2 application, and the Board can make a determination about which costs are reasonable after reviewing the evidence.

6.2 ***Issue 15***

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

6.2.1 SEC agrees with Board Staff that there are certain minimum commitments in its designation application to which the designated transmitter must be held. Board Staff has provided an adequate list, and agree that failure to meet these commitments may result in re-consideration of designation or failure to obtain leave to construct.

6.2.2 Where SEC differs is to the extent the designated transmitter should be required to

adhere to other elements of its designation application. The most important for ratepayers is the estimated construction cost.

6.2.3 SEC understands that at this stage, it would not be fair to require a designated transmitter to provide a binding commitment on construction costs. What should be required though is setting out a range for those final costs that is prepared fairly and objectively, and is a reasonable estimate given the facts known at this time. The estimated construction costs are going to be a major part of this designation process. Of course final determination on the reasonableness of such costs will not occur until leave to construct. However, since there will likely be multiple designation applications, the difference in projected construction costs will go in part to the financial capacity and costs criterion set out in the Board's Policy.[7] This would create an expectation that at the leave to construct stage, the designated transmitter will have to provide compelling reasons why its final construction budget, differs from its designation application. .

6.2.4 It would be unfair to ratepayers if the designated transmitter submits projected construction budget that is materially lower than other proponents, and then when it comes to the leave to construct application, costs to have ballooned so that the original comparison between proponents was retrospectively meaningless. The designated transmitter should consider itself to be "at risk" in its leave to construct application if the Board subsequently determines that the construction estimate in Phase 2 of this proceeding was unreasonably understated.

6.3 *Issue 16*

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

6.3.1 The costs that the designated transmitter will be entitled to recover in the event that the project does not move forward to a successful leave to construct should be determined based on the reason for non-success. If the project does not move forward to a successful leave to construct application primarily due to factors outside the designated transmitter's control, then it should be still be able to recover its approved development budget expenses reasonably incurred to that point in time. The Board will have to determine, taking into account the specific reasons that the project did not move forward, the date in prior to which costs incurred should be recoverable. The designated transmitter in this case should also be able to recover reasonable wind-up

[7] *Framework for Transmission Project Development* at 14.

costs.

6.3.2 If the project does not move forward to a successful leave to construct because of something that is reasonably within the designated transmitter's control then it should not be able to recover any of its approved budgeted development costs, even if they had already been occurred. As noted earlier, the designated transmitter should also be required to deliver (without charge) information and intellectual property developed during the development phase to their replacement on the project, once selected by the Board.

7 PROCESS

7.1 <u>*Issue 17*</u>

17. 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)?

7.1.1 SEC is in general agreement with Board Staff on the process, with a few exceptions.

7.1.2 SEC submits that at this time it is premature for the Board to determine if it will rely solely on a written hearing for Phase 2. While there are unique procedural fairness issues associated with multiple proponents that should not automatically remove the option of an oral hearing. These challenges can be overcome. The effect of this proceeding is still to allow a significant amount of money to be included in rates. That requires full procedural fairness to ratepayers as well.

7.1.3 The Board could easily fashion a procedure that would eliminate any unfairness. After receiving the proponents' applications, it may be appropriate for an oral hearing regarding specific areas that are more qualitative in nature, such as First Nations and Métis participation, or the proponent transmitters' ability to undertake procedural aspects of First Nations and Métis consultations. Further, an important aspect of this process is the examination of the proponents' budgeted development costs, and their estimated construction costs. Ratepayer groups should still have the opportunity to cross-examine proponents on their budgets, if necessary.

7.1.4 Board Staff has recommended that interrogatories to the proponents be asked solely by themselves, informed by suggestions from all parties, and the questions differ only to the extent that the applications differ. While it is probably best for all the interrogatories to come from the same source, SEC submits that they must be more than informed by suggestions from all parties. Board Staff should only refuse to ask interrogatories submitted from other parties if they are duplicative. All parties must have a right to take full part in this application, and Board Staff should not be put in the position where it has to determine which interrogatories are best. This would put Board Staff in an adjudicative role, which SEC submits is inappropriate.

7.1.5 Further, it is possible, perhaps even likely, that the most informative interrogatories will be from one proponent directing a question to another transmitter proponent. Since each proponent will have presented an application, they are likely to be in the best position to point out specific deficiencies in the each other's applications.

7.1.6 SEC does agree that as much as possible the interrogatories should be put to all parties, but experience informs us that in practice there will not be as many such questions as might be expected. Most interrogatories are in practice questions on a specific part of an application aimed at getting a specific clarification. They are less frequently general questions which could be put to all parties.

7.2 *Issue 18*

18. 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 designated process? If yes, what should those roles be?

7.2.1 SEC agrees with Board Staff on the appropriate role to be played by IESO, the OPA and the Board`s expert advisor. It also may be useful for the OPA and IESO to provide their Phase 2 written submissions in advance of all other parties, and at the same time as Board Staff.

7.2.2 Hydro One Network Inc.'s ("HONI") role is different from all other parties in the process, as the East-West Tie Line will attach to its existing infrastructure. It will need to provide information, including costing on specific stations, to the proponents in the development of their plans. HONI should be limited to asking interrogatories and making submissions related to the effect of any aspect of an application on its system.

7.2.3 SEC agrees with Board Staff that like Great Lake Power Transmission LP ("GLPT"), HONI should not be allowed to provide any submissions in which it advocates in any way for a specific proponent.

7.2.4 It is important for the Board, in determining the process and any limitations it might place on HONI, to be cognisant of the inherent conflict that currently exists. The Board has the option of not designating any of the proponents. If the Board made that decision, HONI would likely be required to develop the line themselves.

7.3 *Issues 19-21*

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

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

21. 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.

7.3.1 HONI and GLPT should be required to disclose all documents relevant to development and construction of the EWT Line, including any development work they previously carried out regarding the East West Tie Line. It is not clear to SEC at this time which documents that are on the list provided by either HONI or GLPT are not producible publically or in confidence pursuant to the Board's *Practice Direction on Confidential Filings*. SEC reserves its right to reply to any submissions on this issue provided by either HONI or GLPT.

7.3.2 SEC submits that the protocols need to be adequate to allow for the sharing of all relevant information, and is interested in the views of the proponents on the adequacy of the protocols put in place by HONI and GLPT.

7.3.3 Since the likely route of the East-West Tie Line will be next to HONI's existing transmission line, it is important that HONI provide reasonable and timely access to its right-of-way to the proponents so that they can undertake the necessary tests and evaluations. SEC submits the Board must ensure, either by order or by a HONI undertaking, that all proponents will have timely access to its right-of-way.

7.4 ***<u>Issue 22</u>***

22. 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 the Great Lakes Power Transmission LP and Hydro One Networks Inc. be governed by the Board's regulatory requirements (in particular the Affiliate Relationship Code) that pertains to the relationship between licensed transmission utilities and their energy service provider affiliates.

7.4.1 The purpose of the *Affiliate Relationship Code For Electricity Distributors and Transmitters* (the "ARC") is to protect ratepayers from harm that may arise from the relationship between a utility and its affiliates *inter alia*, through cross-subsidization, protection of confidential information, and ensuring there is no preferential access to utility services.[8]

7.4.2 EWT LP has been structured so that it is beyond the reach of the ARC:

> EWT LP is controlled by its general partner East-West Tie Inc., which is an

[8] *Affiliate Relationship Code For Electricity Distributors and Transmitters*, section 1.

> Ontario corporation. East-West Tie Inc. has no affiliates, as that term is used in the ARC. The ARC adopts the definition of affiliate from the *Business Corporations Act* (Ontario). Under that Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, (i) one of them is the subsidiary of the other or (ii) both are subsidiaries of the same body corporate or (iii) each of them is controlled by the same person. East-West Tie Inc. is not an affiliate of Great Lakes Power Transmission Inc., Hydro One Inc. or Bamkushwada Inc. (the "Shareholders"), as it is not a subsidiary of or controlled by any of these entities. This is because each of the Shareholders holds only 33.33% of the outstanding shares in East-West Tie Inc., meaning that no subsidiary or control relationship arises under the *Business Corporations Act* (or the ARC) vis-à-vis the Shareholders and East-West Tie.[9]

7.4.3 On the face of it, this would mean that the regulatory oversight that the ARC provides to protect consumers is absent. SEC submits that the Board must impose regulatory requirements on EWT LP so that the purposes behind the ARC are applied to this corporate structure.

7.4.4 Section 70 of the *OEB Ac*t provides that "…a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*." SEC submits that objectives relating to protecting consumers with respecting to price, and the promotion of cost-effectiveness and economic efficiency, objectives under both the *OEB Act* and the *Electricity Act*, would inform this situation.

7.4.5 Since EWT LP will be staffed by employees of HONI and GLPT, the Board must ensure that those employees do not unfairly provide confidential information that would be in their possession due to their work for either transmitter, to EWT LP. Further, the Board must protect ratepayers directly by making sure that HONI and GLPT charge EWT LP a fair and appropriate amount for the usage of its employees, infrastructure, and support costs. Those costs are paid by ratepayers and are part of HONI and GLPT revenue requirements.

7.4.6 Even if the ARC could be applied, it may not be suitable protection against any potential unfair competition since it was never designed to deal with a competitive transmission designation.

7.4.7 SEC submits that the Board must look beyond the strict definition of affiliates defined in the ARC, and construct an appropriate protection so that EWT LP does not have unfair advantage, and HONI and GLPT are being paid fair market value for their use

[9] Altalink Interrogatory 2(a) in EB-2011-0350

of their employees and services. The Board must also ensure EWT LP does not have an unfair advantage in the designation process by virtue of having through its limited partners or their affiliates, preferential access to information, resources and personnel.

7.4.8 In addition to all the issues mentioned above relating to HONI and GLPT, it will be important that both these incumbent transmitters make sure there is proper accounting of the allocation of resources between themselves and EWT LP. While ultimately this will be an issue for each transmitter's next rate application, it will also be important in this proceeding because it misallocation of resources could affect the level of the development budget, and the construction cost estimate. .

7.5 *Issue 23*

***23.* What should be the required date for filing an application for designated?**

7.5.1 SEC is interested in the views of the proponents on the reasonable time frame required to submit a Phase 2 application.

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

Originally signed by

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Mark Rubenstein
Counsel to the School Energy Coalition