

IN THE MATTER OF sections 70 and 78 of the
Ontario Energy Board Act, 1998;

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.

Reply Submissions of Icon Transmission Inc. on Phase 1

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1. Icon Transmission Inc. ("Icon") submits reply submissions on issues 7, 18 and 19 below; in summary:

- (a) Some proponents and intervenors have supported or suggested adding further criteria to Board Staff's proposed new Filing Requirements. This would necessitate that proponents include a level of detail in their plans that is inappropriate at the *pre-development* stage and which cannot be meaningfully compared and evaluated.
- (b) EWT LP's proposed non-communication protocol between proponents is unnecessary and inappropriate at the designation phase. This is not a traditional procurement and the inherent risks of collusion are not present. The imposition of such a prohibition might also inhibit the type of innovation which the Board is seeking to spur through this process.
- (c) The various agencies should not be active participants in the designation process; their role should be neutral and limited to providing information and answering questions. All communications between the agencies and the Board should be on the public record.
- (d) The Incumbent Transmitters should be ordered to disclose any preliminary development work conducted on the East-West Tie Line or a line that would directly impact the East-West Tie Line.

No. 7 What additions, deletions or changes should be made to the Filing Requirements (G-2010-0059)?

2. *Changes to the Filing Requirements* - A number of proponents and intervenors made submissions supporting the increased plan detail contemplated by Board Staff's proposed new Filing Requirements. In some cases, proponents and intervenors suggested that the Filing Requirements be supplemented with additional criteria.

3. The level of detail required in proponents' plans should be commensurate with a pre-development process. The purpose of the designation process is to designate a transmitter to do development work (and to later bring a leave to construct application to

the Board). It would be artificial to require proponents at the pre-development stage to prepare development plans that include details on criteria such as tower structure, tower spacing, description of planned route/alternative routes, risks and risk mitigation strategy, etc. These details will be determined in the course of and as the result of development work, including environmental assessment processes in which the proponent will be required to undertake public consultation and seek input from relevant government agencies.

4. Further, and with due respect, the Board will not be able to meaningfully evaluate competing plans at the level of detail contemplated by Staff's proposed Filing Requirements. Details that proponents are required to file will invariably change and evolve over the course of the development process; at this early stage, the Board will simply not possess the information required to assess trade-offs between the various economic, social, environmental and cultural factors that need to be considered to knowledgeably discern and determine which proponent's plan is superior. On the other hand, what the Board can and should judge proponents' on are their qualifications and track record for developing, constructing, owning and operating major transmission projects, as well as proposals for delivering the project most cost effectively.

5. *Non-communication provision* - EWT LP submits that a new requirement be added to the Filing Requirements to prohibit coordination or communication between proponents during the designation process.

6. Non-communication prohibitions are often included in formal procurements to prevent proponents from colluding to allocate opportunities and favourably influence contract price and other contractual terms. Those concerns are not present in this process. This process will not lead to a contract to develop the East-West Tie Line and the designated transmitter will ultimately have its development and construction costs reviewed by the Board in future proceedings. Accordingly, the risk of collusion present in a traditional procurement does not exist in this designation process.

7. Further, the imposition of a non-communication clause could actually stifle innovation by preventing collaboration between proponents with differing strengths and

experience. Proponents should not be prevented from exploring options that may result in a better and more innovative project.

No. 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 designation process? If yes, what should those roles be?

8. Icon agrees with the Ontario Power Authority ("OPA") that the agencies should maintain neutrality and that their roles should be limited to providing information on the East-West Tie Line and responding to questions posed by proponents.¹

9. The agencies should not be active participants in the designation process. They should not ask interrogatories or express a preference as to which proponent should be designated and all communications between the agencies and the Board should be made on the public record.

No.19 What information should Hydro One Networks Inc. and Great Lakes Power Transmission be required to disclose?

10. The Incumbent Transmitters should be ordered to disclose any preliminary development work conducted on the East-West Tie Line or a line that would directly impact the East-West Tie Line to all of the proponents.

11. In its submission, Hydro One Networks Inc. ("HONI") indicates that it is prepared to file documents identified in its Documents List, but takes the remarkable position that it should not be required to release the documents relating to preliminary development work on the East-West Tie Line because the documents would "actually be unhelpful to the Board's designation process."

12. HONI should be required to disclose documents relating to any and all preliminary development work conducted on the East-West Tie Line to all proponents. It is not for Hydro One, as a partner in one of the competing proponents, to determine which relevant documents will and will not be helpful to proponents. This work was funded by ratepayers and it would not be efficient or cost effective for the Board to deny proponents access to that

¹ OPA Phase 1 Submissions, pp. 4-5

work. Full disclosure is also an important step in leveling the playing field by ensuring that all proponents have access to the same information as EWT LP.

13. HONI also asserts that it is prevented from disclosing certain reports because of confidentiality agreements. These agreements do not bind or restrict the Board and any consultant working for a regulated entity such as HONI should be aware that the regulator may well order disclosure of any materials produced in the course of that mandate. In any event, if confidentiality is a legitimate concern for the Board, disclosure can be made in accordance with the Board's *Practice Direction on Confidential Filings*.

All of which is respectfully submitted this 22nd day of May, 2012