



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 AND ORDER

May 31, 2012

BACKGROUND

EWT LP filed an application with the Ontario Energy Board on September 20, 2011, under section 60 of the *Ontario Energy Board Act, 1998* (the “Act”) for an electricity transmission licence. 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.

EWT LP is a newly created Ontario limited partnership with interests equally held by three limited partners, Hydro One Inc. (“Hydro One”), Great Lakes Power Transmission EWT L.P. (“GLPT-EWT”) and Bamkushwada LP (“BLP”). The general partner of EWT LP is East-West Tie Inc., whose shares are equally held by Hydro One, Great Lakes Power Transmission Inc. (“GLPT”) and BLP. Hydro One is the sole controlling shareholder of Hydro One Networks Inc., which is an incumbent Ontario transmitter. GLPT is the sole controlling general partner of Great Lakes Power Transmission LP, which is also an

incumbent Ontario transmitter. The applicant has no existing transmission assets in Ontario, although its intended business activity is to develop, construct, own and operate transmission assets in the province. 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").

The Board issued a Notice of Application and Hearing on October 19, 2011. The following parties requested and were granted intervenor status in the proceeding: AltaLink Ontario, L.P., Canadian Niagara Power Inc., Power Workers' Union, RES Canada Transmission GP Inc. on behalf of RES Canada Transmission LP, TransCanada Power Transmission (Ontario) L.P. and Upper Canada Transmission, Inc.

Procedural Order No. 1 was issued on November 7, 2011 setting out the schedule for the proceeding.

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. EWT LP filed its interrogatory responses on December 5, 2011.

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, as 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.

Procedural Order No. 2 was issued on December 22, 2011, which set out the process for addressing the motions.

In accordance with Procedural Order No. 2, the Moving Parties filed their respective additional written submissions on the motions on December 30, 2011. Power Workers' Union (the "PWU") and RES Canada Transmission GP ("RES Canada") filed their submissions on the motions on January 9, 2012. EWT LP filed its written submission on the motions on January 17, 2012. The Moving Parties replied to EWT LP's submission on January 24, 2012.

The Board issued a Decision on Motions and Procedural Order No. 3 (the “Decision on Motions”) on March 23, 2012 where the Board ordered EWT LP to file additional information in response to certain interrogatories from Upper Canada and AltaLink and set out dates for further procedural steps. EWT LP filed the additional information on April 5, 2012. Board staff, the PWU, AltaLink, TransCanada, RES Canada and Upper Canada filed their respective submissions on the merits of the licence application on April 20, 2012. EWT LP filed its reply argument on May 4, 2012.

The full record of the proceeding is available at the Board’s offices and on the Board’s website. I have summarized the record in this proceeding only to the extent necessary to provide context to my findings.

SUBMISSIONS AND FINDINGS

Based on the evidence filed, I have determined that it is in the public interest to grant an electricity transmission licence to EWT LP for a period of five years.

Technical Capability, Financial Viability and Conduct

The key areas reviewed by the Board in any licence application are the financial viability, technical capability and conduct of an applicant. In the case of electricity transmission licence applications, the Board’s review is also guided by the Board’s policy *Framework for Transmission Development Plans* (EB-2010-0059). The Board stated in its policy that the licensing process is intended to allow the Board to evaluate the financial viability and technical capabilities of the new entrant transmitters. Once the financial resources and technical capabilities of a new entrant transmitter are considered and found to be satisfactory, the transmitter would be issued a licence. The Board also stated in its Chatham-Kent Transmission Inc. licence decision (EB-2010-0351) that obtaining a transmission licence is intended to be a threshold qualification step, and is not intended to be unduly onerous.

No parties in their submissions on the merits of EWT LP’s application for a transmission licence raised concerns with regard to financial and technical capabilities of the applicant to undertake development of transmission projects.

I find that the applicant has provided sufficient evidence of its financial viability and technical capabilities to qualify for a transmission licence. EWT LP provided audited

financial statements and annual reports for Hydro One, its limited partner and Brookfield Infrastructure Partners L.P. (“Brookfield”) and GLPT, affiliates of GLPT-EWT. In its supplementary responses to AltaLink interrogatory #5(a), the applicant described financial commitments of its limited partners and their affiliates with respect to providing financing and equity contributions to the applicant.

With regard to technical capabilities, EWT LP, being a newly created entity with no technical expertise of its own, intends to rely on the technical expertise of its limited partners and their affiliates, Hydro One, GLPT or other Brookfield entities. In section 9 of the application form, and through interrogatory responses, the applicant described the relevant transmission system expertise of its limited partners and their affiliates. The applicant indicated that it intends to enter into a contract with Hydro One for operating services for the new line. Hydro One is the largest transmission system owner and operator in Ontario, with 29,000 circuit kilometers of high-voltage transmission lines, 280 transmission stations and 26 interconnections with neighboring provinces and states. Brookfield and GLPT were described as entities with extensive experience with transmission system planning, design, construction and management services. The applicant also stated that it will contract with BLP for services related to environmental assessment and routing processes. I find that the information provided meets the threshold qualification requirements for the licensing process.

No concerns were raised regarding the conduct of the applicant, and I find that EWT LP has demonstrated that it is likely to operate its business in conformity with relevant legislation and regulatory requirements.

It should be noted that the issuance of a transmission licence will enable EWT LP to participate in the designation process. The granting of this transmission licence does not endorse the applicant’s technical and financial capabilities in relation to the development of a specific transmission project. Licensed transmitters who file plans to develop a transmission project under the Board’s designation process will be required to provide a significantly more detailed demonstration of their technical and financial capabilities in relation to the development of a specific transmission project.

Submission by Upper Canada

In its submission on the merits of the application, Upper Canada argued that in addition to the articulated criteria of financial viability, technical capabilities and past conduct, the

overriding consideration in determining whether to grant a licence to EWT LP is whether such a grant is in the public interest.

Upper Canada submitted that since EWT LP applied for a licence expressly for the purpose of participating in the Board's Designation Proceeding, the Board should consider the extent to which the public interest would be affected by granting such a licence in the context of facilitating new transmission entrants and supporting competition in Ontario's transmission sector, to drive economic efficiency for the benefit of ratepayers.

Upper Canada further argued that granting a licence to the applicant that is controlled by the parent entities of Ontario's two main incumbent transmitters, Hydro One and GLPT, would raise concerns regarding fairness, transparency and competitiveness of the designation process which would discourage new entrants, contrary to the public interest. On that basis Upper Canada submitted that the Board should deny the application.

Upper Canada submitted that should the Board grant the licence, the Board should attach conditions pursuant to section 70 of the Act that would impose the same obligations on the relationship between EWT LP and the incumbent utilities that would have been imposed by the Board's Affiliate Relationships Code for Distributors and Transmitters had EWT LP been an affiliate of the incumbent transmitters. Upper Canada also stated that EWT LP's request to defer the effective date of the licence, if granted, should be denied, although Upper Canada did not provide any specific reasons for its position.

EWT LP responded that the Board should reject the submissions from Upper Canada for the reasons outlined by the Board in the Decision on Motions. The applicant also stated that Upper Canada did not provide any reasonable basis for denial of EWT's request to defer the effective date of the licence and that such denial would give rise to an uneven playing field in the context of the Designation Proceeding.

I agree with the applicant that concerns raised in Upper Canada's submission have been already fully addressed in the Decision on Motions where I found that issues related to the relationship of the applicant with incumbent transmitters and the applicant's potential competitive advantage from leveraging those relationships in developing its plans for a designation filing are beyond the scope of this licensing proceeding. The Decision on Motions also stated that:

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.¹

Upper Canada argued that the granting of a licence to EWT LP for purposes of participating in the Designation Proceeding could only discourage new entrants, undermine the Board's stated policy and that of the Ontario government, and thus be contrary to the public interest. Upper Canada provided no additional reasons supporting or explaining its position. I agree with the applicant that Upper Canada has not established an additional or overriding consideration beyond the tests that the Board has already articulated for licensing transmitters, which I note have been established to assess the merits of an application in the context of the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

As noted in the Decision on Motions, it is open to parties in the Designation Proceeding to bring these matters forward at the appropriate time. I also note that the matters raised by Upper Canada in its submission are in fact included on the issues list for phase 1 of the Designation Proceeding².

With respect to the licence conditions, I have found in the Decision on Motions that "...any conditions or restrictions imposed on this Applicant's licence would be for the purpose of addressing the Applicant's behaviour and participation in the the Designation Proceeding...", and that "... these considerations are beyond the scope of the current licensing proceeding."³

I also find that EWT LP's proposal to defer the licence effective date should be granted, despite Upper Canada's submission. Upper Canada provided no specific reasons for its request for delay, although given Upper Canada's request for the establishment of licence conditions, an immediate effective date for the licence would be needed to give immediate effect to those conditions. I note that other new entrant transmitters received approval from a Board panel for similar requests to that of EWT LP and I see no reason why EWT LP should be treated differently in this regard at this initial licensing stage.

¹ Decision on Motions and Procedural Order No 3, EWT LP, EB-2011-0350, page 12

² Designation Proceeding EB-2011-0140, Procedural Order No 2 dated April 16, 2012, Appendix A, issues 20, 21, 22

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

The first of several decisions issued by the Board approving a later effective date was in regard to TransCanada Power Transmission (Ontario) LP's transmission licence application (EB-2011-0260), issued on November 2, 2011. Consistent with that decision, the effective date of EWT LP's license will be the date upon which the applicant is designated as a developer of transmission assets in Ontario pursuant to the Board's designation process, or the date upon which it applies to amend schedule 1 of the licence to specify the facilities to be owned and/or operated by it, whichever is earlier.

A transmission licence is typically granted for a term of 20 years, recognizing the long term nature of transmission assets. However, the Board has found in recent transmission licence decisions that a shorter term of licence is appropriate for entrant transmitters who presently have no facilities in Ontario. Consistent with those decisions, the term of the licence will be 5 years. I note that EWT LP did not request a specific term. The term of the licence may be amended and extended to the standard 20 year term in the event that EWT LP develops or acquires transmission facilities in Ontario.

IT IS THEREFORE ORDERED THAT:

1. The application by EWT LP for an electricity transmission licence is granted.
2. The licence will become effective on the date upon which EWT LP is designated as a developer of transmission assets in Ontario pursuant to a Board designation process, or the date upon which EWT LP applies to amend schedule 1 of the licence to specify the facilities to be owned and/or operated by EWT LP, whichever is earlier.

DATED at Toronto May 31, 2012

ONTARIO ENERGY BOARD

Original signed by

Theodore Antonopoulos
Manager, Electricity Rates