EB-2011-0140

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.

Argument-in-Chief of Iccon Transmission Inc. / TransCanada Power Transmission (Ontario) LP

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I. OVERVIEW

1. This is the argument-in-chief of Iccon Transmission Inc. ("**Iccon**") and TransCanada Power Transmission (Ontario) LP ("**TPT**") (jointly, "**Iccon/TPT**") for designation by the Ontario Energy Board (the "**OEB**" or the "**Board**") to undertake development work on the East-West Tie line ("**East-West Tie**" or "**the project**").

2. Iccon/TPT's joint proposal brings together TransCanada Corporation ("**TransCanada**") and Isolux Infrastructure Netherlands B.V. ("**Isolux Infrastructure**"), which is jointly owned by Grupo Isolux Corsán, S.A. ("**Isolux Corsán**") and the Public Sector Pension Investment Board ("**PSP Investments**").[1]

3. Iccon/TPT is the preferred choice to develop the East-West Tie. Together, Isolux Infrastructure and TransCanada have tremendous experience and expertise developing, building and operating major electric transmission and other linear infrastructure projects, including a long history in Northern Ontario and extensive experience engaging and working with First Nations and Métis communities. No other applicant can claim these combined strengths, which are the most credible measures of an applicant's capability to cost effectively develop and successfully build and operate the East-West Tie.

4. There is a significant gap in experience between Iccon/TPT and the other applicants as demonstrated by the responses to the Board's Interrogatory 32 which asked applicants to identify transmission projects greater than 100 km undertaken in the last ten years. As the applicants' answers — depicted in Figure 1 below — illustrate, Isolux Infrastructure has developed, constructed and brought into service more kilometers of major transmission projects ***than all of the other applicants combined***.[2]

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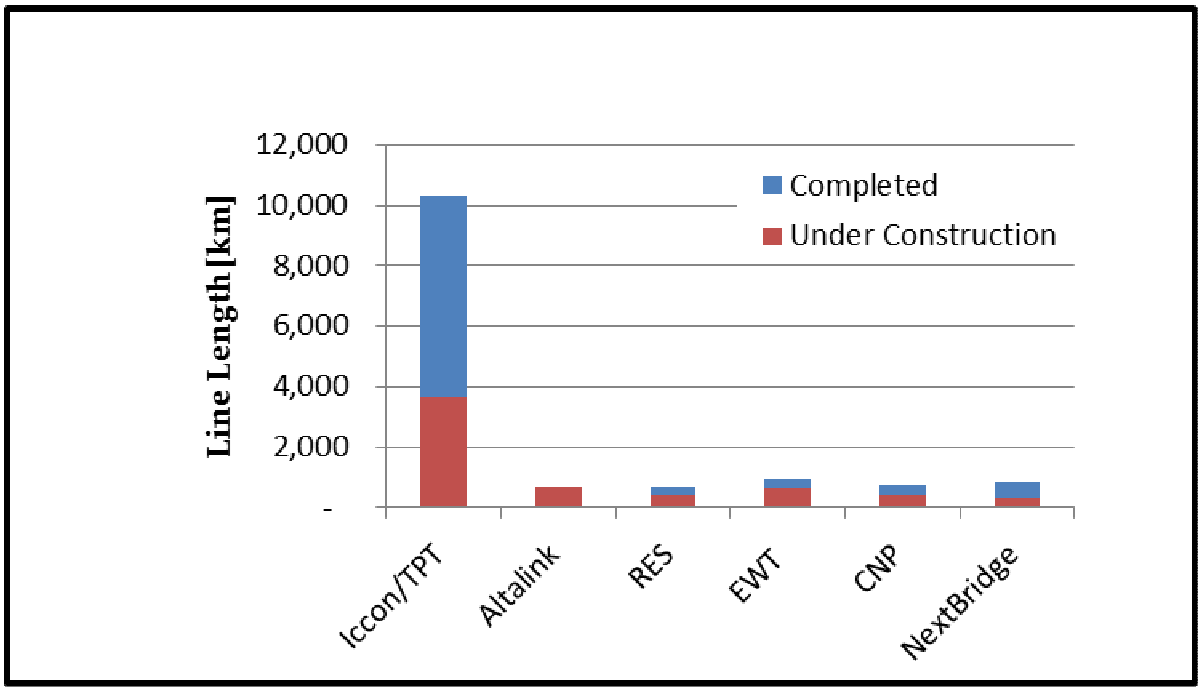
[1] Isolux Infrastructure is engaged in the development, construction, ownership, operation and management of concessions for transmission lines, tool highways and generation facilities. Isolux Infrastructure can also draw upon Isolux Corsán's engineering, procurement and contracting experience in constructing large complex infrastructure projects on a turnkey basis.

[2] This figure does not include Isolux Corsán's additional experience in constructing turnkey transmission projects and TransCanada's considerable experience developing and constructing oil and gas transmission pipelines. The full breadth of experience that Iccon/TPT can draw upon is detailed in Appendices "B" and "C" in Section 4 of Iccon/TPT's Joint East-West Tie Designation Application ("Iccon/TPT Application").

Figure 1: Applicants' Experience with Recent Transmission Projects >100 km



5. Iccon/TPT's considerable experience and expertise is reflected in its transmission development plan. Iccon/TPT has made a concerted effort to be measured and prudent in the commitments it has made in its plan by providing competitive yet realistic development and construction schedules and cost estimates. As an experienced transmission developer, Iccon/TPT has declined to premise its application on premature conclusions about technical design, preferred routing or rate incentives, nor has it made presuppositions about the outcome of future engagement efforts with First Nations and Métis communities.

6. In designating an applicant, the Board should be cautious of plans premised on unproven technical designs, preferred routes determined in advance of stakeholder consultation, vague incentive rate proposals, or presumptions about which First Nations and Métis communities will participate and what form their participation will take. The Board should also be wary of optimistic project schedules and aggressive cost estimates. It is tempting in a competitive process to try to score points by making early promises and projections, but this is not a reliable basis for selecting the applicant that is most likely to successfully develop, construct and operate the East-West Tie.

7. In this regard, the Board must recognize that the plans filed by applicants are subject to three significant limitations: (i) the applicants are not subject to the sort of contractual

commitments on price, schedule or design that are imposed as part of a typical competitive procurement process; (ii) the applicants have not yet conducted the type of extensive stakeholder and First Nations and Métis consultation that is required in Ontario to undertake a project of this type; and (iii) the applicants' plans have not been scrutinized and tested through the Board's usual regulatory litigation processes. Given these limitations, the Board's most important consideration should be the capability of applicants, measured by reference to their expertise and track records. Capability is an essential prerequisite to designation; the applicants' plans are based on preliminary commitments, projections and assumptions that are only as good as an applicant's capability to deliver.

8. The Board's selection of an applicant should also be guided by the fundamental objectives of the transmission designation process to "encourage new entrants to transmission in Ontario bringing additional resources for project development" and to "support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers".[3] There has been limited transmission development in Ontario in recent decades and there are intrinsic benefits to adding new players with global experience, new ideas and unique strengths. To gain the benefits of this experience, the Board should designate a new transmitter to develop the East-West Tie unless the plans of the incumbent utilities (EWT LP and CNPI) present a compelling and overwhelming advantage. For the reasons detailed below, it is apparent that the plans of the EWT LP and CNPI do not meet this threshold.

9. In summary, the Board should designate Iccon/TPT to develop the East-West Tie for the following reasons:

- Iccon/TPT has unmatched expertise and experience developing, building and operating major electric transmission projects and it has assembled qualified project teams that are ready to commence work immediately upon designation;

[3] *Board Policy: Transmission Project Development Plans*, EB-2010-0059 (August 26, 2010) at p. 1.

- Iccon/TPT has prepared a credible and well-resourced plan for First Nations and Métis engagement and participation; this plan reflects Iccon/TPT's substantial experience engaging and working with Aboriginal communities;

- Iccon/TPT has a long history working in Northern Ontario where TransCanada' Mainline Pipeline traverses the same area as the proposed East-West Tie; it is familiar with the terrain and weather challenges and has developed strong relationships with Northern communities, including First Nations and Métis;

- Iccon/TPT has the unquestioned financial capability to develop and construct the project;

- Iccon/TPT has extensive experience navigating the requisite regulatory and landowner, municipal and community consultation processes;

- Iccon/TPT is relying upon a proven design that will be further adapted and refined as appropriate through the development process;

- Iccon/TPT has prepared competitive and prudent development and construction cost estimates and schedules which the Board and Ontario ratepayers can reasonably rely upon; and

- Iccon/TPT's track record demonstrates its commitment and capability to manage costs and complete projects on schedule.

II. LEGAL AUTHORITY

10. There is no specific legislative or regulatory authority for the transmitter designation process. The Board is relying on its general licensing and the rate-making powers under sections 70 and 78 of the *Ontario Energy Board Act, 1998* to designate a transmitter and to authorize that transmitter to recover its transmission development costs through rates.

11. The Board declined to specify in Phase 1 of this proceeding how it would make its decision to select a transmitter – that is, how it would rank and/or weigh the decision-

making criteria. The Board said it would make this determination based on the evidence and the submissions of the parties:

> The Board will not, at this time, articulate an assessment methodology to be applied to the decision criteria, nor will it ascribe any relative importance to the decision criteria through a weighting system ... the Board is unwilling to remove the discretion and flexibility it may need in evaluating the application for designation. The Board will exercise its judgment for each criterion, with the assistance of the evidence presented and the submissions received from all parties.
>
> … All the decision criteria are important, and the Board is unwilling to restrict its ability to give full consideration to each criterion before it is informed by the content of the applications for designation.[4] (emphasis added)

12. Iccon/TPT submits that the Board's decision-making process should be guided by the following legal parameters:

- the purpose of the designation process vis-à-vis subsequent regulatory processes; and
- the administrative decision-making process the Board has chosen to designate a transmitter.

A. Designation Process vis-à-vis Subsequent Regulatory Processes

13. The purpose of the transmitter designation process is to select a transmitter to do development work. As the selected transmitter will be the likely builder and operator of the East-West Tie, it is important to assess an applicant's credentials and capabilities to construct and operate the new line.

14. However, the Board must also recognize that this proceeding will not approve the need for the East-West Tie or a specific transmission design, route or cost. Those matters will be determined in subsequent regulatory processes such as the leave to construct application, the environmental assessment process, and the transmission rate proceedings. As the Board cautioned in its Phase 1 decision:

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[4] Phase 1 Decision and Order, July 12, 2012, EB-2011-0140 ("Phase 1 Decision") at pp. 8–9. In this Procedural Order No. 6, the Board also invited applicants to address trade-offs amongst decision criteria in argument.

> It is important to remind participants of the limited scope of this process, which is the selection of the designated transmitter to do development work for the East-West Tie line. The final determination of the need for the Line will be considered in its subsequent leave to construct proceeding. In general, environmental matters are not within the mandate of the Board and the necessary environmental assessment will be conducted in another forum.[5]

15. These other processes will follow in due course. The designated transmitter will engage with First Nations and Métis communities, undertake stakeholder consultation, perform an environmental assessment, select a preferred design and route and prepare detailed cost-benefit analyses of the project and alternatives. All of these matters will be thoroughly debated and reviewed through a subsequent environmental assessment and leave to construct application.[6] After the line is brought into service, the transmitter's project costs may be further examined in a transmission rate proceeding.

16. Given the scope of these subsequent proceedings, the Board should focus at this stage on assessing the applicants' capabilities to develop, construct and operate the East-West Tie. The specifics of the plan will largely be resolved after designation in the course of carrying out development work and engagement; and they will be closely examined and tested in future environmental assessment, leave to construct and rate proceedings.

B. The Board's Chosen Decision-Making Process

17. Unlike most proceedings before the Board, which entail a single applicant, this is a competitive process that involves six competing applicants and, as the Board observed, has many of the features of a procurement process.[7] The Board tailored the proceeding to include elements of a competitive procurement process and to eliminate many of the aspects of a conventional regulatory litigation proceeding:

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[5] Phase 1 Decision at p. 2; see also Procedural Order No. 6, p. 3, where the Board advised that it would not entertain submissions on matters that are "more properly discussed during a leave to construct or environmental assessment".

[6] *Filing Requirements for Electricity Transmission and Distribution Applications,* EB-2006-0170 (revised June 28, 2012).

[7] Letter from the Board dated November 21, 2012; Procedural Order No. 5 dated January 8, 2013 at p. 2; Procedural Order No. 6 dated March 4, 2013 at pp. 1-2.

- The Board required all applicants to file their applications at the same time, with no right to file responding evidence (so as to prevent applicants from changing or augmenting their applications).

- The Board did not permit interveners to file responding evidence.

- The Board narrowly circumscribed the interrogatory process. All interrogatories were filtered through the Board; parties were prohibited from using the interrogatory process to augment their applications and evidence; and no opportunities were provided to bring motions for further answers or disclosure.

- The Board did not provide for a technical conference or any other discovery processes to further scrutinize the applications.

- The Board directed a written hearing rather than an oral hearing; and no opportunities were provided to test the evidence through cross-examination.[8]

18. The panel is therefore limited in this case to making its decision based on the applications as filed and supplemented by limited interrogatory answers.

19. In the unique circumstances of this case, the Board should focus on and attach the most weight to evidence of the applicants' capabilities as demonstrated by their track records:

- the number of major transmission projects managed and built on-time and on-budget;

- experience in developing and constructing transmission and other linear infrastructure projects in challenging weather and terrain conditions similar to those in Northern Ontario;

- familiarity and experience working in Northern Ontario;

[8] Phase 1 Decision; Procedural Order No. 5 at p. 2; Procedural Order No. 6 at pp. 1-2; Letter from Board dated November 21, 2012.

- experience consulting and working with First Nations and Métis communities;
- experience and expertise navigating environmental assessment and other regulatory, licensing and permitting processes;
- sufficient financial strength to carry out the project; and
- ability to bring new ideas, approaches and resources to the Ontario Transmission sector and to facilitate competition in transmission.

20. These are all important criteria the Board can meaningfully assess based on the evidentiary record. They are largely matters of fact that are discernible based on the evidence filed and require little in the way of further testing.

21. The details of applicants' plan are untested by the sort of a discovery processes and cross-examination the Board ordinarily applies to contested evidence before it. In the absence of such testing, representations of applicants are preliminary and do not satisfy basic evidentiary reliability requirements; at this early stage, they should be accorded less weight than evidence of capability and competency which can be evaluated as matters of fact and which are most probative of applicants' true ability to effectively undertake this project.

III. DECISION CRITERIA

A. Iccon/TPT's Technical Capability and Organization Distinguishes it from Other Applicants

22. Isolux Corsán and TransCanada are both highly regarded infrastructure companies with a wealth of experience in developing, constructing and operating electric transmission lines and other linear infrastructure. If designated, they will form a new limited partnership between Iccon and TPT to develop, construct and operate the East West Tie.[9]

23. *Isolux Corsán* — Isolux Corsán is one of the largest companies in the global transmission and distribution market. It has unrivalled experience and expertise in developing, constructing and owning/operating greenfield transmission projects (South

[9] Iccon/TPT Application, Section 2.1.

America, Texas, India, Africa). In the last 12 years, Isolux Corsán has constructed and brought into operation over 60 transmission projects totaling more than 12,000 km of high-voltage transmission lines and 145 substations, and it is currently constructing another 16 transmission lines totaling 3,500 km and over 25 substations. Of these, Isolux Infrastructure has developed, constructed, brought into service and operated 13 projects (approximately 6,000 km) at a total investment cost of approximately $2.5 billion. ***As shown in Figure 1 above, this represents more kilometers of transmission lines in the past 10 years than all of the other applicants combined.***

24. Isolux Corsán has constructed and/or developed transmission projects on five continents under a range of challenging geography and weather conditions. It has built transmission projects under harsh winter conditions, including constructing a 142 km 132 kV transmission line in the Patagonia region of Argentina, which experiences extremely high wind conditions and ice storms. It has also built transmission lines through and across deserts, jungles and tropical rainforests. Isolux Infrastructure is presently constructing 1,191 km of high-voltage transmission lines through the heart of the Amazon Jungle and across the Amazon River.[10] This is one of the most complex and ambitious transmission projects ever undertaken in South America.

25. *TransCanada* — TransCanada is a North American leader in the development, construction and operation of linear infrastructure. TransCanada currently operates over 60,000 km of pipeline and owns over 10,000 MW of electrical generation assets. TransCanada has significant technical expertise and strength in every aspect of project development from planning to execution to operation. Over the past 10 years, TransCanada has developed and brought into operation over 4000 km of large linear infrastructure projects in North America.[11]

[10] Iccon/TPT Application, Exhibit "G".
[11] Iccon/TPT Responses to Interrogatories, Interrogatory 32 and Appendix "D".

26. Isolux Corsán and TransCanada plan to combine and leverage their respective strengths in developing and building the East-West Tie as follows:[12]

- Iccon/TPT has engaged Isolux Corsán's EPC affiliate Isolux Ingeniería for its extensive expertise and experience in constructing large complex transmission projects. Being able to draw on in-house EPC resources from conception through to operation offers significant efficiency advantages on such a major and complex project.

- Isolux Ingeniería has global procurement expertise and relationships which it will leverage to competitively purchase materials and equipment at the lowest cost.

- Iccon/TPT intends to enter into a fixed fee EPC contract with Isolux Ingeniería at market based rates prior to filing a leave to construct application. A fixed fee EPC contract will incentivize cost efficiency and limit ratepayer exposure to construction delays and cost overruns. Isolux Ingeniería will also efficiently manage and, as appropriate, competitively subcontract the major work required to construct the East-West Tie, using local Aboriginal resources where economically feasible.[13]

- Iccon/TPT will utilize and draw on TransCanada's substantial North American development experience, its work experience and relationships in Northern Ontario, and its extensive proven expertise in engaging First Nations, Métis and other communities and stakeholders. Over the course of more than 60 years of developing and operating linear infrastructure in North America, including in Northern Ontario, TransCanada has developed relationships with and gained substantial experience engaging First Nations and Métis peoples, as well as other northern communities.

- Iccon/TPT will draw on TransCanada's knowledge and experience in navigating environmental, land acquisition and other regulatory processes

[12] Iccon/TPT Application, Section 2.4 at pp. 11-13.
[13] For a description of TransCanada's Aboriginal contracting strategy that will be implemented by Iccon/TPT, see Iccon/TPT Application, Appendix "A" to Section 2.4 at pp. 10-11.

that are critical prerequisites to the successful development of major linear infrastructure projects such as the East-West Tie.

27. Iccon/TPT has formed a project management structure and assigned key roles. The project General Manager will be Mr. Juan J. Soto Martinez,[14] who is successfully overseeing Isolux Infrastructure's transmission projects in Brazil and India and is a member of the Board of Managers of WETT in Texas.[15] Iccon/TPT's project management team — as well as its EPC Services, Aboriginal Engagement, Routing and Environmental Services, Land Services, and Community Relations Services teams — are ready and able to commence engagement and development work immediately upon designation.[16]

B. Iccon/TPT has Substantial Financial Capacity

28. Isolux Infrastructure's largest shareholder is Isolux Corsán, a global engineering and infrastructure company with a virtually unrivalled record of successfully developing and operating electricity transmission projects worldwide. Isolux Infrastructure's ownership includes a recent $500 million investment by PSP Investments, a federal Crown corporation established by the Parliament of Canada under the *Public Sector Pension Investment Board Act* to manage the pension plans of the Canadian federal public service, the Canadian Forces and the Royal Canadian Mounted Police.[17] PSP Investments has over $65 billion in funds under management (as of March 31, 2012).

29. TransCanada is a public energy infrastructure company with robust financial capabilities and extensive North American linear infrastructure project management experience. TransCanada has operated in northern Ontario since 1958, is extremely familiar with the northern climate and terrain, and has developed strong relationships and ties with Aboriginal communities and other local communities in Northern Ontario.

30. Iccon/TPT is extraordinarily well-resourced. TransCanada has a current A- credit rating by Standard & Poor's, $49 billion in assets and an annual cash flow from operations

[14] Mr. Soto's resume is included in Iccon/TPT Application, Exhibit "A".
[15] Iccon/TPT Responses to Interrogatories, Response to Interrogatory 2.
[16] Iccon/TPT Responses to Interrogatories, Response to Interrogatories 2 and 5.
[17] Iccon/TPT Application, Section 5.1 and Exhibits "I" and "J". See also Iccon/TPT Application, Section 2.1 for an updated organization chart for Iccon.

in excess of $3.9 billon.[18] Isolux Corsán is the largest private Spanish group in the engineering and infrastructure sector with $10.7 billion in assets, a business portfolio of approximately $57 billion and annual revenues of $4.5 billion. The anticipated equity contributions from TransCanada and Isolux Corsán during development and construction are small as relative to the size of the two companies.[19]

31. Iccon/TPT expects to finance the project with a mix of equity contributions and non-recourse debt. Iccon/TPT intends to enter into concrete negotiations with potential lenders for long-term debt financing once the project nears the final stages of its main permitting and licensing processes (approximately in 2015-2016). Both TransCanada and Isolux Corsán have a proven ability to raise debt financing for large infrastructure projects.[20]

C. Iccon/TPT has a Credible Plan for Aboriginal Engagement and Participation Backed by Substantial Experience

(a) Iccon/TPT's Proactive Approach to Engagement

32. Iccon/TPT's engagement efforts will be led by TransCanada's Aboriginal and Stakeholder Relations team, supplemented as appropriate with contracted local resources such as Maawadoon Consulting and Golder Associates Ltd. Iccon/TPT's application includes a detailed Aboriginal and Stakeholder Engagement Plan prepared by TransCanada's Aboriginal and Stakeholder Relations team.[21]

33. The Aboriginal and Stakeholder Engagement Plan is premised on certain principles and objectives TransCanada has learned from more than half a century of working with Aboriginal communities in developing major linear infrastructure projects in North America. A key requirement of the engagement process is to proactively engage Aboriginal communities and stakeholders in:

- scoping project related issues;

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[18] Iccon/TPT Application, Section 5.1 and Exhibit "H".
[19] Iccon/TPT Application, Section 5.3.
[20] Iccon/TPT Application, Section 5.5 and Appendix "A" to Section 5.
[21] Iccon/TPT Application, Appendix "A" to Section 4.

- identifying the potential effects of the Project on Aboriginal communities, use of the land for traditional activities, and sites of historical or cultural importance;

- participating in the development of mitigation measures;

- providing input into the implementation of the engagement process; identifying and providing opportunities to participate in the project.[22]

34. It is often difficult to predict in advance of project development how a particular project will evolve in terms of route, technical design, cost, schedule, etc. and how such changes may affect the interests of numerous First Nations and Métis communities, many of which will have different interests. As Iccon/TPT states in the Aboriginal and Engagement Plan filed as part of its application:

> [T]he applicants agree with the Board that there are a wide variety of mechanisms through which Aboriginal communities could engage in the Project. As designate, the applicants would expect to consult immediately with the Aboriginal communities to determine the mechanisms that are most attractive to each community.
>
> Since the costs and benefits of various mechanisms depend on such things as the community's size, capacity and desire or willingness to work in conjunction with other communities, there can be no "one size fits all" solution to optimizing the value of engagement. Further discussions with communities will be necessary to determine the appropriate benefits for this Project.[23]

35. Engagement with First Nations and Métis communities necessarily takes a major investment of time, effort and resources. There are no shortcuts. Companies like TransCanada who have been developing major infrastructure projects in Canada for more than 50 years — and have recent experience — know this. First Nations engagement is an integral component of TransCanada's business.

36. In practice, this means it is necessary to conduct First Nations and Métis engagement with the utmost good faith and to allocate significant time and resources (both financial and

[22] Iccon/TPT Application, Appendix "A" to Section 4 at p. 6.
[23] Iccon/TPT Application, Appendix "A" to Section 4 at p. 7.

qualified personnel) to the process. It is only through good faith engagement and the investment of time and resources that project developers are able to understand First Nations and Métis interests, forge necessary relationships with Aboriginal communities and work through the sort of mitigation and project participation arrangements that are appropriate for both the developer and affected and interested communities.

(b) Iccon/TPT's Aboriginal Engagement Plan and Experience

37. TransCanada initiated communications with a number of affected First Nations and Métis communities in spring 2011, but deferred those discussions pending designation in accordance with the advice given by the Ontario Power Authority ("**OPA**") in January 2012.[24] The Board has properly emphasized that it will assess the "ability to conduct" successful consultation as demonstrated by a consultation plan backed by evidence of experience:

> … Applicants will be required to demonstrate their ability to conduct successful consultations with First Nations and Métis communities, as may be delegated by the Crown, by providing a plan for such consultations, and evidence of their experience in conducting such consultations.[25]

38. Iccon/TPT has presented details of a multi-phased engagement process in the Aboriginal and Stakeholder Engagement Plan that includes:

- immediately identifying a team to work on Aboriginal community specific strategies and execution plans;
- initiating pre-engagement activities with Aboriginal communities;
- implementation of a comprehensive engagement process;
- offering capacity funding to support participation in the engagement process;

[24] Iccon/TPT Application, Section 3.1. See also the Letter from the Ministry of Energy to the OPA dated May 31, 2011 outlining the Crown and OPA roles in "any duty to consultant on the proposed East-West Tie project during the period prior to any Ontario Energy Board (Board) transmitter designation".
[25] Phase 1 Decision at p. 8.

- initiating an Aboriginal working group as a forum for discussions and coordination amongst affected Aboriginal communities and to share information on the project;

- supporting participation in Traditional Ecological Knowledge and Traditional Land Use studies and field studies;

- providing access and resources for education and training programs;

- exploring a range of options for community benefits; and

- exploring additional options to provide long term financial benefits derived from the project.[26]

39. The Aboriginal and Stakeholder Engagement Plan is backed by TransCanada's considerable experience and expertise in First Nations and Métis engagement across North America:

- TransCanada has over 60,000 kilometres of current and proposed pipelines, along with 10,800 MW of power generation facilities; it works with 7 tribal reservations and 13 First Nations reserves and Métis settlements where its assets directly cross tribal reservations in the United States and reserves and Métis settlements in Canada.

- TransCanada has operated in Northern Ontario since 1958. Its Canadian Mainline pipeline traverses much of the same area between Thunder Bay and Nipigon as the proposed East-West Tie. The existing transmission line crosses the ROW for TransCanada's Mainline at two points. TransCanada has developed relationships with and gained substantial experience engaging First Nations and Métis people in this area as well as other northern communities.

[26] Iccon/TPT Application, Appendix "A" to Section 4 at p. 4-5.

- TransCanada works with numerous other Aboriginal communities where its assets are located on traditional lands, and has agreements with a number of communities throughout Canada.

- TransCanada has a proven track record of successful engagement and received a score of 100 percent for stakeholder engagement in the 2011 Dow Jones Sustainability World Index.

40. If selected as the designated transmitter, Iccon/TPT will immediately commence engagement efforts with all First Nations and Métis communities whose traditional territory is crossed by the East-West Tie project as well as any other First Nations and Métis communities that express an interest in the project. It has formed a highly qualified and experienced team of internal and external personnel to lead its First Nations and Métis engagement efforts. These personnel and their qualifications and responsibilities are detailed in Iccon/TPT's application materials.[27]

41. A notable contrast with other applicants is the substantial amount Iccon/TPT has allocated to First Nations and Métis engagement (a total of $14,157,000 which includes $11,028,000 in the development phase and $3,129,000 during construction). This estimate reflects the challenges of engaging with at least 18 communities dispersed over a wide geographic area for a period of 5 years (2013 to 2018).

42. The amount allocated to engagement is a measure of the credibility of Iccon/TPT's application and demonstrates its commitment to devoting the necessary time and resources to successful First Nations and Métis engagement. To provide a point of comparison, HONI estimated costs for "First Nations & Métis Relations" during the development phase at $15,592,000 in its 2010 Project Definition Report.[28]

43. As shown in Figure 2, the other applicants have allocated considerably lower amounts for First Nations and Métis consultation.[29]

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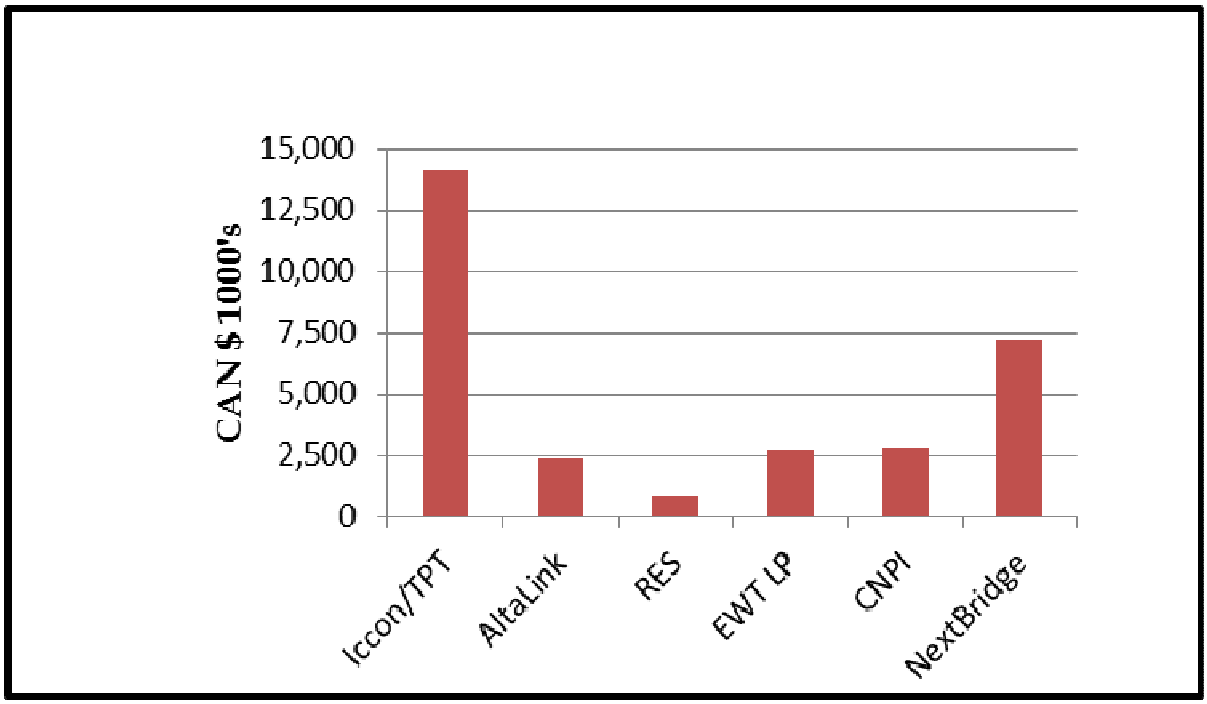
[27] Iccon/TPT Responses to Interrogatories at pp. 5-6; Iccon/TPT Application, Section 3, Appendix A at pp. 15-16.
[28] *Project Definition Report, Study Estimates for Options, East-West Tie Expansion* dated June 4, 2010 at p. 37.
[29] Figure 2 is based on the responses to Interrogatory 26. EWT may already have spent amounts on consultation in advance of the designation process.

Figure 2: Costs Allocated to First Nations and Métis Consultation



44. Based on TransCanada's substantial engagement experience, the amounts other applicants have allotted for First Nations and Métis consultation are significantly less than what will likely be required. For example, divided amongst the 18 communities identified by the OPA over an assumed 5-year engagement period, the $14,157,000 allocated by Iccon/TPT is equivalent to $157,300 annually per community; in contrast, RES's estimate of $820,000 represents a mere $9,111 annually per community.[30] In Iccon/TPT's view, it is unlikely that the designated transmitter could undertake adequate engagement on the limited budgets proposed by other applicants.

(c) Iccon/TPT's Plan for First Nations and Métis Participation

45. Iccon/TPT has not yet identified specific First Nations and Métis communities that will participate in the project. This will be determined through a thorough and collaborative process of confidential engagement with individual First Nations and Métis communities. In advance of engagement, Iccon/TPT has not presupposed which First Nations and Métis communities may participate in the project and has not made any

[30] The equivalent figures for the other applicants are: AltaLink $26,222; EWT LP $30,111; CNPI $30,933; NextBridge $80,552.

commitments. As mentioned above, Iccon/TPT will engage with all affected First Nations and Métis communities as well as any others who express an interest in participation.[31]

46. In the Phase 1 Decision, the Board stated that it will not favour participation arrangements already put in place, but will focus instead on a sound approach to participation backed by actual experience:

> The Board will not look more favourably upon First Nations and Métis participation that is already in place at the time of application than upon a high quality plan for such participation, supported by experience in negotiating such arrangements.[32]

47. As detailed above, Iccon/TPT has presented a comprehensive Aboriginal and Stakeholder Engagement Plan that explains how Iccon/TPT will determine the appropriate forms of participation. Iccon/TPT has outlined a suite of potential options for consideration in its Aboriginal and Stakeholder Engagement Plan, and will consider other reasonable options that are proposed by First Nations and Métis communities. The determination of participation for all Aboriginal communities affected by the project will be dependent upon further discussions with each of those individual communities.[33]

48. Iccon/TPT's plan for participation is supported by TransCanada's considerable experience engaging with Aboriginal communities[34] and its significant financial commitment. Iccon/TPT has estimated that between $6 and $12 million will be made directly available to First Nations and Métis communities as short-term financial benefits and community investment benefits.[35] Iccon/TPT has allotted a total of $11,876,000 for First Nations and Métis participation ($9,021,000 in the development phase and $2,855,000 during construction), which far exceeds the amounts allocated by other applicants as shown in Figure 3 below.[36]

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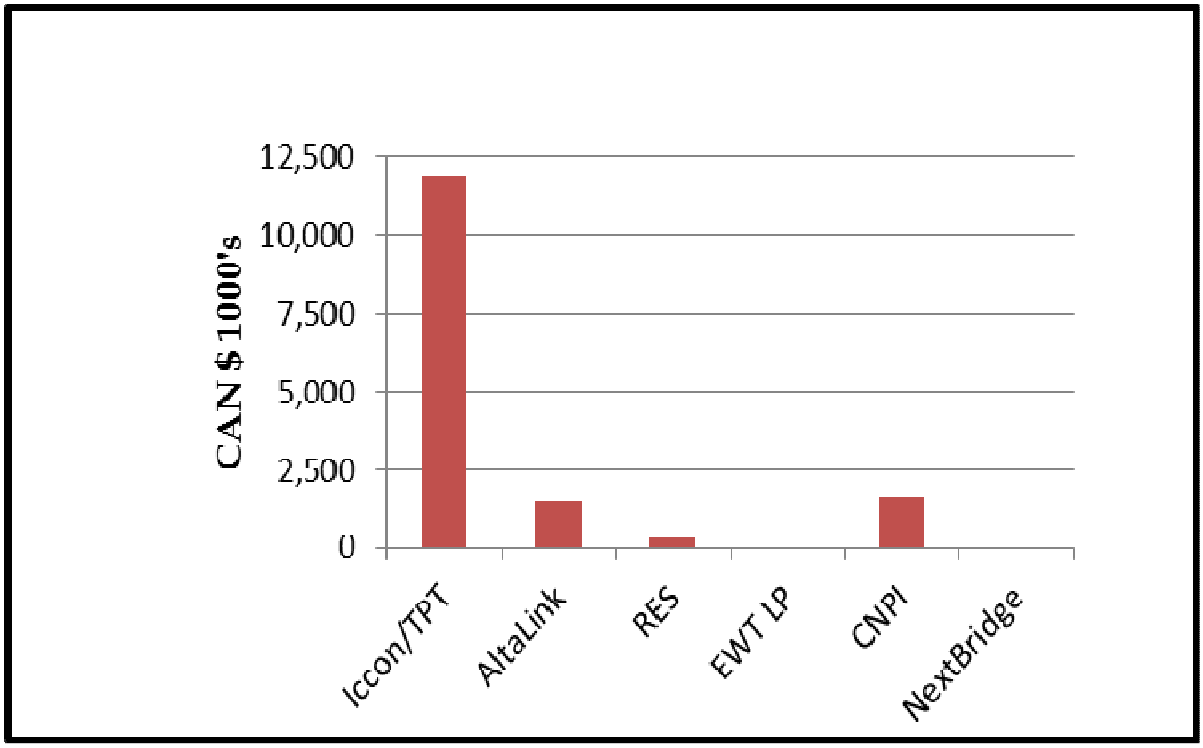
[31] Iccon/TPT Response to Interrogatories, Interrogatory 6.
[32] Phase 1 Decision at p. 8.
[33] Iccon/TPT Response to Interrogatories, Interrogatory 9.
[34] See paragraph 39 above.
[35] Iccon/TPT Application, Appendix "A" to Section 4 at p. 14-15.
[36] Figure 3 is based on the applicants' responses to Interrogatory 26. EWT LP lists participation costs as $0 for both the development and construction phases. NextBridge states that participation costs are "Not Included".

Figure 3: Costs Allocated to First Nations and Métis Participation



49. With a major project like the East-West Tie, it is not a prudent or realistic approach to propose that multiple and diverse interests can all be solved by a single approach, be it equity or otherwise. Iccon/TPT has prudently based its application on the assumption that participation may include: education and training programs; project employment; contracting and procurement opportunities for Aboriginal-owned businesses; community investment benefits, etc.[37] This is consistent with the Board's direction that First Nations and Métis participation may take many forms:

> "Participation" can mean many things, and the Board will not restrict its consideration to any particular type of participation. Applicants are invited to demonstrate the advantages of whatever type and level of First Nations and Métis participation they have in place, or are proposing to secure.[38]

50. Care must be taken to avoid simple equity "solutions", as they often run the risk of either: (i) excluding some Aboriginal groups whose interests are affected by the project; or (ii) diverting value away from the First Nations and Métis communities that they are intended to benefit; or both.

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[37] Iccon/TPT Application, Appendix "A" to Section 3 at pp. 8-11.
[38] Phase 1 Decision at p. 8.

51. For example, the pre-existing commitments made by EWT LP and CNPI inherently include some communities and exclude others – raising the prospect of objections by those communities who have been excluded. Similarly, AltaLink and EWT LP have indicated that First Nations and Métis communities will obtain their equity interest at "fair market value"[39] and "on commercial terms and conditions",[40] which strongly suggests that not all of the available benefits will flow to the affected communities.

52. In evaluating the applicants' Aboriginal participation plans, it is important to keep the ultimate end-goal of promoting the Board's electricity objectives in mind. The purpose of First Nations and Métis participation in this project is to facilitate the cost-effective construction and operation of the East-West Tie by addressing the effects this project will have on those communities' interests. The effects on each community will be different and the nature and extent of those effects will only become understood through a thorough development and engagement process with the designated transmitter. Accordingly, flexibility is key. Predetermined top-down decisions as to who will participate and what form participation will take may be counter-productive to the ultimate success of the project.

53. The participation plan that is most likely to succeed is one that has not predetermined which Aboriginal groups will be engaged and the appropriate forms of participation; is inclusive and comprehensive; provides for a non-exhaustive list of engagement and participation options; and, is well-resourced and funded. TransCanada has learned through experience that these elements are necessary ingredients for successful engagement and hence a successful project.

D. Iccon/TPT's Proposed Design is a Proven Solution

54. Iccon/TPT's proposed design — a double circuit 230 kV overhead transmission line with lattice towers — is a proven solution that has commonly been used in Northern Ontario.

55. The proposed design is based on the Reference Option and the Board's *Minimum Technical Requirements* and will be capable of handling the terrain and weather challenges of

[39] AltaLink IR Responses, Interrogatory 8; AltaLink Application for Designation East-West Tie Line, p. B-21.
[40] EWT LP IR Responses, Interrogatory 8.

Northern Ontario. The resulting total transfer capability for the East-West Tie will be 650 MW commencing in October 2018 with an anticipated lifetime expectancy of 50 years.[41] Based on Iccon/TPT's preliminary analysis, a double circuit 230 kV overhead transmission line is the most reliable and cost effective transmission option for addressing the identified need.

56. Iccon/TPT intends to design a new family of steel lattice tower structures that will optimize design and ensure that critical physical and environmentally sensitive conditions are avoided.[42] The new family of towers will be designed specifically to the requirements of the project. The design will be customized for the site by taking into account environmental constraints, design criteria, weather conditions, site conditions, topographic constraints and project limitations and requirements. Iccon/TPT has allotted time in its project schedule to allow for the new tower design to be fully tested during the engineering phase of the project.[43]

57. There may be technological and design innovations that can be integrated as part of the Reference Option to limit environmental impact, reduce cost, reduce ratepayer risk and/or enhance the reliability of the transmission grid. Potential innovations include: (i) the use of alternative materials (type of conductors, optical ground wire (OPGW), hardware, etc.); (ii) the possibility of using monopoles in some areas or lattice towers that span above the tree tops, reducing the number of dead-end towers needed to protect against cascading failure; and (iii) a design that protects against the real risk level of single loop galloping.[44]

58. Iccon/TPT's proposed design is preliminary in nature and, consistent with the pre-development stage of the project, is subject to a full evaluation during the development phase. In its Phase 1 decision, the Board recognized that it was impossible for applicants to provide all design assumptions "prior to having done at least some development work" and acknowledged "that plans will evolve during the development phase."[45] The Board's assessment of the plans presented by the applicants should be assessed in light of its prior comments.

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[41] Iccon/TPT Application, Section 6 at pp. 1-3.
[42] Iccon/TPT Application, Section 6 at pp. 4, 6-7.
[43] Iccon/TPT Responses to Interrogatories, Interrogatory 16.
[44] Iccon/TPT Application, Section 6 at pp. 6-8.
[45] Phase 1 Decision and Order at p. 11.

59. RES has prematurely indicated a preference for the single circuit design for the East-West Tie.[46] It is not disputed that, from a reliability perspective, a double circuit line is the superior option to the single circuit line, as the Independent Electricity System Operator ("**IESO**") concluded in its Feasibility Study:

> For the One-plus-One contingency condition, the installation of a new double-circuit line to reinforce the East-West Tie would therefore represent the superior option.[47]

60. Further, the alleged cost savings of RES's single circuit option have not been established. RES has not filed a detailed full lifecycle analysis that compares the costs of the single and double circuit options considering all of the incremental costs of a single circuit design. Those costs include additional reactive equipment in the substations (which RES has estimated at $25 million[48]), additional line losses for a single circuit, costs associated with control actions to address n-1 conditions (estimated by EWT LP at $104 million on a net present value basis[49]), and reduced transfer capacity until the necessary station upgrades are made. A full analysis of these factors during the development phase is required to substantiate the claimed cost savings of the single circuit option and to determine if they outweigh the shortcomings of the single circuit option.[50]

61. The applicants that have proposed guyed tower designs cannot provide the Board with any degree of assurance that a guyed tower can be achieved in this case. This option was not used for the existing East-West Tie and did not form part of the Reference Option recommended by the OPA and IESO. When asked by the Board, NextBridge failed to provide a single example of double circuit guyed-Y design.[51]

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[46] EWT LP has stated that it will study a single circuit cross-rope structure ("**CRS**") in further detail.
[47] IESO, *A study to review the requirements for reinforcing the East-West Tie to provide a westward transfer capability of approximately 650MW* dated August 11, 2011.
[48] RES Application for Designation, Exhibit B-1-1, p 12, Table B-2.
[49] EWT IR Responses, Interrogatory 5.
[50] Notably, EWT LP concluded that its CRS single circuit option (which has a lower estimate cost than RES's preferred design) could produce potential cost savings of $28 million as compared to the Reference Option after taking into consideration $104 million of costs stemming from the n-1 re-dispatch of energy. However, EWT LP's double circuit design includes $42 million to address single loop galloping. If further analysis of the single loop galloping determines that a new double circuit line can be built to the same standard as the existing line, then EWT LP's CRS single circuit option would cost $14 million more than a double circuit line with no single loop design requirement. This analysis does not include the costs of incremental line losses associated with a single circuit line.
[51] Upper Canada Transmission, Response to Board Interrogatory 15.

62. Isolux Infrastructure is familiar with guyed towers as it developed and constructed a double circuit guyed design for its Jauru South Project. A guyed tower requires a wider ROW, has a risk of collapse if one guy is broken, and can pose safety risks to recreational users of the transmission right-of-way (such as snowmobilers). For the foregoing reasons Iccon/TPT has reservations about the appropriateness of a guyed tower design; however, as with all potentially viable design options, it will be fully investigated during the development phase, including discussing this and other options with stakeholders. Iccon/TPT's proposed design will be evaluated against proposed design alternatives and assessed as part of the environmental assessment and leave to construct proceedings.

63. Similarly, it is premature for an applicant to identify a preferred route for the East-West Tie in advance of undertaking the necessary development work. Iccon/TPT has prepared a Routing Analysis that identifies the alternative corridors that will be evaluated during the development of the Terms of Reference for the environmental assessment.[52] The Routing Analysis has identified challenges with paralleling the existing line, including the legal constraints under the *Canada National Parks Act* to obtaining a new right-of-way through Pukaskwa National Park.[53]

E. Iccon/TPT has Proposed Prudent and Realistic Development and Construction Schedules

64. Iccon/TPT has prepared a prudent and realistic preliminary schedule under which it projects the East-West Tie will be ready to be brought into service in October 2018.[54] As shown in Figure 4, the proposed development and construction schedules from three of the applicants – Iccon/TPT, AltaLink, and RES – are generally consistent when adjusted for the date of designation and show an in-service date in Q3/Q4 of 2018.[55]

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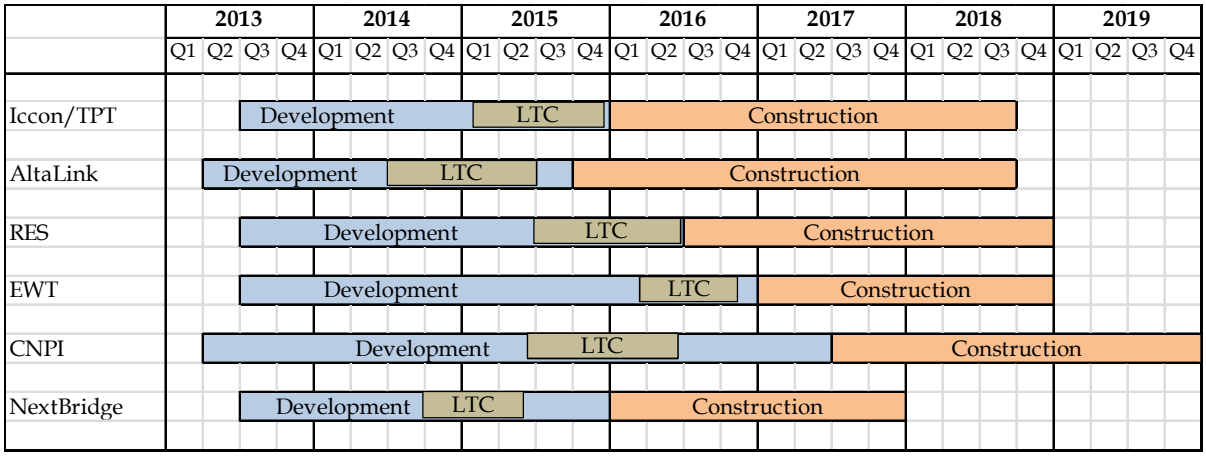
[52] Iccon/TPT Application, Sections 9.3 and 9.4.
[53] Iccon/TPT Application, Appendix "A" to Section 9 at p. 1-2.
[54] Iccon/TPT Application, Section 7 at pp. 1-8.
[55] Figure 4 is based on the development and construction schedules presented in Section 7 of each application. All of the applicants' schedules are premised on the Reference Option with the exception of NextBridge, which used the guyed-Y tower as the basis for its schedule (see UCT East-West Tie Designation Application at p. 113).

Figure 4: Applicants Development and Construction Schedules



65. Iccon/TPT's projected in-service date of October 2018 is a reasonable and achievable target for the project that allows sufficient time for both development and construction. Iccon/TPT has refused the temptation to create an overly optimistic schedule that shows an in-service date in 2017 and has supported its schedule with a preliminary risk register.[56]

66. EWT LP has proposed an optimistic two-year construction schedule for the Reference Option. EWT LP's schedule assumes that the line will be constructed in three segments using crews working in parallel on each segment. EWT LP's consultant Power Engineers concluded that meeting a two-year construction schedule by using three parallel "calls for a significant commitment of labour and equipment to the project and should be considered challenging."[57] Power Engineers concluded:

> Any desire to shorten the schedule must recognize that the need for more labour or extending the workweek hours of a labour force carries a relatively high premium. The existence of added equipment can be costly since this will not be the only major project happening in this time frame.[58]

67. Like EWT LP, NextBridge is proposing a two-year construction schedule, although this schedule is for the guyed-Y design and not the Reference Option.[59] NextBridge's two-year construction schedule faces the same risks relating to the availability of labour and

[56] Iccon/TPT Application, Appendix "D" to Section 7.
[57] EWT LP, Plan for the East-West Tie Line, Appendix 6A at p. 8.
[58] EWT LP, Plan for the East-West Tie Line, Appendix 6A at p. 8. At p.9, Power Engineers also identified the "Availability of labour and major equipment when you most need it" as a risk to the schedule's duration.
[59] UCT East-West Tie Designation Application at p. 113.

equipment as those identified by Power Engineers. NextBridge has also identified difficulties in attracting construction labour as a risk to its construction schedule.[60]

68. There are a number of more prudent measures that can be implemented in advance of receiving leave to construct approval that might allow the designated transmitter to achieve a 2017 in-service date.[61] If a 2017 in-service date is required, Iccon/TPT would be willing to implement measures such as the procurement of long lead-time material in advance of leave to construct approval provided that the Board considered such expenditures to be recoverable development costs in the event leave to construct is not granted. These measures could significantly accelerate the development schedule with relatively little incremental risk.

69. It is a truism that a project schedule is only as good as the applicant's ability to deliver on that schedule. For this reason, the Board should look beyond the projected schedules to the applicants' past experience in bringing large transmission projects into service on-time. In this regard, Isolux Infrastructure has a proven track record for developing and constructing large transmission projects to meet contractual in-service dates. All of its transmission projects undertaken over the past 10 years have been developed and brought into service on or before the contractual in-service date.[62]

70. Similarly, TransCanada has a strong track record for bringing oil and gas transmission projects into service on time.[63] Of the eight major projects TransCanada has developed and constructed over the past 10 years, all but two were brought into service on time (and the other two were completed within 60 days of their projected in-service dates).

F. Iccon/TPT has Prudent Cost Estimates and a Proven Ability to Manage Costs

(a) Development Costs

71. A meaningful comparison of the applicants' estimated costs is difficult for two reasons. First, the cost estimates are preliminary and not subject to the sort of contractual commitments that are imposed as part of a typical competitive procurement process. Nor

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[60] UCT East-West Tie Designation Application at p. 112.
[61] For examples of some of these measures see the AltaLink Application for Designation East-West Tie Line at p. B-104.
[62] Iccon/TPT Responses to Interrogatories, Interrogatory 32.
[63] Iccon/TPT Responses to Interrogatories, Interrogatory 32.

have the estimates been scrutinized and tested through the Board's usual regulatory litigation processes. Second, it is apparent that applicants have interpreted the various cost categories differently and may not have included all of the same costs in their estimates.

72. Notwithstanding these difficulties, Iccon/TPT has prepared Figure 5 that shows harmonized development costs estimates for the Reference Option up to the filing of leave to construct without escalation, contingency, IDC/AFUDC and First Nations and Métis participation and consultation.[64]

Figure 5: Applicants' Development Costs for the Reference Option (on 2012 $ basis)

	Iccon/TPT	AltaLink	RES	EWT LP	CNPI	NextBridge
Engineering, design, and procurement activity	5,370,000	9,410,000	9,410,000	4,680,000	7,204,000	10,553,085
Materials and equipment	0	0	0	0	0	
Permitting and licensing	300,000	200,000	0	560,000	0	46,667
Environmental and regulatory approvals	4,250,000	3,755,000	1,560,000	5,150,000	3,842,000	3,593,500
Land rights (acquisition or options), including consultation and negotiation with landowners	1,857,000	505,000	2,780,000	3,310,000	1,923,000	1,990,805
First Nation and Métis participation (direct and indirect costs, including impact mitigation if applicable)						
First Nation and Métis consultation						
Other consultation (community, stakeholder)	800,000	505,000	860,000	2,430,000	3,615,000	496,240
IDC or AFUDC (if included in estimates)						
Contingency						
Other	8,775,000	0	4,310,000	4,280,000	2,307,000	2,464,214
Escalation	-1,800,000					
Total w/o Escalation	**19,552,000**	**14,375,000**	**18,920,000**	**20,410,000**	**18,891,000**	**19,144,511**

73. Figure 5 shows that Iccon/TPT has presented a prudent and competitive cost estimate for the development phase of the East-West Tie. With the exception of the lowest outlier AltaLink,[65] the pre-leave to construct development costs for all applicants average $19.4 million and are within an 8% range. Iccon/TPT has presented a competitive estimate that is consistent with the average.

[64] Figure 5 is based on the responses to Interrogatory 26. First Nations and Métis participation and consultation costs are discussed above at paragraphs 41, 43 and 48. Escalation is shown as a line item for TPT/Iccon only as other applicants elected to remove escalation from individual line items.

[65] AltaLink's development costs estimate is 25% lower than the average, but its construction costs estimate is higher than that of any other applicant (see Figure 6).

74. Given the difficulty of making precise comparisons and the narrow range within which the development cost estimates fall, they should not be considered an important determinant for designation.

(b) Construction and Operation & Maintenance Costs

75. In its Phase 1 Decision, the Board recognized "the uncertainty inherent in estimating costs of construction and operation and maintenance of the line" and so asked that applicants simply provide a "reasonable estimated range for these costs, and provide justification for the cost estimates and width of the range."[66]

76. Figure 6 shows the applicants' construction cost estimates on a harmonized basis for the Reference Option without escalation, contingency and IDC/AFUDC.[67]

Figure 6: Applicants' Construction Costs for the Reference Option (on 2012 $ basis)

	Iccon/TPT	AltaLink	RES	EWT LP	CNPI	NextBridge
Engineering, design, and procurement activity	11,770,000	12,403,200	12,590,000	5,000,000	10,800,000	13,243,117
Materials and equipment	65,560,000	125,059,200	241,010,000	53,000,000	181,050,000	69,423,822
Permitting and licensing	0	200,000	470,000	1,000,000	1,301,000	193,333
Environmental and regulatory approvals	2,000,000	1,810,000	5,700,000	6,000,000	2,960,000	3,027,770
Land rights (acquisition or options), including consultation and negotiation with landowners	10,700,000	11,970,000	13,020,000	4,000,000	16,304,000	17,135,214
First Nation and Métis participation (direct and indirect costs, including impact mitigation if applicable)	2,855,000	1,000,000	40,000	0	681,000	0
First Nation and Métis consultation	3,129,000	720,000	60,000	1,000,000	861,000	5,526,345
Other consultation (community, stakeholder)	0	350,000	680,000	1,000,000	861,000	841,040
Site clearing and preparation	45,685,000	33,268,000	11,270,000	7,000,000	8,575,000	50,610,924
Construction	203,142,000	261,497,600	97,970,000	282,000,000	148,698,000	193,123,999
Site remediation	1,633,000	5,820,000	4,300,000		17,584,000	9,690,100
Other		0	29,890,000	46,000,000	11,089,000	6,840,694
Project Management	26,580,000					
Financing costs	16,320,000					
A&G Costs	16,166,000					
Post-LTC Development Cost	12,996,000					
Total w/o Escalation, before IDC and Contingency	**418,536,000**	**454,098,000**	**417,000,000**	**406,000,000**	**400,764,000**	**369,656,358**

[66] Phase 1 Decision and Order at p. 5.

[67] Figure 6 is based on the responses to Interrogatory 26. Post-leave to construct development costs, which were removed from Iccon/TPT's development costs for the purposes of Board Interrogatory 26, have been added to the construction costs. Iccon/TPT has also broken out its "Other" costs.

77. As noted above at paragraph 71, the applicants have interpreted the various cost categories differently and may not have included all of the same costs in their estimates. For example, all applicants will have financing costs; however, it is not apparent whether these costs have been included by all applicants. AltaLink, NextBridge and CNPI do not appear to have included financing costs. RES has included the cost of financial services but has not reported them separately. Iccon/TPT cannot determine whether EWT LP has included an appropriate amount for financing costs in its estimate.

78. Nonetheless, despite these difficulties, the overall picture for harmonized construction costs estimates shows an average estimate of $411 million, with four of the applicants (Iccon, RES, EWT LP, and CNPI) within a 5% range. The lowest construction cost estimate from NextBridge includes a very low amount for project management and General and Administrative expenses despite the large number of team members listed in its application.

79. Similarly, the applicants' operating cost estimates at this stage are very preliminary and will be subject to a future rate proceeding. Figure 7 shows a comparison of the applicants' estimated operation and maintenance costs.[68] It is evident that several of the applicants have not included significant cost categories in their estimates.

Figure 7: Applicants' Operation and Maintenance Costs for the Reference Option (on 2012 $ basis)

	Iccon/TPT	AltaLink	RES	EWT LP	CNPI	NextBridge
Major activities (please list, but cost estimate may be bundled)	1,877,500	0	2,650,000	4,060,000	974,000	1,251,000
Administration and general costs related to O&M	2,865,000	1,700,000	80,000	1,630,000	685,000	1,346,000
Regulatory costs	500,000	0	31,000	250,000	25,000	1,850,000
Contingency	257,500	0	0	1,190,000	0	0
TOTAL with Escalation	5,500,000					
Escalation	650,000					
Total w/o Escalation	**4,850,000**	**1,700,000**	**2,761,000**	**7,130,000**	**1,684,000**	**4,447,000**

80. Again, in light of the difficulty of making precise comparisons and the inherent uncertainties surrounding the applicants' costs estimates, these estimates should not be a key determinant in selecting an applicant to undertake development work on the East-West Tie. They are preliminary in nature, are not "apples to apples" comparisons and have not

[68] Figure 7 is based on the responses to Interrogatory 26. Escalation is shown as a line item for TPT/Iccon only as other applicants elected to remove escalation from individual line items.

been tested through the Board's usual hearing processes. Nonetheless, the Board should be skeptical of applicants who have submitted extraordinarily low cost estimates (particularly where they are paired with optimistic schedules), which may be a reflection of a lack of relevant experience or aggressive bidding.

(c) Risk Allocation Proposals

81. As detailed in its Application, Iccon/TPT proposes to enter into a fixed fee EPC contract for this project with Isolux Ingeniería prior to filing its leave to construct application.[69] The fixed fee arrangement will incentivize cost efficiency and limit ratepayer exposure to construction delays and cost overruns.

82. While other applicants have proposed other mechanisms to allocate risk between themselves and transmission ratepayers, these proposals are very preliminary in nature and should be given little weight. For example, AltaLink has proposed a sharing mechanism based on a "target price for construction costs [that] would be negotiated," but no details are provided on how such a mechanism would be established or who would negotiate the target price.[70] To work effectively, AltaLink's proposal would require a detailed implementation agreement establishing milestone dates and force majeure rights. The Board does not have the ability to serve as the contractual counterparty to such an arrangement. Similarly, NextBridge states that it intends to present a comprehensive proposal for performance-based ratemaking at the leave to construct phase, but has provided scant details about the mechanism.[71]

83. RES has also proposed an incentive rate methodology that shares risk by rewarding RES for cost underages and penalizes it for cost overages. However, RES's proposed mechanism would not actually achieve its stated purpose if RES was to proceed with its preferred option of the single circuit design.[72] As noted above at paragraph 60, the single circuit design includes incremental costs that were not included in RES's cost estimates. As a result, RES could receive a bonus if it has cost underages even if the overall cost of the line is higher than estimated due to the incremental costs associated with the single circuit

[69] Iccon/TPT Application, Section 8.11; Iccon/TPT Response to Interrogatories, Interrogatory 32.
[70] AltaLink Application for Designation East-West Tie Line, p. B-21.
[71] UCT East-West Tie Designation Application at p. 121.
[72] RES Application for Designation, Exhibit P-5-1 at pp. 8-12.

design. This example illustrates the dangers on settling upon a specific rate mechanism before the project is properly defined through the development process.

(d) Ability to Control Costs

84. The Board should place significant weight on an applicant's ability to control costs. In its Phase 1 Decision and Order, the Board, in the context of addressing development costs, confirmed that the ability to control costs was more important than a preliminary estimate:

> The Board finds that it is reasonable to simplify the development cost breakdown by grouping some categories of cost. The Board is of the view that, while development cost estimates will be considered, the magnitude of development costs will be small in comparison to the total costs of the East-West Tie project. Consequently, an applicant's demonstrated ability to manage complex projects and control all costs is more important for the selection of a designated transmitter than the estimate of development costs.[73] (emphasis added)

85. The best indicator of an applicant's ability to control costs is the applicant's track record. In this respect, Iccon/TPT are unique amongst the applicants – Isolux Infrastructure is accustomed to developing transmission projects in an environment where it accepts the risk for project cost deviations and must manage that risk.[74] All Isolux Infrastructure's transmission projects (with the exception of WETT in Texas) were awarded based on submitting the lowest bid where the winner accepted contractual risk if projects were not completed on budget.[75] The fact that Isolux Infrastructure has successfully developed and constructed 13 large transmission projects under this model is a testament to its proven ability to control costs. Quite simply, if Isolux Infrastructure could not properly control costs, it would not be in business.

86. In addition to the experience of Isolux Infrastructure, TransCanada also has an excellent record for bringing its projects in on budget.[76] TransCanada also has a proven history for completing major pipeline and other large infrastructure projects within planned construction budgets. Six of the eight major projects that TransCanada has developed in the

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[73] Phase 1 Decision and Order at p. 12.
[74] Iccon/TPT Response to Interrogatories, Interrogatory 32.
[75] Iccon/TPT Application, Sections 4.1.2, 7.4 and 8.10; Iccon/TPT Response to Interrogatories, Interrogatory 32.
[76] Iccon/TPT Response to Interrogatories, Interrogatory 32.

last 10 years were brought into service under or on budget and the remaining two projects were 11% and 12% over budget respectively.[77] This is an impressive record in light of all the complexities of developing and constructing large linear infrastructure projects such as weather, geotechnical uncertainties, labour productivity and commodity costs.

87. Iccon/TPT brings a true developer's mindset to the table with a commitment to cost discipline and economic efficiency. Selecting Iccon/TPT as the designated transmitter aligns with the Board's objectives of bringing new companies with new innovative ideas, approaches and ways of doing business to the province's transmission sector. As noted above at paragraph 8, the key objectives of the Board's competitive transmission policy are to "encourage new entrants to bring additional resources for project development" and "drive economic efficiency for the benefit of ratepayers".[78]

IV. PROPOSED CONDITIONS OF APPROVAL

88. In its Argument-in-Chief, Board Staff have proposed a list of critical milestones for the development phase with quarterly reporting obligations for the designated transmitter.

89. Iccon/TPT has identified the major milestones in the development process in Appendix B to section 7 of its application. If designated, Iccon/TPT proposes to file an updated schedule adjusted for the actual date of designation.

90. While Iccon/TPT agrees with the general thrust of Board Staff's submission, it does not believe that it is necessary or appropriate to impose a generic development schedule or additional milestones. The Board's filing requirement 7.2 directed applicants to provide "a detailed line development schedule identifying significant milestones that are part of the development phase of the project, and estimated dates for completing those milestones." The applicants responded with project schedules that form a critical component of their respective transmission plans. Changes to the project schedule would undoubtedly impact other components of an application. The Board should accept the applications as filed and refrain from imposing a new schedule or milestones.

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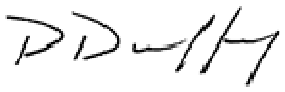
[77] Iccon/TPT Response to Interrogatories, Interrogatory 32.
[78] *Board Policy: Transmission Project Development Plans*, EB-2010-0059 (August 26, 2010) at p. 1.

91. Also, as detailed in its application, Iccon/TPT proposes to file progress reports tracking the actual development process against the preliminary schedule and explaining any deviations. The progress reports would be filed with the Board concurrent with the quarterly filings for electricity transmitters that are required by the Board's *Electricity Reporting and Record Keeping Guidelines*. This will satisfy Board Staff's objectives.

92. Iccon/TPT agrees with Board Staff that the findings of the Board in the Phase 1 Decision provide sufficient guidance on the consequences of failing to meet significant milestones and that specific sanctions should be determined at the time of the breach. The most serious consequences identified by the Board — loss of designation and the inability to recover development costs — should only be utilized in the event there are significant delays within the control of the applicant in meeting critical milestones such as filing the Terms of Reference and a leave to construction application.

All of which is respectfully submitted this 18th day of April, 2013



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