

**TOR01: 5326370: v3J. Mark**

**Rodger**

T (416) 367-6190

F (416) 361-7088

mrodger@blg.com

**John A.D. Vellone**

T (416) 367-6730

F (416) 361-2758

jvellone@blg.com

September 10, 2013

**Delivered by RESS, Courier and Email**

Ms. Kristen Walli, Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Confirmation of Ongoing Public Disclosure of Reporting related to EB-2011-0140**  
**Ojibways of the Pic River First Nation Notice of Appeal dated September 6, 2013**  
**Our Client: AltaLink Ontario, L.P.**

We are writing pursuant to the East-West Tie Line Designation Phase 2 Decision and Order dated August 7, 2013, Board File No. EB-2011-0140 (the “**Phase 2 Decision and Order**”). In its Decision and Order the Board named Upper Canada Transmission Inc. (“UCT”) as the designated transmitter for the development phase of the proposed East-West Tie line and AltaLink Ontario, L.P. (“AltaLink”) as the designated runner-up transmitter. As the successful runner-up, AltaLink has an ongoing direct interest in ensuring that it is kept informed of the issues facing UCT’s progress in carrying out the East-West Tie Line project (the “Project”). The matters raised in this correspondence reflect AltaLink’s continued interest in the Project.

Last Friday afternoon a Notice of Appeal was served upon us by counsel to the Ojibways of the PIC River First Nation which asks the Court, among other things, to set aside the Phase 2 Decision and Order. AltaLink will carefully consider this development and may participate in the Appeal. In view of the Appeal this correspondence is submitted to the Board on a without prejudice basis to any submissions, positions or arguments AltaLink may make to the Divisional Court, other court or tribunal.

The role of the designated runner-up transmitter is explained at pages 16-17 of the Phase 1 Decision and Order dated July 12, 2012 (the “**Phase 1 Decision and Order**”):

“If the designated transmitter fails to fulfill its obligations and the line is still needed, the Board could offer the development opportunity to the runner-up. The runner-up would not

be under an obligation to take on the project, but would have right of first refusal to undertake the work.”

In the Phase 2 Decision and Order, the Board imposed a number of up-front and ongoing reporting obligations on UCT as a condition of its transmission licence.

In Phase 1 Decision and Order, the Board states at pgs. 14-15:

“The Board agrees with Board staff and other parties that it will be necessary to impose performance milestones and reporting obligations on the designated transmitter. The objectives of the milestones and reporting are:

- to ensure that the designated transmitter is moving forward with the work on the East-West Tie line in a timely manner;
- to facilitate early identification of circumstances which may undermine this ability to move forward; and
- to maintain transparency, as the costs of development work are intended to be recovered from ratepayers.”

AltaLink is writing to confirm that it is the Board’s intention to make each of UCT’s reports publically available upon receipt. To maintain transparency, AltaLink submits that the Board should make each of UCT’s reports publically available.

AltaLink, as the designated runner-up transmitter, has a vested interest in monitoring UCT’s progress, as the Board may later ask AltaLink to undertake the development work should UCT fail to meet its designated milestones. In addition, AltaLink’s expertise in transmission project development may assist the Board in facilitating early identification of circumstances which may undermine UCT’s ability to move forward. Finally, ratepayers are funding the costs of UCT’s development work regardless of whether or not the construction of the East-West Tie line proceeds (a departure from the used-and-useful principle). Consequently, a higher degree of public disclosure and transparency is required.

While UCT has not formally expressed a view on whether or not its reports should be made publically available, UCT has acted consistently with the understanding that its filings would be made publically available by copying all of the intervenors of record on its August 28, 2013 compliance filing. The Board has similarly made UCT’s August 28, 2013 compliance filing publically available on its website. AltaLink is hopeful that all parties can agree on the need for transparency.

Finally, AltaLink has the following comments on the UCT August 28, 2013 compliance filing (the “Filing”):

1. In its Decision and Order the Board made specific reference to December 2017 as the in-service date advanced by UCT in its Application. From the Filing it is unclear to AltaLink whether UCT is maintaining the December 2017 in-service date (which appears to have been an important factor for the Board in its Decision and Order to designate UCT) or whether UCT is now proposing a different in-service date. AltaLink submits that UCT should confirm that December 2017 remains the in-service date for the EWT.
2. UCT proposed in Attachment 1 a revised development milestone to "[c]ommence negotiations or discussions with all landowners and permitting agencies", however the milestone proposed by Board Staff included additional language in parenthesis "(would include identification of, and at least one contact with, each landowner and permitting agency)" that UCT appears to have omitted. AltaLink submits that the Board should retain Board Staff's proposed milestone wording, which includes a minimum requirement of at least one contact with each landowner and permitting agency.
3. In describing the "Proof of Completion" in Attachment 1, UCT uses the term "Confirming correspondence" multiple times without clearly explaining what is meant by the term. AltaLink submits that a letter from UCT or its counsel simply confirming that the milestone has been met would not meet the Board's requirements for transparency and accountability. AltaLink submits that such confirming correspondence should be accompanied by additional evidence that can be examined by reasonable and informed parties to confirm that the milestone has in-fact been met (for instance, confirming correspondence from the IESO that the SIA has been filed, a copy of the SIA from the IESO, etc.).

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original signed by Mark Rodger*

J. Mark Rodger

Incorporated Partner\*

\*Mark Rodger Professional Corporation

Encl.

Copy: Steve Hodgkinson, AltaLink Ontario, L.P.

All Parties in EB-2011-0140 (By e-mail only)