

ONTARIO ENERGY BOARD

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

WRITTEN SUBMISSION

of

RES CANADA TRANSMISSION LP

on

PROPOSED LIST OF ISSUES FOR PHASE 1

May 7, 2012

Introduction

1. RES Canada Transmission LP ("**RES Transmission**") is an Ontario limited partnership formed for the purpose of pursuing opportunities in the electricity transmission sector in Ontario and elsewhere. Both RES Transmission and its general partner, RES Canada Transmission GP Inc., are affiliates of Renewable Energy Systems Canada Inc. ("**RES Canada**") and Renewable Energy Systems Americas Inc. ("**RES Americas**"). RES Canada and RES Americas are developers of renewable generation facilities and associated transmission facilities in Canada and the United States, respectively. In Ontario, RES Canada has developed and constructed two large wind farms. Its Greenwich Wind Farm is located in northwestern Ontario and interconnects, via its 10 kilometer ("**km**") high voltage transmission line, with Hydro One Network Inc.'s ("**Hydro One**") 230 kV transmission line at a point east of Thunder Bay, Ontario.
2. RES Transmission holds Transmission Licence ET-2011-0282. It is a registered transmitter and an intervenor in this proceeding and intends to submit an application for designation in Phase II.
3. The submission that follows is divided into two parts. It first addresses overarching issues that are raised by the participation of EWT LP ("**EWT**") and its partners' affiliates, Hydro One and Great Lakes Power Transmission LP ("**GLPT**"), in this designation proceeding. It next addresses the specific issues on the Issues List with reference to the submission of Board Staff ("**Staff Submission**") on Phase I issues.

General Comments

Benefits of Competition and New Entrants

4. This proceeding is to select a transmitter to develop the transmission line component ("**East-West Tie**") of an expansion of that portion of Hydro One's existing transmission

system that extends from Thunder Bay to Wawa, Ontario. At the suggestion of the Minister of Energy in his letter to the Ontario Energy Board (“**OEB**” or “**Board**”) of March 29, 2011, the process that will be used to do this is patterned after the process conceived by the Board to facilitate development of major transmission facilities required to connect renewable generation in Ontario. That process is set out in a policy document entitled *Framework for Transmission Project Development Plans* (the “**Designation Policy**”).

5. The process articulated in the Designation Policy is underpinned by three stated Board objectives:
 - allowing transmitters to move ahead on development work in a timely manner;
 - encouraging new entrants to transmission in Ontario bringing additional resources for project development; and
 - supporting competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

6. It is clear from the Minister of Energy’s letter that his preference for a designation process to select a transmitter to develop the East-West Tie is founded on these same three objectives: timely development, encouragement of new entrants and enhancement of economic efficiency driven by competitive forces. The Staff Submission also confirms that although the purpose of this proceeding is to designate a transmitter to develop facilities to maintain long-term system reliability in north-western Ontario – as opposed to connect renewable generation – the original Designation Policy objectives should continue to pertain.¹

7. The “new entrant” and “competition” objectives are separate but related objectives. The participation of new entrants is necessary to sustain a competitive process but new

¹ Staff Submission, pp. 6, 16.

entrants also bring new sources of private sector capital, expertise, experience and innovation to the development of transmission facilities in Ontario and, in the result, create benefits for ratepayers and taxpayers alike.

Need for Level Playing Field

8. Five new entrant transmitters – including RES Transmission and, in effect, three incumbent transmitters – are participating in this designation proceeding. EWT, although a new entity, is on the record in proceeding EB-2011-0350 as stating that it intends to rely on the combined expertise, experience and resources of its partners and their respective affiliates to develop, construct and operate the East-West Tie, including incumbent transmitters, Hydro One and GLPT.
9. The indirect participation by Hydro One and GLPT in this proceeding does not offend the Board’s Designation Policy which contemplates the participation of both incumbent and new entrant transmitters. It does, however, give EWT an apparent and significant “going-in” advantage over the new entrant participants because of its ability to leverage of Hydro One’s and GLPT’s resources, expertise, experience and relationships constructing and operating transmission facilities in north-western Ontario. In this regard, it is relevant to note the evidence of EWT in its transmission licensing proceeding to the effect that it intends to contract with GLPT for the development and management of the East-West Tie and with Hydro One to undertake systems operations.²
10. EWT’s ability to leverage the resources, expertise and experience of Hydro One and GLPT gives rise to three “going-in” advantages:
 - An “**Information Advantage**” arises by virtue of the fact Hydro One and GLPT possess documents and information resources that were created in the course

² EB-2011-0350, EWT, LP Transmission Licence Application, Responses to AltaLink Ontario L.P.’s Interrogatories (December 5, 2011), pp. 3-4 of 14.

of: (i) the development, construction and operation of their respective transmission systems in north-western Ontario; and (ii) Hydro One's development work in respect of the East-West Tie Expansion carried out in 2010 and 2011 response to a letter dated September 21, 2009 from the then Minister of Energy and Infrastructure.³

- A “**Knowledge Advantage**” arises by virtue of the fact that EWT shares employees with both Hydro One and GLPT. Accordingly, EWT benefits from the institutional knowledge of these shared employees, which knowledge was acquired, at ratepayer expense, prior to the sharing arrangement and, thus, any cost allocation arrangement, being put into place. EWT's evidence in its transmission licensing proceeding confirms that it has used executive-level employees of Hydro One and GLPT to assist it in developing its East-West Tie plan.⁴
- A “**Relationship Advantage**” arises by virtue of EWT's ability to leverage Hydro One and GLPT's long-standing relationships with landowners and First Nation and Métis groups located along existing transmission corridors in north-western Ontario. Efforts by Hydro One and GLPT to establish and nurture these relationships have been funded by ratepayers over the years. EWT's ability to leverage these relationships is apparent from the fact that Bamkushwada LP (“**BLP**”), one of the three equal limited partners of EWT, is itself comprised of six First Nations whose traditional territories are situated along the existing corridor of the East-West Tie. EWT's evidence in its licensing application is that BLP, though the participation of these First Nations, has a very high level of experience and expertise with respect to the relevant geographic area and a

³ EB-2010-0002, Hydro One 2011 and 2012 Transmission Revenue Requirement and Rates Application, Tab 2, Schedule 4.

⁴ *Ibid.*, footnote 2.

unique ability to work with other potentially affected local stakeholders and First Nation groups along the corridor.⁵

11. If the benefits of a true competition with the participation of all five new entrant transmitters are to be achieved in Phase 2 of this proceeding, the new entrants must have confidence that EWT will not be permitted an undue “going in” advantage by virtue, solely, of the indirect participation of Hydro One and GLPT. The Board, itself, recognized and endorsed the need for competitive neutrality when, in its Designation Policy, it spoke about:

- the need to level the playing field between incumbent and non-incumbent transmitters;⁶
- the benefit in keeping the designation process as open and unbiased as possible;⁷ and
- the need to ensure that all transmitters are on equal footing when submitting designation plans.⁸

12. It is critical that the designation process be perceived as transparent, fair and truly competitive. For this to happen, RES Transmission submits that the Board should:

- (i) In its decision on Phase I issues, explicitly confirm its commitment to the “new entrant” and “competition” objectives, making it clear that when it assesses the designation applications, it will consider whether and how an applicant’s development plan advances these objectives.

⁵ EWT Application for Electricity Transmission Licence, Section 9.

⁶ Designation Policy, p. 5.

⁷ *Ibid.*, p. 11.

⁸ *Id.*

- (ii) Neutralize EWT's Information Advantage by requiring that all documents identified on the lists provided by Hydro One and GLPT and circulated by the Board on April 20, 2012, be provided to all parties in this proceeding, subject only to reasonable protection for confidential information. For greater certainty, neither Hydro One nor GLPT should be permitted to object to the disclosure of any document identified on their respective lists on the basis of relevance. If a document related to the East-West Tie exists, it should be disclosed and produced. This is the only way to avoid procedural wrangling over the production of information, thereby imposing more cost on new entrant participants. Finally, Hydro One and GLPT should be required to certify that their respective document lists are complete in all respects, or, in the alternative, provide updated and comprehensive lists.
- (iii) Explicitly consider, in its Phase I Decision, whether EWT's Knowledge Advantage should be neutralized by prohibiting EWT from sharing employees with HONI and GLPT. RES Transmission acknowledges that this would be a departure from its Designation Policy allowing incumbent utilities to seek designation. It would also amount to differential treatment of one registered transmitter, relative to other registered transmitters. RES Transmission submits, however, that such a prohibition would be justified by virtue of the fact that no other registered transmitter has a Knowledge Advantage that has been acquired at the expense of Ontario ratepayers and that this Knowledge Advantage represents an undue advantage (further submissions on this issue are included at paragraphs 41, below).
- (iv) Offset EWT's Relationship Advantage by making it abundantly clear, in its Phase I Decision, that it will not prefer an applicant who has already entered into a participation agreement with First Nation and/or Métis groups over an applicant who has not done so by the due date for designation applications. RES

Transmission strongly supports the concept of providing a vehicle for the meaningful participation of First Nations and Métis groups and believes that a mutually beneficial participation arrangement with the aboriginal groups along the north shore of Lake Superior can be reached. Such an arrangement, however, can only be developed in consultation with First Nation and Métis groups and on the basis of a recognition that such an arrangement would be neither an abrogation of, nor a derogation from, their treaty rights. In the result, applicants who choose to file participation plans should be on equal footing with applicants who have already entered into participation agreements. In the context of assessing designation applications, participation plans should not be preferred over participation agreements.

Part I: Issue-Specific Comments

13. RES Transmission found the Staff Submission to be a useful tool in framing its own submissions on the issues and commends Staff for its thoughtful and comprehensive submission. RES Transmission comments and proposals on the issues and the Filing Requirements, along with its response to certain of Staff's recommendations, are set out below.

Issues 1 – 4: Decision Criteria

14. The Staff Submission recommends that the Decision Criteria articulated in the Designation Policy – organization, technical capability, financial capacity, costs, landowner and other consultations and “other” factors – not be changed.
15. RES Transmission agrees these are appropriate Decision Criteria (**Issue 1**). It submits, however, that for the reasons set out above, the Decision Criteria should include explicit consideration of whether and how an applicant's development plan advances the “new entrant” and “competition” objective of the Minister and the Board. This can be achieved in one of two ways: (i) by adding a new criterion – “fulfillment of the Board's

new entrant and competition objectives”; or (ii) by explicit confirmation that the Board will consider how an applicant contributes to these foundational objectives under “other” factors.

16. A certain confusion arises with respect to the inclusion of “Schedule” and “Costs” as Design Criteria. It is not clear whether these refer to the costs and schedule of the development phase or of the post-development phase (i.e., after a leave-to-construct application is filed). On the one hand, the Staff Submission (at p. 4) states that “...schedule and cost are fundamental to the economic efficiency, and therefore the need for the line. For example, if costs of construction are too high, other options identified by the OPA for satisfying demand in Northwest Ontario could be preferred.” On the other hand, the Staff Submission also recommends deleting the requirement to file an assessment of economic efficiency (p. 10) and acknowledges (at p. 17) that because construction costs estimates could not be expected to be accurate so far in advance of the completion of development work, the Board should not require any definite commitments from applicants regarding these estimates. RES Transmission agrees that the quality of available cost information at the designation stage will not be high and submits that the Board should clarify how it will rely on and assess such information when making its designation decision.
17. The Staff Submission (at p. 6) recommends that if the Board proposes to increase the number of decision criteria, it add the following: “Line capacity and reliability, could be added, as the capacity and reliability of the line are fundamental to achieving the need identified for this project by the OPA.” In light of the Project Definition, the Minimum Technical Requirements for the Reference Option and the Minimum Design Criteria for the Reference Option (all of which have been provided to registered transmitters), RES Transmission does not believe that this Decision Criterion is necessary.
18. RES Transmission has no preference with respect to the question of whether First Nations and Métis participation should be a separate Decision Criterion (**Issue 2**) or,

alternatively, explicitly recognized as being included under the head of “landowner and other consultations,” provided that the Board makes it clear that, in either case, applicants who have already entered into commercial arrangements with landowners or with First Nations and/or Métis groups will not have *prima facie* advantage over applicants who file a prospective plan of consultation.

19. Similarly, RES Transmission expresses no preference on **Issue 3**. An applicant’s ability to carry out the procedural aspects of First Nations and Métis consultation could be added as a separate criterion or considered as required element under the head of “landowner and other consultations.” It does agree with the Staff Submission, however, that a transmitter does not have the responsibility to undertake the procedural aspects of the Crown’s duty to consult unless and until such duty has been delegated. This has yet to occur. Accordingly, RES Transmission agrees with the Staff Submission to the effect that applicants who have commenced consultation with First Nations and Métis groups before they apply for designation should not be regarded more favourably than those who have not commenced consultation but who have a comprehensive and practical plan for consultation that would be initiated, upon designation.

Part II: Issues 5 and 6: Use of the Decision Criteria

20. For the reasons articulated in the Staff Submission, RES Transmission is of the view that the Board should not rank, group or weight the Decision Criteria nor prescribe an assessment methodology (**Issue 5**).
21. In its Submission on these issues, Staff invited parties to express a view as to whether the Board should select one or more “runners-up” for designation. RES Transmission’s view is that it should not. Runners-up cannot be expected to commit to a project that they may or may not be called upon to develop in future years (**Issue 6**).

Part III: Issues 7 and 8: Filing Requirements

22. The proposed Filing Requirements attached as Appendix A to the Staff Submission are significantly different from those that were included with the Designation Policy, reflecting the fact that these requirements now relate to a specific and identifiable project. RES Transmission's submissions on these requirements focuses on material areas of agreement or disagreement.
23. With respect to **Issue 7** (addition, deletions and changes to the Filing Requirements):
- (i) RES Transmission supports Staff's recommendations that the Filing Requirement pertaining to an assessment of economic efficiency be deleted.
 - (ii) While RES Transmission agrees that an applicant for designation should be required to provide information regarding its plan for First Nations and Métis participation, it is of the view that most of the information required in section 2.5 of the Filing Requirements (participation plan) will not be available until an actual participation agreement is negotiated and concluded. It would be naïve as well as insulting to First Nation and Métis groups to presume to anticipate the nature and extent of their participation and the benefits and costs of such participation in advance of concluding bilateral discussions and negotiations with them. RES Transmission submits that section 2.5 be revised accordingly.
 - (iii) Section 7.2, which requires information on "First Nation and Métis participation costs," should be deleted for the reasons set out above. Given its comments above regarding the reliability of cost estimates given at the designation stage, RES Transmission believes that deleting this requirement will not diminish the Board's ability to assess the relative viability of designation applications.

- (iv) References to specific milestone dates (for example, in s. 6.2 of the Filing Requirements) should be deleted for the reasons set out in paragraph 28, below.
24. RES Transmission expresses no view on **Issue 8** (separate plan for separate segments of the East-West Tie).
25. The Staff Submission invites registered transmitters to comment on whether any of the Filing Requirements that pertain to the plan for the East-West Tie Line are overly prescriptive. RES Transmission's general observation is that the information solicited, particularly in sections 5.1 and 8.3, can be provided as part of a project plan provided it is understood that plans submitted at the designation stage are likely to change in response to the investigations and studies carried out during the development stage. As with construction cost estimates submitted as part of a designation application, the Board needs to decide whether and how it will rely on such information in assessing applications for designation. The Board's thoughts in this regard should be set out in its Phase 1 decision.

Part IV: Issues 9 -12: Obligations and Milestones

26. RES Transmission supports the imposition of reporting obligations (**Issue 9**) on the successful designee. It proposes that: the designee be required to report to the Board no more frequently than on a quarterly basis; that the specific format and content of such reports be left to the discretion of the designee; but that, at a minimum, reports should include a description and evidence of progress toward the completion of specific development tasks.
27. For the reasons articulated in the Staff Submission at page 13, RES Transmission does not support the imposition of performance obligations (**Issue 10**) such as the posting for performance bonds.

28. RES Transmission does not support the imposition of specific performance milestones **(Issue 11)** in the development phase of the project. Pre-determined milestones would, by definition, be arbitrary and overly prescriptive and would not reflect evolving conditions and circumstances during the development phase, some of which will be beyond the control of the designated transmitter. RES Transmission understands and accepts that it is in the public interest for the Board to ensure that the successful designee is making appropriate progress towards the completion of the development phase; however, it should be up to the designee to develop and implement a development work plan. The Board should not put itself into the position of policing this plan. It will be in the interest of the designated transmitter to complete the development phase and the construction phase as quickly as is reasonably possible, in order to recover its development costs and begin earning a return on its invested capital.
29. It would be premature to specify performance milestones **(Issue 12)** for the construction phase of the project in the designation order. If the Board believe that these types of milestones are required, it could specify them in any leave-to construct order issued to the designee. RES Transmission notes, however, that the Board's usual practice is to ensure timely construction by imposing a sunset date on the commencement of project construction in the leave-to-construct order. There does not appear to be any reason to deviate from this practice. In any event, this decision does not have to be made in Phase I.
30. The Staff Submission recommends that the Filing Requirements require applicants to identify, in their designation applications, their proposal for the consequences of failure to complete the development phase and that this proposal be reflected, in the designation order – presumably, only if the Board agrees with the proposal. RES Transmission is of the view that an understanding of the consequences of failure to perform is one “rule of the game” that applicants need to know before filing a

designation application. The Board should articulate the consequences of non-performance in its Phase I Decision. RES Transmission's proposal in this regard is set out below under **Issue 16**.

Part V: Issues 13 – 16: Consequences of Designation

31. With respect to **Issue 13**, RES Transmission agrees with the Staff Submission that the examination and determination of the prudence of budgeted development costs, for the purpose of recovering these costs in rates, is the examination and determination of these costs that will occur in Phase 2 of this proceeding. Put another way, there can be no "after-the-fact" determination of a designee's ability to recover budgeted development costs. This was the Board's decision in the Designation Policy and it should continue to pertain in this proceeding. If it were otherwise, there would be no point in seeking to become designated, because a transmitter need not be designated in order to seek Board approval to construct and operate a transmission facility. The primary consequence of designation is the guarantee of recovery of the budgeted development costs identified in the designation application and scrutinized in Phase 2.
32. RES Transmission does not agree with the Staff Submission that the designated transmitter should not be permitted to recover costs incurred prior to the issuance of the Board's Phase I decision (**Issue 14**). Phase I costs are legitimate costs of doing business and should be eligible for recovery by the successful designee.
33. RES Transmission submits that costs eligible for recovery by the designated transmitter (**Issue 14**) should include the following: the budgeted development costs identified in the successful applicant's development plan, filed as part of the designation application; the costs of preparing that plan (also identified in the designation application); and the costs incurred up to the date of issuance of the Board's Phase I decision (also identified in the designation application). RES Transmission agrees with Staff that a deferral

account is an appropriate accounting mechanism to facilitate the recovery of costs incurred by the designated transmitters.

34. RES Transmission requests that the Board provide direction, in its Phase 1 decision, on the issue of when pre-construction costs that are eligible for recovery would be recovered by the designated transmitter. RES Transmission proposes that recovery of eligible costs should occur when the designated transmitter files its leave to construct application.
35. With respect to **Issue 15** – the extent to which a designated transmitter should be held to the content of its designation application – RES Transmission agrees with Staff that the designated transmitter should be required to fulfill commitments with respect to adherence to IESO and technical standards, reporting requirements and implementation of its First Nations and Métis participation plan (subject, of course, to events beyond the control of the designated transmitter). RES Transmission does not support the imposition of performance obligations and so, in this regard, does not agree with Staff’s list of minimum required commitments. The “recovery of costs in excess of budgeted development costs” is not a commitment of the transmitter and should not be included in the list of commitment requirements. Finally, RES Transmission agrees with Staff that certain aspects of a designee’s application cannot be characterized as “commitments”; indicative estimates of construction costs fall into this category. In this regard, RES Transmission urges the Board to clarify the role that such information will play in its assessment of designation applications.
36. With respect to **Issue 16** – cost recovery in the event the project does not move forward to a successful application for leave to construct – RES Transmission is of the view that recovery of eligible costs should be permitted in any event provided the reasons why the project does not move forward are beyond the reasonable control of the designated transmitter.

Part VI: Issues 17 – 23: Process

37. RES Transmission agrees, in large measure, with Staff's proposal for the Phase 2 hearing (**Issue 17**), namely, a written hearing; interrogatories to applicants from the "Board" but informed by suggestion from all parties; written responses from applicants, followed up with oral questions from the "Board" if necessary; and written reply submissions from the applicants.
38. RES Transmission requests that if the Board accepts Staff's proposal in this regard, the Board should:
- (i) clarify whether interrogatories and follow-up oral questions will be from the Board or from Board Staff; in this regard, RES Transmission submits that the Board (assisted by Staff) should decide which intervenor questions should be put to applicants; and
 - (i) make provision for the submissions of suggestions from intervenors for oral follow-up questioning by the Board.
39. RES Transmission generally agrees with the Staff Submission regarding the appropriate role, in this proceeding, of the IESO, the Ontario Power Authority, Hydro One and GLPT (**Issue 18**). It reserves the right to comment further on this matter in its reply submission.
40. In respect of **Issue 19** and as previously stated, RES Transmission submits that all documents identified on the lists provided by Hydro One and GLPT and circulated by the Board on April 20, 2012, be provided to all parties in this proceeding, subject only to reasonable protection for confidential information. For greater certainty, neither Hydro One nor GLPT should be permitted to object to the disclosure of any document identified on their respective lists on the basis of relevance. If a document related to the East-West Tie exists, it should be disclosed and produced. Hydro One and GLPT

should be required to certify that their respective document lists are complete in all respects, or, in the alternative, provide updated and comprehensive lists.

41. **Issues 20 21** and **22** are related. **Issue 20** asks what special conditions should be imposed on the participation of incumbent transmitters in this proceeding. **Issue 21** asks whether the protocols established by Hydro One and GLPT in response to the Board's letter of December 22, 2011 are adequate and **Issue 22** asks whether the requirements of the Affiliate Relationships Code should pertain to the relationship between EWT, on the one hand, and HONI and GLPT, on the other. RES Transmission does not agree with Staff that Hydro One and GLPT's protocols (as described in their respective responses to the Board's December 22nd letter), together with a Board order requiring each to produce all of the documents on the lists that they have filed, are sufficient to neutralize or offset EWT's Knowledge Advantage (possessed by virtue of its shared employees) and Information Advantage (access to documents and other types of existing information):

(i) Hydro One's Directive requiring those employees that it shares with EWT to make enquiries "through the Board and not through the normal internal resources" is wholly inadequate for a number of reasons. It ignores the fact that the shared employees afford EWT the benefit of the knowledge they have acquired over decades of employment with Hydro One. These employees don't need to make "enquiries" in order to get information about Hydro One. They already possess system planning information and information about the East-West Tie development work carried out by Hydro One in 2010 and 2011, by virtue of their employment with Hydro One. This information and experience – the Knowledge Advantage described earlier in this submission – is not available to new entrant transmitters, notwithstanding that it was acquired at the expense of ratepayers. This, in and of itself, constitutes a "subsidy" provided to EWT by Hydro One.

- (ii) Hydro One's Directive does not establish any computer data management and data access protocols that prevent its shared employees from accessing Hydro One's information services. In any event, if these employees continue to be employed by and provide services to Hydro One (as opposed to only EWT), it is unclear how such protocols, even if they existed, could prevent shared employees from accessing Hydro One information services. EWT will still enjoy an Information Advantage, relative to new entrant transmitters.
42. RES Transmission urges the Board to address how EWT's Information and Knowledge Advantages will be neutralized. Revising the protocols to absolutely prohibit shared utility employees from accessing any utility system planning information, together with requiring production of all documents included on the lists circulated by Hydro One and GLPT, will go a long way toward remedying the Information Advantage problem.
43. Resolving the Knowledge Advantage is no less important but much more difficult. RES Transmission's submissions on this issue are set out above in paragraph 12.
44. With respect to **Issue 23** – the required date for filing a designation application – RES Transmission proposes a due date that is no less than four months after the issuance of the Board's Phase I decision. This proposal recognizes that all parties – the Board, its Staff, registered transmitters and other intervenors – are engaged in a unique process and will require some time to absorb, understand and then implement the directives and decisions in the Board's Phase I decision.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7TH DAY OF MAY 2012

(signed) Helen T. Newland

Helen T. Newland
of Counsel to RES Canada
Transmission LP