

**ONTARIO ENERGY BOARD**

**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.

**UPPER CANADA TRANSMISSION, INC. (UCT)**

**Phase 1 Reply Submissions**

1. UCT has considered the extensive Phase 1 submissions filed by others. UCT sees no reason to modify the positions and suggestions provided in its own primary Phase 1 Submissions filed on May 7, 2012, and repeats and relies on those earlier submissions. UCT offers comment below on a few particular aspects of the submissions of others. Silence on other aspects of the phase 1 submissions of others should not be taken as agreement.
2. Some parties have suggested that the Board adopt a formal quantification or hierarchy of decision criteria in evaluating designation applications.<sup>1</sup> UCT agrees with those parties who, in contrast, have submitted that this proceeding is an adjudicative process and not a procurement, and that the Board should weigh the evidence and make its designation determination on the basis of its informed discretion rather than in accord with any rigid weighting system. UCT repeats its position that an appropriate set of articulated evaluation criteria and flexibility in the application of those criteria will provide for an effective balance between

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<sup>1</sup> Canadian Niagara Power May 7, 2012 submission, Power Workers Union May 7, 2012 submission.

consistency and creativity, to the ultimate benefit of Ontario's electricity consumers.<sup>2</sup>

3. A number of parties have submitted that designation applicants should demonstrate experience in Ontario in support of their applications for designation.<sup>3</sup> UCT submits that applicants should bear the onus of demonstrating to the Board that the applicant's experience, wherever gained, is relevant to, and supportive of, their ability to carry out development, construction and operation of transmission in Ontario. It would be premature, however, for the Board to specify that Ontario specific experience will be given greater weight in evaluation of designation applications. To do so would provide the incumbent transmitters, participating in this process through EWT LP, and other applicants with Ontario specific experience, undue advantage.
4. TPT comments<sup>4</sup>, in respect of the issue of aboriginal consultation:

*"In particular, the Board should assess whether the Applicants have experience consulting with First Nations and Métis groups in the context of the development of large-scale, linear infrastructure projects. The Board should take into account an Applicant's experience and programs aimed at carrying out consultation and engage [sic] all affected communities in development of a project."*

UCT understands these comments to be addressing the scope of appropriate considerations within a broader criterion on ability to carry out the procedural aspects of First Nations and Métis consultation, rather than to be suggesting a new, standalone criterion. UCT would object to the latter, again as providing incumbents with an undue advantage, but understands and agrees that such considerations are appropriately part of a broader assessment of an applicant's ability to carry out the procedural aspects of aboriginal consultation.

5. TransCanada Power Transmission (TPT) argues that the Board should adjust a number of its filing requirements to refer to "linear energy infrastructure projects"

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<sup>2</sup> UCT May 7, 2012 Phase 1 Submissions, paragraph 40.

<sup>3</sup> See for example PWU May 7, 2012 Submissions, pages 2 and 3.

<sup>4</sup> TPT May 7, 2012 Submission, page 4, bottom.

in place of electrical transmission.<sup>5</sup> UCT submits that no such adjustments are warranted. This process is to designate a developer for electrical transmission. It should be open to TPT to argue that the experience of its affiliates in developing, building and operating natural gas and oil pipelines support its application for designation, but it would be premature for the Hearing Panel to determine at this stage the equivalency of this experience with electrical transmission specific experience.

6. EWT LP has proposed the addition of a “special condition” on all registered transmitters in this process, to the effect that registered transmitters be prohibited from *“coordinating or communicating with other designation applicants with respect to their designation plans or designation strategy”*. EWT LP asserts that its proposed “special condition” would prevent two or more designation applicants from coordinating their participation to enhance the chance that one of the coordinating parties will be successful, and will then bring the other(s) along as a co-developer(s).<sup>6</sup> EWT LP does not explain in its submissions why such a “special condition” is warranted in this designation proceeding in particular (as opposed to designation processes in general). UCT does not understand the particular mischief feared by EWT LP. It is not clear how two or more registered transmitters might collude in order to prejudice EWT LP or any other applicant. On the other hand, EWT LP’s proposed condition might have been argued to have precluded the wholly appropriate communication between registered transmitters to date in this process which has given rise to co-operative submissions regarding process and issues of common concern. Further, such a condition could be applied to preclude wholly appropriate discussions among interested parties in co-operative applications or legitimate co-development agreements. The Board is perfectly capable of controlling its own process and determining if and when any parties are acting inappropriately or in a manner inconsistent with the law. UCT does not see how EWT LP’s proposed “special condition” would assist in this regard, but does envision that such a condition

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<sup>5</sup> See for example TPT May 7, 2012 Submissions, page 9.

<sup>6</sup> EWT LP May 7, 2012 Submission, page 26.

could be improperly applied to stifle wholly appropriate and efficient communication among parties with common interests.

7. PWU submits that the Board should reconsider intervenor status for registered transmitters, on the basis that granting the transmitters such status creates an adversarial process “*that will interfere with the discovery process and assessment of the applications*”.<sup>7</sup> UCT submits that the registered transmitters are best placed to assist the Board in critical evaluation of competing applications. In any event, this Board is expert at adjudicative processes, and well able to assess the criticisms levelled on any particular application in reference to both the substance of such criticisms and their origins. The PWU’s submission proceeds from the foregoing premise to generally strip from competing designation applicants any role in the process. This is inappropriate. Further, the PWU suggests that the Board determine the relevant decision criteria for designation only after applications are filed. Such an approach would preclude any ability for the applicant transmitters to understand the case that they will have to meet. UCT finds the PWU’s procedural proposals counterintuitive, and submits that they should be rejected.
8. Several parties have addressed the issue of the appropriate notice period for filing designation applications. While parties seem generally aligned that the notice period should run from release of the Board’s Phase 1 decision, suggestions as to the length of the notice period range from 2 months to 6 months. UCT has advocated a 6 month notice period, on the basis that this is the first proceeding of its kind in Ontario and is thus somewhat complex and unpredictable.<sup>8</sup> The Board’s *Framework for Transmission Project Development Plans* policy sets the “default period” for notice at 3 months<sup>9</sup>. A notice period of less than 3 months would thus be a departure from the Board’s policy. No compelling justification for such a departure in this instance has been presented. Some parties have supported Board Staff’s suggested 4 month notice period.

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<sup>7</sup> PWU May 7, 2012 Submission, pages 13 and 14.

<sup>8</sup> UCT May 7, 2012 Submissions, paragraph 86.

<sup>9</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, August 26, 2010, page 12, top.

UCT continues to believe that it would be counterproductive to constrain the quality of the applications and potentially this process for the sake of saving 2 months at this stage, on a transmission line project with a currently assumed in service date in 2017.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED by:**



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