

TORYS
LLP

Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

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COURIER, RESS, EMAIL

Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

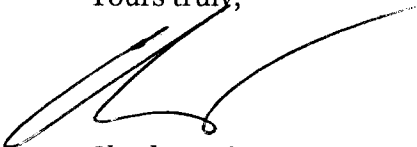
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2011-0140 -- EWT LP reply submissions pertaining to the issues in Phase 1 of the East West Tie Designation Proceeding

We are counsel to EWT LP. In accordance with the Board's Procedural Order No. 2, attached are EWT LP's reply submissions pertaining to the issues in Phase 1 of the East West Tie designation proceeding.

Yours truly,



Charles Keizer

Tel 416.865.7512
ckeizer@torys.com

cc: A. McPhee, GLPT-EWT LP
M. Zajdeman, GLPT-EWT LP
P. Pelletier, BLP
M. Penstone, Hydro One

Enclosure

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

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

8
9 **EWT LP PHASE I REPLY SUBMISSIONS**

10 The following are EWT LP's reply submissions in respect of Phase I of the Ontario
11 Energy Board-initiated proceeding to designate an electricity transmitter to undertake
12 development work for the East West Tie (the "**Designation Proceeding**" or EB-2011-
13 0140). These submissions are organized into three parts:

14
15 Part I : EWT LP's Participation in the Designation Proceeding;

16
17 Part II: The Board's Consideration of Aboriginal Participation and
18 Consultation in the Designation Proceeding; and

19
20 Part III: Issue-Specific Responses to Other Parties' Positions.
21

1 **Part I -- EWT LP's Participation in the Designation Proceeding**

2
3 1. **Overview**

4
5 In their original submissions, certain designation applicants -- TransCanada Power
6 Transmission (Ontario) L.P. ("**TransCanada**"), Upper Canada Transmission Inc.
7 ("**UCT**"), RES Canada Transmission LP ("**RES**"), AltaLink Ontario, L.P. ("**AltaLink**")
8 and Iecon Transmission, Inc. ("**Iecon**") (collectively, the "**Opposing Applicants**") --
9 have in an apparent coordinated manner questioned EWT LP's right to participate in the
10 Designation Process, EWT LP's partnership relationships and the ethics and knowledge
11 of EWT LP's senior management. These assertions are without basis, are premised on a
12 mischaracterization of the competitive nature of the Designation Process and appear to
13 have been made for purely tactical reasons.

14 For purposes of Part I of these submissions, EWT LP wishes to respond to the
15 submissions of the Opposing Applicants, which essentially allege the following with
16 respect to EWT LP's participation:

- 17
- 18 • That EWT LP has certain advantages in respect of knowledge, information and
19 relationships that should be neutralized. EWT LP's reply to this proposition is set
20 out primarily in Section 4 of Part I of these submissions.

 - 21 • That special restrictions should be imposed on EWT LP because EWT LP's
22 partners, and parties related to those partners, are perceived to somehow have
23 special knowledge through shared senior officers and that those relationships will
24 be exploited to gain access to knowledge not generally available to other
25 designation applicants. EWT LP's reply to this proposition is set out in Section 5
26 of Part I of these submissions.

 - 27 • That the Affiliate Relationships Code ("**ARC**"), or a variation of it, should apply
28 to EWT LP notwithstanding that EWT LP does not have affiliate relationships.

1 EWT LP's reply to this proposition is set out in Section 6 of Part I of these
2 submissions.

3 • That the role of Aboriginal participation in this proceeding should be rendered
4 irrelevant primarily because of Bamkushwada LP's partnership interest in EWT
5 LP. EWT LP's reply to this proposition is set out in Part II of these submissions.

6 2. **Summary of EWT LP's Position**

7 In considering the submissions of the designation applicants, the Board must be mindful
8 of two overarching aspects. First, the Board must be aware that the Designation Process
9 is competitive both in Phase I and Phase II. As a result, the Opposing Applicants are
10 already motivated to improve their competitive position relative to EWT LP. As such,
11 many of the submissions of the Opposing Applicants in Phase I are self-serving and
12 designed to better their competitive advantage relative to EWT LP rather than to ensure
13 the Designation Process is fair. Second, EWT LP's partnership relationships and
14 activities did not occur in a vacuum. The Board's Framework for Transmission Project
15 Development Plans in EB-2010-0059 dated August 26, 2010 (the "**Designation Policy**
16 **Report**") clearly permitted licensed transmitters to participate in the Designation Process,
17 either on their own or with others.¹ Any of the activities undertaken or relationships
18 developed by EWT LP or its partners could have been undertaken by the Opposing
19 Applicants.

20 Thus, EWT LP is a legitimate and proper participant in these proceedings and should
21 have the same opportunity and obligations as any other designation applicant. As such,
22 EWT LP's structure and the relationship between its partners and related parties are
23 acceptable and proper. There is nothing improper or anti-competitive arising from the
24 participation of EWT LP in this proceeding.

¹ Ontario Energy Board, *Board Policy: Framework for Transmission Project Development Plans*, August 26, 2010 at p. 6.

1 The protocols that Hydro One Networks Inc. (“**HONI**”) and Great Lakes Power
2 Transmission LP (“**GLPTLP**”) established, and the process they have proposed to deal
3 with the flow of information to and from designation applicants, ensures the Designation
4 Process is a fair one in the relative respects. Given this fairness, EWT LP should not be
5 disadvantaged in its participation because the Opposing Applicants perceive it to be a
6 strong competitor, especially where that perceived strength arises from actions taken by
7 EWT LP that the Opposing Applicants could have taken but did not take. The thrust of
8 the Opposing Applicants’ submissions is to lessen competition rather than to enhance
9 competition.

10 In particular, EWT LP submits that:

- 11 • Any organizational structure established or action taken by EWT LP in respect of
12 the East West Tie was not determined by the regulatory and policy framework
13 underlying the Designation Process. Any other designation applicant could have
14 undertaken the same activities or established the same structures. EWT LP
15 should not now be penalized because of its initiative or the lack of initiative by
16 the other designation applicants.
- 17 • A key goal for the Designation Process is achieving cost effectiveness for rate
18 payers. Competition, insofar as it promotes this goal, is about establishing a fair
19 and unbiased process, not one that is designed to lessen or bolster a particular
20 party’s strength or weakness.
- 21 • Recognizing that they possessed technical information relating to the existing
22 transmission systems that should be available to all designation applicants, and to
23 ensure the integrity of the Designation Process, HONI and GLPTLP voluntarily
24 put in place effect protocols and took measures to ensure the separation of
25 responsibilities of their designation and non-designation teams.

- 1 • EWT LP has supported the disclosure of technical information related to the
2 connection of HONI and GLPTLP's transmission assets to the East West Tie.
3 EWT LP has also endorsed in its Phase I submissions the establishment of a
4 Board process to administer current and ongoing disclosure of information.
- 5 • Contrary to the assertion of the Opposing Applicants, the relevant knowledge of
6 those senior executives of EWT LP that are shared with GLPTLP and HONI is
7 limited and there is no basis for the presumption that these individuals will not
8 adhere to the protocols.
- 9 • In any event, the information that the Opposing Applicants believe to be
10 advantageous:
- 11 • is not exclusively under the control or the responsibility of HONI or
12 GLPTLP since the OPA or the IESO may be a better source for the
13 information; and
- 14 • given the physical characteristics of the East West Tie line, is narrow in
15 focus, as set out in the Board's correspondence of December 20, 2011.

16 As a result, submissions of certain Opposing Applicants that seek to limit EWT LP's
17 involvement in the Designation Process until the sharing of employees ends, to apply the
18 ARC or similar regulatory requirements to EWT LP or to include evaluation criteria
19 solely based upon furthering the interests of the Opposing Applicants are not appropriate
20 relief and would inherently bias the Designation Process.

21 **3. Regulatory and Policy Framework**

22 To provide context, EWT LP believes it is important for the Board to consider not just
23 the immediate procedural aspects of the Phase I Issues List but also the entire regulatory
24 regime and context of the Designation Process, from when the concept of designation

1 emerged (with the Board's policy deliberations on its Designation Policy Report) to the
2 Board's Notice of Proceeding dated February 2, 2012.

3 Under the Designation Policy Report, existing licensed transmitters are entitled to
4 participate in a designation process. Of course, the Designation Policy Report recognizes
5 that licensed transmitters may have information regarding the configuration of connection
6 points, and that this concern could be addressed as part of possible amendments to the
7 Transmission System Code.² Even so, the Designation Policy Report imposes no special
8 conditions on licensed transmitters with respect to their activities. Even more broadly,
9 the Board has never stated that a licensed transmitter must not consider designation, that
10 such a transmitter must change its organizational structure prior to participating in a
11 designation process or that certain partnership relationships were prohibited in a
12 designation process.

13 On November 23, 2010, the East West Tie was identified as one of the five priority lines
14 under the Long-term Energy Plan.³ Under the Plan, the East West Tie was to be
15 submitted to the Board for purposes of a designation process.⁴ On March 29, 2011, the
16 Minister sent a letter to the Board requesting the Board use its designation transmitter
17 policy framework to establish a designated transmitter for the East West Tie. In
18 response, the Board Chair filed a letter with the Ontario Power Authority ("OPA") on
19 April 25, 2011 requesting a report with respect to East West Tie for the purposes of the
20 Designation Process. At no time did the Board provide any instructions or directions to
21 licensed transmitters, or to any other would-be participant in the Designation Process,
22 restricting the activities related to the preparation of a development plan.

23 Following the issuance of the OPA's report *Long Term Electricity Outlook for the*
24 *Northwest and Context for the East West Tie Expansion*, dated June 30, 2011, the Board

² Ontario Energy Board, *Board Policy: Framework for Transmission Project Development Plans*, August 26, 2010 at p. 12.

³ Ministry of Energy, *Ontario's Long-Term Energy Plan - Building Our Clean Energy Future*, 2010 at p. 46.

⁴ *Ibid.* at 46.

1 issued a letter on August 22, 2011 asking parties interested in designation to file letters of
2 interest by September 21, 2011. Again, no direction was provided to licensed
3 transmitters or any other party with respect to the activities they could undertake with
4 respect to the East West Tie.

5 Given this regulatory and policy context, the activities of EWT LP and its partners have
6 been and are acceptable and proper. These activities have been and are consistent with
7 the Board's policy and with the Minister's March 29, 2011 letter. Any designation
8 applicant, if they chose to, could have undertaken the same activities. The Board's intent
9 to conduct the Designation Process for the East West Tie has been known for a
10 considerable time. EWT LP submits that the Board should avoid any retroactive policy
11 changes that penalize EWT LP simply because the partners and related parties of EWT
12 LP have undertaken positive steps regarding the Designation Process.

13 **4. Competitive Process**

14 In their submissions, the Opposing Applicants focus on the following Designation
15 Process objectives identified in the Board's Designation Policy Report:

- 16 (a) promoting timely transmission development work;
- 17 (b) encouraging new entrants to provide additional resources for transmission
18 development in Ontario; and
- 19 (c) supporting competition in transmission in Ontario to drive economic
20 efficiency for the benefit of rate payers.

21 The Opposing Applicants have focused on competition amongst new entrants as being
22 the only means to conduct a competitive process and bring about benefits for the
23 ratepayers. In their view, EWT LP's participation does not lend itself to the objectives
24 described above.

1 However, this is a mischaracterization of the Board’s policy objectives. An objective is
2 to “support competition”, but as a means to benefit ratepayers. Another objective is to
3 “encourage new entrants”, but as a means to provide additional resources.⁵ Neither
4 encouraging new entry nor facilitating competition are end objectives in their own rights,
5 nor does the Board have the legislative mandate to pursue them as end objectives in
6 relation to electricity.

7 The Board’s ultimate objectives of providing ratepayer benefits and providing additional
8 resources must be considered when reviewing the following: UCT’s submission that the
9 Board “...expressly reiterate that it considers encouraging new entry and facilitating
10 competition to be among the primary objectives for both this designation process and its
11 outcome”⁶; Canadian Niagara Power Inc.’s submission that “enhanced competition”
12 should be considered as one of the “Other Factors” in the decision criteria⁷; and RES’s
13 submission that “...the Decision Criteria should include explicit consideration whether
14 and how an applicant’s development plan advances the ‘new entrant’ and ‘competition’
15 objective”.⁸ Supporting competition and encouraging new entrants are, on their own, not
16 the objectives of the Designation Process.

17 Furthermore, contrary to the suggestions of the Opposing Applicants, the Designation
18 Process is not simply about competition exclusively or primarily between new entrants.
19 The Opposing Applicants attempt to argue this point on a number of occasions.⁹ Yet in
20 its Designation Policy Report, the Board explicitly permitted existing licenced
21 transmitters to participate in competitive designation processes. The Board presumably
22 felt comfortable in doing so because competition is not about limiting the strength of one
23 participant to make new entrants feel more comfortable and to lessen their risk in
24 competing. Instead, competition is about conducting a fair and unbiased process that

⁵ Ontario Energy Board, *Board Policy: Framework for Transmission Project Development Plans*, August 26, 2010 at p. 1.

⁶ UCT, Phase 1 Submissions, EB-2011-0140, p. 4.

⁷ CNPI, Phase 1 Submissions, EB-2011-0140, p. 1.

⁸ RES, Phase 1 Submission, EB-2011-0140, p. 7. See also at p. 5, para 12.

⁹ See AltaLink para 11, Iccon para 19-23, RES para 12, 15, UCT para 9-13, 29.

1 enables participants to compete on their relative merits. Only by adopting this view of
2 competition can the Board promote the primary objective of this process under the
3 *Ontario Energy Board Act, 1998*, that being cost effectiveness for the benefit of
4 ratepayers.

5 In all competitive processes, each participant will bring to the process strengths and
6 weaknesses. Some participants will be stronger in certain aspects because of their
7 experience, location, relationships, advanced planning or prior initiatives. Parties will not
8 all be the same and will not all be starting from the same place at the outset of a process.
9 A process that is designed to limit or lessen the competitive strength of a particular
10 participant is not enhancing or supporting competition. Rather, such a process becomes
11 biased in favour of those that do not have that particular competitive strength, and allows
12 those parties to stay “competitive” even without working to build their competitive
13 strength. It is a lowest common denominator approach that fails the ratepayer. The
14 ratepayer is the beneficiary when all participants are required to contend fully with each
15 other’s strengths and weaknesses.

16 The question of how to address the relative competitive advantages of participants in a
17 competitive process, while providing a fair and unbiased process that ensures a level
18 playing field, has been considered on a number of occasions by the Canadian
19 International Trade Tribunal (“CITT”).¹⁰ In particular, the CITT has considered this
20 question in the context of federal government procurement processes where complaints
21 have been made that the procurement process and/or associated technical requirements
22 demonstrate bias in favour of incumbent suppliers or service providers to the detriment of
23 other bidders. Although this context differs somewhat from the context in the present
24 proceeding -- particularly because (i) the Designation Process is not a tender call or
25 procurement process where the end result is a contract, and (ii) EWT LP is not an

¹⁰ The CITT is a federal tribunal that, among other things, provides businesses with access to processes for issuing and obtaining determinations in respect of complaints concerning federal government procurement. It makes such determinations pursuant to, among other bases, the *Agreement on Internal Trade* (as amended) and the *Agreement on Government Procurement*.

1 incumbent or under the control of an incumbent transmitter -- the general principles
2 articulated in an adjudicative setting by the CITT in relation to questions of fairness and
3 incumbent advantage in competitive processes will assist the Board.

4 In *CAE Inc.*,¹¹ the CITT considered allegations of improper advantage relating to an
5 original equipment manufacturer's participation in a competitive RFP process for a
6 submarine command training system. In its decision, the CITT distinguished between
7 circumstances that reflect legitimate competitive advantage and circumstances that reflect
8 improper advantage:

9 Regarding the first ground of complaint that [the government departments]
10 failed to ensure equal access to the procurement, the Tribunal does not
11 believe that there is necessarily anything inherently discriminatory in the
12 tendering procedures where bidders are on an unequal footing going into
13 the bidding process. As stated by CAE in its March 15, 2004 letter to (the
14 government departments): **“There is no question that certain bidders
15 have certain competitive advantages in certain bids. This is simply
16 part of the ordinary ebb and flow of business.”** The Tribunal notes that
17 these competitive advantages could be created as a result of incumbency,
18 [intellectual property], [international security considerations] or any
19 number of other business factors. **The Tribunal is in agreement with
20 CAE’s statement as quoted above** and is of the opinion that, if a bidder
21 is at a disadvantage, it does not necessarily follow that the tendering
22 procedures used . . . are discriminatory.¹²

23 In *Re Corel Corp.*,¹³ where the CITT considered a complaint that the evaluation process
24 in the procurement of a software suite for a government department was biased in favour
25 of the incumbent and its technology, the government argued that:

¹¹ September 10, 2004, CITT, File No. PR-2004-008.

¹² *Ibid.* at para 43 (emphasis added).

¹³ October 26, 1998, CITT, File No. PR-98-012/014.

1 with respect to the question of incumbency generally . . . while the
2 government does its utmost to ensure that every competitor has a ‘fair’
3 opportunity to compete, it recognizes that, at times, certain bidders may
4 have a cost advantage, such as due to a bidder being the incumbent or
5 existing contractor. Non-incumbent suppliers may have to incur
6 conversion costs that the incumbent does not have to incur and bidders in
7 these circumstances must make a business decision whether to compete
8 or not. The government . . . cannot ignore these costs, for to do so would
9 penalize the taxpayer . . . To suggest that, where there is an incumbent,
10 the government must always ensure that the “playing field” is perfectly
11 level would completely undermine the Crown’s ability to acquire goods
12 and services at the best value to Canadian taxpayers.¹⁴

13 The CITT generally agreed with the government’s approach and found as follows:

14 The Tribunal is also of the view that, in principle, an incumbent should not
15 be penalized because of the experience and knowledge that it has acquired
16 in that capacity. Indeed, where goods and/or services have been acquired
17 in an appropriate manner over a period of time, there is no obligation to
18 offset the effect of incumbency in the formulation of solicitations and,
19 subsequently, in the evaluation of proposals.¹⁵

20 The key for supporting a competitive process is fairness. A fair process is one where the
21 roles and criteria of the process are applied openly and without bias. This enables parties
22 to compete on the same parameters while asserting their strengths and bolstering their
23 weaknesses to drive the best plan.

24 The Opposing Applicants, on the other hand, have primarily focused on limiting the
25 competitive strengths of EWT LP and not upon the fairness of the process. For example,

¹⁴ *Ibid.* at para 49.

¹⁵ *Ibid.* at para 93.

1 some Opposing Applicants, in particular RES, have suggested that EWT LP is
2 inappropriately advantaged over other new entrants because the partners of EWT LP are
3 related to HONI and GLPTLP and will have the benefit of “expertise, experience and
4 relationships constructing and operating transmission facilities in north-western
5 Ontario”.¹⁶ Based on its assertion, the Opposing Applicant would prefer that the Board
6 conduct a competitive process among participants that have no such expertise, experience
7 or relationships in respect of the construction and operation of transmission facilities in
8 north-western Ontario.¹⁷ This approach would limit one party’s competitive strength to
9 benefit a select group within the process and is not to the benefit of ratepayers. Although
10 expertise, experience and relationships may be acquired or developed differently, no
11 designation applicant was or is precluded or restricted from acquiring (through
12 consultants or otherwise) or developing expertise, experience or fostering relationships in
13 north-western Ontario.

14 It is also important to note that under the Board’s Designation Policy, HONI and
15 GLPTLP could have participated on their own and brought their own expertise,
16 experiences and relationships to the process. The fact that this comes into play through
17 EWT LP, if it is designated, is not relevant to conducting a fair and competitive process.

18 According to the Opposing Applicants, EWT LP allegedly has an informational
19 advantage because HONI and GLPTLP possess information obtained in the course of
20 developing, constructing and operating their respective systems. The Opposing
21 Applicants also allege this information was obtained through East West Tie development
22 work that occurred after the Ministry of Energy and Infrastructure’s letter of September
23 21, 2009. These allegations are incorrect. The protocols, and ultimately the Board’s
24 processes, restrict the access of EWT LP, like any other designation applicant, to such
25 information.

¹⁶ RES, Phase 1 Submissions, EB-2011-0140, p. 3.

¹⁷ Ibid. at p. 6.

1 The Opposing Applicants also assert that EWT LP has an undue advantage because of its
2 relationship with its partner Bamkushwada LP. The Opposing Applicants seem to make
3 this assertion to support their position that Aboriginal participation should not be
4 considered in the Designation Process. The Opposing Applicants would prefer a
5 competition between parties that have not pursued Aboriginal participation arrangements.
6 This is discussed more completely in Part II below.

7 Furthermore, some Opposing Applicants have attempted to diminish the role of
8 Bamkushwada LP and its commercial independence. They argue that EWT LP's
9 participation arrangements should be ignored because the Bamkushwada First Nations
10 live near the project and may ultimately enter into participation arrangements with
11 another transmitter should EWT LP not be designated.¹⁸ They also discount that
12 Bamkushwada LP is a one-third equal partner in EWT LP that participates in EWT LP's
13 governance. These positions do Bamkushwada LP and its First Nations partners a
14 disservice. These First Nations are governing bodies with the independence and
15 discretion to develop relationships with whom they choose. Like all relationships,
16 Bamkushwada LP's partnership in EWT LP has been built with time and trust and not
17 merely because of the presence of a physical asset in the area.

18 5. Fair Process

19 The Opposing Participants have asserted that the Designation Process will be unfair
20 because EWT LP shares senior management with GLPTLP and HONI. The Opposing
21 Participants assert that these shared managers have relevant knowledge not available to
22 other designation applicants and will obtain information from HONI and GLPTLP
23 notwithstanding the protocols that have been established. EWT LP submits that the
24 protocols are effective, that HONI and GLPTLP have proposed adequate document
25 disclosure, that the nature of the information in question is not what Opposing Applicants
26 allege it to be, and therefore that the Designation Process will remain fair and unbiased.
27

¹⁸ UCT, Phase 1 Submissions, May 7, 2012 (See para. 6, p. 2, and pp. 8-9).

1 As described in correspondence filed with the Board on January 9, 2012, and as further
2 disclosed in HONI's response to Vulnerable Energy Consumers Coalition's interrogatory
3 #2 in EB-2012-0180, GLPTLP and HONI have established protocols for the fair
4 treatment of all designation applicants that might request certain information from
5 GLPTLP and HONI, respectively. The information protocols establish a separation of
6 designation and non-designation activities within GLPTLP and HONI and establish a
7 separation of EWT LP from GLPTLP and HONI. They also contain procedures for the
8 distribution of information from GLPTLP and HONI to designation applicants.
9 Furthermore, as indicated in its initial Phase I submissions, EWT LP supports a
10 disclosure process for requesting and disclosing GLPTLP and HONI technical
11 information that is clearly and transparently set out and applied in the same way to all
12 designation applicants. Moreover, to ensure the fair treatment of all designation
13 applicants, HONI and GLPTLP technical information should be shared through a Board-
14 approved process and not on an ad hoc basis.¹⁹ Through the Board's oversight, these
15 protocols will ensure that appropriate information is disclosed from GLPTLP and HONI
16 to all designation applicants, including EWT LP. Like every other designation applicant,
17 EWT LP will have to rely on the process established by the information protocols and by
18 the Board to obtain new information from the OPA, the IESO, HONI and GLPTLP in
19 preparation of its development plan. EWT LP is on the same level as all of the
20 participants in this regard.

21

22 EWT LP also notes that HONI and GLPTLP will disclose documents related to the East
23 West Tie. EWT LP submits that Canadian Niagara Power Inc. ("CNPI") should also
24 produce a list of documents similar to those produced by HONI and GLPT and then
25 disclose any documents in its possession that the Board considers relevant to the
26 Designation Proceeding. CNPI is the only licensed and rate-regulated transmitter that is a
27 designation applicant. As such, it should be subject to at least the same disclosure
28 obligations as HONI and GLPTLP.

¹⁹ EWTLP, *Phase I Submissions*, May 7, 2012, Issue #19, p. 25.

1
2 EWT LP has had the opportunity to review the submissions of Great Lakes Power
3 Transmission EWT LP (“GLPTEWT”) and EWT LP agrees with and supports the
4 position of GLPTEWT set out therein.

5
6 With the HONI and GLPTLP’s protocols in place, and with a Board-administered
7 process to deal with current and future disclosure, the process to share HONI and
8 GLPTLP information is and will be open, fair and secure.

9
10 Notwithstanding the protocols, the Opposing Applicants allege that the shared senior
11 management will use their position to influence the disclosure process and position EWT
12 LP to be able to receive information not available to others.²⁰ There is no basis for this
13 allegation. It is based solely on conjecture and assumes that the executives in question
14 seek to circumvent the rules to gain an advantage in a matter that is before the Board.
15 Both GLPTLP and HONI are regulated by the Board and their senior officers appear
16 regularly before the Board. There has been no past circumstance raised or alleged with
17 respect to the behavior of the individuals in question. It would be unfair for the Board to
18 establish restrictions on EWT LP that would assume impropriety with respect to the
19 individuals acting as EWTLP’s senior officers. Furthermore, EWT LP rejects
20 TransCanada’s assertion that there is a conflict of interest either with respect to HONI
21 and GLPTLP’s role in the Designation Proceeding or with respect to EWT LP’s shared
22 senior management.²¹ There is no conflict of interest given that the East West Tie is a
23 new, greenfield project, and from the outset the Board has explicitly permitted existing
24 transmitters to participate in the Designation Process. Doing so is consistent with the
25 goal of ensuring that the most competitive applicants participate. Moreover, HONI and
26 GLPTLP established their protocols in the interest of fairness, eliminating any concern
27 even if there was one.

²⁰ See AltaLink, *Phase 1 Submissions*, May 7, 2012, paras. 45-51; RES, *Phase 1 Submissions*, May 7, 2012, paras. 41-42; UCT, *Phase 1 Submissions*, May 7, 2012, para. 77.

²¹ TransCanada, *Phase 1 Submissions*, May 7, 2012, p. 20.

1
2 With respect to the knowledge possessed by the senior management, contrary to the
3 assertions of the Opposing Applicants, these individuals do not possess detailed
4 knowledge of system planning or the connection of generating stations and major loads to
5 the existing East West Tie. EWT LP notes that these individuals are in a managerial role
6 and are not system planners, technical specialists or commercial account managers. To
7 assert that EWT LP has an undue advantage because of knowledge is not tenable. It is
8 entirely possible for any Opposing Applicant to retain, for example, a former HONI
9 employee or consultant that would have as much knowledge or more. Based on the
10 Opposing Applicants' logic, if this were the case (and it may well be), then the party
11 retaining such services would also have an undue advantage.

12
13 In any event, the information that Opposing Applicants are concerned about is
14 information such as the "institutional knowledge"²², "system planning information"²³,
15 "commercially sensitive and technical information"²⁴, and "familiarity with . . . the
16 existing East West Tie line, generators and significant loads impacted by the existing tie
17 line, and the Project"²⁵. To the extent this information is legitimately useful and is not
18 restricted by confidentiality and security considerations, HONI, GLPTLP, the IESO and
19 the OPA should make it available to all registered transmitters in accordance with the
20 relevant procedures. In particular, the OPA and the IESO have responsibility for system
21 planning. The OPA, through its report dated June 30, 2011, set out the parameters of the
22 project.²⁶ The IESO through its feasibility study report dated August 18, 2011 has set out
23 the system impacts.²⁷ Further consideration of system needs and impacts are available
24 from these resources. Furthermore, the magnitude of the project has been clearly set out,

²² See Phase 1 Submissions for UCT at para. 80-82; RES at p. 4; Iecon at para. 20.

²³ See Phase 1 Submissions for UCT at para. 83; RES at pp. 16-17; AltaLink at para. 48.

²⁴ See AltaLink, Phase 1 Submission, para. 37, 45, 48.

²⁵ See UCT, Phase 1 Submission, para. 77.

²⁶ Ontario Power Authority, *Long Term Outlook for the Northwest and Context for the East-West Tie Expansion*, June 30, 2011.

²⁷ IESO, *Feasibility Study - An Assessment of the Westward Transfer Capability of Various Options for Reinforcing the East-West Tie*, August 18, 2011.

1 with the project being defined as only “the line consisting of conductors, structures and
2 protection systems running from point to point.”²⁸ The developer is not responsible for
3 the station work. As a result, based upon the foregoing, and given there is document
4 disclosure by HONI and GLPT, the scope of further inquiries by the designation
5 applicants (through the protocols) would likely be very narrow. In effect, the Opposing
6 Applicants are overstating the magnitude of the actual issue of preferred access to
7 information.

8
9 **6. EWT LP’s relationships with each of HONI and GLPTLP should not be**
10 **made subject to the Affiliate Relationships Code or similar regulatory**
11 **requirements**

12 (a) *The relationships in question are arm’s length and not subject to the*
13 *Affiliate Relationship Code*

14 EWT LP agrees with Board staff that EWT LP’s relationship with each of HONI and
15 GLPTLP is not subject to the ARC. This is worth clarifying given that some submissions
16 mischaracterize the relationship between these parties.

17
18 The ARC was established to govern certain affiliate relationships. The ARC adopts the
19 definition of “affiliate” from the *Business Corporations Act* (Ontario). Under that Act,
20 one body corporate is deemed to be affiliated with another body corporate if, but only if,
21 (i) one of them is the subsidiary of the other or (ii) both are subsidiaries of the same body
22 corporate or (iii) each of them is controlled by the same person.

23
24 Neither HONI nor GLPTLP is an affiliate of EWT LP. EWT LP is a limited partnership.
25 Its general partner, East West Tie Inc., has three shareholders (the “Shareholders”) –
26 Hydro One Inc., Great Lakes Power Transmission Inc. and Bamkushwada LP. None of
27 the Shareholders have control over EWT LP. Rather, each Shareholder holds only 33

²⁸ OEB, *Board Announcement of Designation Process for East-West Tie*, December 20, 2011 at Attachment 1: Project Definition for Designation for the East-West Tie Line, p. 2.

1 1/3% of the outstanding shares in East West Tie Inc., meaning that no subsidiary or
2 control relationship arises under the *Business Corporations Act* (or the ARC) vis-à-vis the
3 Shareholders and East West Tie Inc.²⁹

4
5 Furthermore, East West Tie Inc. is not an affiliate of any entities to which the
6 Shareholders are subsidiaries or by which they are controlled. Even though Hydro One
7 Inc. is the sole controlling shareholder of HONI, and Great Lakes Power Transmission
8 Inc. the sole controlling general partner of GLPTLP, neither Hydro One Inc. nor Great
9 Lakes Power Transmission Inc. has a controlling interest in EWT LP or its general
10 partner. As a result, EWT LP does not have a corporate “parent”, and shares no such
11 “parent” with GLPTLP or HONI, contrary to the assumption in Issue 22.

12 In clarifying this corporate structure, EWT LP would like to address some of the
13 defamatory remarks of other designation applicants. AltaLink states that EWT LP was
14 “carefully designed so as to avoid the application of ARC’s regulatory restrictions to its
15 activities” and that HONI and GLPTLP are “seeking to circumvent the information
16 sharing and resource sharing restrictions in ARC, and are seeking to obtain preferential
17 treatment for EWT LP as a result.”³⁰ Neither statement is true. EWT LP was established
18 as an equal partnership of arm’s length parties, each with their own distinct commercial
19 interests. Given the inherent checks and balances in an arm’s length structure, there is
20 nothing unusual and nothing improper about the fact that the structure is not subject to
21 the ARC. Furthermore, in accusing HONI and GLPTLP of some colorable purpose, the
22 statements of AltaLink marginalize one of EWT LP’s key partners, Bamkushwada LP,
23 which has as much control over and as much of an interest in EWT LP as either of the
24 other Shareholders.

25

²⁹ Board staff at p. 22 of its Phase 1 Submissions incorrectly states that “two of EWT LP’s limited partners are incumbent transmitters”.

³⁰ Para. 60 of AltaLink Ontario, L.P.’s submissions.

1 (b) *The Affiliate Relationships Code was not designed to govern the*
2 *activities of EWT LP or its arm's length relationships with HONI and*
3 *GLPTLP*

4 The Board established the ARC to govern the involvement of utilities, through their
5 affiliates, in competitive markets. The ARC was never intended to govern the activities
6 of non-affiliates in a regulated Designation Process. Some explanation is warranted
7 given that many of the submissions wrongly suggest that the Board should impose the
8 ARC or similar requirements on the relationships of EWT LP with each of HONI and
9 GLPTLP.

10
11 A contextual reading of the ARC makes it clear that it serves a very specific goal --
12 namely, preventing utilities from subsidizing affiliates that enter competitive markets for
13 energy services so that (i) competition in that market is not impaired and (ii) the
14 ratepayers do not contribute towards the profits of competitive affiliates.

15 The Opposing Applicants have taken parts of the ARC and have applied them out of
16 context to the competitive designation proceeding. For example, the confidentiality
17 restrictions in the ARC relate only to the disclosure of "confidential information" -- i.e.
18 "information the utility has obtained relating to a specific smart sub-metering provider,
19 wholesaler, consumer, retailer or generator in the process of providing current or
20 prospective utility service".³¹ When put in context, this restriction exists to ensure that a
21 regulated utility does not disclose to its affiliates billing or other commercial information
22 that would allow them to interfere with market competition in a way that can damage
23 ratepayers. Another example is section 2.6.4 of the ARC, which restricts a utility's
24 ability to share certain "system planning" information. However, that restriction only
25 applies to the sharing of system planning information with an affiliate that is an "energy
26 service provider", which is defined to mean a non-utility involved in the supply of
27 electricity or gas or related activities (which by virtue of being undertaken by a non-
28 utility are necessarily not transmission activities). The examples given of these activities

³¹ See section 1.2 of the ARC.

1 are all activities for which there exists a more or less competitive market. With respect to
2 sharing employees, section 2.2.3 of the ARC prohibits a utility from sharing with an
3 energy service provider affiliate employees that are directly involved in collecting, or that
4 have access to, “confidential information”. Again, when put in context, this restriction
5 exists to ensure that ratepayers are not subsidizing potentially anti-competitive activities
6 in a competitive market for energy services.

7
8 Neither EWT LP nor its partners are energy service providers. Any employees shared
9 between EWT LP and either HONI or GLPTLP do not fall into the class of employees
10 referred to in 2.2.3 of the ARC. The Opposing Applicants have attempted to stretch the
11 ARC well beyond its intended purpose and its terms beyond their stated definitions. The
12 result is a complete distortion of the ARC to the point where its terms become
13 meaningless.

14 Because many designation applicants seem to confuse the purpose of the ARC, EWT LP
15 believes it is helpful to restate the following paragraph of its original submission:

16
17 [T]he activities of EWT LP are not analogous to the activities of energy
18 service providers: EWT LP will only operate as a regulated transmitter
19 whereas energy service providers are not regulated by the Board. In the
20 past, the Board has required incumbent utilities whose affiliates wish to
21 participate in energy service businesses -- such as electrical contracting,
22 natural gas storage and smart metering -- to comply with certain
23 regulatory restrictions on cost allocation and information sharing.

24 However, unlike the activities of these non-regulated energy service
25 providers, EWT LP would be a licensed transmitter that is wholly under
26 the control of the Board. An example is useful for clarification. In the
27 Natural Gas Electricity Interface Decision (EB-2005-0551, the “NGEIR
28 Decision”), the issue was whether and how the Board, *in refraining from*
29 *regulating storage*, must ensure consumer protection within the

1 *competitive market* for storage in Ontario.³² In the present case, EWT LP
2 is not an incumbent utility, nor is the Board refraining from regulating
3 EWT LP. Thus, the fundamental concern that is addressed by applying the
4 ARC -- in particular, that non-regulated affiliates of a regulated entity
5 might set rates that weaken competition in a competitive market -- is not
6 relevant in the present context. In the case at hand, a regulated transmitter,
7 which is not an affiliate of incumbent transmitters, will operate in a
8 regulated market for transmission services. The circumstances for which
9 the ARC was developed do not exist here, and the ARC does not and
10 should not apply to EWT LP.

11 In essence, there is obvious distinction between a competitive market for energy services
12 and the present Board-regulated Designation Process, which is not a market, and which
13 will not result in a market.

14
15 The submissions of TransCanada, AltaLink and UCT fail to acknowledge this basic
16 distinction. For example, each of the cases cited by TransCanada – which relate to
17 electrical contracting, natural gas storage and suite metering – relate to the participation
18 of utility affiliates in competitive markets. However, in the designation proceeding,
19 HONI and GLPTLP have no affiliates that are competing for designation. Moreover,
20 neither EWT LP nor any other designation applicant is participating in a competitive
21 market. The Designation Process is competitive, of course, but it is not a market. As the
22 Schools Energy Coalition submits, “the ARC was never designed to deal with a
23 competitive transmission designation.”³³

24
25 EWT LP submits that any concerns about the provision of utility information or
26 employees to EWT LP have already been addressed through HONI and GLPTLP’s
27 protocols and proposed document disclosure. The protocols ensure that relevant
28 technical information in the possession of HONI and GLPTLP is not shared with EWT

³² NGEIR Decision, November 7, 2006 (EB-2005-0051), page 75.

³³ See para. 7.4.6.

1 LP unless it is shared with all designation applicants. Both utilities have also identified
2 information in their possession that is relevant and useful to the Designation Process and
3 that they are willing to provide to the Board for disclosure. The Board may now act as a
4 clearinghouse for that information.

5
6 Importantly, the Board has authority over HONI, GLPTLP and EWT LP. It also has
7 control over all aspects of the Designation Process, including any aspects relating to
8 information sharing and disclosure. In contrast, the Board has no authority over
9 competitive markets, which is why the Board established the ARC to regulate the
10 involvement of utilities in those markets. Some of the other designation applicants do not
11 acknowledge this distinction, leading one to reasonably conclude that they seek to have
12 the ARC applied to EWT LP's relationships not to protect competition in a non-existent
13 market, but to diminish EWT LP's competitive strength in the Designation Process.

14

1 **Part II -- Aboriginal Participation and Consultation**

2

3 **1. Aboriginal Participation**

4 Some designation applicants argue that it would be inappropriate for the Board to
5 consider Aboriginal participation in assessing designation plans. In particular, they argue
6 that Aboriginal participation arrangements are most appropriately undertaken after
7 designation, and therefore should not be seriously considered by the Board in the
8 designation proceeding. Various reasons are given for this position. For example,
9 TransCanada, AltaLink and UCT in general suggest that designation is somehow a
10 prerequisite for meaningful participation negotiations, and that the Board should not give
11 any weight to the participation of the Bamkushwada First Nations in EWT LP.³⁴ In
12 addition, AltaLink suggests that HONI and GLPT may have had unique access to
13 information identifying the affected Aboriginal communities, which allowed EWT LP's
14 partners to secure a commercial relationship with the Bamkushwada First Nations before
15 others had this opportunity.³⁵

16 EWT LP disputes that other designation applicants could not have initiated participation
17 discussions with affected Aboriginal communities prior to the Designation Process. It
18 should have been clear -- at least to any party with the ability to develop major
19 infrastructure projects in the traditional territory of Aboriginal communities -- that
20 Aboriginal participation will be fundamental to the successful development of the East
21 West Tie. With this knowledge, any designation applicant could have started to build
22 relationships and to discuss participation arrangements with affected Aboriginal
23 communities at least as early as November 2010, when the Long Term Energy Plan
24 stated that the development of the East West Tie would proceed by a Designation
25 Process. Contrary to AltaLink's assumption, EWT LP and its partners did not have any
26 unique information about the affected Aboriginal communities. What they had was a
27 commitment to involve Aboriginal communities from early on in the Designation

³⁴ See, for example, pages 3-4 of TransCanada's submissions and page 5 of AltaLink's submissions.

³⁵ See page 5 of AltaLink's submissions.

1 Process. In EWT LP's view, doing otherwise would have marginalized the role of
2 Aboriginal communities in the development of the East West Tie.

3
4 EWT LP therefore submits that it is in no way prejudicial for the Board to consider issues
5 of Aboriginal participation prior to designation or to consider a plan for participation as
6 part of a development plan. EWT LP also endorses the submission of the National
7 Chief's Office and the Métis Nation of Ontario that Aboriginal participation in energy
8 generation and transmission projects is a fundamental tenet in Ontario's energy policy, as
9 expressed by the province's Long Term Energy Plan and the Minister's March 29, 2011
10 letter.³⁶ The East West Tie cannot be successfully developed without a consideration of
11 some form of Aboriginal participation. Any credible designation applicant would be
12 aware of this factor. From a process perspective, designation applicants have been aware
13 of the fundamental importance of Aboriginal participation to the East West Tie for some
14 time, and they were in no way restricted from exploring a wide range of participation
15 arrangements in advance of the Designation Process. It is therefore fair for the Board to
16 consider the role of Aboriginal participation in an applicant's designation plan.

17
18 Although there is a broad range of Aboriginal participation that can legitimately be
19 explored and included in a designation plan, EWT LP is mindful that many designation
20 applicants have not yet formalized their participation arrangements. As a result, EWT LP
21 is sensitive to the concern of some designation applicants that the Board should not
22 establish an evaluation criterion to assess an applicant's existing participation
23 arrangements. In this regard, EWT LP does not endorse TransCanada's argument that
24 "[i]f the Board determines that it will define and evaluate participation in this proceeding,
25 the participation opportunities may be reduced to the "lowest common denominator" of
26 equity participation and, effectively become an auction where participants are expected to
27 bid for this participation".³⁷ (It is unclear why the economic participation of Aboriginal
28 communities in a major infrastructure project in their traditional territories represents the

³⁶ See page 3 of the Métis Nation of Ontario's submissions.

³⁷ See page 3.

1 lowest common denominator.). But EWT LP does believe that Aboriginal participation
2 should not exist just to check a box on the Board's decision criteria, but rather be part of
3 enhancing the overall delivery of the East West Tie.

4
5 EWT LP therefore submits that Aboriginal participation should not be its own criterion,
6 which compartmentalizes it without due regard to how it might impact the other criteria.
7 Rather, it is preferable to treat participation by Aboriginal communities as an overarching
8 consideration. The onus should be on designation applicants to show how the
9 participation of directly affected Aboriginal communities in the East West Tie project
10 would ensure that their knowledge and expertise is used to achieve the most timely and
11 cost-effective project possible. For example, the Board may assess the role of an
12 applicant's proposed Aboriginal participation in relation to how an applicant fulfills the
13 Filing Requirements relating to Organization; Strength of Plan; Schedule; and Costs. In
14 this regard, EWT LP endorses Board staff's recommendation to expand the filing
15 requirements with respect to information concerning Aboriginal participation. EWT LP
16 believes treating Aboriginal participation as such an overarching consideration
17 acknowledges the importance of such participation to the successful development of the
18 East West Tie, while resolving the concerns expressed by other designation applicants.

19
20 **2. Aboriginal Consultation**

21 In its original submissions, EWT LP submitted that the Board should establish a separate
22 criterion to assess a designation applicant's plan for Aboriginal consultation. It is
23 imperative that applicants submit a robust plan; to do otherwise would reveal a
24 fundamental unpreparedness to develop the East West Tie. In assessing this Aboriginal
25 consultation plan, EWT LP endorses the following submission of Schools Energy
26 Coalition:

27 Factors such as past experience and conduct, internal and external
28 expertise, and their specific consultation plan, will all be important. In

1 considering these factors, the Board should in SEC's view be cognizant of
2 the fact that proponents will not have the same experience and expertise,
3 due to the location of their existing infrastructure and transmission assets.
4 In those cases where the proponent does not have specific experience, the
5 Board may have to place greater emphasis on the proposed plan, their
6 willingness to meaningfully consult, and the external expertise that they
7 are planning to obtain for the purposes of the EWT Line. At the same
8 time, a proponent who does have significant past experience and expertise
9 should not have that discounted.³⁸

10
11 Essentially, when assessing an applicant's Aboriginal consultation plan, the Board should
12 consider such past experience and expertise as evidence of the credibility of a
13 consultation plan, and of the applicant's ability to execute it.

³⁸ Section 2.1.6.

1 **PART III -- Issue Specific Responses to Parties' Positions**

2

3 **Issue 1 -- Decision Criteria**

4 1. **IESO's Submissions**

5 The IESO submits that *reliability and line transfer capability* should be added to the
6 decision criteria. EWT LP suggests this criterion would be inappropriate.

7 The reliability and line transfer capability relates to the electrical properties of the line
8 that the designated transmitter will be responsible for developing prior to applying for the
9 Board's leave to construct. Reliability and line transfer capability is not a property of the
10 development plan itself and would therefore not seem to be a useful criterion for selecting
11 the designated transmitter.

12 **Issue 5 -- Relative Weightings**

13 1. **TransCanada's Submissions**

14 TransCanada submits that technical capability should be given the least weight when the
15 Board assesses the transmitters' plans because the designated transmitter will outsource
16 the various components of the technical design to third party suppliers. Instead,
17 TransCanada suggests it is the oversight and management of those skills that
18 distinguishes proponents.

19 EWT LP disagrees with TransCanada's assertion.

20 EWT LP submits that not all third party suppliers of technical design services are equally
21 qualified and experienced to undertake the East West Tie project. Furthermore, EWT LP
22 suggests it would be imprudent to make any assumptions about the quality, experience
23 and capabilities of the third party suppliers if a designation applicant indicated it was
24 intending to rely on third party suppliers but had yet to contract for their services.

1 2. **Icon's Submissions**

2 (a) **Construction Costs**

3 Icon asserts that cost "...is the central criterion upon which proponents may compete..."
4 and that "... the costs which should be focused on are the overall costs to develop, build
5 and operate the East West Tie Line, not development costs which are a small proportion
6 of overall costs. In Brazil, Texas and the UK, proponents were required, albeit in
7 different ways, to compete on overall cost."³⁹

8 EWT LP disagrees with the suggestion that transmitters' estimated construction costs are
9 a meaningful basis for designating a transmitter to undertake development work,
10 especially in the absence of any environmental assessment studies or consultation to
11 confirm the likely right of way. It would be premature to require applicants to submit
12 detailed construction costs before that work has been complete. It would also be
13 unhelpful to rely on those estimates as accurate indications of construction costs. This
14 would be the case particularly if a designation applicant did not provide a detailed
15 development plan along with its cost estimates; without those development details, the
16 Board could not substantiate whether the estimated costs were accurate.

17 EWT LP also submits that Icon may have mischaracterized the Texas process.

18 Staff [of the Public Utility Commission of Texas] issued its 2nd RFI
19 [request for expressions of interest] to the Interested TSPs [transmission
20 service providers] in an attempt to gather comparable construction cost
21 data for use in making an "apples to apples" evaluation of which, if any, of
22 the Interested TSPs could provide an economic benefit to the public by
23 constructing CTP [Competitive Renewable Energy Zone Transmission
24 Plan] Facilities at lower cost. Unfortunately, even within the
25 specifications of the RFI the data provided by the TSPs proved to be based

³⁹ See paras. 48-49 of Icon's submission.

1 on a variety of underlying assumptions that made the estimates difficult to
2 compare, with the lowest cost projections less than half the amount of the
3 highest ones. Further, many of the TSPs made one or more revisions to
4 the response, in each instance reducing their projected costs. Eventually,
5 the construction cost estimates became "grouped" together at a narrow
6 range of between \$11 and \$14 million with two notably lower outliers.
7 While unable to apply this data to empirically distinguish between the cost
8 benefits offered by the TSPs, Staff's 2nd RFI did allow it to conclude that
9 the costs of construction would be substantially similar among different
10 TSPs and thus Staff concluded that these costs could not be relied upon as
11 determinative factors in revising its recommendation of CTP Facility
12 designations.⁴⁰

13 Given that the Board is not being asked to approve construction costs in this hearing,
14 EWT LP suggests it would be erroneous to give them any weighting. Contrary to Iccon's
15 submissions, the Designation Process is not about assessing a premature estimate of
16 development costs, but rather about assessing an applicant's ability to develop the East
17 West Tie.

18 **(b) Project Schedules**

19 Iccon suggests that "... the Board should not place importance on a detailed project
20 schedule." but instead the "Board should require transmitters to provide indicative
21 schedules... ." Iccon seems to be suggesting that transmitters can rely on their extensive
22 experience constructing transmission facilities outside Canada in lieu of providing the
23 Board a detailed transmission project development plan for its review and approval.
24

⁴⁰ Commission Staff's Post-Hearing Briefing, Public Utility Commission of Texas, Docket 35665 19th December 2008

1 EWT LP disagrees with Iccon's suggestion that project schedules are merely indicative
2 and that the Board should place no importance on them. The Board policy EB-2012-
3 0059 states:

4

5 The transmitter designated for a particular project will be assured of
6 recovery of the budgeted amount for project development.

7

8 First, EWT LP believes the Board cannot be expected to provide assurance of budgeted
9 cost recovery without having first reviewed the transmitter's transmission project
10 development plan and associated detailed schedule. Second, EWT LP believes
11 ratepayers can have no confidence in a transmitter's development plan if it is not
12 supported by a detailed project schedule with milestones and reporting requirements.

13

14 EWT LP suggests the detailed project schedule is a not only an important part of a
15 transmission project development plan, which the Board is being asked to approve, but is
16 a fundamental and integral part of the plan. Furthermore, each transmitter's schedule
17 should be definitive, not indicative.

18

19 **Issue 7 -- Changes to the Filing Guidelines**

20

21 **1. AltaLink's Submissions**

22 AltaLink submits that the Board in its filing requirements should confirm that experience
23 in Ontario will not be favoured over comparable experience in other jurisdictions.

24 AltaLink's specific concern is the focus on experience earned from undertaking
25 development in similar terrain, climate or other environmental conditions. This concern
26 is echoed by Iccon in its suggested amendments to the detailed filing guidelines.

27 EWT LP respectfully suggests that the terrain, the climate and other environmental
28 conditions are all important when assessing a transmitter's technical experience; e.g. a

1 transmitter who had only ever designed transmission lines located in warm-weather areas
2 would presumably have limited experience calculating the effect of ice loading on
3 transmission structures.

4 EWT LP suggests each transmitter should be expected to demonstrate how its technical
5 experience best qualifies it to undertake the East West Tie taking into account the
6 circumstances under which this technical experience was gained.

7 **2. Iccon's Submissions**

8 Iccon has suggested that the "Board Staff's proposed filing criteria requiring a detailed
9 development/construction schedule, chart of major risks, strategy to mitigate risks, etc., is
10 inappropriate at this stage". Iccon has also proposed deleting the relevant sections from
11 Board Staff's proposed detailed filing guidelines.

12 EWT LP disagrees with the assertion that transmitters should not be required to provide
13 the Board with information about significant project development risks. Without this
14 information it would be difficult to determine the completeness and robustness of the
15 transmitter's transmission project development plan.

16 EWT LP suggests that a description of development risks and how the transmitter
17 proposes to mitigate them should not be deleted from the filing criteria.

18 **Issues 9-10 -- Reporting and Performance Obligations**

19 There was general agreement among most parties that applicants should include proposed
20 performance reporting and milestones as part of their filed plans. EWT LP agrees with
21 that approach as it provides another means for the Board to assess the capabilities of the
22 applicants in terms of putting forward a reasonable plan. Iccon suggested that indicative
23 milestones only should be filed in the plan and a more detailed set of reporting and
24 milestones would be filed six months after designation. CNPI said that reporting and
25 performance milestones should be determined by the Board in this Phase 1 proceeding so

1 that applicants know when they are preparing their plans what milestones they will be
2 judged against. EWT LP respectfully disagrees with both Iccon and CNPI. Well-
3 prepared applicants should be able to determine what would be a reasonable reporting
4 and milestone framework based on previous project experience as well as their detailed
5 knowledge about the project gained during the plan preparation stage. In EWT LP's
6 view, being able to provide such information in a plan suggests preparedness and
7 experience in managing large linear infrastructure projects.

8
9 There was also general agreement that requiring performance obligations in the form of
10 financial security (e.g., a performance bond) was unnecessary in the circumstances.

11 **Issues 13-16 -- Cost Recovery**

12 There was general agreement among parties that budgeted development costs, having
13 been tested in the designation proceeding, will be deemed prudent and therefore
14 recoverable. The preferred mechanism for recovery was a deferral account. There was
15 also general agreement that variances from budget must undergo a later prudence review.
16 Most parties supported the notion that costs incurred for preparing plans, as well as costs
17 incurred prior to plan preparation, should be eligible for recovery, subject to
18 demonstrating prudence. Such "prior" costs could include costs related to engaging in
19 discussions re: aboriginal participation. The Métis Nation of Ontario noted that allowing
20 for recovery of costs related to enabling aboriginal participation provides an incentive for
21 proponents to engage in that activity, and not allowing for such recovery provides a
22 disincentive to doing so. EWT LP agrees with the Métis Nation of Ontario's assessment.

23
24 Most parties supported the notion that applicants should generally be held to the content
25 of their plans in order to avoid the potential for gaming the Designation Process, but with
26 a recognition that some flexibility should be allowed to address changing circumstances
27 that could arise as a result of doing the development work. Variances from the original

1 plan could be reviewed in the leave-to-construct application. EWT LP agrees with that
2 approach.

3 Finally, EWT LP disagrees with Board staff's submission that the designated transmitter
4 should only be able to recover designation costs incurrent after the Board issues its Phase
5 1 decision. This is an arbitrary cut-off that does not reflect that designation applicants
6 may have reasonably incurred designation costs that are related to the preparation of the
7 transmitter's development plan and that have a benefit to ratepayers. EWT LP submits
8 that the Board, instead of choosing a cut-off date for eligible designation costs, should
9 assess whether submitted costs relate to the preparation of the designated transmitter's
10 designation plan in a way that ultimately benefits ratepayers.

11 **Issue 23 -- Timing of Designation Plans**

12 Five of the nine intervenors who commented suggested transmitters should be given four
13 months or fewer to prepare their transmission project development plan. CNPI, the only
14 participating transmitter that already owns and operates transmission facilities in Ontario,
15 suggested that transmitters should be provided two months to file their plans.

16
17 EWT LP believes that two months may be too little time. However we also note that
18 those intervenors who are based in or have experience permitting electricity facilities in
19 Ontario, and presumably are best able to understand how long it might take, have all
20 recommend four months or fewer.

21
22 EWT LP therefore continues to suggest that the Board allow between three and four
23 months (3-4 months) from the date of its Phase 1 decision for transmitters to prepare their
24 plans.

25

26

1 All of which is respectfully submitted this 22nd day of May, 2012.

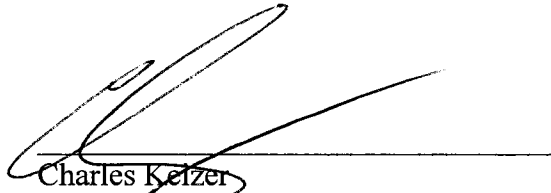
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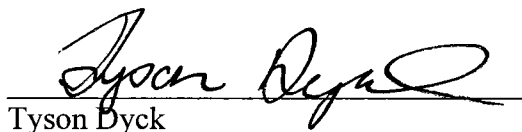
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Counsel to the Applicant

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Tyson Dyck

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Counsel to the Applicant

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