

January 15, 2013

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 -- Confidentiality Request by RES Canada Transmission L.P.
("RES") in relation to Phase 2 of the East West Tie Designation Proceeding**

We are counsel to EWT LP in the above noted proceeding. Further the Board's Procedural Order No. 5, we are filing this letter on behalf of EWT LP with respect to RES's request that certain exhibits in its designation application (the "Exhibits") be held confidential. We submit that the Exhibits should be placed, unredacted, on the public record in the East-West Tie proceeding.

As set out in the cover letter to RES's designation application, the Exhibits fall into one of two categories: (i) documents that RES considers to be "proprietary information" and (ii) the financial statements of Renewable Energy Holdings Limited and its affiliates (the "RES Group"). With respect to the "proprietary information", RES argues that it should not be disclosed because:

- (i) it was acquired by RES at considerable expense;
- (ii) its disclosure could harm RES's competitive position with respect to other commercial activities in Ontario; and
- (iii) its disclosure could be of value to and used by another transmitter if RES is not designated in this proceeding.¹

EWT LP submits that the cost of acquiring and preparing information is an invalid reason for it to be deemed confidential. All designation applicants have prepared their applications at considerable expense. As a result, the cost of preparing the applications is not unique to RES but are common to all designation applicants. Yet unlike RES, all other designation applicants have put similarly "proprietary information" (relating, for example, to their environmental assessment plans and project design ideas) on the public record to support their respective

¹ See page 3 of the cover letter to RES's designation application.

applications. RES's request seeks to have RES treated differently than other applicants.

With respect to its competitive position, RES provided no basis as to how the disclosure of the information could harm other commercial activities. EWT LP also submits that the disclosure of the "proprietary information" is highly unlikely to harm RES's competitive position with respect to other commercial activities in Ontario. Based upon the description of the documents set out in RES's request, the information is completely and specifically related to the development of the new East-West Tie Line. Information regarding access roads to the new line and the environmental assessment of the project area is largely irrelevant to the development and construction of other projects in other locations in Ontario. Therefore, the disclosure of the information is unlikely to weaken RES's competitive position in other commercial activities in Ontario.

RES's primary concern, therefore, appears to be that no other transmitter be allowed to use the "proprietary information" upon designation. In this regard, RES takes a different position than all other designation applications, all of whom have filed entire applications on the public record. RES's confidentiality request asks for special treatment; it seeks to elevate RES's commercial concerns over the Board's view that the designation proceeding should be "open, transparent and accessible".² EWT LP therefore submits that RES should place the "proprietary information" on the public record.

The same is true with respect to the financial statements of the RES Group: they should be placed, unredacted, on the public record. In the cover letter to its application, RES indicates that the financial statements are not otherwise publicly available and that their disclosure could be detrimental to the RES group.³ Although it may be privately held and not subject to continuing disclosure obligations, the RES Group is nonetheless being put forward as having the necessary financial capacity for RES to undertake the project in a *public* designation process, which is a hearing and not a procurement. One of the core aspects of that process is the Board's assessment of the financial capability of the applicants. RES was aware of the filing requirements and the nature of the proceeding when RES chose to participate in the process. As a licensed transmitter, it should understand that evidence of its financial capacity is subject to public scrutiny. Doing so is a basic requirement of participating in such a public process. Without full access to the RES Group financial statements, applicants and intervenors may not be able to properly prepare interrogatories to assist the Board in its assessment. In respect of this key evaluation criteria, RES once again seeks to be treated differently.

In the absence of any commercial prejudice, although EWT LP appreciates RES's January 10, 2013 letter advising the Board that the RES Group financial statements (in addition to the "proprietary information") is available to external counsel and consultants who sign a declaration and undertaking, EWT LP feels that this gesture is insufficient to ensure a fair and transparent hearing. For example, it is unfair to require all parties to the proceeding to hire external financial and technical advisors to complete an assessment of the Exhibits when they may have the necessary resources in-house. This is particularly the case given that all other designation applications have put their financial statements and entire designation plans on the public record.

The designation proceeding is not a procurement process in which submissions by private parties are judged confidentially. It is a public hearing in which the Board assesses the

² See page 3 of the Board's Procedural Order No. 5 in EB-2011-0140.

³ See page 4.

applications of licensed transmitters, in part by relying on the interrogatories of intervenors and other applicants to guide that assessment. It is, therefore, incumbent on all licensed transmitters to support the transparency and fairness of the Board's process. EWT LP submits that RES should file the "proprietary information" and financial statements on the public record.

Yours truly,

per 

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cc: A. McPhee, EWT LP
All parties to the designation proceeding