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File 20412

May 22, 2012

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**VIA RESS FILING and COURIER**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Walli

**Re: East-West Tie Designation Process – Phase 1 Criteria for the  
Selection of a Designated Transmitter (EB-2011-0140)**

Attached please find the Power Workers' Union's reply submission in Phase 1 of the East-West Tie Designation Process.

We hope you will find the PWU's comments useful.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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cc: Judy Kwik  
John Sprackett

HONORARY COUNSEL

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(1934 - 2006)

**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

## **Phase 1 Reply Submission of the Power Workers' Union**

### **1. INTRODUCTION**

Procedural Order No. 2 for this proceeding provides for submissions pertaining to the issues in Phase 1 of this proceeding and for reply submissions.

The Power Workers' Union ("PWU") filed a submission on the Board-approved Issues List for Phase 1 of this proceeding. The PWU has reviewed the submissions of the other participants filed in Phase 1 of this proceeding. It is clear that participants have diverse views and positions on the questions set out on the Board's Phase 1 Issues List. The PWU is not swayed by parties' views that differ from those forwarded in the PWU's May 7<sup>th</sup>, 2012 submission and maintains its positions.

However, the PWU notes that some transmitters seeking designation in this proceeding are advancing the addition of a criterion that has the effect of limiting the designation process to new transmission entrants. In the PWU's view such a criterion is inappropriate and provides reply to the submissions.

## 2. PWU REPLY SUBMISSION

A position was forwarded on a criterion that pertains to the impact of the Board's policy objective of "encouraging new entrants and introducing competition in transmission" in the designation proceeding articulated in the Board's *Framework for Transmission Project Development Plans* ("Board's Policy")<sup>1</sup> and reiterated in the Minister of Energy's March 29, 2011 letter to the Board (the "March Letter")<sup>2</sup>.

The PWU notes that some parties, including Niagara Canadian Power Inc. ("NCPI") and Icon Transmission Inc. ("Icon"), are advancing the view that the above stated objectives of the Board should be used as decision criteria for designation. In fact, Icon points out that some other jurisdictions which have sought to introduce competition to transmission have restricted participation by incumbents, suggesting that the Board could do so in the current proceeding.<sup>3</sup>

To the PWU's knowledge, of the seven transmitters who have registered an interest in the designation proceeding, only one, NCPI had a transmission license and assets in Ontario prior to the Board's announcement of the designation policy. The remaining transmitters that have expressed interest in the designation process applied or received their transmission license only after the Board's announcement of the designation process. In this regard, the target "incumbent transmitter" referred to by many of the parties that are calling for special treatment for new entrants is not clear. In the PWU's view, the more substantive issue, however, which the Board should be clear about and provide clarification to all participants going forward is the role which the objective of 'encouraging new entrants and competition' plays in the designation process. There appears to be a misinterpretation by some parties on what the Board's Policy and the Minister's March Letter mean with respect to the objective of encouraging new entrants and competition. In the PWU's view "encouraging new entrants and introducing

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<sup>1</sup> Framework for Transmission Project Development Plans ("Board's Policy") that

<sup>2</sup> Minister of Energy's March 29, 2011 letter to the Board (the "March Letter").

<sup>3</sup> Submissions of Icon Transmission, Inc. on Phase I, page 6

competition” does not restrict incumbents (i.e. transmission companies that already own transmission assets and operate transmission systems in Ontario) from the designation process.

### **3. BOARD POLICY: FRAMEWORK FOR TRANSMISSION PROJECT DEVELOPMENT PLANS (EB-2010-0059)**

In the Board Policy document the Board states that its policy will:

- allow transmitters to move ahead on development work in a timely manner;
- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.

There is no question that the three ‘objectives’ above reflect the Board’s desire to “encourage new entrants and support competition” in transmission. In the PWU’s view, what the Board has been doing since it issued the Board Policy is just that: encourage new entrants and competition. To start with the Board announced a designation proceeding for the development of the East-West Tie line. That is, instead of expecting or requiring the incumbent transmitters to develop the proposed line, the Board invited all – new and existing - interested transmitters to express their interest in the designation process. The Board issued new entrants with transmission licenses that will be required by the designated transmitter, in many cases removing barriers and preconditions to accommodate these new entrants that do not have existing assets in Ontario. Furthermore, the Board has, and is, ensuring: that the incumbent transmitters, Hydro One Networks Inc. and Great Lakes Power Transmission LP, are transparent about their relationship with EWT LP and that there are protocols in place that precludes information exchange; and, that there is disclosure of all information and studies on the East-West Tie line required by all the transmitters competing in the designation process. These are some of the ways in which the Board’s objectives of encouraging new

entrants and competition are implemented. In other words, the Board's role is to ensure that the designation process is fair, transparent, and non-discriminatory. Unfortunately, some parties like Iccon argue that this is not enough:

**Encouraging new entrants is a broader objective than simply introducing competition. It reflects the fact that, beyond instituting competitive processes, there are intrinsic benefits to adding new companies that “bring additional resources to project development”.** <sup>4</sup>

**A decision criterion should be added that addresses the important objective of introducing competition and encouraging new entrants in transmission.** <sup>5</sup>

**Conditions may be imposed to address information sharing/access by Hydro One and GLP, but these measures cannot altogether eliminate the inherent advantages the Incumbent Transmitters have. For instance, ordering the Incumbent Transmitters to disclose information concerning development of the East-West Tie Line will never address the Incumbent Transmitters' head-start or the institutional knowledge of EWT LP senior executives.** <sup>6</sup>

The Board states that “introducing competition in transmission development will improve economic efficiency and lead to better outcomes for the consumer.”<sup>7</sup> This indicates the Board's belief that competition is the best approach towards economic efficiency and better outcomes for the consumer because it allows for the opportunity to select the most qualified transmitter. This means that competition is not an end in and of itself. The Board's Policy in no way suggests or advocates that enhancement of competition should be considered as a selection criterion or that a new entrant must be designated for the sake of encouraging competition. The Board's policy objective does not require

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<sup>4</sup> Submissions of Iccon Transmission, Inc. on Phase I, page 3

<sup>5</sup> Submissions of Iccon Transmission, Inc. on Phase I, page 5

<sup>6</sup> Submissions of Iccon Transmission, Inc. on Phase I, page 6

<sup>7</sup> OEB : Board Policy: Framework for Transmission Project Development Plans (EB-2010-0059), August 26, 2010, page 10

discrimination against the incumbent transmitters. Neither does the Board's policy objective require giving unfair advantage to new entrants.

#### **4. THE MINISTER OF ENERGY'S MARCH 29, 2011 LETTER TO THE BOARD (THE "MARCH LETTER")**

The Minister's March Letter states:

**The Board's Policy Framework for Transmission Project development Plans is well suited to apply to the East-West Tie project. Such an approach would allow transmitters to move ahead on development work in a timely manner, encourage new entrants to transmission in Ontario and bring additional resources for project development. It will also support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers** <sup>8</sup>

Clearly, the Minister is satisfied that the Board's Policy encourages new entrants and supports competition. This is in contrast, for example, to the Minister's more explicit and emphatic expectation with respect to the participation of First Nations and Métis:

**I would expect that the weighting of decision criteria in the Board's designation process takes into account the significance of aboriginal participation to the delivery of the transmission project as well as a proponent's ability to carry out the procedural aspects of Crown consultation.**<sup>9</sup>

The Minister's March Letter also clearly reiterates the ultimate purpose of the designation process outlined in the Board's policy framework as "to select the most qualified and cost-effective transmission company to develop the E-W Tie."<sup>10</sup> It should

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<sup>8</sup> Minister of Energy's March 29, 2011 letter to the Board (the "March Letter"), page 1

<sup>9</sup> Minister of Energy's March 29, 2011 letter to the Board (the "March Letter"), page 1

<sup>10</sup> Minister of Energy's March 29, 2011 letter to the Board (the "March Letter"), page 1

be clear to the Board and all concerned that “the most qualified and cost-effective transmission company” can be designated only if companies are compared and evaluated on the basis of what they bring in terms of organization, technical and financial capability, relevant experience, etc. A new entrant should not be credited just for being a new entrant.

## **5. CONCLUSION**

The current proceeding is the Board’s first implementation of the Board Policy. It should be expected that transmitters – new and incumbent - that vary in their experience, organization, technical and financial capabilities etc. will participate in any designation proceeding. It is imperative that participants have the correct understanding of the role of the Board’s stated objective of “encouraging new entrants and competition” and how this objective is realized in the designation process. In the PWU’s view, the Board’s stated objective of “encouraging new entrants and competition” should ensure that the designation process is open, fair and transparent to all based on the decision criteria relevant to selecting the most qualified transmitter for the project. It does not imply a preferential treatment towards new entrants nor discrimination against the incumbent. For all the reasons above, the PWU submits that the Board should not consider new entrants and competition enhancement as decision criteria relevant to the selection of the most qualified transmitter as the designated transmitter for the development of the East-West Tie line project.

**All of which is respectfully submitted.**