

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule. B;*

AND IN THE MATTER OF an Application by Canadian Niagara Power Inc. for an Order or Orders granting leave to construct and reinforce transmission facilities in and around Fort Erie.

**REPLY SUBMISSIONS OF
THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

1. The Independent Electricity System Operator (the “IESO”) appreciates the opportunity to file these reply submissions in respect of Canadian Niagara Power Inc. (CNPI) application for leave to construct and reinforce certain transmission facilities in and around Fort Erie, Ontario (the “Project”). In this reply, the IESO will limit its submissions to the following points:

- a) The Project will lead to incremental local area supply security;
- b) There is a need for clarification regarding the market benefits attributed to the Project; and
- c) National Energy Board (the “NEB”) requirements are paramount.

Project will lead to incremental local area supply security

2. In its Supplemented and Restated Submissions-in-Chief (filed December 8, 2009), CNPI acknowledged that the Project need is not driven by a requirement or obligation to meet reliability standards applicable to the bulk power system. CNPI submits that “[the] Project has two purposes: (i) improving Reliability on the CNPI transmission in accordance with Good Utility Practice; and (ii) providing intertie benefits to Ontario.”

As noted in the IESO's response to Board Staff interrogatories, CNPI's connection currently satisfies the IESO minimum reliability requirement for load security and restoration. We agree that, should CNPI elect to reinforce its transmission system in order to enhance the current supply capability or provide synchronous or multiple supply sources, this will enable it to maintain a higher degree of load security in the area. In addition, we agree that the enhanced supply capability and resulting reliability performance will be beneficial to CNPI's customers; however, it is the IESO's view that this capability would be incremental to the minimum local area reliability performance criteria that CNPI is required to meet by the IESO at this time.

Clarification regarding the market benefits attributed to the Project.

3. CNPI also stated that "the IESO confirmed and emphasized the potential for the Project to enhance the overall Ontario import/export capability and, therefore, to provide:

- increased market activity and efficiency,
- flexibility to address situations of surplus baseload and/or renewable generation, and
- flexibility to import during periods of supply shortages.

The IESO assisted CNPI in outlining areas of potential benefits and approaches for assessing those benefits. We generally agree with the areas identified by CNPI as having potential benefits for the market; however, the IESO did not undertake a comprehensive study to quantify the market benefits of the Project; accordingly, the above-noted benefits should not be positioned or viewed as "confirmed" by the IESO.

National Energy Board requirements are paramount.

4. CNPI has provided a copy of its NEB permit (EP-137) that was issued May 14, 1999 pursuant to a request by it for authorization to rehabilitate and operate its international power line (also known as Line 7) running from Station 18 to the international boundary on the Niagara River. Our research also shows that the Certificate of Public Convenience and Necessity (i.e., EC-22) governing the construction and operation of the international power line was issued December 29, 1959, but was subsequently revoked on the date that EP-137 was issued.

EP-137 contains a number of terms and conditions on which NEB authorization to reconstruct and operate the international power line was granted. In particular, these include:

6. *Unless the Board otherwise directs and subject to condition 7, CNP's Line 7 shall not be connected to Niagara Mohawk Power Corporation's (NM) transmission system at the same time, even on a momentary basis, as CNP's system is connected to the transmission system of Ontario Hydro or any of its successor companies as of 1 April 1999 (OH).*
7. *CNP may apply to the Board to obtain the authorization to connect Line 7 to NM's transmission system at the same time as CNP's system is connected to OH's transmission system by:*
 - a) *filing for Board approval technical studies, prepared jointly with OH, demonstrating the feasibility of an arrangement under which Line 7 could be connected to NM's transmission system at the same*

time as CNP's system is connected to OH's transmission system, and:

- b) filing with the Board any agreement CNP may have reached with OH, or any comments CNP may have received from OH with regard to the matter referred to in the present condition.*

- 9) CNP shall not make any change in the international power line authorized by this Permit without prior approval by the Board.*

5. In the current application before this Board, CNPI is seeking leave to modify and reinforce the international power line for which EP-137 was granted, as well as effectively make a synchronous connection with the National Grid transmission system (previously owned Niagara Mohawk Power Corporation) in the state of New York. To the IESO knowledge, CNPI has not presented any evidence or information to attest that the NEB has in fact devolved its jurisdiction or governance over the international power line, or exempted CNPI from the terms and conditions which requires CNPI to seek NEB prior approval before making any change to the international power line or establishing a synchronous connection with the National Grid system. Given this, the IESO believes that the NEB's review and approval for modification or reinforcement of Line 7, as well as to make a synchronous connection with the National Grid transmission system is paramount in this regard. Among other considerations, Section 58.22 of the National Energy Board Act notes that "[t]erms and conditions of permits and certificates and Acts of Parliament of general application are, for the purpose of

applying the laws of a province under section 58.2¹ or 58.21², paramount to those laws.” Therefore, it is questionable whether the current leave to construct application before this Board, and the associated order(s) sought from it by CNPI with respect to CNPI’s international power line is appropriate. We believe that leave to re-construct, modify or reinforce CNPI’s international power line, as to well as to make a synchronous connection with the National Grid transmission system should be subject to the NEB’s review and approval and not this Board.

All of which is respectfully submitted,

Original signed by

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Submitted this 18th day of December, 2009

¹ National Energy Board Act, Section 58.2, The laws from time to time in force in a province in relation to lines for the transmission of electricity from a place in the province to another place in that province apply in respect of those portions of international power lines that are within that province.

² National Energy Board Act, Section 58.21, A provincial regulatory agency designated under section 58.17 has, in respect of those portions of international power lines that are within that province, the powers and duties that it has under the laws of the province in respect of lines for the transmission of electricity from a place in the province to another place in that province, including a power or duty to refuse to approve any matter or thing for which the approval of the agency is required, even though the result of the refusal is that the line cannot be constructed or operated.