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

December 29, 2009

VIA RESS, COURIER AND EMAIL

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Canadian Niagara Power Inc. - Application for Leave to Construct and Reinforce Transmission Facilities in the Fort Erie / Niagara Falls Area - Reply Submissions (Board File No. EB-2009-0283)

We are counsel to Canadian Niagara Power Inc. (the "Applicant"). Enclosed are two copies of the Applicant's Reply Submissions, which have been filed electronically today on RESS.

Yours truly,

J. Britton

for Charles Keizer

CK/sb
Enclosures

Tel 416.865.7512
Fax 416.865.7380
ckeizer@torys.com

c.c. Robert Caputo, Ontario Energy Board
Michael Millar, Ontario Energy Board
Intervenors
Angus Orford, CNP
Douglas Bradbury, CNP
Jonathan Myers, Torys LLP

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Canadian Niagara Power Inc. for an Order or Orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* (as amended) granting leave to construct and reinforce transmission facilities in and around Fort Erie, Ontario.

REPLY SUBMISSIONS

of

CANADIAN NIAGARA POWER INC.

December 29, 2009

REPLY SUBMISSIONS

These are the Reply Submissions of Canadian Niagara Power Inc. ("CNP") in the matter of its application for leave to construct and reinforce transmission facilities in and around Fort Erie (EB-2009-0283).

With respect to the submissions that follow, CNP will address the submissions of Board Staff, the Independent Electricity System Operator ("IESO") and Ontario Power Generation Inc. ("OPG") in turn.

Reply to Board Staff Submissions

Board Staff Mischaracterizes Need

The need for CNP's proposal to develop a synchronous connection between the CNP transmission system, the IESO-control grid and the NYISO-control grid (and thereby provide the ability for instantaneous restoration of service on the CNP system upon the loss of a single element) (the "Project") is for two purposes: (i) improving reliability; and (ii) providing intertie benefits to Ontario.

Board Staff focuses on the "N-1 contingency criterion" as being the basis for the need of the Project. As noted in Board Staff Submissions[1] and in CNP's response to Board Staff Supplemental Interrogatories, CNP conceded that the N-1 NERC standard did not apply and that it was not relying on this standard as a basis for need of the Project.[2] As a result, the Board should give no weight to Board Staff Submissions related to N-1 contingency criterion as a standard because it is not applicable in that regard.

N-1, meaning the ability to withstand the loss of a single element, is, however, applicable as a solution to CNP's reliability needs. In this regard, CNP stated in evidence that,

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[1] Board Staff Submissions, p. 5

[2] Responses to Board Staff IRs, December 8, 2009, p. 2

> "It is therefore important to distinguish between N-1 as a component of the NERC standard and N-1 as a solution to a reliability concern. As a solution to a reliability concern, N-1 simply refers to the idea that a system is able to withstand the loss of a single element. For CNP, the reliability concern that needs to be addressed is that the system is not currently able to withstand the loss of a single element. For example, the loss of supply from HONI results in a complete system-wide outage for CNP. This reliability concern is demonstrated by having regard to among other things, the scope of CNP's outages, as well as their duration and frequency over the long term."[3]

The system has only one normal source of supply. CNP's transmission system is exposed to the risk of its entire system "going dark" for extended periods if any one of several circumstances occur.[4] CNP's transmission system's reliability performance does not meet the benchmarks established by the Canadian Electricity Association (the "CEA") and Hydro One Networks Inc. ("Hydro One") since CNP exceeds the average outage frequency and duration benchmarks established for each of those entities.[5] Given the natural risks associated with the configuration of the system, recent near misses could have easily deteriorated CNP's reliability performance.[6]

Implications for end users are real[7] and with financial impacts estimated at approximately $16.1 million, good utility practice requires CNP to strive to improve reliability and to lessen the threat to reliability inherent in CNP's transmission system. The only solution that achieves this is the Project, which permits the system to have the ability to withstand the loss of one element.[8] CNP would have a readily available secondary supply to provide uninterrupted service in the event of planned or unplanned loss of the system's primary supply.

CNP has consistently relied upon good utility practice as a basis for the Project need. In this regard, CNP has relied on that part of the definition of good utility practice which states:

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[3] Responses to Board Staff IRs, December 8, 2009, p.3
[4] Exhibit B, Tab 3, Schedule 1, p. 3
[5] Exhibit B, Tab 3, Schedule 1, p. 11-12
[6] Response to Board Staff I-1.0(x), p. 11
[7] CNP Response to Board Staff SI-3 and Appendix "B"
[8] CNP Supplemental and Restated Submissions, p. 20

> "...any of the practices, methods or acts which, in the exercise of a reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with business practices, reliability, safety and expedition."[9]

CNP submits that it is on this basis that the Board can consider the review of the Project on a case by case basis in accordance with good utility practice. In light of the facts related to the CNP system, CNP submits that it is prudent and justifiable that CNP proceed with the Project.

Board Staff ignores any factual analysis related to good utility practice. Instead, it focuses solely on that part of the definition which states: "...any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry in North America during the relevant time period...". CNP submits that Board Staff takes a view that is too narrow and that fails to reflect the operational concerns of a licensed transmitter.

In this regard, Board Staff applies the "N-1 Contingency Criterion" as a standard. Board Staff relies wholly on a Hydro One response to an interrogatory that provided a list of 16 lines for loads less than 75 MW and for which N-1 contingency was not available. It is presumed by Board Staff that based solely upon the list of 16 lines by Hydro One, the configuration of Hydro One's lines reflect the "practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry in North America." Board Staff gave no consideration to the nature of the load served, the reliability history of the lines in question, the application of various reliability benchmarks or any calculation of the financial consequences of an outage of the lines. All of these factors are relevant and CNP submits that the Board should consider them in respect of CNP's circumstance and the Project proposed.

The Board Staff also fails to consider a significant operational difference between the Hydro One lines and CNP's line. Presumably in most circumstances with the Hydro One lines the transfer to a back-up source could be done "live" in accordance with standard operating practice. To be activated "live" means that sections of line can be isolated for planned maintenance without

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[9] Responses to Board Staff IRs, December 8, 2009, p. 2

incurring outages to end-users. Because CNP's interconnection with USNG is not synchronous, the entire CNP system must go dark for planned maintenance. Even if the backup supply from USNG were activated, two outages would still be required for the transfer to and from USNG.

Based solely on the Hydro One interrogatory, Board Staff proffered the opinion that reinforcing the CNP transmission system cannot be reasonably justified as a matter of "good utility practice". As a result, one can only conclude from Board Staff's submission that if Hydro One does not undertake a certain configuration, then no other transmitter can undertake such a configuration and be justified in doing so in good utility practice. It appears to be Board Staff's belief that as goes Hydro One so go all transmitters notwithstanding what the facts may be that confront a transmitter or the reliability concerns that a transmitter may have.

It is CNP's submission that the application of good utility practice must have a degree of flexibility in order to take into account circumstances and facts that the transmitter and any regulatory authority must consider for a Project on a case by case basis. Hydro One, as submitted by Board Staff, cannot be the only standard. It is not reasonable for the Board Staff to ask the Board to interpret and apply the definition of good utility practice only in accordance with the procedures of Hydro One. Unfortunately, however, this is the approach Board Staff seems to desire the Board to follow.

Board Staff also referred to two IESO reliability measures relating to load restoration period and unsupplied energy.

The load restoration period relates to the criteria set out in the IESO's *Ontario Resource and Transmission Assessment Criteria* (the "RTAC"). According to this criteria, transmission systems such as CNP's must be planned so that all loads must be restored within approximately 8 hours. In this regard, Board Staff relies upon the interrogatory response of the IESO. CNP submits that this interrogatory response does not fully state all of the aspects of the criterion or how it should be applied. In its interrogatory response, the IESO has not adequately set out the context in which it should be applied. Both the Board Staff and the IESO treat the benchmark as a bright line test. However, if Board Staff is to rely on this criteria, the Board Staff should take

the proper and fair approach and take into account the standard in its entirety not simply disregard those aspects of the criteria that are not in favour of Board Staff's position. The Board Staff fails to consider that[10]:

- the RTAC is to be used to evaluate long term system adequacy and connection assessments, not for identifying "operating criteria" (RTAC, p. 1);
- the study parameters must be applied on the basis of good utility practice and judgment, taking into account the particular circumstances and characteristics of the part of the IESO-control grid that is being studied (RTAC, p. 3);
- each case can be considered separately, taking into account the probability of the contingency, frequency of occurrence, length of repair time, the extent of hardship caused and cost (RTAC, p. 30);
- the RTAC 8 hour timeframe evolved from the IESO's *Supply Deliverability Guidelines*, which in turn were based on Ontario Hydro's "Guide to Planning Regional Supply Facilities" (also known as the "E2 Guide") in which it was acknowledged that the guide did not directly specify the level of reliability provided in terms of typical measures such as frequency, duration, loss of load probability, energy unsupplied, or customer impacts and that decisions on new facilities or enhancements were made on a case-by-case basis.

The approval of the Project is about operation and the real life impacts associated with operation and not about operating a system to a generally applied design standard of approximately 8 hours. No utility in Ontario would believe that it is good utility practice for a utility to adopt the practice of taking up to 8 hours to restore power to a 56 MW load. CNP submits the Board can only view the IESO standard as a minimum and not a standard for reliability from an operational sense. These criteria are not determinative of good utility practice. The prudent transmitter strives to improve reliability and not just meet a standard of an 8 hour outage. An endorsement by the Board of such a standard for operational purposes would be counter intuitive to the practices generally undertaken by regulated transmitters.

With respect to unsupplied energy, Board Staff fails to recognize the inherent weaknesses associated with the IESO's local area performance benchmarks. The local area benchmark,

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[10] CNP's Supplemental and Restated Submissions, p. 17-19

designated by a red, yellow or green classification extending from poor to good performance, presents a moving target in which poor performance over time will ultimately lead to a lowering of the threshold making it easier for a transmitter to establish a green designation and good performance over time will raise the benchmark making it harder to achieve a green designation. As a result, because of CNP's past poor performance, for the next five years it will take an outage of approximately 150 minutes or more for CNP's classification to fall from green instead of the 30 minute outage period applied previously.[11] As a result, the application of the standard is significantly fact specific. Since 2002, the designation of the CNP transmission system has gone from yellow (2002) to red (2003 and 2004) to yellow (2005 and 2006) to green (2007 and 2008).[12] The change in the designation to green merely represents the shift in CNP's good fortune and the inherent uncertainties associated with the reliability of the system. Any one of the near-miss events noted in CNP's response to Board Staff Interrogatory I-1.0(x) would be expected to have given rise to an outage of approximately 4 hours. As such, CNP's classification under the IESO's process and criteria for assessing local area performance can change at any time because of just a single event. As a result, IESO's local area performance benchmark is merely a snapshot in time. There is no certainty that CNP will stay "green" and there is nothing inherent in CNP's system that would enable CNP to avoid falling to "yellow" or "red" under this performance indicator.

CNP provided data to reflect the frequency and duration relative to CEA and Hydro One benchmarks. Performance of the CNP transmission system related to the CEA's *Study on Forced Outages of Transmission System Equipment, 115-149 kV*[13] has been generally below average. For the period 2002-2006, the outage frequency on the CNP transmission system is 8.75 outages per 100 km-year, far greater (730% higher) than the CEA average frequency of 1.0534 outages for 100 km-year. With respect to the comparison against the Hydro One customer delivery point performance standards, CNP's transmission system performance for

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[11] Response to Board Staff IR SI-1, p. 5
[12] Exhibit B, Tab 3, Schedule 1, p. 10
[13] Exhibit B, Tab 3, Schedule 1, p. 11

2002-2008 fell below both the minimum average performance standards for both frequency and duration of outages.[14]

The data reflects a trend over time and captures the fact that there will be periods of good reliability and periods of poor reliability. The Board Staff, however, chose instead to be selective with respect to the time horizon and to focus only on the last three years where through good fortune CNP has been outage free. Board Staff submitted that the Board should give more weight to the last three years. However, in support of this position, Board Staff has provided no facts or an industry basis as to why the Board should only look at the last three years of data. Based upon Board Staff's reasoning, if CNP had three poor reliability years and a number of good years, then the poor performance of the system would not be in question notwithstanding what the overall historical period reflects. Over the period from 2002 to 2008, CNP has consistently maintained and operated the transmission system and has not materially altered or made improvements to the system.[15] With this in mind it is CNP's view that the historical performance of the entire period provides a more realistic indication of what can be expected in the future. CNP notes that both the IESO Local Area Criteria and the Hydro One Customer Delivery Point Standards derive baselines from analyzing a 10-year period. This underlines the fact that reliability performance is better assessed over a long time period.As a result, it is not reasonable to look only at the last three years of history which coincidentally facilitates the Board Staff's argument for denial of approval of the Project.

Recent good performance does not excuse a transmission operator such as CNP from the obligation to continue to improve reliability and to take preventative steps to avoid outages. The fact remains that the CNP system does not have a readily available supply in the event of a loss of primary supply from Hydro One. As a result, it is reasonable to consider the potential exposure of the system to risk. In CNP's case, portions of the transmission system consist of lines along wooden poles located in road allowances where there is a risk that vehicular

[14] Exhibit B, Tab 3, Schedule 1, p. 12
[15] Response to Board Staff IR I-1.0(x), p. 11

accidents can cause severe disruptions.[16] The wooden poles are also subject to the possibility of burning due to insulator tracking.[17] Historically, these have been the source of outages on the CNP system. As noted above, a number of similar events have occurred in the last three years. While each of these incidents could very well have given rise to lengthy outages to CNP's entire transmission system, by virtue of good fortune CNP was able to avoid those outages.[18] Notwithstanding that the outages were avoided, the risks remain to the CNP transmission system. Board Staff seems to assert in its submissions that CNP has undertaken certain measures prior to 2007 which may have improved the reliability of the transmission system. However, as noted in evidence, CNP indicated that implementation of more systematic line inspection and vegetation management programs may have reduced some risks but there is no way to quantify the relative contributions, if any exist. CNP also noted that a large portion of its system is subject to risk of vehicular accidents and due to the nature of the system, it would only take one such accident or incident to dramatically change CNP's performance for a given year.[19]

With respect to outage duration and the availability of back-up supply from USNG, Board Staff incorrectly asserts that CNP's limited back-up supply from USNG can restore the supply to the CNP system in less than four hours. Based on Board Staff's submissions, the Board Staff relies on the response to Board Staff supplemental interrogatory SI-4. Nowhere in supplemental interrogatory SI-4 does CNP assert that the back-up supply from UNSG could restore supply in less than four hours. Throughout its evidence, CNP has been consistent in stating that the restoration of supply through the Emergency Tie Line would take a minimum of four hours and likely longer.

The implication of Board Staff's approach is that reliability improvements can only be reactive and occur when there is clear harm arising from system outages within the present period or the very recent past. The Board Staff's approach suggests that a transmitter should ignore historical

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[16] Response to Board Staff IR I-1.0(x), p. 11

[17] Ibid.

[18] Response to Board Staff IR I-1.0(x), p. 11; SI-1, p. 4

[19] Response to Board Staff IR I-1.0(xi), p. 12

trends notwithstanding that there have been no fundamental changes in the transmission system and should not take steps to alleviate threats to reliability especially where the solution is to provide continuous supply in the event of the loss of a single element. CNP submits that Board Staff's approach is not in accordance with good utility practice and would not provide for good overall planning of the system.

In taking a very narrow approach Board Staff fails to consider the facts relating to frequency, duration, loss of load probability and customer impacts which are relevant to determining that the Project is justifiable on a case by case basis in accordance with good utility practice. In particular, Board Staff ignored that:

- with the exception of only a few minor circumstances, the CNP transmission system's configuration results in outages that are system-wide outages and which affect over 15,000 end users in the service territory, reflecting a population of approximately 30,000 people. CNP's service territory is primarily urban with a diverse group of end users including residential, commercial, institutional and industrial.

- CNP filed as evidence, in response to Board Staff Interrogatory SI-3, letters from end users expressing concerns relating to the need for reliability. Among the end users is the Buffalo and Fort Erie Public Bridge Authority, which operates the Peace Bridge, one of the busiest and most economically significant border crossings between Canada and the United States (Exhibit B, Tab 4, Schedule 1, p. 15). The Peace Bridge is important for trade and houses vital security and immigration related facilities, with estimated trade across the Peace Bridge being valued at US $3.4 million per hour.

- CNP provided evidence, which was not refuted, of the local economic implications of CNP's reliability problems on its system end users. CNP considered the value of lost load as the basis for qualifying the benefit from the Project of avoiding outages. This approach, conservatively applied, determined that the value of avoiding outages has a present value of $16.1 million.

- As further discussed below, without improvement in the transmission system's reliability, prospective renewable energy generators are reluctant to connect to the existing CNP transmission system.

- As noted, CNP's transmission system's performance has been generally below average relative to CEA benchmarks and the Hydro One delivery point performance standards. In addition to the system outages listed at Exhibit B, Tab 3, Schedule 1, Figure 3.2, in recent

years there have been a number of similar events that gave rise to significant risks of lengthy, forced outages.

- The emergency tie line linking the CNP transmission system and the USNG system has a limited backup capability. The emergency tie line is no longer capable of meeting average monthly peak load levels on the CNP system. The emergency tie line cannot be engaged without there first being significant interruptions to supply, since it takes a minimum of 4 hours to complete the coordination and switching over of this alternative supply source in a manner that does not cause adverse impacts on systems in New York and Ontario.

- The implementation of the Project will enable CNP to consistently achieve and improve with respect to benchmarks and the threat to CNP's reliability, particularly by way of the total loss of supply due to the loss of a single element, would be eliminated and the impact on and costs to end users would be avoided.

- Although CNP carries out a wide range of activities and is always considering improvements that may enhance system performance, no such activities or improvements would address the basic reliability problem of the system not being able to withstand the loss of its primary supply source.

Benefits

CNP calculated the overall net present value of the Project as $4.27 million. This was based on benefits associated with improved reliability of the CNP transmission system (or $16.1 million), benefits due to increased intertie capacity ($30.5 million) and benefits due to generation maintenance scheduling arising from increased intertie capacity ($3.4 million).[20] None of these calculations were contested in the proceeding or refuted by any of the parties. As a result, the Board should accept the calculations of the benefits as provided.

Board Staff has expressed concern as to whether the Project is discretionary or non-discretionary, particularly with respect to the application of the N-1 contingency criterion. As noted, CNP has conceded that the NERC standard and obligations under the Transmission System Code in that regard do not apply to it. However, CNP is of a view that in accordance with good utility practice it needs to develop the Project to improve reliability and to remove threats to reliability.

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[20] Exhibit B, Tab 4, Schedule 1, p. 5, 10-14

CNP submits that whether the Project is considered discretionary or non-discretionary the Project is justifiable and should be approved by the Board. CNP submits that it has established: (i) the need for the Project, (ii) quantifiable benefits that provide a positive net present value, (iii) a number of qualitative benefits[21] and, (iv) that the Project is better than other alternatives.[22] CNP notes that the latter three aspects have not been challenged in this proceeding. As such the Project is in the public interest with respect to pricing and the reliability and quality of electricity service.

The only issue raised in Board Staff's submissions in regard to benefits was that CNP did not undertake consideration of alternative interconnection projects in the Niagara area or elsewhere in the province. CNP submits that Board Staff's assertion should be given no weight. The Project should not be segmented and has to be considered as a whole, together with all of the benefits that arise from the Project. If consideration of alternatives on a segmented basis were to occur, it is CNP's submission that the results of such a study would be of very limited use to the Board since the outcomes would be related to highly hypothetical projects and provide analysis that is too remote for purposes of providing project comparisons. This is because CNP would have to consider either the construction of new inter-connections or the refurbishment of existing interconnections. With respect to interconnections elsewhere in Ontario, such projects will be outside the area currently served by CNP, would involve jurisdictions other than New York, and would require interconnections to systems in Ontario that are not under the control of CNP. In addition, consideration of changes to existing inter-connection facilities at Niagara Falls would also be of limited use, since CNP has no ability to control these facilities.

In any event, as indicated in Hydro One's response to interrogatory SI-25, the approximate cost of any increased intertie capacity related to those connections would exceed the project cost put forward by CNP.

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[21] Exhibit B, Tab 4, Schedule 1, p. 15-21

[22] Exhibit B, Tab 5, Schedule 1

Renewable Generation

Contrary to Board Staff's view, in response to SI-1, SI-2 and SI-3, CNP provided clear evidence of why renewable generators would be concerned about connection to CNP's transmission system. CNP stated that concerns had been expressed to it by way of oral communication, either from face-to-face meetings or by telephone. No evidence was led by interveners or Board Staff to challenge the veracity of CNP's position. This, coupled with the system and economic reasons set out in CNP's interrogatory responses, provides sufficient evidence of the concerns of renewable generators. In response, the Board Staff only provided its opinion which was based on neither communication with project proponents or any material assessment of the system or economic consequences of outages to renewable generators.

Alternatives

Board Staff asserts that based upon CNP's evidence there may be opportunities for improving the reliability of supply by improvements to the back-up supply from the USNG by some relatively minor line upgrades and/or enhancements that may reduce the switching time to something less than four hours. Board Staff provides no evidence reference in support of this statement. As noted in Hydro One's response to Interrogatory SI- 22, Hydro One takes more than four hours to activate a backup supply from Hydro One's own system, which is wholly under its control. It is, therefore, unreasonable for Board staff to assert that CNP can reduce its switchover time to a different transmission system in another jurisdiction where co-ordination amongst various operators and control authorities in both Canada and the US is required. As previously noted by CNP, no activities or improvements would address the basic reliability problems of the system not being able to withstand the loss of its primary supply source. As previously indicated by CNP[23]:

- With respect to the two circuits on the limiting Queen St. Tower to High Tower section, where only one of the circuits is currently energized, even if the second circuit was

[23] CNP Supplemental and Restated Submissions, p. 20

upgraded to 60-cycle, re-insulated and energized, the basic reliability problem of not having N-1 contingency would not be mitigated (See responses to 1.0(vi) and 2.0(ii)(b));

- An upgrade to the limiting transmission line section between Queen St. Tower and High Tower would improve line capacity by a small margin and would therefore increase the capacity of the Emergency Tie Line by a small margin, but the Emergency Tie Line would still provide inadequate emergency backup supply and would still take at least 4 hours to engage. Such an upgrade would not address the basic reliability problem of not being able to withstand the loss of a single element (See response to 2.0(ii)(a)); and

- The minimum 4-hour long procedure for engaging the Emergency Tie Line in the event of a forced outage, along with the similar process for switching back to the primary supply cannot be condensed or shortened. As discussed above in 3(a) above, this amount of time is needed in order for CNP to carry out its initial response activities (or await the completion of HONI's initial response for an outage on HONI's system), as well as for necessary communications and coordination, for USNG to perform the necessary operations to prepare its system to supply Fort Erie load, and for CNP to complete its 31-step switching procedure.

Project Economics and Cost Responsibility

CNP notes that according to the Board Staff's *Minimum Filing Requirements for Transmission and Distribution Rate Applications and Leave to Construct Projects*,

> "...a transmission project may be subject to any or all three of these regulatory settings. Avoiding duplication of regulatory review is therefore critical. The conclusions of the Board specific to a project that are made in one regulatory setting will not be re-evaluated in another setting"(p.27).

As such, the need and the costs presented by CNP in respect of the Project, other than with respect to cost overruns, should not be re-evaluated in a subsequent rate proceeding. The purpose underlying the Board's filing guideline is that projects found to be in the public interest as part of a leave to construct proceeding would continue to be part of the public interest at the time that costs associated with the Project are considered in a rates proceeding. As a result, CNP does not agree with Board Staff's submission that CNP will have to re-establish in a rates proceeding that any amounts expended are for the benefit of the utility customers and are reasonable.

With respect to discussions with USNG, in response to Board Staff interrogatory SI-6, CNP clearly indicated that based upon discussions with USNG, USNG had no reason to carry out the USNG portion of the Project on its own since the USNG system already meets the N-1 contingency criterion and does not require any of the facilities associated with the Project. This response from USNG is consistent with the responses that Hydro One has received from USNG. It is important for the Board to note that USNG is also subject to its own regulatory parameters and as such, it will not undertake projects and expend capital unless the projects are in the benefit of USNG's customers. As an interconnected transmitter, CNP must work within the regulatory parameters confronting USNG and, unlike the presumption made by Board Staff, must recognize that any arrangement entered into is not a typical commercial transaction. Nevertheless, CNP will continue with its dialogue with USNG as it works to establish an interconnection agreement and finalizing arrangements with USNG. However, since results of these discussions are not wholly within the control of CNP, obtaining a cost-sharing result that is different than what CNP has proposed in its evidence should not form a condition of a leave to construct order from the Board. At most, CNP could report back to the Board as to the nature and progress of any discussions with USNG.

Regulatory Jurisdiction

Board Staff suggested that as a condition of any order granted by the Board, CNP be required to obtain all necessary federal regulatory approvals and all necessary US approvals. CNP has from the outset indicated in its evidence the need to obtain approval from the National Energy Board as well as other US regulatory approvals. As a result, CNP agrees with establishing such a condition.

Board Staff also suggests that in granting approval the Board make it clear that the approval pertains only to portions of the Project within Ontario that are under the Board's jurisdiction. CNP submits that although part of the line falls under the jurisdiction of the Board and part of the line falls under the jurisdiction of the National Energy Board, the Project operationally is integrated and as such, its need, costs and benefits need to be considered as a whole. CNP notes

that that portion of the Project relating to the reinforcement of two kilometers of lines A36 and A37 between CNP Station No. 11 and Hydro One's Murray TS form part of the Board's jurisdiction. This portion of the Project is integral to any work undertaken in respect of the international power line. The converse also applies. It would not advance the regulatory process for the Board to consider only that portion of the Project that falls under its jurisdiction.

Environmental Assessment

The Board Staff suggests that CNP be required to obtain all necessary provincial, federal and environmental approvals before construction commences as a condition of the Board's approval. CNP agrees with this condition subject to the additional caveat that the condition state "where necessary, CNP will obtain all necessary provincial, federal and environmental approvals."

Aboriginal Consultations

CNP agrees with Board Staff's suggestion that any approval be conditional upon CNP providing the details of the Ministry of Aboriginal Affairs' response to the inquiry as to whether there are any existing or asserted aboriginal or treaty rights in the vicinity of the Project.

Reply to IESO Submissions

In its submission, the IESO stated on Page 2 of 5 that: "... we agree that the enhanced supply capability and resulting reliability performance will be beneficial to CNP customers; however, it is the IESO's view that this capability would be incremental to the minimum local area reliability performance criteria that CNP is required to meet..." These two IESO statements are contradictory. On the one hand, the IESO indicates that the Project will benefit CNP customers. The IESO then implies that the Project should not be done because of marginal benefit to its reliability criteria. Since the basic objective of reliability analysis is to assess impact to end-users, these statements by the IESO call into question the relevance of its Local Area Criteria. In its evidence, CNP demonstrated clearly that the majority of outages experienced between 2002-2006 would have been avoided with a synchronous tie. It is counter-intuitive for the IESO to agree with that benefit but then claim that it has negligible impact on local area criteria.

As noted above, the reinforcement of two kilometers of the transmission lines A36 and A37 requires the approval of the Board under Section 92 of the *Ontario Energy Board Act*. As a result, the application brought by CNP is appropriately constituted and is subject to the Board's jurisdiction. As a result, CNP disagrees with the submission by the IESO questioning whether the current leave to construct application is appropriate. It is CNP's submission that it is incorrect for the IESO to make such an assertion.

CNP also submits that it is incorrect for the IESO to assert that the jurisdiction of the NEB and the Board are mutually exclusive. Although CNP must seek approval from two energy regulatory boards, it is incorrect to assume that those regulatory boards are competing in their jurisdiction. In the case of the NEB and the Board, there are areas of overlapping jurisdiction. For example, for the international power lines in Ontario the costs of operation and maintenance and return on capital are recovered through rates while changes to those interconnections are subject to NEB certificates.

CNP has acknowledged from the outset that approval from the NEB is required. This approval is not unlike any other regulatory approval that a proponent would be required to obtain as part of a leave to construct. In those circumstances costs for obtaining such approval and any capital arising as a result of that approval are typically recoverable through rates. The equivalent situation exists in the case of the Board and the NEB.

CNP is not asking the Board to usurp the NEB's jurisdiction in considering the operational aspects of the intertie. However, the Project is an integrated project with benefits extending to Ontario end-users and having operational implications for the IESO and Hydro One, both of which are under the Board's jurisdiction. As such, the Board will have responsibility for approval of the reinforcement of the Project as well as the subsequent approval of any recovery of cost for the Project as a whole. As a result, it is completely and wholly acceptable for the Board to consider the Project in its entirety.

Reply to OPG Submissions

CNP submits that it is also committed to continue to work expeditiously with both OPG and HONI in respect of resolution of the land issue described in OPG's submissions.

All of which is respectfully submitted by,

Charles Keizer, counsel for the Applicant

Jonathan Myers, counsel for the Applicant