Ontario Energy Board

Commission de l'Énergie de l'Ontario

EB-2009-0283

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 transmission facilities in the Niagara Falls / Fort Erie Area.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Cynthia Chaplin
Vice Chair

Ken Quesnelle
Member

DECISION

March 29, 2010

This is an application by Canadian Niagara Power Inc. ("CNP") under section 92 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c.15, Schedule B requesting an order from the Board granting leave to construct transmission facilities in Niagara Falls and Fort Erie. For the reasons set out below the Application is denied.

Background

CNP is a licensed Ontario transmitter which operates a transmission system in the Niagara Falls and Fort Erie area which includes an international connection to US National Grid's ("USNG") transmission system in Buffalo, New York, under a National Energy Board permit.

This Application involves assets in both Ontario and New York. The Ontario assets involve the following:

(a) reinforcing 2 km of CNP's 2-circuit 115 kV line (circuits A36 and A37) extending from Hydro One's Niagara Murray TS in Niagara Falls, Ontario;

(b) replacing 0.5 km of conductor on CNP's existing 115 kV line from Bertie Hill Tower to Queen Street Tower in Fort Erie;

(c) replacing approximately 0.66 km of conductor on the existing 115 kV line from the Queen Street Tower in Fort Erie, across the Niagara River; to the High Tower adjacent to Terminal House B in Buffalo; (Note: CNP's ownership of this line section ends at the midpoint of the Niagara River crossing.)

(d) installing a 115 kV circuit breaker adjacent to the A36N/A37N taps out of Niagara Murray TS;

(e) installing two 115 kV circuit breakers at CNP's Station #17 in Stevensville; and

(f) installing a 150 Megavolt Ampere ("MVA") phase shifting transformer and voltage regulator at CNP's Station #18 in Fort Erie.

The New York assets involve the following:

(a) constructing a 115 kV, 3-breaker ring station at USNG's Switch 998 in Buffalo, New York; and

(b) replacing 10 km of conductor on the existing 115 kV line from USNG's Huntley Station to a new 115 kV Paradise Station being planned by USNG in Buffalo, New York.

The location of both the Ontario and New York assets is set out in the map described as Schedule A.

The Test

Section 96(1) of the Act provides that if, after considering an application under section 92 of the Act, the Board is of the opinion that a proposed work is in the public interest, then the Board shall make an order granting leave to carry out the work. Section 96(2) of the Act states that in considering the public interest, the Board shall only consider the interest of consumers with respect to prices and the reliability and quality of electricity service, and, where applicable (and in a manner consistent with the policies of the Government of Ontario) the promotion of the use of renewable energy sources.

The Issues

In this Application, the main issues the Board must decide are as follows:

(a) The scope of its review in the context of a project that has multi-jurisdictional regulatory oversight.
(b) Is the Project needed?
(c) What are the economic benefits?
(d) Have appropriate alternatives been considered?
(e) Does the Project promote renewables?
(f) What impact will the Project have on transmission rates?
(g) Have the Environmental Assessment requirements been met?
(h) Have the System Impact Assessment and Customer Impact Assessment requirements been adequately addressed?
(i) Have the land-related matters been addressed?
(j) Have the appropriate Aboriginal consultations been carried out?

Jurisdiction

There are two jurisdictional issues in this proceeding. The first arises due to the fact that a section of the transmission system within the project operates according to terms and conditions established by the National Energy Board under its authority regarding international power lines. The second jurisdictional issue relates to the question of cost responsibility and Ontario ratepayers bearing the cost of assets located in the United States.

The first issue pertains to the scope and purpose of the Board's review given the multi-jurisdiction footprint of the project. CNP's request for orders of the Board identified facilities that are under the regulatory oversight of the NEB. This attracted submissions from the IESO and Board Staff.

On December 29, 1959 CNP received a Certificate of Public Convenience and Necessity from the National Energy Board ("CC-22") governing the construction and operation of the international power line it operates. That Certificate was revoked on May 14, 1999, 40 years later, when the NEB issued CNP permit EP137 which was an 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 (the "International Line"). EP137 contains a number of the terms and conditions on which the NEB authorization to reconstruct and operate the International Line was granted.

The particulars include:

> Section 6 from NEB EP137 states that: "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). "
>
> Section 7 from NEB EP137 also states that:" 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. "

As part of this Application, CNP has applied to the Board for an order or orders granting:

a) leave to reinforce 2.0 km of line (being CNP's lines A36 and A37) to accommodate the maximum capability of an upgraded interconnection between CNP's transmission system in Fort Erie, Ontario and US National Grid's ("USNG") transmission system in Buffalo, New York;

b) Leave to Construct and reinforce 0.5 km of conductor from the Bertie Hill Tower to Queen Street Tower in Fort Erie with 795 MCM conductor to provide capacity of at least 150 MW; and

c) Leave to Construct and reinforce 0.66 km of conductor from the Queen Street Tower in Fort Erie, Ontario, across the Niagara River; to the High Tower forming part of the USNG transmission system in Buffalo, New York.

The facilities associated with the requested orders in b) and c) above form part of the international line that is operated under the authority of the NEB.

Board staff submitted that any order granted by the Board should be conditional on CNP obtaining all necessary federal regulatory approvals and all the necessary U.S. approvals, before construction starts. Board staff also submitted that it appears that the international portion of the line lies under NEB jurisdiction, and therefore does not require an OEB leave to construct approval.

The Independent Electricity System Operator ("IESO") questioned the appropriateness of the current leave to construct application and its associated order(s) sought with respect to CNP's international power line. The IESO submitted that any leave to construct related to CNP's international power line is subject to the NEB's review and approval and not the Ontario Energy Board.

The IESO, in its submissions of December 18, 2009 states;

> *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.*

In response, CNP submitted that it has acknowledged from the outset that approval from the NEB is required and that that approval is not unlike any other regulatory approval that a proponent would be required to obtain as part of a leave to construct.

CNP submitted that although part of the line falls under the jurisdiction of the OEB and part of the line falls under the jurisdiction of the NEB, the Project operationally is integrated and as such, the need, costs and benefits should be considered as a whole.

In specific reference to the IESO's submission CNP argued that:

> *Although CNP must seek approval from two energy regulatory board's 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 cost of operation and maintenance and return on capital are recovered through rates while changes to those interconnections are subject to NEB certificates.*

The second jurisdictional issue relates to the question of cost responsibility and Ontario ratepayers bearing the cost of assets located in the United States.

The total Project costs are estimated to be approximately $30 million. The amount related to the work required in New York is approximately $16 million. CNP proposes that the Project costs, including the capital contribution that CNP will make to USNG be ultimately added to rate base and recovered through the network charge of the Uniform Transmission Rates.

Board staff submitted that due to the fact that this proceeding is not a rate case they would make no submission regarding the ultimate recovery of any costs related to the Project. However, they submitted the onus lies on the applicant in a rates case to demonstrate that any amounts closing to rate base are of benefit to the utility's customers irrespective of whether the costs relate to a leave to construct application or not.

In response, CNP cited the following excerpt from the Board'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).*

CNP submitted that 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 costs associated with the project are considered in a rates proceeding. CNP argued that, other than cost overruns, the need and costs presented in this proceeding should not be re-evaluated in a subsequent rate proceeding.

Board Findings – Jurisdiction

The Board agrees that jurisdiction to approve the International Line component of the Project lies with the NEB, and not the Board. Similarly, the Board is of the opinion that it has no jurisdiction to authorize the construction of any works that are located solely in the United States. The Board's section 92 jurisdiction does cover the parts of the Project within Ontario that do not form part of the International Line. CNP agreed in its reply argument that portions of the Project were under NEB jurisdiction, although it argued

that the Project was operationally integrated and that its need, costs, and benefits should therefore be considered by the Board as a whole.

The Board's accepts the CNP position that the Board's review should consider the need, costs, and benefits of the Project as a whole and has provided its findings below based on that scope of review. However, the Board's determinations on the merits of the Project as a whole do not alter the breadth of its authority. The Board would not grant the two of the three orders requested by CNP that pertain to the International component irrespective of its determinations on the Project merits. Board approval for leave to construct the components which are within the Board's jurisdiction would be conditional on the proponent receiving the requisite approvals from the NEB and any required US approvals. This recognizes that construction of a single component of a multi-jurisdictional project would not be justified.

With regard to the cost responsibility and approvals in that regard, the Board notes that the issue of recoverability of costs incurred in the United States is a unique issue. It raises ratemaking considerations beyond those typically addressed in a Leave to Construct proceeding. In addition, the recovery of the costs associated with works in the United States may raise jurisdictional issues. The ratemaking issues related to the costs of the International Line and works in the United States have not been fully exposed in this proceeding in any event. The Board concludes that given the scope and nature of these issues they may be better addressed in a rates proceeding.

Given the Board's findings on the application, it is not necessary to address these issues further at this time.

Reliability Requirements

CNP must demonstrate the need for this project. In doing so the Applicant argues that the investment is necessary to meet certain reliability requirements, to achieve certain economic benefits and to accommodate renewable generation. The most important issue that the Board must consider are the arguments regarding reliability requirements.

CNP submits that the average monthly peak load on CNP's transmission system was 48 MW in 2005, 49 MW in 2007 and 47 MW in 2008. The annual peak load was 56 MW in 2008 and exceeded 48 MW since 2002. CNP forecasts its load to grow at an annual rate of 0.5%. CNP has a normal 115 kV supply via a connection to the Hydro One system at Niagara Murray TS and an emergency backup supply via a 115 kV line

connected to USNG's system in New York. The emergency backup supply has a limiting 0.66 km line section (the section that crosses the Niagara River) that is rated 48 MW. There is also a 53 MW limitation on the emergency tie that is due to capacity limitations on the USNG system.

CNP compared the performance of its transmission system with: (i) the Canadian Electricity Association ("CEA") Transmission Benchmarking data (for 2002-2006); (ii) Hydro One's Customer Delivery Point Performance Standards ("CDPPS") for 2002-2008; and (iii) the IESO Performance Benchmarks. CNP submits that its current transmission system does not provide adequate reliability of supply for the Fort Erie load. CNP also submitted that reinforcement of the system so that it meets the N-1 contingency criterion is the only way to improve the reliability of supply.

CNP originally submitted that the need to meet the N-1 contingency criterion was based on the requirements under NERC Standard TOP-002-2 as well as well as the TSC requirement for a transmitter to operate and maintain its transmission facilities in accordance with "good utility practice" [1]. Following information provided by the IESO, CNP conceded that NERC Standard TOP-002-2 does not apply to the CNP transmission system since it is not part of the bulk transmission system. That left the principle of "good utility practice" as the only reliability-based standard that CNP relied on for justification of its proposal to reinforce its system to meet the N-1 contingency criterion[2].

Section 5.1.2 of the Board's Transmission System Code ("TSC") that states the following:

> *A transmitter shall operate and maintain its transmission facilities in compliance with this Code, its licence, its operating agreement with the IESO, the Market Rules, all connection agreements, good utility practice, the standards of all applicable reliability organizations and any applicable law.*

Section 2.0.33 of the TSC defines "good utility practice" as follows:

> *"good utility practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility*

[1] Exhibit A, Tab 3, Schedule 1, Page 8
[2] CNP's Responses to Board Staff Supplemental Interrogatories, December 8, 2009, Page 2

> *industry in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of 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 good business practices, reliability, safety and expedition. Good utility practice is not intended to be limited to optimum practices, methods or acts to the exclusion of all others, but rather to include all practices, methods or acts generally accepted in North America.*

Based on the TSC definition of "good utility practice", the Board considers a key component of "good utility practice" to be that the practice is accepted by “a significant portion of the electrical utility industry in North America…” CNP did not provide any specific evidence that meeting of the N-1 contingency criterion for systems similar to CNP’s is practiced by any other utility. In response to a Board staff supplementary IR, Hydro One, Ontario’s largest transmitter, submitted that it could not identify any cases in its system where a transmission line carrying a load less than 75 MW (as is the case with CNP’s system) meets the N-1 contingency criterion. Furthermore, Hydro One provided a sampling of sixteen 115 kV transmission lines that do not meet the N-1 contingency criterion. The peak load levels on the sixteen lines were in the range of 10 - 131 MW with an average of about 63 MW per line. The peak load on eight of these lines exceeded 56 MW which was the peak load on the CNP system in 2008.

Board Findings - Reliability

In the Board’s view, it can be reasonably concluded from the above, that Hydro One does not provide for meeting the N-1 contingency criterion in situations similar to CNP’s transmission system. In fact, the evidence shows that some of Hydro One’s transmission lines carry significantly higher load than CNP’s and still do not meet the N-1 contingency criterion. Hydro One could not identify even one 115 kV transmission line in its system with load level less than 75 MW that met the N-1 contingency criterion.

CNP submits that there is a significant operational difference between the Hydro One lines and CNP's line in that “Presumably in most circumstances with the Hydro One lines the transfer to a back-up source could be done "live"…” and also the fact that “CNP’s interconnection with USNG is not synchronous….” This suggests that it would take longer on the CNP system to restore supply to the load via the emergency backup. However, Hydro One’s evidence indicates that of the sixteen 115 kV transmission lines noted above, fourteen had provisions for partial load restoration requiring more than 4

hours and the other two had no restoration possible. Based on this, the outage times on the Hydro One and CNP systems appear to be similar in most cases and likely higher on the Hydro One systems that have no backup for load restoration.

The issue of the need for improved reliability of the CNP transmission system is further addressed by the IESO's evidence which indicates that for transmission systems such as CNP's system, the IESO uses two measures to assess the reliability performance of the transmission system. One measure is based on the load restoration period and the other is a measure of the unsupplied energy. The IESO submitted that the CNP transmission system meets the reliability requirements on both counts. CNP submitted that the Board can consider the Project on a case by case basis in accordance with good utility practice. CNP further submitted that the Board should consider the nature of the load served, the reliability history of the lines, reliability benchmarks and financial consequences of outages.

CNP submitted that its transmission system outage frequency for the 2005-2008 period is 1.5625 outages per 100 km per year, which is 48% higher than the CEA reported average of 1.0534 outages per 100 km per year. The Board notes that the actual number of forced outages on the CNP system during that period was two which equates to an outage rate of 0.5 outages per year. CNP expressed this outage rate in terms of outages per 100 km per year which equates to 1.5625 outages per 100 km per year, based on the 31 km of transmission lines in the CNP system.

While CNP's approach is mathematically correct, its relevance is diminished because of the small size of the CNP system, which at 31 km is less than a third of the 100 km basis of the metric and much smaller than most of the systems incorporated in the CEA's analysis. The Board would not rely on this analysis unless there was evidence that this shortcoming could be addressed. This might be possible, for example, through an analysis over a longer time period.

CNP calculated the 3-year rolling averages for outage frequency and duration in the period 2002-2008[3]. CNP also calculated the "average of the 3-year rolling averages" in the same period. The Board notes that based on the "average of the 3-year rolling averages", CNP's system performance meets or exceeds Hydro One's CDPPS "Minimum Standard of Performance" for one of its delivery points (Station 17) and is

[3] CNP's Responses to Board Staff Interrogatories, October 28, 2009, Page 39 (Appendix "A")

marginally deficient for the other delivery point (Station 18). The Board also notes that CNP's system performance based on the 3-year rolling averages in 2007 and 2008 meets or exceeds both the "Standard (Average) Performance" and the "Minimum Standard of Performance" contained in Hydro One's CDPPS.

The Board notes that Section 2.1.1 of Hydro One's CDPPS states that "the minimum CDPP standards of performance, for each of the four load groups or bands, are used as triggers by Hydro One. The trigger occurs when the three-year rolling average of the delivery point performance fall below the minimum CDPP Standard …" In the absence of an approved CDPPS for CNP, the Board considers Section 2.1.1 of Hydro One's CDPPS to be a reasonable guide for CNP's system.

CNP submitted that under the IESO's Local Area Performance benchmarks, the performance of a transmission system is rated as "Red", "Yellow" or "Green" based on system performance[4]. Red indicates poorer performance than threshold and Green indicates better than threshold performance. Since 2002, the rating 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). In the Board's view, CNP did not provide sufficient evidence regarding the relevance of the above-noted ratings in the form of specific guidelines or criteria to ascertain the adequacy of the CNP's transmission system or the need to provide improved reliability.

CNP filed a number of letters[5] from "end users" which provide comments regarding their electricity supply. In the Board's view, these letters generally describe the customer's operations, comment on the impact that a major power outage would have and express support for an improvement in reliability of supply but do not provide conclusive evidence that their existing reliability of supply is inadequate and needs to be improved.

The Board finds that based on the evidence, the Project cannot be justified on the basis of the need to improve the reliability of supply to the Fort Erie load. Therefore, the Board considers the Project to be in the "Discretionary" need category, based on Section 5.2.2 of the Ontario Energy Board's "Filing Requirements for Transmission and Distribution Applications". As a "Discretionary" project, the Board assumes that the Project must be justified on economic grounds and that "doing nothing" is a viable option.

[4] Exhibit B, Tab 3, Schedule 1, Page 10
[5] Responses to Board Staff Supplemental Interrogatories, December 8, 2009, Appendix "B"

Economic Benefits

The total cost of the Project is estimated to be $33.2 million, broken down as follows:[6]

Project Development	$ 1.1 million
Station Work in Ontario	$ 13.6 million
Line Work in Ontario	$ 0.2 million[7]
Total Work in Ontario	**$ 14.9 million**
Station Work in New York	$ 6.0 million
Line Work in New York	$ 10.0 million
Total Work in New York	**$ 16.0 million**
Total Cost Excluding AFUDC	**$ 30.9**
AFUDC[8]	**$ 2.3 million**
TOTAL PROJECT COST	**$ 33.2 million**

The following table provides a summary of the estimated economic benefits claimed in the evidence[9].

		NPV over 30 years ($ million)	
		(based on pre-filed values)	(modified based on OPA Comments)
(a)	Benefits associated with improved reliability of supply to the Fort Erie load	16.1	16.1
(b)	Benefits to Ontario due to increased interconnection capability between Ontario and New York	36.6	30.5

[6] CNP's Responses to Board Staff Interrogatories, October 28, 2009, Page 21

[7] Includes a 0.66 km line section from CNP's Queen Street Tower, across the Niagara River to USNG's High Tower in Buffalo

[8] Allowance for Funds Used During Construction

[9] Exhibit A, Tab 3, Schedule 1, Pages 12-14

(c)	Benefits due to improved maintenance schedules	3.4	3.4
	Total Benefits	**56.1**	**50.0**
	Total Costs[10]	**45.7**	**45.7**
	NPV	**10.4**	**4.3**

With respect to the interconnection benefits in (b), the IESO submitted[11] that it assisted CNP in outlining areas of potential benefits and approaches for assessing those benefits and generally agrees with the areas identified by CNP as having potential benefits for the market; however, the IESO did not undertake a comprehensive study to quantify the market benefits of the Project and states that "the above-noted benefits should not be positioned or viewed as "confirmed" by the IESO".

CNP submitted that the interconnection benefits were derived from avoided cost data used by LDCs for assessing the value of CDM programs. In response to Board Staff Supplementary Interrogatory SI-7, CNP was asked to request that the OPA confirm this analysis.

CNP received the OPA's reply to this inquiry on December 3, 2009 in which the OPA stated that "The use of avoided costs for demand response (DR) for this case is not entirely accurate because the value of demand response takes into account the value of reduced reserve margin requirements and losses." As a result, "the value of demand reduction is expected to be about 20 percent higher than the value of additional supply". Since two different supply sources are being compared in the CNP proposal (rather than supply vs. DR), this 20 percent savings associated with reserve margins and losses would not occur. The OPA therefore recalculated the benefits and arrived at a 30 year NPV of $30.5M (instead of $36.6M).

[10] Based on the NPV of the Transmission Rate Impact over the 30-year period 2013-2042
Exhibit B Tab 5, Schedule 1, Page 3; and
Responses to Board Staff Supplemental Interrogatories, December 8, 2009, Page 29

[11] IESO Reply Submissions, December 18, 2009, Page 2

Board Findings – Economic Benefits

The Board concludes that no weight can be given to the original estimate of the net benefits ($10.4 million) given the revision necessary to reflect the OPA's analysis. The Board is also of the opinion that due to uncertainties in the costs and benefits, the relatively low expected NPV of $ 4.3 million is not sufficient to justify the project on economic grounds. This NPV could diminish to zero or become negative as a result of minor changes in assumptions or inherent inaccuracies in the estimates. For example, CNP submitted[12] that the accuracy of the estimated cost of the Project is +/-25%. Because the Project is considered "discretionary", it must be justified on economic grounds. This means that the Project would have to be compared to other alternatives which may provide similar or greater benefits, including alternatives outside of CNP's jurisdiction.

Other than rough estimates for some options provided by Hydro One (in response to interrogatories), CNP understandably did not consider alternatives elsewhere in Ontario since that would not provide improved reliability of supply to the Fort Erie load, which CNP considered the main driver for the Project justification. The Board concludes that the Project cannot be justified on the basis of achieving economic benefits.

Renewable Energy Generation

CNP submitted[13] that it believes potential renewable energy generators would be reluctant to connect to the existing CNP transmission system and reiterates its reliability concerns to support that view. However, it did not provide any direct evidence from prospective generators other than stating that "concerns had been expressed to it by way of oral communication, either from face-to-face meetings or by telephone".

Board Findings – Renewable Energy Generation

While the Board acknowledges that enabling the connection of renewable energy projects to transmission and distribution systems is a key objective of the Green Energy and Green Economy Act, based on the evidence provided, the Board is not convinced

[12] CNP's Responses to Board Staff Interrogatories, October 28, 2009, Page 21

[13] Exhibit A, Tab 3, Schedule 1, Pages 11-12
Responses to Board Staff Supplemental Interrogatories, December 8, 2009, Pages 3-7

that not meeting the N-1 contingency criterion would discourage prospective generators from seeking connection to CNP's transmission system.

Qualitative Benefits

CNP described a number of qualitative benefits[14] associated with the Project including:

- fewer outages to Peace bridge
- elimination of interruptions for maintenance outages
- increased protection against supply shortages
- increased trade between Ontario and New York
- maximized use of existing land and infrastructure
- low regulatory risk (no new land required, environmental risks etc.)

Board Findings – Qualitative Benefits

In the Board's view, these benefits could largely be considered part of the reliability and economic benefits considered above (Sections 3.1.1 and 3.1.2) and do not alter the Board's overall assessment of the need for the Project.

Other Issues

CNP addresses a number of other issues including land owner issues and aboriginal consultation.

With respect to the land issues, the Board notes the intervention of Ontario Power Generation ("OPG") on September 24, 2009. OPG filed interrogatories specifically with reference to the land in and around Murray TS / Niagara TS. Based on the responses to those interrogatories, OPG has argued that CNP does not possess full legal rights over the OPG lands. OPG argues in its final submission that OPG does not oppose CNP's Application "conditional on the successful resolution of the land issues and commits to continuing work expeditiously with CNP and HONI in this regard." The land issue could be addressed by having an Order with conditions that the approval was subject to CNP resolving the outstanding land issues with OPG and HONI. However, given that the Board has decided not to grant the Application it is not necessary to deal with the land issues at this time.

[14] Exhibit B, Tab 4, Schedule 1, Pages 15-21

Similarly, it is unclear from the record whether the issue of aboriginal consultations has been carried out on a basis that would meet the standards required by the Board. Again, because the Board has decided to deny the Application it is not necessary to deal with this issue at this time. The Board takes the same position with respect to any of the other outstanding issues.

DATED at Toronto, March 29, 2010
ONTARIO ENERGY BOARD

Original signed by

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Gordon Kaiser
Vice Chair and Presiding Member

Original signed by

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Cynthia Chaplin
Vice Chair

Original signed by

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Ken Quesnelle
Member

APPENDIX A

Canadian Niagara Power Inc.
Transmission Reinforcement Project
Niagara Falls / Fort Erie Area