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File 10329

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VIA RESS FILING AND COURIER

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

Dear Ms. Walli

Re: Transmission Project Development Planning (EB-2010-0059)

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry. Attached please find a list of PWU employers.

The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, please find the PWU's comments on the Staff Discussion Paper: *Transmission Project Development Planning* (EB-2010-0059).

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

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson
RPS:jr
encl.

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List of PWU Employers

Algoma Power
AMEC Nuclear Safety Solutions
Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Capital Power Corporation Calstock Power Plant
Capital Power Corporation Kapuskasing Power Plant
Capital Power Corporation Nipigon Power Plant
Capital Power Corporation Tunis Power Plant
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Infrastructure Health and Safety Association
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
Lake Superior Power Inc. (A Brookfield Company)
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexho Canada Ltd.
TransAlta Generation Partnership O.H.S.C.
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

EB-2010-0059

Ontario Energy Board

Transmission Project Development Planning

Comments of the Power Workers' Union

1. Introduction

By way of a notice ("Notice") dated April 19, 2010, the Ontario Energy Board ("OEB" or "the Board") launched a consultation, the intent of which is to develop a process to facilitate the timely and cost effective development of major transmission facilities that may be required to connect renewable generation in Ontario. The Board identifies two developments that provide the context for the consultation:

a. As a result of the passage of the *Green Energy and Green Economy Act, 2009* ("GEA"), there has been enormous interest in connecting renewable generation to both distribution systems and the transmission system. The Ontario Power Authority ("OPA") has received applications representing over 9,000 MW of renewable generation under its Feed-in Tariff ("FIT") program. In addition, the Government has signed an agreement with a consortium headed by Samsung to construct a further 2,500 MW of renewable generation capacity; however, transmission capacity has been allocated for only 500 MW leaving 2,000 MW in need of transmission capacity. On this basis, there is 11,000 MW of renewable generation for which transmission capacity may be required. The Board notes that existing or approved transmission facilities in Ontario can accommodate only 4,000 MW of

generation, which means that billions of dollars of transmission investment will be needed to connect the balance of 7,000 MW, as well as any other renewable generation that may come forward. In August 2010 the OPA is expected to begin its assessment of transmission investments that in its view are required and economically justified to connect those FIT applicants and other renewable generation for which there is no available capacity; and,

b. The *Ontario Energy Board Act, 1998* ("*OEB Act*") contains new provisions that require licensed transmitters, as and when mandated to do so by the Board and in the manner determined by the Board, to develop transmission system plans to accommodate renewable generation, and to file those plans for review and approval by the Board.

It is in this context therefore, that the Board released for comment a Board staff discussion paper entitled *Transmission Project Development Planning* ("Discussion Paper"). The Discussion Paper sets out Board staff's proposals for transmission project development planning in Ontario. The Discussion Paper also includes proposed filing requirements for the preparation of transmission project development plans ("Plan").

The Board indicates that the proposals in the Discussion Paper build on the framework for a designation process that the Board articulated in relation to "enabler" transmission facilities. The designation and transmission Plan approval process proposal described in the Discussion Paper focus on transmission projects that the OPA identifies and assesses through the "Economic Connection Test" ("ECT") as transmission investments that are required and economically justified to connect FIT projects and other renewable generation that cannot be accommodated by existing transmission capacity. The ECT is expected to identify four broad categories of transmission investments: capacity

enhancements; network reinforcements; enabler facilities; and network expansions. The Discussion Paper proposes that the first two investment categories (capacity enhancements and network reinforcement) be undertaken by the incumbent transmitter and will therefore not be subject to the transmitter designation and plan approval process. The latter two categories, enabler facilities and network expansions, will be subject to transmitter designation and plan approval.

The Board states that if the enabler development processes proposed in the Discussion Paper are adopted, they would also be followed in respect of the development of other transmission facilities in Ontario.

2. Comments of The Power Workers' Union

The Power Workers' Union ("PWU") provides general comments on the Discussion Paper followed by input on the issues on which Board staff seeks stakeholder comment. The PWU's comments stem from the PWU's energy policy:

> **Reliable, secure, safe, environmentally sustainable and reasonably priced electricity supply and service, supported by a financially viable energy industry and skilled labour force is essential for the continued prosperity and social welfare of the people of Ontario. In minimizing environmental impacts, due consideration must be given to economic impacts and the efficiency and sustainability of all energy sources and existing assets. A stable business environment and predictable and fair regulatory framework will promote investment in technical innovation that results in efficiency gains.**

2.1 General Comments

The PWU has identified a number of general issues presented in the Discussion Paper that either require further clarity or which, in the PWU's view, the Discussion Paper appears to have overlooked. The PWU submits that these general issues deserve the Board's consideration as they have a bearing on the efficacy and implementation of the Board staff proposals when and if adopted by the Board.

2.1.1 The Scope of the Transmitter Designation Proceeding

As noted above, the ultimate purpose of this consultation is the facilitation of the timely and cost effective development of transmission facilities that may be required to connect renewable generation. In this context the PWU's understanding of the Discussion Paper is that the Board has set a two-pronged goal for the transmitter designation proceeding:

- the approval of a Plan relating to a project or group of projects; and,
- the designation of the transmitter that filed the approved Plan as the transmitter that will undertake the development work relating to the project(s).

In general, the process outlined in the Discussion Paper starts with the OPA filing a report with the Board on the FIT projects that it identifies as requiring new transmission facilities, including expansion and enablers based on the ECT. The Board then posts the OPA's report on its website and invites or directs transmitters to file a Plan. The Plans will be evaluated and the transmitter whose Plan is approved will be designated to develop the project. Assuming the project proceeds to construction, there may be a leave to construct application filed by the designated transmitter for the specific project(s) covered by the Plan.

The Discussion Paper proposes a scope for the proposed Plan that transmitters are required to file to compete for designation. In addition to certain obvious requirements such as experience, technical capability, and a transmission license, the designation of a transmitter as the developer requires the proponent to include in its Plan detailed information relating to other criteria including cost, financing and efficiency. In the PWU's view, some of these other criteria raise a number of concerns as requirements for a development plan. For example:

i. Board staff proposes that the Plan's overview include cost-related information such as the total costs associated with all projects in the Plan

broken down into development, construction, and operation and maintenance related costs[1]. Information is also required on the schedules of the projects including milestones and in-service dates. The difficulty with this proposal is that it requires information that is normally gathered in the project development phase whereas the Plan is concerned with a project development plan.

The proponent has not yet been designated and therefore is not carrying on development work, but rather is putting together a development plan to be submitted with the Board for approval of its Plan and designation as the transmitter to undertake the development work. As set out in the Definitions section of the Discussion Paper, transmission project development plans "are plans for development of one or more transmission projects filed with the Board in response to the Board's invitation or direction…". Further, "development" is defined as "work, including consultation, route planning, engineering and site/environmental studies, undertaken in order to choose among options and/or prepare an application for leave to construct. From the regulatory perspective, this stage lasts from the approval of a Plan until leave to construct is applied for or until a project begins construction, if leave to construct is not required."[2]

ii. There is no basis on which to assume that any information related to cost and schedule filed by proponents in a development plan for the purpose of designating a transmitter as the project developer, will be reliable and useful. In fact, there is no mechanism to assure the Board that data on cost and scheduling proposed by proponents in the Plan is not understated / overstated to influence the outcome of the proceeding on the Plan. More importantly, there is no mechanism to hold the proponents

[1] OEB, EB-2010-0059, Staff Discussion Paper: Transmission Project Development Planning, Page 20
[2] Ibid, Page 4

accountable and to ensure that the proposed costs in the Plan will be reasonably in line with actual costs.

iii. The relationship between the OPA's ECT, the proponent's Plan and a possible leave to construct application needs to be clarified. The PWU's understanding is that once the OPA identifies the transmission expansions that would be needed to accommodate FIT applications, the OPA will assess whether these expansions are economic based on the ECT. Presumably, this assessment by the OPA will consider alternatives and determine the most economic transmission expansion option. It is therefore important that the Board clarify its expectation as to how much of the ECT's findings with respect to the need for and cost of the project(s) should be subject to re-examination and scrutiny at the transmitter designation proceeding and the leave to construct proceeding. The PWU notes that with regard to the transmitter designation proceeding the Discussion Paper states:

> **In order to ensure that transmitters are developing enabler facilities and network expansion projects that have been identified by the OPA, staff is proposing that the Board accept, solely for transmitter designation and project development purposes, the outcome of the ECT as filed and without substantive examination. Board staff expects that the OPA will conduct and document the ECT in a manner that will make the outcome sufficiently robust for project development purposes.**[3]

The PWU identifies the need for clarification on the wording "without substantive examination". With regard to the leave to construct proceeding the Discussion Paper states:

> **… A substantive evaluation of the need for any particular enabler transmission network facility would then follow at the leave to construct stage.**

The PWU submits that given that it is the Board's invitation/direction based on the OPA's ECT that a transmitter has taken on the designated transmitter role, clarification is required as to the weight, if any, that the OPA's ECT result carries in the leave to construct proceeding and the roles of the transmitter and the OPA in that proceeding.

[3] Ibid., Page 7

2.1.2 The Transmitter Designated to Undertake Development Work should Construct the Facilities

The Board's Notice and the Discussion Paper indicate that Board staff's proposals focus "*specifically on development work* [emphasis added] for projects identified by the OPA as it assesses transmission investments associated with the connection of generation under the FIT program*"*. Further, a proponent is designated to do the development work up to the point where a leave to construct application is ready for filing. However, Board staff suggests that, under normal circumstances, the transmitter designated to undertake the development work will also be the transmitter that will construct, own and operate the facilities[4]. Board staff notes that this is consistent with Board's position articulated in the April 15, 2009 Notice of Revised Proposal to Amend a Code regarding transmission connection cost responsibility ("TCCR") related to enabler facilities. As indicated by the Board in the April TCCR Notice:

> **In the normal course, the Board anticipates that the transmitter that is designated to undertake development activities relating to an enabler facility will also be the transmitter that will eventually construct and own the enabler facility. However, the Board does not wish to preclude at the outset that this might not be the case. [5]**

Board staff suggests the extension of this concept to transmission network expansions identified through the ECT. Board Staff adds that "while there is no guarantee that the transmitter that has been designated to develop a transmission project will eventually be the transmitter that will construct, own and operate the facilities, Board staff assumes that this would normally be the case"[6].

The PWU submits that the Board needs to provide assurance and certainty that a transmitter designated to undertake development work will be the one that will build, own and operate the facility and that the unlikely scenario where this would

[4] Ibid., Page 15
[5] OEB, EB-2008-0003, Notice of Revised Proposal to Amend a Code, Revised Proposed Amendments to the Transmission System Code, Page 5, April 15, 2009
[6] OEB, EB-2010-0059, Staff Discussion Paper: Transmission Project Development Planning, Page 15-16

not be the case would be the exception. Under normal circumstances it would not be efficient to have a transmitter build, own and operate a facility for which development work was undertaken by another transmitter. This is especially so given the relationship building and commitments that the latter would have made in stakeholder consultations conducted during the development phase. It is also important to ensure that designated transmitters undertake responsible, accountable and credible development work by clearly making them responsible for the construction, ownership, operation and maintenance of the facilities as well.

The PWU notes that the experiences in Texas and the U.K. provided in Appendix A to the Discussion Paper do not pertain to processes that view development and construction as separate aspects of proposed projects. In the case of Texas, the process is "to select the transmission service providers ("TSPs") who *would build the high voltage transmission facilities that would interconnect those areas with significant wind resources to major load centers* [emphasis added]*."* [7] Similarly in the case of the UK the selection process is not for a proponent that will only undertake development, but one that will also undertake work that extends to construction, ownership and operation of the facilities. Therefore, in order for the experiences of these two jurisdictions to be relevant, the Board should make it clear from the outset that this proceeding involves the designation of a transmitter that will develop, and barring exceptional circumstances (e.g. bankruptcy, withdrawal of the designated transmitter) construct, own, operate and maintain enabler and network expansion facilities.

2.1.3 Incumbent Transmitters Should be the Presumptive Designated Transmitter

The PWU submits that incumbent transmitters by any measure, including the criteria proposed by Board staff, are best qualified as the designated transmitter

[7] Ibid., Appendix A, Page 1

not only for development work but also for construction, ownership, operation and maintenance of transmission facilities. The Discussion Paper proposes that the Board require the incumbent transmitter to file a Plan in order to make sure that there is at least one Plan filed with the Board. The definition of an incumbent transmitter set out in the Discussion Paper "is any transmitter to whose existing system a network expansion or an enabler line identified by the OPA would connect". The PWU submits that consideration of the incumbent transmitter should go beyond providing assurance that at least one Plan is filed. The incumbent transmitter should be recognized as the presumptive option in order to meet the Government's goal of expediting the renewable energy generation connections sought by the GEA. The PWU's publicly stated preference and expressed view has been that the Government's desire for expeditious connection of renewable energy generators can be best realized by explicitly imposing the obligation to connect renewable generators on the owner of the transmission system to which the renewable generator seeks to connect or on the owner of the distribution system in whose service area the generator is located[8].

There are innumerable advantages in terms of operational and cost efficiencies by designating the incumbent transmitter: experience and skill; familiarity with federal and provincial regulatory processes; and understanding of stakeholder issues and relationships with stakeholders that allow for negotiations to be realized. Designating the incumbent transmitter to take responsibility for both network expansions and enabler facilities and connecting the renewable energy generators will facilitate the planning and coordination of the design and construction of multiple new connections to the local transmission system. This will provide for the consistent application of environmental and service reliability, quality and safety standards and avoid single project "queue jumping" at the expense of asset duplication, system inefficiency and delay to other projects.

[8] PWU Comments on Proposed Bill 150, the Green Energy and Green Economy Act, 2009 (EBR Registry Number: 010-6017), March 25, 2009

The incumbent transmitters have proven competence and together already have province-wide resources in place. The incumbents also have established relationships with aboriginal peoples and other stakeholders. In addition they have established relationships with the OPA and IESO, and they understand the market rules and are familiar with the OEB's processes. The PWU submits that there is a case to be made for having the incumbent transmitter become the designated transmitter on a mandatory basis. There are clearly advantages for such an approach (e.g. efficiency, streamlining, continuity, accountability, maintenance of quality standards). To accommodate circumstances where the incumbent transmitter may not be able to fulfill the role of designated transmitter on a timely basis, an alternative approach would be to make the incumbent transmitter the "presumptive" designated transmitter.

The PWU submits that obtaining a transmission license at the time of filing a Plan, and having experience in a jurisdiction outside of Ontario is in no way an indication of a proponent's competence relative to the incumbent transmitter's. It is this experience and competence of the incumbent transmitter that provides for the ongoing maintenance of service safety, quality and reliability. The Board should recognize service safety, quality and reliability as a major consideration in guiding the selection process and not as a subordinate objective of the Board.

The PWU understands the desire of some parties to open the process to all licensed transmitters including new entrants assuming that doing so would bring about the best Plan and most economic option. However, the PWU cautions the Board that doing so could significantly compromise ongoing service quality and reliability. The PWU has no objection, however, to the possibility that a third party could be involved when the incumbent chooses to partner with a third party in the development and construction of the project for logistics and efficiency in meeting project schedules, where the incumbent has established the third party's competence and how it might interact with the third-party in ensuring acceptable performance standards.

2.1.4 Efficiency, Confidentiality and the Review of Filed Plans

Based on the experiences of Texas and the U.K. the designation process can be viewed as a competitive tendering process. Under a typical tendering process, bidders submit their tenders and the entity that issues the bid evaluates applications filed with the necessary confidentiality provisions enforced. The preferred bidder is then chosen based on the criteria that the issuer of the bid has established. In the case of the U.K., for example, OfGem may, after evaluating the bids, ask for a best and final offer from the bidders or it may directly choose a preferred bidder.[9]

The PWU understands the differences between the Board staff's proposal for designation of a transmitter and a typical competitive tendering process; however, in the PWU's view there are significant concerns with a competitive bid approach within a quasi-judicial regulatory proceeding. Such an approach can be expected to be time consuming and fraught with inefficiency given the various opportunities and processes available for participants in a proceeding to argue minute details and matters of procedure and legality. This would not be amenable to the government's, and hence the Board's, desire and goal to expedite the connection of renewable energy sources. The Board's lack of experience in conducting a public competitive bid review is likely to exacerbate the issues of timeliness and efficiency as the Board feels its way through this new approach. The proposed process therefore, does not reflect the sense of urgency embedded in the government's policy and directives. It is important to note that while the Public Utility Commission of Texas ("PUCT") initiated competitive renewable energy zones ("CREZ") development in January, 2007, the process in fact started 2 years earlier when Senate Bill 20 directed the PUCT to implement a proposal for CREZ. Further, a PUCT update on CREZs indicates that the first certificate of convenience and necessity application was only approved in March

[9] OEB, EB-2010-0059, Staff Discussion Paper: Transmission Project Development Planning, Appendix A, Page 7

2010[10]. While cognizant of the large size of the CREZ projects, the PWU notes the possible lengthy timeframe that the competitive bid approach may require. As submitted earlier, the PWU believes that the designation of the incumbent transmitter is the best approach to achieve efficiency and address urgency.

Another concern with the competitive bid approach relates to issues of confidentiality and the manner in which Plans will be reviewed in a proceeding should be clearly identified and established. The PWU recognizes that under Section 70(1.1) of the OEB Act, the Board "…may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence.[11]" In other words, the Board can process the applications and designate the appropriate transmitter without a hearing. However, the Discussion Paper states that "Board Staff believes that transmitter designation is better examined in a process that allows for participation by interested stakeholders, and that a hearing is ideally suited to the transmitter designation and transmission project development plan approval process."[12] Board Staff further state that "Potentially, if there is only one transmitter that files a transmission project development plan for any particular project, the Board could hold a relatively simple, written hearing."[13]

The PWU notes that since, unlike a typical tendering process, the Plan approval and transmitter designation will be done through a hearing, all proponents could participate in the hearing not only as applicants but as intervenors. If proponents participate as intervenors, it should be recognized that the order in which the different Plans are reviewed at the hearing can have undesired consequences. For example, in the absence of a procedural order that states that an applicant cannot modify or update its Plan for any reason during the course of the hearing, there is no guarantee that proponents will not game the process by constantly

[10] http://www.class4winds.com/PDFs/PUCT%20CREZ%20Update.pdf , Slides 5 & 9
[11] OEB Act, 1998
[12] OEB, EB-2010-0059, Staff Discussion Paper: Transmission Project Development Planning, Page 13
[13] Ibid.

modifying their Plans upon learning the contents of competing Plans and/or intervenor concerns with other Plans. The PWU also notes that it is not clear from the Discussion Paper whether filed Plans would be made publicly available before the commencement of the hearing.

The PWU notes that "Board staff anticipates that any issues relating to the confidentiality of information contained in a transmission development plan will be addressed by the Board in accordance with its *Practice Direction on Confidential Filings*."[14] However, the issue of whether an applicant can participate at the hearing as an intervenor and the Plan screening/review process should be clearly articulated by the Board in advance of the proceeding.

2.1.5 Board Adoption of Different Stages in Plan Screening Process

Related to the PWU's comment under issue #2.1.4 above is whether the Board should review in the proceeding all Plans filed, or whether there should be a screening process that identifies Plans that merit review in the proceeding. It is submitted that having different stages in which applicants are screened and then to consider only those Plans worthy of a hearing is a better approach as it provides for a more efficient public review process. In the OfGem (UK) experience for example, there are five stages: Pre-Qualification; Qualification to Tender; Invitation to Tender; Best and Final Offer (optional); Preferred Bidder; and, Successful Bidder to whom a license would be granted.

2.1.6 Recovery of Cost of Preparation of the Plan

While the Discussion Paper properly recommends the recovery of prudently incurred costs of development work regardless of whether the project proceeds to construction or not, it does not mention cost recovery for the preparation of a Plan by incumbent transmitters that are directed by the Board to file a Plan. This

[14] Ibid., Page 19

is particularly concerning given the proposal that the Board would direct the incumbent transmitter to file a Plan under all circumstances so as to make sure that at least one Plan is filed with the Board. Considering that the Plan is expected to include substantial detailed information, the preparation of the Plan will require a significant amount of effort and resources. While the PWU assumes that cost recovery can be expected given that the requirement to prepare a Plan would be a licence requirement, explicit specification that this is indeed the case would prevent controversy when the incumbent transmitter seeks to recover the costs in rates in its cost of service review.

2.2 Comments on Board Staff's Specific Issues / Questions

2.2.1 The OPA and Transmission Planning

As indicated earlier, the OPA's ECT assessment is expected to identify four broad categories of transmission investments: **capacity enhancements** (upgrades to existing network capability such as through the use of Static Var Compensators); **network reinforcement** (reinforcement of existing transmission network facilities); **enabler facilities** (transmitter-owned connection facilities designed to connect clusters of renewable resources to the existing system); and **network expansion** (the expansion of the transmission network through major new network facilities).

The PWU supports Board staff's proposal that the development of capacity enhancements and reinforcements should not be subject to the designation and Plan approval process and should be undertaken by the incumbent transmitter and addressed through the normal rate-setting process, and where applicable, the leave to construct process. The PWU also agrees that incumbent transmitters would be expected to incorporate these ECT-identified projects into their capital plans for review in their cost of service rate proceeding.

By contrast, Board staff is proposing that the designation process already contemplated for enabler facilities be extended to cover major network expansions identified in the ECT, and that both enabler facilities and major network expansions be the subject of transmission project development plans. The PWU has in past public submissions supported the designation of the incumbent transmitter as the responsible transmitter for enabler facilities given the potential problems related to the coordination of developing enabler facilities for use by multiple renewable generators[15]. The context for the PWU's position in its submission to the Board on TCCR (EB-2008-0003) was that the alternative to designating a transmitter would have been to require the generators in a cluster to coordinate among themselves and use third parties to develop and build the facilities. That in turn would have caused a number of problems which the PWU identified in its submission. In this consultation, the context is not whether the facilities should be built by a third party (that would not necessarily be a licenced transmitter) or not. Rather, the issue is which transmitter should be designated to develop, construct, own, operate and maintain the enabler facilities and network expansions. As noted earlier, the PWU's view in this respect is that the incumbent transmitter is the appropriate proponent for both enabler facilities and network expansion projects.

[15] PWU Submission on Transmission Connection Cost Responsibility Review, Staff Discussion Paper: Generation Connections EB-2008-0003, August 11, 2008

2.2.2 A Proposed Framework for the Development of Enabler Facilities and Network Expansion Projects

2.2.2.1 Process to Designate a Transmitter

a. Identification of Facilities Requiring Designation

The Discussion Paper states:

> **After completing an ECT, the OPA will file with the Board a report with its conclusions regarding new transmission facilities, including network expansions and enabler facilities that the OPA believes are required and economic. That report would be posted on the Board's website.**

The PWU seeks clarity on whether the above statement assumes that the OPA's ECT report will identify or categorize proposed projects as an enabler, a new network expansion, a capacity enhancement, or a network reinforcement, and if so, whether the expectation is that the OPA will consult with incumbent transmitters to determine what category a specific project falls in. The PWU submits that agreement between the OPA and the transmitter on the classification of the transmission investment is important because the definition of enabler lines and network expansions can be expected to be controversial and could in some cases overlap. Unless it is clearly defined that network expansions are "greenfield" expansions wherein the projects do not involve the construction of transmission facilities adjacent to an incumbent transmitter's existing transmission assets, it is possible that what should properly be classified as reinforcement projects could be perceived as network expansions by the OPA. Such misclassification would result in significant cost and operational inefficiencies and extra time in putting the assets in place. Therefore, the PWU submits that the description of 'network expansion' as presented in the Discussion Paper should clearly apply to only 'greenfield' expansions as follows: the expansion of the transmission network through major new greenfield network facilities.

Clarity is required as to which authority is to determine the classification of the transmission investment and the process to be undertaken by that authority in the determination. It is important that such a process involve the incumbent transmitter in the event that the transmission investments that are categorized by the OPA, subject to the designation and Plan approval process, infringe on the incumbent's existing assets thereby affecting the ongoing safety, reliability and quality of the incumbent's system. A network expansion will eventually connect to the incumbent transmitter's system. As the definition of 'incumbent transmitter' in the Discussion Paper indicates, "Incumbent transmitter is any transmitter to whose existing system a network expansion or an enabler line identified by the OPA would connect." [16] Based on the nature of a connection, the incumbent may see the category of a project differently from that identified by the OPA.

b. Notice and Direction to File

The PWU agrees with Board staff that the Board accept the outcome of the ECT for enabler and transmission network expansion project development purposes, leaving the need for these projects to be confirmed at the leave to construct stage. In other words, the designation and plan approval proceeding should focus on choosing a transmitter to undertake development and preferably construction as well, rather than on assessing the need for the investment. However, the PWU reiterates its concern about the level of need assessment that is required in the leave to construct proceeding. The PWU assumes that the Board will give due weight to the ECT report in determining whether there is need for the project in the leave to construct proceeding.

The PWU also supports Board staff's proposal that the Board require an incumbent transmitter to file a Plan as a condition of licence. The PWU submits that the Board should recognize the many advantages offered by the incumbent

[16] OEB, EB-2010-0059, Staff Discussion Paper: Transmission Project Development Planning, Page 4

over other operating transmitters and new entrants that are untested for their efficiency, ability to provide safety, reliability and service quality, and familiarity with local requirements and stakeholder issues.

c. Requirement to be Licensed

Board Staff is seeking comment on whether new entrants should be required to be licensed as transmitters as a condition of participation in a designation process.

The PWU agrees that in order to file a Plan for approval and selection as the designated transmitter, a new entrant must be licensed by the Board as a transmitter. However, as Board staff noted, a licence is only required to own and operate a transmission system, and as such is only required when a facility has been constructed and energized. Therefore, the fact that a new entrant has been licensed for the purpose of filing a Plan does not mean that it is on equal footing with operating transmitters with regard to the development and construction of facilities. As indicated earlier, the PWU's preference is for the designation of the incumbent transmitter. If an incumbent transmitter is unable to take on the project(s) the PWU's preference would be for one of the other transmitters currently operating in Ontario to take on the responsibility of designated transmitter.

d. When to File

Board Staff asks the question: "How long would it take to prepare transmission project development plans (i.e., how much time should be given for filing transmission project development plans after notice of the designation process has been given)?**"**

The PWU has no comment on the amount of time needed by proponents to prepare the relevant Plans as it believes the Board should rely on input from the existing incumbent transmitters.

e. Decision Criteria and Process

Board staff identifies three aspects of a Plan that it anticipates the Board will primarily consider for the designation process: (a) the financial and technical capacity of the transmitter to undertake development of the specific projects at issue, including its demonstrated ability to carry out the work based on experience with similar projects; (b) the transmitter's plan for carrying out the work and associated consultations; and (c) the economic efficiency of the transmitter's plan. It is from these aspects of a Plan that the criteria proposed for the purpose of designation are derived.

Before commenting on the specific criteria, the PWU stresses that consideration of the designation of a transmitter to undertake development work must be comprehensive given the expectation that the designated transmitter will also construct, own, operate and maintain the facilities.

i. Organization and Experience

The PWU agrees that organization and experience should be one of the criteria the Board uses to designate a transmitter. The PWU notes that 'organization' refers to the transmitter's organizational plan for undertaking the project and that it would include contracting for significant work and partnerships, including any involvement by First Nations or Métis groups.[17] The PWU submits that in considering organization the Board should also consider the proponent's demonstration of its ability to be flexible and innovative in meeting fluctuating resourcing requirements. This would include for example, the transmitter's ability

[17] Ibid., Page 11

to meet intermittent peaking requirements for qualified skilled workforce through access to a hiring hall. With regard to information in the Plan about use of contracting out and partnerships, the PWU submits that the Board exercise caution in interpreting the implications of doing so. For example, there is no reason to assume that the simple proposition by a proponent that it will contract out some or most of the work makes it a better candidate; it may just mean that the transmitter does not have sufficient resources to do the work using in-house resources. Outsourcing, if not done strategically, can have adverse impacts including delays, cost overruns and poor reliability and quality of service.

With respect to “experience”, including that of the specific management team involved in “regulatory processes, the acquisition of land use rights and landowner and other required consultations”, the PWU’s view is that the experience sought after should be ‘relevant’ experience, i.e. Ontario and Canadian experience. Such relevant experience would imply familiarity and experience with provincial and federal regulatory requirements, rules and processes, and knowledge about concerns of local landowners, First Nation and Métis institutions and groups, etc.

ii. Technical Capability

The PWU agrees with Board staff that a demonstration of the proponent’s technical capability would enable the Board to evaluate the technical expertise of the transmitter and the specific management team proposed in relation to the requirements of the project(s) in the Plan. The PWU also agrees that technical capability should include any technological innovation that the transmitter proposes in relation to a project in its Plan. The PWU recommends that the consideration of technical capability should be extended to any third party that the designated transmitter proposes to contract. Moreover, technical capability should include evidence that the proponent has in the past provided training to

its workforce on new energy technologies and their safe integration with the transmission system.

iii. Schedule

With regard to schedule the Discussion Paper proposes the following guidelines:

> **The Applicant should submit a project development schedule identifying major milestones and proposed dates for completing those milestones, as well as a project construction schedule identifying major construction milestones and proposed dates for completing those milestones.**
>
> **In this section, the Applicant should include the following:**
>
> - **A discussion of the overall project development and construction schedules, identifying significant milestones for engineering and design, right-of-way and other land use acquisitions, material and equipment procurement, consultations, financing, construction and any other significant activities.**
> - **The date by which the Applicant expects to file an application for leave to construct, including significant milestones supporting the development of the leave to construct application.**
> - **The date by which the Applicant expects the project to be in service.**
> - **A project execution Gantt chart showing major steps and milestone dates for both project development and project construction.**
> - **Any innovative practices that the Applicant is proposing to use to accelerate the project development and/or project construction schedules.**
> - **The major risks to achievement of the project development and/or project construction schedules, and the Applicant's strategies to mitigate or address those risks.**
> - **Where the plan contains more than one project, a description of how the Applicant would propose to sequence the projects, how the development and construction schedules for the projects are compatible, and how the project development and projects construction schedules and the resources required to achieve those schedules are consistent with the financial and human resources proposed to be made available by the Applicant.**

The PWU agrees with the proposal and has no further comment.

iv. Costs

Board staff is proposing that estimated budgets (for both the development and construction stages) and any cost reduction opportunities such as those resulting from economies of scale, shared resources, etc. be used as criteria. The PWU generally agrees that any cost information would help the Board to evaluate the anticipated costs associated with the project(s) in the Plan and any cost reduction opportunities. However, the PWU has the same concerns submitted earlier in the general comments section, particularly with respect to the level of detail requested and whether such detailed cost estimates for construction, maintenance and operations provided before the development work has been undertaken can be reliable and useful for designation purpose.

v. Financing

The PWU shares Board staff's view that information on financing would enable the Board to evaluate the manner in which the transmitter is proposing to finance the development and construction of the project(s) in its Plan. Board staff considers two aspects of financing:

a. Financial position: Access to the financial resources, either equity or debt, necessary to carry out the development work and construct the facilities identified in the plan.
b. Whether or not alternative mechanisms set out in the *Report of the Board: The Regulatory Treatment of Infrastructure Investment in Connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario* (EB-2009-0152) are being or will be requested.

The PWU has concerns with the proposed consideration of a proponent's intent to request approval for use of one of the alternative financial mechanisms set out in the Board's Report on the regulatory treatment of infrastructure investment for the purpose of designating a transmitter to undertake development work. The

PWU's understanding is that the Board in EB-2009-0152 proposed alternative mechanisms such as accelerated cost recovery and incentives because the Board believes that "Alternative mechanisms should be available in appropriate cases in relation to investments driven by the Green Energy Act and potentially in appropriate circumstances in relation to other types of investments."[18] Moreover, the Board states that "Applicants seeking Board approval of an alternative mechanism must satisfy the "requisite relationship test". Specifically, the applicant will be required to: a) establish the need for the infrastructure investment, and b) demonstrate that a requisite relationship exists between the alternative mechanisms requested and the demonstrable risks and challenges faced by the applicant in relation to the investment being made."[19] Therefore, the Board has recognized the potential need for these mechanisms and makes them available to transmitters under appropriate circumstances. The PWU submits that a transmitter's intent to use such alternative mechanisms should not in any way be used to evaluate its Plan and diminish its prospect of becoming the designated transmitter. Indeed this would appear to be inconsistent with the Board's intent of making the alternative mechanisms available to transmitters where the requisite test is met. Therefore, the PWU is of the view that the information sought with regard to a transmitter's intent to seek approval for the use of an alternative mechanism should not be a criterion in the evaluation of a Plan, the intent of which at this stage is the designation of a transmitter that undertakes development work. While the PWU is sensitive to the need to consider cost and customer rate impact, the PWU notes that requests for the use of alternative mechanisms are filed in cost of service applications, long after the designation of a transmitter to undertake development work, and should be a regulatory consideration at that time.

[18] OEB, EB-2009-0152, Report of the Board: The Regulatory Treatment of Infrastructure Investment in connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario, Executive Summary, Page ii, January 15, 2010
[19] Ibid., Page ii - iii

vi. Landowner and Other Consultations

The PWU agrees that a review of the transmitter's approach to and plan for carrying out all required consultations with municipalities, landowners, First Nations and Métis groups, and for obtaining all rights-of-way and other land use rights would help the Board designate the right transmitter. The PWU also submits that the Board ought to recognize in its evaluation of a Plan any advance work done by the applicant in this respect either as part of another project or plan, or as a result of work done voluntarily by the transmitter in anticipation of the Plan.

vii. With regard to the above *Decision Criteria and Process* Board staff asks the question: "Are these the appropriate decision criteria? Should the decision criteria be weighted and, if so, which are most important?"

The PWU considers the proposed criteria taken together with the PWU's submissions to be sufficient for the purpose of designating a transmitter. The PWU also believes that the Board's task would be easier if the decision criteria are weighted. This however requires the development of a carefully designed weighting system. There are elements within each criterion which themselves require weighting in order to arrive at a weighting average for a specific criterion. With regard to the question as to which criteria are the most important, the PWU considers incumbency, followed by organization and relevant experience, technical capability, and financing as the most important criteria for the purpose of designation.

f. Implications of Plan Approval

The PWU agrees that Board staff's proposals regarding the implications of Plan approval are generally reasonable. Plan approval would mean that the

transmitter whose Plan is approved has been designated to do the development work and the Board would direct the designated transmitter to develop the specific project(s) to the point where a leave to construct application would be required. The PWU's preference as indicated earlier is that the Board, in its decision ought to explicitly recognize that, barring unforeseen circumstances, the designated transmitter will also be the transmitter that constructs, owns and operates the facilities. The Board should also direct the designated transmitter to establish any necessary deferral accounts and provide assurance that prudently incurred costs associated with the approved Plan will be recoverable through rates. The PWU also supports Board staff's proposal that the designated transmitter could apply for a rate rider if it contends that immediate funding is required.

The PWU agrees that the designated transmitter would have to consult with the OPA regarding the status of FIT-contracted and other generation projects. This is particularly important in that the OPA is expected to update its ECT reports every 6 months.

g. Designating Multiple Transmitters

Board staff suggests that the Board should consider, in appropriate cases, designating two transmitters to develop the same project, with the final determination of who should proceed to construction being made at the leave to construct stage. Board Staff asks the question: "Under what circumstances should two transmitters be designated to develop the same project and to recover the development costs from ratepayers?"

In general, the PWU does not agree with the designation of multiple transmitters. However, should a designated transmitter, of its own volition, decide to partner with another transmitter, that option should be available to it. Even if the development cost is a relatively small portion of the total cost of a project,

financing two development streams for the same project is not cost effective. Further, having two development streams is inefficient and creates uncertainty. In addition, having two developers working separately with the stakeholders in relation to the same project is likely to confuse stakeholders and compromise negotiation outcomes as the designated transmitters compete for stakeholder time, resources and buy-in.

2.2.2.2 Hearing for Leave to Construct

With respect to the leave to construct proceeding that may be required for some projects, the PWU recognizes that in accordance with the Board's filing requirements, the hearing will examine such issues as project classification, need, options, and costs and benefits. However, the OPA's ECT report which is the basis for the preparation of the Plans required for designation will have already provided the justification and need for the projects before the leave to construct hearing takes place. The leave to construct hearing should not be a forum for re-examination of issues that have already been settled on either in the ECT report or in the transmitter designation proceeding.

2.2.2.3 Hearing for Rate Recovery

The PWU submits that the designated transmitter should be able to apply for recovery of development costs regardless of changes in planning as a result of changes in the ECT including an outcome that the project is no longer needed. The PWU also submits that the designated transmitter should be allowed to recover all of the prudently incurred costs even if the project does not proceed to a leave to construct hearing, or the construction phase, provided that failure to proceed was for reasons outside of the transmitter's control.

The PWU reiterates its position that Plan preparation costs should be recoverable by the incumbent transmitter when it is directed by the Board to file a Plan.

Finally, the PWU has studied the flow chart on page 18 of the Discussion Paper which illustrates the proposed designation and Plan approval process, including considerations for leave to construct and rate proceedings. The PWU notes that the flow chart does not make reference to the Integrated Power System Plan ("IPSP") and little or no explanation is provided in the Discussion Paper as to where the IPSP fits in the context of the current consultation. This information is required to clarify the relationships between the OPA's ECT, the IPSP, and leave to construct hearings relating to OPA proposed projects in the ECT.

2.2.3 Proposed Filing Requirements

The PWU notes that the proposed filing requirements relate to the overview of the Plan, description of the applicant, information relating to the different proposed criteria such as organization and experience, technical capability, cost, financing, consultation, etc. The PWU has made submissions in the foregoing sections on the substantive issues relating to these matters and has no further comments.

All of which is respectfully submitted

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