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October 26, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319, 26th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**RE: TransCanada Power Transmission (Ontario) LP
Application for Electricity Transmission Licence**

I. Introduction

By way of this letter and attached application form, TransCanada Power Transmission (Ontario) LP ("TPT") is applying to the Ontario Energy Board ("OEB" or "the Board") for an Electricity Transmission Licence, pursuant to Sections 57(b) and 60 of the *Ontario Energy Board Act, 1998* ("OEB Act"). This application is being made in the context of the *Green Energy and Green Economy Act, 2009* ("GEA"), and a current initiative by the OEB to satisfy the demand for timely new transmission development (EB-2010-0059). This letter also: (a) addresses a recent OEB decision on the issue of transmission licensing; (b) establishes TPT's financial and technical qualifications for a transmission licence; (c) requests a temporary exemption from the *OEB Electricity Reporting and Recordkeeping Requirements* ("RRR") until such time as TPT is either designated by the OEB to undertake transmission development work or becomes active in the Ontario transmission market (i.e., by owning or operating a transmission system in Ontario); (d) requests an exemption from Sections 2.2.2 and 2.2.3 of the *OEB Affiliate Relationships Code* ("ARC"); and (e) requests the OEB to consider this application by way of a written hearing.¹ Finally, pursuant to the *OEB Rules of Practice and Procedure* and in accordance with the *OEB Practice Directions*, TPT requests that its corporate organization chart submitted in answer to Section 7(b) of this application be held in confidence by the Board.

¹ In connection with this Application for an Electricity Transmission Licence, TransCanada Energy Ltd. ("TCE"), with its limited partnership interest in TPT, will file a Notice of Proposal pursuant to Section 81 of the *Ontario Energy Board Act, 1998*.

II. OEB Work on Transmission Designation Process

As stated in the OEB policy paper (the “Board Policy”) on transmission project development planning (EB-2010-0059) the passage of the GEA has created significant demand for investment in new transmission infrastructure to enable the connection of new renewable sources of electrical supply to the Ontario grid. The Ontario Power Authority (“OPA”) has received applications for over 9,000 MW of new renewable generation, and the Government of Ontario has signed an agreement to construct a further 2,500 MW of renewable generation capacity. To ensure that the timely development of the transmission system accommodates this new renewable generation, the Board Policy is designed, in part, to encourage new entrants to participate in transmission project development in Ontario.

One of the issues considered during the consultation leading up to the Board Policy was whether these “new entrants” ought to be licensed for the purpose of participating in the transmission project designation process. The OEB determined that the requirement for a licence would permit the OEB to evaluate the financial viability and technical capabilities of any new entrant.² TPT agrees with this rationale, and is making this application in order to participate in any upcoming designation process.

III. Lexi Decision

On August 10, 2009, the OEB denied an application by Lexi Transmission Corporation (“Lexi”) for an electricity transmission licence.³ The OEB’s standard Application for an Electricity Transmission Licence requires that an applicant provide information on the transmission facilities involved in the application (including proposed in-service date, intended purpose of the facilities, the location and whether they are to be used to deliver service to other parties) and a description of its energy sector business activities.⁴ Lexi stated that while its transmission facilities were “to be determined” and that it “currently has no active business”, its proposed business activity is the development, construction, ownership and operation of transmission assets, and more specifically to be a “transmission proponent” as contemplated by the Integrated Power System Plan.⁵

The OEB decision on the Lexi application noted two “threshold tests” applicable to transmission licence applications: (a) whether there is a specific project which underpins the application; and (b) in the absence of a specific project, whether the applicant is engaged in transmission activity elsewhere and whether it has the necessary technical and financial expertise to undertake transmission activity in Ontario.⁶ The OEB determined that Lexi had not satisfied the condition of either test on the basis that there was no specific project which underpinned the application, and Lexi had no specific transmission experience or expertise and had only indicated that it

² See OEB Board Policy EB-2010-0059: Framework for Transmission Development Plans at p.6 (Aug. 26, 2010); OEB Filing Requirements EB-2010-0059: Transmission Project Development Plans at p.2 (Aug. 26, 2010).

³ OEB Decision EB-2009-0164 (Aug. 10, 2009) (“Lexi Decision”).

⁴ See OEB Application for Electricity Transmission Licence, Sec. 4, 6, 12, 13, 14, and 16.

⁵ Lexi Decision at p.1-2.

⁶ *Id.* at p.3.

would contract the proposed transmission activities to unaffiliated third parties.⁷

**A. Focus of Licence Review should be on Licensee,
Not Assets or Prospective Project**

The OEB decision on the Lexi application pre-dates the Board's consultations that led to the Board Policy in EB-2010-0059. Given the new Board Policy objective of encouraging new entrants into the Ontario transmission sector, denying a transmission application by a prospective new entrant on the basis that the applicant does not have a specific project underpinning its application should no longer be considered. Therefore, we respectfully submit that the focus of the licence review should be on the licensee, not existing transmission assets or the prospective transmission project.

**B. TransCanada's Major Project Expertise in
Financing, Construction and Operation**

With more than 50 years' experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and oil pipelines, power generation and gas storage facilities. In addition to over \$40 billion of assets, TransCanada has a number of projects in development and will invest approximately \$22 billion in a number of energy infrastructure projects throughout North America. The majority of these projects are under construction and expected to be completed over the next three years. Moreover, TransCanada has invested approximately \$5 billion over the past several years in both nuclear and natural gas-fired generation facilities in Ontario including Bruce Power, Portlands Energy Centre and the Halton Hills Generating Station.

Through its parent companies and affiliates, TPT has access to a skilled and diverse workforce with expertise in gas, power and oil development, construction and operation. TransCanada has a long history in the development and operation of large-scale linear energy infrastructure projects, including the recently completed Keystone System. Keystone's first phase was highlighted by the 864 kilometre conversion of natural gas pipeline to crude oil pipeline and construction of an innovative bullet line that brings the crude oil non-stop from Canada through North Dakota, South Dakota, Nebraska, Kansas, Missouri and Illinois to market hubs in the U.S. Midwest. The US\$12 billion Keystone pipeline will play an important role in linking a secure and growing supply of Canadian crude oil with the largest refining markets in the United States, significantly improving North American security supply. Upon completion, the Keystone System will be comprised of the 3,461 kilometre Keystone Pipeline and the proposed 2,673 kilometre Keystone Gulf Coast Expansion Project.

The project development and operating experience that TransCanada has obtained over many years is now being employed in the development of electrical transmission assets. On May 20, 2010, TransCanada announced the successful open season for the full capacity on its proposed Zephyr Power Transmission Project. Zephyr is a 1,600 kilometre, 500 kilovolt, high voltage direct current transmission line designed to move 3,000 megawatts of wind-generated power

⁷ *Id.*

from Wyoming to markets in the southwest United States at a cost of approximately US\$3.0 billion. Zephyr is an important new transmission infrastructure project that would directly benefit the states it crosses and would make a substantial contribution to achieving state renewable portfolio standards and federal climate change objectives. Zephyr's successful open season and the related FERC decision are an industry first for interstate merchant transmission.

In addition, TPT's parent company, TransCanada Energy Ltd., is the owner and operator of the Wildhorse Transmission Line, which TransCanada received approval from the NEB to construct and operate as an international power line (NEB Hearing Order EH-1-96). Another affiliate of TPT, TransCanada Maine Wind Development Inc., is developing and will operate the Kibby Wind Project which will include 44 wind turbines and an approximately 25-mile radial 115 kV transmission line to connect the project to the Central Maine Power transmission system in Franklin County, Maine. The Kibby Wind Power Project will be the largest wind power development in New England, providing enough clean, renewable electricity for the equivalent of 50,000 average Maine homes.

The extent to which TPT will utilize the services of third-party contractors to carry out transmission facility construction, operation or maintenance will depend on the specific details of the particular transmission project. TPT will utilize the same contractor pre-qualification process and contractor selection process used by all TransCanada companies. TPT will select its construction contractors through a competitive process which involves the issuance of a Request For Proposal ("RFP") to contractors that have been pre-qualified by TransCanada. These pre-qualification requirements include an assessment of a contractor's technical capability, safety performance, and financial risk assessment.

The RFP proposals received in respect of any particular transmission project (from solicited, pre-qualified contractors) will be evaluated based on a set of pre-established evaluation criteria which will include: (a) technical capability for the particular project; (b) past safety record/performance and safety plan for the project; (c) financial capability in relation to the project; (d) contract commercial terms; and (e) price for the work. The objective of the RFP process is to select the contractor which has the capability to best perform the work and offers the most competitive commercial terms and price.

As for the financial capability of TPT, it has reviewed the Board's standard parental guarantee form and would be prepared to have TransCanada Corporation or TCPL provide financial assurance for the Board's costs under the electricity transmission licence should the Board consider such assurance necessary. The credit ratings for TransCanada Corporation and TransCanada PipeLines Limited ("TCPL") (as well as other companies in the TransCanada corporate family) can be found at www.transcanada.com/creditratings.html.

IV. Request for Temporary Exemption from the RRR and Exemption from Sections 2.2.2 and 2.2.3 of the ARC

TPT requests a temporary exemption from the transmitter obligations of Section 3 of the RRR. The Board has recognized that certain standard requirements in a transmission licence may not apply to a new entrant without assets in the province:

The Board notes that some of the requirements in the transmission licence may not apply unless a transmitter has assets in Ontario. If a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of its application process.⁸

Accordingly, TPT requests a temporary exemption from Section 3 of the RRR until such time as TPT: (a) is designated by the OEB to undertake transmission development work; or (b) becomes active in the Ontario transmission market (i.e., by owning or operating a transmission system in Ontario).

TPT also requests an exemption from Sections 2.2.2 and 2.2.3 of the ARC. Section 2.2.2 of the ARC sets forth certain access restrictions and review procedures regarding a utility sharing information services with an affiliate. Section 2.2.3 of the ARC prohibits a utility from sharing with an affiliated energy service provider employees that are directly involved in collecting, or have access to, confidential information.

TPT is part of a large family of energy companies, with TransCanada Corporation being the ultimate parent. The TransCanada family of companies contains both regulated (i.e., utility) and unregulated (i.e., non-utility) energy businesses. TransCanada has invested at considerable expense appropriate computer data management and data access protocols that protect confidential information (as defined in the ARC) from being shared between its regulated and unregulated business units. These data management and access protocols were established to conform to Codes of Conduct prepared and filed with the National Energy Board.⁹ For instance, Sections 3.2.2 of the NEB Codes of Conduct require that when a regulated affiliate such as the TCPL Mainline or NGTL shares information services with a non-regulated affiliate, all confidential information must be protected through appropriate computer data management and data access protocols and contractual provisions. Compliance with these requirements is subject to periodic confirmation by the regulated affiliate. Similarly, Sections 3.3.4.2 of these Codes of Conduct prohibit the regulated affiliate from sharing employees with a non-regulated affiliate that routinely participate in making decisions with respect to the provision of services, deal with customers, or are involved in commercial management of the business.

Although not all of the regulated entities within the TransCanada group of companies are governed by similar inter-affiliate codes or standards of conduct, as a matter of policy, TransCanada treats all regulated entities in a similar manner. This is achieved through a corporate personnel and information classification system whereby personnel and information assets are classified as "Regulated", "Non-regulated" or "Shared". Non-regulated personnel are not provided with access to regulated information assets, and are prohibited, by way of a card-key system, from physically accessing areas which are deemed restricted due to the performance

⁸ *Id.* at p. 6. .

⁹ See Section 3 of the TransCanada Pipelines Limited, Canadian Mainline, Code of Conduct. See also Section 3 of the NOVA Gas Transmission Ltd. ("NGTL") Code of Conduct, which is substantially similar to TCPL's Code of Conduct, has been approved by the Alberta Utilities Commission, and given the recent transition from provincial to federal jurisdiction, will be submitted in to the NEB for approval as well.

of commercial and/or operational activities in respect of the regulated utilities. Processes are also in place to monitor compliance with these various physical and information access restrictions, and to ensure that classifications and access privileges are amended as individuals change roles or reporting structures change. Employees who are classified as "Shared" (namely those in corporate services roles such as Legal, Information Services and Human Resources) may access regulated information, but these individuals are prohibited from sharing such information with non-regulated personnel. Finally, all personnel also receive training upon commencement of employment and on an annual basis, on the Code and Standards of Conduct requirements.

This existing system, to which TPT would be incorporated as a regulated affiliate, accordingly meets the requirements of the National Energy Board and exceeds the Standards of Conduct requirements of the U.S. Federal Energy Regulatory Commission, which are intended to achieve the same purposes as the ARC's prohibitions on the sharing of information and employees between regulated and unregulated affiliates in the energy sector. The difference is that Sections 2.2.2 and 2.2.3 of the ARC appear to go further to suggest that each regulated affiliate must be individually isolated from other regulated affiliates as well as shared personnel who may require access to confidential information in order to perform their roles, but who are nonetheless prohibited from sharing such information with non-regulated personnel. Requiring TPT to be isolated as such would require an unnecessary expenditure of funds by TPT, with no attendant benefits. TransCanada's existing system provides all the safeguards necessary to ensure that no TransCanada unregulated affiliate would have access to TPT confidential information and that TPT employees involved in commercial matters are not shared with unregulated affiliates.

TPT would be pleased to provide the Board with additional details regarding its current information system controls and "Shared" employees. TPT notes that similar exemptions (with respect to Sections 2.2.2 and 2.2.3 of the ARC) have been granted before to Canadian Niagara Power Inc. (ED-2002-0572) and Cornwall Street Railway Light and Power Company Limited (ED-2004-0405).

V. Request for Confidentiality

Pursuant to Rule 10 of the *OEB Rules of Practice and Procedure* and in accordance with Section 5 of the *OEB Practice Directions*, TPT requests that its corporate organization chart submitted in answer to Section 7(b) of this Application as Attachment 1 and marked "CONFIDENTIAL" be held in confidence by the Board. TransCanada's organizational charts are the work product of TransCanada employees and illustrate internal corporate relations that have been structured through confidential tax and business planning by TransCanada employees together with outside consultants. To reveal TransCanada's corporate structure could potentially breach confidentiality arrangements with TransCanada's outside advisors, and could be duplicated to TransCanada's detriment by competitors.

VI. Conclusion

For the foregoing reasons and based on the information in the attached application form, TPT requests approval of its Application for an Electricity Transmission Licence. Once the OEB issues its Notice of Application, TPT will issue a Media Advisory to Ontario media outlets

making them aware that the licence application has been submitted to the OEB and is available to interested parties on the OEB website. Further information about TPT is available to the public at www.TransCanada.com.

Moreover, TPT requests a temporary exemption from the transmitter obligations in Section 3 of the RRR until such time as TPT is either: (a) designated by the OEB to undertake transmission development work; or (b) becomes active in the Ontario transmission market (i.e., by owning or operating a transmission system in Ontario). TPT also requests an exemption of Sections 2.2.2 and 2.2.3 of the ARC.

Furthermore, TPT requests the OEB to consider this application by way of a written hearing.

Finally, TPT requests that its corporate organization chart submitted in answer to Section 7(b) of this Application be held in confidence by the Board.

If you have any questions please do not hesitate to contact myself at 403-920-2373 or Brian Kelly at 416-869-2183.

Yours truly,
TransCanada Power Transmission (Ontario) LP

Original signed by

Frank Karabetsos
Legal Counsel
Law and Regulatory Research

cc: Adrian Pye
OEB, Manager, Licence Applications

Brian Kelly
TCE, Manager – Eastern Canada Marketing & Trading