

**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 TransCanada Power Transmission LP, pursuant to sections 57(b) and 60 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B for an electricity transmission licence.

**SUBMISSIONS OF THE INDEPENDENT  
ELECTRICITY SYSTEM OPERATOR**

**February 23, 2011**

**Introduction**

1. On December 20, 2010, the IESO filed its initial comments with the Ontario Energy Board (the “Board”) regarding TransCanada Power Transmission LP (“TransCanada”) request for a transmission license (EB-2010-0324). At that time, the IESO indicated that it was interested in all aspects of the application and proceeding; however, the IESO’s initial comments would be confined to TransCanada’s request for an exemption from Sections 2.2.2 and 2.2.3 of the Board’s Affiliate Relationships Code (the “Code”).

2. On February 7, 2011 the IESO filed a request with the Board for late intervenor status for purpose of participating in the hearing of this matter. The IESO felt that there were other important issues arising from the application that it would appear were not addressed in the proceeding thus far, and that the IESO felt the Board also needs to examine before rendering a decision. The IESO was granted intervenor status on the basis that it accepts the record of the proceeding to date by way of the Board’s Procedural Order No.2 that was issued on February 18, 2011. The IESO accepts the record as is.

3. In this submission the IESO will expand on its earlier comments as requested by the Board, as well as address other issues that it believes the Board also needs to examine regarding the scope, authority and obligations of a transmitter that is granted a new license to enable its participation in the Board's transmission project designation process.

### **Affiliate Relationships Code Exemption Request**

4. In its earlier comments the IESO noted that it is concerned that, if the Board were to grant the requested exemptions, this may reduce TransCanada's capacity and incentive to effectively comply and monitor compliance with various regulatory requirements, including the Market Rules. The Market Rules set out various provisions pertaining to accessibility and secure management of confidential information and data which will be made available to TransCanada or potentially come under its possession or control. For example:

- Chapter 5, Section 7.9.2 (i.e., Provision of Information to Transmitters) states that "[n]otwithstanding any other provision of these market rules, the IESO may, if necessary to enable transmitters to prepare plans for the expansion or modification of the IESO-controlled grid, provide to relevant transmitters information provided by market participants pursuant to this Chapter regarding their forecasts and plans."
- Chapter 3, Section 5.1.1 (Accessibility of Confidential Information) states that "[s]ubject to section 5.7.1<sup>1</sup>, all persons shall have an equal opportunity for open and non-discriminatory access to all information, **other than confidential information**, required by the market rules to be made available to market participants, the IESO or other persons."
- Chapter 3, Section 5.2.1 (Confidentiality of Confidential Information) states that "[e]ach market participant and the IESO shall keep confidential any confidential

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<sup>1</sup> Chapter 3, Section 5.7.1 sets out provisions under which the IESO may grant a market participant request for access to or for disclosure of confidential information in the IESO's possession or control.

information which comes into the possession or control of that market participant or the IESO or of which the market participant or the IESO becomes aware.”

- Chapter 9 (Settlement and Billing) sets out various provisions pertaining to accessibility and secure treatment of confidential settlement and billing information and data, including Section 2.11.5 which obligates the IESO to “safeguard any settlement information that is confidential information in accordance with section 5 of Chapter 3.”

5. As a licensed transmitter, TransCanada will be in a rather unique position to potentially access or will be the recipient of a significant amount of market participant confidential information, including financial, planning and operational information and data. There are two situations that are of particular concern to the IESO. These are as follows:

- (a) **Disclosure or access to confidential customer equipment and operational information and data.** As a licensed transmitter (i.e., whether solely for the purpose of participating in the Board’s transmission project designation process or to own and/or operator transmission facilities or both), the IESO may be required from time-to-time to provide TransCanada with certain confidential information, including customer forecast, planning and load flow information and data for the purpose of preparing transmission plans or proposals for the expansion or modification of the IESO-controlled grid.
- (b) **Disclosure or access to confidential customer settlement and billing information and data.** Were TransCanada to become a fully licensed transmitter (i.e., licensed to participate in the Board’s transmission project designation process, owner/operator of transmission facilities and provider of transmission settlement services), it would be the recipient of and potentially have access to a significant amount of confidential customer settlement and billing information and data.

6. A blanket exemption that is granted to TransCanada in respect of Sections 2.2.2 and 2.2.3 is likely to result in a conflict with the Market Rules pertaining to accessibility and secure management of confidential information and data that will be made available to TransCanada or come under its possession or control. While the IESO appreciates

TransCanada's desire to maximize use of its resources, this must be weighed against the potential risks and adverse implications arising from any prohibited or inadvertent access and use of confidential market participant information and data. The Market Rules are intended to be administered in conjunction with the Code to ensure that other market participants will not be disadvantaged from any potential interactions between TransCanada and its affiliates, nor will any of its affiliates be afforded any advantage over other participants from such interactions. The IESO does not believe that a blanket exemption from Sections 2.2.2 and 2.2.3 of the Code is reasonable or should be granted by the Board.

### **Scope of Authorization and Obligations of a Designated Transmitter**

7. TransCanada claims that it is making this application for a transmitter license to enable its participation in the Board's transmission project designation process. Specifically, TransCanada notes that it is "applying to the ["Board"] for an Electricity Transmission License, pursuant to Sections 57(b) and 60 of the Ontario Energy Board Act, 1998" (TransCanada Application for Electricity Transmission License, page 1, paragraph 1, October 26, 2010). Further, TransCanada states that it is "...making this application in order to participate in any upcoming designation [transmission project] process." (TransCanada Application for Electricity Transmission License, page 2, paragraph 2, October 26, 2010)

8. It would appear that there is a disconnect (or some confusion) between the application, and the scope of the approval and authorization that is being sought by TransCanada in this regard. Section 60 of the Ontario Energy Board Act, 1998 states that "[a person may apply to the Board for the issuance or renewal of a licence authorizing one or more of the activities referred to in section 57 as specified in the application. 1998, c. 15, Sched. B, s. 60 (1); 2003, c. 3, s. 4." Section 57(b) requires that no other person shall "own or operate a transmission system" unless licensed to do so. It is unclear whether the approval being sought here includes authorization to participate in the Board's transmission project designation process, as well as authorization to own and/or operate transmission facilities that may be constructed,

modified or acquired by TransCanada in the future. Typically, a transmission license granted pursuant to Section 57(b) is in respect of specific transmission facilities that have been approved by the Board, as prescribed in the license. For example, Part 3, Authorization, of a transmission license that has been issued by the Board specifies that “[t]he Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence to own and operate a transmission system consisting of the facilities described in Schedule 1 of this Licence, including all associated transmission equipment.” Accordingly, the IESO does not believe that a blanket authorization to own and/or operate any transmission facilities is warranted (i.e., without knowing the specific facilities for which an owner and/or operator license is required).

9. In the IESO’s view, any approval and authority that is granted to TransCanada in respect of this application should be limited at this time to that of enabling its participation in the Board’s transmission project designation process only (i.e., it should not be considered a blanket authorization to also own and or/or operate a transmission system). It is anticipated that the terms and conditions of a license that is granted in relation to this application, including respective obligations and responsibilities, would be specifically associated with TransCanada’s participation in the transmission project designation process. Further, the obligations under the license would also include all associated requirements or provisions relating to the electricity market and integrated power system operation (i.e., compliance with applicable provisions of the Market Rules, the Code, etc.). In other words, the authority that is granted in this regard would not include or deem to include the authority to also own and/or operate transmission facilities that may be constructed, modified or acquired by TransCanada in the future. While this may in fact add to the administrative process for TransCanada to become a fully licensed transmitter this will, among other things, provide greater clarity with respect its obligations and responsibilities relative to that of a fully licensed transmitter.

### **Designated Transmitter Methodology**

10. If the Board finds that it is in the public interest to grant TransCanada a license to enable its participation in the Board's transmission project designation process, the IESO proposes that this be administered by way of one of new category of licensed called "Designated Transmitter". A Designated Transmitter will be an entity that is licensed to participate in the Board's transmission project designation process and whose authority and obligations are restricted in this regard. In the event that TransCanada were to construct new transmission facilities, modify existing facilities or acquire transmission facilities for which a transmission license is required pursuant to Section 57(b) of the Ontario Energy Board Act, 1998, it would need to also seek and obtain the Board's prior approval by filling an amended application and supporting evidence in accordance with Section 60. The Board may also need to amend the license of each incumbent licensed transmitter to also include this authority to enable their participation in the transmission project designation process because this is currently not among the authorization that is prescribed in their transmitter license.

### **Conclusions**

11. The IESO appreciates the opportunity to make submissions regarding this matter. In summary, the key conclusions are as follows:

- a) In the IESO's view, approval of the request for exemption from Sections 2.2.2 and 2.2.3 of the Code would amount to a reduced standard of conduct and performance requirements applicable to TransCanada, relative to other licensed transmitters, with respect to the accessibility and need for secure management of confidential information and data that will come under its possession or control.
- b) The IESO believes that the scope of TransCanada's authority and obligations with respect to a license granted under this application should be limited at this

time to enabling its participation in the Board's transmission project designation process.

- c) If the Board finds that it is the public interest to grant TransCanada a license, it may need to institute a different methodology for administering the license, as well as to clearly differentiate TransCanada's authority and obligations from that of fully licensed transmitter. Accordingly, the IESO proposes that the Board consider creating a new category of licensed transmitter called Designated Transmitter. As a Designated Transmitter, TransCanada would be licensed to participate solely in the Board's transmission project designation process and its authority and obligations restricted in this regard. In addition, to become a fully licensed transmitter, TransCanada will need to seek the Board's prior approval to amended and upgrade its Designated Transmitter license to permit it also own and/or operate any transmission that it may construct or acquired in the future and for which a license is required pursuant to Section 57(b) of the Ontario Energy Board Act, 1998.

All of which is respectfully submitted,

***Original signed by***

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