



EB-2010-0351

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

AND IN THE MATTER OF an application under
section 60 of the Ontario Energy Board Act, 1998,
S.O. 1998, c. 15, Schedule B for an electricity
transmission licence.

BOARD STAFF SUBMISSIONS

Background

Chatham-Kent Transmission Inc. ("Chatham-Kent") filed an application with the Ontario Energy Board (the "Board"), received on November 16, 2010, under sections 57 (b) and 60 of the *Ontario Energy Board Act, 1998* (the "Act") for an electricity transmission licence. Chatham-Kent is making the application in order to own and operate the transmission line that is to be constructed which will connect a 270 MW wind generation facility within the Municipality of Chatham-Kent to the existing Chatham Switching Station owned by Hydro One Network Inc. Chatham-Kent has also expressed an intention to participate in future transmitter designation processes.

Board staff and intervenors filed interrogatories on February 4, 2011 and Chatham-Kent filed its interrogatory responses on February 18, 2011.

Board staff's submissions are specifically focused on the response to EnWin Utilities Ltd. Interrogatory 2(c) which asked the following:

"Does the proposal to utilize a confidentiality agreement for shared staff satisfy all the requirements of the [*Affiliate Relationships Code for Electricity*

Distributors and Transmitters (“ARC”)]? If there are other requirements other than transfer pricing, please detail the plan to satisfy those requirements.”

In its response, Chatham-Kent identified the following provisions of the ARC – sections 2.1.1, 2.1.2, 2.2.1, 2.2.2, 2.2.3, and 2.7.1 and stated that these provisions will apply to Chatham-Kent when it becomes a “transmitter” – i.e. it owns or operates a transmission system.

Sections 2.1.1, 2.1.2, 2.2.1, 2.2.2 of the ARC require the following:

- 2.1.1 A utility shall ensure accounting and financial separation from all affiliates and shall maintain separate financial records and books of accounts.
- 2.1.2 A utility shall ensure that at least one-third of its Board of Directors is independent from any affiliate.
- 2.2.1 Where a utility provides a service, resource, product or use of asset to an affiliate or receives a service, resource, product or use of asset from an affiliate, it shall do so in accordance with a Services Agreement, the terms of which may be reviewed by the Board to ensure compliance with this Code. The Services Agreement shall include:
 - (a) the type, quantity and quality of service;
 - (b) pricing mechanisms;
 - (c) cost allocation mechanisms;
 - (d) confidentiality arrangements;
 - (e) the apportionment of risks (including risks related to under or over provision of service); and
 - (f) dispute resolution process for any disagreement arising over the terms or implementation of the Services Agreement.
- 2.2.2 Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate. Access to a utility's information services shall include appropriate computer data management and data access protocols as well as contractual provisions regarding the breach of any access protocols. A utility shall, if required to do so by the Board, conduct a review of the adequacy, implementation or operating effectiveness of the access protocols and associated contractual provisions which complies with the

provisions of section 5970 of the CICA Handbook. A utility shall also conduct such a review when the utility considers that there may have been a breach of the access protocols or associated contractual provisions and that such review is required to identify any corrective action that may be required to address the matter. The utility shall comply with such directions as may be given by the Board in relation to the terms of the section 5970 review. The results of any such review shall be made available to the Board.

Chatham-Kent has stated that it will fulfill the requirements of provisions 2.1.1, 2.1.2, 2.2.1, and 2.2.2 of the ARC by putting in place the requisite service agreements, data access protocols, and contractual provisions.

Section 2.7.1 sets out the following requirement:

- 2.7.1 A utility shall be responsible for ensuring compliance with this Code and shall:
- (a) perform periodic compliance reviews;
 - (b) communicate the Code to its employees; and
 - (c) monitor its employees' compliance with this Code.

Chatham-Kent has stated that it will a) perform another ARC compliance review prior to the date on which it assumes ownership or control of the transmission assets contemplated, and will then perform periodic compliance reviews going forward; b) will communicate to its employees, and those employees which it shares with its affiliates, its ARC compliance obligations; and c) will, through its periodic compliance reviews, monitor compliance with the ARC by its employees and those employees which it shares with its affiliates.

Section 2.2.3 requires that:

- 2.2.3 A utility shall not share with an affiliate that is an energy service provider employees that are directly involved in collecting, or have access to, confidential information.

Chatham-Kent has commented that it will evaluate the feasibility of providing for information access protocols in order to meet the requirements of section 2.2.3 of the ARC and will seek an exemption from this section of the ARC if it is unable to comply.

STAFF SUBMISSIONS

Board staff has concerns that the applicant may not comply with its conditions of licence given that in their response to interrogatory 2(c) Chatham-Kent has stated it may not be compliant with all sections of the ARC at the time it receives a licence from the Board. Additionally, Board staff notes that Chatham-Kent has not sought exemption from any section of the ARC in this application.

It is Board staff's view that, absent an exemption, the obligation to comply with the ARC commences at the time that Chatham-Kent is licensed as an electricity transmitter. Board staff notes that compliance with legislation, regulations and market rules and the Board's Codes is a condition of licence.

In addition to acquiring transmission facilities from Pattern Energy Group, the applicant contemplates participating in future transmitter designation processes. Board staff notes that the IESO has made submissions on a transmission licence application by TransCanada Power Transmission LP [EB-2010-0324], in which exemptions from the ARC have been requested. The IESO stated that a licensed transmitter would have access to a significant amount of confidential customer and market participant information including financial, planning and operational information and data. The IESO submitted that "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." Board staff believes that the same concerns apply to the current application, despite the fact that no exemptions have been requested by the applicant.

The applicant has stated that it does anticipate sharing information systems and services with affiliates, and will put in place the requisite service agreements, data access protocols and contractual provisions in order to meet its obligations in sections 2.1.1, 2.1.2, 2.2.1, and 2.2.2 of the ARC. However, based on the evidence provided by Chatham-Kent, it is not clear that this will be completed at the time Chatham-Kent is licenced as a transmitter by the Board. Board staff submits that Chatham-Kent

should be required to provide confirmation that it is able to comply with the ARC upon being licensed by the Board.

Finally, with respect to complying with section 2.2.3 of the ARC, Chatham Kent has identified one “energy service provider” affiliate with whom employees may be shared. Section 2.2.3 of the ARC specifically precludes the sharing with an affiliate that is an “energy service provider” of employees that are directly involved in collecting, or have access to, confidential (customer) information. Chatham-Kent has stated that it needs to assess whether customer information access protocols can effectively be put in place to comply with the ARC but that it may seek an exemption from section 2.2.3 of the ARC at some time in the future, if this is not feasible.

Board staff submits that if the Board approves this licence application, it is not clear that Chatham-Kent would be compliant with section 2.2.3 of the ARC at the time of issuance of the licence.

Board staff does not support Chatham-Kent’s approach of seeking an exemption at a later date. Chatham-Kent’s application for an electricity transmission licence is based on an acknowledgment (as confirmed in section D of the application form) that, as a licensed transmitter, it is required to comply with all licence conditions including the provisions of the Board’s Codes and with legislation, regulations and market rules. Board staff submits that Chatham-Kent should be requesting any exemptions before it is licenced, together with the appropriate justifying evidence.

All of which is respectfully submitted.

March 4, 2011