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File 19365

March 4, 2011

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**VIA RESS FILING AND COURIER**

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

**Re: Chatham-Kent Transmission Inc.  
Board File No. EB-2010-0351  
Submissions of Power Workers' Union**

We enclose two copies of the Submissions of Power Workers' Union. An electronic copy has been filed through the Board's RESS filing system, and has been forwarded to the applicant and intervenors via email.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

*Original signed by*

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**Via Email:**

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Doc 782359v1

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

**AND IN THE MATTER OF** a review of an application filed by  
Chatham-Kent Transmission Inc. dated November 16, 2010,  
under sections 57(b) and 60 of the *Ontario Energy Board  
Act, 1998* for an electricity transmission licence.

## **Submissions of the Power Workers' Union**

1. The following are the Power Workers' Union's ("PWU") submissions in relation to the application of Chatham-Kent Transmission Inc. ("CKT") for a transmission licence.
2. In considering an application for a transmission licence, the Board must determine whether it is in the public interest to grant a transmission licence on the basis of the application before it.<sup>1</sup>
3. In considering whether the application by CKT is consistent with the public interest, the PWU submits that the Board must consider whether the activity that CKT intends to undertake, should the licence be granted, is consistent with the statutory, regulatory, and other legal requirements for the transmission of electricity in Ontario. If the Board concludes that the intended activity will not be consistent with those requirements, PWU submits that it is not in the public interest for the licence to be granted.
4. The PWU has two concerns with CKT's application:
  - a. Does CKT propose to undertake its transmission business in accordance with applicable statutory, regulatory and code requirements;
  - b. What is the scope of the licence that CKT is seeking?

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<sup>1</sup> EB-2009-0164 Re: *Lexi Transmission Corporation*

**a. Is the Proposed Transmission Business Consistent with Statutory, Regulatory and Code Requirements?**

5. In Ontario, the transmission of electricity occurs only in a publicly regulated environment. Transmitters are licensed entities, and any charges for the provision of a transmission service are subject to an open and transparent public review and approval, as well as compliance with applicable codes and rules. There is no place in the regulatory scheme governing the transmission of electricity in the province of Ontario for transmitters to govern transmission charges on the basis of private, commercial bilateral agreements, not subject to public review or approval.

6. On the face of its application, CKT appeared to be proposing to proceed with its transmission business in the absence of legally required public review and approval mechanisms. Specifically, at four separate places in CKT's application, the following statement appears:

**Costs will be recovered directly from Pattern in the form of contributed capital and operational cost recoveries under the terms of a twenty-year commercial agreement to be mutually agreed upon between the parties. The Applicant and Pattern will provide the Ontario Energy Board with the finalized commercial agreement between the two parties at the time of the section 86 application.<sup>2</sup>**

6. Absent entirely from the application was any recognition of CKT's obligations pursuant to the provisions of the *Ontario Energy Board Act, 1998*, ("OEB Act") and the Transmission System Code. Section 78(1) of the *OEB Act* provides that:

**78(1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract.**

7. Although the application specifically referenced the fact that the proposed twenty-year commercial agreement between CKT and Pattern would include "operational cost recoveries", the application does not appear to contemplate that these "operational cost recoveries" would be a "charge for the transmission of electricity" for the purposes of s. 78(1) of the *OEB Act*. Indeed, rather than envisaging a requirement for the approval of the OEB of these charges in the context of a section 78 application, CKT simply

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<sup>2</sup> CKT application P.4, 18, 20 and 21

indicates that it “will *provide* the Ontario Energy Board with the finalized agreement between the two parties at the time of the section 86 application” (emphasis added).

8. However, in response to PWU Interrogatory #2, CKT acknowledged for the first time that the “operational cost recoveries” referred to in the application are in fact a “charge for the transmission of electricity” under section 78(1) of the *OEB Act*. Further, CKT acknowledged that it will in fact seek an order from the Board pursuant to section 78 of the *OEB Act* approving the charges to be recovered from the South Kent Wind Farm. The answer to PWU interrogatory #2 continues as follows:

**As explained in the Application (see pages 4 and 29), the project will be a line connection transmission facility, the capacity of which will be limited by the capacity of the Hydro One Transmission System at the point of connection to that system. The line connection will thus be sized to serve the requirements of a single customer. CKT’s section 78 application will seek approval of the charges to that single customer, South Kent Wind Farm, which charges will be set out in a twenty-year transmission services agreement between CKT and South Kent Wind Farm.**

9. In addition, in response to PWU interrogatory #2, CKT acknowledged for the first time that the “operational cost recoveries” referred to in the application are in fact charges for a transmission service under s. 4.2.2 of the Transmission System Code. In addition, response to PWU interrogatory #4, CKT acknowledges that it is intended that it will enter into a connection agreement with South Kent Wind Project, as provided for in s.4 of the OEB Transmission System Code.

10. CKT’s responses to the interrogatories seem to clarify that it acknowledges that it is bound by the same rules which govern all other transmitters in Ontario, notwithstanding the fact that it will be servicing a single customer.

11. PWU submits that CKT’s acknowledgement of the applicability of the requirements of the Transmission System Code is significant. In particular, the following obligations are important:

**4.1.1 Subject to s. 4.1.2, a transmitter shall connect a customer’s facilities and shall offer and provide transmission service to a customer, subject to that customer entering into or having a connection agreement with the transmitter. Such connection agreement shall be in the form set out in the applicable version of the connection agreement set out in Appendix 1 ...**

**4.1.2 A transmitter may not enter into a connection agreement on terms and conditions other than those set forth in the applicable version of the**

connection agreement set out in Appendix 1, or amend the terms and conditions of a connection agreement relative to the terms and conditions set forth in the applicable version of the connection agreement set out in Appendix 1, except as expressly contemplated in the applicable version of the connection agreement set out in Appendix 1, or with the prior approval of the Board.

- 4.2.2 No transmitter shall charge a customer for any transmission service unless the charge has been approved by the Board.**

12. Further, Appendix 1, Version B (Form of Connection Agreement for Generation Customers) imposes further obligations on CKT. In particular, Appendix 1 provides that:

- 22.1 The Transmitter shall provide transmission services to the Customer in accordance with this Agreement and the Transmitter's Rate Order.**
- 22.2 The Parties shall comply with their respective obligations set out in Schedule B in relation to transmission service.**
- 22.3 The Transmitter shall not charge the Customer for transmission services except in accordance with the Transmitter's Rate Order.**
- 22.4 The Customer shall pay for charges for transmission services in accordance with Schedule B.**

13. Additionally, Schedule B to Appendix 1 imposes further obligations on CKT (and Pattern Energy), in particular:

- B.3 The Customer shall not be entitled to receive, and the Transmitter shall not be required to provide, any transmission services, unless the Customer and the Customer's facilities comply with all applicable requirements of the Agreement and with all revenue metering and associated billing and settlement requirements of the Market Rules.**
- B.5 Charges for transmission services provided to the Customer shall be determined and billed in accordance with the Transmitter's Rate Order and the Market Rules.**
- B.6 Transmission service charges shall be paid by the Customer to the IESO in accordance with the Market Rules...**
- B.7 The Parties may agree to use Attachment B.1 or an amended version of Attachment B.1 in connection with the payment of transmission service charges.**

14. Finally Attachment B.1 provides in part that:

**The Market Rules and the Transmitter's Rate Order require that transmission services charges payable by transmission customers shall be collected by the IESO. The building and settlement processes used by the IESO are designed to**

**collect transmission service charges from entities that are market participants, using meter readings that are totaled and loss-adjusted.**

15. Insofar as CKT is unable or unwilling to acknowledge that it is bound by and intends to and is able to comply with its full range of obligations as a licenced transmitter, the application should be denied. However, if CKT acknowledges that it is bound by and satisfactorily demonstrates its intention and ability to comply with its full range of obligations as a licenced transmitter, the PWU does not oppose the application on this basis.

**b. The Scope of the Proposed Licence**

16. On the face of CKT's application, it appeared at CKT was seeking a licence only in respect of the specific project described in the application, that is, the line connection with the Pattern Energy wind project. However, in a response to Board Staff Interrogatory 1, CKT clarified that, in addition to the proposed line connection, CKT intends to rely upon the transmission licence (if granted) as a basis to participate in future transmission expansion in the province of Ontario. Presumably, this reflects an intention to participate in future OEB managed transmitter designation processes.

17. The PWU submits that the qualifications to participate in future transmitter designation processes involves different consideration than apply to the very narrowly tailored application filed presently with the Board. In particular, a critical aspect that will be necessary for aspiring transmitters to demonstrate before being permitted to seek designation is the financial resources and wherewithal necessary to own and operate major infrastructure projects on a stable and prudent basis.

18. Because this aspect of CKT's application was not readily apparent in the first instance, the PWU submits that there has not been any probing analysis of the issue of CKT's suitability to be a qualified entity for the purposes of the transmitter designation process in the context of this application. The PWU notes that parties that are likely to have significant interest in CKT's suitability for this role, such as the IESO, have not actively participated in this application.

19. The effect of the current application, if granted on the basis sought, would be to permit CKT to bypass the scrutiny that it would otherwise face in seeking to become a

qualified entity for the purposes of the transmitter designation process. The PWU submits that this would not be an appropriate outcome for this proceeding. As a result, the PWU submits that the Board should either:

- a. Dismiss the application, without prejudice to the right of CKT to re-file with more complete evidence regarding its suitability to be designated as a qualified entity for the purpose of the transmitter designation process; or
- b. Allow the application, with the condition that the licence is restricted to the specific project that is the basis of the application. To the extent that CKT seeks to expand the scope of its licence, it shall be required to file an application for an amendment of its licence to permit it to engage in other transmission activities.

## **Conclusion**

20. In conclusion, the PWU submits that:

- a. On the understanding that CKT will be subject to the transparent public regulation provided by the OEB, together with compliance with all statutory, regulatory, and code requirements, including the provisions of the Transmission System Code, the PWU does not oppose CKT's application for a transmission licence; and
- b. To the extent that the application seeks a transmission licence for purposes beyond the Pattern Energy line connection project the Board should either:
  - i. Dismiss the application, without prejudice to the right of CKT to re-file with more complete evidence regarding its suitability to be designated as a qualified entity for the purpose of the transmitter designation process; or
  - ii. Allow the application, with the condition that the licence is restricted to the specific project that is the basis of the application. To the extent that CKT seeks to expand the scope of its licence, it shall be



required to file an application for an amendment of its licence to permit it to engage in other transmission activities.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

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