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File No. T984111

March 28, 2011

**VIA RESS AND COURIER**

Ms. Kirsten Walli  
**ONTARIO ENERGY BOARD**  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: EB-2010-0351 - Application by Chatham-Kent Transmission Inc. (CKT) for an Electricity Transmission Licence**

**Corrected ARC Reply Submission**

Attached please find a copy of CKT's corrected Reply Submission in the captioned proceeding, which we hereby submit for filing.

It has been brought to our attention by Board Staff that in places in the original filing the text erroneously refers to section 2.3.3 of the Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters (ARC)*, which section 2.3.3 provides direction on transfer pricing rules where there is no market for the relevant affiliate service. The correct references in each of these instances should be to ARC section 2.2.3, which section 2.2.3 precludes the sharing with energy services affiliates of utility staff with access to confidential information. CKT has requested a limited exemption from section 2.2.3 of the ARC.

In the corrected submission erroneous references to ARC section 2.3.3 have been replaced in paragraphs 37, 39 and 83c. (Paragraphs 20, 31, 36, 38a. and 43 continue to correctly refer to section 2.2.3 of the ARC.)



We apologize for any confusion that our error has caused, and thank Board Staff for bringing this error to our attention.

Yours truly,

A handwritten signature in dark ink, appearing to read "Ian A. Mondrow".

Ian A. Mondrow

:cag  
Encl.

cc: Christopher Cowell (CKT)  
Jim Hogan (CKT)  
David Ferguson (CKT)  
Andrew Sasso (EnWin)  
Anne-Marie Reilly (Hydro One)  
John Sprackett (PWU)  
Richard Stephenson (Paliare Roland)  
Carl Burrell (IESO)  
Irina Kuznetsova (OEB)

TOR\_LAW 7625262\1

ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*;

**AND IN THE MATTER OF** an application by Chatham-Kent Transmission Inc. under section 60 of the *Ontario Energy Board Act, 1998* for an electricity transmission licence.

**CORRECTED REPLY SUBMISSION OF  
CHATHAM-KENT TRANSMISSION INC. (CKT)**

**Nature of the Application**

1. By application dated November 12, 2010 (Application), CKT applied to the Board for an electricity transmission licence.
2. In 97 pages (excluding the covering letter) CKT detailed in its Application:
  - a. Its intended transmission sector involvement, both in the near and longer terms.
  - b. The transmission related qualifications of its employees, project partners and consultants.
  - c. Preliminary financing commitments obtained in support of CKT's current transmission project.<sup>1</sup>
3. The Application describes a particular transmission project that CKT is pursuing now, which project is the immediate driver for this Application. This project is a line to connect to the Hydro One transmission system a 270 MW wind farm being developed by the Pattern Energy Group (Pattern), as a business partner of

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<sup>1</sup> Application, Exhibit E, filed in confidence. CKT's prospective financial statements, filed as Exhibit I to the Application, were also filed in confidence.

Samsung C&T Corporation (Samsung). This project is known as the South Kent Wind Project (SKWP).<sup>2</sup>

4. The SKWP is a project arising from the agreement executed by the Ontario Government with a consortium of Samsung and the Korea Electric Power Corporation. This agreement will result in the tripling of Ontario's renewable wind and solar energy generation capacity and will lead to the construction in Ontario of manufacturing facilities for renewable energy generation components.<sup>3</sup> SKWP has executed a power purchase agreement with the Ontario Power Authority, has been issued a connection impact assessment, has been allocated transmission connection capacity by Hydro One, and has a targeted commercial operation date of December, 2012.<sup>4</sup>
5. This transmission licence Application is an important early step in execution of the SKWP.<sup>5</sup>
6. CKT has been assembling the utility corridor (CKT Corridor) in which to site the transmission line that will connect SKWP with Hydro One's existing transmission system.<sup>6</sup>
7. Pattern will, subject to being granted leave to construct by the Board, construct the subject transmission connection facility on the CKT Corridor, under Pattern's Ontario generator licence, and pursuant to the transmission licence exemption provided for in Ontario Regulation 161/99, section 4.0.2 (1)(d).<sup>7</sup> Following construction, energization and commissioning, and subject to leave of the Board under section 86 of the *Ontario Energy Board Act, 1998 (OEB Act)*, the transmission connection assets will be sold by SKWP to CKT. CKT will then operate the transmission facility, and provide transmission services to SKWP.

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<sup>2</sup> Application, page 4.

<sup>3</sup> Application, Appendix H.

<sup>4</sup> Application, Appendix H and page 33.

<sup>5</sup> Letter from SKWP, Appendix A hereto.

<sup>6</sup> Application, Exhibit G.

<sup>7</sup> Response to PWU Interrogatory 1.

The charges to SKWP for such transmission services will be the subject of a future application to the Board by CKT under section 78 of the *OEB Act*.<sup>8</sup>

8. The Application refers to the potential for future consolidation of additional utility services within the CKT Corridor, in order to use the corridor *“as efficiently as possible to ensure the rational expansion of transmission assets”*.<sup>9</sup> At this time, however, the transmission connection capacity at Hydro One’s Chatham Switching Station is constrained, and there is sufficient transmission connection capacity only to serve the SKWP project.<sup>10</sup> In the result, the complete capacity of the proposed connecting line will be dedicated to serving SKWP.<sup>11</sup>
9. In addition to the particular project detailed in the Application, the Application describes future potential generation developments in the Chatham-Kent area<sup>12</sup>, as well as CKT’s intention *“to participate in future transmission system expansions as may be required under Ontario’s Long Term Energy Plan”*.<sup>13</sup>

### **The Record Herein**

10. The Board issued a Notice of Application and Hearing in this matter dated December 14, 2010. Hydro One Networks Inc. (Hydro One) and EnWin Utilities Limited (EnWin) filed intervention requests, and the Power Workers’ Union (PWU) and Veridian Connections Inc. (Veridian) requested observer status. The PWU subsequently requested that its status be changed to intervenor. These requests were granted by the Board.
11. Pursuant to Procedural Order No. 1 herein, on February 4, 2011 CKT received interrogatories from Board Staff, Hydro One, EnWin and PWU. On February 18,

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<sup>8</sup> Application, page 4; Response to PWU Interrogatory 2.

<sup>9</sup> Application, page 33.

<sup>10</sup> Application, page 4.

<sup>11</sup> Application, page 4; page 33.

<sup>12</sup> Application, page 6.

<sup>13</sup> Application, page 33.

2011 CKT provided 24 pages of detailed responses to the interrogatories received.

12. Pursuant to Procedural Order No. 1, submissions on the Application were filed on March 4, 2011 by Board Staff, PWU and EnWin. Having submitted interrogatories, Hydro One indicated that it had no submissions to make on the Application. Also on March 4 the IESO filed a request for late intervention (which request was granted by the Board) and submissions on the Application (which submissions were received by the Board).
13. Pursuant to Procedural Order No. 2, herein, this is the Reply Submission filed on behalf of CKT.

### **ARC Compliance**

14. The submissions of Board Staff and the IESO focus on issues of compliance by CKT with the Board's *Affiliate Relationships Code for Electricity Distributors and Transmitters (ARC)*.
15. CKT addressed its intended compliance with the *ARC* in response to EnWin interrogatory 2(c). In that response, CKT set out its position that the *ARC* will apply to CKT when it becomes a "transmitter" – i.e. when it "*owns or operates a transmission system*". CKT proceeded in that interrogatory response to list the several provisions of the *ARC* that will apply to it, and to detail the steps that will be taken to ensure compliance with the *ARC* going forward.
16. Board Staff have expressed concern that CKT "*may not be compliant with all sections of the ARC at the time it receives a licence from the Board*"<sup>14</sup>. Board Staff has interpreted CKT's position to be that the *ARC* will not apply to CKT upon receipt of its transmission licence.

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<sup>14</sup> Staff Submissions, page 4, first paragraph.

17. To clarify, the position stated by CKT in its interrogatory responses was that the ARC will apply to CKT upon receipt by CKT of a transmission licence from the Board, but the ARC provisions which apply to “a utility” will require compliance by CKT only at and after the time that CKT becomes a “utility”, as that term is defined in the ARC. The ARC defines a “utility” as “an electricity transmitter or electricity distributor that is licensed under Part V of the [OEB Act]”. “Transmitter” is in turn defined in the ARC as “a person who owns or operates a transmission system”. Thus the position stated by CKT in its interrogatory response was that the ARC provisions that require or preclude actions by a “utility” will apply to CKT at the time that CKT acquires, or commences to operate, the connecting transmission line connecting SKWP.
18. Notwithstanding CKT's position, in light of the ARC related concerns raised in the interrogatories and articulated in Board Staff's submissions, CKT has expedited completion of the ARC review referenced in its response to EnWin Interrogatory 2(c)vi. ***CKT is thus now in a position, as requested by Board Staff, to confirm that it will be able to comply with the ARC requirements for a “transmitter” upon being licenced by the Board,*** with one exception which is addressed below.
19. In particular:
- a. As required by ARC section 2.1.1, accounting and financial separation of CKT from all affiliates is in place.
  - b. As required by ARC section 2.1.2, one third of CKT's Board of Directors will be independent as of the CKT Board of Directors election to be held on April 8, 2011.
  - c. As required by ARC section 2.2.1, Services Agreements between CKT and each of Chatham-Kent Utility Services Inc. (CKUS) and Chatham-Kent Hydro Inc., from which entities CKT acquires shared corporate and other services, will be in place by April 8, 2011, and will address all the matters set out in the ARC for inclusion in such agreements.
  - d. As required by ARC section 2.2.2, data access protocols and contractual provisions to enforce such protocols as between CKT and its affiliates in



respect of shared information systems, in order to protect any “confidential information” (as defined in the ARC) in possession of CKT from its sole intended transmission customer, will be in place by April 8, 2011.

- e. As required by ARC section 2.7.1, CKT has completed a full ARC compliance review, and has communicated the results of that review, including steps taken to secure ARC compliance now, to its employees and to those employees which it shares with affiliates.
- 20. The remaining section of the ARC referenced in CKT’s response to EnWin Interrogatory 2(c) and in Board Staff’s March 4<sup>th</sup> submissions is section 2.2.3. ARC section 2.2.3 prohibits a utility from sharing with an “energy service provider” affiliate employees that have access to “confidential information”.
  - 21. Outlined below is CKT’s request for a limited ARC exemption to allow for such employee sharing until the end of this year.
  - 22. ***In conclusion in respect of ARC compliance, and subject to the limited ARC exemption request set out below, CKT will be in full compliance with the ARC upon being licenced by the Board.***
  - 23. The IESO, in its submissions, provided information to the Board regarding the confidential information that the IESO may be required, from time to time, to provide to CKT. In particular, the IESO referenced “*customer forecast, planning and load flow information and data*” that CKT might, as a licenced transmitter, have access to from the IESO or from Hydro One, “*for the purpose of preparing transmission proposals and plans for the expansion or modification of the IESO-controlled grid*”. The IESO’s submissions made further reference to such information in the context of enabling CKT to participate in a future Board transmission development designation process.<sup>15</sup>
  - 24. The IESO’s submissions also included the following passage<sup>16</sup>:

*The IESO is encouraged by Chatham-Kent’s acknowledgement of its potential obligations and responsibilities as a licensed transmitter,*

<sup>15</sup> IESO submissions, page 2, 2<sup>nd</sup> last paragraph.

<sup>16</sup> IESO submissions, page 2, 1<sup>st</sup> paragraph.



*including the need for compliance with applicable reliability standards and provisions (e.g., NERC, NPCC, Transmission System Code, etc.) and the Market Rules and Affiliate Relationships Code, and that Chatham-Kent is committed to putting in place the necessary processes and provisions to monitor and maintain compliance with these requirements.*

25. The IESO went on to express the view that CKT might be in possession of such information from the IESO prior to CKT acquiring or commencing to operate a transmission system. Implicit in the IESO's submissions is a concern that CKT retain any such information in confidence.
26. Prior to receiving any information from the IESO, CKT will be required to enter into an IESO Participation Agreement. The primary purpose of such an agreement is to secure adherence by the signor of the agreement to the IESO's Market Rules. Those Market Rules contain their own definition of "confidential information"<sup>17</sup>. Those Market Rules also contain their own requirements for the retention in confidence by market participants of such information.<sup>18</sup>
27. Among those detailed Market Rule requirements for retention in confidence of "confidential information" provided by the IESO is section 5.3.5, which provides:

*Where the IESO makes any disclosure [to a transmitter]:*

*....*

*The transmitter to whom the disclosure is made shall use the confidential information so disclosed solely for the purposes referred to... and shall use all reasonable endeavours to protect the confidentiality of such confidential information."*

28. As noted by the IESO in its submissions, CKT has acknowledged its various future obligations, including those under the IESO's Market Rules. Those Market Rules provide a comprehensive regime for the sharing by the IESO with transmitters, and the protection by transmitters, of what the IESO Market Rules define as "confidential information". CKT submits that this regime stands independent of the ARC.

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<sup>17</sup> Market Rules for the Ontario Electricity Market, Chapter 11 – Definitions, page 11-5.

<sup>18</sup> Market Rules for the Ontario Electricity Market, Chapter 3, sections 5.2 *et seq.*

29. Should CKT be in the position to receive any such IESO defined “confidential information”, CKT will certainly receive and manage that information so as to maintain its confidence, in compliance with the Market Rules. For example, to the extent required, CKT may designate a specific individual to receive such information, who will be obliged not to release such information to any other person employed by, or otherwise associated with, CKT, and to use such information only as input for the system planning or operation purposes for which the IESO provided it.
30. In any event, as detailed in this Reply Submission, subject to the limited ARC exemption addressed below, CKT will be fully compliant with confidentiality related provisions of the ARC upon issuance of its transmission licence. The limited ARC exemption addressed below would not in any way undermine any IESO data confidentiality requirements.

### **Limited ARC Exemption**

31. As noted by Board Staff in its submissions<sup>19</sup>, CKT’s response to EnWin Interrogatory 2(c), in respect of compliance with ARC section 2.2.3 states that:

*CKT has one “energy service provider” affiliate – Chatham-Kent Utility Services (CKUS) – which provides sub-metering services and owns a small solar electricity generation facility. CKT will evaluate the feasibility of providing for information access controls that would preclude any employee engaged by both CKT and CKUS from having access to the “confidential customer information” of CKT’s sole customer – the South Kent Wind Project. If it is concluded that appropriate CKT customer information access protocols cannot effectively be put in place, and that employee sharing between CKT and CKUS is desirable, then CKT will apply to the Board for exemption from section 2.2.3 of the ARC in respect of such shared employees.*

32. CKUS has one sub-metering customer, and this customer is outside of the Chatham-Kent area. The Chatham-Kent Energy group has determined that it will

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<sup>19</sup> Board Staff Submissions, page 3, last paragraph, *et seq.*

exit the sub-metering business as soon as disposition of its one sub-metering contract can be arranged, and in any event by the end of 2011.

33. CKUS has one 10 kW micro-fit contracted solar array on the roof of a CKUS building. The Chatham-Kent Energy group has determined that this array will be transferred to Chatham-Kent Hydro Inc. as soon as practical, which in any event will be prior to the end of 2011, subject to the notification process required by section 80 of the *OEB Act* and to CKH obtaining a generator licence pursuant to section 57 of the *OEB Act*. Chatham-Kent Hydro Inc. has filed a section 80 Notice of Proposal with the Board in respect of the intended transfer of the solar array.
34. In the result, while CKUS is currently an “energy service affiliate” of CKT, following the changes outlined above CKUS will no longer be an “energy service affiliate” of CKT.
35. As a result of the ARC review that it has now completed, CKT has determined that it is desirable for CKT to share with its affiliates, including CKUS certain senior management personnel. Acquiring separate senior management resources for either CKT or CKUS would, at this point in time, be uneconomic.
36. CKT’s senior management are directly involved in negotiation of the agreements to be entered into between CKT and SKWP. Therefore, notwithstanding any degree of data access restriction, these shared senior management personnel will have access to information relating specifically to SKWP and obtained from SKWP in the course of negotiating the provision of prospective utility services. Accordingly, CKT has concluded that a request for a limited exemption from ARC section 2.2.3 is appropriate for the brief period during which CKUS remains an “energy service provider” affiliate of CKT.
37. ***CKT thus hereby applies to the Board for a limited exemption from section 2.2.3 of the ARC to permit, until December 31, 2011, the continued sharing between CKT and CKUS of CKT senior management personnel involved in***

***the negotiation for acquisition from SKWP of the connecting transmission line and for the provision to SKWP of transmission services by CKT.***

38. CKT submits that the granting of such a limited exemption is appropriate for the following reasons:

- a. The rationale for the ARC prohibition on sharing employees with access to confidential customer information between a utility and an energy services affiliate is to protect ratepayers by; i) precluding cross-subsidization by the utility of the energy services affiliate; and ii) precluding customer confusion. This rationale was most recently articulated by the Board in its *Notice of Proposal to Amend a Code: Proposed Amendments to the Affiliate Relationships Code for Electricity Transmitters and Distributors*<sup>20</sup>. The Board there stated:

*The Board is not proposing to eliminate section 2.2.3 of the Electricity ARC, which prohibits the sharing of employees who are directly involved in collecting, or have access to, confidential information. This provision remains important to the objectives of preventing cross-subsidization and customer confusion. However, the Board is proposing to amend the section by limiting its application to affiliates that are energy service providers. This reflects the Board's view that the risk of harm is greatest in relation to energy service provider affiliates. [Emphasis added]*

In a subsequent *Notice of Revised Proposal to Amend a Code* in the same proceeding<sup>21</sup> the Board elaborated on its rationale, in response to comments that the restriction should be modified. The Board stated as follows:

*The Board is not persuaded that a general policy shift to a focus on the use of information is appropriate at this time. The Board reiterates that if a utility can demonstrate that the use of confidentiality agreements in particular circumstances will result in no harm to ratepayers, no customer confusion and no cross-subsidization, then those specific circumstances could be assessed through an application for an exemption from section 2.2.3. [Emphasis added]*

- b. In respect of the potential for customer confusion:
  - (i) CKUS could not in any event use confidential information of SKWP in any way which could result in confusion to SKWP. The

<sup>20</sup> EB-2007-0662, Notice dated September 19, 2007, page 8.

<sup>21</sup> EB-2007-0662, Notice dated February 11, 2008, page 5.

competitive energy services that CKUS currently engages in are micro-embedded renewable generation and sub-metering. SKWP is a wind-generator, and is not a potential energy services customer of CKUS.

- (ii) The single sub-metering customer of CKUS could not be confused by the requested sharing of senior management, as that customer is outside of the Chatham-Kent area, and in any event sub-metering is not related to electricity transmission.
  - (iii) CKUS' renewable electricity micro-embedded generation initiatives don't have "customers", save for the OPA.
- c. In respect of precluding cross-subsidy of CKUS by CKT and its sole anticipated ratepayer, CKUS could not be advantaged (i.e. cross-subsidized) by access to SKWP information in its competitive energy services business. Again, SKWP is not a potential customer for the limited energy services businesses engaged in by CKUS.
- d. CKT submits that access to confidential SKWP information has no bearing on the cost allocation protocols and protections required of CKT by the ARC. Financial cross-subsidies are addressed in the ARC separately from information sharing prohibitions. In any event, CKT will be financially separated from its affiliates, including CKUS, and costs relating to the shared senior management personnel will be allocated to CKT in accord with the ARC transfer pricing provisions. The payments by SKWP for transmission services to be provided by CKT are intended to be governed by a Transmission Services Agreement between CKT and SKWP<sup>22</sup>, and will be subject to review and approval by the Board in a future application by CKT under section 78 of the *OEB Act*.
- e. As contemplated by ARC sections 2.6.1 and 2.6.2, CKT's sole anticipated ratepayer – SKWP - has provided a letter (included as Schedule A to these Reply Submissions) acknowledging the potential for the release and disclosure to CKUS of SKWP's "confidential information" as a consequence of CKT and CKUS sharing senior management personnel. SKWP has consented to such release and disclosure to the extent that it occurs. Pursuant to ARC sections 2.6.1 and 2.6.2, the prohibition on provision or disclosure of such information by CKT is fully addressed by SKWP's acknowledgement and consent. The sharing of senior management for which exemption from ARC section 2.2.3 is requested can thus do no harm, nor present any prejudice, to CKT's ratepayer, SKWP.

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<sup>22</sup> Application, page 4; Response to PWU Interrogatory 2.



- f. The Board has, in the past, granted exemptions from affiliate relationships code provisions which preclude the sharing of employees with access to confidential customer information, to allow the sharing of senior management where economics so required<sup>23</sup>, and where the exemptions requested were limited in scope.<sup>24</sup>
39. ***In the particular circumstances of CKT and CKUS as detailed above, and in consideration of the provision by CKT's sole anticipated transmission services customer (in the near and medium term) of acknowledgement and consent to any sharing of its "confidential information" by CKT with CKUS, CKT submits that the Board can, and should, grant to CKT a limited exemption from section 2.2.3 of the ARC, for the purposes of sharing between CKT and CKUS of certain senior management personnel until December 31, 2011.***
40. ***Further, CKT requests that the Board proceed to consider such request for limited ARC exemption within this docket and on the record as it stands, and that the Board grant such exemption as part of its determination on this licence Application.*** CKT makes this request on the basis of; i) the limited nature of, and duration for, the requested exemption; ii) the completeness of the record herein regarding the relationship between CKT and its sole anticipated transmission services customer; iii) the acknowledgement and consent provided by that customer regarding its confidential information; iv) the limited scope of CKUS's current energy services activities; and v) the importance of timely transmission licencing to the transaction being negotiated between CKT and SKWP to connect a renewable energy project supported by the Ontario government<sup>25</sup>.
41. CKT is aware of a parallel process of the Board in the case of an application (the TCP Application)<sup>26</sup> for a transmission licence by TransCanada Power

<sup>23</sup> Decision and Order in an Application by Natural Resource Gas Limited, RP-2002-0147/EB-2003-0117, August 4, 2004.

<sup>24</sup> Decision and Order in an Application by FortisOntario Inc., RP-2003-0254/EB-2003-0318, August 31, 2004.

<sup>25</sup> Letter from SKWP, Appendix A hereto.

<sup>26</sup> EB-2010-0324

Transmission (Ontario) LP (TCP). CKT is also aware that in the TCP Application the Board has invited a round of submissions by the parties on TCP's request for exemption from the *ARC*.

42. CKT respectfully submits that the circumstances of the TCP Application that led the Board to direct submissions specifically on TCP's request for exemption from the *ARC* do not pertain in the case of the limited exemption request by CKT set out herein.
43. TCP is requesting that the Board grant TCP a permanent exemption from sections 2.2.2 and 2.2.3 of the *ARC*, on the basis that TCP's own, internal affiliate relationships protocols on the sharing of information should be accepted in place of the *ARC*'s protocols. The record in the TCP Application indicates that TCP's established "energy service provider" affiliates will continue to be active energy service providers, and that the requested exemption would obtain for the foreseeable future in respect of TCP's sharing of staff with those "energy service affiliates". There have been no submissions in the TCP Application other than those invited by the Board relating to TCP's *ARC* exemption request.
44. CKT, on the other hand, is requesting a temporary exemption (until December 31, 2011), for a limited purpose (the sharing of senior management involved in negotiations with SKWP), and only until its "energy service affiliate", CKUS, is no longer an "energy service provider" (which, in any event, will be by the end of 2011). CKT has the express acknowledgement and consent of its one customer. As outlined above, there is clear precedent for such an exemption by the Board. Further, there have been full submissions by interested parties in this Application, including in respect of *ARC* issues.
45. While CKT submits that the Board can, and should, proceed to grant the requested, limited *ARC* exemption on the current, complete record herein, in the alternative, and should the Board conclude that a further process is required in respect of the limited *ARC* exemption herein requested, CKT requests that the Board proceed to issue a decision on all other aspects of CKT's licence



Application now, conditioned only on CKT satisfactorily addressing the requested ARC exemption.

## Reply to PWU Submissions

46. PWU in its submissions raises two concerns:

- a. Whether CKT proposes to undertake its transmission business in accordance with applicable statutory, regulatory and code requirements.
- b. Whether CKT's Application provides sufficient basis for the Board to grant a transmission licence that would enable CKT to participate in a future Board transmission development designation process.

47. In respect applicable statutory, regulatory and code requirements, PWU states:<sup>27</sup>

*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.*

48. CKT so acknowledges. As reflected in the now significant record developed on this Application:

- a. CKT has acknowledged the requirement that any transmission charges to SKWP be approved by the Board pursuant to section 78(1) of the *OEB Act*<sup>28</sup>.
- b. As acknowledged by the IESO in its March 4<sup>th</sup> submission, CKT has acknowledged "*its obligations as a licenced transmitter, including the need for compliance with applicable reliability standards and provisions (e.g., NERC, NPCC, Transmission System Code, etc.) and the Market Rules and Affiliate Relationships Code, and [CKT] is committed to putting in place the necessary processes and provisions to monitor and maintain compliance with these requirements*".
- c. CKT acknowledges the applicability to it as a licenced transmitter of the specific provisions of the *OEB Act* and the Board's *Transmission System Code* identified in the PWU submissions.<sup>29</sup>

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<sup>27</sup> PWU March 4, 2011 Submissions, paragraph 15.

<sup>28</sup> Response to PWU Interrogatory 2.

- d. CKT has also addressed how it will ensure up to date technical compliance with international transmission operational and reliability standards through staff training and, as required, retainer of expertly qualified consultants.<sup>30</sup>
49. CKT would note that these acknowledgements should be understood to be “without prejudice” to any future requests regarding the appropriate application of the various regulatory instruments or rules to CKT’s particular transmission activities. The business model for the immediate transmission project driving this application – the partnering to develop and then acquire a dedicated generator connection facility - is a new one for Ontario. No doubt it is but one of many new and innovative models that will be brought forward for consideration by the Board as Ontario’s electricity sector continues its brisk pace of redevelopment and maturation. The Board’s own new policy for competitive designation of transmission system developers is another such new model. Innovation requires some flexibility, which the Board has traditionally been able to exercise at the same time that existing regulatory requirements are addressed and the public interest protected.
50. In respect of PWU’s position that CKT’s Application has not met requirements for transmission licences necessary to enable participation in a future Board transmission development designation process, CKT disagrees.
51. First, despite PWU’s assertion to the contrary, CKT’s intentions regarding participation in post OPA Economic Connection Test projects, and more generally in “*future transmission system expansions as may be required under Ontario’s Long Term Energy Plan*”, were expressly set out in CKT’s Application.<sup>31</sup> Indeed the IESO specifically addressed such potential in its March 4<sup>th</sup> submissions herein.
52. Further, the record herein is complete with detailed information on CKT’s knowledge of electricity distribution and transmission and of the statutory and

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<sup>29</sup> See also Response to PWU Interrogatory 4.

<sup>30</sup> CKT Response to Hydro One Interrogatory 1 b).

<sup>31</sup> Application, page 33.

regulatory framework applicable thereto<sup>32</sup>, as well as regarding CKT's financial resources<sup>33</sup>.

53. More fundamentally, CKT disagrees with PWU's assertion that transmission licencing for the purpose of qualifying for participation in the Board's transmission designation process somehow requires a demonstration, at the licencing stage, of *"the financial resources and wherewithal necessary to own and operate major infrastructure projects on a stable and prudent basis"* [emphasis added]. (CKT is assuming that PWU here refers to transmission projects substantially larger in scale and scope than the particular generation connection project which is the immediate driver for CKT's Application.)
54. In its recent transmission designation Policy, in determining that transmitters will need a transmission licence from the Board to participate in the competitive transmission designation process, the Board referred to its transmission licencing process as useful *"to ensure that a new entrant transmitter meets certain minimum requirements in relation to both financial and technical capability, and that this would provide comfort that the new entrant transmitter is both qualified and committed to doing business in Ontario should it be designated"*.<sup>34</sup> [Emphasis added]
55. The Board went on in its Policy, in commenting on stakeholder suggestions that the Board's licensing process could be a barrier to entry to Ontario's transmission sector, to recognize that *"[t]he Board's licensing process is neither unduly onerous nor time consuming"*.<sup>35</sup>
56. CKT submits that its Application, as elaborated on in the balance of the record herein, amply demonstrates that it is both qualified for, and committed to, doing business in Ontario's transmission sector.

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<sup>32</sup> See for example CKT Response to Hydro Interrogatory 1.

<sup>33</sup> See for example Application pages 12 through 25, and Confidential Exhibit E.

<sup>34</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 5, 3<sup>rd</sup> paragraph.

<sup>35</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 5, last full paragraph.

57. CKT further submits that its ability to undertake any particular future project that might be subject to the Board's new competitive transmission designation framework, should CKT choose to apply for designation for such a project, will be the subject of review in such future proceeding. There is no basis upon which to restrict the transmission licence requested by CKT in the manner proposed by PWU. Indeed, to do so would be contrary to the Board's own policy to encourage new entry and support competition in Ontario's transmission sector<sup>36</sup>, and thus contrary to the "public interest" as applied by the Board through that policy.
58. CKT would note that its two shareholders are the Municipality of Chatham-Kent, and Corix Utilities Inc. The Corix Group of Companies specialize in providing products and utility solutions for sustainable infrastructure in the water, wastewater and energy sectors for clients across North America. Corix has more than 1,800 employees in 60 locations across North America.<sup>37</sup> It is submitted that CKT clearly has access to financial and technical resources well beyond the "minimum required" to be demonstrated at the licencing stage.

### **Reply to EnWin Submissions**

59. CKT has a number of comments on EnWin's submissions herein.
60. First, EnWin extensively cites the Board's decision in EB-2009-0164, which was an application by Lexi Transmission Corporation for an electricity transmission licence. EnWin asserts that the Lexi application is analogous to CKT's Application, and asserts that the Board's decision on the Lexi application is a basis upon which the Board should reject CKT's Application.
61. Lexi's application bears no resemblance to CKT's Application.
62. Lexi was an entity owned by SkyPower Corporation. SkyPower was a wind generator participating in the OPA's Standard Offer Program. The Board rejected

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<sup>36</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 1.

<sup>37</sup> Application, page 7 and Exhibit D.

Lexi's transmission licence application on the basis that there was no specific project underpinning the application, Lexi was not engaged in transmission activity elsewhere, and the evidence before the Board was that Lexi had no specific technical expertise in transmission.

63. In contrast, CKT's Application provides extensive information on a particular transmission project that is well developed and which the parties involved are now beginning to execute (this transmission licence Application being an important step in that execution). Further, the CKT senior management and key individuals involved in this project<sup>38</sup> have extensive electricity grid experience, including transmission experience and the operation of two established Ontario electricity distributors.
64. EnWin's submissions also make assertions regarding the "public interest", and posit that the Lexi decision supports the contention that "[t]he burden of demonstrating that granting the transmission licence would be in the public interest sits with the Applicant".<sup>39</sup>
65. The Lexi Decision is, in aggregate, 2 pages long. The Board sets out its reasons for decision in 4 brief paragraphs. The only mention of "public interest" in the Lexi Decision is found in the following passage<sup>40</sup>:

*After considering the application, the Board finds that it is not in the public interest to grant a transmission licence on the basis of the current application.*

66. At its highest, the Lexi decision can be quoted in support of the proposition that the public interest could be harmed by granting a transmission licence to an applicant with neither relevant experience nor a specific transmission project. The various assertions by EnWin of the need for CKT to positively demonstrate a furthering of the public interest in order to be granted a transmission licence are simply not supported in any measure by the very fact specific Lexi decision.

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<sup>38</sup> Application, pages 12 through 25; CKT Response to Hydro One Interrogatory 1.

<sup>39</sup> EnWin March 4<sup>th</sup> Submissions, paragraphs 9 *et seq.*

<sup>40</sup> EB-2009-0164, Decision dated August 10, 2009, page 2, third last paragraph.

67. In particular, EnWin asserts that to be granted a transmission licence, CKT must demonstrate that it is in the “public interest” for CKT to be the transmitter of electricity from the SKWP to the grid, rather than Hydro One being that transmitter<sup>41</sup>. This assertion seems to be on the basis that “[m]ultiple transmitters in close proximity are presumed to create inefficiencies, duplicate costs and introduce financial instability due to competing operations”<sup>42</sup>.
68. EnWin seems to have confused the notion of “competition” with the notion of “redundancy”. Network facilities are inefficient when they are redundant – i.e. constructed to operate in parallel when demand is less than sufficient to properly utilize more than one facility. In contrast, competition to develop and operate network facilities, including contiguous network facilities, is potentially beneficial to Ontario ratepayers generally, and is the very basis of the Board’s recently articulated transmission development policy. It must be presumed that the Board’s transmission development policy reflects the Board’s view of the public interest. That policy is expressly designed precisely to attract competition and new entry into Ontario’s transmission sector.<sup>43</sup>
69. Hydro One itself has publicly acknowledged that the very type of radial line that is proposed to connect SKWP to Hydro One’s primary transmission system is the type of facility that “could be built and operated by new transmitters”. According to Hydro One, “[t]hese facilities operate independently of the transmission network and hence there is no reason that they could not be operated by new transmitters, provided of course that the new facilities are fully compliant with applicable technical and reliability standards”.<sup>44</sup>
70. CKT further notes that Hydro One, which has historically been proactive in asserting its role in future transmission development in Ontario, actively intervened in this Application and, based on the developed record, has indicated

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<sup>41</sup> EnWin March 4<sup>th</sup> Submissions, paragraph 11.

<sup>42</sup> EnWin March 4<sup>th</sup> Submissions, paragraph 15.

<sup>43</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 1.

<sup>44</sup> Submission of Hydro One Networks Inc. Regarding the Staff Discussion Paper on Transmission Project Development Planning, EB-2010-0059, May 31, 2010, page 4, last paragraph.



that it has no submissions to make. Though an active participant in this Application, Hydro One has raised no objection to the granting to CKT of a transmission licence.

71. EnWin further asserts a “*presumption*” that “*prices would increase to cover incremental transmission administration costs*”. CKT is proposing to participate in development of a new transmission line, for a dedicated purpose, the costs of which will be incremental by definition. Those costs, it is proposed, will be absorbed by CKT or covered by SKWP.<sup>45</sup>
72. Finally, EnWin asserts the potential for “material impact” to EnWin and its ratepayers<sup>46</sup>. However, EnWin provides no specifics regarding such impact. None of EnWin’s interrogatories address any such impacts. This assertion is without any substance.
73. Issues of “public necessity and convenience” and transmission services charges will be fully reviewed by the Board at the leave to construct and rate order applications related to the proposed transmission connection project. Should EnWin have any particular concerns on behalf of its ratepayers, it can advance them at that time. These are not issues for determination at the preliminary stage of a transmission licence application.
74. As detailed at paragraphs 53 through 57 above, at issue in a transmission licence application is the commitment and basic competence of the licence applicant to be a transmitter. CKT submits that it has demonstrated commitment and competence.

## Conclusion

75. The Ontario Energy Board has recently released a transmission policy for Ontario, the primary stated objectives of which include to:

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<sup>45</sup> CKT Responses to Hydro One Interrogatory 6 b) and to PWU Interrogatory 2.

<sup>46</sup> EnWin March 4<sup>th</sup> Submissions, paragraphs 2 and 14.



- a. *“encourage new entrants to transmission in Ontario bringing additional resources for project development”*; and
  - b. *“support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers”*.<sup>47</sup>
76. In that policy the Board specifically contemplates transmission licencing as a threshold qualification step, intended to be neither unduly onerous nor time consuming.<sup>48</sup>
77. The Board’s overriding, legislated policy objectives also include the promotion of the generation of electricity from renewable sources.<sup>49</sup>
78. The Ontario government’s policy for development of Ontario’s renewable energy sector is manifested, *inter alia*, in its agreement with a consortium of Samsung and the Korea Electric Power Corporation for development of wind generation and manufacturing facilities in Ontario. The SKWP wind generation facility to be connected to the provincial electricity transmission grid by CKT’s proposed transmission connection arises directly out of that agreement.
79. CKT’s Application includes significant detail regarding a specific transmission connection project to connect to Hydro One’s existing transmission system a significant new renewable electricity generation facility which is directly supported by the government of Ontario.
80. CKT’s senior management has significant electricity grid experience in Ontario.
81. CKT’s Application demonstrates that CKT is fully cognizant of its obligations and responsibilities as a licenced Ontario transmitter.<sup>50</sup> CKT fully acknowledges its intention and ability to comply with its full range of obligations as a licenced electricity transmitter.<sup>51</sup>

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<sup>47</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 1.

<sup>48</sup> EB-2010-0059 *Framework for Transmission Project Development Plans*, page 3.

<sup>49</sup> OEB Act, section 1(1) 5.

<sup>50</sup> IESO March 4<sup>th</sup> Submissions, page 2, top.

<sup>51</sup> PWU March 4<sup>th</sup> Submissions, paragraph 15.

82. CKT respectfully submits that there is no public interest that militates against the Board granting to CKT the applied for transmission licence. On the contrary, CKT submits that the application of the "public interest" reflected in the Board's recent transmission policy is served by granting a transmission licence to CKT as a competitive new entrant bringing additional project development resources and economic efficiency to Ontario's electricity transmission sector.
83. ***CKT thus respectfully requests that:***
- a. ***The Board grant this Application and issue an electricity transmission licence in the name of CKT.***
  - b. ***Such licence not be constrained geographically or to the specific near term project described in the Application.***
  - c. ***The Board further grant to CKT a limited exemption from section 2.2.3 of the Board's Affiliate Relationships Code for Electricity Transmitters and Distributors, to allow CKT to share senior management personnel with CKT's energy services affiliate, CKUS, until December 31, 2011.***

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:

  
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**GOWLING LAFLEUR HENDERSON LLP**, per:  
Ian A. Mondrow  
Counsel to Chatham-Kent Transmission Inc.  
March 25, 2011

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**SCHEDULE A TO REPLY SUBMISSION  
OF CHATHAM-KENT TRANSMISSION INC.  
(EB-2010-0351)**

**SOUTH KENT WIND GP INC.**  
SUITE 105  
100 SIMCOE STREET  
TORONTO, ON

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March 25, 2011

Chatham-Kent Transmission  
320 Queen St.,  
P.O. Box 70,  
Chatham, ON N7M 5K2  
Canada

**Re: Acknowledgement and Consent Regarding Confidential Information.**

As requested, this letter acknowledges our discussions regarding the sharing of certain senior management personnel between Chatham Kent Transmission Inc. (CKT) and other companies in the Chatham-Kent Energy group, including Chatham Kent Utility Services Inc. (CKUS). In particular, we acknowledge your advice that:

- CKUS is currently engaged in the provision of competitive energy services, which are billing services, sub-metering services and the renewable generation of electricity.
- The Ontario Energy Board's (OEB) Affiliate Relationships Code for Electricity Transmitters and Distributors (ARC) prohibits the sharing of CKT staff with access to SKWLP's transmission customer specific information with any affiliate that provides such energy services.
- Given that senior CKT management are also involved in management positions for other Chatham-Kent Energy group companies, including CKUS, CKT will be seeking an exemption from the OEB in respect of this prohibition.

This letter confirms that we have no concerns with, or objections to, the provision of our customer specific information to CKT's senior management personnel who are also involved in senior management capacities with other Chatham-Kent Energy group companies, including CKUS.

Please feel free to file this letter with the Ontario Energy Board in support of any requested ARC exemption application. We hope that this letter will expedite the processing of CKT's Transmitter Licence Application, which is an important step to ensure the timely completion of our negotiations and timely execution of our wind project, including its connection to the pre-existing Ontario transmission grid.

Please don't hesitate to call if you require anything further.



Colin Edwards  
Director  
South Kent Wind GP Inc.