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Toronto, April 18, 2011

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: TransCanada Power Transmission (Ontario) L.P.
Application for an Electricity Transmission Licence (EB-2010-0324)

Please find enclosed the Reply Submission of TransCanada Power Transmission (Ontario) L.P. in the above-noted proceeding.

Yours very truly,



Richard J. King

RK/mnm

Encl.

cc. All Intervenors and Observers

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by TransCanada Power Transmission (Ontario) L.P. under section 60 of the OEB Act for an electricity transmission licence.

REPLY SUBMISSION

OF

TRANSCANADA POWER TRANSMISSION (ONTARIO) L.P. (“TPT”)

PART A - Overview

1. This submission responds to the submissions of Board Staff, Hydro One Networks Inc. (“HONI”), the Independent Electricity System Operator (“IESO”) and Great Lakes Power Transmission LP (“GLPT”), in respect of the TPT’s application for an electricity transmission licence.
2. Neither Board Staff nor any intervenor has suggested that TPT should not be granted an electricity transmission licence.
3. Board Staff, HONI and GLPT have confined their submissions to TPT’s request for exemptions from certain provisions of the Board’s *Affiliate Relationships Code for Electricity Distributors and Transmitters* (“ARC”). TPT’s reply submissions on the ARC exemption requests are set out in Part B below.

4. Only the IESO's submission addresses the granting of a licence to TPT. The IESO does not suggest that TPT be denied a licence, but rather suggests that TPT be issued a transmission licence that is limited in scope (as compared to the licences of existing transmitters), based on the fact that TPT's application is being made to enable TPT to participate in the transmission designation process. Part C (below) responds to the IESO's submissions on this concept of a limited transmission licence.

PART B - Exemptions from ARC

5. Upon reviewing the submissions of Board Staff and the intervenors, TPT is withdrawing its request for an exemption from section 2.2.2 of the ARC. TPT will establish the requisite data management and access protocols to comply with section 2.2.2.
6. Consequently, the only ARC exemption being requested by TPT is a very limited exemption from section 2.2.3 of the ARC. The purpose of this exemption is to enable TPT to utilize Shared Services personnel within the TransCanada group of companies. The Shared Services personnel will be subject to confidentiality requirements to ensure that no confidential information is shared with an energy service provider. The result is that an affiliated energy service provider will not have access to TPT's confidential information.
7. TPT is also asking that the ARC not be made applicable to TPT until such time as TPT is successfully designated as a transmitter (or until TPT otherwise purchases or operates a transmission system in Ontario).

(a) Proposed Shared Services Agreement

8. In order to address the concerns raised by Board Staff and intervenors about a section 2.2.3 ARC exemption, TPT is proposing to enter into a Shared Services Agreement with

TransCanada PipeLines Limited (“TCPL”) (which is attached at Exhibit A to this reply submission) upon being designated as a transmitter for a particular project (or upon TPT otherwise purchasing or operating a transmission system in Ontario).

9. The key elements of this proposed Shared Services Agreement are as follows:

- Shared Employees: TPT will not share employees with TCPL if such sharing would be harmful to TPT’s customers. Further, TPT will be prohibited from sharing employees that participate in the commercial or consumer aspects of TPT’s business with a non-regulated affiliate¹ of TPT or TCPL.
- Confidential Information: By way of a Shared Services Agreement, TPT and TCPL will be prevented from providing non-regulated affiliates of TPT with information related to the planning, operations, finances or strategy of TPT before such information is publicly available. Further, neither TPT nor TCPL will be able to share confidential information² with any affiliate except where legally compelled or otherwise protected, with the exception of the provision of confidential information that TPT may provide to TCPL on an as-needed basis.

¹ The term “non-regulated” or “Non-Regulated” when used in this submission has the same meaning as the term “energy services provider” in the ARC. Thus, a reference to a non-regulated affiliate of TPT is the same as a reference to an affiliate of TPT that is an energy services provider (as that term is used in the ARC). At section 1.5 of the proposed Shared Services Agreement, the term “Non-Regulated Affiliate” is defined as “[a]n Affiliate that is an energy services provider within the meaning of the *Affiliate Relationships Code for Electricity Distributors and Transmitters* issued by the Ontario Energy Board (as amended).”

² The term “confidential information” when used in this submission has the same meaning as that term in the ARC. At section 1.2 of the proposed Shared Services Agreement, the term “Confidential Information” is defined as “[a]ny information TPT has obtained relating to a specific smart sub-metering provider, wholesaler, consumer, retailer or generator in the process of providing current or prospective electricity transmission services in Ontario.” This is different than the definition of “Confidential Information” used in TCPL’s Code of Conduct, and has been amended to conform to the ARC.

10. These measures are explained in greater detail below in our reply to Board Staff. However, it is TPT's submission that these measures in the Shared Services Agreement address the issues raised by all other parties to this proceeding as well.
11. Finally, TPT's proposed measures in its Shared Services Agreement would enable TPT to utilize its Shared Services group of employees within the TransCanada group of companies in a way that mitigates that risk posed by being exempted from section 2.2.3 of the ARC.
12. As noted in TPT's application and Interrogatory Responses, the TransCanada group of companies contain both regulated and non-regulated energy businesses. As a result of inter-affiliate codes of conduct governing some of the larger regulated entities within the TransCanada group of companies (i.e., TCPL Mainline and Nova Gas Transmission Ltd. ("NGTL")³), TransCanada has organized its personnel and information assets into three divisions: "Regulated", "Non-Regulated" and "Shared Services".
13. The "Shared Services" division within the TransCanada group of companies consists of personnel that deal with, *inter alia*, taxation and accounting, regulatory and legal affairs, environmental affairs, field operations, human resources, information systems, investor relations, financial reporting, communications, engineering, treasury, secretarial and executive administration, etc. These "Shared Services" personnel are all employees of TCPL, and provide these types of functions for both the regulated and non-regulated entities within the TransCanada group of companies. This obviously provides cost

³ The codes of conduct of both TCPL Mainline and NGTL are attached to TPT's response to Board Staff Interrogatory #1.

efficiencies for TransCanada and its customers (including the ratepayers of TransCanada's regulated businesses).

14. The TransCanada inter-affiliate codes of conduct were established for much the same purpose as the ARC – namely, to mitigate the risks associated with having shared employees and information systems among affiliated energy companies involved in both the regulated and non-regulated aspects of the energy sector. Although the inter-affiliate codes of conduct apply to only TCPL Mainline and NGTL, they drive the entire inter-*corporate* structure of services (and as a result, apply *de facto* across the entire TransCanada group of companies). These codes prevent, for example, TCPL Mainline (a regulated utility) from sharing confidential information with its non-regulated affiliates.
15. What TPT is proposing is to impose obligations similar to the shared employee and confidential information requirements contained in the TCPL Code of Conduct on TPT (and, where relevant, TCPL), by way of a Shared Services Agreement with TCPL. These requirements ensure that no confidential information will be conveyed to any non-regulated affiliate of TPT or TCPL, and as a result, a non-regulated affiliate will not be in a position to gain financially from such information.

(b) Reply to Submissions of Board Staff

16. Board Staff made two submissions on TPT's request for an exemption from section 2.2.3 of the ARC: (a) Board Staff first pointed out that cost savings alone (achieved by sharing employees) cannot trump section 2.2.3 of the ARC; and (b) Board Staff also expressed concern that an exemption could give a competitive advantage to TPT and its affiliates.
17. With respect to cost savings, TPT agrees with Board Staff that the cost savings achieved by TPT utilizing the TCPL Shared Services group cannot trump the ARC provisions.

However, the cost savings to be garnered as a result of TPT sharing these employees is a relevant consideration for the Board in considering this exemption request. The Board's decisions in both the Fortis and NRG cases⁴ to grant an exemption from section 2.2.3 of the ARC were both based in part on cost savings considerations.

18. It is not only in its past decisions on ARC exemption requests that the Board has noted the importance of cost savings. In the context of new transmission to be built in Ontario, it is noteworthy that the Board's policy as articulated in the Transmission Project Development Planning process⁵ was to "support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers". This is, of course, consistent with the Board's statutory objective to "promote economic efficiency and cost effectiveness in the ... transmission ... of electricity ...".⁶
19. So cost efficiencies and savings resulting from the sharing of employees by TPT is relevant. As a small company, having access to the TCPL Shared Services group will enable TPT to avail themselves of those resources in a manner that is more cost effective than either hiring full-time employees to perform those functions or retaining external resources.
20. The primary risk that section 2.2.3 of the ARC is meant to address in the context of TPT's application (according to Board Staff) is the potential for TPT's non-regulated

⁴ Decision and Order in an Application by Natural Resource Gas Limited seeking an order granting an exemption from certain sections of the *Affiliate Relationships Code for Gas Utilities* (RP-2002-0147/EB-2003-0117), August 4, 2004; Decision and Order in an Application by FortisOntario Inc. for exemptions from sections of the *Affiliate Relationships Code for Electricity Distributors and Transmitters*, (RP-2003-0254/EB-2003-0318), August 31, 2004.

⁵ See *Board Policy: Framework for Transmission Project Development Plans* (EB-2010-0059, issued by the Ontario Energy Board on August 26, 2010)(the "Designation Policy").

⁶ Subsection 1(2), OEB Act.

affiliates to obtain confidential information from TPT as a result of the sharing of employees. This is an issue of both privacy and the ability of a TPT non-regulated affiliate obtaining an unfair business advantage as a result of having such information.⁷

21. TPT submits that these risks associated with being granted an exemption from section 2.2.3 of the ARC are limited in the case of TPT, and fully addressed by the proposed Shared Services Agreement in any event.
22. In TPT's case, these risks are limited because the employees being shared would not be employees of either TPT or a non-regulated affiliate of TPT. Rather, the "shared employees" are employees of TCPL (in the Shared Services group), a regulated affiliate of TPT. Thus, the concern is not that a non-regulated TPT affiliate would obtain access to confidential information of TPT as a result of employees of the non-regulated affiliate being directly involved in TPT's business (or vice versa). Instead, the sharing of employees is "indirect" in the sense that both TPT and non-regulated affiliates of TPT will share employees of a different regulated affiliate (i.e., TCPL). That sharing of employees with its regulated affiliate TCPL is the only reason for TPT seeking this exemption from section 2.2.3 of the ARC.
23. It is difficult to imagine how TCPL would obtain an unfair competitive advantage as a result of employees within TCPL's Shared Services group obtaining TPT confidential information (while providing services to TPT). TCPL owns and operates the Canadian Mainline, which is the main natural gas transmission system from Alberta to eastern Canada. TPT is unlikely to have any confidential information that could be utilized by

⁷ Paragraph 1.1(e) of the ARC states that it is an objective of the ARC to prevent "a utility from acting in a manner that provides an unfair business advantage to an affiliate that is an energy services provider."

TCPL for any competitive advantage. TCPL does not compete in any of the Ontario energy sector's competitive lines of business. Further, the Shared Services group employees are not involved in commercial management of TransCanada's businesses, do not typically have direct contacts with TransCanada customers, and do not participate in the day-to-day decision-making regarding the provision of regulated services by TCPL or other TransCanada businesses.

24. So the risks associated with TPT being granted an exemption from section 2.2.3 of the ARC, to be able to utilize Shared Services personnel with TCPL, are minimal.
25. However, as noted above, in order to provide additional comfort to the Board, TPT will impose restrictions on the employees in the Shared Services group of employees (similar to the obligations that TCPL places on those same employees in TCPL's Code of Conduct) by way of a Shared Services Agreement which is attached as Exhibit A to this submission. The key provisions in the proposed Shared Services Agreement are sections 4.1, 4.2, 5.1, 5.2 and 5.3 (which are modelled on sections 3.4, 6.1, 6.3 and 6.5 of the TCPL Code of Conduct), which state:

4. Employee Sharing

4.1 General Obligation. TPT may share employees with TCPL on a Cost Recovery Basis, provided that the employees to be shared are able to carry out their responsibilities in a manner that preserves the form, spirit and intent of this Agreement. In particular, an employee:

4.1.1 shall not be shared if it could reasonably be considered detrimental to the interests of TPT's customers; and,

4.1.2 if being shared, shall abstain from engaging in any activity that could reasonably be considered detrimental to the interests of TPT's customers.

4.2 Employees That May Not Be Shared. TPT and TCPL may not share employees with a Non-Regulated Affiliate that:

4.2.1 participate in making day-to-day decisions with respect to the provision or delivery of TPT's services;

4.2.2 deal with or have direct day-to-day contact with customers of TPT; and

4.2.3 are involved in day-to-day commercial management of the businesses of TPT.

5. Confidentiality of Information

5.1 TPT Information. Neither TPT nor TCPL shall provide Non-Regulated Affiliates with information relating to the planning, operations, finances or strategy of TPT before such information is publicly available.

5.2 No Release of Confidential Information. Subject to section 5.3, neither TPT nor TCPL shall release to an Affiliate Confidential Information relating to a current or prospective smart sub-metering provider, wholesaler, consumer, retailer or generator, without receiving the prior written consent of such, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required:

5.2.1 for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the customer is a party;

5.2.2 for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;

5.2.3 to a municipal or provincial police service for the purpose of investigating an offence;

5.2.4 by law or by an order of a government or agency having jurisdiction over TPT; or

5.2.5 for the purpose of providing Shared Services to the Affiliate or for the purpose of receiving Shared Services from the Affiliate, provided appropriate measures are first put in place by the Affiliate to protect the Confidential Information and the Confidential Information is used by the Affiliate only for the purpose intended by TPT.

5.3 Release of Confidential Information to Regulated Affiliates. TPT may release Confidential Information on an as-needed basis, to TCPL provided that TCPL does not release the Confidential Information to any other entity without receiving the prior written consent of the smart sub-

metering provider, wholesaler, consumer, retailer or generator, as the case may be.

26. These provisions, in TPT's submission, would ensure that no unfair advantage is provided to any non-regulated affiliate of TPT, and the confidential information of TPT is appropriately protected, while still permitting TPT to utilize the Shared Services group.

(c) **Reply to Submissions of IESO**

27. The IESO's main concern with the ARC exemptions relates to the potential disclosure or access to two types of information: (a) confidential customer equipment and operational information and data (i.e., customer forecast, planning and load flow information and data that the IESO may be required to provide to TPT from time to time for the purpose of preparing transmission plans or proposals for the expansion or modification of the IESO-controlled grid); and (b) confidential customer settlement and billing information and data.
28. It is important to note that as a licensed transmitter, TPT would be required to comply with the IESO's Market Rules (including all confidentiality provisions of the Market Rules, such as those cited in the IESO's submission).
29. Further, TPT submits that the proposed Shared Services Agreement addresses the concerns of the IESO, as follows:
- Pursuant to section 4.1 of the Shared Services Agreement, TPT may only share employees with TCPL if such sharing is not harmful to TPT's customers.
 - Pursuant to section 4.2 of the Shared Services Agreement, TPT and TCPL cannot share employees with a non-regulated affiliate of TPT that participates in the commercial or consumer aspects of TPT's business.

- Pursuant to section 5.1 of the Shared Services Agreement, neither TPT nor TCPL is able to provide non-regulated affiliates of TPT with information relating to the planning, operations, finances or strategy of TPT before such information is publicly available.
 - Pursuant to sections 5.2 and 5.3 of the Shared Services Agreement, TPT and TCPL will not be able to share confidential information with an affiliate except where compelled or otherwise protected, with the exception of confidential information that TPT may provide to TCPL on an as-needed basis (provided TCPL does not release the confidential information to any other entity without receiving the prior written consent of the smart sub-metering provider, wholesaler, consumer, retailer or generator).
30. Moreover, by agreeing to establish the appropriate data access protocols and data management systems to comply with section 2.2.2 of the ARC, TPT's affiliates will not be able to access TPT confidential information.

(d) Reply to Submissions of GLPT

31. GLPT's short submission focuses on the transmitter designation process, and states that TPT should not be given any ARC exemptions if it would provide TPT a potential advantage relative to other transmitters in respect of the designation process.
32. GLPT does not articulate how any such ARC exemption would provide TPT with an advantage relative to other transmitters. TPT believes that being granted a very limited exemption from section 2.2.3 of the ARC, and binding TPT to the proposed Shared Services Agreement, would not provide TPT with any such advantage.

(e) **Reply to Submissions of HONI**

33. HONI's submission focuses on the issue of the timing of the ARC's applicability to TPT. Specifically, HONI states that any blanket exemption from the ARC during the designation process would enable TPT to receive potentially confidential and commercially sensitive technical and connection information that incumbent transmitters are required to provide to all bidders as part of the designation process.
34. Consequently, HONI suggests that the ARC be applicable to TPT at the outset of the designation process rather than at a point in time where TPT is successfully designated.
35. TPT submits that HONI's concerns are unfounded.
36. First, it is not clear whether the information that incumbent transmitters would be required to provide to other participants in the designation process would fall within the definition of "confidential information" (as utilized in the ARC). In its Designation Policy, the Board stated that it would begin a process to amend the Transmission System Code in order to provide specific instructions to incumbent transmitters on the level and timing of information to be provided. To TPT's knowledge, no proposed amendments have yet been issued.
37. Second, and most importantly, any confidentiality issues arising in the context of a Board designation proceeding could be dealt with by the Board as it normally does in the context of any proceeding (i.e., by way of confidentiality undertakings). It is TPT's submission that this is the most appropriate mechanism for dealing with confidentiality during the designation process since the issue at that point in time would be confidentiality of the information more broadly (i.e., in the context of a public hearing) as opposed to the specific confidentiality concerns that the ARC is meant to address.

38. Consequently, there is no good reason to apply the ARC broadly to TPT until such time as TPT is successfully designated in respect of a particular project (or becomes active in the Ontario transmission market).

PART C - Scope of Transmission Licence

39. The final issue addressed in this reply submission is the IESO's submissions requesting that TPT be issued a limited transmission licence, on the basis that TPT's motive for seeking such a licence is solely to participate in the transmission designation process.

40. The IESO submission states that "there is a disconnect (or some confusion)" between the fact that: (a) TPT is making its application to enable TPT to participate in the transmission designation process; and (b) the licensing requirement in the OEB Act is for companies that wish to "own or operate a transmission system". As the IESO states at paragraph 8 of its submission:

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.

41. Consequently, the IESO states that a "blanket authorization" to own/operate any transmission facilities is not warranted, and that any transmission licence should be limited to a license to participate in the designation process.
42. TPT submits that there is no "disconnect" or "confusion" between TPT's application and the approval/authorization being sought by TPT. TPT is applying to the Board for an electricity transmission licence. Any licence issued to TPT as a result of this application should not be limited as suggested by the IESO, for the following reasons.

43. First and foremost, the issue being raised by the IESO has already been considered and decided in the Designation Policy proceeding. Page 6 of the Designation Policy states:

Transmitters will need a transmission licence from the Board to participate in the designation process.

Existing transmitters that are already licensed by the Board will participate in the designation process under their existing licence.

New entrant transmitters will need to apply for, and obtain, a transmission licence before being able to participate in the designation process.

44. Thus, the Board has already considered how to deal with transmission licensing in the context of the transmission designation process, and have instructed new entrant transmitters such as TPT to obtain an electricity transmission licence before being able to participate in the designation process. This is precisely what TPT is doing, and what other new entrants appear to be doing as well (e.g., Icon).
45. Second, section 57 of the OEB Act sets out the Board's licensing authority. The Board does not have authority to issue a licence to enable participation in the transmitter designation process. No such licensing authority exists. Nor does the Designation Policy contemplate different "types" of transmission licences as between existing transmitters and new entrants.
46. Third, from a practical perspective, even if the Board did have such authority, there is no good reason to have new entrants be issued an electricity transmission licence that is limited in scope, and could put new entrants at a competitive disadvantage. In fact, the most efficient approach would be to have new entrants issued a standard electricity transmission licence with a blank Schedule 1. If a new entrant is successful in the designation process, Schedule 1 would be amended to add the new facilities that were the subject of the designation process.

47. The issuance of an electricity transmission licence to TPT would not (as the IESO suggests) provide “a blanket authorization” to TPT to own and/or operate any transmission facilities “without knowing the specific facilities for which an owner and/or operator license is required”. An existing licensed transmitter enjoys no such “blanket authorization” – any new transmission facilities that an existing transmitter seeks to construct or purchase would have to be added to Schedule 1 of that transmitter’s licence by way of a licence amendment application, wherein the Board will assess the existing transmitter’s financial and technical capability to own and operate these new or additional facilities. The same will be true in any designation process conducted by the Board. Existing transmitters and new entrants will be evaluated in part on their ability to own and operate the facilities in question. Indeed, some projects subject to designation may be so significant in scale that new entrants such as TPT may be more financially and technically capable of owning and operating these facilities than existing transmitters. This can and will be dealt with in the designation process.
48. Licensing new entrants does, however, provide the Board with an opportunity to conduct a general assessment of the financial and technical capability of the new entrant for the purposes of the designation process. This is presumably what drove the Board’s Designation Policy to require designation process participants to obtain a licence.

PART D - CLOSING SUBMISSIONS

49. In evaluating the above submissions, it is helpful to bear in mind the policy objectives set out in the Designation Policy. The Board states that the objectives of the Designation Policy are to:

- encourage new entrants to transmission in Ontario bringing additional resources for project development; and
- support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.⁸

50. Thus, attracting new entrants to provide competition in the transmission sector was a fundamental goal of the framework. This entails a couple of points.

51. First, the goal of the regulatory instruments underlying transmission – including in this case, the ARC – should be considered in light of the fact that electricity transmission is a different business than gas and electricity distribution. Therefore, accommodating some difference in the application of the Board’s Codes may be warranted.

52. In this regard, it is helpful to bear in mind that the ARC was initially developed to govern the activities of gas distributors, and then extended to the electricity sector, primarily to govern electricity distributors. While those types of utilities bear some resemblances to electricity transmitters (in that both distributors and transmitters have their rates and terms of service regulated by the Board), there are some important differences as well. Specifically, distributors have a *de facto* monopoly business that the Board has consistently sought to maintain – the Board is not seeking to attract competition in gas or electricity distribution. As the Board stated in developing a policy that prohibited more than one distributor from operating in a distribution franchise, “the distribution sector is a natural monopoly.”⁹

⁸ Designation Policy, p.1.

⁹ Service Area Licence Amendment Applications, February 27, 2004, para. 182 (RP-2003-0044).

53. By contrast, the Board is seeking to attract new entrants to provide electricity transmission services. As the Board has noted, “there are no exclusive franchises for electricity transmission.”¹⁰ As a result, the precedential value of decisions respecting gas and electricity distribution, and the application of Board Codes to distribution utilities, are somewhat limited in the transmission context. The distribution system regulatory regime is aimed at maintaining monopolies in gas and electricity distribution; the electricity transmission system regulatory regime is aimed at least in part at attracting competition. This is an important difference in considering whether the application of the ARC provisions to electricity transmission can be carried out in a more flexible manner than in distribution.
54. More concretely, the business models underlying the electricity transmission sector may be less uniform than business models in Ontario’s distribution sector. For example, the transmission companies that the Board is seeking to attract to Ontario will in many cases be part of larger organizations with operations outside of Ontario, and business practices that allow them to operate in several jurisdictions. Attracting these new entrants involves some recognition that they may have ways of doing businesses that are different than similar businesses operating solely in Ontario, and being open-minded about whether those different approaches should be tolerated.
55. In TPT’s submission, the Board’s considerations in this regard should be about ends, not means. Thus, if TPT’s practices meet the Board’s goals of protecting customers, providing cost effective services, etc., then TPT should not be disqualified because it uses different means – a corporate structure driven by a code of conduct that meets national

¹⁰ OEB Report on the Review of the Integrated Power System Plan, December 27, 2006, p. 11.

regulatory requirements, using slightly different modalities than those used in Ontario. If the Board does not allow for some differences, then it may effectively cede the designation to incumbent Ontario transmitters – those whose businesses were established to serve only the Ontario market.

56. One other point is worth bearing in mind. When the Board adopted the requirement that participants in a designation process should first obtain an electricity transmission licence, it acknowledged that the fit would not always be perfect. The Board thus observed that, “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.”¹¹

57. This approach recognizes that the current requirements for licenced transmission operators in Ontario may have to be applied flexibly if the province seeks to attract new entrants with new approaches. It is hoped that this recognition continues to apply as the Board considers these submissions.

DATED at Toronto, this 15th day of April, 2011.

¹¹ Designation Policy, p.6.

Exhibit A

Pro Forma Shared Services Agreement

PRO FORMA SHARED SERVICES AGREEMENT

BETWEEN:

**TRANSCANADA POWER TRANSMISSION LTD., as
General Partner on behalf of TRANSCANADA POWER
TRANSMISSION (ONTARIO) L.P.**

-and-

TRANSCANADA PIPELINES LIMITED

THIS AGREEMENT dated as of the ___ day of _____, 20___, (the “Effective Date”) by and between TransCanada Power Transmission (Ontario) L.P., a newly formed Ontario partnership (hereinafter referred to as “TPT”) and TransCanada PipeLines Limited, a corporation organized under the laws of Canada (hereinafter referred to as “TCPL”).

WITNESSETH:

WHEREAS TCPL is a leader in the responsible development and reliable operation of North American energy infrastructure, whose business operations are performed in functional areas that provide integrated services to various lines of business throughout the organization. TCPL is the parent operating company and employer for the TransCanada corporate family of companies in Canada.;

WHEREAS TPT is a newly formed Ontario partnership, the purpose of which is to develop, construct, operate and own electricity transmission facilities within Ontario; and,

WHEREAS the Parties wish to formalize the provision of certain shared services.

NOW THEREFORE, in consideration of the representations, covenants and premises hereinafter set forth, the Parties agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings set forth below:

- 1.1 Affiliate. An affiliate, with respect to a corporation, has the same meaning as in the *Business Corporations Act* (Ontario).

- 1.2 Confidential Information. Any information TPT has obtained relating to a specific smart sub-metering provider, wholesaler, consumer, retailer or generator in the process of providing current or prospective electricity transmission services in Ontario.
- 1.3 Cost Recovery Basis. With respect to:
- (a) the use by TPT of TCPL's personnel, means the fully burdened costs of such personnel for the time period they are used by TPT, including salary, benefits, vacation, materials, disbursements and all applicable overheads;
 - (b) the use by TPT of TCPL's equipment, means an allocated share of capital and operating costs appropriate for the time period the equipment is utilized by TPT;
 - (c) the use by TCPL of TPT's equipment, means an allocated share of the capital and operating costs appropriate for the time period the equipment is utilized by TCPL;
 - (d) the use by TPT of TCPL's services, means the complete costs of providing the services, determined in a manner acceptable to TPT, acting prudently;
 - (e) the use by an TCPL of TPT's services, means the complete costs of providing the services, determined in a manner acceptable to TPT, acting prudently; and,
 - (f) the transfer of equipment, plant inventory, spare parts or similar assets between TPT and TCPL, means the net book value of the transferred assets.
- 1.4 Designated Executive. Designated Executive shall have the meaning ascribed to it in subsection 8.2.
- 1.5 Information Services. Computer systems, services, databases and persons knowledgeable about the utility's information technology systems.
- 1.6 Non-Regulated Affiliate. An Affiliate that is an energy services provider within the meaning of the *Affiliate Relationships Code for Electricity Distributors and Transmitters* issued by the Ontario Energy Board (as amended).
- 1.7 Party. TPT or TCPL and "Parties" shall mean TPT and TCPL.
- 1.1. Person. An individual, corporation, trust, limited or general partnership, or joint venture.
- 1.8 Regulated Affiliate. An Affiliate whose rates, tolls and/or tariffs are regulated by the Ontario Energy Board, National Energy Board, Alberta Utilities Commission, or the Federal Energy Regulatory Commission.
- 1.9 Shared Service. Any service defined in Section 2.

2. SHARED SERVICES

2.1 Where a Party determines from time to time that it is prudent in operating its business to do so, it may obtain Shared Services from, or provide Shared Services to, the other Party. The Parties shall periodically review the prudence of continuing Shared Services arrangements with a view to making any necessary adjustments to ensure that each Party bears its proportionate share of costs. Shared Services may include:

- regulatory and legal affairs;
- community, safety and environment;
- information systems;
- taxation and accounting;
- engineering and operations;
- human resources;
- communications, public and investor relations;
- field operations;
- financial reporting and treasury;
- secretarial and executive administration; and,
- such other shared services as may from time to time be agreed upon between the Parties.

3. ACCOUNTING SEPARATION

3.1 TPT shall ensure accounting separation from all Affiliates (including TCPL) and shall maintain separately identifiable financial records and books of accounts.

4. EMPLOYEE SHARING

4.1 General Obligation. TPT may share employees with TCPL on a Cost Recovery Basis, provided that the employees to be shared are able to carry out their responsibilities in a manner that preserves the form, spirit and intent of this Agreement. In particular, an employee:

- 4.1.1 shall not be shared if it could reasonably be considered detrimental to the interests of TPT's customers; and,

- 4.1.2 if being shared, shall abstain from engaging in any activity that could reasonably be considered detrimental to the interests of TPT's customers.
- 4.2 Employees That May Not Be Shared. TPT and TCPL may not share employees with a Non-Regulated Affiliate that:
 - 4.2.1 participate in making day-to-day decisions with respect to the provision or delivery of TPT's services;
 - 4.2.2 deal with or have direct day-to-day contact with customers of TPT; and
 - 4.2.3 are involved in day-to-day commercial management of the businesses of TPT.
- 4.3 Emergency Services. In the event of an emergency, TPT may share services and resources with TCPL without a Shared Services Agreement on a Cost Recovery Basis.

5. CONFIDENTIALITY OF INFORMATION

- 5.1 TPT Information. TPT and TCPL shall not provide Non-Regulated Affiliates with information relating to the planning, operations, finances or strategy of TPT before such information is publicly available.
- 5.2 No Release of Confidential Information. Subject to Section 5.3, neither TPT nor TCPL shall release to an Affiliate Confidential Information, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required:
 - 5.2.1 for the purpose of a court proceeding or a proceeding before a quasi-judicial body;
 - 5.2.2 for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
 - 5.2.3 to a municipal or provincial police service for the purpose of investigating an offence;
 - 5.2.4 by law or by an order of a government or agency having jurisdiction over TPT; or
 - 5.2.5 for the purpose of providing Shared Services to an Affiliate or for the purpose of receiving Shared Services from an Affiliate, provided appropriate measures are first put in place by the Affiliate to protect the Confidential Information and the Confidential Information is used by the Affiliate only for the purpose intended by TPT.
- 5.3 Release of Confidential Information to Regulated Affiliates. TPT may release Confidential Information, on an as-needed basis, to TCPL provided that TCPL does not release the Confidential Information to any other entity without receiving the prior

written consent of the current or prospective smart sub-metering provider, wholesaler, consumer, retailer or generator.

6. TERM

- 6.1 This Agreement shall be effective as of _____, 20__ and shall be effective for a term of five years, unless terminated earlier by either Party upon providing 90 days advance written notice of termination.

7. INDEMNITY AND LIABILITY

- 7.1 Each Party shall indemnify and save the other harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever arising out of such Party's fault or negligence (or the fault or negligence of its agents, employees or other representatives) in the performance or non-performance of this Agreement.

8. DISPUTE RESOLUTION

- 8.1 Exclusive Dispute Resolution. This Section 8 shall apply to any dispute arising under or in connection with this Agreement (whether arising in contract, tort or otherwise, and whether arising at law or in equity), including:
- (a) any dispute regarding the construction, interpretation, performance, validity or enforceability of any provision of this Agreement or whether any Person is in compliance with, or breach of, any provisions of this Agreement; and
 - (b) the applicability of this Section 8 to a particular dispute.

The provisions of this Section 8 shall be the exclusive method of resolving disputes.

- 8.2 Designated Executive Meeting. All disputes arising out of or in connection with this Agreement, or the breach, termination, interpretation or invalidity hereof, shall first be referred to the senior executives of the Parties designated for such purpose (each, a "Designated Executive").
- 8.3 Arbitration. If such Designated Executives fail to settle such dispute within 30 days after it is referred to them for resolution pursuant to Section 8.2, either Party to such dispute may refer the matter to arbitration before a panel of three neutral arbitrators, with one arbitrator to be selected by each Party and the final arbitrator to be selected jointly by the first two arbitrators. The arbitration will be held in Calgary, Alberta under the National Arbitration Rules of the ADR Institute of Canada, Inc. All arbitrators shall have experience resolving commercial disputes in the energy industry and shall have experience resolving disputes reasonably similar to the dispute they are called upon to resolve. The arbitration panel's decision shall be in writing and shall be supported by detailed findings of fact and conclusions of law. The arbitration decision shall be final

and binding on all parties thereto. All costs and expenses of such arbitration shall be borne in the manner determined by the panel.

- 8.4 Final Decision. It is the intent of the Parties that the matters agreed upon to be arbitrated be decided as set forth herein and they shall not seek to have this Section 8 rendered unenforceable or to have such matter decided in any other way.
- 8.5 Legal Fees. Should any litigation be commenced between the Parties concerning any provision of this Agreement or the rights and duties hereunder, the Party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in such proceeding, to a reasonable sum as and for their attorneys' fees in such litigation, which sum shall be determined in such litigation or in a separate action for such purpose.
- 8.6 Joinder of Claims and Disputes. If in connection with any claim or dispute there exists a comparable dispute under or relating to any shared services agreements in force within the TransCanada corporate family of companies in Canada, the disputing Parties shall seek to coordinate their efforts to resolve such disputes and, to the greatest extent possible, any arbitration relating to such disputes shall be conducted by the same arbitration in the same hearings.
- 8.7 Remedies Cumulative. Remedies provided under the provisions of this Agreement shall be cumulative and, except as to the agreement for binding arbitration contained in this Section 8, shall be in addition to the remedies provided by law or in equity.

9. GENERAL

- 9.1 Survival of Obligations. The termination of this Agreement shall not discharge any Party from any obligation which it owes to any other Party by reason of any transaction, commitment or agreement entered into, or any loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination.
- 9.2 Law of the Contract. This Agreement shall be construed and interpreted under the laws of the Province of Ontario, without regard to the principles of conflicts of laws.
- 9.3 Effect of Agreement. This Agreement reflects the whole and entire agreement among the Parties with respect to its subject matter and supersedes all prior agreements and understandings, oral or written, among the Parties with respect to its subject matter.
- 9.4 Notices. Unless otherwise specifically provided in this Agreement, any written notice or other communication shall be sufficiently given or shall be deemed given on the fifth business day following the date on which the same is mailed by registered or certified mail, postage prepaid, or on the next business day following the date on which the same is sent via a nationally recognized courier service or by telecommunication, in each case addressed:

9.4.1 If to TCPL, to:

Executive Vice President, Operations & Major Projects
TransCanada PipeLines Limited
450 – 1 Street S.W.
Calgary, Alberta T2P 5H1

or such other person or address as may be designated from time to time by written notice to TPT.

9.4.2 If to TPT, to:

Vice-President, TransCanada Power Transmission Ltd.
TransCanada Power Transmission (Ontario) L.P.
200 Bay Street, 24th Floor, South Tower
Toronto, Ontario M5J 2J1

or such other positions or address as may be designated from time to time by written notice to TCPL.

- 9.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 9.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 9.7 Waiver. No waiver by any Party of any default by another Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirements herein, nor shall such waiver be deemed to be a waiver of, or in any manner a release of, the other Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right hereunder shall not impair the exercise of any such right, or any like right, accruing to it thereafter. No waiver of a right created by this Agreement by one Party shall constitute a waiver of such right by another Party except as may otherwise be required by law with respect to Persons not Parties hereto. The failure of one Party to perform its obligations shall not release the other Parties from the performance of such obligations.
- 9.8 Assignability. This Agreement may not be assigned by any Party except as otherwise expressly permitted or contemplated hereby, without the prior written consent of the non-assigning party, which consent may not be unreasonably withheld. Any assignment hereunder shall be effective on the first day of the month following the month during which the Assignment is complete. In the event of an assignment of this Agreement by any Party, the assignor shall have no further rights, liability or obligations hereunder; provided, however, that the assignor shall not be discharged from any obligation which it owes to the other Parties by reason of any loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise)

prior to the effective date of such assignment. This Agreement and all of the obligations and rights herein established shall extend to and be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the respective Parties hereto.

- 9.9 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in applicable laws or interpretations thereof or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by law.
- 9.10 Laws and Regulatory Bodies. This Agreement and the obligations of the Parties hereunder are subject to all applicable laws, rules, orders and regulations of governmental authorities having jurisdiction and, in the event of conflict, such laws, rules, orders and regulations of governmental authorities having jurisdiction shall control.
- 9.11 Section Numbers. Unless otherwise indicated, references to Section numbers are to Sections of this Agreement.

[The rest of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the _____ day of _____, 20____.

TRANSCANADA POWER TRANSMISSION LTD., as General Partner on behalf of TRANSCANADA POWER TRANSMISSION (ONTARIO) L.P.

TRANSCANADA PIPELINES LIMITED

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

ORIGINATOR	CHECKED BY	CLIENT	LEGAL	RISK	QUALITY