



EB-2010-0403

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

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

By delegation, before: Jennifer Lea

DECISION AND ORDER

BACKGROUND

Icon Transmission Inc. ("Icon") filed an application with the Ontario Energy Board (the "Board"), received on December 23, 2010, under section 60 of the *Ontario Energy Board Act*, 1998 (the "Act") for an electricity transmission licence.

The Board issued a Notice of Application and Hearing on January 17, 2011. Intervention requests were filed by Hydro One Networks Inc., Great Lakes Power Transmission L.P. and the Independent Electricity System Operator. The Power Workers' Union, Canadian Niagara Power Inc., and Mr. Pattani requested observer status. The Board granted all the intervenor and observer status requests.

On February 9, 2011, the Board issued Procedural Order No. 1, providing for interrogatories and submissions. Board staff and intervenors filed interrogatories on March 8, 2011 and Icon filed its interrogatory responses on March 22, 2011. A submission was received from Board staff on April 5, 2011. No intervenor filed a submission. On April 19, 2011, Icon filed a letter advising that it would not be filing any reply submission.

In a cover letter accompanying the application, Icon filed a claim for confidentiality, pursuant to the Board's *Practice Direction on Confidential Filings* with respect to a corporate organizational chart submitted with the application. Icon stated that the

corporate organizational chart shows internal corporate relations and structures that reflect business planning processes and strategies and are of a commercially sensitive nature.

The Board, in the proceeding relating to the transmission licence application from TransCanada Power Transmission (Ontario) L.P. (EB-2010-0324), dealt with a claim for confidentiality for the organizational chart filed in that application. In Procedural Order No. 2 in that proceeding, the Board found that the organizational chart should be held in confidence. Similarly, in this case, no intervenors objected to Iccon's claim for confidentiality. I find that the organizational chart will be held in confidence.

The record of the proceeding is available at the Board's offices and on the Board's website. I have summarized the record in this proceeding only to the extent necessary to provide context to my findings.

THE APPLICATION

Iccon, newly incorporated on October 5, 2010, is a wholly-owned subsidiary of Isolux Corsan Concesiones, S.A.U. Isolux Corsan Concesiones, S.A.U. is a member of the Isolux Corsan group of companies involved in the management of infrastructure investment projects.

Iccon has stated that it is making this application in order to participate in any upcoming Board transmitter designation process for new transmission investment in Ontario. The applicant has no existing transmission assets in Ontario although its intended business activity is to develop, construct, own and operate transmission assets in the province.

As part of its licence application, Iccon requested a temporary exemption from Section 3 of the Board's *Electricity Reporting and Record Keeping Requirements* ("RRR") until it becomes licensed and owns or operates transmission assets in Ontario. Iccon stated that its request for a temporary exemption is consistent with the Board's acknowledgment in the Board's *Policy Framework for Transmission Project Development Plans* (EB-2010-0059) that some of the requirements of a transmission licence may not apply unless a transmitter has assets in Ontario.

Board staff submitted that based on the evidence provided in the Iccon application, Iccon meets the technical and financial requirements for a transmission licence. Board staff noted Iccon's confirmation that it will comply with the requirements of the *Affiliate*

Relationships Code for Electricity Distributors and Transmitters ("ARC") as of the date it is licensed and that Iccon will apply to the Board for an exemption if in the future it foresees being unable to comply with the ARC. Board staff submitted that exemption requests from the ARC are being considered by the Board in other electricity transmission licence applications before it and that the Board's decisions in those proceedings should be given consideration in the event Iccon proceeds with any future request for exemption.

FINDINGS

Licence Application

The Board assesses a licence application by reviewing the evidence filed by the applicant and parties who participated in the proceeding. Based on the evidence filed, I have determined that it is in the public interest to grant an electricity transmission licence to Iccon for a period of five years.

The key areas reviewed by the Board in any licence application are the financial position, technical capability and conduct of an applicant. In the case of electricity transmission licence applications by entrant transmitters, the Board's review is also guided by the Board's Policy Framework (EB-2010-0059), referred to earlier, and the accompanying Filing Requirements.

As the Board stated in its TransCanada Power Transmission (Ontario) L.P. licensing decision (EB-2010-0324), the Board's policy seeks to encourage new transmission entrants to Ontario, thereby bringing additional resources for project development and supporting competition in the transmission sector to drive economic efficiency for the benefit of ratepayers. The Board stated in its Chatham-Kent Transmission Inc. licence decision (EB-2010-0351) that obtaining a transmission licence is intended to be a threshold qualification step, and is not intended to be unduly onerous.

I find that Iccon has provided sufficient evidence of its financial and technical capabilities to qualify for a transmission licence. Iccon or its affiliates have constructed more than 8000 km of transmission lines, in various parts of the world including, Europe (Spain), South America, Africa and the Middle East.

Icon has provided the 2009 audited financial statements and annual report for its parent company as Icon is a newly created entity and no financial results are available for it at this time. The information provided meets the threshold qualification requirements for the licensing process.

No concerns were raised regarding the conduct of the applicant, and I find that Icon has demonstrated that it is likely to operate its business in conformity with relevant legislation and rules.

The issuance of a transmission licence will enable Icon to participate in the designation process. The granting of this transmission licence does not endorse the applicant's technical and financial capabilities in relation to the development of a specific transmission project. Licensed transmitters who file plans to develop a transmission project under the Board's designation process will be required to provide a significantly more detailed demonstration of their technical and financial capabilities in relation to the development of a specific transmission project.

As Icon presently has no facilities in Ontario, the Board will not include any listed facilities in Schedule 1 of the licence. The Board will amend the licence granted to Icon to add the specific facilities that it is authorized to own and operate if it is successful in a designation process.

A transmission licence is typically granted for a term of 20 years, recognizing the long term nature of transmission assets. However, the Board has found in the transmission licence decisions referred to above that a shorter term of licence is appropriate for entrant transmitters who presently have no facilities in Ontario. Consistent with those decisions, the term of the licence will be 5 years. The term of the licence may be amended and extended to the standard 20 year term in the event that Icon becomes a designated transmitter.

Exemption Request

Icon requested as part of its application a temporary exemption from section 3 of the RRR. I find that an exemption should not be granted.

As Icon pointed out in its submission, the Board has recognized that not all obligations under Board codes, rules and guidelines applicable to licensed transmitters may apply

to those transmitters without transmission assets in the province. However, the Board has been reluctant to grant exemptions from Board regulatory instruments, especially those instruments dealing with affiliate relationships. Certain requirements of section 3 of the RRR flow from the ARC, and the Board has stated that it expects licensed transmitters to comply with those provisions of the RRR. Section 3.3.1, 3.3.2 and 3.3.7 of the RRR would appear to be inapplicable unless a transmitter has transmission assets in the province. I find no exemption should be granted from section 3 of the RRR, although a transmitter without transmission assets in the province will not be expected to comply with sections 3.3.1, 3.3.2 and 3.3.7 until it constructs, owns or operates transmission assets in the province.

IT IS THEREFORE ORDERED THAT:

The application by Iacon for an electricity transmission licence is granted on such conditions as are contained in the attached licence.

DATED at Toronto June 30, 2011

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects



Electricity Transmission Licence

ET-2010-0403

Iccon Transmission Inc.

Valid Until

June 29, 2016

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board
Date of Issuance: June 30, 2011

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1 Definitions

In this Licence:

“Accounting Procedures Handbook” means the handbook, approved by the Board which specifies the accounting records, accounting principles and accounting separation standards to be followed by the Licensee;

“Act” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“Affiliate Relationships Code for Electricity Distributors and Transmitters” means the code, approved by the Board which, among other things, establishes the standards and conditions for the interaction between electricity distributors or transmitters and their respective affiliated companies;

“Board” means the Ontario Energy Board;

“Electricity Act” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“Licensee” means Icon Transmission Inc.

“Market Rules” means the rules made under section 32 of the Electricity Act;

“Performance Standards” means the performance targets for the distribution and connection activities of the Licensee as established by the Board in accordance with section 83 of the Act;

“Rate Order” means an Order or Orders of the Board establishing rates the Licensee is permitted to charge;

“transmission services” means services related to the transmission of electricity and the services the Board has required transmitters to carry out for which a charge or rate has been established in the Rate Order;

“Transmission System Code” means the code approved by the Board and in effect at the relevant time, which, among other things, establishes the obligations of a transmitter with respect to the services and terms of service to be offered to customers and provides minimum technical operating standards of transmission systems;

“wholesaler” means a person that purchases electricity or ancillary services in the IESO administered markets or directly from a generator or, a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person other than a consumer.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence to own and operate a transmission system consisting of the facilities described in Schedule 1 of this Licence, including all associated transmission equipment.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act and the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the “Codes”) approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board. Any exemptions granted to the Licensee are set out in Schedule 2 of this Licence. The following Codes apply to this Licence:
- a) the Affiliate Relationships Code for Electricity Distributors and Transmitters; and
 - b) the Transmission System Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Requirement to Enter into an Operating Agreement

- 6.1 The Licensee shall enter into an agreement (“Operating Agreement”) with the IESO providing for the direction by the IESO of the operation of the Licensee’s transmission system. Following a request made by the IESO, the Licensee and the IESO shall enter into an Operating Agreement

within a period of 90 business days, unless extended with leave of the Board. The Operating Agreement shall be filed with the Board within ten (10) business days of its completion.

- 6.2 Where there is a dispute that cannot be resolved between the parties with respect to any of the terms and conditions of the Operating Agreement, the IESO or the Licensee may apply to the Board to determine the matter.

7 Obligation to Provide Non-discriminatory Access

- 7.1 The Licensee shall, upon the request of a consumer, generator, distributor or retailer, provide such consumer, generator, distributor or retailer, as the case may be, with access to the Licensee's transmission system and shall convey electricity on behalf of such consumer, generator, distributor or retailer in accordance with the terms of this Licence, the Transmission System Code and the Market Rules.

8 Obligation to Connect

- 8.1 If a request is made for connection to the Licensee's transmission system or for a change in the capacity of an existing connection, the Licensee shall respond to the request within 30 business days.
- 8.2 The Licensee shall process connection requests in accordance with published connection procedures and participate with the customer in the IESO's Connection Assessment and approval process in accordance with the Market Rules, its Rate Order(s) and the Transmission System Code.
- 8.3 An offer of connection shall be consistent with the terms of this Licence, the Market Rules, the Rate Order, and the Transmission System Code.
- 8.4 The terms of such offer to connect shall be fair and reasonable.
- 8.5 The Licensee shall not refuse to make an offer to connect unless it is permitted to do so by the Act or any Codes, standards or rules to which the Licensee is obligated to comply with as a condition of this Licence.

9 Obligation to Maintain System Integrity

- 9.1 The Licensee shall maintain its transmission system to the standards established in the Transmission System Code and Market Rules, and have regard to any other recognized industry operating or planning standards required by the Board.

10 Transmission Rates and Charges

- 10.1 The Licensee shall not charge for the connection of customers or the transmission of electricity except in accordance with the Licensee's Rate Order(s) as approved by the Board and the Transmission System Code

11 Separation of Business Activities

- 11.1 The Licensee shall keep financial records associated with transmitting electricity separate from its financial records associated with distributing electricity or other activities in accordance with the Accounting Procedures Handbook and as otherwise required by the Board.

12 Expansion of Transmission System

- 12.1 The Licensee shall not construct, expand or reinforce an electricity transmission system or make an interconnection except in accordance with the Act and Regulations, the Transmission System Code and the Market Rules.

13 Provision of Information to the Board

- 13.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 13.2 Without limiting the generality of paragraph 13.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) business days past the date upon which such change occurs.

14 Restrictions on Provision of Information

- 14.1 The Licensee shall not use information regarding a consumer, retailer, wholesaler or generator, obtained for one purpose for any other purpose without the written consent of the consumer, retailer, wholesaler or generator.
- 14.2 The Licensee shall not disclose information regarding a consumer, retailer, wholesaler or generator to any other party without the written consent of the consumer, retailer, wholesaler or generator, except where such information is required to be disclosed:
- a) to comply with any legislative or regulatory requirements, including the conditions of this Licence;
 - b) for billing, settlement or market operations purposes;
 - c) for law enforcement purposes; or
 - d) to a debt collection agency for the processing of past due accounts of the consumer, retailer, wholesaler or generator.
- 14.3 Information regarding consumers, retailers, wholesalers or generators may be disclosed where the information has been sufficiently aggregated such that their particular information cannot reasonably be identified.
- 14.4 The Licensee shall inform consumers, retailers, wholesalers and generators of the conditions under which their information may be released to a third party without their consent.
- 14.5 If the Licensee discloses information under this section, the Licensee shall ensure that the information is not be used for any other purpose except the purpose for which it was disclosed.

15 Term of Licence

- 15.1 This Licence shall take effect on June 30, 2011 and expire on June 29, 2016. The term of this Licence may be extended by the Board.

16 Transfer of Licence

- 16.1 In accordance with subsection 18(2) of the Act, this Licence is not transferable or assignable without leave of the Board.

17 Amendment of Licence

- 17.1 The Board may amend this Licence in accordance with section 74 of the Act or section 38 of the Electricity Act.

18 Fees and Assessments

- 18.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

19 Communication

- 19.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 19.2 All official communication relating to this Licence shall be in writing.
- 19.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; and
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

20 Copies of the Licence

- 20.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 SPECIFICATION OF TRANSMISSION FACILITIES

This Schedule specifies the facilities over which the Licensee is authorized to transmit electricity in accordance with paragraph 3 of this Licence.

1. Schedule 1 will be completed at such time as the Licensee applies for, and the Board approves, an amendment to this Licence specifying the facilities over which the Licensee is authorized to transmit electricity

SCHEDULE 2 LIST OF CODE EXEMPTIONS

This Schedule specifies any specific Code requirements from which the licensee has been exempted.