



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