

July 8, 2011

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto ON M4P 1E4

**Attention: Ms Kirsten Walli
Board Secretary**

Dear Ms. Walli:

**Re: TransCanada Power Transmission (Ontario) L.P.
Electricity Transmission Licence**

Introduction

This is an application by TransCanada Power Transmission (Ontario) L.P. ("TransCanada Transmission") under s. 74 of the *Ontario Energy Board Act, 1998* (the "*OEB Act*") to amend its transmission licence by changing the effective date of the licence from "June 22, 2011" to "the date upon which TransCanada Transmission applies to the Board to provide a prospective transmission service." A prospective transmission service would include applying to be designated under a transmission designation process conducted by the Ontario Energy Board (the "OEB" or the "Board") or applying to own or operate a transmission system. In either case, an application would have to be filed with the Board so that the Board and other parties are made aware that TransCanada Transmission will be providing a prospective transmission service. This approach coordinates the timing of the effective date of the licence with the timing of TransCanada Transmission's commencement of prospective transmission services. It is similar to other examples where the Board has given legal effect to regulatory instruments upon the occurrence of a condition precedent.

The reasons for this request are set out below.

The Licencing Decision and Order

The current effective date of TransCanada Transmission's transmission licence is June 22, 2011¹. The issue of the effective date was not addressed as an issue in the licence application hearing and presumably the June 22 date was used because it corresponded with the date of the Decision granting the licence.

¹ TransCanada Transmission Transmission Licence, s. 15.1

In its Decision granting the licence, the Board noted that TransCanada Transmission's application was made "in order to participate in any upcoming Board transmitter designation process for new transmission investment in Ontario."² TransCanada Transmission is currently reviewing the Decision and its participation in the designation process.

In the Decision, the Board stated that the "issuance of a transmission license will permit TransCanada Transmission to participate in a designation process".³ The Decision also stated that participation in a transmitter designation process is considered to be included in the process of "providing prospective utility service" as that term is used in the Affiliate Relationships Code.⁴ However, apart from participating in the designation proceeding, the licence does not currently authorize TransCanada Transmission to engage in regulated transmission activities or own or operate a transmission system. As the Board stated in the Decision: "The Board will amend the licence granted to TransCanada Transmission to add the specific facilities that it is authorized to own and operate if it is successful in a designation process."

Changing the Effective Date of the Transmission Licence to align with Licenced Activities

As a result of the foregoing, notwithstanding the effective date of the licence, TransCanada Transmission's ability to engage in transmission related services will require an application to the Board (either an application to be designated under the designation process, or an application to own or operate a transmission system). Consequently, if the amendment is granted by changing the effective date of the licence, there is no risk that TransCanada will engage in activities for which a licence is required without first applying to the Board.

Given that TransCanada Transmission's rights and duties as a licenced transmission company will, as a practical matter, only arise upon an application to the Board, it is submitted that it is appropriate for that fact to be reflected in the transmission licence itself.

Instituting a condition precedent to the effectiveness of a regulatory instrument has been used by the Board in the past. For example, in cases where, as a result of a transaction, the owner or operator of a generator facility is changed, the Board has held that the effective date of the change is subject to the condition precedent of closing the transaction.⁵

Similarly, in the context of gas distributor billing services, the Board changed an effective date of a distributor's obligation to provide that service from a fixed date (January 1, 2008) to a condition precedent (starting from the date upon which the specific service was requested). In adopting that approach, the Board stated that moving from fixed date to a condition precedent "has the greatest potential to avoid costs being incurred to accommodate a billing option that gas vendors may ultimately decide not to pursue."⁶ Many of the same considerations are applicable here given that the scope and timing of any potential transmission designation process have not yet been specified.

² Decision and Order granting TransCanada Transmission a transmission licence, June 22, 2011, p. 2 (EB-2010-0324) (the "Decision").

³ See the Decision (p. 8).

⁴ See the Decision (p. 10).

⁵ See, for example, where the Board approved a licence amendment that permitted ACH Limited Partnership to commence operating a generating station "when the Board receives confirmation from the Applicants that the commercial transaction has closed and operation of the eight generation stations has been transferred to ACH from AbiBow, and will be effective from the date of closing." (EB-2011-0065, EB-2011-0068, May 20, 2011, at p. 13).

⁶ Notice of Amendment to the Gas Distribution Access Rule, December 11, 2007, p. 3.

This practice has also been used by the National Energy Board (the "NEB"). In its decision declaring that the NEB had jurisdiction over the TransCanada Alberta System, it timed the effective date of its jurisdiction to coincide with the issuance of a Certificate of Public Convenience in order for TransCanada "to remain in compliance with section 30 of the NEB Act, which provides that pipelines under NEB jurisdiction must have a Certificate in order to legally operate."⁷

Conclusion

For the foregoing reasons, it is respectfully requested that the effective date of the TransCanada Transmission's transmission licence be changed from "June 22, 2011" to "the date upon which TransCanada Transmission applies to the Board to provide a prospective transmission service."

Given that no other person will be adversely impacted by the change in the effective date of TransCanada Transmission's transmission licence, TransCanada Transmission requests that the Board dispose of this application without a hearing in accordance with s. 21(4) of the *OEB Act, 1998*.

All of which is respectfully submitted.

Please provide all correspondence on this matter to me as well as to:

Brian Kelly
TransCanada Power Transmission
(Ontario) L.P.
200 Bay Street, 24th Floor – South Tower
Toronto, ON M5J 2J1
Tel: (416) 869-2183
Fax: (416) 869-2114
E-mail: brian_kelly@transcanada.com

Sincerely,



George Vegh

c: Brian Kelly

⁷ Reasons for Decision, TransCanada PipeLines Limited, February, 2009 (GH-5-2008), p. 9.