

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an application by Niagara West Transformation Corporation ("NWTC") approving or fixing just and reasonable transmission rates for electricity transformation services provided by NWTC pursuant to section 78 of the Act.

**SUBMISSIONS OF THE INDEPENDENT  
ELECTRICITY SYSTEM OPERATOR**

**July 18, 2011**

**Overview**

1. The Independent Electricity System Operator (the "IESO") is pleased to make submissions in respect of NWTC application for an order or orders of the Ontario Energy Board (the "Board") approving its 2011 revenue requirements and transmission rate for electricity transformation services provided by NWTC. NWTC's application and supporting evidence has revealed serious concerns regarding its ability to cost-effectively fulfil its regulatory obligations and responsibilities as is required of all licensed transmitter. Furthermore, the evidence this matter also raises questions concerning whether there is still a need for NWTC to be licensed as a transmitter.
2. This evidence clearly shows that there is a lack of understanding and appreciation among NWTC's officials regarding the scope of its regulatory obligations and responsibilities. It also appears that that NWTC may be unable to fulfill the requirements of its transmission license (e.g., provisions prescribed in its permanent transmission license, the Board's Codes and Market Rules) cost-effectively and without exerting undue burden on its customers.
3. Some of these issues that are of concern to the IESO are also shared by Board Staff and Hydro One. For example, in its submission which was filed on July 13, 2011, Board staff notes that:

*"...lack of expertise and attention to details by NWTC's officers is cause for concern;"<sup>1</sup>; and*

*"Board staff has some potential concerns regarding certain practices at NWTC. NWTC is a small utility and cannot be expected to have as many staff as a larger transmitter, but it still must meet all of the responsibilities required of all transmitters. Ratepayers are entitled to certain assurances that a utility is appropriately managing costs."<sup>2</sup>*

During the course of the exchange between Hydro One and NWTC at the Technical Conference, Hydro One also alluded to having a number of similar concerns.<sup>3</sup>

4. The IESO believes that the Board must take these issues into consideration in its deliberation of NWTC's application. In reviewing the application, the Board should be guided by its "objectives" under the Act; therefore ensuring that NWTC has or will be able to obtain adequate resources and enhanced its capability as necessary to enable it to fulfill its obligations and responsibilities as a licensed transmitter in Ontario. In the IESO's view, if the Board finds that the application and supporting evidence is "questionable" in this regard, then it must consider taking such other action as may be warranted to ensure that the transmission facilities are operated and maintained cost-effectively, and in accordance with the regulatory obligations and responsibilities that comes with ownership and operation of a transmission system in Ontario.

5. Although NWTC is a small transmission utility, it must still meet all of the applicable obligations and responsibilities required of all licensed transmitters. It is incumbent on the Board to ensure that NWTC can do so in an efficient and cost-effective manner. Additionally, the IESO believes that the Board's consideration and resolution of these issues in this case will have broader implications going forward, particularly given the number of new transmitters that have been recently licensed by the Board or awaiting its approval, enabling them to own and/or operate a transmission system.

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<sup>1</sup> Board Staff Submission, (EB-2010-0345), para. 2, page 10.

<sup>2</sup> Board Staff Submission", (EB-2010-0345), para. 2, page 16.

<sup>3</sup> Technical Conference Transcript (EB-2010-0345) pages 41-59.

## Potential Alternatives to the Current Situation

6. NWTC has withdrawn its initial request to be included in the provincial transformation service Uniform Transmission Rate (UTR) pool.<sup>4</sup> Further, NWTC notes that it is not intending to request that the transmission facilities be included in the IESO-controlled grid or on becoming a registered market participant<sup>5</sup>, which are all requirements in order for NWTC to be included in the transformation UTR pool.<sup>6</sup> That being said, including NWTC in the UTR transformation pool doesn't appear to be a reasonable alternative to the status quo were the Board to determine that the current situation is no longer in the public interest.

7. The Board could also consider approving the requested revenue requirements and rate but exempting NWTC from certain of its obligations and responsibilities, in so doing reducing the scope of its regulatory load to ensure that it is able to economically fulfill its applicable obligations and responsibilities. However, the IESO observes that based on past practice the Board is generally very reluctant to granting exemptions from regulatory obligations and requirements other than under exceptional circumstances. For example, in issuing its recent decision regarding a request by TransCanada Power Transmission L.P. for an exemption from various provisions of the Affiliate Relationships Code (the "ARC"), the Board notes that "[t]he ARC, like all Codes, was developed according to specific statutory provisions and safeguards and was the product of highly transparent consultation processes involving a wide range of interests." The board goes on to say that "[p]romoting economic efficiency and cost effectiveness in the transmission sector is a statutory objective of the Board, but it is not the primary purpose or objective of the ARC."<sup>7</sup>

8. Other actions that the Board might consider include repealing the license and deeming the facilities distribution, as such establishing the basis for integrating the facilities into the asset base of either Niagara Peninsula Energy Inc. ("NPEI") or Grimsby Power Inc. ("Grimsby Power") or Hydro One Distribution. Alternatively, the Board could consider repealing the license and integrating the facilities into Hydro One's transmission asset base.

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<sup>4</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 20, page 5.

<sup>5</sup> NWTC Response to IESO Interrogatories 1-4, February 8, 2011.

<sup>6</sup> Ontario Market Rules, Chapter 10.

<sup>7</sup> TransCanada Power Transmission L.P., Decision and Order, Exemption Requests, Page 9, June 22, 2011

## Background

9. NWTC is a small transmission utility that is licensed by the Board to own and operate a transmission system in Ontario. It currently owns a 230 kV DESN transformer station which is monitored and operated on a day-to-day basis by Hydro One through an Operating Agreement executed between NWTC and Hydro One.<sup>8</sup> The transmission station was built as a joint venture involving Grimsby Power and NPEI (formerly Niagara West Utilities Ltd.). At the Technical Conference NWTC noted that the holding companies of both the utilities took over ownership of [NWTC].<sup>9</sup> The IESO observes that in NWTC's Argument In-Chief, it specifically make a point of noting that "...NPEI has no ownership interest in NWTC."<sup>10</sup> With the subsequent reference to the ownership status involving NPEI only, it's unclear whether this means Grimsby Power in fact still has an interest in NWTC. We observed that Grimsby Power and NPEI are both registered market participants and each licensed by the Board to own and operate a distribution system in Ontario.

10. The authority enabling NWTC to administer a rate for transformation service and the amount of the rate was initially determined by the Minister of Energy and administered by way of directive to the Board given that there was a rate free in effect at the time. The was the IESO's understanding that in order for the Board to implement the Minister's directive, NWTC needed to be licensed as a transmitter because it did not meet any of the provisions under Ontario Energy Board Act, 1998 for an exemption from the Board's ratemaking authority; accordingly, a transmission license with an initial term of three years (i.e., as opposed to the standard 20 year term license) was granted to NWTC by the Board.<sup>11</sup> The license was extended for additional three year terms upon expiration in each case.

11. In accordance with its license and Market Rules, the IESO is obligated to enter into an agreement with licensed transmitters providing for the direction by the IESO of the operation of their transmission system. It was the IESO understanding that the need for NWTC to maintain its transmission license would likely to be re-assessed by the

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<sup>8</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 10, page 3.

<sup>9</sup> Technical Conference Transcript (EB-2010-0345) page 63, line 17.

<sup>10</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 3, page 1.

<sup>11</sup> Ontario Energy Board Act, 1998, Section 78.

Board in NWTC's 2006 cost of service review given the change in the circumstance and premise under which the license was initially granted. Further, the IESO observes that the Transmission Connection Agreement between Hydro One and NWTC contemplated that NWTC will in fact obtain an exemption from the Board such that it will not require a transmission license.<sup>12</sup>

12. It was on this premise which the discussion between the IESO and NWTC was carried out regarding the need for a comprehensive operating agreement, and subsequently the execution on June 2, 2005 of a simple form of letter simple agreement which, among other things, recognizes NWTC as a licensed transmitter. In its Argument In-Chief, NWTC mischaracterizes the nature of said document and certain of the terms and conditions under which it was executed.<sup>13</sup> In fact, the document is not merely at "letter" as alleged by NWTC but rather a "letter agreement" executed between the IESO and NWTC. Also, the agreement specifically noted that "...at this time it is not necessary for the IESO to enter into a [formal or full] operating agreement with NWTC" and "this determination is without prejudice to our right to require NWTC to enter into a detailed operating agreement at a future date should we determine that it is necessary or advisable to do so."

13. NWTC notes in its Argument-In-Chief that the "[t]he Station is a "transmission facility only because it connects to a HONI transmission circuit which operates at greater than 50 kV. Aside from a short (~30 meter) jumper from the 230 kV transmission line to the transformer station, there are no transmission lines associated with NWTC."<sup>14</sup> Also, it emphasized that "the station does not operate as a traditional transmitter, such as HONI, Canadian Niagara Power Inc. and Five Nations Transmission Inc."<sup>15</sup> NWTC is not a transmitter simply because its transmission facilities are connected to the IESO-controlled grid but rather the transmission facilities that it owns and/or operates meet the provisions pertaining to a transmitter, including the definition of a transmitter pursuant to the Act. In other words, the size or scope of the transmission system that it owns and/or operates is not a factor which singularly determines its obligations and responsibility as a licensed transmitter.

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<sup>12</sup> NWTC/Hydro One Transmission Connection Agreement, Schedule N, paragraph 5, page N-3.

<sup>13</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 11, page 3.

<sup>14</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 4, page 2.

<sup>15</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 5, page 2.

14. While NWTC is considered a small transmission utility it is still required to meet all applicable obligations and responsibility of a licensed transmitter. The IESO is not aware of any exemption from these provisions that has been granted to NWTC by the Board or the legislature. Of particular note, NWTC's transmission license sets out various obligations and responsibilities for facilitating fair and non-discriminatory access to its transmission system and connection of renewable generation resources. NWTC have not produced any evidence of its connection procedures which was developed in accordance with the requirements of the Transmission System Code;<sup>16</sup> thus allowing for prudent assessment of connection proposals, as well as identification of any reinforcements or modification that may be required to accommodate connection requests.

15. NWTC stated that its transmission system is currently operating close to the maximum interrupting capacity; consequently, it cannot accommodate additional requests for the connection of renewable embedded generation proposals to the grid. A study was commissioned by NWTC to review short-circuit levels at the station and the ability to accommodate additional embedded generation facilities; however, it would appear that no alternatives or any subsequent actions for improving the short-circuit capability of the station was seriously pursued. NWTC identified two instances wherein distributors advised the Board of their inability to cost-effectively connect new FIT generation; however, it provided no evidence of NWTC advising or seeking a waiver from the Board in this regard as well. The IESO observes that other transmitters have indeed requested and was granted approval by the Board to carry out necessary upgrade work at various transformer stations to improve short-circuit capability in order to reliably connection embedded renewable generation facilities.<sup>17</sup>

### **Change in Circumstances**

16. The IESO doesn't take issue with NWTC's assertion that "...the same rationale for the transformer station remains in place today..."<sup>18</sup> That is, the facilities are still required to relieve constraints on the Beamsville TS in a reliable and safe manner. The change in the status of affairs however calls for a review and consideration of whether continuation of the current arrangement is still prudent, and whether NWTC in reality can meet the obligations and responsibilities that comes with issuance of a permanent

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<sup>16</sup> Ontario Energy Board Transmission System Code, Section 6, Customer Connections, pages 24-27

<sup>17</sup> Hydro One 2011-2012 Transmission Rates Decision with Reasons, paragraphs 4-5, Page 40

<sup>18</sup> NWTC Argument-In-Chief, July 1, 2011, paragraph 8, page 2.

transmission license cost-effectively. Particularly, the primary restrictions which necessitated the need for the Board to issue a transmission license to NWTC in the first place no longer exist and today the Board has broader discretion for determining matters that are in the public interest. Also, the IESO believes there may be more practical and cost-effective alternatives to the current situation which will enable the owner and/or operator of the facilities to fulfill its regulatory obligations and responsibilities in a reliable and more cost-effective manner.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,  
THIS 18 DAY OF JULY, 2011**

*Original signed by*

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Carl Burrell  
Senior Regulatory Analyst  
Independent Electricity System Operator

cc. Ms. Karen Bubish, Niagara West Transformation Corp. (By Email)  
All Intervenors (By Email)