



September 13, 2011

Ontario Energy Board
2300 Yonge Street, Suite 2700
Box 2319
Toronto, Ontario M4P1E4

Attn: Ms Kirsten Walli
Board Secretary

Re: OEB File: EB-2011-0260
Application to Amend a Transmission License
TransCanada Power Transmission (Ontario) L.P.

Dear Ms Walli:

We are responding to the Board's Notice of August 26, 2011, inviting comments on its proposals respecting an application by TransCanada Power Transmission (Ontario) L.P.

AMPCO's Interest

AMPCO members' interest in this proceeding is that of large consumers of transmission services. As such, we believe that Ontario customers will be better served with more competition in the development, construction, ownership and operation of transmission services. The dominant position of the incumbent transmitters, and the advantage their monopoly situation confers on them, is the primary impediment to greater competition, and the greatest challenge to the Board in designing a process that fosters greater competition. The Board's approval processes therefore must be open and transparent, ensuring that necessary information is provided to all participants, and observers, and must seek to eliminate barriers to new entrants.

At the same time, as large customers, AMPCO members support the need for confidential customer information to be protected from access by their direct competitors and from preferential access by energy service providers or others. We believe however that, should the need arise, the Board can protect confidential information through the designation process and beyond, without having to impose requirements that will have the effect of discouraging potential transmitters from applying to be designated.

The following submission discusses the three issues that appear be central to this hearing, namely preservation of confidentiality, the nature of any specific conditions or exemptions on TPTs license and its effective date.

Concerns about Confidentiality of Information

Hydro One

In Hydro One's letter of Feb 23, 2011, the company references "*potentially* confidential and commercially sensitive technical and connection information" (emphasis added) that incumbents will have to provide to bidders. Hydro One does not elaborate on what the nature of this



information might be and why it should be regarded as sensitive. To our understanding, the detailed technical information required to develop a proposal for a line and connection is in the possession of the IESO, since it (not Hydro One) has the responsibility to preserve the stability and reliability of the grid. The IESO routinely provides technical requirements and system models to parties wishing to connect to the grid.

In its letter, Hydro One does not appear to refer to customer-specific confidential information.

It may be that Hydro One is concerned about having to provide information such as preferred/qualified products or suppliers or technical standards, which might be construed as commercially sensitive. It should be noted that, until Ontario Hydro was broken up, this type of information was made publicly available without any obvious negative consequences. In any event, selection of a designated transmitter should be based on the transmitter meeting generally accepted performance standards and not on adopting particular technical requirements that an incumbent may have adopted. If the technical focus of the designation hearing is grounded in functional performance requirements, there should be no need for disclosure by incumbents of information which a reasonable person would agree should be kept confidential.

If the ARC requirements are not met, Hydro One notes that its confidential information might become available to an affiliate of an applicant; Hydro One does not comment on whether this would be less harmful than if the ARC requirements were fully met. It may be that Hydro One takes issue with providing information it considers to be sensitive to any potential competitors, whatever process that might take. We would invite Hydro One to be more specific about its concerns with respect to the release of information, describing the type of information it regards as sensitive, and a description of the potential harm that such a release might cause. In any case, arguments to keep necessary information confidential must properly be substantiated.

Arguments regarding the need to protect technical information from disclosure have been commonly used by monopolies as a barrier to competition. Bell Canada used this argument in the 1970's to forestall competition in telephones and office switches and Microsoft used it effectively for many years to maintain the position of its Office software. Others have done the same.

IESO

In contrast to the Hydro One letter, the concerns raised by the IESO relate directly to its obligation to protect customer-specific confidential information (e.g., AMPCO members). These are legitimate concerns and they are properly raised.

At the same time, the IESO is not strictly obligated under the Market Rules to provide customer-specific confidential information to any transmitter. In Chapter 5, Section 7.9.2 of the Market Rules, the IESO is permitted to provide confidential forecasts and plans; it is not obligated to do so. We are not aware of any language in the Market Rules that imposes an obligation on the IESO to share confidential customer information. A license condition that imposes such an obligation therefore would be redundant and unnecessary.

Specific License Conditions

Notwithstanding the above, the IESO submission makes some reasonable suggestions to resolve the licensing issue without necessarily requiring TPT to comply fully with the ARC prior to becoming a



designated transmitter. The essence of the IESO submission is described in paragraph 9 on page 5, that the Board provide TPT with a license that is limited to what is necessary for TPT to participate in the designation process. As TPT may not seek to become a market participant prior to completion of the designation process, the suggested requirement to abide by the Market Rules may be unnecessary. Agreement to abide by the Market Rules is a prerequisite to registration as a market participant.

Our reading of the submission by TPT is that it is broadly consistent with the IESO's suggestion. Namely, that TPT's license be limited in scope at this time to allowing it to participate in the designation process. Should TPT be successful in the designation process, it would then have to apply to the Board to have its license amended before seeking approval to build facilities and become a fully licensed transmitter.

AMPCO's Perspective

None of the submissions and letters reviewed actually identify what types of confidential information would need to be disclosed by the IESO or an incumbent transmitter in the designation process, whether to an applicant or another party. Given that the east-west tie will be a network asset moving an aggregated power flow (i.e., not serving one or a small group of customers or generators), it is difficult to see how specific customer information could be relevant to the designation process, whether or not it is confidential. Even if detailed confidential information on the forecasts and plans of individual market participants were available, it is hard to see how this could be useful. Transmission assets, especially lines, have very long service lives, whereas the plans of individual market participants routinely change on a short time scale.

Unless the IESO or Hydro One can substantiate concerns about the need to provide and protect customer specific information in the designation process, we believe there should be no issue with confidentiality. The Board has adequate mechanisms in place to allow confidential information to be protected in a hearing process and to impose sanctions on violation of confidentiality. All applicants to the Board, and intervenors in its proceedings, should be familiar with these provisions.

It seems obvious to us that the Board should be satisfied of full compliance with its codes—including the Affiliate Relationship Code—before it grants a license to own or operate a transmission system Board, or an order granting leave to construct, expand or reinforce a transmission line or interconnection, or an order fixing just and reasonable rates for the transmitting of electricity. At this point in the designation process, neither TPT nor any other applicant is seeking those orders from the Board. Our understanding is that the Board elected to require that transmitters seeking designation receive a transmitter license to satisfy the Board with respect to technical and financial considerations. TPT apparently has satisfied the Board in these respects.

We see no benefit to imposing additional requirements on TPT or another transmitter to comply with codes or rules that have no practical effect (such as setting up an affiliate to accommodate the unsubstantiated potential that some as yet unknown information might be made available to them in an unspecified manner that would cause some as yet undefined harm to an incumbent). To the extent that new and additional requirements have the potential to impose a sufficient regulatory burden as to discourage new entrants, we urge the Board to proceed with care. If the Board's



designation process is not seen to encourage participation by clearly qualified and capable transmitters, then the process itself will be called into question.

The Board's Notice of August 26, 2011, sets out four options. We do not support options one, two, or three. All of these would seem to impose unnecessary and ineffective compliance obligations on the transmitter. Option 4, while offering the advantage of deferring a compliance requirement until compliance makes sense, would seem to suggest that TPT (and other transmitters) at some point would need to make a second, and additional, application to the Board for another license. We see no advantage in requiring a redundant license. The Board has already granted this license; the question is what conditions the Board should attach to the license it has granted, and on which date those conditions should be made effective.

The legislation makes clear that no person shall construct, expand or reinforce a transmission line or interconnection without an order from the Board granting leave to do so. If the purpose of this process is to designate a transmitter to proceed with the development and execution of a plan to construct a transmission facility, the next step would be for the designated transmitter to bring an application to the Board seeking leave to construct. After that, assuming the Board grants such leave, the applicant will be expected to bring another application seeking an order fixing just and reasonable rates. In other words, the Board has ample authority to impose compliance obligations—in addition to its licensing powers—at the appropriate time in the process.

It makes sense to us that the threshold for compliance should be established in relation to the need for and effect of compliance. None of the options set out in the Board's Notice cleanly define such a standard. We submit therefore a simpler suggestion: that the Board amend TPT's license so that the effective date is left undefined, or to be defined at a future time. (Such a provision is a common feature of Ontario Regulations). The license therefore will be made not effective—sufficient to establish TPT's qualifications to participate in the designation process but not sufficient to own and operate a transmission system (an approval for which there is no practical need at the present time). The Board therefore would reserve the right to establish conditions at some future stage in the process according to which it would make the license effective for the purpose of actually owning and operating a transmission system. Presumably, such a date would coincide with the effective dates of subsequent orders the successful applicant would seek from the Board granting leave to construct, and fixing rates.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Adam White', with a stylized flourish at the end.

Adam White
President

Copy:
Mr. Wayne Clark
SanZoe Consulting