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Delivered by Email

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street,
Ste. 2701
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: TransCanada Power Transmission (Ontario) L.P. ("TransCanada")
Electricity Transmission Licence: EB-2011-0260**

We are counsel to AltaLink Ontario, L.P. ("AltaLink"), a new entrant transmitter which, like TransCanada, was recently licensed by the Board (ET-2011-0126) and was created to participate in transmission development in Ontario pursuant to the Board's designation process under the Board's policy framework for transmission project development plans (EB-2010-0059) (the "Framework").

AltaLink is supportive of the practical concerns raised by TransCanada in its application to amend the effective date of its transmission licence. Most new entrant transmitters, including AltaLink, have brought similar concerns to the Board's attention.

Fundamentally, the concerns relate to a need to eliminate unnecessary barriers to new entrants and to ensure that there will be a level playing field for all participants in a proceeding to designate a transmitter pursuant to the Board's Framework. Put succinctly:

Under the Framework, the Board decided that new entrant transmitters need to obtain a transmission licence so the Board can assess the new entrant's technical and financial capabilities. However, the Board's standard form of transmission licence and the codes incorporated by reference in that licence were not developed with the Framework in mind, and as a result the licence imposes numerous regulatory obligations that effectively serve as a barrier to new entrants coming into Ontario. By contrast, incumbent transmitters already account for the costs of compliance under existing ratepayer funded regulatory budgets, thereby unfairly increasing the competitive advantage of their bids during any subsequent designation process.

TransCanada's application to amend the effective date of its transmission licence appears to be a practical proposal aimed at addressing this generic concern. TransCanada's proposed solution ensures that the Board can still assess a new entrant's technical and financial capabilities, but delays the implementation of the regulatory obligations by making the entire licence subject to a condition precedent before becoming effective.

AltaLink raised this issue, although not the solution suggested by TransCanada, in argument in its recent transmission licence proceeding.¹ The Board carefully considered AltaLink's concerns, including AltaLink's request for several specific temporary exemptions to the transmission licence provisions, in its Decision and Order dated August 31, 2011 (EB-2011-0126) (the "AltaLink Decision"). The following summary of the AltaLink Decision is intended to illustrate how this issue has been previously addressed by the Board and the IESO:

1. *Non-ARC Exemptions.* In its application, AltaLink had requested a temporary exemption from numerous non-ARC provisions of the transmission licence. While the Board denied AltaLink's request for a formal temporary exemption, the Board noted that numerous specific provisions of the transmission licence, the Transmission System Code and the Electricity Reporting and Record Keeping Requirements cannot practically apply to a licensed transmitter who does not own or operate transmission assets in the province and is not yet designated to develop transmission assets.
2. *Operating Agreement.* AltaLink also sought to be exempt from section 6.1 of the transmission licence, which requires a licensee to enter into an operating agreement with the IESO. The Board denied AltaLink's request for a temporary exemption on the basis that that the IESO would allow new entrant transmitters not currently carrying on a transmission business in Ontario to defer entering into such an operating agreement. In light of the IESO's position, a formal exemption was in the Board's view not required.
3. *ARC Exemptions.* Although AltaLink initially requested a temporary exemption from several sections of the ARC, after the TransCanada licensing decision was issued AltaLink narrowed its exemption request to section 2.3 of the ARC, the transfer pricing provisions. The Board denied AltaLink's request for a temporary exemption, noting that it is generally very reluctant to grant exemptions from the ARC and noting that no transmitter that is unsuccessful in the designation process will be permitted to recover from ratepayers the costs of preparing a plan.

As is apparent from the summary above, while the Board has been sympathetic to new entrant's practical concerns about certain impractical regulatory obligations, the Board has been reluctant to grant formal exemptions (temporary or otherwise) to the transmission licence obligations in general and to the obligations imposed under ARC in particular.

AltaLink submits that TransCanada's application to amend the effective date of its transmission licence represents another solution that is intended to address a generic concern that has been raised by numerous new entrant transmitters in Ontario, including AltaLink.

In this context, AltaLink submits that should the Board accept the relief sought by TransCanada in its application, the Board should issue a notice to all licensed new entrant transmitters in Ontario (including AltaLink) indicating that the transmitter would be entitled to similar relief if it applies to the Board. If the Board is unable to extend the relief sought by TransCanada to all other new entrant transmitters in Ontario, AltaLink submits that TransCanada's request for relief should

¹ See AltaLink's Reply Submissions dated August 3, 2011 in EB-2011-0126.

be denied.² AltaLink submits that this approach is necessary to ensure that all new entrant transmitters are treated equally and are starting from the same point during a future designation proceeding.

AltaLink would like to conclude its submissions by re-iterating its support for the Board's new policy objectives of encouraging new entrants to transmission in Ontario and supporting competition in transmission in Ontario. This important policy initiative will drive economic efficiency in transmission for the benefit of Ontario ratepayers. AltaLink looks forward to working with the Board as it seeks to address the various inevitable policy issues that are going to arise when pursuing such an important new policy objective.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original signed by John A.D. Vellone per J. Mark Rodger

J. Mark Rodger
Counsel to AltaLink Ontario, L.P.

Encl.

Copy To: Steve Hodgkinson, AltaLink Ontario, L.P.
George Vegh and Brian Kelly, TransCanada Power Transmission (Ontario) L.P.
Ontario Electricity Transmitters and Applicants

JMR/jv

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² If the Board elects to deny the relief sought by TransCanada in its application, there are other ways the Board can help to ensure a level playing field as between incumbent and new entrant transmitters in respect of ARC. One approach would be to require that all incumbent transmitters who wish to participate in a designation process must create a separate legal entity to be licensed and participate in the Framework. That way, all new entrants and incumbent transmitters would have to manage the same incremental regulatory burdens and would have to comply with the information protection provisions of ARC (in this way, the Board could also legally restrict Hydro One from sharing with its affiliate any information other than what it shares with all new entrant transmitters under the Framework).