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September 13, 2011

**VIA RESS and COURIER**

Ms. Kirsten Walli  
**ONTARIO ENERGY BOARD**  
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File No. T981761

Dear Ms. Walli:

**Re: EB-2011-0260: TransCanada Power Transmission (Ontario) L.P. (TPT)  
Application for a Licence Amendment**

**Submissions of Upper Canada Transmission Inc. (UCT)**

UCT has reviewed the submissions filed herein on behalf of TPT, and generally supports those submissions and the relief claimed by TPT. In particular, UCT agrees with TPT that should the Board grant TPT relief herein and change the effective date of TPT's transmission licence, the appropriate effective date for the licence should be the earlier of:

1. the date upon which TPT is designated as developer of transmission assets in Ontario, pursuant to a Board designation process; and
2. the date upon which TPT applies to own or operate a transmission system outside of a designation proceeding.

In UCT's submission it is only when one of the foregoing conditions arise that a licenced transmitter assumes "public interest" obligations to ratepayers that are distinct from its obligations to its shareholder. It is by virtue of those "public interest" obligations that the regulatory oversight provided for by transmission licence conditions, including adherence to the Board's regulatory instruments (such as the *Affiliate Relationships Code for Electricity Distributors and Transmitters (ARC)*), become relevant.

In the case of designation to develop a particular transmission project, up until the time of such designation a prospective transmitter's attention will be focussed solely on the best interests of its shareholder in securing designation to develop the project, subject to paying due regard to its obligations to the Board as an applicant. Any public service obligations of a prospective transmitter would arise only upon its being awarded an opportunity to develop transmission assets to serve Ontario ratepayers, and to start to

accrue development costs for recovery from Ontario ratepayers. The designated transmitter's ability to recover from ratepayers costs incurred following designation results in a potential divergence of the interests of ratepayers and the transmitter's shareholder, and thus engages the requirement for the regulatory oversight provided by the transmission licence and incorporated regulatory instruments.

By way of particular additional comment on the topics addressed in TPT's submissions:

1. UCT endorses TPT's request to each of the IESO and Hydro One to provide detailed explanation regarding the precise nature of the confidential information that they anticipate will be made available to transmission development designation applicants during the designation process, and why the existing OEB rules regarding confidentiality would not sufficiently protect the interests of the specific customers whose information may be provided.
2. To the extent that Hydro One's concerns regarding confidentiality pertain to its own corporate information (as distinct from confidential information regarding any of its customers), UCT submits that such concerns are inappropriate. Hydro One is a Crown Corporation with only a public service mandate and no private shareholder interests to protect.
3. UCT generally sympathizes with the concerns reflected in TPT's submissions regarding the "burden" associated with compliance requirements that are premature. There is one assertion made by TPT that UCT wishes to clarify its own view on. TPT asserts that absent deferral of the effective date of its transmission licence, and presumably as a result of the consequent early applicability of the ARC, TPT would be required to maintain *"stand alone staff during the designation process because of the possibility that [TPT] may be designated as a transmitter"*<sup>1</sup>. UCT notes that the ARC prohibition on sharing staff between a transmission licensee and an affiliate applies in respect of an *"energy services affiliate"*, and applies in respect of staff who *"are directly involved in collecting, or have access to, confidential information"*. Subject to these conditions, the ARC expressly contemplates *"shared corporate services"*, which would include, for example, shared strategic management. Subject to ensuring that no employee with access to *"confidential information"* is shared with an *"energy services affiliate"*, UCT does not agree that fully separate staffing would be required at the time that a transmission licence becomes effective. UCT further notes the Board's comments in the Decision in TPT's transmission licence application<sup>2</sup> that the Board *"will.. be interested in any proposals that the IESO, Hydro One or other interested parties might wish to make at the relevant time if considered appropriate to ensure that confidential information is protected in a manner commensurate with its commercial value and sensitivity"*. UCT is of the view that stand alone confidentiality protocols can be defined for the purposes of

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<sup>1</sup> TPT September 6, 2011 submission, page 7, 3<sup>rd</sup> full paragraph.

<sup>2</sup> EB-2010-0324, Decision and Order, June 22, 2011, page 11, first paragraph.

a transmission development designation process that will provide satisfactory protection for relevant information without unduly constraining the ability of shared senior management of licenced transmitters to provide appropriate direction for project and OEB application development and execution.

4. UCT endorses the comments provided to the Board in Hydro One's final comment letter filed in UCT's ongoing transmission licence application<sup>3</sup> that if the this application results in a change in the effective date of TPT's licence, UCT and other new entrant transmitters should be afforded similar treatment.

UCT appreciates the opportunity to comment in this matter.

Yours truly,



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<sup>3</sup> EB-2011-0222, Hydro One letter dated September 8, 2011.