

March 2, 2012

COURIER, RESS, EMAIL

Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: EB-2011-0350 - Response to Supplementary Submission in EWT LP's
Application for an Electricity Transmission Licence**

We are counsel to EWT LP. On February 24, 2012, a letter was submitted on behalf of TransCanada Power Transmission notifying the Board of part of its Decision and Order on Suite Metering Issues in EB-2010-0142. For the reasons below, EWT submits that the Board should disregard TransCanada's letter.

In its letter, TransCanada claims to bring to the Board's attention a recent decision. However, TransCanada's letter cites a paragraph of the Board's Decision and Order in EB-2010-0142 in which the Board is quoting its July 7, 2011 Partial Decision and Order in the same matter. The passage cited by TransCanada is therefore from a decision that the Board had issued prior to EWT's licensing proceeding. If this passage was important to TransCanada's motion, TransCanada should have raised it in its motion materials so that all parties to the proceeding could have had the proper opportunity to respond. TransCanada was aware of the proceeding in EB-2010-0142, having cited a December 10, 2010 Procedural Order in the matter in its Notice of Motion.¹ A moving party cannot argue by way of a supplementary letter following the close of motion submissions what it could have argued in its original submissions.

Moreover, TransCanada's letter tries to reinforce an argument that it had already made in its motion submissions. Nothing new is added. In particular, the letter again attempts to advance TransCanada's incorrect view that the designation process is a competitive market or a contestable business. As EWT submitted in its motion materials, this is clearly not the case. The designation process is a regulatory process that is wholly under the control of the Board through its filing guidelines and Procedural Orders. Therefore, any purported analogies to competitive or contestable businesses are inaccurate.

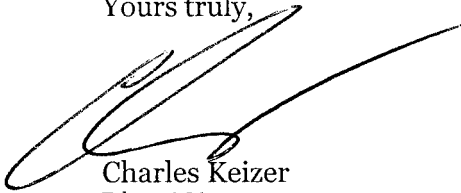
TransCanada's analogy between the designation process and unit sub-metering is no exception. As the Board states in its July 7, 2011 Partial Decision and Order in EB-2010-0142, "[u]nit sub-

¹ TransCanada's Notice of Motion in EB-2011-0350 dated December 12, 2011, page 4.

metering is a competitive and, therefore, non rate-regulated activity”.² As a result, the Board in EB-2010-0142 considered how to set rates for suite metering services, a wholly regulated industry, that would allow for procurement choices between suite metering and unit sub-metering to be made on a comparable economic basis.³ It is fundamentally flawed to analogize this decision to the designation process. By initiating a designation process, the Board is in no way creating a competitive market for transmission services, such as the one that exists for unit sub-metering. Rather, even though the designation process has a competitive aspect in the sense that designation participants compete for designation to develop a specific transmission project, the process is still a wholly regulated one. Thus, the fundamental concern underlying the cited portion of EB-2010-0142 is not relevant in the present context.

For these reasons, TransCanada’s letter should be disregarded.

Yours truly,



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² See the Board’s Decision and Order in EB-2010-0142 dated February 22, 2012, page 4, citing the Board’s Partial Decision and Order in the same matter dated July 7, 2011.

³ *Id.*, at page 5.