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February 20, 2015

RESS, EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Application for approval of the amalgamation of Niagara West Transformation Corporation ("NWTC") and Grimsby Power Inc. ("GPI") under subsection 86(1)(c) of the *Ontario Energy Board Act*, 1998.
Board File No.: EB-2014-0344
Our File No. 123132**

We are counsel to the Intervenor, Niagara Peninsula Energy Inc. ("**NPEI**"), in the above noted proceeding.

Pursuant to Procedural Order No. 2 dated February 10, 2015, please find attached the Submissions of NPEI.

If there are any questions, please contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP



Scott Stoll

SAS/bm

Attach

cc: Applicant, GPI (*via email*)
Applicant, NWTC (*via email*)
Mark Rodger, Counsel to the Applicants GPI and NWTC (*via email*)
Brian Wilkie, Niagara Peninsula Energy Inc. (*via email*)

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ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 86(1)(c) of the *Ontario Energy Board Act*, 1998 for leave to amalgamate and continue as Grimsby Power Inc.;

AND IN THE MATTER OF an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 84 of the *Ontario Energy Board Act*, 1998 for a determination that the Niagara West Transformation Corporation transmission system which will become part of the amalgamated distributor, is deemed to be a distribution system;

AND IN THE MATTER OF an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 78 of the *Ontario Energy Board Act*, 1998 seeking approval for Grimsby Power Inc. to charge Niagara Peninsula Energy Inc., an electricity distributor that will be embedded within the amalgamated distributor, the Board-approved Niagara West Transformation Corporation's transmission rate as a distribution rate from the completion of the proposed transaction until the amalgamated distributor's next rebasing;

AND IN THE MATTER OF an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 78 of the *Ontario Energy Board Act*, 1998 seeking approval for the amalgamated distributor to charge its customers other than Niagara Peninsula Energy Inc. a retail transmission rate that includes the incremental contribution of the Niagara West Transformation transformer station assets as if they were part of the revenue requirement until the amalgamated distributor's next rebasing;

AND IN THE MATTER OF an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 77(5) of the *Ontario Energy Board Act*, 1998 for cancellation of Niagara West Transformation Corporation's transmission licence, upon completion of the proposed transaction.

**SUBMISSIONS OF
NIAGARA PENINSULA ENERGY INC.
("NPEI")**

PART I. Introduction

1. These are the submissions of NPEI in respect of the proposed amalgamation of Niagara West Transformation Corporation ("**NWTC**") and Grimsby Power Inc. ("**GPI**", together the "**Applicants**"). NPEI submits there are deficiencies in the methodology used by the Applicants for the "no harm test". As such, based upon the current evidence NPEI cannot support the proposed amalgamation at this time. However, if the Board approves the amalgamation and relief sought, NPEI requests the Board order:

- (a) GPI to expressly deal with a proper cost allocation study and rate mitigation in the 2016 Cost of Service Application in the design of any rate for NPEI;
- (b) GPI to obtain the written consent of NPEI prior to GPI seeking any amendment to its distribution license that would permit GPI to distribute electricity to any additional customers within the NPEI service territory; and
- (c) GPI be prevented from passing along to customers any costs directly related or attributable to the proposed amalgamation regardless of whether the costs are transactional or necessary changes to the physical elements of the Transformer Station.

2. NWTC has one physical asset – the Niagara West Transformer Station ("**TS**"). There are other assets, such as non-capital tax losses, in addition to the TS. NPEI understands the

amalgamation, if approved, would result in GPI obtaining the rights and obligations that were previously held by NWTC. The current financial situation for NWTC was not sustainable.¹

3. The Applicants have indicated that while there may be some savings, approximately \$35,000,² that the Applicants have forecasted a 25.3% increase in rates following the 2016 Cost of Service (“COS”) rate hearing.³ Further, the 2016 COS is intended to create a situation where NPEI is the only customer in a new Embedded Distributor rate class.

4. The physical location of the TS in the distribution territory of NPEI, a transmitter that relies exclusively upon third party service providers, an acquiring utility that has does not have transmission assets or in-house technical capabilities, that a regulated transmission utility had significant prolonged financial concerns, and the proposed massive increase in costs to customers makes this a unique situation.

Technical or Operational Issues

5. The TS is located within NPEI's service territory.⁴ NPEI is concerned the existence of a distribution asset will be used to justify future incursions into NPEI's service territory. NPEI is opposed to any such incursions and requests the Board make it abundantly clear that the change of the TS to a distribution asset should not be seen as a beachhead for expansion by GPI.

6. NPEI is the meter market participant for the transformer station. Currently settlement is achieved viable the wholesale market. It is unclear what changes to the current settlement

¹ EB-2014-0344, Application, page 6, paragraph 17, lines 13 to 17. NWTC has not recovered return on equity or long term debt.

² EB-2014-0344, Application, page 5, paragraph 13, line 17.

³ EB-2014-0344, Application, page 6, paragraph 18, line 18.

⁴ EB-2014-0344, Response to Interrogatory, Board Staff 1.1 and NPEI 1(b).

process will result from the proposal. Certainly no financial impacts have been specifically identified regarding the settlement process and so the Applicant should not be able to increase costs to customers that would result from such.

7. The evidence shows NPEI utilizes 2 of the potential 6 feeders and has historically used approximately 44% of the demand through the TS.⁵ The capacity assigned to NPEI is 18.4 MW of 45.8 MW or 40%.⁶ Further, the NPEI circuit exiting from the TS is connected to a new generation facility that has been in operation less than 12 months.⁷ As such, it is reasonable to conclude that NPEI will not increase its use of the TS and one could conclude it would be expected that the operation of the HAF Wind Farm will further reduce the energy taken by NPEI through this station.

8. The Applicants have indicated there will be no change in the service quality or service providers as a result of the amalgamation.⁸

9. Based upon this commitment to maintain current service providers and reliability, NPEI does not have further comments regarding the reliability or operational issues associated with the TS under the proposed transaction.

Financial Issues

10. NWTC filed its financial statements with the Application.⁹ It is clear the income from operations, \$28,771,¹⁰ the reduction in equity to approximately 12%¹¹, is not sufficient for a sustainable business. Further, NWTC has non-capital losses in the amount of \$657,944 which

⁵ EB-2014-0344, Response to Interrogatory, NPEI 1(d).

⁶ EB-2014-0344, Response to Interrogatory, NPEI 1(e).

⁷ EB-2014-0344, Response to Interrogatory, NPEI 1(j).

⁸ EB-2014-0344, Application, page 7, paragraph 20, lines 4 to 9.

⁹ EB-2014-0344, Attachment 1.4.3(a) and (b).

¹⁰ EB-2014-0344, Attachment 1.4.3(a), page 4, Income from Operations.

¹¹ EB-2014-0344, Attachment 1.4.3(a), page 2. Shareholder Equity \$925,848 divided by Total Assets \$7,134,564.

could be used to offset future PILs payments.¹² As such, the current cost structure is not appropriate to use for the base of comparisons. NWTC should have considered alternatives to maximize the benefit to its customers in conducting the “no-harm test”.

11. The Applicants have based their analysis for the “no-harm test” on the fact there will be certain activities that will no longer be carried out by NWTC following the amalgamation – thereby creating a “savings” of \$35,000.¹³ The analysis is flawed because it does not properly allocate future costs and benefits, results in significantly higher costs and risk for a greater number of customers; and did not consider the fact the current situation was unsustainable. Further, it does not indicate how the non-capital losses will be used – whether to the benefit of the ratepayer or to the shareholder. The shareholder of GPI should not benefit in such a situation.

12. First, the analysis is based upon the supposition of a 50:50 sharing of costs and benefits which NPEI believes is inappropriate. Currently, the TS has two circuits serving each of NPEI and GPI and two spare circuits. As noted above, demand usage, allocation and other factors confirm allocating 50% to NPEI is not supportable using any criteria.

13. The Applicants seek to transition the current rate applied to NPEI from a transmission rate to a distribution rate until GPI completes the 2016 COS rebasing. In the circumstances this is a reasonable approach if the Board approves the Application.

14. The Applicants have identified modest savings, \$35,000¹⁴ annually, as a result of the proposed amalgamation. However, the Applicants have indicated that it is their intent to create a new Embedded Distributor rate class as part of GPI’s 2016 COS hearing. As a single class, in

¹² EB-2014-0344, Attachment 1.4.3(a), page 11, Note 8.

¹³ EB-2014-0344, Application, page 5, paragraph 13, line 17.

¹⁴ EB-2014-0344, Application, page 5, paragraph 13, line 17.

contrast to GPI allocating across a number of classes, NPEI is concerned that it could be over-allocated future capital costs related to the TS and subject to further significant cost increases.

15. NPEI has significantly more customers than GPI¹⁵ and, according to the Applicants, all of NPEI's customers will see an increase in their rates following the transaction in the order of 25%. NPEI would note that no specific cost drivers for the rate increase were identified but rather it is presumed from the evidence that the proposed increase that GPI will seek is based upon achieving specific financial performance metrics in accordance with Board approval and industry norms. However, if the rate increase is attributable to any cost – such as capital deployment resulting from the proposed amalgamation – then such costs should have been identified as part of the “no-harm test”. The absence of such costs in the tests would lead to the conclusion that no such costs will result or no such costs will be passed along to ratepayers.

16. A 25% increase will change the current rate of NPEI from \$1.77/kW to approximately \$2.20/kW which is more than the Hydro One rate incurred by NPEI. Such a change would require the issue of mitigation to be considered in the 2016 COS hearing. If such a situation as is being proposed by the Applicants is to come into existence, NPEI, would be obligated to shift load away from the TS to Hydro One delivery points to reduce the costs to its customers. This would render the Applicants' proposed 50:50 allocation even further astray from a proper allocation of costs and benefits.

17. Given there is no basis for the purported 50:50 allocation – NPEI is of the view the analysis is fatally flawed and cannot be relied upon by the Board to grant the amalgamation. However, if the amalgamation is approved by the Board, NPEI would request that the Board

¹⁵ EB-2014-0344, Response to NPEI Interrogatory 1(p).

order GPI to specifically prepare a detailed cost allocation study and consider rate mitigation in the 2016 COS.

18. Next, NPEI would make the submission that 1 year horizon for consideration of the “no harm test” is not appropriate. If the current rate situation is not sustainable, then the Applicants should have provided a clear base of the future of NWTC for comparison purposes. Clearly, this is distinguishable from situations where acquisitions were resulting in promises of lower rates for 5 year or extended periods time.

19. It is clear beyond year 1 that costs will increase, presumably for all customers – GPI’s existing customers and NPEI. As such, the result is not “no-harm” for NPEI.

20. It appears the proposed amalgamation was the result of an uneconomically sustainable situation. Therefore, something had to be done. However, there was no consideration of any other options which may have provided significantly more benefits. The Board, in its Report of the Board - *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*¹⁶ directed distributors to consider how value for ratepayers is being provided in the decisions that are being made. Specifically, the Board stated the “*renewed regulatory framework for electricity is designed to support cost-effective planning and operation of the electricity distribution network – a network that is efficient, reliable, sustainable and provides value for customers.*”¹⁷ It does not appear that the proposed amalgamation has provided value to the customer – especially NPEI.

21. For the above reasons, NPEI is of the view the current evidence is insufficient to grant the Application.

¹⁶ Ontario Energy Board, October 18, 2012, page 1.


¹⁷ Ontario Energy Board, October 18, 2012, page 1.

Conclusions

22. Given the unique situation, the physical location of the transformer station and the minimal savings, it is disappointing that other options were not considered and NPEI was not provided an opportunity to consider and have input into the future of the transformer station. It would appear that while savings may result in respect of the proposed transaction versus a status quo, it is not apparent that there was any attempt to obtain the best result for ratepayers. The disappointment is reinforced with the general concerns ratepayers have regarding concerns with costs and the Board should be encouraging regulated entities in considering these types of situations to consider ratepayer impact.

23. Given the above comments, NPEI would request that if the Board approves this Application that the Board include certain conditions in its order as provided above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: February 20, 2015	AIRD & BERLIS LLP Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9  <hr/> Scott Stoll (LSUC #45822G) Tel: 416.865.4703 Fax: 416.863.1515 Counsel for Niagara Peninsula Energy Inc. ("NPEI").
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