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March 2, 2015

**Delivered by RESS and Courier**

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

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

We are counsel to Niagara West Transformation Corporation and Grimsby Power Incorporated, the Applicants in the above-captioned matter. Please find accompanying this letter the Applicants' Reply submission, delivered in accordance with the Board's Procedural Order No. 2.

Should you have any questions or require further information, please do not hesitate to contact me.

**Yours very truly,  
BORDEN LADNER GERVAIS LLP**

*Original signed by James C. Sidlofsky*

James C. Sidlofsky

Copy to      Doug Curtiss, CEO, GPI  
                  Shafee Bacchus, Chair, NWTC  
                  Brian Wilkie, NPEI  
                  Scott Stoll, Aird & Berlis LLP  
                  David Kelly

TOR01: 5865779: v1

**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 customer 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.

**REPLY SUBMISSIONS OF GRIMSBY POWER INC. AND  
NIAGARA WEST TRANSFORMATION CORPORATION**

**DELIVERED MARCH 2, 2015**

## INTRODUCTION:

1. On November 6, 2014, Grimsby Power Inc. (“GPI”) and Niagara West Transformation Corporation (“NWTC”), collectively referred to as the “Applicants”, filed an application (the “Application”) with the Ontario Energy Board (the “Board”) seeking the following:
  - a) Leave to amalgamate and continue as Grimsby under section 86(1)(c) of the *Ontario Energy Board Act, 1998* (the “Act”);
  - b) A determination that the Niagara West transmission system which will become part of Grimsby, is deemed to be a distribution system under section 84 of the Act;
  - c) Approval for the amalgamated distributor to charge Niagara Peninsula Energy Inc. (“NPEI”), an electricity distributor that will be embedded within the amalgamated distributor, the Board-approved Niagara West transmission rate as a distribution rate from the completion of the proposed transaction until Grimsby’s next rebasing under section 78 of the Act;
  - d) Approval for GPI to charge its customers, other than NPEI, a retail transmission rate that includes the incremental contribution of the NWTC transformer station assets as if they were part of GPI’s revenue requirement until GPI’s next rebasing; and
  - e) Cancellation of NWTC’s transmission licence, upon completion of the proposed transaction under section 77(5) of the Act.
2. Following the issuance by the Board of Procedural Order No. 1, interrogatories were filed by Board Staff and NPEI, and responses were filed by the Applicants on February 6, 2015.
3. On February 10, 2015 the Board issued Procedural Order No. 2 providing an opportunity for parties to file submissions on the applications. The Applicants have received submissions from Board Staff and NPEI, and offer the following submissions in reply thereto.

## THE BOARD STAFF SUBMISSION:

4. Board Staff referred<sup>1</sup> to the Board’s decision in RP-2005-0018/EB-2005-0234/EB-2005-0254 and EB-2005-0257 (the “Combined Decision”), in which the Board established the scope of issues that it will consider in determining applications for leave to acquire shares or

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<sup>1</sup> Board Staff submission, at p.5

amalgamate (“Merger, Amalgamation, Acquisitions and Divestitures” or “MAADs”) under section 86 of the Act and ruled that the “no harm” test is the relevant test. Board Staff confirmed that the “no harm” test involves consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board’s statutory objectives set out in section 1 of the Act. According to the no-harm test, if the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted.

5. The Applicants note that this approach was confirmed in the Board’s July 3, 2014 Decision and Order in the Norfolk Power/Hydro One MAADs Application (EB-2013-0187/EB-2013-0196/EB-2013-0198). In that Decision, the Board found that the no harm test remains the relevant benchmark and that Section 1 of the Act remains the approved determinant to meet the Board’s objectives.<sup>2</sup>
6. With respect to the Board’s Report on “*Rate-making Associated with Distributor Consolidation*” issued July 23, 2007 (the “2007 Report”), Board Staff observe that the 2007 Report provides for the deferral of rebasing; that a “distributor will be required to specify its proposal for rate rebasing as part of the MAAD application”; and that “the issue of rate harmonization in the context of a consolidation transaction is better examined at the time of rebasing”, but that parties should indicate in the MAAD application “whether they intend to undertake a rate harmonization process after the proposed transaction is completed and, if they do, to provide a description of the plan”. Board Staff note that this is relevant to this proceeding because Grimsby has requested that the transmission line be deemed to be a distribution asset.<sup>3</sup>
7. Board Staff make submissions in the following areas: Price, Economic Efficiency and Cost Effectiveness; Service Quality and Reliability; and the NWTC transmission assets and Rate Rebasing. Overall, Board Staff submit that “the evidence in this proceeding reasonably demonstrates that the proposed transaction will not have an overall adverse effect relative to the status quo in relation to the Board’s statutory objectives.”

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<sup>2</sup> Available at  
[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/442355/view/dec\\_order\\_HONI\\_NPDI\\_20140703.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/442355/view/dec_order_HONI_NPDI_20140703.PDF)

<sup>3</sup> *Ibid.*

8. With respect to Price, Economic Efficiency and Cost Effectiveness, Board Staff note that the Applicants have estimated annual cost savings of approximately \$35,000 from eliminating duplicate administrative costs and the additional layer of transmitter-related regulatory compliance, and the Applicants have confirmed that all incremental transaction costs will be borne by NPI and not GPI's rate payers. Board staff conclude that "the proposed transaction can reasonably be expected to result in savings and operational efficiencies."<sup>4</sup>
9. With respect to Service Quality and Reliability, Board Staff submit that "Based on the evidence provided by the applicants,...Grimsby can reasonably be expected to continue to operate the station and its distribution system in a safe and reliable manner."<sup>5</sup>
10. With respect to the NWTC transmission assets and Rate Rebasing, Board Staff support the Applicants' request that the transmission assets be deemed distribution assets under section 84 of the Act. Board Staff acknowledge that the Applicants wish to maintain the status quo with respect to rates until Grimsby's next cost of service application, expected to be filed in the Spring of 2015 for rates effective January 1, 2016; and that Grimsby's intention is to establish an embedded distributor class in order to charge NPEI an appropriate distribution charge for the services provided by Grimsby from the TS. Finally, Board Staff note the Applicants' estimate of a net increase in overall costs of \$177,471 related to the TS, reflecting recovery of the current OM&A and debt servicing costs for the TS as well as the full allowed rate of return on equity; and that the Applicants have emphasized that the proposed changes in rates and cost allocation are subject to Board approval and that NPEI will have an opportunity to participate in the rate proceeding where these matters will be reviewed. Board Staff conclude that "Consistent with the 2007 Report...the rate and cost allocation changes proposed by the applicants are better examined at the time of rebasing as this is when the consolidated entity would apply for its revenue requirement and the particular details of the rate and cost allocation proposals, described in this application can then be fully explored."
11. Board Staff conclude that "based on the evidence provided by the applicants, the proposed transaction will not have an adverse effect relative to the status quo in relation to the Board's statutory objectives and therefore meets the "no-harm" test. Accordingly, Board Staff submits that the application should be approved as filed."

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<sup>4</sup> Board Staff submission, at p.6

<sup>5</sup> Board Staff submission, at p.7

12. The Applicants agree with the Board Staff conclusions.
13. The Applicants also note that in the Norfolk Decision, the Board observed that the issues raised by the parties in that proceeding were confined to whether the no harm test had been satisfied in relation to the first two objectives provided for in section 1 of the Act, and that at the time of the Combined Proceedings the Act only provided for the first two of its current section 1 objectives. However, the Board went on to note that it is required by law to be guided by all five of the section 1 objectives, and that the no harm test should be applied in relation to all five of them. The remaining objectives include the promotion of electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances; the facilitation of a smart grid in Ontario; and the promotion of the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.
14. The Board concluded that in assessing the Norfolk acquisition, it did not consider that there was any reasonable indication that harm would be caused in the context of the last three objectives. The Applicants respectfully submit that similarly, in the current proceeding, no harm will be caused in the context of the last three objectives. GPI will continue to be bound by applicable OEB Codes, including the Distribution System Code, and the OEB Filing Requirements with respect to rate applications, that operate in part to facilitate CDM; smart grid development; and the promotion of renewable energy.

**THE NPEI SUBMISSION:**

15. The Applicants submit that the NPEI submissions are largely irrelevant to this proceeding, and in certain cases misconstrue the evidence before the Board. For the reasons set out below, the Applicants respectfully request that the Board reject the demands of NPEI and approve the application as filed. The Applicants have followed the order of the NPEI submission in providing their reply.

### Technical or Operational Issues

16. NPEI confirms that the TS is located within NPEI's service territory, and expresses its concern that the TS, as a distribution asset, will be used to justify future incursions into the NPEI service territory. NPEI opposes any such incursions and wants the Board to "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."<sup>6</sup>
17. The Applicants have already addressed this issue three times in their interrogatory responses. In their responses to Board Staff Question 1.2 and NPEI Questions 1(n) and 1(q), the Applicants confirmed that GPI does not intend to serve any customers beyond its current boundaries with the exception of NPEI itself, which will still be connected to the NWTC facilities, and the small number of load transfer customers for which GPI is the physical distributor. GPI's service territory will not change.<sup>7</sup> The Applicants' position has not changed, and this application is not about creating a "beachhead" for GPI expansion. It is about reorganizing the GPI corporate family and achieving savings through the elimination of duplicate layers of administration and regulatory requirements. However, this is not an appropriate forum for the Board to be issuing prohibitions against future boundary changes. Any future proposals in this regard would be governed by the Board's policies and filing requirements in place at the time of the request, and NPEI would have an opportunity to participate in the corresponding Board proceeding. For example, the treatment of long term load transfers is now the subject of the Board's February 20, 2015 proposed amendments to the Distribution System Code<sup>8</sup> Those amendments, if implemented, envision service area amendments whereby physical distributors' service areas would be expanded to include those customers being served by those physical distributors. The Applicants submit that the Board should not be imposing restrictions in this section 86 Application that would prevent future actions and applications that are in accordance with Board policy.
18. NPEI is correct in stating that it is the Metered Market Participant (the "MMP") for the TS. GPI is anticipating that this arrangement will continue. Costs related to MMP services are

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<sup>6</sup> NPEI submission, at page 3, para.5

<sup>7</sup> Applicants' responses to Board Staff interrogatories at page 3, and responses to NPEI interrogatories at pages 10-11

<sup>8</sup> EB-2015-0006

typically recovered from a distributor's customers through rates. If NPEI is no longer prepared to continue in that role, GPI will have to make alternative arrangements, and the costs related to those arrangements will have to be addressed in a GPI rate case.

19. NPEI's comments with respect to its historical usage of the capacity of the TS and the potential impact of the HAF Wind Farm are more appropriately addressed in the context of a GPI rate proceeding. As the Applicants have indicated numerous times in this proceeding, they intend to maintain the status quo with respect to rates for NPEI and the remainder of GPI's customers. Any intended adjustments to the allocation of TS-related costs to NPEI will be set out in GPI's upcoming rebasing application, and NPEI will have an opportunity to participate in that proceeding.
20. NPEI has not raised concerns about the ability of GPI to operate and maintain the TS. Current service contracts will be kept in place, although the Applicants have noted that the arrangements will likely change over time.<sup>9</sup> GPI has hired a Professional Engineer in the position of Engineering Supervisor, with the responsibility to manage the operation of the station and the distribution assets. The Applicants remain confident that through dedicated internal resources and external third party service providers the safe reliable operation of the station will not only be maintained but will be enhanced.

### **Financial Issues**

21. NPEI has suggested that the current financial situation for NWTC was unsustainable,<sup>10</sup> and refers to the Application to support that assertion. This is not what the Applicants have said. What they have said is that NWTC was earning low returns on its assets. In their response to NPEI Question 1(t), the Applicants indicated that NWTC's return on equity has ranged between 3.2% and 3.7% over the 2011-2013 period. At no time have the Applicants suggested that this Application is being made because the current NWTC financial situation is "unsustainable", and the fact is that the Board's approval of this Application will not significantly change that situation.
22. The estimated \$106,923 increase to NPEI is based on an increase in the return on the NWTC assets to the Board's deemed ROE and the change in allocation of the TS to

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<sup>9</sup> See the Applicants' response to Board Staff Question 2(b), at page 5 of their responses to Board Staff Interrogatories.

<sup>10</sup> NPEI submission, at page 3, para. 2.



50%/50% as between NPEI and GPI, but these anticipated adjustments are not part of this Application, and as the Board has noted, “the rate and cost allocation changes proposed by the applicants are better examined at the time of rebasing as this is when the consolidated entity would apply for its revenue requirement and the particular details of the rate and cost allocation proposals, described in this application can then be fully explored.” Once again, the Applicants state that any adjustments of this kind would be proposed in the context of GPI’s rebasing, and NPEI will have an opportunity to participate in that proceeding.

23. Similarly, at this time, the Applicants submit that they have accurately calculated the anticipated savings from the proposed amalgamation. The actual savings will be returned to GPI’s customers, including NPEI as an embedded distributor customer of GPI, through rates.
24. The NPEI assertions<sup>11</sup> that the transaction “results in significantly higher costs and risks for a greater number of customers” and that “all of NPEI’s customers will see an increase in their rates following the transaction in the order of 25%” are simply wrong, if not misleading. The applicants have proposed to maintain the status quo in this Application, so there is no impact on customers from this transaction. Any changes to cost allocation and returns will be proposed and addressed at the time of GPI’s next rebasing. Any TS-related cost increases to NPEI customers that might be proposed in GPI’s next rebasing are immaterial, since they amount to \$2.04 per customer per annum, or \$0.17 per month<sup>12</sup>.
25. In the Board’s recent Decision in the Hydro One acquisition of Norfolk Power, the Board determined (consistent with the 2007 Report) that it would “not consider future rates at this time. However, as indicated in the Motion Decision, in applying the no harm test it is appropriate for the Board to assess the cost structures that will be introduced as a result of the acquisition, in comparison to the cost structures that underpin [Norfolk’s] current rates.” The Applicants submit that the proposed transaction is creating a beneficial change in the underlying cost structure of the NWTC assets in that duplicative costs will be avoided, and this suggests that the no harm test is met and the Application should be approved. The approval of the Application does not adjust the cost allocation or increase the return on the NWTC assets. Even in the absence of the proposed amalgamation, it would be open to

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<sup>11</sup> NPEI submission, page 5, para. 11

<sup>12</sup> See the Applicants’ response to NPEI Question 2(h), at page 19 of the Applicants’ responses to NPEI Interrogatories

NWTC to apply for approval of a transmission rate that provides for a higher return on the assets, and of a revised allocation of costs as between NPEI and GPI.

26. Finally, NPEI refers to the Board's Report on a *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, and expresses concern that there was no consideration of any other options that "may have provided significantly more benefits". NPEI refers to the Board's comment that "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." The Applicants agree that this is an important objective, but they note that the matter before the Board is not a matter of system planning – this proceeding relates to a TS that has been in operation, and serving GPI and NPEI and one of its predecessor corporations, Peninsula West Utilities (the parent of Peninsula West Utilities owned 50% of NWTC but sold its interest to the parent of GPI in 2012), for approximately a decade. Maintaining the TS in a separate corporation is not helpful, as it perpetuates added costs and another layer of regulation. The proposed amalgamation is a reasonable approach that reduces those costs. It meets the Board's no harm test and should be approved. It is not the Board's role to search for another alternative approach. As the Board made clear in its August 31, 2005 Decision in the Combined Proceeding,

The Board believes that the "no harm" test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties."<sup>13</sup>

27. NPEI has made no suggestions or filed any evidence as to alternatives, but the Applicants submit that any such suggestions would be beyond the scope of the Board's role in this proceeding.

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<sup>13</sup> RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 – available at: [http://www.ontarioenergyboard.ca/documents/cases/RP-2005-0018/decision\\_310805.pdf](http://www.ontarioenergyboard.ca/documents/cases/RP-2005-0018/decision_310805.pdf) at page 6

### **NPEI's Requested Conditions of Approval**

28. NPEI asks that the Board order the following in the event that the Board approves this Application:<sup>14</sup>

- 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.

29. The Applicants submit that these conditions are neither necessary nor appropriate in this proceeding.

- a) With respect to the cost allocation study, GPI will be required to conduct and file a cost allocation study in any event as part of its cost of service rate application – Chapter 2 of the Board's *Filing Requirements for Electricity Distribution Rate Applications* requires this.<sup>15</sup>
- b) With respect to the NPEI demand that GPI obtain NPEI's consent prior to seeking a licence amendment that would permit GPI to distribute electricity to any additional customers within the NPEI service territory, the Applicants have stated that they do not intend to service additional customers within the NPEI service area beyond NPEI itself and the load transfer customers it currently serves. GPI is not requesting a service area amendment, nor is one necessary at this time. However, it would be highly inappropriate for NPEI to in effect be given a veto in this proceeding over any potential future GPI application for a

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<sup>14</sup> NPEI submission, at page 2, para. 1

<sup>15</sup> See section 2.10.1 of Chapter 2 of the Filing Requirements, at [http://www.ontarioenergyboard.ca/oeb/\\_Documents/Regulatory/Filing\\_Reqs\\_Dx\\_Applications\\_ch\\_2.pdf](http://www.ontarioenergyboard.ca/oeb/_Documents/Regulatory/Filing_Reqs_Dx_Applications_ch_2.pdf)

service area amendment that would allow it to distribute electricity to customers in the NPEI service area. This would mean that even if it were more economically efficient for GPI to service a customer in the NPEI service area, NPEI could prevent it. The Board has policies and Filing Requirements related to service area amendment applications,<sup>16</sup> and they contemplate both consensual and contested applications. It is the Board's policies and Filing Requirements related to those applications, and not an NPEI veto, that should govern any possible future GPI application.

- c) With respect to the request that 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", the Applicants have two comments. With regard to transaction costs, the Applicants have already made it clear in section 1.6.7 of the Application that incremental costs related to the transaction costs are being borne by GPI's parent, Niagara Power Inc., and will not affect GPI's rate payers. No such condition is necessary. With regard to changes to the physical elements of the TS, NPEI's motives in seeking this condition are not clear, but GPI is not contemplating changes to the physical elements of the TS – it is anticipating continuing to operate the facility as it is currently being operated. If upgrades to the TS are necessary in the future, then they would likely be dealt with as part of GPI's capital planning, and the revenue requirement related to those upgrades would be addressed in a future rate-related application. It is not clear why NPEI is making this request, but if it is an attempt by NPEI to avoid costs related to its potential bypass of these facilities that were constructed in part to serve its load,<sup>17</sup> then the Board should explicitly reject this request. As the Applicants stated in response to NPEI Question 1(k),

"The effects of bypassing the NWTC facility and shifting of load to other transformer stations by NPEI, would certainly have to be evaluated in the context of the allocation of costs and its relationship to revenue recovery.

If NPEI were to bypass the NWTC facility by shifting load to other transformer stations, this would in effect partially strand this asset. This practice, if deployed, would be contrary

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<sup>16</sup> [http://www.ontarioenergyboard.ca/documents/cases/EB-2006-0327/filing\\_requirements\\_SAAA\\_20070312.pdf](http://www.ontarioenergyboard.ca/documents/cases/EB-2006-0327/filing_requirements_SAAA_20070312.pdf)

<sup>17</sup> NPEI seems to hint at this at page 6, para. 16 of its submission and Question 1(k) of its interrogatories.

to the reasons for building the station in the first place. NWTC was established and jointly owned by the parent corporations of GPI and Peninsula West Utilities Limited (Peninsula West was a predecessor corporation to the current NPEI). The facility was built approximately 10 years ago to supply the needs of both LDCs and this was made clear to the OEB when NWTC obtained both a Transmitter Licence and an OEB-approved transmission rate in 2005. The shifting of load by NPEI to other transformation facilities may have cost implications for the remaining customers – GPI customers – and it may be appropriate to address with the OEB the matter of NPEI's bypass of the facility, and the need to hold GPI's remaining customers harmless for NPEI's actions."

## CONCLUSION

30. For the reasons set out in the Application and above, the Applicants submit that the Board's no harm test has been met; that the Application should be approved as filed; and that the NPEI requests for conditions on the approval should be rejected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2<sup>ND</sup> DAY OF MARCH, 2015

BORDEN LADNER GERVAIS LLP  
Per:

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James C. Sidlofsky  
Counsel to the Applicants