

**VIA ELECTRONIC MAIL AND FACSIMILE**

February 3, 2006

Mr. Dave Walker  
National Energy Board  
444 Seventh Avenue SW  
Calgary, AB T2P 0X8

Dear Mr. Walker:

**Re: Draft Filing Manual for Electricity Facilities Application  
Comments of the Ontario Independent Electricity System Operator**

The Independent Electricity System Operator (the “IESO”) respectfully requests that the National Energy Board (the “Board”) convene a technical conference to discuss and clarify matters pertaining to the potential for the overlapping of federal and provincial jurisdiction over parts of an international power line (IPL). Figure 2-1 of the draft Electricity Filing Manual highlights the potential for overlap. There appears to be some overlapping of federal and provincial authority regarding leave for construction and ongoing operation, among other things, that may be required in respect of both a Permit application and a certificate pursuant to a Designation Order.

Below we identify and discuss some of the specific issues that we believe require further discussion and clarification.

Preamble

*Section 58.1 of the Act directs that no person shall construct or operate a section or part of an international power line except under and in accordance with a permit issued under section 58.11 or a certificate issued under section 58.16; and*

*Section 58.11(1) of the Act notes that except in the case of an international power line designated by order of the Governor in Council under section 58.15 or in respect of which an election is made under section 58.23, the Board shall, on application to it and without holding a public hearing, issue a permit authorizing the construction and operation of an international power line.*

Figure 2-1 suggests that, in addition to Board authorization for construction and operation of an IPL that is required pursuant to 58.11, provincial authorization is also required in this regard pursuant to section 58.19 of the Act. Specifically, section 58.19 directs that:

*for the purposes of sections 58.2, 58.21 and 58.22, a law of a province is in relation to lines for the transmission of electricity from a place in the province to another place in the province if the law is in relation to any of the following matters:*

- a) *the determination of their location or detailed route;*
- b) *the acquisition of land required for the purposes of those lines, including its acquisition by expropriation, the power to so acquire land and the procedure for so acquiring it;*
- c) *assessments of their impact on the environment;*
- d) *the protection of the environment against, and the mitigation of the effects on the environment of those lines; or*
- e) *their construction and operation and the procedure to be followed in abandoning their operation.*

Taken together it would appear that multiple levels of leave to construct and operate authorization (i.e., federal and provincial) may be required for IPLs that are subject to review under section 58.11 of the Act, and also where a certificate is required pursuant to a Designation Order and no election is made. In addition, Figure 2-1 contemplates that an IPL that is permitted by the Board will also be subject to ongoing provincial regulation pursuant to section 58.19. This being said it is unclear what specific authorization is being granted by the Board upon issuance of a Permit. Furthermore, we are unaware of any IPL or precedent wherein the Act has been applied in this manner.

## **Other Matters Requiring Clarification**

### **Regulatory Test for Permit Application**

It is unclear what regulatory test must be met by the proponent of an IPL in order to be granted a Permit by the Board. For example, for a Certificate application in respect of:

- (a) an international power line in relation to which an order made under section 58.15 is in force,
- (b) an international power line in relation to which an election is filed under section 58.23, or
- (c) an interprovincial power line in relation to which an order made under section 58.4 is in force.

the proponent must persuade the Board that the IPL is and will be required by the present and future public convenience and necessity. However, it is unclear what test, if any, must be met with respect to a Permit application.

### **Matters Regarding Security of International Power Lines**

We note that the Public Safety Act, 2002 amended the National Energy Board Act to provide the Board with new powers pertaining to “security” of pipelines and international power lines. We also observe that security is not a defined term with respect to the Board’s authority for reviewing and approving or ongoing regulation of pipelines and international power lines.

We believe the Electricity Filing Manual should define and specify the scope of security matters that the Board will consider in the course of its review and approval and ongoing regulation of IPLs. In the electricity industry the term security is used to characterize certain elements of reliability—that is, the ability of the electric system to withstand sudden disturbances such as short circuits or unanticipated loss of system elements. By defining the scope of security matters that the Board will consider, pursuant to its authority under the Act, this will help to prevent potential confusion that may arise in the course of reviewing and approving, and the Board’s ongoing regulation of IPLs.

### **Cost Recovery for Ongoing Regulation**

In Figure 2-1 it is contemplated that, where a Permit (and Certificate pursuant to Designation Order) is granted for an IPL, the line will be subject to “ongoing regulation” pursuant to federal conditions and provincial and other applicable laws. Presumably these facilities will be included in the cost of service pool—the basis on which the Board recovers its costs for regulating IPLs and electricity export activities. As noted earlier, there appears to be some overlapping of authority with respect to federal and provincial authorization regarding leave for construction and ongoing operation of IPLs. Consequently, this may result in the duplication of administration of the respective authority and the assessment of costs that is associated with the review and approval and ongoing regulatory oversight of the transmission facilities.

We look forward to participating in the discussion of these matters. Please feel free to call me at (416) 506-2858 if you have any questions regarding the IESO’s initial comments on the draft filing guidelines.

Yours truly,

### ***Original signed by***

Carl Burrell  
Senior Analyst  
Regulatory Affairs  
Independent Electricity System Operator