



05 November 2010

Mr. Shan Bhattacharya
Vice-President Transmission
Alberta Electric System Operator
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RE: Discussion Paper – Competitive Procurement Process for Critical Transmission Infrastructure

Dear Shan;

Attached is TransCanada Energy Ltd.'s ("TransCanada") response matrix to the above noted Discussion Paper. While TransCanada recognizes that the AESO is in the very early stages of developing the competitive procurement process, below are some high level observations/comments in addition to those in the matrix:

- TransCanada notes that although the Discussion Paper suggests that the competitive procurement process applies to critical transmission infrastructure projects, section 24.2 of the amended Transmission Regulation refers to "transmission facility projects", which indicates that the process the AESO is establishing will apply to more projects than those designated as CTI.
- Since the AESO is in the very early stages of the consultation process, the high-level nature of the Discussion Paper prevents TransCanada from providing in-depth comments. For example, in the discussion paper, the "Selected Entity" in the Own Alternative appears to essentially become a TFO and under current legislation must, therefore, meet all existing TFO obligations and requirements. TransCanada would appreciate clarification of the AESO's expectations in this regard.
- TransCanada is concerned that the consultation timeline will not allow for full consideration, design, and implementation of the detailed competitive procurement process. In order to maintain what TransCanada considers to be a very aggressive schedule, it may be advisable to contract the services of an organization that specializes in tendering major infrastructure projects.
- Alternatively, TransCanada suggests the AESO form a workgroup of skilled individuals to assist in resolving key issues like establishing the contract terms and conditions for the Own Contract template, risk sharing options, force majeure principles, etc.

TransCanada looks forward to working with the AESO and industry in developing a robust, open and transparent process with the objective of achieving a high degree of success in the competitive procurement of transmission projects.

Sincerely,

Originally Signed by

Vince Kostaskey
Senior Advisor – Western Power

Cc: Nadine Berge - TransCanada
Jana Mosley – Consultant to TransCanada



Stakeholder Comment and AESO Replies Matrix

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The AESO is asking market participants and interested parties to indicate their interest in participating in the AESO’s consultation regarding the AESO’s proposed competitive procurement process and to provide comments on the related Terms of Reference and Discussion Paper.

Date of Request for Comment: <u>2010-11-04</u>	Contact: <u>Vince Kostas</u>
Period of Consultation: <u>2010-09-17</u> through 2010-11-04	Phone: <u>403-920-2087</u>
Comments From: <u>TransCanada Energy Ltd. (“TransCanada”)</u>	E-mail: <u>Vince_kostas@transcanada.com</u>
Date [yyyy/mm/dd]: <u>2010-11-04</u>	

Interest in Participating in AESO Consultation for a Proposed Competitive Procurement Process		
Please indicate your interest in participating in this consultation		
	Stakeholder Comment	
	<input checked="" type="checkbox"/> Interested <input type="checkbox"/> Not Interested	
Terms of Reference - In-Scope Section		
Do stakeholders agree with the scope set out in the Terms of Reference? Are there any other documents the AESO should consider as in scope?		
Stakeholder	Stakeholder Comment	AESO Replies
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose	



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	<i>In addition to the existing scope, consideration for how this competitive procurement process could be applied or adapted to other system or customer projects should be given, as contemplated in Section 24.2(8) of the Transmission Regulation.</i>	
Terms of Reference – Out-of-Scope Section		
Do stakeholders agree with the out-of-scope section?		
Stakeholder	Stakeholder Comment	AESO Replies
TransCanada Energy Ltd.	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose	
Terms of Reference - Consultation Activities, Documents and Schedule Section		
Do stakeholders agree with the consultation activities, documents and schedule?		
Stakeholder	Stakeholder Comment	Replies
TransCanada Energy Ltd.	<i>TransCanada believes that the Recommendation Paper should articulate the details of the Process and a pro forma Own Contract and therefore the proposed consultation schedule does not appear to allow for sufficient time to develop a comprehensive Recommendation Paper.</i> <i>The schedule for the AUC application process, possible legislative changes and</i>	



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	<i>an implementation schedule should also be documented and published.</i>	
Terms of Reference – Other Comments		
Do stakeholders have any other comments regarding the Terms of Reference for the competitive procurement process documents?		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<i>There is no discussion of the resources AESO intends on using to develop the Recommendation Paper or the process. The AESO is encouraged to consider engaging an organization that has designed and implemented such processes to manage this initiative.</i>	



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Discussion Paper		
The AESO is seeking stakeholder comments regarding the proposed implementation schedule.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input checked="" type="checkbox"/> Oppose <i>The Discussion Paper does not contain an implementation schedule.</i> <i>Clarity is required from the Alberta Department of Energy on reasonable timeframes to make changes to the EUA and Transmission Regulation, if required.</i> <i>A Process training schedule for potential bidders should also be considered and should include RFP requirements, Facility Application requirements, other AESO and AUC rules and standards.</i>	
Discussion Paper		
The AESO is seeking stakeholder comments regarding the objectives and principles to be used in the design of a competitive procurement process for CTI in Alberta.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <i>Item 2.1.2 d) TransCanada would like to</i>	



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	<p><i>understand more about how the AESO believes the Process can foster regulatory predictability.</i></p> <p><i>Item 2.1.3(c) The duty to consult aboriginal people on their rights under section 35 of the Canadian constitution is a government duty. Although some procedural aspects of consultation may be delegated to industry by government directly or through a regulatory process, the duty itself continues to rest with the Crown. The Selected Entity must meet the consultation requirements put in place by the regulators or permit grantors.</i></p>	
Discussion Paper		
<p>The AESO is seeking stakeholder comments regarding additional alternatives including associated advantages and disadvantages for the competitive procurement process.</p>		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<p><i>Section 24.2(8) of the Transmission Regulation states that the Process may be used on other transmission projects. Depending on the project scope, known landowner sensitivities, and schedule requirements there may be occasions where a project is better suited to one</i></p>	



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	<i>process alternative than the other. Consideration of developing both alternatives may be warranted.</i>	
Discussion Paper		
The AESO is seeking stakeholder comments regarding the process steps in the Own Alternative.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <i>Step 2: Note 6 on page 7 – the RFQ and determination of Eligible Bidders process should be consulted on as part of the Recommendation Paper. Consideration should be given to a cyclical RFQ process so bidders do not need to apply every time an RFP is identified. (See Ontario Energy Board “Licensed Transmitter” process).</i> <i>Step 5: In the past, the AESO has emphasized the need to work well with the Incumbent TFOs to implement transmission projects. If the AESO is awarding the bid, how could this impact AESO and Incumbent TFOs working relationship and day to day processes required to deliver all other transmission projects? TransCanada suggests considering contracting of the evaluation and recommendation of a</i>	



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	<p><i>Selected Entity to an independent third party.</i></p> <p><i>Step 6: Project schedules cannot afford to have the AESO reject all qualified Proposals – it is imperative that the AESO hold workshops for potential bidders before implementing the Process to increase the odds of receiving qualified Proposals.</i></p> <p><i>Step 7: Creation of the Own Contract template will require significant time in the Process creation schedule and consideration should be given to whether the Own Contracts will be made publicly available.</i></p>	
Discussion Paper		
<p>The AESO is seeking stakeholder comments regarding the advantages, as well as any other advantages and disadvantages the stakeholder believes are appropriate for the Own Alternative.</p>		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <p><i>An additional advantage of this alternative is that the Selected Entity may also be a market participant that has facilities or is building facilities in the area of the needed transmission infrastructure and therefore</i></p>	



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	<p><i>has already established landowner relationships.</i></p> <p><i>On page 9, the AESO states that it will take approximately one year to identify a Selected Entity. TransCanada is concerned with this timeframe and would like to see it reduced to the extent possible given the additional risk that it adds to projects. For example, in order to reduce the risks, and hence premiums, associated with route selection perhaps the AESO can establish a preferred route prior to the RFP being issued. This option would require a method for dealing with the substantial costs incurred in the route development stage in order to maintain the competitive aspect of the process.</i></p>	
Discussion Paper		
The AESO is seeking stakeholder comments regarding efficient risk-sharing options that will optimize the overall cost of CTI projects.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose	



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Discussion Paper		
The AESO is seeking stakeholder comments regarding the process steps in the EPC Alternative.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <i>Same comments as Own Alternative for Steps 1 to 6</i> <i>Step 7: In TransCanada’s view, timely and cost efficient coordination between the EPC Entity and the Incumbent TFO is unlikely. Competitive advantages would then be reduced or lost.</i> <i>In addition, requiring that the AESO or its agent oversee all coordination and transactions between the EPC Entity and Incumbent TFO is inefficient and increases timelines, as proven in the current Connection Process models.</i> <i>There is no incentive for the Incumbent TFOs to make this alternative a success. For the model to be a success, the incumbent TFO would have to be willing to facilitate competition against itself, which is unlikely to occur.</i>	



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Discussion Paper		
<p>The AESO is seeking stakeholder comments regarding the advantages, as well as any other advantages and disadvantages the stakeholder believes are appropriate for the EPC Alternative.</p>		
Stakeholder	Stakeholder Comment	
<p>TransCanada Energy Ltd.</p>	<p><input type="checkbox"/> Support <input type="checkbox"/> Oppose</p> <p><i>Advantage c): The Own Alternative suggests that not involving the Incumbent TFO and having the stakeholder relationships held by the Selected Entity is an advantage, yet in the EPC Alternative the AESO suggests that having the Incumbent TFO involved with stakeholders is an advantage. Further consideration should be given to determine which alternative is more advantageous in this regard.</i></p> <p><i>Has the EPC Alternative been tested in other jurisdictions and if so, what were the outcomes?</i></p> <p><i>The potential coordination issues and time and cost implications are a major disadvantage of this process. There is a high risk of project failure under this alternative.</i></p>	



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Discussion Paper		
<p>The AESO is seeking stakeholder comments regarding additional issues for consideration applicable to the Own and EPC Alternatives, as well as identification of any other issues that will need consideration.</p>		
Stakeholder	Stakeholder Comment	
<p>TransCanada Energy Ltd.</p>	<p><input type="checkbox"/> Support <input type="checkbox"/> Oppose</p> <p><i>1. Section 24.2 of the Transmission Regulation, as amended, states that where the AUC approves the Competitive Process, it must consider any resulting arrangements prudent. As a result, the role of the AUC in approving the Process is an important one.</i></p> <p><i>2. In addition, in the Own Alternative, the Selected Entity will have to make a tariff application under s. 37 of the EUA and the AUC is the body that will consider that application</i></p> <p><i>3. TransCanada agrees issues related to default and force majeure provisions are important to address, but it is too early in the consultation process to comment at this time.</i></p> <p><i>4. TransCanada also agrees with the necessity for an affiliate rule to be in place</i></p>	



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	<i>to prevent undue advantage for incumbent TFOs.</i>	
Discussion Paper		
The AESO is seeking stakeholder comments regarding additional issues for consideration applicable to the Own Alternative, as well as identification of any other issues that will need consideration.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <ol style="list-style-type: none"> 1. <i>The Selected Entity and the TFOs should be treated equally. Current TFO duties and responsibilities should be reviewed for validity and reasonableness and amended where required.</i> 2. <i>Selected Entities could enter into an agreement with existing TFOs or other entities with system control center capability or fund their own. Cost recovery would be dependent on AUC requirements and provisions. Incumbent TFOs enter into operating agreements with various interconnecting parties today - this should not be an issue under this alternative.</i> 	



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Discussion Paper		
The AESO is seeking stakeholder comments on the inclusion of the proposed structure for the Request for Qualifications (RFQ), as well as any other information the stakeholder believes should be included.		
Stakeholder	Stakeholder Comment	
TransCanada Energy Ltd.	<input type="checkbox"/> Support <input type="checkbox"/> Oppose <i>Has the AESO considered how other jurisdictions are running the RFQ process?</i> <i>In parallel with the Process development, the AESO should consider testing the proposed RFQ process with potential bidders on a beta project to determine what additional information is needed for bidders to complete a qualified bid.</i>	
Discussion Paper		
The AESO is seeking stakeholder comments on the inclusion of the information required by potential bidders to substantiate their qualifications to an RFQ, as well as any other information the stakeholder believes should be included.		
Stakeholder	Stakeholder Comment	
Discussion Paper		
The AESO is seeking stakeholder comments on the potentially required amendments to relevant regulations, as well as any other amendments the stakeholder believes will be necessary.		
Stakeholder	Stakeholder Comment	



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<p>TransCanada Energy Ltd.</p>	<p><input type="checkbox"/> Support <input type="checkbox"/> Oppose</p> <p><i>TransCanada disagrees that any amendment to the Alberta Utilities Commission Act (“AUCA”) would be required. Section 8 of the AUCA gives the Commission broad powers to act on matters conferred upon it by other enactments. Section 24.2 of the Transmission Regulation (AR 86/2007), as amended (“T-Reg”), refers to approval of the Process by the Commission. Together these are sufficient to allow the Commission to approve the Process. TransCanada also disagrees that any new AUC rules are required. The competitive Process can be specified in an AESO rule. The existing framework for AESO rule development is sufficient to put the rule in place, particularly if the Process has already been approved in principle by the AUC.</i></p> <p><i>Section 9(6) of the EUA prohibits the AESO from owning or holding an interest in a transmission facility. TransCanada interprets “interest” as a financial interest. TransCanada does not see in the information provided by the AESO potential</i></p>	
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	<p><i>for the AESO to own or hold a financial interest in the transmission facilities in either the Own Alternative or the EPC Alternative. Both models do not differ in this respect from the present situation with the existing TFOs.</i></p> <p><i>Section 24(2) permits the AESO to grant exceptions to the service territory designations for the incumbent TFOs. If the Process is approved by the Commission and specified in an AESO rule, TransCanada does not see the need to amend s. 24 of the T-Reg.</i></p> <p><i>TransCanada agrees that any provision of the T-Reg or EUA that gives an unfair advantage to incumbent TFOs, including s. 41, will have to be clarified in order to address the potential advantage.</i></p>	
Discussion Paper		
<p>The AESO is seeking any other stakeholder comments on the Discussion Paper concerning the AESO's proposed competitive procurement process.</p>		
Stakeholder	Stakeholder Comment	