NextEra Energy Canada, ULC

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May 28, 2010

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
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Toronto ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

RE: Board File: EB-2010-0059

Please find enclosed three copies of the comments of NextEra Energy Canada, ULC ("NextEra") on the Board Staff Discussion Paper on Transmission Project Development Planning. Please direct any further communications on this matter to NextEra and its counsel at the addresses set out below.

Sincerely,

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NextEra Comments to the Ontario Energy Board Regarding OEB Staff Discussion Paper on Transmission Project Development Planning

I. Introduction

NextEra Energy Canada, ULC, ("NextEra") is pleased to participate in the development of the Ontario Energy Board Staff Discussion Paper on Transmission Project Development Planning (the "Discussion Paper").

NextEra brings to Ontario strong experience in developing and operating successful renewable energy projects as well constructing and operating electric transmission facilities. NextEra is part of the NextEra Energy, Inc., family of companies. NextEra Energy, Inc.'s, principal subsidiaries are NextEra Energy Resources, LLC, and Florida Power & Light Company. NextEra Energy Resources, LLC, owns and operates more than 18,000 MW of generation capacity, which includes the largest renewable energy generation fleet in North America. These generation assets are in addition to the more than 24,000 MW of generation owned by Florida Power & Light Company.

NextEra's transmission family credentials include its regulated affiliate Florida Power & Light Company's ownership and operation of the electric transmission system serving more than 4.5 million customers in Florida, consisting of about 10,000 kilometres of transmission level facilities. For its part, by the end of 2010, NextEra Energy Resources, LLC, will have built over 800 kilometres of transmission connecting its renewable facilities to the North American grid. In addition, NextEra's United States regulated transmission affiliate, Lone Star Transmission, was awarded and is currently developing 480 kilometres of transmission under the Texas Public Utility Commission's CREZ program, with an expected investment of approximately $800 million USD.

NextEra has been active in Ontario and plans to grow its participation in and contribution to the province's energy future. It is an active participant in the Feed in Tariff Program, where it was awarded contracted generation that can be served by existing available transmission capacity and another additional NextEra projects are currently waiting in the FIT queue for a Transmission Availability Test and/or Economic Connection Test. NextEra is therefore directly interested in

both developing enabler facilities, network expansion, and helping shape the ongoing development of an effective and efficient transmission expansion policy.

In summary, and for the reasons set out below, NextEra's comments respecting the Board's current and proposed transmission expansion policy are as follows:

- NextEra proposes that the requirement for new entrants to be licenced transmitters as a condition of participating in the designation process could benefit from further consideration, including options that allow for flexibility in designations while at the same time demonstrating that a new entrant is both qualified and committed to doing business in Ontario.

- NextEra also believes that further consideration should be provided regarding the role of the ECT as a screen for all enabler connection facilities and all network expansions, as other processes may be appropriate for both of these types of facilities. With respect to enabler facilities, the Board already has a policy embedded in the TSC which is more relevant to this issue than is the ECT. Further, the criteria used to designate transmitters under the current policy to develop enabler facilities should continue to apply at the leave to construct stage for those facilities.

- Finally, NextEra believes that the current policy may not allow sufficient flexibility for parties to consider different commercial arrangements by which enabler facilities can be built, owned and operated. It would appear that the current enabler model is designed to develop a construction arrangement among generators, rather than to encourage a commercial transmission development model. NextEra suggests that the Board reconsider this model as its transmission development policy evolves through this stakeholder process, to meet evolving market conditions in Ontario and as specific development applications are made.

These points will be addressed in greater detail below, following a discussion of the Board's current policy respecting enabler facilities and the extension of that policy to major network expansions. NextEra's responses to the specific questions identified for comment are in the Attached Schedule "A".

II. The Current Policy

It may be helpful to summarize NextEra's understanding of the current policy to provide some context and clarity to NextEra's comments on the Discussion Paper.

The Board's transmission expansion policy currently consists of the enabler policy framework established in the Transmission Connection Cost Responsibility Review (EB-2008-0033) and as

codified in the amendments to the Transmission System Code ("TSC") dated October 20, 2009. Under the TSC, a transmitter may construct an "enabler facility" to serve the following categories of renewable energy clusters ("Clusters"):[1]

1. Clusters identified in an approved Integrated Power System Plan ("IPSP") or a Transmission Plan approved pursuant to s. 70(2.1) of the *Ontario Energy Board Act, 1998*. ("Transmission Plan");

2. Clusters identified in a specific procurement directive issued to the OPA by the Minister of Energy and Infrastructure; and

3. Clusters that have been identified by the OPA through the FIT program that meet the OEB's screening criteria in s. 3A.1 of the TSC (namely a minimum 100 MW of capacity at a length of at least 10km.).[2]

Under the current rules, a transmitter may be designated by the Board to carry out development work for an enabler facility and recover prudently incurred development costs from transmission rate payers. A transmitter may also request use of "alternative mechanisms" as described in the Board's Report on *Regulatory Treatment of Infrastructure Investment*.[3] These alternative mechanisms include project specific ROEs and depreciation schedules, including CWIP in rate base.

A transmitter who has carried out development work may then apply to the Board for Leave to Construct ("LTC") a transmission line. If the development work demonstrates that the project

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[1] TSC, s. 2.9.28A.

[2] The September 11, 2009 Notice of Revised Proposal to Amend a Code that proposed the screening criteria addressed the relationship between these three routes as follows (at pp. 4-5):

"The Board expects that, under the FIT program, renewable generators will have a greater role in driving the quantity and location of renewable generation facilities in the Province. The Board believes that, in the context of this more proponent driven process, it is desirable to make provision for screening criteria that can serve to promote the development of the more economic clusters of renewable resources.

The Board is therefore proposing that the hybrid approach to cost responsibility for enabler facilities should only apply where the enabler facility proposal satisfies certain screening criteria (sections 2.0.28A and 3A of the Code). The enabler screening criteria would apply as mandatory elements only where the proposed enabler facility is associated with a renewable resource cluster that has been identified by the OPA as discussed in section II.2 above [i.e., through the FIT Program Applications]. In other words, the enabler screening criteria would not apply as mandatory elements where the enabler facility is identified as such in an approved IPSP or in a Board-approved transmission plan, or where the associated renewable resource cluster is the subject of a direction issued by the Minister. While it is anticipated that a Board panel tasked with the review of the IPSP or of a transmission plan would apply the enabler screening criteria in any event, the Board believes it appropriate for the panel to retain discretion to determine, in appropriate cases based on the evidence before it, that a connection facility should qualify as an enabler facility even if the screening criteria would not be met."

[3] EB-2009-0152 (January 15, 2010); See Discussion Paper at p. 12.

still satisfies the Board's screening criteria, then it may maintain its qualification as an enabler facility and therefore, at least presumptively satisfy the "need" requirement of the Board's LTC evaluation. The Board expressed this point as follows in its April 15, 2009 Notice:[4]

> "It is not the Board's intention to revisit the same issues in successive proceedings.
>
> ...to the extent that the need for and the costs associated with an enabler facility project are adequately assessed by the Board in the course of designating a transmitter to undertake development activities, those issues are also not intended to be revisited thereafter except in relation to any material deviations. In this regard, the information before the Board at the relevant time would need to be at a level of detail at least equivalent to that which would be required to satisfy the requirements of the Board's review of a transmitter's capital budget in a rates proceeding or the Board's approval of an application for leave to construct transmission facilities. In any event, however, issues pertaining to matters such as the capacity of the enabler facility and the technology used would remain to be addressed in the leave to construct proceeding."

Similarly, in its September 11, 2009 Notice, the Board stated:[5]

> "The Board notes that satisfying the enabler screening criteria means that a connection facility is eligible to be treated as an enabler facility as the basis on which development of the facility can proceed. If, at the leave to construct stage, the enabler screening criteria continue to be met, the enabler facility designation would remain in place for construction, ownership and future operation purposes."

This approach provides regulatory certainty, which is necessary for long term energy infrastructure investment.

As is discussed below, NextEra proposes that a number of ideas put forward in the Discussion Paper could benefit from further consideration and refinement.

III. Comments on the Discussion Paper

1. Transmission Licensing

The Discussion Paper proposes using a transmission licensing requirement as a form of pre-qualification of a proponent's financial and technical capability.[6] NextEra agrees with and supports the goal of a pre-qualification requirement. However, it has concerns about using the

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[4] April 15, 2009 Notice of Revised Proposal to Amend a Code, pp. 5-6.

[5] September 11, 2009 Notice of Revised Proposal to Amend a Code, p. 5.

[6] Discussion Paper, p. 9.

transmission licensing requirement as the means to meet this goal. Most importantly, the transmission regulatory regime contains a number of restrictions to ensure that transmitters do not carry out business activities other than transmitting electricity. These include:

- A licence condition to comply with the Affiliate Relationships Code, which includes restrictions on separation of Boards of Directors, sharing services, products, resources and use of assets, transfer pricing, outsourcing, transferring assets, financial transactions, etc.;[7]
- A restriction on business activities to transmission only;[8]and
- Prior approval for affiliate participation in generation activities.[9]

These restrictions are appropriate for a transmission company that is providing a public utility service, i.e., transmitting power. These restrictions create additional cost and administrative burden. However, these costs are recovered from transmission customers, and there are commensurate obligations that regulated utilities must comply with. Thus, while incumbent transmitters carry the administrative burden of transmission licensing requirements, they also recover all of their expenses and a rate of return on invested capital.

Conversely, new entrants will prepare designation applications, etc. at their risk in the sense that their proposals may or may not be approved by the Board. And, unlike incumbent transmitters, new entrant's costs will not be recovered should their proposals not be approved. Even if a new entrant's designation application is approved, it still faces the risk of the project not going beyond the development stage. In this case, the Board's policy provides cost recovery, but no general return on invested capital to cover the lost opportunity costs of the time and effort spent in carrying out development work. In this sense, up until at least leave to construct is granted, after which designated transmitters will be investing capital and entitled to apply to earn a return, transmission development work is less utility-like than licenced transmission services. Thus, until leave to construct is granted, requiring a transmission developer to be subject to the same licensing requirements as a transmission owner and operator should be reconsidered.

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[7] Sample Transmission Licence, s. 5, Affiliate Relationships Code, ss. 2.1, 2.2, 2.3, and 2.4..

[8] OEB Act, s. 71.

[9] OEB Act, s. 80

This is not to suggest that there are no public interest considerations that apply to applicants for designation and persons who have been designated to do development work, but those considerations are different at this earlier stage, and NextEra believes that they can be addressed through other means. NextEra suggests that the relevant considerations are as follows:

- The need to demonstrate financial and technical expertise and a commitment to being licenced if and when leave to construct is granted; and
- Ensuring that any recovery of funds for development work is used only for development work and not to subsidize other activities.

These considerations can be met through a number of Board instruments, including protocols or a new category of licence or application. The point is that the instrument should be more finely tailored to meet the legitimate regulatory oversight of transmission developers, which is different than the oversight required for transmitters.

2. The Role of the ECT in Enabler Facilities

The Discussion Paper indicates that "After completing an ECT, the OPA will file with the Board a report with its conclusions regarding new transmission facilities, including network expansions and enabler facilities that the OPA believes are required and economic."[10] NextEra appreciates that the OPA's views on enabler facilities will be important to the Board, and will be taken into account in considering a designation application.

The TSC already incorporates a screen for enabler facilities. Specifically, s. 3A of the TSC provides that a facility may qualify as an "enabler facility" where:[11]

> "(a) the capacity of the associated renewable resource cluster is at least 100 MW; and
> (b) if the proposed enabler facility is a line connection facility, either:
>
> i. the proposed line connection facility is at least 10 km in length; or
>
> ii. the OPA has satisfied the Board that the line connection facility should qualify as an enabler facility because such treatment would be superior, for technical or cost effectiveness reasons, to the generation facilities in the associated renewable resource cluster connecting directly to the transmitter's existing transmission facilities individually or on a coordinated basis."

[10] Discussion Paper, p. 9.

[11] TSC, s. 3A

This screen was enacted in October, 2009 after extensive stakeholder consultation which lasted for over one year. The existing screen is not addressed in the Discussion Paper.

Another element of the current Board policy which should be maintained is with respect to how the factors leading to the designation of enabler facilities continue to apply for leave to construct. As indicated, the Board's current policy is that, where a project passes the screen for designating projects under s. 3A of the TSC, then it will not be reconsidered in a subsequent proceeding. To repeat the Board's statement on this issue: "...to the extent that the need for and the costs associated with an enabler facility project are adequately assessed by the Board in the course of designating a transmitter to undertake development activities, those issues are also not intended to be revisited thereafter except in relation to any material deviations."[12]

It appears that staff may be proposing that this not be the case for enabler facilities that pass the ECT screen. The Discussion Paper addresses this point as follows:[13]

> "Board staff expects that the OPA will conduct and document the ECT in a manner that will make the outcome sufficiently robust for project development purposes. A substantive evaluation of the need for any particular enabler or transmission network facility would then follow at the leave to construct stage."

It is not clear if this is to meant to suggest that the Board should change its policy and now apply different criteria at the leave to construct stage than it did at the earlier enabler designation stage. This aspect of the Board's current policy is helpful because is avoids uncertainty for those who plan to make long term investments in Ontario's energy infrastructure.

3. Commercial Incentives in the Current Enabler Policy

Under the proposed policy, a transmitter will have a commercial incentive to construct network expansion facilities. This commercial incentive is lacking in the current enabler policy, where capital investment in subscribed facilities is no longer afforded a rate of return. The current enabler policy does not contemplate a commercial method for ownership and operation. As a result, the current enabler model resembles more of a construction arrangement among generators than a commercial transmission development model.

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[12] April 15, 2009 Notice of Revised Proposal to Amend a Code, pp. 5-6.

[13] Discussion Paper, at p. 7.

IV. Conclusion

In conclusion, NextEra appreciates the opportunity to comment on the Board's current and proposed transmission expansion policies.

NextEra proposes that the Board further consider the requirement that new entrants need to be licensed transmitters as a condition of participating in the designation process, as well as the role of the ECT as a screen for all network facilities and enabler connection facilities, including the extent to which the criteria used to designate transmitters to develop enabler facilities should continue to apply at the leave to construct stage for those facilities.

Finally, while NextEra also supports some aspects of the Board's current process with respect to the connection of enabler facilities, NextEra is concerned that the process does not incorporate a commercial model by which enabler facilities may be owned and operated. NextEra suggests that the Board should reconsider it as this policy is developed under the Discussion Paper and through specific applications.

Schedule "A" – Responses to Issues for Comment

Issue for Comment	NextEra's Comments
Should new entrants be required to be licensed as transmitters as a condition of participation in a designation process?	NextEra agrees and supports the goal of a pre-qualification requirement. However, it has concerns about using the transmission licensing requirement as the means to meet this goal. The transmission regulatory regime contains a number of restrictions that are applicable to transmitters providing public utility services, but are not required for transmission development. There are legitimate oversight and pre-qualification issues that can be addressed for new entrants, but they can be met through a number of Board instruments, including protocols or a new category of licence or application. The point is that the instrument should be more finely tailored to meet the legitimate regulatory oversight of transmission developers, which is different than the oversight required for transmitters.
How long would it take to prepare transmission project development plans (i.e., how much time should be given for filing transmission project development plans after notice of the designation process has been given)?	NextEra participated in the Texas PUC's CREZ process, and suggests that the general timelines used for filing plans in that process led to timely and successful approvals. As a result, NextEra suggests that the Board look to the CREZ process for similar timelines.
Has the Discussion Paper identified appropriate decision criteria? Should the decision criteria be weighted and, if so, which are most important?	NextEra recognizes that there is a need for the Board to apply a consistent set of criteria to evaluate multiple applicants. At the same time, NextEra proposes that the Board include in its evaluation, a provision to assess unique capabilities, experience, skills and resources that different applicants may bring to bear.

Are staff's proposals regarding the implications of plan approval reasonable?	It should also be noted that the Board's current policy is that, where an enabler facility satisfies the screen in s. 3A of the TSC, then, apart from any material departure from that initial qualification, it will continue to qualify as an enabler facility. This approach should continue to apply.
Under what circumstances should two transmitters be designated to develop the same project and to recover the development costs from ratepayers?	NextEra agrees with the Discussion Paper that this should be an unusual practice and only applied where there are dramatically different proposals being developed. It is important to not cause confusion by having competing transmitters providing different messages to landowners and other stakeholders who are being consulted with.
Are these the appropriate filing requirements to enable the Board to apply the decision criteria identified in section 3.1? If other decision criteria are being suggested, what additional filing requirements would be appropriate for the other criterion or criteria?	Aside from the considerations discussed in response to the first question regarding license requirements, the Filing Requirements appear reasonable in light of the criteria that the Board are likely to apply.