



EB-2010-0250

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 Canadian Niagara Power Inc., requesting approval to establish a deferral account.

BEFORE: Paula Conboy
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER

THE APPLICATION

Canadian Niagara Power Inc. ("CNPI") has filed an application with the Ontario Energy Board, (the "Board") dated July 23, 2010, pursuant to section 78 of the *Ontario Energy Board Act, 1998*, requesting Board approval to establish a deferral account for the purpose of recording expenses related to renewable generation connection and infrastructure investment arising from the *Green Energy and Green Economy Act, 2009* ("GEGEA").

CNPI is a licensed Ontario transmitter. CNPI's transmission system is interconnected with Hydro One Networks Inc.'s transmission system in Niagara Falls, Ontario and provides service in and around the area of Fort Erie, Ontario. CNPI's transmission system is also interconnected, through an emergency tie line, with the transmission system owned and operated by US National Grid in New York State.

The Board has assigned File No. EB-2010-0250 to this application.

THE PROCEEDING

On November 5, 2010, the Board issued its Notice of Application and letter of Direction which directed CNPI to serve a copy of this Notice and Application on all Ontario transmitters and other interested parties including those that typically intervene in Board proceedings that establish transmission rates. On November 17, 2010, CNPI filed an affidavit of service indicating that it had served the documents as directed by the Board.

No party requested intervenor status, observer status or provided a letter of comment regarding this proceeding.

The Board proceeded with the application by way of a written hearing.

On January 21, 2011, the Board issued Procedural Order No. 1 which set up a schedule for an interrogatory process and for submissions.

Board staff filed interrogatories on January 28, 2011 and CNPI filed responses to the interrogatories on February 7, 2011.

On February 11, 2011 CNPI filed a submission, followed by a staff submission on February 22, 2011 and CNPI's reply submission on March 1, 2011.

CNPI'S EVIDENCE AND SUBMISSIONS

In a letter to the Board dated July 23, 2010, CNPI advised that it intends to participate in any "designation process"¹ implemented by the Board to determine which transmitters would have the responsibility for developing enabler facilities and major network expansions. CNPI further stated that such facilities can be identified by the Ontario Power Authority's ("OPA") Economic Connection Test ("ECT"), and through transmission plans filed with the Board pursuant to the deemed conditions referred to in subsection 70(2.1) of the *Ontario Energy Board Act, 1998*.

CNPI acknowledged that a designation process is not yet in place, and that, at the time of its application, the *Transmission Project Development Planning* proceeding (EB-2010-0059) was still underway, but indicated that because of the timing associated with

¹ A process being developed through a Board-initiated proceeding (EB-2010-0059) to facilitate the timely and cost effective development of major transmission facilities that may be required to connect renewable generation in Ontario.

the approvals for deferral accounts it believed it was prudent to apply for a GEGEA deferral account to ensure that, if approved, it would be in place prior to the OPA's release of its ECT results, and prior to the implementation of a designation process.

CNPI submitted that the designation process proposed by Board Staff in EB-2010-0059² involves transmitters filing transmission project development plans in support of a request to be designated to conduct development work for a particular project. CNPI further noted that there will be costs associated with producing such plans such as work and associated discussions and consultations with affected First Nations and Métis groups (i.e. predevelopment work), and participating in designation proceedings. These are the type of incremental costs that CNPI indicated that it anticipates recording in a GEGEA deferral account.

In its response to Board staff interrogatories, CNPI stated that, as a licensed transmitter, it intends to seek “designation to develop transmission project(s) in Ontario that (i) have been identified by the OPA as required for connection of renewable generation sources, and/or (ii) otherwise approved transmission projects identified, for example, in an approved Integrated Power System Plan”.³ CNPI further stated that it has reviewed the Board-issued policy EB-2010-0059 entitled “Framework for Transmission Project Development Plans” (the “Policy”) and has begun preliminary work in order to submit competitive application(s) when the ECT reports are issued.

In its response to Board Staff Interrogatory 1, CNPI further submitted that it is currently engaged in preliminary work in the form of First Nations consultations, pre-engineering and cost estimation and is incurring costs associated with these activities. CNPI also stated that its parent FortisOntario Inc. and the First Nations’ Lake Huron Anishinabek Transmission Company Inc. (“LHATC”) announced on February 2, 2011 that FortisOntario Inc. and LHATC have entered into a binding memorandum of understanding for a joint venture to develop, construct and operate regulated electricity transmission projects in Ontario.

CNPI further responded that two of its competitors, Great Lakes Power Transmission LP (“GLPL”) and Hydro One Networks Inc. (“HONI”), were both granted deferral accounts on the basis that non-material costs for project development plans associated

² A Board-initiated proceeding to facilitate the timely and cost effective development of major transmission facilities that may be required to connect renewable generation in Ontario.

³ EB-2010-0250, CNPI Response to Interrogatory 1.

with the designation process may be recorded now, before the initial ECT reports are issued.

CNPI further stated that to deny or delay CNPI's request for approval to establish a GEGEA deferral account would put CNPI and its First Nations partners at a distinct disadvantage to its competitors for the following reasons:

- CNPI's competition would be in an immediate position to react when an ECT report is issued by the OPA, putting CNPI at a disadvantage if it had to wait for a deferral account to be approved; and
- a great deal of effort is required by CNPI and its First Nations partners prior to the issuance of the OPA's initial ECT report in order to prepare a timely and competitive designation application.

On February 11, 2011, CNPI submitted that that an appropriate effective date for its GEGEA deferral account, if granted, would be July 23, 2010 - the date of its initial application.

Board staff filed a submission on February 22, 2011. (See Board Staff Submissions section below).

In its reply submission dated March 1, 2011, CNPI disagreed with Board staff's submission that "*the purpose of a deferral account is for recording development costs which only begin when a transmitter is designated and not for recording expenses related to participating in any designation process implemented by the Board*". CNPI argued that Board staff's position is inconsistent with the Policy and stated:

Since plans must be prepared prior to designation, clearly the Policy contemplates that plan preparation costs that pre-date designation are recoverable (albeit only for the successful transmitter).

CNPI also submitted that it filed its application for a deferral account on July 23, 2010, which predates the issuance of the Policy and stated:

To treat CNPI differently from HONI and GLPL simply because of the timing of the respective applications for deferral accounts would be unfair and contrary to the Policy.

CNPI further submitted that it intends to apply for designation in regard to the transmission line between Nipigon and Wawa (the "East-West tie"), and has initiated preliminary work in that regard. CNPI noted that, according to Ontario's Long-Term Energy Plan, the East-West tie will be a project to which the Board's designation process will apply.

CNPI submitted that it would agree to cap the amount that it will record in the deferral account, if granted, at \$2 million and apply to the Board to raise the cap in the future, if necessary.

BOARD STAFF SUBMISSIONS

Board staff submitted that the Policy sets out the Board's policy with regard to transmission project development planning including cost recoverability for development work. The following excerpts were reproduced from the Policy by Board staff:

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The Board agrees that the starting point for transmission project development planning should be an informed, effective plan from the province's transmission planner, the OPA. The Board believes that the ECT fits that description and is, therefore also a valid starting point for the process.

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When the Board receives an ECT report from the OPA, it will issue a Notice of a hearing to designate development of any enabler facilities and network expansions identified in the ECT report. In the Notice, the Board will invite all licensed transmitters to submit plans in the form mandated by the filing requirements. Only the transmitter that is successful in being designated will be able to recover its costs of preparing a plan.

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From the Board's perspective, the objective of the development phase is to bring a project to the point where there is sufficient information for the transmitter to submit a leave to construct application. Therefore development costs begin when a transmitter

is designated and end when a leave to construct application is submitted.

Board staff submitted that

- the above statements indicate that the ECT is the starting point for transmission project development planning, that only the transmitter that is successful in being designated will be able to recover its costs of preparing a plan and that recoverable development costs only begin upon the designation of a transmitter;
- it is clear that the purpose of a deferral account is for recording development costs which only begin when a transmitter is designated and not for recording expenses related to participating in any designation process implemented by the Board; and
- the project for which CNPI is seeking a deferral account has not been the subject of a Board-led designation process.

Board staff also submitted that the deferral accounts approved for GLPL and HONI, under EB-2009-0409 and EB-2009-0416 respectively, were granted on March 25, 2010, prior to the development of the Policy issued on August 26, 2010. The deferral accounts did not envisage recovery of costs associated with participation in the Board's designation process for which CNPI is now seeking a deferral account.

Board staff noted that, on page 16 of the Policy, the Board specifically addressed the prior approvals of deferral accounts for HONI and GLPL and referenced the Decision and Order in each case in which the Board stated that each of the transmitters "*is cautioned that this approval does not provide any assurance, either explicit or implicit, that the amounts recorded in the account will be recovered from ratepayers. No finding of prudence is being made at this time...*"

BOARD FINDINGS

The Board denies CNPI's request for approval to establish a deferral account for the purpose of recording expenses related to renewable generation connection and infrastructure investment arising from the GEGEA.

CNPI's contends that it requires the account in order to record incremental costs associated with the production of plans and associated discussions and consultations with affected First Nations and Métis groups and participating in designation

proceedings and that it is at a disadvantage relative to its competitors who have deferral accounts in place now.

As well, CNPI submits that because of the timing associated with the approvals for deferral accounts it believed it was prudent to apply for a GEGEA deferral account to ensure that, if approved, it would be in place prior to the OPA's release of its ECT results, and prior to the implementation of a designation process.

The Board Policy excerpt from page 12 that Board Staff relied on in support of its submission states that “Only the transmitter that is successful in being designated will be able [to] recover its cost of preparing a plan”.

The Board views the “plan” in that context to be the plan that will be submitted in response to the invitation and it is clearly intended that the costs associated with the creation of that plan is recoverable by the successful applicant.

While the Board accepts the view submitted by Board Staff that the deferral account envisioned in the Policy is intended to capture the development costs once a transmitter is designated, it does not consider this element of the policy to be determinative of whether a designated transmitter will be able to recover its cost of preparing the plan submitted in response to the invitation to do so.

The Board does not consider it necessary for CNPI to have an approved deferral account from the Board to record the types of costs it anticipates incurring in the formation of a plan it would submit in a designation process.

The Board's policy framework around the designation process is intended to engender competition in the provision of transmission services. There are other entities that either currently hold or are applying for transmission licences in order to participate in designation processes. These entities are not necessarily rate regulated by the Board and as such, they do not all maintain regulatory accounting systems. The Board does not intend to establish any regulatory accounting instruments for these entities at the time that it issues invitations to submit plans. The treatment of the costs incurred in the run up to the designation process will be dealt with at the time of the designation process and the selection of the successful applicant.

CNPI can keep track of its investment costs incurred in the preparation of a plan to be submitted in a designation process without an approved deferral account designated for that purpose. It is expected that other entities participating in the designation process

will do the same. If successful, those costs will be dealt with in accordance with the stated intent of the Policy and in a manner that is determined to be appropriate in the context and particulars that will become evident in the designation process.

CNPI claims it will be disadvantaged if it does not have a deferral account because two of its competitors have been provided deferral accounts it considers to be for the same purpose that it intends for itself. Based on the Board's findings that CNPI will be eligible to recover its costs if successful in a designation process the Board does not consider CNPI to be disadvantaged. CNPI is free to participate in any designation process with the inherent risks associated with that process on an equal footing with all other applicants.

On the matter of CNPI's stated concern regarding the timing associated with the approvals of deferral accounts, the Board does not consider it to be expedient to provide a deferral account to CNPI in advance of the designation process. The Board has found that the establishment of a deferral account prior to the designation process serves no purpose in that time period. A deferral account established at the time of designation of a successful applicant may be conditioned in such a way as to deal with issues particular to the project that can only be known at that time. Therefore there is no efficiency to be gained by establishing a deferral account at this time.

THE BOARD ORDERS THAT:

The application by CNPI requesting approval to establish a deferral account for the purpose of recording expenses related to renewable generation connection and infrastructure investment arising from the *Green Energy and Green Economy Act, 2009* is denied.

DATED at Toronto, May 18, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary