

November 9, 2011

VIA RESS and COURIER

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File No. T981761

Dear Ms. Walli:

Re: EB-2011-0222: Upper Canada Transmission, Inc. (UCT) Application for an Electricity Transmitter Licence

Request for Amendment of the Application (pursuant to EB-2011-0260 Decision (November 2, 2011))

By application dated June 3, 2011 (Application), UCT applied to the Board for an electricity transmission licence. The record in this proceeding was closed as of September 22nd with the submission by UCT of its Response submissions. A decision on UCT's Application is pending.

Through this letter UCT requests amendment of its Application, as contemplated in the Board's recently (November 2, 2011) issued decision in TransCanada Power Transmission (Ontario) L.P.'s (TransCanada Power) transmission licence amendment application [EB-2011-0260]. UCT requests that its Application be amended to request that the effective date of the transmission licence herein applied for be the date upon which UCT is designated as a developer of transmission assets in Ontario pursuant to a Board designation process or the date upon which UCT applies to amend Schedule 1 of its licence to specify the facilities to be owned and/or operated by UCT, whichever is earlier.

Background

UCT's Application included a request for exemption from the Board's *Affiliate Relationships Code for Electricity Transmitters and Distributors* (ARC), until such time as UCT becomes designated by the Board as a transmission developer or owns and/or operates transmission facilities in Ontario.¹ UCT subsequently amended its request for

¹ June 3, 2011 Application Transmittal Letter, page 3.

ARC exemption, withdrawing its original request for exemption from the ARC as a whole, and replacing that request with one for exemption only from section 2.1.2 of the ARC.² Section 2.1.2 of the ARC requires that at least one-third of a transmitter's Board of Directors be independent from any affiliate. This narrowed request was made in express deference to recent Board decisions denying broader ARC exemption requests, such as that made in UCT's initial filing, and reiterating the Board's policy that the ARC would apply to new entrant transmitters, particularly in respect of requirements related to the treatment of confidential information.³ UCT's narrowed ARC exemption request was also time limited, until such time as; i) UCT is designated to develop a particular transmission project in Ontario, or ii) it otherwise acquires transmission assets in Ontario.

In Hydro One's submissions in this Application⁴ Hydro One noted the link between this Application and the licence amendment application filed by TransCanada Power. Hydro One suggested that the Board consider putting other new entrant transmitters, like UCT, on a similar footing with respect to the effective dates of their licences, in order to ensure a level playing field. In its Response submissions herein, UCT made a similar submission.⁵ UCT echoed that submission in its September 13, 2011 letter filed in TransCanada Power's licence amendment application.⁶

In earlier submissions on the issue of the protection of confidential customer information obtained by an applicant during an OEB transmission development designation process, UCT noted the role of the IESO's Market Rules⁷ and the Board's own rules for the treatment of confidential information⁸ in addressing such confidentiality concerns.

EB-2011-0260 Decision

In its recently released EB-2011-0260 Decision regarding TransCanada Power's application for amendment of its distribution licence, the Board granted the relief requested and ordered that TransCanada Power's transmission licence be amended by changing the effective date of the licence to the date upon which the licensee is designated as a developer of transmission assets in Ontario pursuant to a Board designation process or the date upon which the licensee applies to amend Schedule 1 of its licence to specify the facilities to be owned and/or operated by the licensee, whichever is earlier. The Board also agreed with the argument of some parties in that application that if the relief requested were granted, other new entrant transmitters

² Response to Board Staff Interrogatory #3, part a), filed August 26, 2011.

³ *Ibid*

⁴ Hydro One Networks Inc. Argument, September 8, 2011.

⁵ UCT Response dated September 22, 2011, paragraph 35.

⁶ UCT's EB-2011-0260 Submissions, page 2, bottom.

⁷ June 3, 2011 Transmittal Letter, page 3, bottom.

⁸ Response to Board Staff Interrogatory #3, part a), filed August 26, 2011, page 2 of 4, bottom; UCT's EB-2011-0260 Submissions, page 2, bottom to page 3.

should be afforded similar relief. The Board in its decision directed that “[a] *new entrant transmitter..whose application is before the Board, may choose to seek the same relief granted in this Decision and Order by way of ...amendment to its application.*”⁹

Amendment Request

UCT hereby requests amendment of its Application to request that the effective date of the transmission licence applied for be the date upon which UCT is designated as a developer of transmission assets in Ontario pursuant to a Board designation process or the date upon which UCT applies to amend Schedule 1 of its licence to specify the facilities to be owned and/or operated by UCT, whichever is earlier. UCT makes this request on the basis that:

1. This request is consistent with UCT's initial ARC exemption request, made at the time that its Application was filed.
2. UCT's ARC exemption request was subsequently narrowed expressly in deference to recent Board decisions which reflected an approach to new entrant transmission licence applications that has since been further informed by the Board's recent EB-2011-0260 Decision.
3. This request is consistent with positions that UCT has taken in both its own Application and in its submissions in the EB-2011-0260 application, in respect of affording other similarly situated new entrant transmitters similar treatment to that now afforded to TransCanada Power.
4. This request is also consistent with the positions that UCT has earlier outlined to the effect that the IESO's Market Rules and the Board's own processes for the protection of confidential information would apply to any information obtained by UCT as applicant in an OEB transmission development designation process. These positions align with the findings of the Board in the recent TransCanada Power licence amendment decision regarding mechanisms other than the provisions of the ARC for protecting any such confidential information.¹⁰
5. Granting UCT's amendment request will afford UCT similar relief to that provided to TransCanada Power, in similar circumstances, and thereby place UCT on a similar footing with TransCanada Power in this respect.

UCT further requests that the Board grant this request for amendment of UCT's Application without the addition of further process in this Application. This approach would be consistent with that contemplated by the Board in its EB-2011-0260 Decision and Order, wherein the Board stated its expectation that for those new entrant

⁹ Decision and Order, EB-2011-0260, page 10, top.

¹⁰ Decision and Order, EB-2011-0260, page 8, 2nd last paragraph, and page 9, last paragraph.

transmitters whose licences had already been granted, an amendment application to seek the same relief as afforded in the EB-2011-0260 application would be processed without the requirement for a hearing, as contemplated in section 21(4)(b) of the *Ontario Energy Board Act, 1998*. That section provides that the Board may dispose of a proceeding without a hearing if the Board determines that no person, other than the applicant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant or licence holder has consented to disposing of a proceeding without a hearing.

While a decision in this Application has not yet been released by the Board, the record has been closed (since September 22nd). UCT submits that no person will be adversely affected in a material way by granting of the amendment requested, and thus the Board can properly proceed to consider that amendment and the relief thereby requested without further process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:



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