



EB-2011-0222

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application under
section 60 of the *Ontario Energy Board Act*, 1998,
S.O. 1998, c. 15, Schedule B for an electricity
transmission licence.

By delegation, before: Jennifer Lea

DECISION AND ORDER

BACKGROUND

Upper Canada Transmission Inc. ("Upper Canada") filed an application with the Ontario Energy Board (the "Board") on June 3, 2011, under section 60 of the *Ontario Energy Board Act, 1998* (the "Act") for an electricity transmission licence.

The Board issued a Notice of Application and Hearing on June 20, 2011. Intervention requests were filed by Hydro One Networks Inc. and Great Lakes Power Transmission L.P. Canadian Niagara Power Inc. requested observer status. The Board granted all the intervenor and observer status requests.

On July 8, 2011, the Board issued Procedural Order No. 1, pursuant to which Board staff and intervenors filed interrogatories on July 20, 2011. On July 28, 2011 Upper Canada filed a letter with the Board requesting an extension of time to file its responses to interrogatories. On August 2, 2011 the Board issued Procedural Order No. 2 granting the requested extension. Upper Canada filed its interrogatory responses on August 26, 2011. A submission was received from Board staff on September 8, 2011. No intervenor filed a submission. On September 22, 2011, Upper Canada filed its reply submission.

The record of the proceeding is available at the Board's offices and on the Board's website.

THE APPLICATION

Upper Canada, newly incorporated on April 19, 2011, is a member of NextEra Energy, Inc. corporate group and wholly owned by NextEra Energy Resources, LLC, a producer of renewable wind and solar energy.

Upper Canada has stated that it is making this application in order to qualify for participation in any upcoming Board transmitter designation process for new transmission investment in Ontario. The applicant has no existing transmission assets in Ontario although its intended business activity is to develop, construct, own and operate transmission facilities in the province.

As part of its licence application, Upper Canada requested a temporary exemption from the Board's *Affiliate relationship Code for Electricity Transmitters and Distributors* ("ARC") until such time as it becomes designated by the Board as transmission developer or owns or operates transmission facilities in Ontario. The request was subsequently amended for exemption from section 2.1.2 of the ARC only (which requires that at least one third of a transmitter's Board of Directors be independent from any affiliate).

On November 9, 2011 Upper Canada filed a letter with the Board requesting an amendment of its application such that the effective date of its transmission licence be the date upon which Upper Canada is designated as a developer of transmission assets in Ontario or the date upon which Upper Canada applies to amend Schedule 1 of its licence to specify the facilities to be owned and/or operated by Upper Canada, whichever is earlier.

FINDINGS

Licence Application

The Board assesses a licence application by reviewing the evidence filed by the applicant and parties who participated in the proceeding. Based on the evidence filed, I

have determined that it is in the public interest to grant an electricity transmission licence to Upper Canada for a period of five years.

The key areas reviewed by the Board in any licence application are the financial viability, technical capability and conduct of an applicant. In the case of electricity transmission licence applications, the Board's review is also guided by the Board's *Framework for Transmission Development Plans* (EB-2010-0059). The Board's policy seeks to encourage new transmission entrants to Ontario, thereby bringing additional resources for project development and supporting competition in the transmission sector to drive economic efficiency for the benefit of ratepayers. The Board stated in its Chatham-Kent Transmission Inc. licence decision (EB-2010-0351) that obtaining a transmission licence is intended to be a threshold qualification step, and is not intended to be unduly onerous.

I find that the applicant has provided sufficient evidence of its financial viability and technical capabilities to qualify for a transmission licence. Upper Canada provided the 2010 financial statements and annual report for its parent company NextEra Energy, Inc. as Upper Canada is a newly created entity and no financial results are available for it at this time. With respect to technical capabilities, Upper Canada, being a newly created entity with no technical expertise of its own, intends to rely on the technical expertise of its affiliates who were described as entities with extensive experience with electricity transmission, distribution and generation development. The information provided meets the threshold qualification requirements for the licensing process.

The issuance of a transmission licence will enable Upper Canada to participate in the designation process. The granting of this transmission licence does not endorse the applicant's technical and financial capabilities in relation to the development of a specific transmission project. Licensed transmitters who file plans to develop a transmission project under the Board's designation process will be required to provide a significantly more detailed demonstration of their technical and financial capabilities in relation to the development of a specific transmission project.

No concerns were raised regarding the conduct of the applicant, and I find that Upper Canada has demonstrated that it is likely to operate its business in conformity with relevant legislation and regulatory requirements.

Effective Date and Term of the Licence

The applicant made its request to amend its application regarding the effective date of its licence following a decision of the Board issued on November 2, 2011: EB-2011-0260. In the EB-2011-0260 decision the Board amended TransCanada Power Transmission (Ontario) L.P.'s transmission licence 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 the Board's designation process or the date upon which the licensee applies to amend schedule 1 of the licence to specify the facilities to be owned and/or operated by it, whichever is earlier. In making its decision the Board considered that other entrant transmitters, either licensed or whose electricity transmission licence applications are currently before the Board, may choose to seek similar relief, stating:

“A new entrant transmitter who has already been licensed, or whose application is before the Board, may choose to seek the same relief granted in this Decision and Order by way of application (or amendment to its application), referencing its licence or application number and this Decision and Order.”¹

Consistent with that decision, the effective date of the license will be the date upon which the applicant is designated as a developer of transmission assets in Ontario pursuant to the Board's designation process, or the date upon which it applies to amend schedule 1 of the licence to specify the facilities to be owned and/or operated by it, whichever is earlier. In light of the effective date of the licence I find that the applicant's request for exemption from section 2.1.2 of the ARC is no longer necessary.

A transmission licence is typically granted for a term of 20 years, recognizing the long term nature of transmission assets. However, the Board has found in the recent transmission licence decisions that a shorter term of licence is appropriate for entrant transmitters who presently have no facilities in Ontario. Consistent with those decisions, the term of the licence will be 5 years. The term of the licence may be amended and extended to the standard 20 year term in the event that Upper Canada develops or acquires transmission facilities in Ontario.

¹ Decision and Order in TransCanada Power Transmission (Ontario) L.P. Licence Amendment Application (EB-2011-0260), page 10.

IT IS THEREFORE ORDERED THAT:

1. The application by Upper Canada Transmission Inc. for an electricity transmission licence is granted.
2. The licence will become effective on the date upon which Upper Canada Transmission Inc. is designated as a developer of transmission assets in Ontario pursuant to a Board designation process, or the date upon which Upper Canada Transmission Inc. applies to amend schedule 1 of the licence to specify the facilities to be owned and/or operated by Upper Canada Transmission Inc., whichever is earlier.

DATED at Toronto November 28, 2011

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects



Electricity Transmission Licence

ET-2011-0222

Upper Canada Transmission, Inc.

Original signed by

Jennifer Lea
Counsel, Special Projects
Ontario Energy Board

Date of Issuance: November 25, 2011

Effective Date: The date upon which Upper Canada Transmission, Inc. is designated as a developer of transmission assets in Ontario pursuant to a Board designation process or the date upon which Upper Canada Transmission, Inc. applies to amend schedule 1 of this Licence to specify the facilities to be owned and/or operated by Upper Canada Transmission, Inc., whichever is earlier.

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Upper Canada Transmission, Inc.
Electricity Transmission Licence ET-2011-0222

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1 Definitions

In this Licence:

“Accounting Procedures Handbook” means the handbook, approved by the Board which specifies the accounting records, accounting principles and accounting separation standards to be followed by the Licensee;

“Act” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“Affiliate Relationships Code for Electricity Distributors and Transmitters” means the code, approved by the Board which, among other things, establishes the standards and conditions for the interaction between electricity distributors or transmitters and their respective affiliated companies;

“Board” means the Ontario Energy Board;

“Electricity Act” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“Licensee” means Upper Canada Transmission, Inc.

“Market Rules” means the rules made under section 32 of the Electricity Act;

“Performance Standards” means the performance targets for the distribution and connection activities of the Licensee as established by the Board in accordance with section 83 of the Act;

“Rate Order” means an Order or Orders of the Board establishing rates the Licensee is permitted to charge;

“transmission services” means services related to the transmission of electricity and the services the Board has required transmitters to carry out for which a charge or rate has been established in the Rate Order;

“Transmission System Code” means the code approved by the Board and in effect at the relevant time, which, among other things, establishes the obligations of a transmitter with respect to the services and terms of service to be offered to customers and provides minimum technical operating standards of transmission systems;

“wholesaler” means a person that purchases electricity or ancillary services in the IESO administered markets or directly from a generator or, a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person other than a consumer.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence to own and operate a transmission system consisting of the facilities described in Schedule 1 of this Licence, including all associated transmission equipment.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act and the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board. Any exemptions granted to the Licensee are set out in Schedule 2 of this Licence. The following Codes apply to this Licence:
- a) the Affiliate Relationships Code for Electricity Distributors and Transmitters; and
 - b) the Transmission System Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Requirement to Enter into an Operating Agreement

- 6.1 The Licensee shall enter into an agreement ("Operating Agreement") with the IESO providing for the direction by the IESO of the operation of the Licensee's transmission system. Following a request made by the IESO, the Licensee and the IESO shall enter into an Operating Agreement

within a period of 90 business days, unless extended with leave of the Board. The Operating Agreement shall be filed with the Board within ten (10) business days of its completion.

- 6.2 Where there is a dispute that cannot be resolved between the parties with respect to any of the terms and conditions of the Operating Agreement, the IESO or the Licensee may apply to the Board to determine the matter.

7 Obligation to Provide Non-discriminatory Access

- 7.1 The Licensee shall, upon the request of a consumer, generator, distributor or retailer, provide such consumer, generator, distributor or retailer, as the case may be, with access to the Licensee's transmission system and shall convey electricity on behalf of such consumer, generator, distributor or retailer in accordance with the terms of this Licence, the Transmission System Code and the Market Rules.

8 Obligation to Connect

- 8.1 If a request is made for connection to the Licensee's transmission system or for a change in the capacity of an existing connection, the Licensee shall respond to the request within 30 business days.
- 8.2 The Licensee shall process connection requests in accordance with published connection procedures and participate with the customer in the IESO's Connection Assessment and approval process in accordance with the Market Rules, its Rate Order(s) and the Transmission System Code.
- 8.3 An offer of connection shall be consistent with the terms of this Licence, the Market Rules, the Rate Order, and the Transmission System Code.
- 8.4 The terms of such offer to connect shall be fair and reasonable.
- 8.5 The Licensee shall not refuse to make an offer to connect unless it is permitted to do so by the Act or any Codes, standards or rules to which the Licensee is obligated to comply with as a condition of this Licence.

9 Obligation to Maintain System Integrity

- 9.1 The Licensee shall maintain its transmission system to the standards established in the Transmission System Code and Market Rules, and have regard to any other recognized industry operating or planning standards required by the Board.

10 Transmission Rates and Charges

- 10.1 The Licensee shall not charge for the connection of customers or the transmission of electricity except in accordance with the Licensee's Rate Order(s) as approved by the Board and the Transmission System Code

11 Separation of Business Activities

- 11.1 The Licensee shall keep financial records associated with transmitting electricity separate from its financial records associated with distributing electricity or other activities in accordance with the Accounting Procedures Handbook and as otherwise required by the Board.

12 Expansion of Transmission System

- 12.1 The Licensee shall not construct, expand or reinforce an electricity transmission system or make an interconnection except in accordance with the Act and Regulations, the Transmission System Code and the Market Rules.

13 Provision of Information to the Board

- 13.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 13.2 Without limiting the generality of paragraph 13.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) business days past the date upon which such change occurs.

14 Restrictions on Provision of Information

- 14.1 The Licensee shall not use information regarding a consumer, retailer, wholesaler or generator, obtained for one purpose for any other purpose without the written consent of the consumer, retailer, wholesaler or generator.
- 14.2 The Licensee shall not disclose information regarding a consumer, retailer, wholesaler or generator to any other party without the written consent of the consumer, retailer, wholesaler or generator, except where such information is required to be disclosed:
- a) to comply with any legislative or regulatory requirements, including the conditions of this Licence;
 - b) for billing, settlement or market operations purposes;
 - c) for law enforcement purposes; or
 - d) to a debt collection agency for the processing of past due accounts of the consumer, retailer, wholesaler or generator.
- 14.3 Information regarding consumers, retailers, wholesalers or generators may be disclosed where the information has been sufficiently aggregated such that their particular information cannot reasonably be identified.
- 14.4 The Licensee shall inform consumers, retailers, wholesalers and generators of the conditions under which their information may be released to a third party without their consent.
- 14.5 If the Licensee discloses information under this section, the Licensee shall ensure that the information is not be used for any other purpose except the purpose for which it was disclosed.

15 Term of Licence

- 15.1 This Licence shall take effect on 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 this Licence to specify the facilities to be owned and/or operated by the Licensee, whichever is earlier. This Licence expires 5 years from the date it takes effect. The term of this Licence may be extended by the Board.

16 Transfer of Licence

- 16.1 In accordance with subsection 18(2) of the Act, this Licence is not transferable or assignable without leave of the Board.

17 Amendment of Licence

- 17.1 The Board may amend this Licence in accordance with section 74 of the Act or section 38 of the Electricity Act.

18 Fees and Assessments

- 18.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

19 Communication

- 19.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 19.2 All official communication relating to this Licence shall be in writing.
- 19.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; and
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

20 Copies of the Licence

- 20.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 SPECIFICATION OF TRANSMISSION FACILITIES

This Schedule specifies the facilities over which the Licensee is authorized to transmit electricity in accordance with paragraph 3 of this Licence.

1. Schedule 1 will be completed at such time as the Licensee applies, and the Board approves, an amendment to this Licence specifying the facilities over which the Licensee is authorized to transmit electricity

SCHEDULE 2 LIST OF CODE EXEMPTIONS

This Schedule specifies any specific Code requirements from which the licensee has been exempted.