



**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.”<sup>1</sup>

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.

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<sup>1</sup> 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