

September 24, 2012

DELIVERED

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File No. T993456.1

Dear Ms. Walli:

Re: Application by Borealis EWT Inc. (BEWTI) for Leave under *Ontario Energy Board Act*, 1998 (*OEB Act*) section 86(2)(a) to Acquire voting securities in Upper Canada Transmission, Inc. (UCT) that will exceed 20 percent.

Application by Enbridge Transmission Holdings Inc. (ETHI) for Leave under *OEB Act* section 86(2)(a) to Acquire voting securities in UCT that will exceed 20 percent.

We write as regulatory legal counsel to UCT, and for the purposes of transmitting the captioned filings on behalf of each of BEWTI and ETHI.

Introduction

These filings are submitted together as they arise from one proposed transaction. Under the proposed transaction each of Borealis Infrastructure Management Inc. (Borealis Infrastructure), the infrastructure investment arm of OMERS and Enbridge Inc. will join NextEra Energy Canada, ULC (NextEra Energy Canada) in participation in UCT. UCT was created by NextEra Energy Canada to pursue electrical transmission development opportunities in Ontario, and in particular to make application in the Ontario Energy Board's EB-2011-0140 proceeding to designate a developer for the East-West Tie Line (Designation Proceeding).

The instant applications are brought to obtain approval of the investments by each of Borealis Infrastructure and Enbridge Inc. in UCT.

This letter provides background on the proposed transaction giving rise to the filings, and on the parties thereto. This letter also serves as the formal request of the applicants

that the Board dispose of the instant section 86 applications without a hearing, pursuant to *OEB Act* section 21(4). This request is made on the basis that; i) no person will be affected in a material way by the proposed transaction; ii) the applicants each request disposition of their applications without a hearing; and iii) expeditious determination of these matters will enable the transaction to conclude expeditiously, facilitating preparation of UCT's application in the Designation Proceeding.

We also enclose a Notice under section 81 of the *OEB Act*, completed by ETHI. This Notice has been provided to ensure full disclosure to the Board of ETHI's existing Ontario electricity sector relationships. However, as UCT does not currently own a transmission or distribution system, and as UCT's transmission licence is not currently active, it does not appear to ETHI that a section 81 Notice is required. We further address this below, and request confirmation from the Board.

The Parties

UCT holds Ontario electricity transmission licence ET-2011-0222. UCT is currently wholly owned by NextEra Energy Canada. (For completion of the proposed transaction, an additional corporation will be inserted between UCT and NextEra Energy Canada, which will wholly own UCT and which will be wholly owned by NextEra Energy Canada. No effective external party or effective change in control is involved.) NextEra Energy Canada is a wholly owned indirect subsidiary of NextEra Energy, Inc. (NextEra).

NextEra is a leading North American clean-energy company with 2011 revenues of more than US \$15.3 billion, more than 41,000 MW of generating capacity, and approximately 15,000 employees in 24 US states and Canada. NextEra subsidiaries include Florida Power & Light, NextEra Energy Resources, LLC, and NextEra Energy Infrastructure, which is developing transmission facilities in Texas and owns transmission facilities in New Hampshire. NextEra is a Fortune 200 corporation trading on the New York Stock Exchange (trading symbol NEE).

UCT was established by NextEra Energy Canada for the purpose of participating in the Designation Proceeding. UCT does not currently own or operate any electricity transmission assets in Ontario. UCT's licence is effective on 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 it, whichever is earlier.

The applicants under the two *OEB Act* section 86 applications transmitted herewith – BEWTI and ETHI – intend to each acquire 25% interests in UCT, joining NextEra Energy Canada in resourcing and enabling UCT to successfully pursue application for transmission development designation.

BEWTI, one of the section 86 applicants, is an OMERS entity. OMERS is one of Canada's largest pension plans with approximately CAN \$55 billion in net assets. Borealis Infrastructure is the infrastructure investment arm of OMERS and is responsible for BEWTI within the OMERS enterprise. Established in the late 1990s, Borealis was the first group formed by a Canadian pension plan with a mandate to invest in infrastructure as a separate asset class. Today, Borealis has approximately CAN \$9 billion invested in over 20 investments that have a total enterprise value of approximately CAN \$50 billion. Borealis takes an active role in the management of its infrastructure assets. OMERS sponsorship enables Borealis to be a long-term, buy-and-hold investor.

ETHI, the other section 86 applicant, is a member of the Enbridge group of companies (Enbridge). In addition to its proposed acquisition of a 25% interest in UCT, ETHI is currently developing the Montana-Alberta Tie-Line power transmission project. This is a 300 megawatt, 230 kilovolt electrical transmission line to allow the movement of power between Alberta and Montana. As a transporter of energy, Enbridge operates the world's longest crude oil and liquids transportation system. Enbridge also has significant involvement in the natural gas transmission and midstream businesses. Enbridge owns and operates Canada's largest natural gas distribution company and provides distribution services in Ontario, Quebec, New Brunswick and New York State. Enbridge is expanding its interests in renewable and green energy technologies, including wind, solar and geothermal energy, as well as hybrid fuel cells. Enbridge employs approximately 7,000 people, primarily in Canada and the United States. Its activities are carried out through five business segments; i) Liquids Pipelines; ii) Gas Distribution; iii) Gas Pipelines; iv) Processing and Energy Services; and v) Sponsored Investments and Corporate. Enbridge Inc., the parent company in the Enbridge group, trades on the Toronto Stock Exchange (trading symbol ENB).

The Proposed Transaction

NextEra Energy Canada, Enbridge and Borealis have agreed to work together, through UCT, applying their respective commercial and operational strengths to develop electrical transmission in Ontario. In particular, in support of UCT's intended application in the Designation Proceeding, Enbridge (through ETHI) and Borealis (through BEWTI) will each acquire from NextEra Energy Canada a 25% interest in UCT. The remaining 50% interest will continue to be held by NextEra Energy Canada. It is anticipated that UCT will become the general partner in a limited partnership for the purposes of pursuing transmission development under UCT's existing transmission licence. As general partner, UCT would remain the holder of the transmission licence and the entity responsible under the licence for any transmission assets. The details of the final proposed project structure will be subject to review by the Board, as appropriate, in the Designation Proceeding.

As detailed in ETHI's Application for Leave under *OEB Act* section 86, Enbridge has considerable experience developing and constructing large scale infrastructure projects and has demonstrated strong project management capabilities. As well, it has the experience and ability to finance these types of projects.

As detailed in BEWTI's Application for Leave under *OEB Act* section 86, Borealis has experience as an active manager of large infrastructure assets in North America and the UK across energy, transportation, institutional facilities and government regulated services sectors. Borealis has well established relationships with lenders, other investors, and members of the business community that will assist UCT in transmission development in Ontario.

Further to the Board's August, 2010 Policy: *Framework for Transmission Project Development Plans* [EB-2010-0059], the proposed investment by each of Enbridge and Borealis in UCT will: i) support new entry to transmission in Ontario; ii) bring additional resources for transmission project development in Ontario; and iii) support competition in transmission to drive economic efficiency in Ontario's transmission sector for the benefit of Ontario electricity ratepayers.

Regulatory Filings

The proposed acquisition by each of BEWTI and ETHI of respective 25% interests in UCT gives rise to applications by each of BEWTI and ETHI for leave of the Board for such acquisitions, pursuant to section 86(2)(a) of the *OEB Act*. Submitted with this letter are the section 86(2)(a) applications for leave of each of BEWTI and ETHI.

ETHI has a number of affiliates which own electrical generation assets in Ontario, and is thus an affiliate of a generator as referred to in section 81 of the *OEB Act*. Section 81 requires an affiliate of a generator to file notice with the Board of its proposal to acquire an interest in a transmission or distribution system in Ontario, or to purchase shares of a corporation that owns a transmission or distribution system in Ontario.

ETHI does not believe that the Board's section 81 mandate is engaged by ETHI's proposal to acquire an interest in UCT. UCT does not own any transmission assets in Ontario at the present time. It merely has an intention to develop such assets, subject to designation to do so in the Designation Proceeding and to approvals of subsequent Leave to Construct and transmission rate applications.

ETHI has nonetheless completed the Board's form for *Preliminary Filing Requirements for a Notice of Proposal under Sections 80 and 81 of the Ontario Energy Board Act, 1998* in order to provide full disclosure to the Board of its existing Ontario electricity sector relationships. ETHI hereby requests that the Board confirm, at its earliest convenience, that it does not intend to issue Notice under *OEB Act* section 81.

As noted above, for completion of the proposed transaction an additional corporation will be inserted between UCT and NextEra Energy Canada. The new corporation will wholly own UCT and will be wholly owned by NextEra Energy Canada. No external party or effective change of control is involved.

Procedural Requests

BEWTI and ETHI hereby request that the Board dispose of their respective section 86 applications without a hearing, pursuant to *OEB Act* section 21(4). This request is made on the basis that:

- i) ***No person will be adversely affected in a material way by the proposed transaction.*** None of the parties serve any electricity (or other) customers in Ontario, and thus except for the applicants the proposed transaction will not affect any persons. The transaction is intended to provide increased resources for UCT and thereby enhance its ability to compete in the Designation Process. Stronger competition in the Designation Process will ultimately benefit Ontario's electricity ratepayers.
- ii) ***The applicants and UCT request disposition of their applications without a hearing.***
- iii) ***In the context of UCT's nascent transmission licence, and the necessity of future applications associated therewith, it is submitted that pro-forma processing of the current section 86 applications is appropriate.*** In addition to the fact that no person could be detrimentally affected by the granting of the applications, and the fact that the three parties to the proposed transaction wish the applications to be disposed of without a hearing, it is submitted that in the current context the applications are appropriately processed in a "*pro forma*" or "threshold" manner. As with the transmission licence applications granted by the Board for the purposes of enabling the applicants for those licences to participate in the Designation Proceeding, the instant applications should be considered by the Board at a "threshold level".¹ Full review of UCT's actual proposal to develop the East-West Transmission Line, including appropriate details of the participation of each of NextEra Energy Canada, Enbridge and Borealis, through UCT, in the proposed transmission project, will be the subject of review by the Board in the Designation Proceeding (along with review of similar details regarding all of the other designation applicants). The instant applications are brought to fulfill the section 86 statutory requirements, but considering that; i) UCT does not own or operate transmission assets; and ii) the qualification of UCT and its shareholders to develop transmission in Ontario will be the subject of scrutiny in the Designation Proceeding, the applications should not trigger any

¹ EB-2010-0351 Decision, page 6; EB-2011-0222 Decision, page 3; EB-2011-0350 Decision, page 3; EB-2010-0324 Decision, page 7; EB-2010-0403 Decision, page 3; EB-2011-0126 Decision, page 3.

concerns or issues related to the “public interest”. These applications are the product of a commercial transaction related to a transmitter which does not currently own or operate any transmission assets and whose licence is inactive pending transmission development designation.

- iv) UCT echoes the requests of the applicants that the applications be disposed of without a hearing. UCT submits that expeditious processing of these applications is in the public interest, as it will enable the proposed transaction to conclude promptly so that UCT can proceed with its application in the Designation Proceeding in a timely fashion, in accordance with the Board’s established schedule in that proceeding.

In respect of ETHI’s filing of Notice under section 81 of the *OEB Act*, ETHI’s intention in making such filing is to ensure full and frank disclosure to the Board of the nature of ETHI’s affiliates’ interests in generation in Ontario. Notwithstanding having provided this information in the form of the Board’s *Preliminary Filing Requirements for a Notice of Proposal under Sections 80 and 81 of the Ontario Energy Board Act, 1998*, ETHI notes that it is not, in fact, acquiring an interest in a transmission system, nor in a company that owns a transmission system. In the result, ETHI submits that the Board’s mandate to ensure no adverse effect on the development or maintenance of a competitive market as a result of the acquisition of an interest in a transmitter (or distributor) by an entity with a generation affiliate is not engaged. ETHI further notes that as its proposed interest in UCT will only be 25%, no issues arise under the Board’s *Affiliate Relationships Code for Electricity Transmitters and Distributors* as a result of the proposed transaction. ETHI thus requests that the Board indicate, at its earliest convenience, that it does not intend to issue a section 81 Notice of Review in respect of ETHI’s proposed acquisition of an interest in UCT.

Request for Confidentiality

ETHI requests that its financial statements be filed and held confidential pursuant to the Board’s *Practice Direction on Confidential Filings*. Complete copies of these statements have been filed in a separate sealed envelope. The financial statements contain sensitive, confidential financial information regarding ETHI which is not in the public domain. Disclosure of such information may inhibit the competitiveness of UCT in the submission of the proposal in the Designation Proceeding. ETHI has included in its (public) section 86 filing financial information regarding Enbridge Inc. that is publicly available. As noted, the consideration for the contemplated transaction is nominal.

Conclusion

UCT, BEWTI and ETHI would appreciate the Board's consideration of the context for the attached applications set out in this transmittal letter in its review of the applications.

Should the Board require any further information in respect of any of the filings made herewith, you may contact the writer or, in respect of the filings on behalf of ETHI, ETHI's counsel as listed in those filings.

BEWTI, ETHI and UCT request that the Board provide the writer, as counsel to UCT, with copies of all correspondence and other documents released by the Board in the context of the enclosed filings, in addition to the provision of copies of such correspondence and documents to the contacts named in the filings themselves.

Yours truly,



Ian A. Mondrow

Attachs.

c: R. Farquhar, ETHI
S. Stoll, Counsel, ETHI
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