

October 29, 2012

Via RESS and Courier

Ms. Kirsten Walli
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File No. T993456.1

Dear Ms. Walli:

Re: EB-2012-0375: 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.

EB-2012-0376: 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.

Additional Information in Support of Applications.

Further to our transmittal letter of September 24, 2012, under cover of which the captioned applications were filed, this letter provides further background on two matters mentioned in our earlier letter.

Project Limited Partnership

At the bottom of page 3 of our September 24th letter, we provided the following description of the proposed transaction giving rise to the captioned applications:

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 reflected in the preceding passage:

- The proposed transaction involves the acquisition by each of the applicants of 25% interests in UCT, a corporation and the transmission licensee.
- A limited partnership, with UCT as the general partner, would execute the planned transmission project (subject to designation as developer for the East-West Tie Line in the Board's ongoing EB-2011-0140 "Designation Proceeding").
- As general partner, UCT would remain the holder the transmission licence and the entity legally responsible under the licence for any transmission assets and associated legal and commercial rights and obligations.
- The appropriateness of this project structure will be subject to review by the Board, as appropriate, in the Designation Proceeding.

As a matter of law in Ontario, partnerships are not separate "legal persons" capable of assuming legal rights and obligations. In the case of a limited partnership, often used for tax planning and/or for commercial facilitation of joint venture projects, the law requires that there be at least one "general partner". This "general partner" generally holds the property of the limited partnership and generally has liability at law for partnership obligations. In consultation with Board staff, it is our understanding that the Board's licencing practices include licencing of regulated activities in fact carried on through limited partnerships by naming the general partner – as the entity having liability at law for partnership obligations - on the licence. That is what is anticipated for the proposed transmission facility development, should UCT be successful in the Designation Application.

We note that the foregoing contemplated project development approach is distinct from what we understand the Board has considered for some recent Feed-In-Tariff (FIT) projects. We understand that for many of those projects, the initial generation licensee has created a second, "special purpose" corporate entity to be the general partner in a limited partnership structure for the purposes of executing the generation project. In these instances, the FIT "project" (which is the collection of legal arrangements for the project in place to that date, including in particular the FIT contract with the Ontario Power Authority) is transferred to the "special purpose entity", along with the generation licence held by the initial licensee. In contrast, should UCT be designated by the Board for development of the East-West Tie Line, it will itself assume the role of general

partner for the purposes of project execution. No asset or associated licence transfer would be required. As noted in the instant applications, UCT is already a “special purpose entity”, formed for the purpose of seeking designation in the Designation Proceeding. Were such designation to be granted, no licence transfer would be required.

Additional NextEra Energy Canada Corporation

At page 2 of our September 24th letter, in the first paragraph describing the parties to the proposed transaction giving rise to the instant applications, we provided the following information:

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.)

As described in this passage from our earlier letter, it is NextEra Energy Canada's intention to interpose between itself and UCT a third, wholly owned corporation. The new corporation would be 100% owned by NextEra Energy Canada, and would in turn own 100% of UCT prior to the sale of UCT shares to the applicants. Following the completion of the sale to the applicants the new corporation would own 50% of the shares of UCT.

Through discussions with Board Staff, we understand that in situations such as that described in which there is a small internal restructuring that involves only the insertion of a new company wholly owned the shareholder and which wholly owns the licensee, given that there is no change of effective control and no introduction of new parties to the ownership structure of the licensee, the Board has determined that no formal application or approval is required. Nonetheless UCT determined it appropriate to disclose in its application materials this additional NextEra internal corporate step.

Conclusion

The parties (UCT and the two applicants) trust that this information is of assistance to consideration by the Board of the instant applications.

As set out in our September 24th transmittal letter, the parties respectfully request that the Board now proceed to dispose of their respective section 86 applications without a hearing, pursuant to *OEB Act* section 21(4). As the January 4, 2013 submission date



for submission of applications in the Designation Proceeding is approaching, we look forward to the Board's response at its earliest opportunity.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Cathy Walker'.

for: Ian A. Mondrow

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