



EB-2006-0182

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

AND IN THE MATTER OF an application by Umbata
Falls Limited Partnership for an electricity distribution
licence pursuant to section 60 of the *Ontario Energy
Board Act, 1998*.

By delegation, before: Mark C. Garner

DECISION AND ORDER

Umbata Falls Limited Partnership ("UFLP") filed an application dated July 21, 2006 with the Ontario Energy Board under section 60 of the *Ontario Energy Board Act, 1998* (the "Act") for a temporary electricity distribution licence with respect to certain distribution assets that UFLP is constructing in order to service the construction of a new generating station.

As an alternative to the issuance of a temporary distribution licence, UFLP has requested that for the duration of the construction phase, the distribution facilities be deemed to be a transmission system under section 84(b) of the Act.

UFLP requested that the Board dispose of this matter without a hearing under section 21(4)(b) of the Act as no person will be adversely affected in a material way by the outcome of this proceeding.

I find that it is appropriate to deem the subject facilities to be a transmission system or part of a transmission system.

I also find that no person will be adversely affected in a material way by the outcome of this proceeding, and therefore have disposed of this matter without a hearing.

BACKGROUND

UFLP is constructing a hydro electric generating station on the White River, approximately 30 km south and east of the Municipality of Marathon, in the District of Marathon. The project includes 23 km of new 115 kV transmission line, disconnect structure and substation. UFLP has acquired a certificate for Leave to Construct with respect to these transmission facilities (Board file no. EB-2005-0487).

The distribution facilities that are the subject of the present licence application, are the transmission facilities noted above, but energized at 25 kV. The connection will be to Hydro One's existing 25 kV distribution system on the south side of Highway 17 in order to provide power for the construction phase of the hydro electric generating station. Construction is scheduled to be completed in May 2008. Thereafter, the 22 km line will be extended by 1 km and the distribution facilities will be converted to transmission facilities energized at 115 kV and connected to Hydro One's 115 kV line north of Highway 17. Once construction is completed, UFLP would no longer be required to hold a distribution licence.

REASONS

Pursuant to subsection 6(1) of the Act, I have been delegated the power and duties of the Board with respect to the determination of applications made under section 60 of the Act. This Decision and Order is made under the authority of that delegation and is based on the submissions filed in this proceeding.

Section 57 of the Act provides that no person, unless licensed to do so, shall own or operate a distribution or transmission system. For the purpose of distribution, UFLP would be required to hold a distribution licence should it own and/or operate distribution facilities at any time. I note that there are exemption criteria set out in section 4.0.1 of O. Reg 161/99 under the Act that may exempt a distributor from the requirement to hold a licence. The distribution facilities constructed by UFLP do not meet these conditions.

UFLP filed an application for a distribution licence to be in effect until such time as construction of the generating station is complete. According to the evidence filed, upon completion of the project the distribution facilities referred to in this application will be converted to transmission voltage for purposes of transmitting the electricity generated to the IESO controlled grid.

Once the line is operational at transmission voltage, UFLP is exempt from holding a transmission licence as set out in section 4.0.2 (1)(d) of O.Reg 161/99 made pursuant to the Act.

The Applicant suggested that one possible alternative to issuing a temporary distribution licence would be for the Board to deem the subject facilities to be transmission. Section 84(b) of the Act provides that the Board may determine, in any proceeding, that a system or part of a system that forms part of distribution system is a transmission system or part of a transmission system. The Applicant has requested that the Board consider the deeming of the subject facilities as transmission to facilitate the construction phase of the project. UFLP clarified that it preferred not to hold a distribution licence as it will not be engaging in any activities of a normal distributor during the generating station's construction phase.

I note that if UFLP were to be granted a distribution licence, UFLP would not be serving any end use customers (except itself). It would not be appropriate under the circumstances of this case to subject UFLP to certain obligations required by most distribution licences.

It is clear from the evidence filed that the ultimate purpose for constructing the subject facilities is for transmitting electricity from the newly constructed generating station to the IESO grid. I find no compelling reason that UFLP should be required to hold a distribution licence.

I therefore find that it is appropriate to deem the 22 km of line, disconnect structure and substation that will be operated by UFLP at 25 kV as described in its application for the duration of the construction phase to be a transmission system or part of a transmission system. I find that this is consistent with the Board's objectives under the Act and in the public interest.

I also find that no person will be adversely affected in a material way by the outcome of this proceeding, and therefore have disposed of this matter without a hearing.

IT IS ORDERED THAT:

1. The 22 km of line, disconnect structure and substation that will be operated by UFLP at 25 kV for the duration of the construction of the UFLP hydroelectric generating station be deemed to be a transmission system or part of a transmission system under section 84(b) of the Act.
2. If construction is not completed by May 31, 2008, UFLP shall advise the Board in writing of its planned construction schedule.
3. UFLP shall advise the Board of the date of completion of the construction phase of the project and the date on which the subject facilities are converted to transmission.
4. Should any end use customers request to be connected to UFLP's deemed transmission line, UFLP shall immediately advise the Board.

Under section 7(1) of the *Ontario Energy Board Act, 1998*, this decision may be appealed to the Board within 15 days.

DATED at Toronto, October 13, 2006

ONTARIO ENERGY BOARD

Original signed by

Mark C. Garner
Managing Director, Market Operations