



EB-2014-0167

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 NextEra
Energy Canada LP under section 86 of the *Ontario
Energy Board Act*, 1998 seeking leave for NextEra
Energy Canada LP to acquire NextEra UCT Holding,
Inc.

BEFORE: Cathy Spoel
Presiding Member

DECISION AND ORDER MAY 30, 2014

Background

On April 21, 2014, NextEra Energy Canada LP (“NextEra LP” or the “Applicant”) filed an application with the Board under subsection 86 (2)(b) of the *Ontario Energy Board Act*, 1998, (the “Act”), seeking leave of the Board to acquire NextEra UCT Holding Inc. (“NextEra UCT Holding”).

As part of a corporate restructuring among entities associated with the NextEra businesses, NextEra Energy Canada ULC (“NextEra ULC”) proposes to transfer its interest in NextEra UCT Holding to NextEra LP. NextEra ULC owns 100% of the shares of NextEra UCT Holding. NextEra UCT Holding owns 50% of the shares of Upper Canada Transmission Inc. (“UCT”) while Enbridge Transmission Holdings Inc. and Borealis EWT Inc. each own 25% of the shares of UCT. UCT is a licensed transmitter and is designated by the Board for the development phase of the proposed East-West Tie Line.

Section 86(2)(b) of the Act states that no person, without first obtaining an order from the Board granting leave, shall acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation.

The Applicant has also requested that the Board dispose of its application without a hearing, pursuant to section 21(4)(b) of the Act as no one will be adversely affected in a material way by the Board's decision regarding this application.

The Applicant has provided the following information in support of its application:

- The parties to the proposed transaction are holding companies - they do not have customers and therefore do not provide services.
- Parties to the proposed transaction intend to distribute by way of dividend all of the issued and outstanding shares of NextEra UCT Holding from NextEra ULC to NextEra LP. This is to be achieved by a resolution of the Board of Directors of NextEra ULC approving the distribution.
- The value of the shares to be transferred is \$1,142 which represents their net book value as of March 31, 2014.
- The proposed transaction will not cause a change of control of any transmission or distribution assets.
- The proposed transaction will not have any impact on consumers with respect to prices and adequacy, reliability and quality of electricity service.
- As the proposed transaction involves holding companies, it will not have any impact on transmission rates nor will there be any impact on economic efficiency or cost effectiveness in the distribution or transmission of electricity.

Board Findings

The Applicant has requested that the Board dispose of the application without a hearing as permitted by section 21(4)(b) of the Act.

This application is being made as a result of a corporate reorganization. The evidence filed by the Applicant indicates that the reorganization will have no impact on the development work being carried out by UCT under its transmission licence or any subsequent construction or operation of the transmission line and transmission facilities. UCT will continue to maintain direct responsibility for all of the rights and

obligations granted to it by the Board. Additionally, while UCT is designated by the Board for the development phase of the proposed East-West Tie Line, UCT does not currently own or operate a transmission system and so does not as yet provide transmission service to customers.

The Board finds that no person will be adversely affected in a material way by the outcome of this application and has proceeded to determine this matter without a hearing.

No Harm Test

In deciding whether to approve the section 86 application, the Board has been guided by the principles set out in the Board's decision in the combined MAADs proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In that decision, the Board ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The "no harm" test is a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. The factors to be considered are those set out in section 1 of the Act, namely:

1. to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and
2. to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

Based on the evidence in this proceeding, the Board finds that the proposed transaction will have a neutral effect on the attainment of these statutory objectives, so it meets the "no harm" test and the application should be granted.

THE BOARD ORDERS THAT:

1. NextEra Energy Canada LP is hereby granted leave to acquire NextEra UCT Holding Inc. pursuant to subsection 86(2)(b) of the Act.

2. The Board's leave for NextEra Energy Canada LP to acquire NextEra UCT Holding Inc. shall expire 12 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application will be required in order for the transaction to proceed.
3. NextEra Energy Canada LP shall promptly notify the Board of the completion of the transaction.

DATED at Toronto, May 30, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary