



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0009

FORTISONTARIO INC.

**Application by FortisOntario Inc. to acquire control of Fortis-RES
GP Inc.**

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

March 2, 2017

INTRODUCTION

This is the Decision of the Ontario Energy Board (OEB) regarding an application filed by FortisOntario Inc. (FortisOntario or Applicant) requesting approval to acquire control of Fortis-RES GP Inc. (Fortis-RES GP) under subsection 86(2)(b) of the *Ontario Energy Board Act, 1998* (Act).

Section 86(2)(b) of the Act states that no person, without first obtaining an order from the OEB granting leave, shall acquire control of any corporation that holds, directly or indirectly, more than 10 percent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation.

As part of a corporate restructuring among entities, FortisOntario and RES Canada Transmission Holdings Inc. (RES GP) are two parties to a purchase agreement, which provides for, among other things, the sale and transfer of common shares of Fortis-RES GP from RES GP to FortisOntario. This transaction would result in FortisOntario becoming the sole shareholder of Fortis-RES GP. Fortis-RES GP is a corporation that directly holds more than 10 percent of the voting securities of 2472883 Ontario Limited (Wataynikaneyap Power GP or WPGP), the general partner of the licensed transmitter Wataynikaneyap Power LP (WPLP). WPLP does not currently have any operating transmission assets in Ontario, nor does it currently have transmission rates that have been approved by the OEB.

WPLP is owned and operated through a partnership structure. Twenty-two First Nation Communities hold a controlling 51 percent interest in WPLP and Fortis-RES GP holds the remaining 49 percent. The application has no impact upon these controlling interests that are held by the participating First Nations.

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

The Applicant also requested under rule 10 of the OEB's *Rules of Practice and Procedure* and section 5.1 of the OEB's *Practice Direction on Confidential Filings* (Practice Direction), confidential treatment for certain information that formed part of the application. The information, and the grounds for the request, are described in the cover letter to the application. The Applicant's rationale for its request was that disclosure of this information on the public record could impact the Applicant's ongoing relationships with its development partner and other stakeholders, and (in the case of the vendor's financial statements) that the vendor is a privately-held company that does

not disclose its financial statements publicly. As such, the vendor has requested that the Applicant file the RES financial statements on a confidential basis.

The Applicant also noted that some information in the corporate resolutions of the Applicant and the vendor authorizing the proposed transaction is related to transactions that are not relevant to the regulated business and are therefore beyond the scope of the OEB's jurisdiction in considering the current application. The Applicant has redacted that information, and it does not form part of the application.

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

- The proposed transaction relates to the transfer to the Applicant of a minority interest in a holding company (i.e. Fortis-RES GP), which is in turn a minority shareholder in the general partner of a limited partnership that is a licensed transmitter with no operating facilities, no customers, no rate base and no rates.
- The proposed transaction will have no impact on the development work that is being carried out by WPLP under its transmission licence.
- The proposed transaction will not have any impact on consumers with respect to prices and adequacy, reliability, and quality of electricity service.

Findings

The Applicant has requested that the OEB 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 FortisOntario indicates that the reorganization will have no impact on the development work being carried out by WPLP under its transmission licence or any subsequent construction or operation of the transmission line and transmission facilities. The proposed transaction has no impact upon the controlling interests of WPLP that are held by the participating First Nation Communities.

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

With regard to the Applicant's request for confidentiality, the OEB's general policy is that all evidence should be on the public record and should be open for inspection by any person unless disclosure of the record is prohibited by law. The Practice Direction seeks to balance the objectives of transparency and accessibility with the need to

protect information that has been properly designated as confidential. The OEB agrees with the Applicant, for the reasons provided by the Applicant, that the documents or portions thereof referred to in the request are to be treated as confidential. The material filed by the Applicant in confidence is not to be placed on the public record.

With regard to the Applicant's claim that certain information is beyond the scope of the application, the OEB agrees that information related to transactions that are not relevant to the regulated business is beyond the scope of the OEB's jurisdiction in this proceeding, and will not require the applicant to file that information in this proceeding.

REGULATORY PRINCIPLES

No Harm Test

As set out in the *Handbook to Electricity Distributor and Transmitter Consolidation*, January 2016 (Handbook), the OEB applies the no harm test in its assessment of consolidation applications. The OEB considers whether the no harm test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The statutory objectives to be considered are those set out in section 1 of the Act:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
 - 1.1 To promote the education of consumers.
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.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution

systems to accommodate the connection of renewable energy generation facilities.

While the OEB has broad statutory objectives, in applying the no harm test, the OEB's review primarily focuses on the impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the consolidating utilities. The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB's existing performance monitoring framework.

The OEB has implemented a number of instruments, such as codes and licences that ensure regulated utilities continue to meet their obligations with respect to the OEB's statutory objectives relating to conservation and demand management, implementation of smart grid, and the use and generation of electricity from renewable resources. With these tools and the existing performance monitoring framework, the OEB is satisfied that the attainment of these objectives will not be adversely affected by a consolidation and the no harm test will be met following a consolidation.

Findings

The Handbook states that the "no harm" test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives, as set out in section 1 of the Act. The OEB will consider whether the "no harm" test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application¹. To demonstrate no harm, applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve customers following a consolidation will be no higher than they would otherwise have been². The Handbook also states that the impact of the proposed transaction on economic efficiency and cost effectiveness will be assessed based on an applicant's identification of the various aspects of operations where it expects sustained operational efficiencies, both quantitative and qualitative³.

¹ OEB Handbook to Electricity Distributor and Transmitter Consolidation, January 2016, page 4.

² OEB Handbook to Electricity Distributor and Transmitter Consolidation, January 2016, page 7.

³ OEB Handbook to Electricity Distributor and Transmitter Consolidation, January 2016, page 8.

The Handbook also sets out that under the OEB's regulatory framework, consolidating utilities are expected to deliver continuous improvement for both reliability and quality of service performance to benefit customers.

The Applicant has submitted that the proposed transaction will have no impact on the development work being carried out by WPLP under its transmission licence or on any subsequent construction or operation of the transmission facilities. The Applicant has also submitted that the proposed transaction will have no effect on the attainment of the relevant statutory objectives of the OEB. FortisOntario noted that the transaction has not been financed and that the transaction costs will not be included in any future rates that would be charged to any customers of FortisOntario, its electricity sector affiliates or WPLP.

The OEB notes that this application is a result of a corporate reorganization and that the licensed transmitter affected by the application currently has no operating facilities, no customers, no rate base and no OEB approved rates, therefore, the impact of the proposed transaction has no effect on the cost effectiveness, economic efficiency and financial viability of the Applicant, Fortis-RES GP or WPLP, and no effect on price and quality of service to customers. Additionally, as a licensed transmitter, WPLP will continue to maintain direct responsibility for all of the rights and obligations granted to it by the OEB.

Based on the evidence in this proceeding, the OEB finds that the proposed transaction will have a neutral effect on the attainment of the OEB's statutory objectives, therefore the application meets the no harm test and the application should be granted.

ORDER

THE BOARD ORDERS THAT:

1. FortisOntario Inc. is hereby granted leave to acquire Fortis-RES GP Inc. pursuant to subsection 86(2)(b) of the Act.
2. The OEB's leave for FortisOntario Inc. to acquire Fortis-RES GP 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. FortisOntario Inc. shall promptly notify the OEB of the completion of the transaction.

DATED at Toronto March 2, 2017

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary