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**BY EMAIL**

May 1, 2017

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: OEB STAFF SUBMISSION  
UPPER CANADA TRANSMISSION, INC. COST RECORDING REQUEST  
EB-2017-0013**

In accordance with the OEB's Invitation to Comment dated April 20, 2017, please find attached the OEB Staff Submission in the above proceeding.

Yours truly,

*Original Signed By*

Judith Fernandes  
Project Advisor  
Applications Division



# **ONTARIO ENERGY BOARD**

## **OEB STAFF SUBMISSION**

**EB-2017-0013**

**May 1, 2017**

## INTRODUCTION

The OEB's Phase 2 Decision and Order on the East-West Tie Line Designation proceeding<sup>1</sup> issued on August 7, 2013 named Upper Canada Transmission (UCT) the designated transmitter for the development of the East-West Tie transmission line. The Decision established a deferral account and specified that the actual costs of development of the East-West Tie line were to be recorded in this deferral account from the date of the decision up to the filing of a leave to construct (LTC) application, or such other time as the OEB may order.

On January 19, 2017, UCT requested approval of a mechanism to record costs relating to the East-West Tie line from and after the date of filing a LTC application. UCT proposed that the OEB either permit UCT to continue recording costs in the established deferral account until the OEB's determination of the LTC application or that the OEB establish a new deferral account to record costs from and after the date that a LTC application is filed.

## SUBMISSION

OEB staff makes the following submissions in support of the request made by UCT.

### **Designation Policy & Phase 2 Decision and Order - Development Period and Costs**

The OEB's designation policy<sup>2</sup> was intended to encourage competition and the entry of new transmitters to Ontario. The policy said:

*The goal is the implementation of a process that provides, among other things, greater regulatory predictability in relation to cost recovery for development work. The Board believes that this policy will:*

- *allow transmitters to move ahead on development work in a timely manner;*
- *encourage new entrants to transmission in Ontario bringing additional resources for project development; and*
- *support competition in transmission in Ontario to drive economic efficiency for the benefit of ratepayers.*

*From the Board's perspective, the objective of the development phase is to bring a project to the point where there is sufficient information for the transmitter to submit a leave to construct application. Therefore development costs begin when a transmitter is designated and end when a leave to construct application is submitted.*

In response to a letter from the then Minister of Energy, the OEB initiated the EB-2011-0140

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<sup>1</sup> EB-2011-0140

<sup>2</sup> Board Policy: Framework for Transmission Project Development Plans (EB-2010-0059)

designation proceeding as a competitive process to designate a transmitter for the development of the East-West Tie transmission line. Consistent with the designation policy, the successful transmitter would be given an economic incentive to develop the transmission line: it could recover development costs up to the approved budgeted amount, even if the line was found to be not necessary, provided that there was no fault on the part of the transmitter. The OEB's Phase 2 Decision and Order on EB-2011-0140 approved recovery of UCT's budgeted development costs of \$22.2 million on this basis.

Also in keeping with the OEB's designation policy, the OEB in the competitive process defined the development phase as ending with the filing of a LTC application. It could be argued that as this period was defined as part of the competitive process, it would not be consistent with the fairness of that process to now extend that period beyond its original limit. However, OEB staff submits that the fairness of the original competitive process is not compromised by allowing UCT to record costs for potential recovery after a LTC application is filed.

OEB staff submits that the original definition of the East-West Tie development period is not an impediment to allowing UCT to record costs for potential recovery that are incurred after a LTC application is filed. OEB staff understands that the relevance of the defined development period was to create a common time period on which applicants were to base their development cost estimates. The cost incentive, i.e. the amount guaranteed for recovery in the absence of fault on the part of the transmitter, was set based on the budget the successful transmitter estimated would cover development costs that would be spent in that time period. The development period was established to clearly define the extent of development costs that would be included in the incentive.

In the OEB's designation policy, the incentive is described as follows:

*The transmitter designated for a particular project will be assured of recovery of the budgeted amount for project development. Material overages will be at risk until a future prudence review.*

Similarly, the guaranteed recovery incentive as described in the Phase 2 Decision and Order on EB-2011-0140 is based on a budgeted amount, and the OEB's finding contemplated that the actual costs of development could exceed the budgeted amount:

*The Board finds that the development costs budgeted by UCT of \$22,187,022 (in \$2012) are reasonable. The Board will establish a deferral account in which UCT is to record the actual costs of development...A consequence of this designation decision is that, if it meets its obligations, UCT will be able to recover the costs of project development (up to the budgeted amount) from transmission ratepayers, even if the final assessment of need indicates that the line is no longer required.*

OEB staff further submits that the deferral account established to record actual development costs in the Phase 2 Decision and Order on EB-2011-0140 was not strictly time bound to the

originally defined development period:

*A deferral account is established for UCT in which the actual costs of development of the East-West Tie line are to be recorded, from the date of this decision up to the filing of a leave to construct application, or such other time as the Board may order.*  
(emphasis added)

OEB staff argues that the definition of the development period did not limit actual development costs for the project, but rather it set out a point beyond which the transmitter would have no guarantee of cost recovery. UCT's designation application laid out the development work that would need to be completed before construction, some of which, such as environmental assessment and engineering work, was scheduled to take place during and after the LTC application<sup>3</sup>. While it was clear in the application of the successful transmitter that development work would continue past the date of filing of a LTC application, the definition of the cost incentive meant that UCT would undertake this work with no guarantee of cost recovery.

OEB staff supports UCT's application, recognizing that UCT is not asking that the OEB rule now that costs incurred after the filing of a LTC application will be recovered, but for permission to record the costs for future consideration by the OEB.

### **OEB's Approach to Development Costs**

Much has changed since the original designation proceeding, particularly the extension of the in-service date and the declaration of the East-West Tie transmission line as a priority project. What has not changed is the OEB's approach to development costs. OEB staff submits that the OEB has continued to allow the actual costs of development to be recorded in the deferral account, but has consistently emphasized that UCT has no guarantee of recovery of any costs beyond the originally budgeted development costs.

This was confirmed in the OEB's Decision regarding the consequences of the delay to the in-service date<sup>4</sup>. In that application UCT proposed the recovery of additional development costs to recognize the recommended extension of the in-service date from 2018 to 2020 by the former Ontario Power Authority (now IESO). UCT asked that the additional development costs be subject to the same recovery guarantee as the original development budget. The OEB denied this request. However, the OEB allowed UCT to record actual development costs beyond the date that UCT originally estimated for filing the LTC. Although the originally anticipated time frame for development would be exceeded, the OEB found that the established parameters of the deferral account adequately facilitate the tracking of

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<sup>3</sup> See page 100 of Upper Canada Transmission, Inc. (o/a NextBridge) East-West Tie Designation Application (EB-2011-0140) filed on 2013-01-04

<sup>4</sup> EB-2015-0216 OEB Decision and Order : Upper Canada Transmission, Inc. – Application for Approval of Schedule and costs related to the Development of the East-West Tie Transmission Line

unanticipated costs for full review at a later date. At that time, UCT was still carrying out development work and has the potential to recover these costs, subject to a prudence review.

As a result of the extension of the in-service date, UCT is already recording costs beyond the original development budget. OEB staff submits that the costs that UCT seeks to record following the filing of its LTC application would fall into the same category as all costs above the original development budget: costs for which recovery may be possible if prudence is demonstrated.

OEB staff also submits that it is consistent with the OEB's designation policy to ensure to the extent possible that new entrant transmitters are not disadvantaged in comparison to incumbent transmitters, who may be able to record development costs of projects that will later be capitalized.

The OEB has previously approved the establishment of deferral accounts for transmitters for planning and development costs, with the caveat that the transmitters would be required to establish the prudence of the costs at the time of account disposition<sup>5</sup>. In a recent decision on Wataynikaneyap Power LP's application for an order to establish a deferral account<sup>6</sup>, the OEB confirmed the potential for entrant transmitters to record development costs for potential future recovery from ratepayers. In this decision, the OEB stated that final determination of prudence of the amounts recorded will be made at the time of disposition of the account.

OEB staff submits that the OEB has allowed the recording of actual development costs by transmitters and has protected ratepayers by consistently ruling that the establishment of a deferral account and the recording of costs in the account is no guarantee of the eventual recovery of recorded costs from ratepayers. OEB staff submits that in this present application, ratepayers are similarly protected, as the costs UCT seeks to record will be recovered from ratepayers only if prudence is demonstrated.

OEB staff submits that the activities that UCT describes in its letter of March 27, 2017 are the type of development activities that a transmitter would be expected to continue to undertake while its LTC application is being considered. While it is unknown at this time whether the costs of those activities would be recovered from ratepayers at some future date, in OEB staff's submission such costs are suitable for recording in a deferral account for future consideration by the OEB.

OEB staff submits that either an extension of the existing deferral account or the creation of a new deferral account would serve the same purpose.

All of which is respectfully submitted

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<sup>5</sup> Hydro One Networks Inc. EB-2009-0416 and EB-2014-0311 and Great Lakes Power Transmission LP EB-2009-0409.

<sup>6</sup> EB-2016-0262