



DECISION AND ORDER

EB-2024-0147

HYDRO ONE NETWORKS INC.

**Application for leave to sell certain transmission assets to
Chatham x Lakeshore Limited Partnership**

CHATHAM X LAKESHORE LIMITED PARTNERSHIP

**Applications for an electricity transmission licence, for the use of
certain accounting standards and for a new deferral account**

BEFORE: Fred Cass
Presiding Commissioner

July 25 , 2024

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1. OVERVIEW OF THE APPLICATION

This is a Decision and Order of the Ontario Energy Board (OEB) on a joint application (Application) filed on April 26, 2024, by Hydro One Networks Inc. (HONI) and Chatham x Lakeshore Limited Partnership (CLLP) (collectively, “the Applicants”), associated with the Chatham to Lakeshore Transmission Line Project (CxL Project). The Applicants requested the following relief:

1. CLLP has applied for an electricity transmission licence under section 60 of the *Ontario Energy Board Act, 1998* (OEB Act) that will allow it to own, operate and maintain certain transmission assets in Ontario;
2. CLLP has applied to the OEB for approval to use United States Generally Accepted Accounting Principles (US GAAP) as the basis for rate setting, regulatory accounting, and regulatory reporting, under section 70(1) of the OEB Act;
3. HONI has applied for leave of the OEB to sell certain electricity transmission assets, substantially consisting of two 230 kV transmission circuits (known as C87H and C88H) (the “CxL Assets”) between Chatham Switching Station in the Municipality of Chatham-Kent and Lakeshore Transformer Station in the Municipality of Lakeshore, excluding the transmission station assets, to CLLP under section 86(1)(b) of the OEB Act; and
4. CLLP has applied for approval of the OEB to establish a deferral account, to record associated revenue requirements for the CxL Assets prior to the inclusion of the associated revenue requirement in the Uniform Transmission Rates (UTRs), under section 78(1) of the OEB Act.

CLLP is a partnership formed to own and operate the CxL Assets. In a previous proceeding (EB-2022-0140), the OEB granted leave to HONI, pursuant to section 92 of the *OEB Act*, to construct the CxL Project. The Project was declared a priority project by the Minister of Energy through an Order in Council dated March 31, 2022 and pursuant to section 96.1 of the *OEB Act*.¹

The Applicants requested that the OEB dispose of this proceeding without a hearing. As set out in the OEB’s letter to the Applicants dated June 7, 2024, the OEB granted the

¹ Application, p.4, para. 1.4

Applicants' request, with reasons to follow. The reasons are provided in this Decision and Order.

Subject to the conditions set out below, the requests made in the Application are granted. With regard to CLLP's request that the OEB approve the use of US GAAP, the OEB is approving the request, but will not make the use of US GAAP a condition of the CLLP Electricity Transmission Licence, for the reasons set out below.

The OEB will address the reasons for its decision to dispose of this proceeding without a hearing under section 21(4) of the OEB Act first. Then, the other requests in the Application will be addressed under the following headings: Application by CLLP for an Electricity Transmission Licence; Application for use of US GAAP by CLLP; Application by HONI pursuant to section 86(1)(b) of the OEB Act; and Application for a Deferral Account by CLLP to Record Revenue Requirement.

2. REASONS FOR DECISION ON HEARING

The Applicants requested that the OEB review, consider, and dispose of this proceeding without a hearing, and confirmed that they consent to this approach.

HONI stated that the proposed sale of certain transmission assets is an inter-entity transfer of assets, which will be operated and maintained by HONI in the same manner as related transmission facilities in Ontario. Further, HONI stated that performance and reliability will not be impacted by a change in equity ownership. Thus, HONI submitted that this application did not require a public hearing.

Findings

The OEB decided that it will dispose of this proceeding without a hearing pursuant to section 21(4)(b) of the OEB Act. The reasons for that decision are as follows.

Section 21(4) of the OEB Act states:

Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

- (a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing, or
- (b) the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.

As noted above, the Applicants have consented to disposing of this proceeding without a hearing.

The evidence of the Applicants is that, if the relief requested in this Application is granted, there will be no material change to the way in which the CxL Assets will be operated and maintained. The CxL Assets will be operated and maintained by HONI in the same manner as related transmission facilities in Ontario and there will be no impact on performance and reliability. On the basis of the evidence provided by the Applicants, the OEB has concluded that no person will be adversely affected in a material way by the outcome of this proceeding, and it will be disposed of without a hearing.

3. APPLICATION BY CLLP FOR AN ELECTRICITY TRANSMISSION LICENCE

For the purpose of owning and operating the CxL Assets, CLLP has applied for an electricity transmission licence under section 60 of the OEB Act.

CLLP intends to own and operate the CxL Assets under the management and oversight of the general partner, Chatham x Lakeshore GP Inc. (CLGP). CLGP will be responsible for ensuring that the transmission assets transferred to CLLP are operated and maintained in accordance with all applicable regulatory standards and HONI's maintenance and operating practices. CLGP will carry out these functions through an operations and management services agreement with HONI for the ongoing operation and management of the CxL Assets and to ensure that all applicable OEB licence, code and rule requirements will be met. HONI will remain primarily responsible for the ongoing operation and management of the CxL Assets and the operations and management services agreement will employ the same resources and standards currently used by HONI in operating and managing similar assets in its transmission business. In support of its application, CLLP noted that HONI has experience with operating of the transmission assets owned by B2M Limited Partnership (B2M) and Niagara Reinforcement Limited Partnership (NRLP), which are partnerships similar in nature to CLLP.

Findings

The OEB approves the request by CLLP for a licence to own, operate and maintain electricity transmission assets, specifically, the CxL Assets.

In determining whether to approve the electricity transmission licence application, the OEB considered CLLP's financial position, technical capability and conduct, as it assessed CLLP's ability to own and operate transmission facilities in Ontario. In view of the Applicants' evidence, the OEB finds that CLLP can reasonably be expected to conduct its business appropriately and to operate the CxL Assets reliably, with the appropriate technical capability. The OEB therefore finds that it is in the public interest to grant the requested electricity transmission licence.

4. APPLICATION FOR USE OF US GAAP BY CLLP

CLLP has requested that the OEB permit CLLP to use US GAAP as its accounting standard for the purposes of rate setting, regulatory accounting, and regulatory reporting. CLLP's request for permission to use US GAAP is made under section 70 of the OEB Act. Subsection 70(1) of the OEB Act authorizes the OEB to prescribe conditions of a licence. Subsection 70(2) states, among other things, that the conditions of a licence may include provisions requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles.

CLLP noted that "Both HONI's distribution and transmission businesses have received OEB approval to utilize US GAAP as its approved framework for rate setting, regulatory accounting and regulatory reporting." CLLP went on to submit that "Approval to use US GAAP for CLLP will facilitate Hydro One Limited's consolidated reporting for securities filing purposes, thus avoiding incremental costs and/or reduced productivity."

Findings

The OEB approves the use of US GAAP by CLLP for the purposes of rate setting, regulatory accounting, and regulatory reporting. However, the OEB will not make this a condition of CLLP's transmission licence.

The OEB has previously approved the use of US GAAP by HONI's distribution and transmission businesses for the purposes of rate setting, regulatory accounting, and regulatory reporting. The OEB is also aware that B2M and NRLP have been permitted to use US GAAP. Approval to use US GAAP for CLLP will align CLLP's accounting standards with those used by HONI's distribution and transmission businesses. This alignment will facilitate Hydro One Limited's consolidated reporting for securities filing purposes and will thereby avoid incremental costs, increased regulatory burden and/or reduced productivity.

In its September 12, 2019 decision and order on NRLP's application for a transmitter licence and HONI's application for leave to sell transmission assets to NRLP², the OEB considered NRLP's request that its licence include a condition permitting NRLP to adopt US GAAP for the purpose of its financial reporting. NRLP had also made a separate application for a deferral account to record certain revenues and costs related to bringing the relevant assets into service. In that case, the OEB did not include a licence condition related to US GAAP. Rather, the OEB found that the request for approval to

² EB-2018-0277 and EB-2018-0276, respectively.

use US GAAP “is more properly dealt with in the consideration of the request for a deferral account as it is a rates-related matter.”³ The OEB went on to address the matter in its decision and order on NRLP’s 2020-2024 revenue requirement application.⁴ The OEB accepted the use of US GAAP for NRLP on the basis that HONI, one of the partners, is on US GAAP. However, the OEB advised that the use of US GAAP for NRLP may be subject to review if at some point HONI is no longer using US GAAP.

The OEB finds that a similar approach should be taken in the current case. Because the current application includes a request for a deferral account, the OEB will accept the use of US GAAP by CLLP for the purposes of rate setting, regulatory accounting, and regulatory reporting in the current Decision and Order. As was the case with NRLP, the OEB notes that the use of US GAAP by CLLP may be subject to review should HONI cease its use of US GAAP.

³ [Decision and Order](#), EB-2018-0276/EB-2018-0277, September 12, 2019, at p.2

⁴ [Decision and Order](#), EB-2018-0275, April 9, 2020, at p.7

5. APPLICATION BY HONI PURSUANT TO SECTION 86(1)(b) OF THE OEB ACT

HONI applied for leave of the OEB to sell the CxL Assets to CLLP under section 86(1)(b) of the OEB Act.

The assets to be transferred consist of two 230 kV transmission circuits connecting Chatham Switching Station in the Municipality of Chatham-Kent to the Lakeshore Transformer Station in the Municipality of Lakeshore. The circuits are known as C87H and C88H and are part of the CxL Project. The CxL Assets include steel transmission towers, the transmission lines, the insulators and hardware affixed to the towers, but exclude transmission station assets. The proposed transfer price of the CxL Assets is \$220 million and represents the estimated future gross book value of the CxL Assets.

As stated in the Application, the revenue requirement for these assets is not included in any current or future HONI transmission revenue requirement approved by the OEB.

HONI has stated that the proposed transaction results in an inter-entity transfer of assets. The CxL Assets will be operated and maintained by HONI in the same manner as related transmission facilities in Ontario. Performance and reliability will not be impacted by the change in the ownership of the assets.

Findings

The OEB approves the request by HONI for leave to sell the CxL Assets to CLLP.

HONI's request for leave to sell the CxL Assets is made under section 86(1)(b) of the OEB Act, which provides that:

No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public.

The evidence confirms that the revenue requirement for the CxL Assets is not included in any current or future HONI revenue requirement that has been or will be approved by the OEB. The evidence also confirms that the proposed inter-entity transfer of assets will not affect performance or reliability and that the CxL Assets will be operated and maintained by HONI in the same manner as related transmission facilities in Ontario.

The OEB finds that the proposed transfer is reasonable and is not anticipated to have any negative effects. However, for greater clarity, the OEB notes that the granting of leave to sell the CxL Assets does not constitute an approval of the value of the CxL Assets for the purpose of rates or any entitlement of CLLP to recover the cost of the assets. The prudence of the cost of the CxL Assets will be determined by the OEB in future revenue requirement proceedings.

6. APPLICATION FOR A DEFERRAL ACCOUNT BY CLLP TO RECORD REVENUE REQUIREMENT

CLLP has requested a new deferral account, the CxL Transmission Line Revenue Requirement Deferral Account (referred to in this Decision and Order as the CTLRRDA), to record the revenue requirement related to the CxL Project for the period from the time when the CxL Project assets go into service up until the OEB-approved effective date of CLLP's first revenue requirement application, which is expected to be filed later this year for approval of final rates beginning in 2025.

CLLP submitted that the proposed CTLRRDA should be approved, and it is in the public interest for the following reasons:

1. CLLP has applied to the OEB for approval of a transmission licence under section 60 of the OEB Act, and HONI has applied for approval to sell certain transmission assets to CLLP under section 86(1)(b) of the OEB Act;
2. The proposed deferral account will allow for the "timely in-service" of the assets that will benefit Ontario ratepayers; and
3. Neither HONI nor CLLP is seeking recovery of the amount CLLP proposes to record in the deferral account at this time. The deferral account balances will be subject to review upon disposition and recovery through the UTRs.

Additionally, CLLP has highlighted the importance to its First Nations partners of receiving an OEB order to establish this new deferral account prior to the time when the CxL Project goes into service, as it allows for the satisfaction of financing arrangements to validate income to the partners and their communities.

The OEB's [Filing Requirements for Electricity Transmission Applications](#) (Filing Requirements) set out the eligibility criteria for approval to establish a deferral or variance account, namely, causation, materiality, and prudence.⁵ In its Application, CLLP addressed these criteria and submitted that they have been met.⁶ The OEB has summarized CLLP's submissions in this regard:

⁵ *Filing Requirements for Electricity Transmission Applications*, Chapter 2 - Section 2.10, February 11, 2016, p.35

⁶ Application, Appendix 5, pp.45-49.

1. Causation:

The Filing Requirements define causation as “The forecasted expense must be clearly outside of the base upon which revenue requirement(s) were derived”. CLLP stated that it has no current OEB-approved revenue requirement, nor are the CxL Assets included in HONI’s rate base. CLLP expects to file an application seeking approval of its 2025 revenue requirement later this year. CLLP is seeking OEB-approval for a transmission licence, and HONI is seeking leave to sell the Transferred Assets to CLLP. Revenue requirement of this nature would normally be recoverable by a transmitter from the provision of these types of services to ratepayers.

2. Materiality:

While CLLP has no current OEB-approved revenue requirement, CLLP stated that its revenue requirement is expected to exceed \$10 million per annum on the basis of total return on capital alone, but not exceed \$200 million per annum since the total forecast cost of the CxL Assets to be transferred is \$220 million. Using a return on capital calculation based on a rate base of \$220 million, CLLP calculated a revenue requirement of \$14.296 million. The Filing Requirements would place CLLP in the category of transmitters with a materiality threshold of 0.5% of annual revenue requirement.

Based on the forecast in-service date for the CxL Assets, CLLP will have a revenue requirement for at least two weeks of 2024, and that represents 3.8% of the annual revenue requirement. CLLP submits that the materiality threshold has therefore been met.

3. Prudence:

CLLP referred to the Filing Requirements, which provide with regard to the prudence criteria that, “The nature of the costs and forecasted quantum must be reasonably incurred, although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating why the option selected represents the cost-effective option (not necessarily least initial cost) for ratepayers.”

CLLP submitted, in part, that “The agreement with the First Nations underlying the formation of the limited partnership and the sale of assets will facilitate the Project assets being placed in-service and ultimately providing transmission services to ratepayers. The deal allows for the completion of the project providing beneficial service to rate payers at a favourable cost.” CLLP noted that “Rate payers will enjoy a modest

tax benefit flowing through in rates, given the tax-free status of the First Nations partners' ownership of CLLP". HONI and CLLP believe this satisfies the prudence standard that the transmitter's decisions to incur the amounts must represent the most cost-effective option for ratepayers.

As required by the Filing Requirements, CLLP included a Draft Accounting Order outlining the proposed entries for recording CLLP's interim revenue requirement prior to the effective date of CLLP's first OEB-approved revenue requirement.

CLLP has requested that the CTLRRDA be effective starting from the in-service date of the CxL Project, which is currently planned for December 15, 2024. CLLP has committed that it will notify the OEB of the CxL Project's completion and will record entries in the account effective that date.

Findings

The OEB approves CLLP's request to establish the proposed CTLRRDA for the purpose of recording revenue requirement relating to the CxL Project once it is placed in-service until the OEB-approved effective date of CLLP's first revenue requirement application.

The purpose of the proposed CTLRRDA is to allow CLLP an opportunity to recover an appropriate level of revenue requirement during the period when the CxL Assets are in service prior to CLLP receiving approval of its revenue requirement application and the approved revenue requirement being incorporated into UTRs. The OEB finds that the proposed CTLRRDA has satisfied the three tests (causation, materiality and prudence) as set out in the Filing Requirements:

Causation:

Section 2.10 of the Filing Requirements states, in respect of the Causation criterion, that: "The forecasted expense must be clearly outside of the base upon which revenue requirement(s) were derived."

CLLP is a partnership that has been formed for the purpose of operating the CxL Assets to be transferred to it by HONI, and in this Decision and Order, the OEB is approving the issuance of a transmission licence to CLLP and the transfer of the CxL assets to CLLP by HONI. CLLP currently has no OEB-approved revenue requirement and the CxL Assets are not included in HONI's rate base. It is expected that CLLP will file an application later this year for approval of its 2025 revenue requirement. CLLP's future

revenue requirement is clearly outside of any base revenue requirement. The OEB finds that the causation criterion for the establishment of the CTLRRDA has been satisfied.

Materiality:

Section 2.10 of the Filing Requirements states, in respect of the Materiality criterion, that: “The forecasted amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the transmitter.”

Given the evidence filed by the Applicants, it is reasonable to expect that:

- CLLP’s annual revenue requirement will exceed \$10 million, but will not exceed \$200 million;
- accordingly, CLLP’s materiality threshold, as provided for in the Filing Requirements,⁷ will be 0.5% of transmission revenue requirement;
- based on the forecast in-service date for the CxL Assets, CLLP will have revenue requirement for two weeks or more of 2024 that will precede a future OEB approval of 2025 revenue requirement; and
- CLLP’s revenue requirement for two weeks or more of 2024 will exceed the 0.5% materiality threshold.

While the OEB is not approving CLLP’s expected revenue requirement at this time, the OEB accepts that the amount to be recorded in the CTLRRDA is likely to be material to CLLP and to have a significant influence on the operation of CLLP. The OEB finds that the materiality criterion for the establishment of the CTLRRDA has been satisfied.

Prudence:

Section 2.10 of the Filing Requirements states, in respect of the Prudence criterion, that: “The nature of the costs and forecasted quantum must be reasonably incurred, although the final determination of prudence will be made at the time of disposition.”

The CxL Project was designated as a priority transmission project under section 96.1 of the OEB Act and, in the EB-2022-0140 Decision and Order, the OEB granted leave to HONI to construct the CxL Project. Thus, the need for the CxL Assets to provide transmission service to Ontario electricity ratepayers has been established and the

⁷ Filing Requirements, section 2.1.1.

construction of the CxL Project by HONI has been approved. The evidence of the Applicants is that the current forecast of the cost to construct the CxL Assets is less than the forecast cost found by the OEB to be reasonable in EB-2022-0140.⁸

The OEB finds that the prudence criterion for the establishment of the CTLRRDA has been met on the evidence in this case. The OEB emphasizes, though, that the final determination of the prudence of amounts recorded in the CTLRRDA will be made at the time when the OEB considers the disposition of amounts recorded in the account.

Although the OEB is approving the creation of the proposed account, it is making no findings at this time regarding either the prudence of amounts actually recorded in the account or the extent to which any such amounts will ultimately be passed on to consumers through rates. This will be determined by the OEB when CLLP brings the account forward for disposition in a future proceeding.

The effective date of the CTLRRDA will be established when CLLP advises the OEB that the CxL Assets are in service. The OEB is not approving any calculation of the revenue requirement to be recorded in the CTLRRDA at this time. The OEB anticipates that the revenue requirement for the CxL Assets will be considered in the proceeding for CLLP's first revenue requirement application, and that the recording of entries in the deferral account, including the appropriateness of interest charges, will also be considered in that proceeding. The prudence of the balance recorded in the account will be determined when the account is brought forward for disposition.

IT IS ORDERED THAT:

1. The application by Chatham x Lakeshore Limited Partnership for an electricity transmission licence is granted, on such conditions as are contained in the attached licence.
2. Hydro One Networks Inc. is granted leave to sell certain electricity transmission assets referred to as the Chatham to Lakeshore Transmission Line assets and described in greater detail in the Application, to Chatham x Lakeshore Limited Partnership.
3. The OEB approves the establishment by Chatham x Lakeshore Limited Partnership of the CxL Transmission Line Revenue Requirement Deferral Account, to record the

⁸ Applicants' EB-2024-0147 Joint Submission dated April 26, 2024, paragraph 1.6; EB-2022-0140 Decision and Order, page 19.

revenue requirement related to the Chatham to Lakeshore Transmission Line assets that are to be transferred from Hydro One Networks Inc. to Chatham x Lakeshore Limited Partnership for the Chatham to Lakeshore Transmission Line Project.

DATED at Toronto, July 25, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar