



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

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**DECISION AND ORDER**

**EB-2015-0216**

**UPPER CANADA TRANSMISSION INC.**

**Application for Approval of Schedule and Costs related to  
the Development of the East-West Tie Transmission Line**

**BEFORE:**      **Ken Quesnelle**  
Presiding Member and Vice-Chair

**Christine Long**  
Member

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**November 19, 2015**

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# 1 INTRODUCTION AND SUMMARY

This is the Decision of the Ontario Energy Board (OEB) in response to a request by Upper Canada Transmission Inc. (UCT) for approval to recover certain costs associated with its development of the East-West Tie project and to approve an updated development schedule.

In a decision dated August 7, 2013, the OEB designated UCT to develop the East-West Tie line. The designation gave UCT an economic incentive to develop the line. A development budget of \$22.4 million was approved to be recovered from ratepayers, even if the line was eventually not needed. In a further decision and order dated September 26, 2013, the OEB approved the development schedule filed by UCT which presumed that the line needed to be in service by the first half of 2018.

On September 30, 2014, the former Ontario Power Authority (OPA) wrote to the OEB recommending that the in-service date of 2018 be extended to 2020, and that the development schedule be reconsidered to recognize that the pace of mining and other infrastructure in Northwestern Ontario, which drove the need for the line, had slowed. The OEB directed UCT to work with the OPA to create revised development and reporting schedules.

UCT filed a request on May 15, 2015 that was updated on June 24, 2015, asking the OEB to approve a revised schedule for the development of the East-West Tie line consistent with a new in-service date of 2020 and development costs of \$20.37 million in addition to the approved development budget of \$22.4 million. UCT asked that the incremental development costs be approved on the same basis as the original development budget and that they be recovered even if the line is not needed.

The OEB denies the request for approval of the recovery of additional development costs. The OEB finds that the deferral account for the actual costs of development can continue to be used to record development costs incremental to the original approved budget for future review of the prudence and reasonableness of those costs.

## 2 BACKGROUND

The Ontario Government's Long Term Energy Plan of November 2010 identified five priority transmission projects, one of which was the reinforcement of the East-West Tie, an electricity transmission line running between Thunder Bay and Wawa, Ontario. On March 29, 2011, the Minister of Energy wrote to the OEB to express the government's interest in the OEB undertaking a designation process for selecting a transmitter to develop this line.

The OEB initiated the EB-2011-0140 proceeding as a competitive process to designate a transmitter for the East-West Tie project. The proceeding involved multiple competitive applicants. The transmitter that was eventually designated would receive an economic incentive to proceed with development of the transmission line: recovery of the costs to develop the line, up to the budgeted amount approved by the Board. The recovery of the budgeted development costs would be allowed even if the line was found to be unnecessary, provided that there was no fault on the part of the transmitter.

The August 2013 decision named UCT as the designated transmitter. The OEB found the development costs of \$22.4 million budgeted by UCT to be reasonable (Board-Approved costs). The August 2013 decision required UCT to report to the OEB on a monthly basis on the progress of the project. At the time of the decision, the presumed timing for filing a leave to construct application was early 2015.

In the OEB's September 2013 decision which approved the development schedule filed by UCT, the OEB also approved a Development Cost Deferral Account (DCDA) to be used by UCT to record the actual costs of development from the date of the August 2013 decision up to the date of filing of a leave to construct application. As part of its approval of the DCDA, the OEB approved the inclusion of sub-account (12) - a "contingency" account to allow the recording of engineering and design costs incurred in excess of the costs budgeted in UCT's designation application. The OEB also approved the inclusion of sub-account (13), an account to record costs incurred for development activities not identified in other sub-accounts. UCT was expected to file a proposal for the disposition of the DCDA at the time it applied for leave to construct the East-West Tie line.

As set out earlier, the former OPA wrote to the OEB on September 30, 2014 to recommend that the in-service date of 2018 be extended to 2020, and that the development schedule be reconsidered. The OPA also recommended that UCT consider a possible route through the Pukaskwa National Park and that the

environmental assessment and leave to construct applications be filed for approval sequentially, rather than in parallel.

In a letter dated October 29, 2014, the OEB directed UCT to work with the OPA to produce revised development and reporting schedules. The OEB required that a revised development schedule include, at a minimum: (a) the proposed in-service date for the line; (b) a revised development schedule, including past milestones achieved and future milestones with proposed completion dates; and (c) a proposal for the frequency of reporting to the OEB. UCT was also asked to consider the impact on costs of the revised development schedule.

In a letter dated December 19, 2014, UCT provided a new development schedule reflecting a proposed in-service date of December 2020, based on the OPA's most current information regarding need for the line. The schedule included both past milestones achieved and future milestones, with proposed completion dates, for development work on the project. UCT proposed a new target date of December 15, 2017 for filing a leave to construct application and stated that the establishment of a new target date for the leave to construct application would necessarily extend the development period for the East-West Tie project. UCT also proposed changing the frequency of reporting during the extended development period from monthly to quarterly as this would allow cost savings to be achieved without compromising transparency or timeliness of reporting.

UCT also stated that it would incur costs in excess of the Board-Approved Costs over the extended development period and said that it would seek approval for the recovery of these incremental costs.

On January 22, 2015 the OEB issued a decision which relieved UCT of the obligation to comply with three milestones in the existing schedule and reduced the frequency of reporting from monthly to quarterly. The OEB did not approve the development schedule due to the uncertainty of the routing of the East-West Tie line through the park. The OEB required the Independent Electricity System Operator (IESO)<sup>1</sup> to provide updates on the need for the East-West Tie on December 15 of 2015 and 2016, and at other times as required by the OEB.

The OEB also required UCT to answer several questions as part of its anticipated filing and to provide the following details if it intended to seek approval for recovery of development costs in addition to those included in the Board-Approved costs: (a) a

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<sup>1</sup> The OPA merged and amalgamated with the IESO on January 1, 2015 and is referred in this decision from this date on as the IESO.

breakdown of the incremental development costs by activity; (b) an explanation of the need for the incremental development costs; and (c) an indication of whether the incremental development costs were originally included in the budget for the construction phase of the project.

### 3 THE APPLICATION

On May 15, 2015, UCT responded to the OEB's January 2015 decision with a filing that was later updated on June 24, 2015.

In the May 15, 2015 filing, UCT asked the OEB to approve:

- a) A revised schedule for the development of the East-West Tie line consistent with a new in-service date of 2020, which is supported by the IESO; and
- b) Development costs of \$23.2 million in addition to the Board-Approved costs of \$22.4 million.

On June 1, 2015, UCT was notified by Parks Canada that access to the Pukaskwa National Park would not be allowed. Based on this information, UCT ceased all efforts to pursue authorization to study the park and removed the Park Study costs, amounting to \$2.9 million from the development budget. As a result, UCT submitted an updated development schedule and additional development costs of \$20.37 million in a filing dated June 24, 2015.

UCT broke down the additional development costs into the following categories:

- 1) Extension costs – activities to address the extension to the development period contemplated by the OPA's September 30, 2014 letter (\$8.80 million)
- 2) Budget Variance/Scope Change costs – activities that are either required as a result of project scope changes or that have increased materially in cost since the 2013 designation proceeding (\$8.61 million)
- 3) Phase Shift costs – activities initially planned for one project phase that have now moved into another project phase (processes involving the environmental assessment and land matters that would have occurred during the leave to construct phase that are now in the development phase) (\$1.0 million)
- 4) Contingency costs (for known risks such as variability in land acquisition; funding for additional events and investments into local communities; studies related to species at risk; additional administrative and management costs and unknown risks allocated to each work stream) (\$1.96 million)

UCT requested that these additional costs be approved for recovery from ratepayers in the same manner and on the same basis as the Board-Approved costs.

On July 9, 2015, the OEB issued an Invitation to Comment inviting the IESO, AltaLink Ontario LP (the designated runner-up in the competitive process) and OEB staff to comment on the May 15 and June 24 filings by UCT. Each of these parties filed submissions in response. Submissions were also made by the School Energy Coalition (SEC) and the Algoma Coalition.

The IESO submission supported the East-West Tie project and the continuation of the development work, noting that the revised schedule is reflective of the IESO's most current information regarding the need for the East-West Tie project. AltaLink Ontario LP submitted that while it is reasonable that the in-service delay will result in some measure of increased costs, without a detailed examination of the work and expenditures to date, it is difficult to precisely estimate the extent of these increases.

OEB staff submitted that the original approved development budget was found to be a reasonable incentive for the East-West Tie project and that the OEB should not commit further ratepayer funds at this time to the development of the line. OEB staff submitted in the alternative that if the OEB were to find that development costs related to the delay of the in-service date should be recoverable on the same basis as the Board-Approved costs, then costs in two of the categories can reasonably be considered to be related to the in-service delay: Category 1, Extension costs (\$8.80 million) and Category 3, Phase Shift costs (\$1.0 million). However, OEB staff noted that none of the costs had been subjected to a competitive process or otherwise tested.

SEC argued that the OEB has failed to give proper notice to affected parties and that no order can be made approving the relief sought by UCT without a hearing. The Algoma Coalition supported SEC's position.

UCT originally requested in its May 15, 2015 filing that the extended development period costs be approved "in the same manner, and on the same basis" as the Board-Approved costs and that the OEB is empowered to make such an order under the same authority that it exercised in making its determinations with respect to the Board-Approved costs.

In its reply submission, UCT proposed that in order to avoid the time and expense of additional process, it would be prepared to accept a compromise solution, if the OEB were to approve recovery of \$9.80 million (being the total of Extension and Phase Shift costs). UCT considered that a lengthy process to consider the requests made in its filings could jeopardize the in-service date of the East-West Tie Project.

## 4 CONCLUSION AND DECISION

### 4.1 Development Costs

The OEB denies the request for the recovery of additional development costs in the manner proposed by UCT. The OEB does not consider that any of the costs put forward by UCT as extended development period costs to be akin to the Board-Approved costs in such a way that would lead to an acceptance of them without further scrutiny of the prudence and reasonableness of these costs.

UCT argues that the costs should be approved in the same manner and on the same basis as the Board-Approved Costs. The manner in which the OEB approved the budgeted development costs cannot be replicated at this juncture. The OEB's process of establishing Decision Criteria in Phase One of the East-West Tie process and then undertaking a comparative analysis of submitted proposals by the applicants in Phase Two formed a comprehensive competitive process. The OEB relied on the business interests of those submitting proposals to determine the reasonableness of the cost levels. The anticipated costs that UCT has submitted are not defined within the same development cost elements as the original costs, nor are they subject to any competitive forces. In the OEB's view, prudence has not been determined in either the nature or the quantum of the costs.

At the time it applied for designation, UCT was aware of the limitations of the approval granted for recovery of development costs. The OEB, in its Phase 1 Decision and Order, stated that transmitters seeking designation should be aware that development costs in excess of budgeted, Board-Approved costs would not necessarily be recovered from ratepayers and would be subject to a prudence review, which will include consideration of the reasons for overages. The OEB also noted that the leave to construct proceeding would provide an opportunity for the OEB to assess the reasonableness of any deviations from the development budget and other aspects of the designated transmitter's plan. Based on this understanding, the applicants submitted their proposed budget for development costs as part of the Phase 2 designation process.

The OEB does not accept that development costs not anticipated as part of the original project premise are automatically afforded the same assurance of recovery as the originally budgeted development costs, absent any examination of the reasonableness of the costs and an evaluation of the expected assumption of normal business risks in determining what should be recovered from ratepayers.

The OEB remains of the view that the established parameters of the DCDA adequately facilitate the tracking of unanticipated costs for full review at a later date.

#### **4.2 Development Schedule and Reporting**

UCT proposed a new schedule for development work on the East-West Tie project in a letter to the OEB dated December 19, 2014. That schedule was updated in UCT's filings of May 15, 2015 and June 24, 2015. No person commenting on the application proposed any changes to the updated schedule. The IESO confirmed in its submission that the proposed development schedule aligns with the IESO's most current information with respect to the need for the line.

The OEB has reviewed the updated development schedule filed by UCT on June 24, 2015 and finds the proposed schedule acceptable. The OEB will require UCT to continue to report quarterly to the OEB, commencing on January 15, 2016.

## 5 ORDER

### The Ontario Energy Board orders that:

1. The Updated Extended Development Schedule filed by UCT on June 24, 2015 is approved and replaces the Revised Development Schedule attached at Appendix 1 to the September 2013 Order.
2. UCT is required to continue to report to the OEB quarterly on the matters as set out in the OEB's decision of January 22, 2015, commencing on January 15, 2016.

All filings to the OEB must quote file number EB-2015-0216 and be made electronically through the OEB's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/) in searchable/unrestricted PDF format. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

### ADDRESS

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**DATED** at Toronto, November 19, 2015

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary