



EB-2009-0072

EB-2009-0073

EB-2009-0075

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 Great Lakes Power
Limited under section 86 of the of the *Ontario Energy Board Act,*
1998 seeking leave to transfer its distribution system to Great
Lakes Power Distribution Inc.;

AND IN THE MATTER OF an application by Great Lakes Power
Distribution Inc. under section 57 of the *Ontario Energy Board*
Act, 1998 for an electricity distribution licence;

AND IN THE MATTER OF an application by Great Lakes Power
Limited under section 18 of the *Ontario Energy Board Act, 1998*
seeking leave to transfer its distribution rate order to Great
Lakes Power Distribution Inc.;

AND IN THE MATTER OF an application by Great Lakes Power
Transmission Inc. on behalf of Great Lakes Power Transmission
LP under section 74 of the *Ontario Energy Board Act, 1998* for a
licence amendment;

AND IN THE MATTER OF an application by Great Lakes Power
Limited under section 18 of the *Ontario Energy Board Act, 1998*
seeking leave to transfer its approved Customer Delivery Point
Performance Standards and its approved Customer
Connections Procedures to Great Lakes Power Transmission
LP.

BEFORE: Paul Vlahos
Presiding Member

Cynthia Chaplin
Member

Ken Quenselle
Member

DECISION AND ORDER

Great Lakes Power Limited ("GLPL"), Great Lakes Power Distribution Inc. ("GLPD") and Great Lakes Power Transmission Inc. ("GLPT") on behalf of Great Lakes Power Transmission LP ("GLPTLP") (together, the "Applicants") filed applications with the Ontario Energy Board (the "Board") dated March 6, 2009.

GLPL is a licensed transmitter, distributor and generator. Section 71 of the *Ontario Energy Board Act, 1998* (the "Act") states that a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity. Pursuant to section 5(4) of Ontario Regulation 161/99 - *Definitions and Exemptions* (made under the Act), GLPL was exempt until December 31, 2008 from section 71 of the Act and was permitted to carry on the activities of transmission and distribution together with generation within the same corporation. These applications were made in anticipation of the expiry of the exemption.

The Applications

GLPL applied for leave of the Board to sell all of its distribution assets to an affiliate, GLPD, under section 86(1)(a) of the Act. The Board assigned the application file number EB-2009-0073.

If the Board grants GLPL's application for leave to sell its distribution assets and if the transaction closes, GLPD will require a distribution licence. GLPD applied for an electricity distribution licence under section 57 of the Act. GLPL, a licensed distributor, filed an application with the Board under section 18 of the Act to transfer its current distribution rate order (EB-2007-0744) to GLPD. GLPL subsequently requested the cancellation of its electricity distribution licence (ED-2008-0343) pursuant to section 77(5) of the Act. The Board assigned application file number EB-2009-0072 to these matters.

GLPT on behalf of GLPTLP applied for a licence amendment to its electricity transmission licence (ET-2002-0247) to operate the transmission system under section 74 of the Act. GLPL applied for leave of the Board under section 18 of the

Act to transfer its approved Customer Delivery Point Performance Standards (EB-2006-0201) and its approved Customer Connection Procedures (EB-2006-0200) to GLPT. GLPL also requested that the Board cancel its transmission licence (ET-2008-0342) pursuant to section 77(5) of the Act. The Board assigned application file number EB-2009-0075 to these matters.

The Proceeding

In the interest of efficiency, the Board combined these applications pursuant to its power under section 21(5) of the Act. The Board issued a Notice of Application and Hearing on March 26, 2009. The Applicants served and published the Notice on April 9, 2009. Interested parties were given 21 days to provide written submissions on the applications to the Board. No submissions were received.

Board Findings

The full record of the proceeding is available for review at the Board's offices. While the Board has considered the full record, the Board has summarized and referred to those portions of the record that it considers necessary to provide context to its findings.

Leave to Sell Distribution Assets

Section 86(1)(a) of the Act states that no transmitter or distributor shall sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety without first obtaining an order from the Board granting leave.

In determining this application (EB-2009-0073), the Board is 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 found that the "no harm" test is the relevant test for the purposes of applications for leave to acquire shares or amalgamate under

section 86 of the Act. The Board finds that this test should also be applied to asset disposals under section 86(1)(a) of the Act. The “no harm” test consists of 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. Section 1 of the Act sets out the objectives of the Board in relation to electricity. The objectives are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
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.

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of book value of assets is not normally recoverable through rates. This position is in keeping with the “no harm” test.

In support of the section 86(1)(a) application, the Applicants have submitted that:

- the transaction is an internal reorganization;
- both GLPL and GLPD are indirectly controlled by Brookfield Asset Management Inc. and the distribution business will remain effectively under the control of Brookfield Asset Management Inc.;
- the management, employees and assets currently operating the distribution system for GLPL will carry on the same business within GLPD, thus ensuring that there will be no change in quality and reliability of service and that operational safety and system integrity are maintained;
- the transaction does not change economic efficiency or cost effectiveness from current levels;

- the transaction price is set equal to the net book value of the underlying assets;
- no expectation for future rate increases at this time;
- other than the transaction costs, no incremental costs will be incurred; and
- GLPL has applied to the Board for leave to transfer its current electricity distribution rate order (EB-2007-0744) to GLPD.

The Board accepts the evidence submitted by the Applicants and concludes that the proposed transaction will not have an adverse effect in terms of the factors identified in the Board's objectives under section 1 of the Act. The Board is satisfied that the application meets the "no harm" test and therefore approves the sale of GLPL's distribution assets to an affiliate, GLPD, under section 86(1)(a) of the Act.

Distribution Licensing Matters

As the Board is granting leave to GLPL to sell its distribution assets to GLPD, the Board finds it is in the public interest to:

- (a) grant an electricity distribution licence to GLPD; and
- (b) cancel GLPL's electricity distribution licence, ED-2008-0342,

subject to the following conditions:

- (a) the GLPD distribution licence and the GLPL licence cancellation will not be effective until the commercial transaction closes;
- (b) in order for the GLPD distribution licence and the GLPL licence cancellation to become effective, the commercial transaction must close on or before December 31, 2009; and
- (c) the Applicants must inform the Board when the commercial transaction closes.

The Board is aware of GLPL's outstanding appeal to the Ontario Superior Court of Justice on the Board's EB-2007-0744 Decision and Order, regarding GLPL's recovery of the balance in account 1574. GLPL has requested that any amendments to its rate order that may arise from this appeal be given effect even if

its rate order has already been transferred to GLPD. The Board accepts this request.

The Board finds that when the transaction closes, it is in the public interest to transfer GLPL's distribution rate order (EB-2007-0744) to GLPD.

Transmission Licensing Matters

GLPT, on behalf of GLPTLP, has requested an amendment to its electricity transmission licence to include GLPTLP as the operator. The transmission assets are currently operated on GLPTLP's behalf by GLPL under an OM&A agreement. To ensure its compliance with section 71 of the Act, GLPL plans to terminate this OM&A agreement. As such, GLPL has requested the cancellation of its transmission licence effective upon the closing of the distribution assets sale transaction.

The Board finds it is in the public's interest to:

- (a) amend GLPTLP's electricity transmission licence, ET-2002-0247, to include it as the operator; and
- (b) cancel GLPL's transmission licence, ET-2008-0342, upon the closing of the commercial transaction.

Under section 4.5.2 of the Board's Transmission System Code transmitters are required to develop performance standards at the customer delivery point level and to file those for approval by the Board. GLPL has applied for leave of the Board to transfer its approved Customer Delivery Point Performance Standards (EB-2006-0201) to GLPT. GLPL has also applied for leave of the Board to transfer its approved Customer Connection Process (EB-2006-0200) to GLPT.

The Board finds it is in the public interest to transfer the Customer Delivery Point Performance Standards and Customer Connection Procedures to GLPT.

THE BOARD ORDERS THAT:

1. Great Lakes Power Limited is granted leave to sell its distribution assets to Great Lakes Power Distribution Inc.
2. The Board's leave to sell Great Lakes Power Limited's distribution assets to Great Lakes Power Distribution Inc. shall expire on December 31, 2009. If the transaction has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.
3. The application for an electricity distribution licence by Great Lakes Power Distribution Inc. is granted, on such conditions as are contained in the attached licence.
4. Great Lakes Power Limited's electricity distribution licence, ED-2008-0343, is cancelled.
5. Great Lakes Power Limited's electricity distribution rate order, EB-2007-0744, is transferred to Great Lakes Power Distribution Limited, subject to any amendments that may arise from Great Lakes Power Limited appeal to the Ontario Superior Court of Justice (Court File No. 610/08).
6. Great Lakes Power Transmission LP's electricity transmission licence, ET-2002-0247, is amended to include Great Lakes Power Transmission LP as operator.
7. Great Lakes Power Limited's electricity transmission licence, ET-2008-0342, is cancelled.
8. Great Lakes Power Limited's Customer Delivery Point Performance Standards (EB-2006-0201) is transferred to Great Lakes Power Transmission Inc.
9. Great Lakes Power Limited's Customer Connection Procedures (EB-2006-0200) is transferred to Great Lakes Power Transmission Inc.
10. Great Lakes Power Limited shall pay the Board's costs of and incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, May 5, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary



Electricity Transmission Licence

ET-2007-0649

Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP

Valid Until

March 11, 2028

Original signed by

Kirsten Walli
Board Secretary
Ontario Energy Board
Date of Issuance: December 24, 2007
Effective Date: March 12, 2008
Date of Sch.1 Correction: March 13, 2008
Date of Amendment: November 19, 2008
Date of Amendment: May 5, 2009

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Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP
Electricity Transmission Licence ET-2007-0649

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Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP
Electricity Transmission Licence ET-2007-0649

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1 Definitions

In this Licence:

"Accounting Procedures Handbook" means the handbook, approved by the Board which specifies the accounting records, accounting principles and accounting separation standards to be followed by the Licensee;

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"Affiliate Relationships Code for Electricity Distributors and Transmitters" means the code, approved by the Board which, among other things, establishes the standards and conditions for the interaction between electricity distributors or transmitters and their respective affiliated companies;

"Board" means the Ontario Energy Board;

"Electricity Act" means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

"Licensee" means Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP

"Market Rules" means the rules made under section 32 of the Electricity Act;

"Performance Standards" means the performance targets for the distribution and connection activities of the Licensee as established by the Board in accordance with section 83 of the Act;

"Rate Order" means an Order or Orders of the Board establishing rates the Licensee is permitted to charge;

"transmission services" means services related to the transmission of electricity and the services the Board has required transmitters to carry out for which a charge or rate has been established in the Rate Order;

"Transmission System Code" means the code approved by the Board and in effect at the relevant time, which, among other things, establishes the obligations of a transmitter with respect to the services and terms of service to be offered to customers and provides minimum technical operating standards of transmission systems;

"wholesaler" means a person that purchases electricity or ancillary services in the IESO administered markets or directly from a generator or, a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person other than a consumer.

2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence to own and operate a transmission system consisting of the facilities described in Schedule 1 of this Licence, including all associated transmission equipment.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act and the Electricity Act and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Comply with Codes

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the “Codes”) approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board. Any exemptions granted to the Licensee are set out in Schedule 2 of this Licence. The following Codes apply to this Licence:
- a) the Affiliate Relationships Code for Electricity Distributors and Transmitters; and
 - b) the Transmission System Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

6 Requirement to Enter into an Operating Agreement

- 6.1 The Licensee shall enter into an agreement (“Operating Agreement”) with the IESO providing for the direction by the IESO of the operation of the Licensee’s transmission system. Following a request made by the IESO, the Licensee and the IESO shall enter into an Operating Agreement

within a period of 90 business days, unless extended with leave of the Board. The Operating Agreement shall be filed with the Board within ten (10) business days of its completion.

- 6.2 Where there is a dispute that cannot be resolved between the parties with respect to any of the terms and conditions of the Operating Agreement, the IESO or the Licensee may apply to the Board to determine the matter.

7 Obligation to Provide Non-discriminatory Access

- 7.1 The Licensee shall, upon the request of a consumer, generator, distributor or retailer, provide such consumer, generator, distributor or retailer, as the case may be, with access to the Licensee's transmission system and shall convey electricity on behalf of such consumer, generator, distributor or retailer in accordance with the terms of this Licence, the Transmission System Code and the Market Rules.

8 Obligation to Connect

- 8.1 If a request is made for connection to the Licensee's transmission system or for a change in the capacity of an existing connection, the Licensee shall respond to the request within 30 business days.
- 8.2 The Licensee shall process connection requests in accordance with published connection procedures and participate with the customer in the IESO's Connection Assessment and approval process in accordance with the Market Rules, its Rate Order(s) and the Transmission System Code.
- 8.3 An offer of connection shall be consistent with the terms of this Licence, the Market Rules, the Rate Order, and the Transmission System Code.
- 8.4 The terms of such offer to connect shall be fair and reasonable.
- 8.5 The Licensee shall not refuse to make an offer to connect unless it is permitted to do so by the Act or any Codes, standards or rules to which the Licensee is obligated to comply with as a condition of this Licence.

9 Obligation to Maintain System Integrity

- 9.1 The Licensee shall maintain its transmission system to the standards established in the Transmission System Code and Market Rules, and have regard to any other recognized industry operating or planning standards required by the Board.

10 Transmission Rates and Charges

- 10.1 The Licensee shall not charge for the connection of customers or the transmission of electricity except in accordance with the Licensee's Rate Order(s) as approved by the Board and the Transmission System Code

11 Separation of Business Activities

- 11.1 The Licensee shall keep financial records associated with transmitting electricity separate from its financial records associated with distributing electricity or other activities in accordance with the Accounting Procedures Handbook and as otherwise required by the Board.

12 Expansion of Transmission System

- 12.1 The Licensee shall not construct, expand or reinforce an electricity transmission system or make an interconnection except in accordance with the Act and Regulations, the Transmission System Code and the Market Rules.

13 Provision of Information to the Board

- 13.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 13.2 Without limiting the generality of paragraph 13.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) business days past the date upon which such change occurs.

14 Restrictions on Provision of Information

- 14.1 The Licensee shall not use information regarding a consumer, retailer, wholesaler or generator, obtained for one purpose for any other purpose without the written consent of the consumer, retailer, wholesaler or generator.
- 14.2 The Licensee shall not disclose information regarding a consumer, retailer, wholesaler or generator to any other party without the written consent of the consumer, retailer, wholesaler or generator, except where such information is required to be disclosed:
- a) to comply with any legislative or regulatory requirements, including the conditions of this Licence;
 - b) for billing, settlement or market operations purposes;
 - c) for law enforcement purposes; or
 - d) to a debt collection agency for the processing of past due accounts of the consumer, retailer, wholesaler or generator.
- 14.3 Information regarding consumers, retailers, wholesalers or generators may be disclosed where the information has been sufficiently aggregated such that their particular information cannot reasonably be identified.
- 14.4 The Licensee shall inform consumers, retailers, wholesalers and generators of the conditions under which their information may be released to a third party without their consent.
- 14.5 If the Licensee discloses information under this section, the Licensee shall ensure that the information is not be used for any other purpose except the purpose for which it was disclosed.

15 Term of Licence

- 15.1 The effective date of this Licence is March 12, 2008, and the Licence will expire on March 11, 2028. The term of this Licence may be extended by the Board.

16 Transfer of Licence

- 16.1 In accordance with subsection 18(2) of the Act, this Licence is not transferable or assignable without leave of the Board.

17 Amendment of Licence

- 17.1 The Board may amend this Licence in accordance with section 74 of the Act or section 38 of the Electricity Act.

18 Fees and Assessments

- 18.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

19 Communication

- 19.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 19.2 All official communication relating to this Licence shall be in writing.
- 19.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; and
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

20 Copies of the Licence

- 20.1 The Licensee shall:
- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
 - b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 SPECIFICATION OF TRANSMISSION FACILITIES

This Schedule specifies the facilities over which the Licensee is authorized to transmit electricity in accordance with paragraph 3 of this Licence.

1. Great Lakes Power Inc. on behalf of Great Lakes Power Transmission LP's transmission facilities consist of:
 - 318.25 circuit km of 230 kV line and associated equipment;
 - 232.37 circuit km of 115 kV line and associated equipment; and
 - 11 circuit km of 44 kV line and associated equipment which was deemed by the Board as serving a transmission function under section 84 of the Act.

SCHEDULE 2 LIST OF CODE EXEMPTIONS

This Schedule specifies any specific Code requirements from which the licensee has been exempted.