

May 21, 2010

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
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Toronto ON M4P 1E4

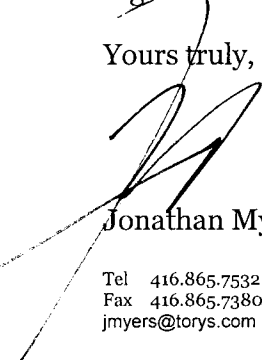
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Great Lakes Power Transmission LP - 2010 Rates (EB-2009-0408) -
Correction to Applicant Response to Board Staff Supplemental Interrogatory
#13(i)**

We are counsel to the applicant in the above-referenced proceeding. It has come to our attention that there is an inaccuracy in the applicant's response to Board Staff Supplemental Interrogatory #13(i), which was initially filed on April 9, 2010. Accordingly, we are hereby filing an amended response to correct the record in this proceeding. A copy of the revised response, together with a blackline comparison to the original, is attached.

Yours truly,



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Attachments

cc: N. Mikhail, Board Staff
All Intervenors
A. McPhee, GLPT
D. Fecteau, GLPT
C. Keizer, Torys LLP

13. Reference: S13.(1) Response to Board Staff Interrogatory 50

Preamble

Board Staff Interrogatory 50 asked if GLPT believed that there is a precedent in Ontario for its request to receive a tax proxy in the revenue requirement of a regulated entity that is not taxable and to state the precedent. The Response to Board Staff Interrogatory 50 stated that GLPT believed that there is no other regulated utility in Ontario that is a limited partnership and there is no precedent in Ontario.

That response also stated that as noted in Response to Board Staff Interrogatory 47 ii) (which referenced the GLPL Distribution decision [EB-2007-0744]):

“...the Board has established a tax allowance in an analogous circumstance of business divisions, which are in themselves not taxable entities.”

Board staff is not clear on why the Applicant is referring to the EB-2007-0744 decision as an “analogous circumstance” and indicating that a business division, such as GLPL’s Distribution division in EB-2007-0744, is not a taxable entity. Board staff is also unclear on this statement in light of references in Great Lakes Power Limited’s 2007 electricity distribution rate application, Reply Submission, June 2, 2008 [EB-2007-0744] which stated the following:

- Page 21 “The GLPL Distribution [Division] as a regulated entity creates a tax burden for GLPL Corporate.”
- Page 22 “GLPL’s distribution net income forms part of GLPL’s corporate net income and therefore forms part of GLPL’s corporate taxable income.”
- Page 24 “At issue is the manner in which GLPL Distribution accounts for and reports for tax purposes the revenue it earns for distributing electricity in a particular year. The accounting and reporting of revenues for income tax purposes must be determined. If in a particular year GLPL Distribution on a stand alone basis reports taxable income, then GLPL Distribution would be entitled to a tax allowance.”

Requests

- (i) With the above references to the EB-2007-0744 Reply Submission in mind, why does the Applicant believe that the EB-2007-0744 decision is an “analogous circumstance” to the Applicant’s circumstance, particularly since:
- a) the corporate structures of a division and a limited partnership are

different; and

- b) GLPL Distribution was established to be taxable in EB-2007-0744 and in this proceeding the Applicant has established that GLPT LP is not taxable. (Reference Exh.1/Tab3/Schl/GLPT LP's 2008 audited financial statements/Note 13 on page 13: "...the Partnership is not subject to income taxation...")

Please explain why the Applicant agrees or disagrees with these statements.

Responses

- (i) While GLPT agrees that divisions of a corporation have fundamental differences with partnerships in terms of form, there are in substance sufficient similarities between the structures to inform the Board on the equitable treatment of partnerships in the absence of definitive regulations on the matter.

In particular, as a division of a corporation, GLPL's Distribution business was not in and of itself a standalone legal person. This parallels GLPT's legal status as a limited partnership. Moreover, the income earned by GLPL's Distribution division was taxed in the hands of the corporate entity that owns the division: Great Lakes Power Limited. Similarly, GLPT LP's income is taxed in the hands of the two corporate entities that have partnership interests (i.e., each has an undivided interest in the limited partnership's assets and liabilities): BIH (Canada) and GLPT GP Inc. In substance, GLPL's Distribution division and GLPT LP have much in common in terms of taxation.

In this context, the Board in its decision adopted the Reply Submission of GLPL dated June 2, 2008 [EB-2007-0744], which sets out facts that are analogous to the case at hand. To illustrate, the quotations from the Reply Submission have been revised below by inserting the names of GLPT, BIH Inc. and GLP Inc., as appropriate. This illustration demonstrates that the principles being expressed remain equally true if the references to GLPL and its distribution division are applied instead to GLPT and its partners:

Page 21 "[GLPT LP] as a regulated entity creates a tax burden for [BIH and GLPT GP Inc.].

Page 22 "[GLPT LP's] net income forms a part of [BIH and GLPT GP Inc.'s] corporate net income and therefore forms part of [BIH and GLPT GP Inc.'s] corporate taxable income."

Page 24 "At issue is the manner in which [GLPT LP] accounts for and reports for tax

purposes the revenue it earns for [transmitting] electricity in a particular year. The accounting and reporting of revenues for income tax purposes must be determined. If in a particular year [GLPT LP] on a standalone basis reports taxable income, then [GLPT LP] would be entitled to a tax allowance.”

Rather than GLPL Distribution having been established to be taxable in EB-2007-0744, it was established that the taxable income arising from GLPL Distribution's operations were relevant to determining the tax costs to be included in GLPL Distribution's regulatory revenue requirement. This is a subtle but important distinction because the taxable income arising from GLPT's transmission operations are relevant to the current rate application in much the same way.

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Board Staff Interrogatory 50 asked if GLPT believed that there is a precedent in Ontario for its request to receive a tax proxy in the revenue requirement of a regulated entity that is not taxable and to state the precedent. The Response to Board Staff Interrogatory 50 stated that GLPT believed that there is no other regulated utility in Ontario that is a limited partnership and there is no precedent in Ontario.

That response also stated that as noted in Response to Board Staff Interrogatory 47 ii) (which referenced the GLPL Distribution decision [EB-2007-0744]):

“...the Board has established a tax allowance in an analogous circumstance of business divisions, which are in themselves not taxable entities.”

Board staff is not clear on why the Applicant is referring to the EB-2007-0744 decision as an “analogous circumstance” and indicating that a business division, such as GLPL’s Distribution division in EB-2007-0744, is not a taxable entity. Board staff is also unclear on this statement in light of references in Great Lakes Power Limited’s 2007 electricity distribution rate application, Reply Submission, June 2, 2008 [EB-2007-0744] which stated the following:

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- Page 24 “At issue is the manner in which GLPL Distribution accounts for and reports for tax purposes the revenue it earns for distributing electricity in a particular year. The accounting and reporting of revenues for income tax purposes must be determined. If in a particular year GLPL Distribution on a stand alone basis reports taxable income, then GLPL Distribution would be entitled to a tax allowance.”

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- a) the corporate structures of a division and a limited partnership are different; and

[Revised May 21, 2010]

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In particular, as a division of a corporation, GLPL's Distribution business was not in and of itself a standalone legal person. This parallels GLPT's legal status as a limited partnership. Moreover, the income earned by GLPL's Distribution division was taxed in the hands of the corporate entity that owns the division: Great Lakes Power Limited. Similarly, GLPT LP's income is taxed in the hands of the two corporate entities that have partnership interests (i.e., each has an undivided interest in the limited partnership's assets and liabilities): BIH (Canada) and GLPT GP Inc. In substance, GLPL's Distribution division and GLPT LP have much in common in terms of taxation.

In this context, the ~~quotations cited by the Board from~~ **in its decision adopted** the Reply Submission **of GLPL** dated June 2, 2008 [EB-2007-0744] (~~pages 21, 22 and 24~~), **which sets out facts that** are analogous to the case at hand. To illustrate, the quotations **from the Reply Submission** have been revised below by inserting the names of GLPT LP, BIH **Inc.** and GLPT GP **GLP** Inc., as appropriate. This illustration demonstrates that the principles being expressed remain equally true if the references to GLPL and its distribution division are applied instead to GLPT and its partners:

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in a particular year [GLPT LP] on a standalone basis reports taxable income, then [GLPT LP] would be entitled to a tax allowance.”

Rather than GLPL Distribution having been established to be taxable in EB-2007-0744, it was established that the taxable income arising from GLPL Distribution’s operations were relevant to determining the tax costs to be included in GLPL Distribution’s regulatory revenue requirement. This is a subtle but important distinction because the taxable income arising from GLPT’s transmission operations are relevant to the current rate application in much the same way.