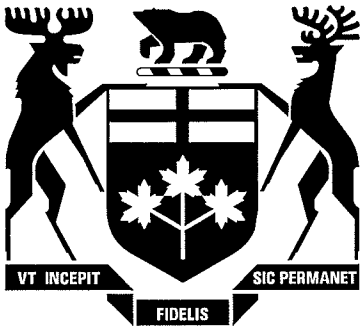

Ontario

REDACTED

BOARD STAFF SUBMISSION
[Confidential Submission Filed June 15, 2010]

Great Lakes Power Transmission LP

Transmission Rate Application (Test Year 2010)

EB-2009-0408

June 22, 2010

APPLICATION AND PROCEEDING

Great Lakes Power Transmission Inc. ("GLPT Inc.") on behalf of Great Lakes Power Transmission LP ("GLPT") filed an application with the Ontario Energy Board (the "Board") seeking approval for changes to the uniform provincial transmission rates that GLPT (and other transmitters) charge for electricity transmission, to be effective January 1, 2010. GLPT submitted an application for 2010 electricity transmission rates on November 30, 2009 based on a 2010 forward test year.

GLPT is engaged in the transmission of electricity to the area adjacent to Sault Ste. Marie, Ontario.[1] GLPT Inc. is the general partner of GLPT with a 0.01% interest in GLPT.[2] Brookfield Infrastructure Holdings (Canada) Inc. ("BIH") is the limited partner with a 99.99% interest in GLPT[3]. GLPT Inc. is a wholly owned subsidiary of BIH.[4] BIH is ultimately owned through a further series of limited partnerships within the Brookfield family of companies of which 60% is owned by a Brookfield Infrastructure Partners L.P.[5], which is a Bermuda based limited partnership[6] whose partnership units are listed on the New York and Toronto stock exchanges.

The parties to the proceeding filed a proposed settlement agreement on May 17, 2010. The parties reached agreement on all issues with one exception. The Board accepted the settlement agreement in its decision dated May 25, 2010. The remaining issue concerned whether GLPT is entitled to recover an income tax allowance of $1,729,806 for the 2010 Test Year. The amount of income tax allowance for inclusion in the revenue requirement for the 2010 Test Year was not settled and was the subject of an oral hearing on June 3, 2010.

With respect to the remaining income tax issue, GLPT filed responses to two rounds of interrogatories, followed by a Technical Conference that took place on April 14, 2010, where GLPT filed further evidence.

In response to an SEC Motion filed on May 12, 2010, the Board held a Motion Day hearing on May 27, 2010, during which an Undertaking (JX.1)[7] was given by GLPT. The Board issued its Motion Decision and Order on May 28, 2010, and

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[1] Exh. 1/Tab 3/Sch. 1/ GLPT LP's 2008 audited financial statements /Note 1 on page 6
[2] GLPT LP Factum May 25, 2010 page 2, paragraph 5
[3] GLPT LP Factum May 25, 2010 page 2, paragraph 5
[4] Exh. 4/Tab 3/Sch. 2/Pg 2, lines 11-12
[5] Tr. June 3, 2010 pg 51, lines 6-8
[6] GLPT's response to Board staff supplementary interrogatory 15 (i), where the web page was provided as follows: **http://www.brookfieldinfrastructure.com/ir_tax.html**
[7] Undertaking JX.1 required the Applicant "To advise whether it is possible, and if so advise the accounting treatment for the net position of the tax loss."

an oral hearing was held on June 3, 2010. At the conclusion of the oral hearing the Board set out a schedule for filing arguments.

2010 TEST YEAR TAX ALLOWANCE

Background

The two partners that form the GLPT limited partnership are the general partner (GLPT Inc. with a 0.01% interest) and the limited partner (BIH with a 99.99% interest)[8]. GLPT, by virtue of being a limited partnership, is itself not subject to tax[9], does not pay tax, and does not file tax returns. Rather, the partners of GLPT report their proportionate shares of taxable partnership income from GLPT and file tax returns as corporations with the Canada Revenue Agency, which also administers Ontario corporate tax on behalf of the province.

While it did file corporate tax returns, the limited partner of GLPT, BIH, did not itself pay any tax in 2007, 2008, or 2009. This circumstance arose because BIH holds a partnership interest in two limited partnerships, Islands Timberlands LP ("Island Timberlands") and GLPT.[10] GLPT has stated that losses for tax purposes from the non-regulated partnership, Island Timberlands, were used in the BIH corporate returns to offset taxable income from the regulated partnership, GLPT.[11] The result of this offset was that BIH paid no tax in 2007, 2008 or 2009.[12] [redacted]

GLPT has applied for an income tax allowance in 2010 test year rates in the amount of $1,729,806.

The purpose of this submission is to enumerate options for the Board to consider in deciding the issue of an appropriate regulatory income tax allowance, if any, to be included in the 2010 test year base transmission rates. The circumstances of this case are more complex than would be the case for a typical regulated utility. The regulated entity requesting the income tax allowance, GLPT, is a limited partnership that by its nature does not pay any tax to either the Ontario provincial government or the Canadian federal government.

Three Options

There are three options that may be considered by the Board in deciding the tax allowance issue:

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[8] GLPT LP Factum May 25, 2010 page 2, paragraph 5
[9] Exh. 1/Tab 3/Sch. 1/ GLPT LP's 2008 audited financial statements /Note 13 on page 13
[10] GLPT LP Factum May 25, 2010 page 2, paragraph 7
[11] GLPT LP Factum May 25, 2010 page 3, paragraph 9
[12] GLPT LP Factum May 25, 2010 page 3, paragraph 9
[redacted]

(I). The requested income tax allowance should not be approved;or
(II). The full amount of the requested income tax allowance should be approved; or
(III). A portion of the requested income tax allowance should be approved.

Board Staff's submission examines these three options and the evidence presented in this case in an effort to assist the Board in considering whether the issue before it may be decided by simply applying existing precedent in Ontario or whether the present case poses a unique situation that may be distinguished from the other cases.

Section (I) which deals with Option 1 is relatively lengthy because the details of the applicable references and cases are set out in this section. Applicable references and cases described at length in Section (I) are referenced directly in Sections (II) and (III) without restatement.

(I) Option 1: The requested income tax allowance should not be approved

Stand Alone Principle Applied to GLPT

GLPT witnesses stated that, being a partnership, GLPT itself does not pay tax or incur tax costs[14]. This was confirmed by the Applicant in the oral hearing[15].

Generally accepted regulatory practice indicates that if costs are not being prudently incurred by an applicant itself, then the applicant should not receive any benefits of such notional costs as are proposed by the Applicant in this case for an income tax allowance.

The Board may wish to consider whether ratepayers should be required to pay for a tax allowance in rates [redacted]. A strict application of the stand alone principle would involve looking exclusively at GLPT which does not pay any tax to the Ontario or federal government by virtue of being a limited partnership. Accordingly, since GLPT is the Applicant in this proceeding, carries on the transmission business and it is not a taxable entity, on a strict application of the stand alone principle the Board could find that GLPT is not entitled to recover an income tax allowance in rates.

However, there are other considerations raised in this proceeding.

The parties acknowledge that the Board has not previously addressed the taxation of applicants that are limited partnerships where the tax burden, if any, is

[14] Technical Conference Transcript, April 14, page 43, lines 2 -6 , oral hearing, June 3, 2010, pages 39-40
[15] Transcript , oral hearing, June 3, 2010, pages 39-40

borne by a party[16] other than the applicant. GLPT stated that there is no other regulated utility in Ontario that is a limited partnership.[17]

The Board's decision in this regard therefore requires considering other situations that are potentially analogous (i.e., the divisional structure analogy), relevant precedent in other jurisdictions and how regulatory principles should be applied. As well, the Board's decision should be made with an understanding of the potential implications for other potential applicants and the potential implications for other aspects of public policy, such as (in this instance) taxation policy.

The Applicant argues that GLPT is akin to a division of a corporation and that in circumstances involving a regulated and a non-regulated division in the same corporation there is precedent for applying the stand-alone principle to the divisions to establish that unregulated taxable losses of one division should not be used to offset regulated taxable income of another division to the benefit of the regulated entity. Board staff acknowledges that this Board has so applied the stand-alone principle in cases of divisions of a corporation. However, as discussed further herein, the Board should not rely heavily on those decisions because the divisional model is no longer utilized by Ontario electricity companies.

Succeeding sections discuss relevant precedent in other jurisdictions and how regulatory principles should be applied. Finally, implications of the Board's decision are explored for other potential applicants and, while taxation policy is not the Board's purview, awareness of the implications may benefit the Board in its decision making.

Rate Payers Interest and Appropriateness of Analogy to Divisional Structure

Given that there is no Ontario precedent for inclusion of a tax provision in revenue requirement for limited partnerships, Board staff submits that there are two matters which the Board should consider in deciding whether to accept the sufficiency of the analogy to divisions of a corporation as presented by the applicant: 1) consideration of ratepayer interests; and 2) the appropriateness of a divisional structure in the current electricity market context.

Consideration of Ratepayer Interests

The first question is whether the ownership structure protects the interests of electricity ratepayers sufficiently.

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[16] *The Income Tax Act* effectively apportions the Taxable Income or Loss to the partners of a given limited partnership

[17] Response to Board Staff Interrogatory 50 i)

Board staff submits that amounts of taxable income arising from transmission operations in GLPT, to the extent that they do not attract actual tax payments within BIH will likely find their way up from BIH through the hierarchy of limited partnerships evident in the corporate organization chart[18] to Brookfield Infrastructure Partners LP (BIP), a Bermuda-based limited partnership without requiring payment of any additional corporations tax. Therefore, the public unit holders of BIP are supposed to bear the tax burden but, according to BIP's public declarations[19] , the unit holders are likely non-taxable trusts (i.e., RRSPs, TFSAs, IRAs, pension plans) in Canada or the United States, or in jurisdictions other than Canada or the United States where their tax status is unknown. There was no evidence indicating that the unit holders are tax paying corporations.

Board staff points out that witnesses for the applicant were not prepared to discuss any tax planning that may have taken place at the time the corporate organization was developed. The witnesses stated that:

> *"there was no formal analysis performed of the alternative structures and the reasons for consideration and rejection of alternatives was implicit rather than explicit."*[20]

Hence, it is not apparent from the evidentiary record that there is any compelling reason for choosing the type of structure that the applicant chose, other than to maximize the utility of the losses of Island Timberlands.

Furthermore, GLPT's witnesses did not provide a clear indication as to what the appropriate value is for the profit or loss situation associated with Island Timberlands. The witnesses for the Applicant have agreed that the taxable losses in Island Timberlands have value[21]. However, the witness qualified this by stating that there are five different ways to view the incomes of Island Timberlands, some showing profit and some showing loss[22]. While multiple views may be possible, Board staff submits that the only view of relevance is the determination of income for tax purposes, since the amount of tax to be paid is the matter at issue.

The Board may be concerned that BIH has chosen to utilize a structure that recovers an amount for income tax from ratepayers (through GLPT) and may pay little or none of it to a Canadian or other taxing authority. If the Board so concludes, it might choose to set aside the divisional analogy of the stand-alone principle submitted by the applicant, conclude that tax payments will likely not

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[18] Pre-filed Evidence, Exhibit 1/Tab 1/Schedule 12/page 5 , Chart 1 of Appendix "B" – Corporate Entities Relationship Chart/

[19] GLPT's response to Board staff supplementary interrogatory 15 (i), where the web page was provided as follows: **http://www.brookfieldinfrastructure.com/ir_tax.html**

[20] Response to Board Staff Supplemental Interrogatory 10

[21] oral hearing Transcript, June 3, 2010, pages 35-37

[22] oral hearing Transcript, June 3, 2010, pages 17 - 18

arise in BIH in 2010 and disallow the inclusion of the $1.7 million tax provision in rates for the 2010 tax year.

Appropriateness of Divisional Analogy

Board staff submits that a corporate divisional structure is different from a group of limited partnerships. In a divisional structure the losses of a division are not limited as they are in a "limited partnership". The extent of limitation in a limited partnership is to the amount invested, whereas in a divisional structure there is no limit to the liability of the corporation with respect to the actions or profits and losses of its various divisions. Accordingly, the analogy to a divisional form of organization in this case is relatively weak because the approach to taking risk and achieving target returns is significantly different.[23]

GLPT suggests the Board must be guided by Hahne & Aliff which states that,

> *"The application in ratemaking of tax savings resulting from losses of non-regulated affiliates would, therefore, create a windfall benefit to the utility consumer by transferring to the consumer the benefit of the tax relief intended for the owners of the losing affiliate."*[24]

Board staff acknowledges the applicability of the stand-alone principle in a typical affiliate structure because the affiliates are typically corporations and therefore distinct tax-paying entities.

However, the applicant and its parent companies chose to operate their transmission and timber business through LPs that they claim are very similar to the divisions through which their predecessor, Great Lakes Power Limited, operated its electricity transmission, distribution and generation businesses.

The applicant relies heavily on the Board's decision in its distribution rate application which considered whether losses from one of GLPL's divisions should be applied offset tax payable arising from its regulated distribution division. Applying the stand-alone principle the Board found that tax losses from GLPL's unregulated business did not have to be taken into account when setting rates for the regulated distribution service.[25]

However, Board staff points out that the GLPL distribution case was a unique circumstance in that GLPL was still operating as an integrated utility, which it was not permitted to do after December 31, 2008.

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[23] oral hearing Transcript, June 3, 2010, pages 40-41, lines 19-28, line 1 (40)
[24] Hahne and Aliff, Part V, Chapter 17, Section 17.05[2]
[25] *Great Lakes Power Limited,* EB-2007-0744, October 30, 2008 at page 14

The transmission business carried on by GLPT was previously a division of GLPL which, unlike the municipal electric utilities (MEUs),[26] was not required to corporatize, nor was it required to comply with section 71 of the *OEB Act* until after December 31, 2008.[27] Accordingly, after December 31, 2008 GLPL was required to separate and restructure its divisions into separate businesses and comply with section 71 of the *OEB Act*.

Section 71 of the *OEB Act, 1998,* requires distributors and transmitters to *not* carry on any activity other than distribution or transmission, except through an affiliate.[28]

In Board staff's view it is clear from the legislation and the expiry of the exemption for GLPL that it was not intended for electricity distribution, transmission, generation or retailing to be carried on as 'divisions' of a corporation. The Board's decision in the GLPL distribution case, on which GLPT relies in this case, was based on unique circumstances (ie. the divisional structure) that are no longer part of the electricity landscape in Ontario.

GLPT is the only limited partnership to date within the group of gas and electricity entities rate-regulated by the Ontario Energy Board.

GLPT relies heavily on the decision in the distribution case as 'precedent' in this proceeding, analogizing the divisional structure in former GLPL to the limited partnerships of the Brookfield family of companies. However, Board staff points out that companies in the electricity sector are no longer permitted to operate under a divisional model.

Thus the Board should not place emphasis on the GLPL distribution decision as a precedent in deciding this application. Further, to the extent that the limited partnership model permits an entity to structure its tax affairs in a way that is virtually identical to what it was previously permitted in a divisional organization,

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[26] On the breakup of Ontario Hydro, former municipal electric utilities (MEUs) were required pursuant to the *Electricity Act, 1998,* to convert to business corporations to carry on the business of distribution, transmission, generation or retailing of electricity, as set out in section 142(2), and to do so within 2 years of section 142 coming into force.

[27] O.Reg. 161/99 (Definitions and Exemptions) states in section 5(4):

(4) Section 71 of the Act does not apply to Cornwall Street Railway Light & Power Company Limited or to Great Lakes Power Limited. O. Reg. 20/02, s. 3; O. Reg. 72/02, s. 5.

(5) Subsection (4) does not apply after December 31, 2008. O. Reg. 20/02, s. 3.

[28] *Ontario Energy Board Act, 1998*, S.O. 1998, CHAPTER 15, SCHEDULE B ("*OEB Act*") :

Restriction on business activity

71. (1) Subject to subsection 70 (9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity. 2004, c. 23, Sched. B, s. 12.

an entity may seek to accomplish indirectly what it is no longer permitted to do directly.

Corporations by their nature do not provide a means for transferring the corporations tax obligation up the ownership hierarchy as do limited partnerships. Thus Corporations do not provide the opportunity to apply losses in the same fashion as is possible in a divisional or limited partnership form of organization.

Board staff respectfully submits that the Board should exercise caution in applying the stand alone principle in this case in the way it did in the GLPL distribution case as it could result in sanctioning a structure that could be a *de facto* divisional organization and no longer permitted.

In summary, Board staff submits that the Board needs to satisfy itself about whether the choice of organizational structure has adequately considered the interests of rate payers and consider the suitability of the GLPL distribution precedent. Board staff acknowledges that the Applicant is entitled to take what actions it can for good tax planning. However, the Board is entitled to adequate assurance that a cost it grants for recovery in rates will ultimately be incurred and paid.

Precedent in Other Jurisdictions – Finding a Payer of Income Tax

It is useful to examine relevant precedents in other jurisdictions, given that there is no direct precedent in Ontario for the inclusion of a tax provision in the revenue requirement of an applicant that is a limited partnership and therefore not itself a tax payer. The most closely comparable circumstance involving a limited partnership is the *AltaLink* case and discussed in Board staff's factum on the SEC motion[29]

Board staff notes that in the *AltaLink* case the ownership structure is directly analogous to the ownership structure in the GLPT case. In the AltaLink case the first taxable level in the hierarchy was the four partners invested in AltaLink Investments LP, and they are at the level equivalent to BIH, being the first potentially taxable level up the chain in this proceeding. This is evident because every other level in between the LP and the taxable owners in the AltaLink case involves limited partnerships which by their definition are not tax paying entities[30].

In the *AltaLink* case the AEUB did allow some provisions for tax allowance but there are two notable aspects of the AEUB's decision in that regard:

- First, the AEUB looked vertically upward through the corporate structure until it found an entity paying corporations tax upon which to base its

[29] AltaLink Management Ltd. And TransAlta Utilities Corporation , AEUB Decision 2003-061, August 3, 2003 ("*AltaLink*") and Board staff Factum, Tabs 4 -6
[30] Board Staff Factum, Tab 5

decision to allow the tax provision in the utility. It found three of the four owners of the limited partnership to be tax paying corporations and the fourth to be a tax exempt pension fund. It allowed a tax recovery from utility customers based on the proportionate ownership interest of the three tax paying partners and excluded the 25% interest of the pension fund because it was tax exempt; and

- Secondly, the amount of tax provision recovered from utility customers was conditionally based on estimated taxes paid by the taxable corporations that were owners in proportion to their ownership interest but subject to firming up based on actual amounts paid or payable.

The first aspect of the *AltaLink* case described above could be helpful to the Board in this case as it shows that the regulator may look several levels up in the limited partnership ownership structure until it finds a tax paying corporation and on that basis grant a tax allowance recoverable in rates.

In the SEC motion decision, the Board agreed with GLPT that it was not necessary to look beyond BIH to determine which entity pays taxes, since the panel "already has on record the tax position for the partners both historically and in the test year."[31] GLPT also noted in evidence with respect to taxable corporations that, "[T]he Board cannot look past a corporation to the ultimate owner of the corporation because the corporation is [a] separate and distinct entity in law."[32] Board staff submits that in this case the Board may need to go beyond finding the first corporation in the ownership hierarchy to find any owner that will or could reasonably be expected to pay corporations tax. The issue in this case is the payment of corporations tax and Board staff submits that the Board need not be restricted by the ownership structure.

In the *AltaLink* case, three of the four partners were payers of income tax and would in fact pay tax on income from their partnership income. In the GLPT case, the analogous tax paying entity is BIH and the "*central question*" is, [redacted] should it be granted a tax allowance recoverable from ratepayers?

At the Motion Hearing, GLPT referred the Board to a number of prior decisions of the Board[34] which it believed carried precedential value proving that it was not necessary to incur the tax cost to recover it from ratepayers, and that in essence the Board has already ruled on this matter. However, none of these Decisions address a business arrangement which involved limited partnerships being allowed to recover a cost from ratepayers that will not be paid.

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[31] Decision on Motion, EB-2009-0408, May 28, 2010, page 5
[32] Response to Board Staff Supplemental Interrogatory #15.
[redacted]
[34] Decision on Motion, page 4, para 3

In the GLPT case the applicant has asserted that its parent one level up, BIH, is a tax paying corporation and asked the Board to consider the tax question at the BIH level. The parties all seem prepared to consider the tax question at the BIH level. .

With regard to the "*central question*" referenced above, Board staff submits that the Board will need to consider whether the fact that BIH is a corporation and completes a corporations tax return is sufficient to consider it equivalent to one of the tax paying entities in the *AltaLink* case. Alternately, the Board may consider it more akin to the exempt entity (a pension trust) that was disallowed in the tax provision calculation for *AltaLink*.

The *AltaLink* case is instructive in the matter of the quantum of the tax paid as well. The AEUB was not satisfied to grant a tax provision merely because it found entities in the ownership hierarchy that completed a corporations tax return, but required such entities to provide independent evidence of actual taxes paid. In the GLPT case, BIH has completed a corporations tax return, [redacted]. Strict application of the *AltaLink* precedent would therefore indicate that the applicant's request should be denied.

[redacted]

Application of Regulatory Principles

Reasonable and Prudently Incurred Costs

In the *AltaLink* case, the AEUB indicated that its requirement that an actual amount of corporations tax be paid was based on the generally accepted regulatory principle that a cost must be reasonable and prudently incurred for it to be recovered in rates[35].

In the GLPT case, it is clear that the corporation, BIH, is a tax payer that completes a tax return. It is also clear that BIH to date has paid no taxes in 2007, 2008 and 2009 [redacted].

No reference has been made to any case that goes beyond the *AltaLink* situation where the owners of a limited partnership have been granted a tax provision in

[35] AEUB Transmission Tariff Decision 2003-061, August 3, 2003, p.84, last para- Re AltaLink Management Ltd.& AEUB's Review and Variance of Decision 2003-061, February 16, 2005, p.7, para 3

[redacted]

rates and that have applied losses from an unregulated business [redacted]

Board staff suggests that, if the Board finds that there is no reasonable prospect that corporations tax will be payable by BIH, it should also note that there is no identifiable corporations tax payable further up in the ownership hierarchy.

Ultimate Point at Issue for the Board

Whether the Board considers the divisional analogy or the *AltaLink* example precedent, Board staff submits that the question ultimately focuses on BIH and the application of taxable losses from an unregulated business to taxable income in a regulated business. [redacted]

(II) Option 2: The requested income tax allowance should be approved

The Board may consider that the circumstances in Ontario differ from the circumstances in the *AltaLink* case. The Board may consider that it is sufficient for BIH to be a corporation that files a tax return and not require actual payment of an amount of tax on the grounds that the AltaLink situation did not have to address the question of application of losses. The Board could determine that the application of losses in the GLPT case is a pure application of the stand alone principle where regulated incomes should be considered on their own merit and include a tax provision without consideration of application of losses arising in an unregulated business.

The Board could consider that the divisional analogy is appropriate in this case to allow the tax provision through applying the stand alone principle as was applied in the Great Lakes Power Distribution case.

Implications

Board staff recognizes that it is not within this Board's jurisdiction to engage in policy related to federal or provincial income tax leakage. However, Board staff considers it important for the Board to be informed of the implications of options it has before it. There are several tax policy implications of allowing the tax provision in rates in a case where the tax may not actually be paid.

- [redacted]

[redacted] As an aside the effect of removing the provision from revenue does not ultimately remove the tax from a tax return. It merely reduces the amount of taxable income otherwise generated such that funds are not available from ratepayers to pay amounts that will not materialize.

- Tax will not necessarily ever be paid by a corporation, or if paid, paid at an indeterminate date, in an indeterminate amount and in an indeterminate jurisdiction by virtue of the nature and circumstances of the unit holders of the Bermuda-based partnership that ultimately controls GLPT.

Board staff also notes that the federal minister of finance in 2006 changed the tax rules to prevent tax leakage similar to that which appears to occur in this case in the circumstance of income trusts by imposing a 34% tax on distributions from income trusts[37].

(III) Option 3: A portion of the requested income tax allowance should be approved

GLPT indicated that if ratepayers do not bear a cost, they are not entitled to the tax benefit associated with the costs.[38] GLPT submitted that GLPT "bears" a tax cost because its owner, BIH, file a corporations tax return and is able to offset the taxable incomes arising from GLPT with taxable losses from another business that is unregulated. GLPT stated that the application of tax savings resulting from the losses in a non-regulated business would create a windfall benefit for ratepayers by transferring to the ratepayer the benefit of the tax relief intended for the owners of the losing business.[39]

[redacted] SEC suggests that either of the two other alternatives could be seen as unfair to one side or the other but that if two entities have come together to create a benefit, then it should be shared[42].

The Board may wish to consider whether ratepayers are entitled to some benefit, since Island Timberlands and GLPT have come together to create a benefit and

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[37] Board staff interrogatories, filed on February 17, 2010, Attachment "A" containing the Statement by the Honourable Jim Flaherty, Minister of Finance dated October 31, 2006

[38] Motion Hearing Transcript May 27, 2010, page 33, lines 20-22

[39] GLPT LP Factum May 25, 2010 page 7, paragraph 20

[redacted]

[42] Motion Hearing Transcript May 27, 2010, page 19, lines 1-8

the Board may contemplate the sharing of the benefit. As such, the Board may wish to consider approving some portion of the income tax allowance, and disallowing some portion.

GLPT stated and the parties agree that there is no other regulated utility in Ontario that is a limited partnership.[43] Thus it is recognized there is no precedent in Ontario for a regulated limited partnership to receive an income tax allowance in rates for taxes that may never be paid.

This unique situation may enable the Board to consider, in the special circumstances in this case, a sharing of the income tax allowance between ratepayers and GLPT as an appropriate solution to the issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

[43] Response to Board Staff Interrogatory 50 i)