

# OGILVY RENAULT

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Toronto, November 21, 2007

## **BY COURIER**

Ontario Energy Board  
Suite 2700  
2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Attention: Ms Kirsten Walli, Board Secretary

Dear Ms. Walli:

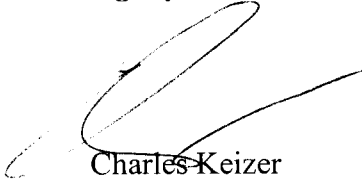
**RE: Applications to Transfer**  
**Board File No. EB-2007-0647, 0649, 0650, 0651 and 0652**

Please find enclosed seven (7) copies of the Final Submissions of Great Lakes Power Limited ("GLPL"), Great Lakes Power Transmission LP ("GLPTLP") and Great Lakes Power Transmission Inc. ("GLPT") for the above-referenced proceedings. An electronic copy of these submissions have been filed with the Board and all participants in this proceeding via e-mail.

Should you have any questions or concerns with respect to the foregoing, please contact me directly.

Yours very truly,

**Ogilvy Renault LLP**



Charles Keizer

CK/rd

Enclosures

cc: All Participants (via e-mail)

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**EB-2007-0647**  
**EB-2007-0649**  
**EB-2007-0650**  
**EB-2007-0651**  
**EB-2007-0652**

## **ONTARIO ENERGY BOARD**

**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 *Ontario Energy Board Act, 1998* seeking leave to transfer its transmission system to Great Lakes Power Transmission LP;

**AND IN THE MATTER OF** an application by Great Lakes Power Limited under section 60 of the *Ontario Energy Board Act, 1998* for an electricity transmission 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 transmission rate order to Great Lakes Power Transmission LP;

**AND IN THE MATTER OF** an application by Great Lakes Power Limited 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 leave to construct order to Great Lakes Power Transmission LP;

## **APPLICANTS' FINAL SUBMISSIONS**

## **1.0 INTRODUCTION**

1. These are the submissions of Great Lakes Power Limited ("GLPL"), Great Lakes Power Transmission Inc. ("GLPT"), and Great Lakes Power Transmission LP ("GLPTLP") (collectively, the "Applicants") in respect of their applications in EB-2007-0647, EB-2007-0649, EB-2007-0650, EB-2007-0651, and EB-2007-0652 (the "Applications"). The Applicants submit that the re-organization, as described below, is in the public interest and the Ontario Energy Board (the "Board") should grant the Applications.

## **2.0 THE APPLICATIONS**

2. GLPL proposes to transfer all of its transmission facilities and any related assets, rights and obligations in respect of the transmission business (the "Transmission Facilities") to a newly formed affiliated entity of Brookfield Asset Management Inc. ("BAM"), GLPTLP, an Ontario limited partnership (collectively the "Transaction"). GLPL will remain a licensed transmitter and, pursuant to an Operations, Maintenance and Administration Agreement with GLPTLP (the "OM&A Agreement"), will continue to operate the Transmission Facilities.
3. To give effect to the Transaction, the following orders are sought:
  - (i) Pursuant to Section 86(1) of the *Ontario Energy Board Act, 1998* (the "OEB Act"), GLPL seeks an Order granting leave to transfer the Transmission Facilities to GLPTLP.
  - (ii) Pursuant to Section 57 of the OEB Act, GLPT on behalf of GLPTLP seeks an Order granting it a license to own and operate the Transmission Facilities.
  - (iii) Pursuant to Section 74 of the OEB Act, GLPL seeks an Order amending its current transmission licence (ET-2002-0247), permitting it to "own and operate" the Transmission Facilities, to a licence to "operate" the Transmission Facilities. GLPL requests that the Board issue an Order making the requested amendment effective upon the date of transfer of the Transmission Facilities from GLPL to GLPTLP.

- (iv) Pursuant to Section 18 of the OEB Act, GLPL seeks an Order granting leave to transfer its transmission rate orders dated October 17, 2007 and December 8, 2005 to GLPTLP.
- (v) Because upon the transfer of the Transmission Facilities to GLPTLP, GLPTLP will assume all rights and obligations of GLPL in respect of the Transmission Facilities, it is intended that GLPTLP will become responsible for fulfilling any outstanding conditions prescribed in Board Order RP-2003-0120/EB-2003-0162 which provided GLPL with leave to construct a transmission reinforcement project. Meeting some of those conditions will occur after the date of the proposed Transaction. Therefore, GLPL seeks an Order to transfer the Order granting leave to construct to GLPTLP for the purposes of allowing GLPTLP to comply with those conditions in place of GLPL and to seek to recover as part of GLPTLP's next rate filing any costs associated with satisfying those conditions.

### **3.0 THE NO HARM TEST**

- 4. The proposed Transaction will satisfy the Board's Section 86 "no harm test" for the following reasons:
  - (a) there is effectively no change of control from an organizational perspective (i.e. this is an internal reorganization);
  - (b) the transfer of the Transmission Facilities is rate neutral; and
  - (c) the transfer of the Transmission Facilities is neutral from an operational perspective.
- 5. Each of these reasons is explained below.

#### **3.1 Internal Reorganization**

- 6. As described above, GLPL is currently controlled by Brookfield Power Inc. which is in turn controlled by BAM. As a result of the Transaction, GLPTLP will be under the

indirect control of BAM. Therefore, the Transaction in question is not a transfer of control of the transmission assets.

### **3.2 Rate Neutrality**

7. As set out at Exhibit E, Tab 1, Schedule 1 of the pre-filed evidence, GLPL seeks leave to transfer its current transmission rate order to GLPTLP. The current rate order of GLPL is set out in the pre-filed evidence of the Applicants at Exhibit E, Tab 1, Schedule 2. Pursuant to the OM&A Agreement, GLPTLP will incur costs in respect of operations, maintenance and administration. These costs will be derived in the same manner in which the costs related to transmission were allocated within GLPL in GLPL's last transmission rate proceeding. GLPTLP will be responsible for those costs in the same manner as GLPL. As part of the settlement agreement resulting in GLPL's transmission rate order EB-2005-0241, GLPL had agreed to file with the Board a transmission rate application on or before December 8, 2008. The settlement agreement is set out in the Applicants' pre-filed evidence at Exhibit E, Tab 1, Schedule 3. Upon the transfer of the rate order, GLPTLP will assume this obligation and will file a transmission rate application on or before December 8, 2008.
8. It is expected there will be no significant incremental costs arising because of the Transaction. To become compliant with Section 71, there will be transactional costs that GLPTLP will seek to capitalize at its next rates case. However, the amount of these costs are expected to be such that any rate impact would be minimal.

### **3.3 Operational Neutrality**

9. GLPL, as agent for GLPTLP, will continue to fulfill all operational procedures and requirements arising from (i) its and GLPTLP's transmission licence, (ii) any applicable Board code and (iii) the Market Rules.
10. There will be no change in reliability or quality of service for the transmission customers connected to the Transmission Facilities as GLPL will continue to be responsible for operation, maintenance and administration on the same basis as it is currently.

11. Further, as was indicated in Exhibit A, Tab 1, Schedule 3 of the pre-filed evidence, the Transaction will allow GLPL and GLPTLP to continue to take advantage of efficiencies first recognized by GLPL from operating distribution and transmission activities together.

#### **4.0 Timing Of Approvals**

12. In order to complete certain elements of the Transaction, the transfer of the Transmission Facilities will not occur immediately upon the granting of the Section 86 approval. Various transactional documents and steps must first be finalized and the application before the IESO to register GLPTLP as a market participant must be completed. Further, the IESO requires certain lead time in order to effect any changes to its settlement system to account for a transfer of the rate order. This expected delay was taken into account within the Applicants' requests before the Board.
13. The amendment of GLPL's license to recognize GLPL as operator of the Transmission Facilities and not as owner can not occur until after the Transmission Facilities have been transferred to GLPTLP otherwise GLPL would be owning the Transmission Facilities without a proper license to do so. Accordingly, GLPL requested that the license amendment application should be granted upon the date of transfer of the Transmission Facilities to GLPTLP at Exhibit A, Tab 1, Schedule 4 of the pre-filed evidence.
14. Similarly, the transfer of the current transmission rate order, the former transmission rate order (and settlement agreement), and the transfer of the leave to construct decision and must also be effective upon the date of transfer, since prior to the transfer date GLPTLP would not own transmission assets and would not be properly entitled to charge and receive a transmission rate or to fulfill any conditions under the leave to construct order.
15. However, the issuance of the GLPTLP license to own and operate the Transmission Facilities could occur as of the date of the Section 86(1) approval. This would permit GLPTLP to have a license to own and operate a transmission system at the time of the transfer of the Transmission Facilities from GLPL to GLPTLP.
16. Therefore, the Applicants respectfully submit that the Board grant the Applications in this case in the following manner:

- Grant the Section 86(1) leave to transfer the Transmission Facilities to GLPTLP as of the date the decision is made;
- Grant GLPTLP a license to own and operate the Transmission Facilities as of the date of the Section 86(1) decision; and
- Grant the GLPL license amendment, the transfer of the current transmission rate order, the transfer of the former transmission rate order (and settlement agreement), and the transfer of the leave to construct decision, effective as of the date of the transfer of the Transmission Facilities from GLPL to GLPTLP.

## **PART II – RESPONSE TO INTERVENOR SUBMISSIONS**

### **5.0 RESPONSE TO PWU SUBMISSION**

17. In its submissions in this case, the PWU referred to the Board's decision in EB-2006-0189/EB-2006-0200 (the "Decision") in which the Board held that Section 71 prohibits a transmitter from constructing customer-owned connection facilities. Specifically, the Board held:

The effect of the transmitter competing in the marketplace for the construction of customer-owned connection facilities is to raise the spectre of potential cross-subsidization of these unregulated activities by the regulated transmission revenue requirement. Such projects fall outside the transmitter's scope, and are therefore subject to the prohibition contained in Section 71.

18. That part of the decision focussed wholly on the construction of customer-owned connection facilities in the context of the Transmission System Code. The Applicants' respectfully submit that the PWU has taken the Board's decision out of context and that it has no application in this case.
19. Section 57(b) of the OEB Act requires one to hold a license to "own or operate" a transmission system. As indicated in Exhibit A, Tab 1, Schedule 3 of the Applicants' pre-

filed evidence and interrogatory responses, GLPL proposes to operate GLPTLP's transmission facilities pursuant to its existing license conditions that have already been considered and approved by the Board. The legislation provides the ability for a transmitter to operate and not own a transmission system.

20. The PWU asserts that a transmitter licensed to own facilities may not contract out the operation of those facilities to another licensed transmitter. The logical extension of this assertion is that a transmitter must both own and operate a transmission system to be compliant with Section 71. This is clearly incorrect since Section 57 requires a transmission license to own or operate a transmission system, and the definition of "transmitter" in Section 56 means a person who owns or operates a transmission system. Clearly, a licensed transmitter can operate a transmission system independent of ownership of the transmission facilities. The Applicants respectfully submit that such an interpretation would render Section 57(b) partially useless and therefore renders an absurd result in respect of Section 57(b).
21. Further, the Applicants submit that, as GLPL is exempt from Section 71 of the OEB Act, the issue raised by the PWU in its submission is moot. Given that the interpretation of Section 71 has no effect on GLPL, this proceeding should not be delayed unnecessarily while awaiting the outcome of EB-2006-0189/EB-2006-0200.
22. The Applicants respectfully submit that the PWU has, by applying the Decision out of context, created an issue where one does not exist. It is the Applicants' submission that the Decision has nothing to do with the relationship between transmitters, but rather relates only to the Board's interpretation of Section 71 in the context of customer-owned facilities. As such, the Board should not consider the Decision in this proceeding or delay its decision in this proceeding pending its conclusion in another matter.

## **6.0 RESPONSE TO VECC SUBMISSION**

23. VECC did not raise any objection with respect to the completion of the Transaction and the approvals sought by the Applicants.



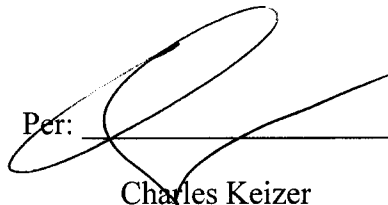
24. With respect to VECC's submission relating to the Affiliate Relationships Code ("ARC"), the Applicants submit that GLPTLP will comply with the ARC. In addition, the Applicants submit that, as is normally the case, the issue of any transfer pricing will be dealt with in GLPTLP's rate filing pursuant to the Board's filing guidelines. However, the Applicants note that the structure whereby GLPL remains a licensed transmitter and provides services to GLPTLP is in place to permit the continued efficiencies of using GLPL's workforce and distribution and transmission assets efficiently in the service of the same geographic area (see Exhibit A, Tab 1, Schedule 3 of the pre-filed evidence). This arrangement avoids the duplication of staff and assets to operate facilities located in the same proximity.
25. GLPTLP disagrees with the submission of VECC with respect to the rate treatment of transaction costs that have been and will be incurred. GLPTLP intends to deal with this issue in its next rate filing. GLPTLP agrees with VECC that this matter is best dealt with in the next transmission rate proceeding.

## 7.0 CONCLUSION

26. For the reasons set out above, the Applicants submit that the re-organization is in the public interest and the Board should grant the Applications.

All of which is respectively submitted this 21st day of November, 2007.

**OGILVY RENAULT, counsel for GREAT  
LAKES POWER LIMITED, GREAT LAKES  
POWER TRANSMISSION INC. and GREAT  
LAKES POWER TRANSMISSION LP**

Per:  \_\_\_\_\_  
Charles Keizer