



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

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

**BEFORE:** Cynthia Chaplin  
Presiding Member

Paul Sommerville  
Member

Paul Vlahos  
Member

## DECISION AND ORDER

Great Lakes Power Limited ("GLPL") and Great Lakes Power Transmission Inc. ("GLPT") on behalf of Great Lakes Power Transmission LP ("GLPTLP") (altogether, the "Applicants") filed applications with the Ontario Energy Board (the "Board") dated June 4, 2007.

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. However, section 5(4) of Ontario Regulation 161/99 – *Definitions and Exemptions* (made under the Act) states that section 71 of the Act does not apply to GLPL. This exemption lasts until December 31, 2008. The Applicants have stated that the applications filed on June 4, 2007 are the first steps by GLPL to restructure itself in anticipation of the expiry of the exemption.

### **The Applications**

GLPL applied for leave of the Board to sell its transmission system to its affiliate, GLPTLP, under section 86(1)(a) of the Act. GLPL stated that it will remain as operator of the transmission system but not the owner. The Board assigned the application file number EB-2007-0647.

If the Board grants GLPL's application for leave to sell its transmission system and if the transaction closes, the new owner will require a transmission licence. GLPT on behalf of GLPTLP applied for an electricity transmission licence under section 60 of the Act. The Board assigned the application file number EB-2007-0649.

GLPL, a licensed transmitter, filed an application with the Board under section 74 of the Act to amend its transmission licence. If the Board grants GLPL's application for leave to transfer its transmission system and if the transaction closes, GLPL will require a licence amendment to its transmission licence, ET-2002-0247, to remove the owner qualification. The Board assigned the application file number EB-2007-0651.

GLPL applied for leave of the Board under section 18 of the Act to transfer its current transmission rate order dated December 8, 2005 to GLPTLP. GLPL also applied to transfer its leave to construct order (RP-2003-0120/EB-2003-0162) to GLPTLP as the

date for meeting some of the conditions of the leave to construct will be after the proposed transfer date of the transmission system. The Applicants did not seek any changes to the current rate order or the leave to construct order as a result of the transfer to GLPTLP should the transfer be approved. The Board assigned the applications file numbers EB-2007-0650 and EB-2007-0652 respectively. On November 7, 2007, the Applicants filed an amendment requesting transfer of the continuing obligations of the rate order dated December 8, 2005, as well as new obligations from the rate order dated October 17, 2007 which accommodates the new approved revenue requirement for Hydro One Networks Inc.

### **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 June 28, 2007. The Applicants served and published the notice on July 17, 2007. The Independent Electricity System Operator, the Vulnerable Energy Consumers Coalition ("VECC") and the Power Workers Union ("PWU") were granted intervenor status in the proceeding. Algoma Steel Inc. and the Algoma Coalition were granted observer status. No letters of comment were received. VECC requested and was granted cost eligibility in this proceeding.

Procedural Order #1 was issued on August 23, 2007. VECC, PWU and Board staff filed written interrogatories with the Board on September 6 and 7, 2007. The Applicants filed their responses to the interrogatories with the Board on September 17, 2007. While intervenors and Board staff were provided with the opportunity to file evidence by September 24, 2007, no evidence was filed.

In response to the notice served and published on July 17, 2007, PWU requested an oral hearing. Procedural Order #2 was issued on October 10, 2007, providing parties with an opportunity to file a submission stating why an oral hearing was required, identifying the issues they would pursue at an oral hearing, and why these issues could not be dealt with through written submissions. PWU submitted, on October 15, 2007, that the services proposed by GLPL for GLPTLP could be contrary to section 71 of the Act. The Applicants responded on October 17, 2007, and submitted that since GLPL is exempt from section 71 of the Act, the issue raised by PWU is moot. The Board found that an oral hearing was not required to deal with the issues identified by PWU but noted that after written submissions were received, and if further evidence or clarification was required, an oral hearing could be convened at that point. It was later

decided that no oral hearing would be required in this proceeding and it proceed by way of a written hearing.

Procedural Order #3, which was issued on October 24, 2007, provided intervenors and Board staff with an opportunity to file written submissions by November 7, 2007. Submissions were received from VECC and PWU. In its submission, VECC stated that it takes no issue with the specific transactions proposed. VECC did raise two issues but requested that the Board defer direction or decision on these matters to a future proceeding. The issues are the applicability of section 2.3.2 of the Affiliate Relationships Code regarding transfer pricing to GLPL and GLPTLP and the suggestion by the Applicants that the transaction costs incurred by GLPTLP be recovered through transmission rates. PWU submitted that the Board should consider the Connection Procedures Decision (EB-2006-0189 and EB-2006-0200) with respect to the interpretation of section 71 of the Act and GLPL's proposed provision of services to GLPTLP directly and not through an affiliate.

The Applicants filed a reply submission on November 21, 2007. With respect to the VECC submission relating to the Affiliate Relationships Code, the Applicants submitted that GLPTLP will comply with said code. The Applicants disagreed with the submission of VECC with respect to rate treatment of transaction costs but agreed that the matter is best dealt with in the next transmission rate proceeding. The Applicants submitted that the section of the Connection Procedures Decision referred to by PWU focused wholly on the construction of customer-owned connection facilities in the context of the Transmission System Code and had no application in this case. The Applicants also submitted that since GLPL is exempt from section 71 of the Act, the issue raised by PWU is moot.

In the reply submission of November 21, 2007, the Applicants provided a suggested timing for the approvals sought in its application. The requested timing of the approvals appeared to result in having two licensed owners and operators at the same time for the same facilities. Procedural Order #4, issued on December 3, 2007, directed the Applicants to provide a rationale for two parties being licensed as owner and operator at the same time for the same transmission facilities and/or provide an alternate timing for the approvals. Intervenors were also given the opportunity to make submissions on the issue, but none were filed.

On December 10, 2007, the Applicants proposed that upon Board approval of the transfer, the GLPL transmission licence be amended to remove the owner qualification

and the new transmission licence for the owner qualification be issued to GLPT on behalf of GLPTLP. In both cases the licences would include a definition for “commercial transaction” and include licensing conditions that would apply before and after the commercial transaction. The Applicants referred to the methodology used by the Board in EB-2006-0175, Abitibi-Consolidated Company of Canada.

Since GLPTLP’s activities are not expected to include transmission system operation at this time, the Applicants filed, on December 13, 2007, amendments to their original application in order to now request only an owner qualification for GLPTLP.

### **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 helpful to provide context to its findings.

#### **Leave to Sell a Distribution System**

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, 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 acquisitions 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 also guided by the combined MAADs proceeding with respect to purchase price. 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 GLPTLP are indirectly controlled by Brookfield Asset Management Inc. and the transmission business will remain effectively under the control of Brookfield Asset Management Inc.;
- the transaction is expected to be rate neutral with no harm to ratepayers;
- GLPL has applied to the Board for leave to transfer its transmission rate orders dated December 8, 2005 and October 17, 2007 to GLPTLP;
- there will be a transactional cost that GLPTLP will seek to capitalize at its next rates case;
- they expect that any rate impact would be minimal;
- the transaction price is not significantly more than the book value of the underlying assets;
- the transaction does not change economic efficiency or cost effectiveness from current levels;
- GLPL will continue to operate the transmission system for GLPTLP pursuant to an operations, maintenance and administration agreement;
- there will be no change in reliability or quality of service for the transmission customers connected to the transmission facilities; and
- GLPL will continue to ensure operational safety and system integrity.

VECC has made submissions regarding the transfer pricing provisions of the Affiliate Relationships Code and the recovery of the transmission system transfer transaction cost. The Board agrees these are appropriately matters for a transmission rate order application and subsequent proceeding and that they do not need to be addressed in this proceeding.

PWU has submitted that the Board should consider the Connection Procedures Decision in deciding this transmission system transfer application. The Connection Procedures Decision interpretation of section 71 of the Act is related to the construction of customer-owned connection facilities and is not applicable to this application; this was recently confirmed in the Board's decision on the motion to review the Connections Procedure Decision. Furthermore, it is not necessary to interpret section 71 of the Act as it applies to GLPL because GLPL is currently exempt from that section of the Act. GLPL acknowledges that further steps will need to be taken to bring it into compliance with section 71 by the time the exemption expires. The Board can address the issue of the interpretation of section 71 of the Act in relation to GLPL as and when it becomes necessary.

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 it.

#### Licensing Matters

Given that the Board is granting leave to GLPL sell its transmission system to GLPTLP, the Board finds that it is in the public interest to:

- (a) grant an electricity transmission licence with an owner qualification to GLPT on behalf of GLPTLP; and
- (b) amend GLPL's transmission licence, ET-2002-0247, to remove the owner qualification,

subject to the following conditions:

- (a) the GLPTLP transmission licence and the GLPL licence amendment will not be effective until the commercial transaction closes;
- (b) in order for the GLPTLP transmission licence and the GLPL licence amendment to become effective, the commercial transaction must close on or before December 31, 2008; and
- (c) the Applicants must inform the Board when the commercial transaction closes;

### Transfer of Orders

Given that the Board is granting leave to GLPL sell its transmission system to GLPTLP, the Board finds that when the transaction closes, it is in the public interest to:

- transfer GLPL's transmission rate order dated October 17, 2007 and remaining obligations of GLPL's transmission rate order dated December 8, 2005 and agreements contained in the Transmission Rate Settlement Agreement to GLPTLP; and
- transfer GLPL's leave to construct order from RP-2003-0120/EB-2003-0162 to GLPTLP. GLPTLP will then be responsible for fulfilling all outstanding conditions in the leave to construct order.

### Cost Awards

The Board will issue a separate decision and order on cost awards; however, the Board will follow the procedure set out below for the cost awards process.

### **THE BOARD ORDERS THAT:**

1. Great Lakes Power Limited is granted leave to sell its transmission system to Great Lakes Power Transmission LP.
2. The Board's leave to sell Great Lakes Power Limited's transmission system to Great Lakes Power Transmission LP shall expire on December 31, 2008. 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. Great Lakes Power Limited's electricity transmission licence ET-2002-0247 is amended in accordance with the attached licence.
4. The application for an electricity transmission licence by Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP is granted, on such conditions as are contained in the attached licence.
5. Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP shall advise the Board of the date of the



completion of the commercial transaction regarding the transmission system described in Schedule 1 of the attached licences.

6. Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP shall apply to amend their transmission licences within 3 months of the completion of the commercial transaction to reflect the actual date of the commercial transaction.
7. Once the notice referred to in number 5 above is provided to the Board, the Board will transfer Great Lakes Power Limited's current transmission rate order dated October 17, 2007 and remaining obligations of Great Lakes Power Limited's transmission rate order dated December 8, 2005 and agreements contained in the Transmission Rate Settlement Agreement to Great Lakes Power Transmission LP (i.e., the authorizations contained in the rate orders are transferred from Great Lakes Power Limited to Great Lakes Power Transmission LP).
8. Once the notice referred to in number 5 above is provided to the Board, the Board will transfer the decision and order in RP-2003-0120/EB-2003-0162 dated March 31, 2004, which granted leave to construct to Great Lakes Power Limited, to Great Lakes Power Transmission LP (i.e., the authorizations contained in the decision and order are transferred from Great Lakes Power Limited to Great Lakes Power Transmission LP).
9. The Vulnerable Energy Consumers Coalition shall file its cost claim by January 25, 2008. The cost claim shall be filed with the Board and served on each of Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP. The cost claims must be done in accordance with section 10 of the Board's Practice Direction on Cost Awards.
10. Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP will have until February 8, 2008 to object to any aspects of the costs claimed by the Vulnerable Energy Consumers Coalition. A copy of the objection must be filed with the Board and must be served on the Vulnerable Energy Consumers Coalition.
11. The Vulnerable Energy Consumers Coalition will have until February 15, 2008 to make a reply submission as to why its costs should be allowed. Again a copy of

the submission must be filed with the Board and a copy served on each of Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP.

12. Great Lakes Power Limited and Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

ISSUED at Toronto, December 24, 2007

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary