



EB-2012-0056

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 the Corporation of the Town of Collingwood and PowerStream Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire shares of Collingwood Utilities Services Corporation.

BEFORE: Paul Sommerville
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER JULY 12, 2012

Background

On March 9, 2012, the Corporation of the Town of Collingwood and Collingwood Utility Services Corporation (respectively referred to as “the Town”, and “Holdco”) filed an application with the Board under section 86 (2)(b) of the Act, seeking a Board order granting leave for the Town to sell, and for PowerStream Inc. (“PowerStream”), to purchase a 50% interest in Holdco (the “Proposed Transaction”).

The Town is the sole owner of Holdco, and Holdco is the owner of COLLUS Power Corp., a licensed electricity distributor. PowerStream, as a generator and co-applicant in this matter, also notified the Board of its intent to acquire an interest in a distribution system through the purchase of Holdco, as contemplated by section 81 of the Act.

The Town intends to sell a 50% non-controlling interest in Holdco to PowerStream through the sale of 2,550,820 common shares of Holdco for a cash consideration of \$8 million. The Town submitted that the application meets the Board's "no harm" test and that there will be no increase in rates or degradation of the quality of the service provided to the ratepayers of COLLUS Power Corp. PowerStream stated that there are no costs of the Proposed Transaction for the customers of PowerStream as there will be no impact on distribution rates or service levels. The Town indicated that the Proposed Transaction will not have an adverse affect relative to the Board's statutory objectives. The Town also stated that there is no intention to harmonize rates as a result of the Proposed Transaction. The applicants indicated that COLLUS Power Corp. and PowerStream would continue to operate as individual corporations under their current distribution licences.

The Town also provided the following information in support of its application:

- The incremental costs for the Proposed Transaction are not material and will not be recovered from PowerStream's electricity customers;
- COLLUS Power will have access to PowerStream's expertise and financial resources which will provide benefits to the COLLUS Power ratepayers;
- Each party to the transaction will have the ability to appoint 50% of the Board of Directors and the Chair does not possess a second vote in the event of a tie, therefore should the Proposed Transaction be completed neither party will have control of COLLUS Power;
- No distribution system assets of COLLUS Power will be sold or transferred;
- The Proposed Transaction will not change the deemed capital structure used to set rates and will not require additional capital expenditures.

The Proceeding

On April 25, 2012 the Board issued its Notice of Application and Written Hearing. No parties responded to the Notice requesting intervenor status. Veridian Connections Inc. requested and was granted observer status in the proceeding. On May 16, 2012 the Board issued Procedural Order No. 1 providing time for interrogatories and submissions on the application evidence. On May 28, 2012 Board staff filed interrogatories on the application. On June 6, 2012 the applicants responded to Board staff's interrogatories.

After considering the responses to interrogatories, Board staff filed a submission on the application and stated it had no issues with the Proposed Transaction. The Town responded to the submission and submitted that the Proposed Transaction meets the “no harm” test and should be approved by the Board. The applicants requested the Board approve the Proposed Transaction at the earliest opportunity so they could proceed with the close of the transaction.

Board Findings

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

In determining whether to approve the section 86 application, the Board has been 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 ruled that the “no harm” test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 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. The factors to be considered are those set out in section 1 of the Act, namely:

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

Based on the evidence in this proceeding, the Board concludes that the Proposed Transaction is not likely to have an overall adverse effect in terms of the factors identified in the Board’s objectives in section 1 of the Act. Accordingly, the Board finds that the Proposed Transaction reasonably meets the “no harm” test.

In determining whether to approve the section 81 notice, the Board is guided by section 82(2)(a) of the Act states that the Board shall approve a proposal under section 81 if it

determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market. In response to Board staff interrogatories the applicant stated that the Proposed Transaction and the fact that PowerStream, as a generator, will be acquiring an interest in a distribution system will not have an affect on the competitive market. The applicant also stated the Proposed Transaction will not impact open access or the ability of generators to access the distribution systems.

The Board finds PowerStream's Notice as contemplated under section 81 of the Act will not adversely affect the development of the competitive generation market and is approved.

THE BOARD ORDERS THAT:

1. The Corporation of the Town of Collingwood is hereby granted leave to sell 50% share of Collingwood Utility Services Corporation to PowerStream Inc. pursuant to section 86 of the Act.
2. The Board's leave for PowerStream Inc. to purchase shares of Collingwood Utility Services Corporation shall expire 12 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application for leave to acquire shares will be required in order for the transaction to proceed.
3. The Corporation of the Town of Collingwood shall promptly notify the Board of the completion of the transaction.
4. PowerStream's Notice as contemplated under section 81 of the Act is approved.

DATED at Toronto, July 12, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary