



**EB-2012-0355**

**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  
Niagara Power Inc. under section 86 of the *Ontario  
Energy Board Act*, 1998 seeking leave to acquire a  
50% share of Niagara West Transformation  
Corporation.

**BEFORE:** Paula Conboy  
Presiding Member

Christine Long  
Member

## **DECISION AND ORDER DECEMBER 6, 2012**

### **Background**

On August 24, 2012 Niagara Power Inc. ("NPI") applied to the Board for leave to purchase a 50% share of Niagara West Transformation Corporation ("NWTC") from Peninsula West Power Inc. ("PWPI") under section 86(2)(a) of the *Ontario Energy Board Act*, 1998. NWTC is a licensed electricity transmitter (ET-2010-0294) that owns and operates a transformer station that serves two licensed electricity distributors: Grimsby Power Inc., and Niagara Peninsula Energy Inc. NPI and PWPI are currently each 50% owners of NWTC.

NPI stated the proposed purchase price is for a fair market value of \$1 million. The proposed transaction will result in NPI holding 100% control of the transmission assets of NWTC. The applicant submitted that there will be no impact with respect to rates and

no impact on the adequacy, reliability and quality of the service provided to its customers. NPI also stated that there is no intention to harmonize rates with the uniform transmission rate as a result of the proposed transaction.

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

- The proposed purchase price is \$150,000 above net book value which is characterized as Goodwill and not recoverable through rates.
- The proposed transaction will not affect the operation of NWTC and will have no impact on future NWTC rate applications;
- No capital expenditures are proposed as a result of the proposed transaction.
- The only incremental transaction costs will be for legal expenses related to the purchase of the shares.

## **The Proceeding**

On September 27, 2012 the Board issued its Notice of Application and Written Hearing for the proceeding. No parties responded to the Notice requesting intervenor status. On October 18, 2012 the Board issued Procedural Order No. 1 providing time for interrogatories and submissions on the application evidence. On October 25, 2012 Board staff filed interrogatories on the application. On November 5, 2012 the applicant 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. NPI did not respond to Board staff's submission.

## **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.

**THE BOARD ORDERS THAT:**

1. Niagara Power Inc. is hereby granted leave to acquire 50% share of Niagara West Transformation Corporation from Peninsula West Power Inc. pursuant to section 86 of the Act.
2. The Board's leave to purchase 50% share of Niagara West Transformation 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 for acquisition of shares will be required in order for the transaction to proceed.

3. Niagara Power Inc. shall promptly notify the Board of the completion of the transaction.

**DATED** at Toronto, December 6, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary