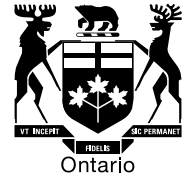


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BY E-MAIL

July 17, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Board Staff Submission

**Application by B2M Limited Partnership for an Electricity Transmitter
Licence – Board File No. EB-2013-0078**

**Application by Hydro One Networks Inc. for Leave to Sell Certain
Transmission Assets – Board File No. EB-2013-0079**

**Application by SON LP Co. to Acquire Partnership Interest in B2M Limited
Partnership - Board File No. EB-2013-0080**

In accordance with Procedural Order No. 1, please find attached Board staff's submission respecting the above referenced applications.

Yours truly,

Original signed by

Gona Jaff
Project Advisor, Applications and Regulatory Audit

Attachment

cc: All Parties to the Proceeding



ONTARIO ENERGY BOARD

Board Staff Submission

**APPLICATION BY B2M LIMITED PARTNERSHIP FOR AN ELECTRICITY
TRANSMISSION LICENCE - EB-2013-0078;**

**APPLICATION BY HYDRO ONE NETWORKS INC. FOR LEAVE TO SELL
CERTAIN TRANSMISSION ASSETS - EB-2013-0079; and**

**APPLICATION BY SON LP CO. FOR LEAVE TO ACQUIRE UP TO A 30%
PARTNERSHIP INTEREST IN B2M LIMITED PARTNERSHIP - EB-2013-0080**

July 17, 2013

INTRODUCTION

B2M Limited Partnership (“B2M LP”), Hydro One Networks Inc. (“HONI”) and SON LP Co. (the “Applicants”) filed three separate but related applications dated March 28, 2013 (the “Applications”) with the Ontario Energy Board (the “Board”). The purpose of the Applications is to allow the Saugeen Ojibway Nation (the “SON”) to acquire up to a 30% ownership interest in certain electricity transmission assets located between HONI’s Bruce and Milton transmission stations (the “Bruce to Milton Assets”). Specifically,

1. under section 86(1)(b) of the *Ontario Energy Board Act, 1998* (the “Act”), HONI seeks approval to sell the Bruce to Milton Assets to B2M LP, a limited partnership owned by Hydro One Inc. through wholly owned subsidiaries;
2. under section 60 of the Act, B2M LP seeks to become a licensed electricity transmitter for the purpose of owning and operating the Bruce to Milton Assets; and
3. under section 86(2)(a) of the Act, SON LP Co., a corporation owned and controlled by the SON, seeks to acquire up to a 30% ownership interest in B2M LP.

Pursuant to its authority under section 21(5) of the Act, the Board decided to consider the Applications together in a consolidated proceeding and issued its Notice of Applications and Hearing on May 1, 2013.

On June 5, 2013, the Board issued Procedural Order No.1 in which the schedule for this proceeding was set out. Board staff is filing this submission pursuant to Procedural Order No.1.

APPLICATION BY B2M LP FOR AN ELECTRICITY TRANSMISSION LICENCE

Board staff notes that in determining electricity transmission licence applications, the Board’s practice is to review the applicant’s financial position, technical capability and conduct to assess the applicant’s ability to own and/or operate a transmission facility in Ontario.

The applicant, B2M LP is a limited partnership which is 100% owned by Hydro One Inc. through wholly owned subsidiaries and its business activities will generally be limited to the operation, maintenance and administration of the Bruce to Milton Assets¹. The evidence indicates that following the proposed transactions, Hydro One Inc. expects to retain 70%

¹ See section 6 of B2M LP’s application for an Electricity Transmission Licence

interest in B2M LP substantially through B2M GP Inc., the general partner. The evidence also indicates that B2M GP Inc. will be responsible for ensuring that the Bruce to Milton Assets are operated and maintained in accordance with all applicable regulatory standards through service agreements with HONI. Based on the evidence, Board staff submits that B2M LP can reasonably be expected to be financially responsible in the conduct of its business and to reliably and safely operate the Bruce to Milton Assets.

APPLICATIONS UNDER SECTION 86 OF THE ACT

HONI applied for leave of the Board to sell the Bruce to Milton Assets to B2M LP under section 86(1)(b) of the Act and SON LP Co. applied for leave of the Board to acquire up to a 30% partnership interest in B2M LP under section 86(2)(a) of the Act which states:

- No person, without first obtaining an order from the Board granting leave, shall,
- (a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or

Board staff notes that section 86(2)(a) of the Act does not specifically deal with acquisition of partnership interests in an electricity transmitter. In response to Board staff interrogatory (“IR”) number 1.2, the Applicants indicated that the Act doesn’t expressly contemplate a transmitter in any form other than a corporate entity whose owners hold voting securities. They further stated that they have filed the application out of an abundance of caution.

The extent to which the Board’s approval is required for the proposed acquisition of 30% of B2M LP by SON LP Co. is not perfectly clear. Section 86(2)(a) appears to assume that transmitters will be corporations with voting securities. A voting security is essentially a share or any class or series of shares of a body corporate.² B2M LP does not have voting securities, and therefore SON LP Co. does not actually propose to acquire any voting securities.

It should be noted that none of the parties to this proceeding have questioned the Board’s ability to approve the transaction. Board staff therefore suggests that further to the analysis of

² “Voting securities” is a defined term in the Act. The definition from the Act adopts the definition from the *Ontario Business Corporations Act*. The OBCA defines a voting security as “any security other than a debt obligation of a body corporate carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.” The OBCA defines “security” as a share of any class or series of shares or a debt obligation of a body corporate.”

the no harm test described below, the Board should consider approving the applications as filed. For greater clarity, the Board could consider adding a condition to the licence of B2M LP that Board approval is required for any subsequent ownership changes for B2M LP of greater than 20%.

The “no harm” test

The Board’s decision in RP-2005-0018/EB-2005-0234/EB-2005-0254 and EB-2005-0257 (the “Combined Decision”) established the scope of issues that the Board will consider in determining applications under section 86 of the Act and ruled that the “no harm” test is the relevant test. The “no harm” test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo of the applicants and their customers in relation to the Board’s statutory objectives as set out in section 1 of the Act. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, the application should be granted.

Specifically, in the Combined Decision the Board stated:

The Board believes that the “no harm” test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board’s statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties.

In this case, HONI proposes to sell the Bruce to Milton Assets to B2M LP for the net book value of the assets which according to the evidence approximates the commercial value of the assets. SON LP Co, proposes to acquire up to a 30% partnership interest in B2M LP. Valuation of the interest held in B2M LP will be based on the net book value of the Bruce to Milton Assets.³ In their response to Board staff IR No. 9.2 and in their submission dated July 8, 2013, the Applicants confirmed that SON LP Co.’s partnership interest in B2M LP will be financed by third party financial lending institutions and that HONI will not be lending SON LP Co. any amounts for this purpose. Furthermore, the evidence indicates that no material impact is expected on reliability or quality of supply as a result of the proposed transactions as the

³ See section 4.6 of the Applicant’s Joint Submission

assets will be operated and maintained in accordance with all applicable regulatory standards by HONI, the current operator and maintainer of the assets. In addition, the Applicants expect a slight decrease in rates, in the long term, as a result of the proposed transaction. Board staff understands that the expected benefit associated with the transactions is dependent on the Applicants obtaining favourable tax rulings with respect to their tax status from the federal and provincial authorities and that such rulings have not been obtained yet. However, Board staff notes that the Applicants have requested that all regulatory approvals be granted on condition that satisfactory tax rulings are obtained and filed with the Board. Board staff therefore submits that based on the evidence, and provided the Board establishes a condition on a satisfactory tax ruling, the proposed transactions reasonably meet the no harm test and should be approved.

All of which is respectfully submitted.