EB-2013-0196
EB-2013-0187
EB-2013-0198

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998,* S.O. 1998, c. 15, Sch. B, as amended.

AND IN THE MATTER OF an application by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. under section 86(2)(b) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application by Norfolk Power Distribution Inc. for leave to dispose of its distribution system to Hydro One Networks Inc. under section 86(1)(a) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application by Hydro One Networks Inc. seeking to include a rate rider in the 2013 Ontario Energy Board approved rate schedule of Norfolk Power Distribution Inc. to give effect to a 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) under section 78 of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF a motion by the School Energy Coalition for an order for further and better interrogatory responses in respect of Board Staff Interrogatories 4.2, 7.2, and 9.2, VECC Interrogatory 2(a), SEC Interrogatories 1, 2, 3(c), 4(c), 5, 6, 7, 8, 14, 15, 16, 18, and 19, CCC Interrogatories 3, 6, 9, and 10, and EBN Interrogatories 2, 3, 4, 5, 6, 13, 14, 15, 16, 20, 21, 22, 24, 25, 26, 27, 28, 30, 32, 33, 37, 43, 44, 45, 46, 53, 54, 55, 56, and 57.

BOOK OF MATERIALS OF HYDRO ONE INC. AND HYDRO ONE NETWORKS INC.

DECEMBER 12, 2013

Gordon Nettleton
McCarthy Tétrault LLP
gnettleton@mccarthy.ca
Tel: 403-260-3622

Counsel for Hydro One Inc. and Hydro One Networks Inc.

INDEX

TAB 1

EB-2005-0257

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 Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

PROCEDURAL ORDER NO. 1

On March 24, 2005, Veridian Connections Inc. ("VCI") and Gravenhurst Hydro Electric Inc. ("GHEI") filed an application with the Ontario Energy Board seeking leave for VCI to acquire all outstanding shares in and subsequently to amalgamate with GHEI, and for related orders (the "Application"). Both VCI and GHEI are licensed electricity distributors. The Application has been assigned Board File No. EB-2005-0257.

VCI is indirectly owned by the City of Pickering, the Municipality of Clarington, the City of Belleville, and the Township of Ajax. Currently, the Town of Gravenhurst indirectly holds 100 percent of the outstanding shares in GHEI.

Upon approval and completion of the proposed transactions, the City of Pickering, the Municipality of Clarington, the City of Belleville, and the Township of Ajax would indirectly hold 100 percent of the outstanding shares in GHEI.

The Board issued a Notice of Application and Written Hearing on April 6, 2005. The Applicants have served and published the Notice as directed by the Board.

In response to the Notice of Application and Written Hearing, the Board received a number of letters of comment from private citizens, which have been placed on the public record. The Board also received six requests to intervene, one of which was subsequently withdrawn. Four of the five remaining prospective intervenors are private citizens (Mr. Ross Ashforth, Mr. William Black, Ms. Diane Cross and Mr. Keith Cross, and Mr. Peter Sutherland) and the fifth is a committee of ratepayers in the Town of Gravenhurst (the "Committee"). Two of the prospective intervenors (the Committee and Diane and Keith Cross) have requested that the Board proceed in this matter by way of an oral hearing rather than by way of a written hearing. One prospective intervenor (the Committee) has indicated that it would be making a request for an award of costs.

GHEI and the Corporation of the Town of Gravenhurst (the "Town") filed a submission with the Board indicating that no basis has been put forward suggesting that an oral hearing is necessary, and that no award of costs should be granted to the Committee. VCI filed a submission to the same general effect. The Applicants have not opposed any of the requests for intervention.

The Board will grant intervenor status to all those who have requested it; namely, the Committee, Mr. Ashforth, Diane and Keith Cross, Mr. Sutherland and Mr. Black (the "Intervenors"). A list of all of the parties to this proceeding is attached as Appendix A to this Procedural Order.

The Board confirms that the Committee is eligible to request an award of costs. The Board will allow the other Intervenors an opportunity to indicate whether they intend to make a request for an award of costs, and will allow the Applicants an opportunity to make submissions on the issue of the eligibility of these Intervenors in that regard. In accordance with its usual practice, the Board will determine the amount of costs, if any, to be awarded to each Intervenor at the end of this proceeding based on various considerations. Section 5.01 of the Board's *Practice Direction on Cost Awards* sets out factors that the Board may consider in awarding costs, including whether the party contributed to a better understanding by the Board of an issue or addressed issues which were not relevant to the issues determined by the Board in the proceeding.

The interventions and letters of comment filed with the Board, and the responding submissions filed by the Applicants and the Town, indicate that there is disagreement amongst the parties on certain matters, including the scope of the issues to be

considered by the Board in this proceeding. The Board considers that the completion of this proceeding can be facilitated and expedited by having a preliminary hearing during which the parties can make oral submissions on the following:

i. the issues that are relevant to the matter to be decided by the Board in this proceeding; and
ii. the need for further evidence to be filed by the Applicants, and the appropriate discovery process.

To that end, the Board has prepared a draft Issues List, which is attached as Appendix B to this Procedural Order. The issues identified in Part I of the draft Issues List include those that have been raised in materials filed with the Board. The fact that an issue has been included on the draft Issues List does not, however, necessarily constitute acknowledgement by the Board of the relevance of that issue to this proceeding. Part II of the draft Issues List addresses the evidentiary and process issue. During the preliminary hearing, parties will have an opportunity to make submissions on the matters addressed in the draft Issues List, including in relation to the identification of any issues that are not currently listed in Part I.

Following the preliminary hearing, the Board will advise the parties as to the issues that the Board considers to be relevant to its consideration of the Application, will make provision for additional discovery as may be required, will determine whether this matter should proceed by way of oral or written hearing and will establish a schedule for completion of this proceeding. The Board will also will rule on the question of eligibility for an award of costs by any additional Intervenor that indicates an intention to request an award of costs.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. To the extent that they have not already done so, the Applicants shall immediately provide a copy of the Application to each Intervenor, together with a copy of all other materials filed by the Applicants in this proceeding.

2. To the extent that they have not already done so, each Intervenor shall immediately file with the Board, and deliver to the Applicants and to all other Intervenors, a letter indicating whether the Intervenor intends to make a request for an award of costs.
3. The Applicants and Intervenors shall file with the Board, and deliver to all other parties, their submissions on the draft Issues List no later than **July 5, 2005**. In the case of the Applicants, these submissions should indicate the Applicants' position on the eligibility for an award of costs of any Intervenor that has filed a letter indicating an intention to request an award of costs, to the extent that the Applicants have not already done so.

4. The preliminary hearing will be held in the Board's West hearing room at 2300 Yonge Street, 25th Floor, Toronto, on **July 19, 2005**, and will commence at **11:00 a.m.**

5. All filings to the Board noted in this Procedural Order must be in the form of **8 hard copies and must be received by the Board by 4:45 p.m.** on the stated dates. The Board requests that, in addition to the hard copies which are filed, all parties make every effort to include a copy of their filings in PDF or Word format, either on diskette or by e-mail to boardsec@oeb.gov.on.ca.

ISSUED at Toronto, June 21, 2005

ONTARIO ENERGY BOARD

Original Signed by

Peter H. O'Dell
Assistant Board Secretary

Appendix A

to

Procedural Order No. 1

EB-2005-0257

June 21, 2005

VERIDIAN CONNECTIONS INC. AND GRAVENHURST HYDRO ELECTRIC INC.
LEAVE TO ACQUIRE SHARES AND AMALGAMATE
EB-2005-0257

APPLICANTS & LIST OF INTERVENORS

JUNE 21, 2005

Applicants	Rep. And Address for Service
Veridian Connections Inc.	Mr. David Clark Executive VP Corporate Affairs Treasurer Veridian Connections Inc. 55 Taunton Road East Ajax ON L1T 3V3 Tel: 905-427-9870 Ext. 2209 Fax: 905-619-0210 e-mail: dclark@veridian.on.ca
McCarthy Tétrault LLP	Mr. Don Gibson Counsel to Veridian Connections Inc. Toronto Dominion Bank Tower Box 48, Suite 4700 Toronto, ON M5K 1E6 Tel: 416-601-7572 Fax: 416-868-0673 Email: dgibson@mccarthy.ca
Gravenhurst Hydro Electric Inc.	Mr. George McEachern President Gravenhurst Hydro Electric Inc. P.O. Box 250 195 Progress Road Gravenhurst ON P1P 1T6 Tel: 705-687-2321 Fax: 705-687-6721 e-mail: georgem@muskoka.com

	Borden Ladner Gervais LLP	Mr. J. Mark Rodger Counsel for the Town of Gravenhurst Borden Ladner Gervais LLP Scotia Plaza 40 King Street West Toronto ON M5H 3Y4 Tel: 416-367-6190 Fax: 416-361-7088 e-mail: mrodger@blgcanada.com
	Intervenors	**Rep. And Address for Service**
1.	Mr. Ross Ashforth	Mr. Ross Ashforth 185 Clairmont Rd. Gravenhurst ON P1P 1H9 Tel: 705-687-3130
2.	Mr. William Black	Mr. William Black 348 Fairview Drive Gravenhurst ON P1P 1L2 Tel: 705-687-2638 e-mail: W.M.Black@Sympatico.ca
3.	Ms. Diane and Mr. Keith Cross	Ms. Diane and Mr. Keith Cross 39 Springwood Crescent Gravenhurst ON P1P 1Z1 Tel: 705-684-9334 e-mail: dandkcross@sympatico.ca
4.	Mr. Peter Sutherland	Mr. Peter Sutherland 255 Lofty Pines Dr. Gravenhurst ON P1P 1R7 Tel: 705-687-4093 Fax: 705-687-8965 e-mail: tommix75@hotmail.com

5.	Gravenhurst Hydro Citizens Committee	Mr. Ray Lingk 205 Kingswood Drive Gravenhurst ON P1P 1L6
	WeirFoulds LLP	Mr. Robert Warren Counsel for Gravenhurst Hydro Citizens Committee WeirFoulds LLP The Exchange Tower, Suite 1600 P.O. Box 480 130 King Street West Toronto ON M5X 1J5 Tel: 416-365-1110 Fax: 416-365-1876 e-mail: rwarren@weirfoulds.com

Appendix B

to

Procedural Order No. 1

EB-2005-0257

June 21, 2005

VERIDIAN CONNECTIONS INC. AND GRAVENHURST HYDRO ELECTRIC INC.
LEAVE TO ACQUIRE SHARES AND AMALGAMATE
EB-2005-0257

DRAFT ISSUES LIST

Part I: Issues

1. The effect of the proposed transaction on the interests of electricity consumers with respect to prices.

2. The effect of the proposed transaction on the interests of electricity consumers with respect to the adequacy, reliability or quality of electricity service.

3. The effect of the proposed transaction on economic efficiency or cost effectiveness in the distribution of electricity.

4. The effect of the proposed transaction on the maintenance of a financially viable electricity industry.

5. The adequacy of the consideration to be paid or received by the parties for the proposed transaction.

6. The adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

7. The attributes of the proposed transaction when compared to other competing bids or other potential merger or share purchase options.

8. The effect of the proposed transaction on the financial interests of citizens in the community in their capacity as taxpayers.

9. The impact of the loss of local influence over the operations of GHEI that may result from the proposed transaction.

10. The degree of support for the proposed transaction amongst citizens in the community.

Part II: Additional Evidence/Discovery and Process

1. Should the Applicants be required to provide additional evidence in support of the Application? If so, what additional evidence is required? Is a written interrogatory process adequate for that purpose?

TAB 2

RP-2005-0018
EB-2005-0234
EB-2005-0254
EB-2005-0257

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 Greater Sudbury Hydro Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd.;

AND IN THE MATTER OF an application by PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders;

AND IN THE MATTER OF an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

DECISION

BEFORE Gordon Kaiser
Vice Chair and Presiding Member

Pamela Nowina
Vice Chair and Member

Paul Vlahos
Member

BACKGROUND

This proceeding relates to certain issues that have arisen in three separate Applications before the Board. Those three Applications were filed under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") and concern:

(a) the acquisition of shares of West Nipissing Energy Services Ltd. by Greater Sudbury Hydro Inc. (EB-2005-0234);

(b) the acquisition of shares of Aurora Hydro Connections Limited by PowerStream Inc. (EB-2005-0254); and

(c) the acquisition of shares of Gravenhurst Hydro Electric Inc. by Veridian Connections Inc. (EB-2005-0257).

The Greater Sudbury Application was filed on February 23, 2005 and seeks an Order of the Board granting Greater Sudbury Hydro Inc. leave to acquire the shares of West Nipissing Energy Services Ltd. The other two Applications were filed on March 24, 2005. There were two Applicants in each of these two cases (the acquiring company and the to-be-acquired company) because the companies are also to be amalgamated following the granting of the requested Order. The Order sought by these Applicants is approval of the acquisition of the shares and of the subsequent amalgamation.

On July 5, 2005, the Board issued a Procedural Order combining the three Applications for the purpose of addressing certain common issues. Those issues largely relate to the scope of the issues that the Board will consider in determining applications under section 86 of the Act.

In the Procedural Order of July 5, 2005, the parties were asked to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside of the scope of the Board's review. The parties were also asked to state the legal basis for their positions.

The Board also requested, without limiting the matters the parties may wish to raise, submissions on the relevance of two specific issues:

(a) the adequacy of the purchase price payable in relation to the proposed transaction; and

(b) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants and Intervenors, and their representatives, in this combined proceeding are listed in Schedule A.

The procedural history of each of the Applications is described in the Board's July 5, 2005 Procedural Order, and a full record of each of the Applications and of this combined proceeding is available from the offices of the Board.

FINDINGS

The submissions of the parties in this combined proceeding focused on the following questions:

- What is the scope of the Board's review on applications relating to share acquisitions or amalgamations under section 86 of the Act?
- What is the proper test the Board should use in determining whether to grant leave in a section 86 application relating to the acquisition of shares or an amalgamation?
- What is the relevance of the purchase price paid?
- What is the relevance of the process followed by the seller?

The Scope of a Section 86 Review

Section 86(1) of the Act deals with changes in ownership or control of systems. Section 86(2) of the Act deals with the acquisition of share control. Those sections provide as follows:

“Change in ownership or control of systems

86 (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation.

(…)

Acquisition of share control

(2) 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

(b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation.”

Section 86(2) of the Act applies to all three Applications while section 86(1) is relevant to the two Applications that involve a proposed amalgamation.

Although section 86(6) of the Act states that an application for leave "shall be made to the Board, which shall grant or refuse leave", it is silent on the factors to be considered by the Board in determining whether to grant leave. Most parties conceded that the Board is a statutory creation guided by its objectives as set out in section 1 of the Act. Section 1 states in part as follows:

> "1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:
>
> 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."

Section 1 of the Act also contains a provision that requires the Board, in exercising its powers and performing its duties, to facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. At the present time, no such plans have been approved. Accordingly, the focus in this proceeding has been the two objectives referred to above, and references in this Decision to section 1 of the Act should be interpreted accordingly.

Most parties to the proceeding stated, and the Board agrees, that the factors to be considered in approving an application to acquire shares or amalgamate under section 86 of the Act are the factors outlined in section 1 of the Act. There are therefore two basic questions: (1) What impact will the transaction have on the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service? (2) What impact will the transaction have on economic efficiency and cost effectiveness in the generation, transmission, distribution sale and demand management of electricity and on the maintenance of a financially viable electricity industry?

The Proper Test

The most important question may be, what is the proper test the Board should use in determining whether to grant leave in a section 86 application involving the acquisition of shares or an amalgamation? The factors are clearly set out in section 1 of the Act, but what is the test?

The Applicants argue that the proper test is a "no harm" test; if the Applicant can establish that there will be no harm in terms of the factors set out in section 1 of the Act, then leave should be granted.

A different view is held by the Gravenhurst Hydro Citizens Committee. As described in their reply submissions, they argue that the appropriate test is the "best result" or the "best deal" test, where the Board would be called upon to determine whether or not consumers would have been better off with the status quo or with other options that were considered by the seller. Put differently, even if the Applicants can prove that the transaction meets the "no harm" test, leave should not be granted if there was a better deal that would improve the position of consumers in terms of the factors described in section 1 of the Act.

Those arguing for the "no harm" test point to the fact that it is used elsewhere. They also point out that if the "best deal" test were used, there would be no certainty in the negotiations between a seller and any given purchaser. The selling utility would always have to be concerned that the Board would step into the shoes of the seller and determine if a competing option was better. They further argued that this regulatory uncertainty would defeat the Government's policy objective of promoting consolidation in the distribution sector.

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

that sense, in section 86 applications of this nature the Board equates "protecting the interests of consumers" with ensuring that there is "no harm to consumers".

The Board has therefore considered the question of the scope of the issues to be addressed in these Applications by reference to the "no harm" test.

Relevance of Price and Process

The Procedural Order of July 5, 2005 asked parties to comment on whether the Board, in determining applications under section 86 of the Act, should consider the price that had been negotiated or the process by which both the price and the transaction terms were arrived at.

The Applicants take the position that both the purchase price and the process are not relevant issues. They state that the Board should not step into the shoes of the owner of the utility, which they note could be either a municipality or a private entity. The selling municipalities are authorized by statute to dispose of their shares in the utility and there are no constraints in the *Electricity Act, 1998* on their ability to do so. It is also argued that the selling municipalities are accountable to the electorate and that the remedy for dissatisfied residents is to vote them out of office. Some of the Intervenors reply that this is not much of a remedy, as it would be available well after the transaction is completed. The relevance of price and process will be addressed in turn.

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 the book value of assets is not normally recoverable through rates. This position is in keeping with the "no harm" test.

By contrast, the fact that the selling entity may have received "too low" a purchase price for the utility would not be relevant to the outcome of the proceeding on the basis of the "no harm" test. The fact that the seller could have received a higher price for the utility, even if true, would not lead to an adverse impact in the context of the objectives set out in section 1 of the Act.

The Board notes that, where an Intervenor in these Applications has raised the issue of price, the concern is that the purchase price for the utility is too low, not too high. To that extent, the price payable is not an issue for the Board in any of the three Applications.

Process

The argument that the Board should exercise oversight with respect to the sale process is advanced most strongly by the Gravenhurst Hydro Citizens Committee. They state in their written argument:

> "We submit that consumers, in this case, the ratepayers of Gravenhurst, have a right to an open and transparent process for the sale of the shares or the assets of their electricity LDC. That right arises, we submit from the fact that what is being sold is a monopoly service which is essential to the ratepayers' existence. That transparency would require, at a minimum, that the advantages and disadvantages of selling, as opposed to retaining the assets or shares, would be explained to the ratepayers, and that the relative merits of the competing offers would be explained to the ratepayers. In circumstances where the Board does not believe that the process has been sufficiently transparent, it has the means to ensure adequate disclosure while protecting the commercial interests of the municipality and purchaser."

A number of other Intervenors have raised concerns regarding the adequacy or integrity of the process by which the sellers in these Applications decided to sell their utilities. In most of these cases, the position has been that perceived deficiencies in the process (such as inadequate public consultation or "improper" motives) *in and of themselves* are relevant to the Board's determination of the Applications. The Board disagrees.

As a general matter, the conduct of the seller generally, including the extent of its due diligence or the degree of public consultation in relation to the transaction, would not be issues for the Board on share acquisition or amalgamation applications under section 86 of the Act. Based on the "no harm" test, the question for the Board is neither the why nor the how of the proposed transaction. Rather, the Board's concern is limited to

the effect of the transaction when considered in light of the Board's objectives as identified in section 1 of the Act.

In order to argue that the process by which the seller negotiated the sale of the utility or carried out its due diligence should be relevant, it would have to be demonstrated that a flawed process leads to an impaired ability of the acquired utility to meet the obligations imposed on it by the Board. Based on the "no harm" test, it is not clear how a flawed decision-making process, even if it could be demonstrated, would in and of itself provide grounds to oppose the Applications. Certainly, it would not in and of itself be grounds for denying the Applications. The "no harm" test is substantive and addresses the effect of a proposed transaction. It is not a process test that addresses the rationale for, or the process underlying, the proposed transaction.

With respect to the claim that ratepayers have a right to "an open and transparent process" for the sale of the shares or the assets of an electricity distributor, the Board has two observations. First, section 86 of the Act applies to distributors whether they are publicly or privately owned. Although the three Applications at issue involve utilities that are municipally-owned, not all distributors are publicly owned. As a result, any findings by the Board with respect to customers' process rights (in the sense of rights associated with the process leading up to the conclusion of a transaction) would apply to privately-owned companies. Further, the legislature has determined that distributors should be governed by the Ontario *Business Corporations Act* ("OBCA"). The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector.

Counsel for the Gravenhurst Hydro Citizens Committee also argued that the relevance of process-related information is further supported by the Board's "Preliminary Filing Requirements for Sections 85 and 86 under the *Ontario Energy Board Act, 1998*". They noted that those Filing Requirements require the applicant amongst other things to:

(a) provide details of the costs and benefits of the proposed transaction to the consumers of the parties to the proposed transaction;

(b) provide a valuation of any assets that will be transferred in the proposed transaction; and

(c) provide details of any public consultation process engaged in by the parties to the proposed transaction, and the details of any communication plans for public disclosure of the proposed transaction.

On this basis, the Gravenhurst Hydro Citizens Committee argued:

> "There are two points to be made about the information that the Board requires. The first is that the Board considers the information relevant to the exercise of its discretion under section 86 of the *OEB Act*. The second is that is the information that the Board has on those points is, at the moment, entirely one-sided. The Board's analysis of, and conclusions about, those points would likely be affected by the evidence from others."

With respect to the Filing Requirements, the fact that background and contextual information is requested with respect to share acquisition or amalgamation transactions does not mean that such information is determinative or even influential with respect to whether leave will be granted. The Board therefore does not agree that the breadth of the Filing Requirements reflects the breadth of issues to be determined in an application for leave to acquire shares or amalgamate.

York Region Supply Situation

Section 6.5 of the Share Purchase Agreement between Aurora Hydro Connections Limited and PowerStream Inc. provides that the purchaser will, subject to any regulatory approval, install three 28 kV feeder lines to increase local reliability. A focus of Newmarket Hydro Ltd.'s ("NHL") intervention has been to object to the inclusion of that section in the Share Purchase Agreement. Specifically, NHL has argued that the contractual arrangement to install these feeder lines is the not the most adequate or proper solution for addressing reliability and quality of service issues in the area.

In paragraph 11 of its written argument, NHL stated:

> "…the supply solution…would, if approved by the Board and implemented, preclude other, lower cost supply options, that are both more efficient and more reliable. These alternatives were identified and endorsed by all LDC's serving York Region, including NHL, the Applicant, Powerstream, and the subject LDC, Aurora Hydro, when the York Region Supply Study was released in July 2003."

None of the parties dispute that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate under section 86 of the Act. Part of NHL's argument is that they need to examine certain aspects of the negotiating process in order to obtain necessary evidence to address this issue. That is, NHL is not interested in the process as an issue per se, just certain facts in that process which they claim will inform the Board on the issues of reliability and the proposal by the Applicant to install the three feeder lines as part of the transaction.

Even if NHL is entitled to explore the evidence for that limited purpose, and accepting for the sake of the argument that it is so entitled, the larger issue is whether these proceedings are the appropriate place to address this question.

The Board has started a different process to address the York Region supply issue. That process is described in a letter from the Board to the Ontario Power Authority ("OPA") dated July 25, 2005. This letter was copied to all electricity distributors in the York Region, including NHL, Aurora Hydro Connections Limited, PowerStream Inc. and Hydro One Networks Inc. (distribution). As is noted in that letter, Board staff has been meeting with Hydro One, the electricity distributors in the York Region and the OPA to identify the optimal solution to the York Region supply issue. The Board's regulatory authority with respect to enhancing distribution and transmission reliability is described in that letter in part as follows:

> "As a result, there are currently three potential options to address the issue of security and reliability of supply in York Region: Transmission Option, the Buttonville Option and the Holland Junction Option. These options contain a combination of transmission and distribution.

> The Board has the power to order that anyone *(sic)* of these options be implemented (subject to any necessary regulatory approvals, including environmental approvals) if it determines that doing so is in the interests of consumers with respect to prices and the reliability and quality of electricity service." (footnotes omitted)

In addition to reviewing the distribution and transmission options in York Region, the Board has asked the OPA, which has the power to enter into contracts for new generation and demand management, to provide its opinion on the optimal solution to meet demand growth in that area.

In its reply submissions, NHL expressed the view that the York Region supply proceeding "is not a timely, appropriate, or effective alternative process in which NHL or any other affected party can expect to raise or address the issues of electricity supply in York Region that are already raised before the Board in [the PowerStream/Aurora Application]". In support of its position that the Board should not defer the reliability issue to the broader York Region supply process, NHL pointed to a decision of the Alberta Energy and Utilities Board in *Atco Electric Ltd. and Atco Gas* (Decision 2003-098, AEUB, December 4, 2003). In that decision, the Alberta Energy and Utilities Board noted that it preferred "to avoid the creation of service problems that may result from the transfer of one entity to another".

The Board acknowledges that there may well be cases where reliability concerns are best addressed in the context of an application under section 86 of the Act rather than being deferred to another process. The Board does not, however, agree with NHL's characterization of the York Region supply proceeding as being an untimely, inappropriate or ineffective alternative process. Rather, the Board believes that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in the process it has established, and in which NHL is an active participant, to address the broader York Region supply issue.

First, it addresses the matter more thoroughly by reviewing all of the options of distribution, transmission, generation and demand management. The PowerStream/Aurora share acquisition and amalgamation Application is too limited in its scope to effectively address the issue of reliability of supply to York Region.

Second, the parties to this proceeding do not bring the perspectives required for a complete treatment of this issue. Specifically, neither the OPA nor Hydro One have participated, nor have any reason to participate, in these proceedings on the reliability issue.

Third, the only reliability issue that is being addressed in these proceedings is whether the purchaser should install three 28 kV feeder lines in Aurora.

The Board does not believe that NHL will be prejudiced by the deferral of the reliability issue to the Board's broader York Region supply review process. The Board notes that any leave it might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process. The Board also notes PowerStream Inc.'s statement in its written reply argument that the feeder line proposal does not constitute a permanent supply solution for York Region, as well as its expressed commitment to working in collaboration with NHL and Hydro One to find a solution for York Region.

For all of these reasons, while reliability of electricity service is a relevant issue in section 86 applications, the Board believes that in the context of this particular Application it is appropriate for this issue to be addressed as part of the broader York Region review that is currently underway.

Next Steps

This Board has now 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 factors to be considered are those set out in section 1 of the Act. On that basis, and having regard to the nature of the concerns raised in the interventions, the purchase price paid and the adequacy of the process followed by the selling entity are not issues for the Board in any of the three Applications that are the subject of this proceeding. Similarly, for the reasons noted in the preceding section, the reliability issue discussed in that section is not an issue for the Board in relation to the PowerStream/Aurora Application. It follows that the panels reviewing the Applications should determine whether there are any issues raised in relation to those Applications that remain in scope in accordance with the terms of this Decision. In other words, it will now be up to the panels to determine in each case, based on the findings in this

Decision, whether there are any issues remaining that require a hearing and to deal with each of the Applications accordingly.

COST AWARDS

The Board will issue a separate decision on costs for this proceeding.

Dated at Toronto, August 31, 2005

ONTARIO ENERGY BOARD

Original signed by

John Zych
Board Secretary

SCHEDULE A
TO
BOARD DECISION IN THE MATTER OF
RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257
DATED AUGUST 31, 2005

APPLICANTS AND INTERVENORS

SUDBURY APPLICATION
(EB-2005-0234)

Applicant	**Rep. And Address for Service**
Greater Sudbury Hydro Inc.	Doug Reeves, P. Eng. President and Secretary 500 Regent St. PO Box 250 Sudbury ON P3E 4P1 Tel: (705) 675-7536 Fax: (705) 675-0528 e-mail: dougr@shec.com
Counsel for Sudbury Hydro	Peter Ruby Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, ON M5B 2M6 Tel : 416-597-4184 Fax : 416-979-1234 e-mail: pruby@goodmans.ca

Intervenor	**Rep. And Address for Service**
Save Our Hydro Group	Brian and Len Laflèche 148 Nipissing Street Sturgeon Falls ON P2B 1J8 Tel: (705) 753-0915 e-mail: brianl@onlink.net

POWERSTREAM/AURORA APPLICATION

(EB-2005-0254)

Applicants	**Rep. And Address for Service**
PowerStream Inc.	Dennis Nolan EVP Corporate Services 2800 Rutherford Road Vaughan ON L4K 2N9 Tel : 905-417-6900 Fax : 905-417-6911 e-mail : dennis.Nolan@powerstream.ca
Aurora Hydro Connections Limited	John Sanderson President Aurora Hydro Connections Limited 215 Industrial Pkwy. S. P.O. Box 157 Aurora ON L4G 3H3 Tel: 905-727-4612 Fax: 905-727-7230 e-mail: Webster@aurorahydro.on.ca
Counsel for Aurora Hydro Connections Limited	Ms. Christine E. Long Counsel Borden Ladner Gervais LLP Scotia Plaza 40 King Street West Toronto, ON M5H 3Y4 Tel : 416-367-6683 Fax : 416-361-2770 e-mail : clong@blgcanada.com
Intervenors	**Rep. And Address for Service**

Mr. Michael Evans	Mr. Michael Evans Aurora TrueValue 15236 Yonge Street Aurora ON L4G 1L9 Tel: 905-727-1373 Fax: 905-727-1374
Hydro One Networks Inc.	Mr. Glen MacDonald Senior Advisor – Regulatory Review Regulatory Affairs Hydro One Networks 8th Floor, South Tower 483 Bay Street Toronto ON M5G 2P5 Tel: 416-345-5913 Fax: 416-345-5866 e-mail: glen.e.macdonald@Hydro One.com
New Deal Ratepayers Group	Mr. Ben Kestein Chairman New Deal Ratepayers Group 90 Old Yonge Street Aurora ON L4G 6C7 Tel: 905-841-3513 e-mail: bkestein@hotmail.com
Newmarket Hydro Ltd.	Mr. P.D. Ferguson, P.Eng. President Newmarket Hydro Ltd. 590 Steven Court Newmarket ON L3Y 6Z2 Tel: 905-953-8548 Ext. 2240 Fax: 905-895-8931 e-mail: pferguson@nmhydro.ca

Counsel for Newmarket	M. Philip Tunley McCarthy Tétrault LLP Box 48, Suite 4700 Toronto Dominion Bank Tower Toronto, ON M5K 1E6 Tel : 416-601-7624 Fax : 416-868-0673 e-mail: ptunley@mccarthy.ca

VERIDIAN/GRAVENHURST APPLICATION

(EB-2005-0257)

Applicants	**Rep. And Address for Service**
Veridian Connections Inc.	Mr. David Clark Executive VP Corporate Affairs Treasurer Veridian Connections Inc. 55 Taunton Road East Ajax ON L1T 3V3 Tel: 905-427-9870 Ext. 2209 Fax: 905-619-0210 e-mail: dclark@veridian.on.ca
Counsel for Veridian Connections Inc.	Helen T. Newland Fraser Milner Casgrain LLP 1 First Canadian Place, 100 King Street West Toronto, ON M5X 1B2 Tel : 416-863-4471 Fax : 416-863-4592 e-mail : Helen.newland@fmc-law.com
Gravenhurst Hydro Electric Inc.	Mr. George McEachern President Gravenhurst Hydro Electric Inc. P.O. Box 250 195 Progress Road Gravenhurst ON P1P 1T6 Tel: 705-687-2321 Fax: 705-687-6721 e-mail: georgem@muskoka.com

Counsel for the Town of Gravenhurst	Mr. J. Mark Rodger Borden Ladner Gervais LLP Scotia Plaza 40 King Street West Toronto ON M5H 3Y4 Tel: 416-367-6190 Fax: 416-361-7088 e-mail: mrodger@blgcanada.com
Intervenors	**Rep. And Address for Service**
. Mr. Ross Ashforth	Mr. Ross Ashforth 185 Clairmont Rd. Gravenhurst ON P1P 1H9 Tel: 705-687-3130
Mr. William Black	Mr. William Black 348 Fairview Drive Gravenhurst ON P1P 1L2 Tel: 705-687-2638 e-mail: W.M.Black@Sympatico.ca
Ms. Diane and Mr. Keith Cross	Ms. Diane and Mr. Keith Cross 39 Springwood Crescent Gravenhurst ON P1P 1Z1 Tel: 705-684-9334 e-mail: dandkcross@sympatico.ca
Mr. Peter Sutherland	Mr. Peter Sutherland 255 Lofty Pines Dr. Gravenhurst ON P1P 1R7 Tel: 705-687-4093 Fax: 705-687-8965 e-mail: tommix75@hotmail.com

Gravenhurst Hydro Citizens Committee

Mr. Ray Lingk
205 Kingswood Drive
Gravenhurst ON
P1P 1L6

Mr. Robert Warren
Counsel for Gravenhurst Hydro Citizens Committee
WeirFoulds LLP
The Exchange Tower, Suite 1600
P.O. Box 480
130 King Street West
Toronto ON
M5X 1J5

Tel: 416-365-1110
Fax: 416-365-1876
e-mail: rwarren@weirfoulds.com

Intervenor	Rep. And Address for Service
Association of Municipalities of Ontario	James C Sidlofsky Counsel: Borden Ladner Gervais LLP Scotia Plaza, 40 King Street West Toronto, ON M5H 3Y4 Tel : 416-367-6277 Fax : 416-361-2751 e-mail : jsidlofsky@blgcanada.com

TAB 3

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

EB-2005-0257

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 Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

BEFORE Gordon Kaiser
Vice Chair and Presiding Member

DECISION AND ORDER

The Application

On March 24, 2005, Veridian Connections Inc. ("VCI") and Gravenhurst Hydro Electric Inc. ("GHEI") (collectively, the "Applicants") filed an application with the Ontario Energy Board (the "Board") under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") seeking leave for VCI to acquire all outstanding shares in and subsequently to amalgamate with GHEI (the "Application"). The Application also seeks, as of a date to be notified by the Applicants, the cancellation of VCI's and GHEI's electricity distribution licences under section 77(5) of the Act, and the issuance of a new electricity distribution licence under section 60 of the Act to the corporation created through the amalgamation of VCI and GHEI.

Both VCI and GHEI are licensed electricity distributors.

VCI owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2002-0503. VCI's licensed service area covers all or a portion of the City of Pickering, the Municipality of Clarington, the City of Belleville, the Township of Ajax, the former Villages of Beaverton and Cannington and the former Police Village of Sunderland (now part of the Township of Brock in the Region of Durham), the former Town of Port Hope (now part of the Town of Port Hope and Hope in Northumberland County), the former Town of Uxbridge (now part of the Township of Uxbridge in the Region of Durham) and the Town of Port Perry. VCI is wholly owned by Veridian Corporation, which in turn is owned by the City of Pickering, the Municipality of Clarington, the City of Belleville and the Township of Ajax.

GHEI owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2002-0576. GHEI's licensed service area covers the Town of Gravenhurst and certain surrounding areas. GHEI is owned by Gravenhurst Power Inc., which in turn is wholly owned by the Town of Gravenhurst.

According to documentation filed with the Application, all internal approvals necessary to enable the parties to enter into the agreement that underlies the transactions contemplated in the Application have been obtained.

VCI does not intend to undergo any immediate rate harmonization, but rather will maintain a separate rate schedule for Gravenhurst urban and suburban customer classes. VCI has indicated that it will consider rate harmonization, in accordance with the Board's Electricity Distribution Rate Handbook and any other Board requirements, following the completion of a cost allocation study. If rate harmonization occurs, it will not take place until 2007.

A Notice of Application and Written Hearing was published as directed by the Board. Mr. Ross Ashforth, Mr. William Black, Ms. Diane Cross and Mr. Keith Cross, Mr. Peter Sutherland and a committee of ratepayers in the Town of Gravenhurst (the "Committee") (collectively, the "Intervenors") have been granted intervenor status in respect of the Application.

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.

The Interventions

The concerns expressed by the Intervenors were varied, but can generally be described as falling within four categories of issues. The first is concerns relating to the process surrounding the negotiation of the transactions contemplated in the Application, including allegations that the proper process was not followed; that there was inadequate public consultation on, and public disclosure about, the proposed transactions; and that the seller was motivated by purposes unrelated to the interests of electricity consumers. The second is concerns relating to the purchase price and, more specifically, that the price payable for the shares of GHEI is too low. The third is concerns relating to the loss to the municipality of revenue from the operations of GHEI, and the impact of that loss on taxpayers in the community, as well as to the loss of local control over the operations of GHEI. The fourth is that inadequate consideration may have been given to other more advantageous potential bids or alternatives to the sale of GHEI. The fifth is that public opinion in the Town of Gravenhurst is strongly against the transactions.

The Committee also noted that it could not reach any conclusions about whether the transactions contemplated in the Application are in the best interests of ratepayers

without further information about the transactions and an open and transparent examination of all of the relevant facts.

Mr. Ashforth raised the further issue of whether the capital expenditure plan proposed by VCI in relation to the operations of GHEI was adequate as it only covered a five-year period. He also questioned whether VCI's proposed capital expenditures were directly comparable to those already proposed by GHEI, as it was not clear whether those proposed by VCI are net of developer contributions and government grants.

Two of the Intervenors requested that the Application proceed by way of oral hearing.

In addition to the submissions of the Intervenors, the Board received several letters of comment objecting to the transactions contemplated in the Application. Many of the objections contained in those letters of comment reflect the concerns expressed by the Intervenors. In addition, some of the letters of comment raise concerns regarding potential increases in rates in the GHEI service area, in part as a result of attempts by VCI to recover the monies spent on the acquisition of GHEI. One of the letters of comment expresses a concern about reduced reliability in the event that the transactions contemplated in the Application are approved.

Procedural Order No. 1

On June 21, 2005, the Board issued its Procedural Order No. 1 in this proceeding. The Procedural Order made provision for a hearing by the Board on two matters; namely, (a) the issues that are relevant to the matter to be decided in the Application; and (b) the need for further evidence to be filed by VCI and GHEI, and the appropriate discovery process. The Procedural Order also established a deadline for filing written submissions on these two matters, and allowed an opportunity for any Intervenor that had not already done so to indicate by letter whether it intends to make a request for an award of costs. On June 23, 2005 a letter was filed with the Board by GHEI and the Town of Gravenhurst relating to the matters addressed in Procedural Order No. 1. On

June 28, 2005, a letter was filed with the Board by the Committee in response to the letter filed by GHEI and the Town of Gravenhurst. On June 30, 2005, the parties were notified that the July 5, 2005 deadline for filing written submissions was being deferred. The process contemplated in Procedural Order No. 1 was superseded by the Procedural Order that gave rise to the combined proceeding described below.

The Combined Proceeding

On July 5, 2005, the Board issued a Procedural Order combining the Application with two others for the purpose of addressing common issues relating to the scope of the issues that the Board will consider in determining applications under section 86 of the Act. The Procedural Order combined the Application with an application by Greater Sudbury Hydro Inc. for leave to acquire shares in West Nipissing Energy Services Ltd. (EB-2005-0234) and an application by PowerStream Inc. and Aurora Hydro Connections Limited for leave for PowerStream Inc. to acquire shares in and subsequently amalgamate with Aurora Hydro Connections Limited (EB-2005-0254). The Board assigned file number RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 to the combined proceeding.

The Procedural Order asked the parties to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside the scope of the Board's review. The Board also requested, without limiting the matters that the parties may wish to raise, submissions on the relevance of two specific issues:

(i) the adequacy of the purchase price payable in relation to the proposed transaction; and

(ii) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Committee, Mr. Sutherland and Mr. Ashforth filed written submissions and participated in the oral hearing. Other Intervenors made written submissions with respect to the issues identified in either Procedural Order No. 1 or the Procedural Order that gave rise to the combined proceeding.

The Board issued its Decision in the combined proceeding on August 31, 2005 (the "Combined Decision"). In the Combined Decision, the Board made two significant determinations in relation to the manner in which the Board will review applications for leave to acquire shares or amalgamate under section 86 of the Act. First, the factors to be considered in deciding such applications are those identified in the Board's objectives as set out in section 1 of the Act. Second, in deciding whether to approve a share acquisition or amalgamation transaction, the Board will use a "no harm" test. In other words, the Board will approve a transaction if it is satisfied that the transaction will not have an adverse effect in terms of the factors identified in the Board's objectives. Based on these two findings, the Board concluded that the price payable by a purchaser is only relevant if the price is too high and creates a financial burden on the acquiring company. In such a case, there could be an adverse effect on economic viability. A price that is too low would not have an adverse effect in terms of the factors identified in the Board's objectives. Similarly, the Board concluded that the conduct or motivation of a seller leading up to the transaction (including, for example, the amount of public consultation on, or public disclosure about, the transaction) are not in and of themselves grounds for denying the approval of a transaction. The "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction.

Based on the Combined Decision, with one exception all of the issues raised up to that point by the Intervenors with respect to the Application are no longer "in scope" for this proceeding, because they have been determined not to be factors relevant to the Board's review of applications for leave to acquire shares or amalgamate under section 86 of the Act. The exception is the issue raised by Mr. Ashforth with respect to VCI's

proposed capital expenditure plans for GHEI, which is addressed later in this Decision and Order.

On September 12, 2005, a conference call was held to allow the Board to hear the views of the parties on the following questions:

1. Does any Intervenor contest the Application on the basis of issues that remain in scope in this proceeding, based on the Board's August 31, 2005 Decision?

2. If so:

   (a) what are those issues?

   (b) what materials or evidence filed by the Applicants with respect to those issues does the Intervenor wish to test, and by what means? Is an oral hearing required for this purpose?

   (c) does the Intervenor wish to have the Applicants produce further materials or evidence?

   (d) does the Intervenor intend to produce evidence in support of its position in relation to the Application?

Representatives of the Applicants, Mr. Ashforth and Mr. Sutherland participated in the conference call. Mr. William Black and Mr. Ray Lingk, one or both of which represented the Committee, also participated in the conference call.

Each of the Intervenors participating in the conference call made submissions reiterating their earlier concerns. The Applicants responded that all of those concerns were, based on the Combined Decision, no longer in scope in this proceeding, and that

no new “in scope” issues had been raised. The Board agrees, and has therefore proceeded with its determination of the Application on that basis.

Board Findings

Section 86 of the Act provides, among other things, that leave of the Board is required before an electricity distributor can amalgamate with any other corporation. In addition, under that section no person may acquire voting shares in an electricity distributor without leave of the Board if, as a result of the acquisition, the person would hold more than 20 percent of the voting securities of the distributor.

The Combined Decision has made it clear that, in deciding whether or not to grant leave in relation to the Application, the Board must determine whether the transactions contemplated in the Application will have an adverse effect on:

(i) the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; or

(ii) economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity or the maintenance of a financially viable electricity industry.

In the Application and other materials filed by the Applicants, the Applicants have submitted that:

- VCI projects that it will be able to operate in the GHEI service area at a cost equal to or below the current cost of operating GHEI. The consolidation and rationalization of administrative functions are expected to save up to $93.00 per customer in annual administrative costs;

- VCI's plan for capital investments will assist with reliability and maintenance of the GHEI distribution system, with the avoidance of supply restrictions, and with increasing distribution supply capacity for future growth and rate stability for customers;

- subject to technical review, VCI intends to proceed with GHEI's 2005 capital budget plan, and has a proposed five-year capital expenditure plan for system improvements to the GHEI service area that exceeds, on an annual basis, the average net annual capital expenditures made by GHEI since 2002. With respect to Mr. Ashforth's concerns regarding the comparability of VCI's proposed capital expenditure plans with those of GHEI, VCI indicated in its reply submissions filed in relation to the combined proceeding that its five-year forecast of annual capital spending is net of developer contributions and government grants;

- VCI's capital program will enable remote monitoring and control of GHEI's distribution system. VCI's existing control centre operation, which operates 24 hours a day, 7 days a week, will assume general oversight and operating management of the distribution system, to support and augment the existing operating staff complement. This, combined with system automation improvements, is expected to generally improve electrical reliability and reduce response time to power interruptions from their existing levels, and to improve employee and public safety;

- VCI's capital spending strategy for all of its service areas includes annual investments in system automation, capacity enhancements and system enhancements to meet customer and load growth requirements, and the sustainment of the general condition of assets to meet industry standards and ensure that reliability indices remain substantially below reference points established by the Board;

- VCI will retain GHEI's current operations centre for at least ten years, with GHEI's local service centre being supported by VCI's other existing fully equipped service centres located one or two hours away;

- rates for customers in GHEI's service area are not anticipated to be higher than rate levels that would otherwise apply in the absence of the transactions contemplated by the Application;

- the transactions contemplated by the Application provide opportunities to capitalize on economies of scale and scope, as well as allowing for greater efficiency and cost maintenance through consolidation; and

- the transactions contemplated by the Application will be financed from available cash reserves and unutilized credit, and will not appreciably affect VCI's cashflow to debt ratios.

The Board also notes VCI's proposal to establish a Gravenhurst Electricity Distribution Advisory Committee that would include two representatives of the Town of Gravenhurst and that would meet quarterly to discuss and report back on issues such as service reliability levels, distribution rate equity and conservation and demand management opportunities.

Finally, the Board notes the understanding of, and acknowledgement by, the Applicants of the Board's practice in relation to the recovery in rates of the costs of acquiring another distribution utility.

In light of the above, the Board is satisfied that the transactions contemplated in the Application will not have an adverse effect in relation to the factors identified in its objectives as set out in section 1 of the Act. In other words, the Board is satisfied that the Application meets the "no harm" test.

The Board therefore approves the proposed transactions and grants leave as requested in the Application.

Cost Awards

The Board will issue a separate decision on costs for this proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. Veridian Connections Inc. is granted leave to acquire all outstanding shares in, and subsequently to amalgamate with, Gravenhurst Hydro Electric Inc.

2. Notice of completion of each of the share acquisition and the amalgamation shall be promptly given to the Board.

3. The Board's leave to acquire shares and amalgamate shall expire 18 months from the date of this Decision and Order. If either the share acquisition or the amalgamation has not been completed by that date, a new application for leave will be required in order for the non-completed transaction to proceed.

Pursuant to section 6(1) of the Act, the Management Committee of the Board has delegated to Mark Garner, an employee of the Board, the powers and duties of the Board with respect to the determination of applications under section 60 and section 77(5) of the Act. Accordingly, the Board refers to Mark Garner the application to issue an electricity distribution licence to the corporation created through the amalgamation of Gravenhurst Hydro Electric Inc. and Veridian Connections Inc. and the application to cancel Gravenhurst Hydro Electric Inc.'s and Veridian Connections Inc.'s electricity distribution licences.

ISSUED at Toronto, September 16, 2005

ONTARIO ENERGY BOARD

Original signed by

Gordon Kaiser
Vice Chair and Presiding Member

TAB 4

Ontario Energy Board

Commission de l'Énergie de l'Ontario

EB-2005-0254

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 PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders.

BEFORE

Bob Betts
Presiding Member

Pamela Nowina
Member

Paul Sommerville
Member

DECISION AND ORDER

September 19, 2005

The Application

On March 24, 2005, PowerStream Inc. (“PowerStream”) and Aurora Hydro Connections Limited (“AHCL”) (collectively, the “Applicants”) filed an application with the Ontario Energy Board (the “Board”) under section 86 of the *Ontario Energy Board Act, 1998* (the “Act”) seeking leave for PowerStream to acquire all outstanding shares in and subsequently to amalgamate with AHCL (the “Application”). The Application also seeks, as of a date to be notified by PowerStream, the cancellation of AHCL’s electricity distribution licence under section 77(5) of the Act, and an amendment to PowerStream’s electricity distribution licence under section 74 of the Act to include AHCL’s licensed service area in PowerStream’s licence.

Both PowerStream and AHCL are licensed electricity distributors.

PowerStream owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2004-0420. PowerStream’s licensed service area covers the Town of Markham, the City of Vaughan and the Town of Richmond Hill. PowerStream’s ownership is currently divided as follows: 59% of the shares are owned by Vaughan Holdings Inc., which is wholly owned by the City of Vaughan; and 41% of the shares are owned by Markham Energy Corporation, which is wholly owned by the Town of Markham. Markham Energy Corporation’s ownership in PowerStream may increase by up to 2% prior to the closing of the transactions contemplated in the Application. This would be the result of the exercise by Markham Energy Corporation of an option contained in the share purchase agreement associated with the amalgamation of Markham Hydro Distribution Inc., Hydro Vaughan Distribution Inc. and Richmond Hill Hydro Inc. that resulted in the creation of PowerStream.

AHCL owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its

electricity distribution licence ED-2002-0558. AHCL's licensed service area covers the Town of Aurora. AHCL is owned by Borealis Hydro Electric Holdings Inc., which is wholly owned by the Town of Aurora.

According to documentation filed with the Application, internal approvals necessary to enable the parties to enter into the agreement that underlies the proposed transactions have been obtained.

PowerStream is currently the fourth largest electricity distributor in Ontario in terms of customer numbers. Following the amalgamation, PowerStream would serve approximately 215,000 customers in the service areas currently served by PowerStream and AHCL.

PowerStream does not anticipate that it will be seeking to implement any immediate changes to the existing AHCL distribution rate orders. PowerStream has indicated that it will consider a rate harmonization plan, in accordance with the Board's Electricity Distribution Rate Handbook and any other Board requirements, following the completion of a cost allocation, cost of service and rate design study. The Share Purchase Agreement filed by the Applicants contains a covenant to the effect that, in the event that rates are harmonized, AHCL's current customers will benefit from the harmonization by a minimum of $10,000,000 over a ten-year period from what the rates would otherwise be were AHCL to remain a stand-alone company.

A Notice of Application and Written Hearing was published as directed by the Board. Mr. Michael Evans, of Aurora TrueValue, Hydro One Networks Inc. ("Hydro One"), Newmarket Hydro Ltd. ("NHL") and Mr. Benji Kestein, representing the "New Deal Ratepayers Group", (collectively, the "Intervenors") requested and were granted intervenor status in this proceeding. The Board also received two letters of comment, one of which raised certain issues for consideration by the Board and the other of which offered support for the transactions contemplated in the Application.

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.

The Interventions

The concerns raised by Mr. Evans can generally be described as falling within three categories of issues.

The first category concerns the process surrounding the negotiation of the transactions contemplated in the Application, including whether the proper process was followed; whether the Mayor of the Town of Aurora, as a person who may have fiduciary responsibilities to the citizens of Aurora, ensured that a fair and transparent process was followed that obtained the maximum value for AHCL's distribution assets; and whether due diligence was exercised through the process, including whether appropriate legal and other advisors were retained.

The second category of issues raised by Mr. Evans relates to the purchase price and, more specifically, asserts that the price payable for the shares of AHCL is below market value.

The third category of concerns addresses issues relating to system reliability, expressed as general concerns regarding whether "supply from the south" is adequate to meet the power needs of existing customers and whether the "promise of power supply" is only for new residents and businesses in Aurora and not for existing customers. Mr. Evans also questioned the Applicants' assertion that rate benefits will arise as a result of the transactions contemplated in the Application.

The concerns raised by Mr. Kestein were much to the same effect. Mr. Kestein also indicated that the concerns of his group have to do with the contract, which he stated had not, at the date of his intervention, been made available to the general public. The

contractual provisions identified as being of interest included the length of the term, escape clauses, penalties and increases on review every three years.

As part of its intervention, NHL indicated a desire to obtain additional information that could expose issues relating to such matters as its, that is NHL's, continued access to transmission and distribution and the effects of the proposed transactions on the costs of borrowing and cash flow. However, the focus of NHL's intervention throughout this proceeding has been related to system reliability. Specifically, NHL was opposed to the inclusion of a particular provision in the Share Purchase Agreement filed by the Applicants under which PowerStream agreed to install, subject to regulatory approval, three 28 kV feeder lines "to provide sufficient capacity for load growth and enhanced reliability through redirecting of supply based upon customer requirements within Aurora". NHL argued that this provision may compromise the interests of electricity consumers in northern York region with respect to the adequacy, reliability and quality of electricity service, and suggested that the proposed approach would preclude other low cost supply options that are both more efficient and more reliable. NHL was also concerned that there may be a resulting increase in costs for NHL's customers, since NHL would expect to be required to make a capital investment in relation to the installation of the three feeder lines. This, in turn, would require NHL to incur added costs in the form of a capital investment in or contribution to other facilities identified as solutions to the supply issue in the region.

Hydro One did not take a position on the merits of the Application.

Mr. Evans requested that the Board proceed with this Application by way of oral hearing, a request that was supported by NHL.

The Combined Proceeding

On July 5, 2005, the Board issued a Procedural Order combining the subject Application with two others for the purpose of addressing common issues relating to the scope of

the issues that the Board will consider in determining applications under section 86 of the Act. The Procedural Order combined the Application with an application by Greater Sudbury Hydro Inc. for leave to acquire shares in West Nipissing Energy Services Ltd. (EB-2005-0234) and an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. for leave for Veridian Connections Inc. to acquire shares in and to subsequently amalgamate with Gravenhurst Hydro Electric Inc. (EB-2005-0257). The Board assigned file number RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 to the combined proceeding.

The Procedural Order asked the parties to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside the scope of the Board's review. The Board also requested, without limiting the matters that the parties may wish to raise, submissions on the relevance of two specific issues:

(i) the adequacy of the purchase price payable in relation to the proposed transaction; and

(ii) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants made oral and written submissions in the combined proceeding. NHL also made oral and written submissions in the combined proceeding, focussing on the reliability issue previously raised by it. Mr. Evans and Mr. Kestein filed a letter reiterating their concerns regarding reliability.

The Board issued its Decision in the combined proceeding on August 31, 2005 (the "Combined Decision"). In the Combined Decision, the Board made two significant

determinations in relation to the manner in which the Board will review applications for leave to acquire shares or amalgamate under section 86 of the Act.

First, the Board determined that the factors to be considered in deciding such applications are those identified in the Board's objectives as set out in section 1 of the Act. Second, the Board determined that it will use a "no harm" test in deciding whether to approve a share acquisition or amalgamation transaction. In other words, the Board will approve a transaction if it is satisfied that the transaction will not have an adverse effect in terms of the factors identified in the Board's objectives.

Based on these two findings, the Board concluded that the price payable by a purchaser is only relevant if the price is too high and creates a financial burden on the acquiring company. In such a case, there could be an adverse effect on the economic viability of the purchaser. A price that is too low would not have an adverse effect in terms of the factors identified in the Board's objectives.

Similarly, the Board concluded that the conduct or motivation of a seller leading up to the transaction (including, for example, the amount of public consultation on, or public disclosure about, the transaction) are not in and of themselves grounds for denying the approval of a transaction. The "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction.

In the Combined Decision, the Board acknowledged that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate. However, the Board also determined that the proceeding associated with its consideration of the proposed transactions in the instant case is not the appropriate place to address this question. This is so because the Board has initiated a different, and more focussed, process to address the York Region supply issue. The Board concluded that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in that process. The Board also noted that NHL would not be prejudiced by the deferral of the reliability issues to the Board's

broader York Region supply process, stating that “any leave [the Board] might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process”.

Based on the Combined Decision, all of the issues raised by the Intervenors with respect to the Application are no longer “in scope” for this proceeding, either because they have been deferred to the Board’s broader York Region supply process (reliability issues), because they are premised on the assumption that it is incumbent on the Applicants to demonstrate that the transactions proposed in the Application will result in a benefit (the question raised by Mr. Evans regarding the rate benefits associated with the transactions), or because they have been determined not to be factors relevant to the Board’s review of applications for leave to acquire shares or amalgamate under section 86 of the Act (issues respecting the process culminating in the proposed transactions and respecting the purchase price).

By letter dated September 7, 2005, the Board received notification from NHL indicating that it was satisfied that based on assurances contained in the Combined Decision, it would have an opportunity to address the issues of most concern in the more focused York Region supply process and accordingly was withdrawing its intervention.

On September 16, 2005, a conference call was held to allow the Board to hear the views of the remaining parties on the following questions:

1. Does any Intervenor contest the Application on the basis of issues that remain in scope in this proceeding, based on the Board’s August 31, 2005 Decision?

2. If so:

   (a) what are those issues?

   (b) what materials or evidence filed by the Applicants with respect to those issues does the Intervenor wish to test, and by what means? Is an oral hearing required for this purpose?

   (c) does the Intervenor wish to have the Applicants produce further materials or evidence?

   (d) does the Intervenor intend to produce evidence in support of its position in relation to the Application?

Participants in the conference call included: Ms. Long, representing the Applicants; Mr. Evans of Aurora TrueValue; Mr. Kestein, representing the New Deal Ratepayers Group; Ms. Band, Board Counsel; Mr. Baumhard, Board Staff; and Mr. Betts, Board Member, presiding over the session.

Also present were Mr. Nolan and Ms. Conboy, representing PowerStream; Mr. John Sanderson, representing AHCL; and Mr. Somerville, representing the Town of Aurora.

Ms. Long opened with submissions that all of the issues raised by the Intervenors to this time have been dealt with in the Combined Decision.

Mr. Evans' primary concern related to his apparent uncertainty regarding his eligibility for cost awards. He reiterated concerns about reliability of supply, and about generation solutions to supply problems, and indicated that he disagreed with the Combined Decision position on price, stating that the price should be based upon Market Value.

Mr. Evans requested a 30 day extension on behalf of himself and Mr. Kestein due to some delays in their receipt of documents and their lack of legal counsel to assist them in relation to this proceeding.

Mr. Kestein agreed with all points raised by Mr. Evans and reiterated his concern about the process followed by the Town of Aurora in relation to the sale of the shares of AHCL.

In her reply for the Applicants, Ms. Long stated that no new issues had been identified in the session, and further, the request for a 30 day extension was unacceptable.

Upon considering the points raised by all parties, the Board ruled as follows:

1) Mr. Evans, of Aurora TrueValue was advised that the Board's *Practice Direction on Cost Awards* specifically includes parties representing consumer interests as being eligible for cost awards, and confirmed that he therefore is eligible for cost awards. Mr. Evans was reminded that eligibility was not a guarantee that costs would be awarded, and further that all of this was clearly stated in the Board's *Practice Direction on Cost Awards* in his possession.

2) The Board rejected a request from the two Intervenors for a 30 day extension to allow them additional time to prepare for the questions put to them. Adequate time has been permitted to understand the Application, the Combined Decision and the questions put to them for discussion during the conference call, as well as to prepare their answers to those questions.

3) The Board ruled that Mr Evans and Mr. Kestein had reiterated past issues and failed to identify any that were not already considered in the Board's Combined Decision of August 31, 2005, or that could not be dealt with in other Board processes, such as the Board's review of the York Region

supply situation. This led to a ruling that the Board would now proceed with its deliberations on the Application based upon the evidence it had at this point in the proceeding.

As a result of a question from Mr. Betts to Mr. Evans, the Board clarified a procedural point that Mr. Evans was the Intervenor of record in this matter, not Aurora TrueValue.

Board Findings

Section 86 of the Act provides, among other things, that leave of the Board is required before an electricity distributor can amalgamate with any other corporation. In addition, under that section no person may acquire voting shares in an electricity distributor without leave of the Board if, as a result of the acquisition, the person would hold more than 20 percent of the voting securities of the distributor.

The Combined Decision has made it clear that, in deciding whether or not to grant leave in relation to the Application, the Board must determine whether the transactions contemplated in the Application will have an adverse effect on:

(i) the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; or

(ii) economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity or the maintenance of a financially viable electricity industry.

The Applicants have submitted that the transactions contemplated in the Application will:

- provide opportunities for efficiencies and economies of scale, which could mitigate the impact of increased upward pressure on distribution rates for electricity consumers currently served by AHCL;

- provide benefits to Aurora ratepayers due to the synergies of integrating within a larger, lower cost utility (based on figures from the years 2002 and 2003, PowerStream's operation, maintenance and administration costs per customer were approximately 25% lower than those of AHCL);

- enable better inventory management and ensure sufficient spare equipment for high reliability through the harmonization of engineering standards;

- provide electricity consumers currently served by AHCL with benefits associated with being served by a larger utility which, given its larger resources, will have an increased ability to monitor, report on and improve system reliability and power quality;

- allow PowerStream to configure its distribution network using best practices given that the service territories of the parties are geographically contiguous;

- based on an analysis of current rates, result in lower rates for electricity consumers currently served by AHCL than would be the case were AHCL to remain a stand-alone company; and

- be financed through debt financing, with interest coverage and cash flow-to-debt ratios being in accordance with all requirements of banking and Electricity Distributors Finance Corporation bond financing arrangements so as to be sufficient to satisfy the credit rating agencies.

The Board also notes that the following commitments have been made by PowerStream in the context of the transactions contemplated in the Application:

- to maintain or improve customer service levels and service offerings, including meeting or exceeding the minimum service level requirements established by the Board (including expected response times) and which are comparable to the service and reliability levels currently enjoyed by customers served by PowerStream (including on call services 24 hours a day 7 days a week);

- to establish a customer advisory committee comprised of representatives resident in Aurora that will meet quarterly with respect to rates, reliability and customer issues on a consultative basis in order to receive local input and feedback, and to maintain a local presence in the Town of Aurora; and

- to provide AHCL's current customers with a benefit from the harmonization of rates of at least $10,000,000 over a ten-year period relative to what they would otherwise be as compared to AHCL remaining a stand-alone company.

Based on the above, the Board is satisfied that the transactions contemplated in the Application will not have an adverse effect in relation to the factors identified in its objectives as set out in section 1 of the Act. In other words, the Board is satisfied that the Application meets the "no harm" test.

The Board does, however, wish to further comment on the issue of the installation of the three feeder lines proposed to be constructed by PowerStream. As noted earlier, the Share Purchase Agreement filed by the Applicants contains a section under which PowerStream has agreed to install, within three years but subject to regulatory approval, three 28 kV feeder lines "to provide sufficient capacity for load growth and

enhanced reliability through redirecting of supply based upon customer requirements within Aurora". As noted in the Combined Decision, any leave given by the Board in relation to the transactions contemplated in the Application would not constitute acceptance by the Board that the installation of the three feeder lines is a long term solution to the supply issue, nor should it be regarded in any degree as a determination of any aspect of the broader York Region process.

The Board recognizes that PowerStream entered into this commitment prior to July 25, 2005, the date on which the Board initiated the broader York Region supply process, and accepts PowerStream's statement that the feeder line proposal does not constitute a permanent supply solution for York Region. It should not, therefore, be implemented in a manner that frustrates any aspect of the broader York Region process.

Finally, the Board notes the statement made in a letter dated June 6, 2005 filed with the Board by the Mayor of the Town of Aurora to the effect that the purchase price payable in respect of the transactions contemplated in the Application "represents a premium of some 30% over the base value of the utility as it currently stands". The Board takes this opportunity to remind the Applicants that, as noted in the Combined Decision, any premium paid in excess of the book value of acquired assets is not normally recoverable through rates.

Cost Awards

The Board received submissions and a claim for cost awards, including a suggestion for an advance toward cost awards, from Mr. Evans.

The Applicants replied with arguments that in making its determination regarding whether Mr. Evans is eligible for a cost award, the Board should consider that the issues raised by Mr. Evans with respect to price and supply are outside the scope of the Board's review, and therefore that Mr. Evans should not be granted an award of costs in order to pursue those issues. The Applicants also argued that, should the Board

determine that Mr. Evans is eligible for costs, the Board should only consider the amount of the cost award at the end of the proceeding in accordance with the Board's normal practice. The submissions of the Applicants on this issue were made prior to the Board's July 5, 2005 Procedural Order.

The Board acknowledges that, prior to its Combined Decision, there was some uncertainty regarding the scope of the issues to be considered in determining whether to grant leave in applications to acquire shares or amalgamate under section 86 of the Act. The Board finds that it would not be appropriate to deny costs to an intervenor for having raised issues that were, at the time, of potential relevance but that have subsequently been determined to be out of scope. The Board also notes that Mr. Evans did raise issues relating to reliability which, but for the York Region supply process, would have been relevant considerations for the Board in its determination of the Application.

The Board confirmed in its September 16, 2005 conference call that Mr. Evans is eligible for costs.

In this Decision, the Board has determined that Mr. Evans shall be awarded 100% of his reasonably incurred costs in connection with his participation in this proceeding. In the Combined Decision, it was noted that the Board would issue a separate decision on cost awards in relation to the combined hearing at a later date. Accordingly, Mr. Evans' entitlement to costs for his participation in the combined hearing will be determined by the Panel that presided over the combined hearing. To facilitate the processing of cost awards to Mr. Evans, he should await that Panel's determination of cost awards for the combined hearing before filing his detailed cost claim. Mr. Evans must then submit his detailed cost claim, in the form required by the Board's *Practice Direction on Cost Awards,* within 21 days of the date on which a decision on cost awards is issued by the combined hearing Panel.

The Board anticipates that the Board's costs of, and incidental to, this proceeding, which relate almost exclusively to the combined proceeding, will be addressed by the combined hearing Panel in its decision on cost awards.

THE BOARD THEREFORE ORDERS THAT:

1. PowerStream Inc. is granted leave to acquire all outstanding shares in, and subsequently to amalgamate with, Aurora Hydro Connections Limited.

2. Notice of completion of each of the share acquisition and the amalgamation shall be promptly given to the Board.

3. The Board's leave to acquire shares and amalgamate shall expire 18 months from the date of this Decision and Order. If either the share acquisition or the amalgamation has not been completed by that date, a new application for leave will be required in order for the non-completed transaction to proceed.

4. The eligible costs of Mr. Evans in relation to this Application, other than in relation to the combined proceeding, as assessed by the Board's Cost Assessment Officer, shall be paid by the Applicants upon receipt of the Board's Cost Order.

Pursuant to section 6(1) of the Act, the Management Committee of the Board has delegated to Mark Garner, an employee of the Board, the powers and duties of the Board with respect to the determination of applications under section 74 and section 77(5) of the Act. Accordingly, the Board refers to Mark Garner the application to cancel Aurora Hydro Connections Limited's electricity distribution licence and the application to amend PowerStream Inc.'s electricity distribution licence.

ISSUED at Toronto, September 19, 2005

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

TAB 5

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

EB-2005-0234

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 Greater Sudbury Hydro Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd.

BEFORE Bob Betts
Presiding Member

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION AND ORDER

The Application

On February 23, 2005, Greater Sudbury Hydro Inc. ("GSHI") filed an application with the Ontario Energy Board (the "Board") under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd. ("WNESL") (the "Application").

Both GSHI and WNESL are licensed electricity distributors.

GSHI owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2002-0559. GSHI's licensed service area covers the City of Greater Sudbury and the Township of Falconbridge. GSHI is wholly owned by Greater Sudbury Utilities Inc., which in turn is wholly owned by the City of Greater Sudbury.

WNESL owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2002-0562. WNESL's licensed service area covers the former Town of Cache Bay and the Town of Sturgeon Falls, now in the Municipality of West Nipissing. WNESL is wholly owned by West Nipissing Power Distribution Ltd., which in turn is wholly owned by the Municipality of West Nipissing.

Upon approval and completion of the transaction contemplated in the Application, the City of Greater Sudbury would indirectly hold 100 percent of the outstanding shares in WNESL.

The Application states that it is the intention of GSHI to amalgamate with WNESL as of December 31, 2005, but does not include a request for leave to amalgamate. Accordingly, a further application to the Board requesting leave to amalgamate would have to be filed by GSHI and WNESL in order for the amalgamation to proceed.

According to documentation filed with the Application, all internal approvals necessary to enable the parties to enter into the agreement that underlies the proposed transaction have been obtained.

GSHI intends to implement rate harmonization concurrent with the amalgamation of GSHI and WNESL that is anticipated to occur at the end of the year. GSHI has stated that, on the basis of current distribution rates, residential customers currently served by

WNESL will benefit from a rate reduction when rates are harmonized. GSHI has also stated that a rate harmonization plan will be established under the revised rate mitigation and harmonization approach established by the Board in relation to the 2006 electricity distribution rates proceeding for the 36 general service (>50 kW) customers who may be negatively affected by rate harmonization.

A Notice of Application and Written Hearing was published as directed by the Board. Mr. Brian LaFleche and Mr. Len LaFleche, representing the "Save Our Hydro Group", have been granted intervenor status in respect of the Application.

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.

The Intervention

The concerns raised by the Save Our Hydro Group can generally be described as falling within three categories of issues.

The first category concerns the process surrounding the negotiation of the transaction contemplated in the Application, including concerns that the process was not transparent; that there was inadequate public consultation on and public disclosure about the proposed transaction; that no tender was issued; that there was a failure to consult with the board of directors and employees of WNESL; that the Municipality did not follow the process required by its by-laws or by law; and that no opportunity was given to consider a potential competing bid by another utility.

The second category of issues raised by the Save Our Hydro Group relates to the purchase price and, more specifically, asserts that the price payable for the shares of WNESL is too low. Concerns were also expressed about the related issue of the accuracy of the valuation of WNESL's assets.

The third category of issues raised by the Save Our Hydro Group relates to questions regarding the tenure and future remuneration of existing WNESL employees.

During the oral hearing held as part of the combined proceeding described below, the Save Our Hydro Group raised two further concerns. The first relates to reliability of electricity service. Specifically, based on the Save Our Hydro Group's understanding that two of the three existing WNESL line staff would be working in the City of Greater Sudbury for six months of the year, concerns were expressed that there may be delays in effecting repairs, particularly when weather conditions are poor. The second issue relates to rates. The Save Our Hydro Group indicated its understanding that the transaction is expected to have a positive impact on rates for residential customers. It noted, however, that it did not have any information regarding rates for commercial customers, and that there was a concern as to the potential impact of the proposed transaction on those rates.

The Save Our Hydro Group requested that the Application proceed by way of oral hearing.

In addition to the submissions of the Save Our Hydro Group, the Board received several letters of comment objecting to the transaction contemplated in the Application, many of which were form letters which were filed with the Board by the Save Our Hydro Group. Those letters object to the proposed transaction on the grounds that there was inadequate public consultation, and also refer to the lack of confidence that the Municipality has shown towards the board of directors of WNESL. Other letters of comment reflect the concerns expressed by the Save Our Hydro Group regarding the process surrounding the negotiation of the proposed transaction. One letter of comment expressed concern that Sudbury workers would have to travel for one hour to reach West Nipissing, that part of the purchase price payable by GSHI was destined for plant improvements in Sudbury and that keeping a "satellite office" in West Nipissing in order to meet the Board's service level requirements would be prohibitively expensive.

The Municipality of West Nipissing requested and was granted observer status in relation to this Application.

Procedural Order No. 1

On June 15, 2005, the Board issued its Procedural Order No. 1 in respect of the Application. The Procedural Order established revised deadlines for the filing of submissions in relation to the issue of whether the Application should proceed by way of oral hearing. Both the Save Our Hydro Group and GSHI filed submissions on that issue, the former in favour and the latter opposed.

The Combined Proceeding

On July 5, 2005, the Board issued a Procedural Order combining the subject Application with two others for the purpose of addressing common issues relating to the scope of the issues that the Board will consider in determining applications under section 86 of the Act. The Procedural Order combined the Application with an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. for leave for Veridian Connections Inc. to acquire shares in and to subsequently amalgamate with Gravenhurst Hydro Electric Inc. (EB-2005-0257) and an application by PowerStream Inc. and Aurora Hydro Connections Limited for leave for PowerStream Inc. to acquire shares in and to subsequently amalgamate with Aurora Hydro Connections Limited (EB-2005-0254). The Board assigned file number RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 to the combined proceeding.

The Procedural Order asked the parties to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside the scope of the Board's review. The Board also requested, without limiting the matters that the parties may wish to raise, submissions on the relevance of two specific issues:

(i) the adequacy of the purchase price payable in relation to the proposed transaction; and

(ii) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. GSHI made oral and written submissions in the combined proceeding. The Save Our Hydro Group made oral and written submissions in the combined proceeding, focussing on the issues previously raised by it. As noted earlier, the Save Our Hydro Group at this time also raised, in response to questions from the Panel, concerns regarding timeliness of electricity service and the impact of the proposed transaction on rates for commercial customers.

The Board issued its Decision in the combined proceeding on August 31, 2005 (the "Combined Decision"). In the Combined Decision, the Board made two significant determinations in relation to the manner in which the Board will review applications for leave to acquire shares or amalgamate under section 86 of the Act.

First, the Board determined that the factors to be considered in deciding such applications are those identified in the Board's objectives as set out in section 1 of the Act. Second, the Board determined that it will use a "no harm" test in deciding whether to approve a share acquisition or amalgamation transaction. In other words, the Board will approve a transaction if it is satisfied that the transaction will not have an adverse effect in terms of the factors identified in the Board's objectives.

Based on these two findings, the Board concluded that the price payable by a purchaser is only relevant if the price is too high and creates a financial burden on the acquiring company. In such a case, there could be an adverse effect on the economic viability of

the purchaser. A price that is too low would not have an adverse effect in terms of the factors identified in the Board's objectives.

Similarly, the Board concluded that the conduct or motivation of a seller leading up to the transaction (including, for example, the amount of public consultation on, or public disclosure about, the transaction) are not in and of themselves grounds for denying the approval of a transaction. The "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction.

Based on the Combined Decision, almost all of the issues raised by the Save Our Hydro Group with respect to the Application are no longer "in scope" for this proceeding, because they have been determined not to be factors relevant to the Board's review of applications for leave to acquire shares or amalgamate under section 86 of the Act. The exceptions are the concerns expressed by the Save Our Hydro Group during the oral hearing in the combined proceeding regarding the timeliness of electricity service and the potential impact of the proposed transaction on rates for commercial consumers.

On September 14, 2005, a conference call was held to allow the Board to hear the views of the remaining parties on the following questions:

1. Does the Save Our Hydro Group contest the Application on the basis of issues that remain in scope in this proceeding, based on the Board's August 31, 2005 Decision?

2. If so:

   (a) what are those issues?

(b) what materials or evidence filed by GSHI with respect to those issues does the Save Our Hydro Group wish to test, and by what means? Is an oral hearing required for this purpose?

(c) does the Save Our Hydro Group wish to have GSHI produce further materials or evidence?

(d) does the Save Our Hydro Group intend to produce evidence in support of its position in relation to the Application?

Representatives of GSHI and the Save Our Hydro Group participated in the conference call. The Save Our Hydro Group made submissions reiterating their earlier concerns respecting the process followed by the Municipality which culminated in the transaction which is the subject of the Application. With respect to the general concern expressed by the Save Our Hydro Group in relation to the potential impact of the transaction on rates for commercial customers, the Board reiterated that any changes in rates will need to be the subject of a separate rate proceeding. Interested parties would be given notice of that proceeding and would have an opportunity for input on the proposed rate changes at that time.

GSHI submitted that all of the concerns raised by the Save Our Hydro Group were, based on the Combined Decision, no longer in scope in this proceeding, or, in the case of the rates issue, would be subject to a distinct process, and that no new “in scope” issues had been raised. The Board agrees, and notified the parties of its determination that the issues which the Save Our Hydro Group wishes to have addressed by the Board are outside the scope of the Board’s review of this application.

The Board has therefore proceeded with its determination of the Application on that basis.

Board Findings

Section 86 of the Act provides, among other things, that no person may acquire voting shares in an electricity distributor without leave of the Board if, as a result of the acquisition, the person would hold more than 20 percent of the voting securities of the distributor. In addition, under that section leave of the Board is required before an electricity distributor can amalgamate with any other corporation.

The Combined Decision has made it clear that, in deciding whether or not to grant leave in relation to the Application, the Board must determine whether the transactions contemplated in the Application will have an adverse effect on:

(i) the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; or

(ii) economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity or the maintenance of a financially viable electricity industry.

GSHI has submitted that the transaction contemplated in the Application will:

- ensure more efficient system planning and capital investment;
- provide opportunities for efficiency gains in rationalization of the organizational structure, human resources and engineering functions, as well as greater resource and cost management in the form of lower overall distribution rate adjustments;
- maintain or improve operational safety and system integrity through GSHI's three-year planned capital and maintenance program, which

includes normal system enhancements and system optimization in relation to the rationalization of substations;

- have a positive impact on rates for residential customers;

- have a positive impact on WNESL's operating costs, which may be reduced by approximately 15% as a result of system integration in the form of the centralization of accounting, engineering, administration, regulatory affairs and billing and customer interaction systems;

- be financed through cash resources on hand, will have no impact on GSHI's debt obligations and will leave sufficient cash resources to support GSHI's ongoing operations and planned capital requirements. The restructured operations and capital requirements of WNESL are expected to be adequately supported by WNESL's cash flow.

The Board also notes GSHI's expressed commitment to:

- maintain the existing service centre in Sturgeon Falls so as to ensure that response times will not be below those existing today and will conform to performance standards set by the Board; and

- establish a transition committee, and subsequently a permanent management committee, to deal specifically with issues affecting WNESL customers.

Based on the above, the Board is satisfied that the transaction contemplated in the Application will not have an adverse effect in relation to the factors identified in its objectives as set out in section 1 of the Act. In other words, the Board is satisfied that the Application meets the "no harm" test.

The Board notes that the Share Purchase Agreement that underlies the proposed transaction contains provisions and schedules that refer to rates. These are provisions that associate certain future payments to the Municipality of West Nipissing with rate increases that might later be authorized by the Board, and tables of illustrative rate changes and distribution rate increases.

The Application currently before the Board is not a rate application. Rates would be an issue in the context of this Application only if the proposed transaction raised immediate concerns in relation to financial viability. However, the Board wishes to remind both GSHI and WNESL that no finding of the Board in this proceeding predetermines the outcome of any future rate applications.

Cost Awards

The Board received submissions and a claim for cost awards from the Save Our Hydro Group. The Board has previously determined that the Save Our Hydro Group is eligible for an award of costs.

The Board acknowledges that, prior to its Combined Decision, there was some uncertainty regarding the scope of the issues to be considered in determining whether to grant leave in applications to acquire shares or amalgamate under section 86 of the Act. In the circumstances, it would not be appropriate to deny costs to an intervenor for having raised issues that were, at the time, of potential relevance but that have subsequently been determined to be out of scope. This is no different from the Board's practice of allowing costs for intervenors in relation to the preparation of interventions that raise issues that are ultimately not included on an issues list in a proceeding.

The Board has therefore determined that the Save Our Hydro Group shall be awarded 100% of its reasonably incurred costs in connection with its participation in this proceeding. In the Combined Decision, it was noted that the Board would issue a separate decision on cost awards in relation to the combined hearing at a later date.

Accordingly, the Save Our Hydro Group's entitlement to costs for its participation in relation to the combined hearing will be determined by the Panel that presided over the combined hearing. To facilitate the processing of cost awards to the Save Our Hydro Group, the Save Our Hydro Group should await that Panel's determination prior to filing its detailed cost claim. The Save Our Hydro Group must then submit its detailed cost claim, in the form required by the Board's *Practice Direction on Cost Awards,* within 21 days of the date on which a decision on cost awards is issued by the combined hearing Panel.

The Board anticipates that the Board's costs of, and incidental to, this proceeding, which relate almost exclusively to the combined proceeding, will be addressed by the combined hearing Panel in its decision on cost awards.

THE BOARD THEREFORE ORDERS THAT:

1. Greater Sudbury Hydro Inc. is granted leave to acquire all outstanding shares in West Nipissing Electric Service Ltd.

2. Notice of completion of the share acquisition shall be promptly given to the Board.

3. The Board's leave to acquire shares shall expire 18 months from the date of this Decision and Order. If the share acquisition has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.

4. The eligible costs of the Save Our Hydro Group in relation to this Application, other than in relation to the combined proceeding, as assessed by the Board's Cost Assessment Officer, shall be paid by the Applicants upon receipt of the Board's Cost Order.

ISSUED at Toronto, September 16, 2005

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

TAB 6

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2013-0078
EB-2013-0079
EB-2013-0080

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 B2M Limited Partnership for an electricity transmission licence pursuant to section 60 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by Hydro One Networks Inc. for leave to sell certain transmission assets to B2M Limited Partnership under section 86(1)(b) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by SON LP Co. for leave to acquire a partnership interest in B2M Limited Partnership under section 86(2) of the *Ontario Energy Board Act, 1998*.

BEFORE: Ken Quesnelle
Presiding Member

Ellen Fry
Member

Peter Noonan
Member

Decision and Order
November 28, 2013

Introduction

B2M Limited Partnership ("B2M LP"), Hydro One Networks Inc. ("HONI") and SON LP Co. (collectively, the "Applicants") filed three separate but related applications dated March 28, 2013 with the Ontario Energy Board (the "Board").

The applications were amended on October 1, 2013 as described below. In the applications as amended,

1. B2M LP applied for an electricity transmission licence under section 60 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act") **(EB-2013-0078)**;
2. HONI applied for leave of the Board to sell certain electricity transmission assets (the "Bruce to Milton Assets") to B2M LP under section 86(1)(b) of the Act **(EB-2013-0079)**; and
3. SON LP Co. applied for leave of the Board to acquire up to a 34% partnership interest in B2M LP under section 86(2)(a) of the Act. **(EB-2013-0080)**.

The purpose of the applications is to give effect to a commercial transaction between HONI and the Saugeen Ojibway Nation (the "SON"), allowing the SON to acquire up to a 34% ownership interest in the Bruce to Milton Assets. Specifically, to facilitate the proposed transaction, 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 and formed for the purpose of the proposed transaction. B2M LP would become a licensed electricity transmitter for the purpose of owning and operating the Bruce to Milton Assets. Thereafter, a corporation owned and controlled by the SON, known as SON LP Co., would acquire up to a 34% ownership interest in B2M LP.

Subject to the condition set out below, the requests in the applications filed by B2M LP and HONI are granted. For the reasons indicated below, the Board will not make a determination on SON LP Co.'s application.

The Proceeding

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

The Board has proceeded by way of a written hearing.

The Board granted the requests of the Power Workers' Union and Dennis Threndyle and Randy Threndyle (on behalf of Elda Threndyle and other individuals) to participate as intervenors in the proceeding. These intervenors filed interrogatories (IRs). Board staff also filed IRs and a submission. The Board also received two letters of comment. The applications were amended and updated evidence was filed on October 1, 2013. The amendments related to the composition and valuation of the Bruce to Milton Assets, the partnership interest to be held by SON LP Co. in B2M LP, and the provisions of the Limited Partnership Agreement. By way of Procedural Order No. 3, the Board invited submissions on the Applicants' updated evidence. No submissions were filed.

Board Findings

Application by HONI Pursuant to Section 86(1)(b) 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 which states:

No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

> (b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public;

In determining this application, the Board is guided by the principles set out in the Board's decision in proceeding RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 (the "No Harm Decision"). 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 "no harm" test is a consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. The factors to be considered are those set out in section 1 of the Act and are attached to this Decision and Order as Appendix A. According to the no-harm test, 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 Board recognizes that HONI's application is an application under section 86(1)(b) to dispose of transmission system assets, whereas the No Harm

Decision addressed applications for leave to acquire shares under section 86(2) and amalgamate under section 86(1)(c). However, given that this proceeding, like the No Harm Decision, concerns a proposed change in system ownership, the Board finds that it is appropriate to apply the "no harm test" to HONI's application under section 86(1)(b) of the Act. Based on the presented evidence, as discussed below, the Board finds that the proposed transaction passes the "no harm test".

The proposed transfer price of the Bruce to Milton Assets is the net book value of the Bruce to Milton Assets. The evidence indicates that on transfer of the assets the associated operating and maintenance costs of the Bruce to Milton Assets will be assumed by B2M LP and removed from HONI's portion of the Uniform Transmission Rate revenue requirement. The evidence further indicates that incremental transaction and operating costs of B2M LP are forecast to be offset by the income tax benefits of the transaction over the long term. The Applicants submit that ratepayers will in fact benefit from the proposed transaction, in the long term, as a result of the expected income tax benefits of the transactions. Specifically, the Applicants state that:

> The proposed transaction is structured so that favourable tax rulings regarding the taxable position of B2M LP and SON LP Co. can result in reductions to the rates that B2M LP charges for transmission services to customers over the long term. The preliminary estimate of the net present value of the customer benefit associated with this transaction is $10 million, calculated over the life of the Transferred Assets.[1]

The Board notes that this expected offsetting of costs and benefit to ratepayers is contingent on the Applicants obtaining favourable tax rulings from the federal and provincial authorities. The Board's approval of the proposed transactions will therefore be conditional on Applicants obtaining the favourable tax rulings that have been contemplated by the Applicants in making the applications in this proceeding.

With respect to the management and operation of the assets, the Applicants submit that there will be no impact on reliability or quality of supply as a result of

[1] Updated Final Joint Submission, Paragraph 6.2

the proposed transaction as HONI, the current operator of the Bruce to Milton Assets, will remain the party responsible for the ongoing operation of the Bruce to Milton Assets. Specifically, the Applicants state that the Bruce to Milton Assets "will continue to be operated and maintained by HONI through a service level agreement"[2] with B2M LP. Based on the proposed arrangement, the Board is persuaded that reliability and quality of supply will not be adversely affected by the proposed transaction.

Application by SON LP Co. Pursuant to Section 86(2)(a) of the Act

SON LP Co. applied for leave of the Board to acquire up to a 34% 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;

In its submission, Board staff noted that Section 86(2)(a) appears to assume that transmitters will be corporations with voting securities. Board staff also noted that B2M LP, given that it is a partnership and not a corporation, does not have voting securities, and accordingly SON LP Co. does not actually propose to acquire any voting securities. Board staff submitted that the extent to which the Board's approval is required for the proposed acquisition of 34% of B2M LP by SON LP Co. is not perfectly clear.

In principle, based on the information in the application, the Board has no objection to the proposed acquisition of a 34% interest in B2M LP by SON LP Co. However, it is clear that the wording of subsection 86(2)(a) of the Act does not cover the acquisition of an interest in a limited partnership. Accordingly, leave from the Board under subsection 86(2)(a) is not required for the proposed acquisition of a 34% interest in B2M LP by SON LP Co.

[2] B2M LP's Application for an Electricity Transmission Licence, Section 17

Application by B2M LP for an Electricity Transmission Licence

For the purpose of owning and operating the Bruce to Milton Assets, B2M LP applied for an electricity transmission licence under section 60 of the Act. In determining whether to approve B2M LP's electricity transmission licence application, the Board considered B2M LP's financial position, technical capability and conduct to assess its ability to own and operate a transmission facility in Ontario.

The applicant, B2M LP was formed for the purpose of the proposed transaction. The evidence indicates that Hydro One Inc., the parent company of the current owner and operator of the Bruce to Milton Assets, through wholly owned subsidiaries, will hold approximately a 66% interest in B2M LP. The evidence also indicates that B2M GP Inc., the general partner owned by Hydro One Inc. will be responsible for ensuring that the Bruce to Milton Assets are operated and maintained in accordance with all applicable regulatory standards through an operations and management services agreement with HONI. Based on this ownership structure, and these operating and maintenance arrangements, the Board finds that B2M LP can reasonably be expected to conduct its business appropriately and to operate the Bruce to Milton Assets reliably, with the appropriate technical capability. The Board therefore finds that it is in the public interest to grant the requested licence.

THE BOARD ORDERS THAT:

Based on the information provided in the applications,

1. B2M LP's application for an electricity transmission licence is granted, on such conditions as are contained in the attached licence.

2. HONI is granted leave to sell the Bruce to Milton Assets to B2M LP.

3. The leave granted in paragraph 2 above is conditional on the Applicants obtaining favourable tax rulings with respect to their tax status from the federal and provincial authorities, as contemplated by the Applicants in making the applications for this proceeding.

4. The Applicants shall promptly notify the Board of the completion of the transactions referred to in paragraph 2.

5. Dennis Threndyle and Randy Threndyle shall file with the Board and serve on the Applicants their cost claims on or before **December 9, 2013.**

6. The Applicants may file with the Board and serve on Dennis Threndyle and Randy Threndyle any objections to the claimed costs on or before **December 19, 2013.**

7. Dennis Threndyle and Randy Threndyle may file with the Board and serve on the Applicants a response to any objections to their cost claims on or before **December 27, 2013.**

8. The Applicants shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

All filings to the Board must quote file numbers, **EB-2013-0078, EB-2013-0079** or **EB-2013-0080**, be made through the Board's web portal at https://www.pes.ontarioenergyboard.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF f0ormat. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Gona Jaff at gona.jaff@ontarioenergyboard.ca and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto November 28, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

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.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.