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**Via RESS Filing**

January 17, 2014

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, Ontario M4P 1E4

**Attention: Ms. Walli:**

Dear Ms. Walli:

**Re: Compliance Filing for Board Decision Dated November 28, 2013 into proceedings EB-2013-0078, EB 2013-0079; EB 2013-0080**

I am writing to you on behalf of B2M Limited Partnership and B2M GP Inc., regarding the favourable tax ruling condition described in Item 3 to the Board's Order dated November 28, 2013 found at page 6 of the Decision. B2M Limited Partnership can advise that applicable tax rulings have been obtained to satisfy the approval condition. The following documents are enclosed in support of this conclusion:

- Canada Revenue Agency ("CRA") Advance Income Tax Ruling – Chippewas of Nawash First Nation dated November 28, 2013;
- Canada Revenue Agency Advance Income Tax Ruling – Chippewas of Saugeen First Nation dated November 28, 2013;
- Legal Opinion from McMillan LLP to SON LP Co. dated December 20, 2013;
- Letters from Chippewas of Nawash First Nation and Saugeen First Nation dated January 8, 2014;
- Ontario Ministry of Finance, Advisory Services and Program Policy Branch letter dated October 16, 2013 to counsel for B2M Limited Partnership and B2M GP Inc.

By way of brief explanation, the two CRA advance rulings confirm that the Chippewas of Nawash First Nation and Chippewas of Saugeen First Nation (the "First Nations") are not taxable entities under the Income Tax Act. The CRA documents include a non-binding opinion that indicates that so long as SON LP Co., continues to hold the partnership interest in B2M Limited Partnership as a bare trustee and as nominee and agent for and on behalf of the First

Nations, the income allocated to SON LP Co. by B2M Limited Partnership on such partnership interest will be the income of First Nations and not the income of SON LP Co. for purposes of computing income under Part 1 of the Income Tax Act.

CRA's opinions note that as a matter of practice CRA does not provide opinions or rulings on issues related solely to the common law. This statement has been made in reference to the question of whether, at common law, an agency relationship exists between SON LP Co. and the First Nations. In light of these circumstances SON LP Co. has obtained a legal opinion regarding this question from McMillan LLP, counsel to the First Nations and one of Canada's leading law firms. We understand that McMillan LLP is of the opinion that the Draft Nominee Agreement made between SON LP Co. and the First Nations is one which constitutes an agency relationship and that income allocated to SON LP Co. by B2M Limited Partnership will be income of the First Nations and not SON LP Co., for purposes of computing income under Part I of the Income Tax Act.

As indicated in the letters to B2M GP Ltd. dated January 8, 2014, based on the rulings and the opinions received, each of the First Nations is satisfied that SON LP Co. will not be treated as a taxable entity with respect to its investment and interest in B2M Limited Partnership and, therefore, will not seek the recovery of income tax amounts related to income allocated to the First Nations's ownership interest in the limited partnership in the rate application to be made by B2M GP Ltd (the General Partner) on behalf of for B2M Limited Partnership. As indicated in our Application of October 1, 2013, this will result in a net benefit to rate payers.

The Ontario Ministry of Finance ("OMF") letter has also made favourable rulings regarding the overall transaction. These rulings confirm that the First Nations are not subject to payment in lieu of taxes regime or transfer tax under the *Electricity Act, 1998* as the OMF acknowledges that the First Nations are not municipal corporations and the First Nations, Limited Partnership and SON LP Co are not "municipal electricity utilities".

Based on the foregoing, B2M Limited Partnership and B2M GP Ltd. respectfully submit that all necessary favourable tax rulings have now been obtained in satisfaction of the condition found in Item 3 to the Board's November 28, 2013 Order.

Yours truly,



Gordon M. Nettleton

GMN/mpf

Enclosures

cc: Susan Frank, Hydro One Networks Inc.  
Jeffrey Smith, Hydro One Networks Inc.  
Alex Monem, Pape Salter Teillet LLP  
Colin Salter, Pape Salter Teillet LLP



Michael Templeton  
McMillan LLP  
181 Bay Street, Suite 4400  
Toronto ON M5J 2T3

Your file / Votre référence

Our file / Notre référence  
2013-047876  
Ann Townsend  
905-721-5096

November 28, 2013

Dear Mr. Templeton:

Re: Advance Income Tax Ruling – Chippewas of Nawash First Nation

This is in reply to your letter of February 14, 2013, in which you requested an advance income tax ruling on behalf of the above-named taxpayer. We acknowledge your additional submissions of February 15, 2013, March 11, 2013, July 5, 2013, September 24, 2013, October 22, 2013, November 14, 2013 and November 26, 2013 as well as various telephone conversations (Townsend/Templeton, Moore/Templeton, Filion/Templeton, Fron/Templeton and Erskine/Templeton).

We understand that, to the best of your knowledge and that of the taxpayer, none of the issues involved in the ruling request are:

- (i) in an earlier return of the taxpayer or a related person;
- (ii) being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person;
- (iii) under objection by the taxpayer or a related person;
- (iv) before the courts, or if a judgment has been issued, the time limit for appeal to a higher court has expired; or
- (v) the subject of a ruling previously considered by the Directorate to the taxpayer or a related person.

Unless otherwise stated, all references to a statute are to the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter, (the “Act”), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions, the facts, proposed transactions and the purposes of the proposed transactions is as follows:

.../cont'd

**DEFINITIONS:**

In this letter, the following terms have the following meanings:

- a) “Band” has the meaning provided under subsection 2(1) of the Indian Act;
- b) “Eligible Person” as defined in the partnership agreement, means:
  - (i) a Band, or;
  - (ii) Xco, or;
  - (iii) any person that is wholly owned, directly or indirectly, by persons described in (i) and (ii);
- c) “Bare Trustco” means 1893080 Ontario Inc. (which will be renamed Saugeen Ojibway Nations Finance Corporation), a new corporation incorporated for the purposes of holding legal title to an interest in the Limited Partnership on behalf of the First Nations;
- d) “FN1” means the Chippewas of Saugeen First Nation, band #123;
- e) “FN2” means the Chippewas of Nawash First Nation, band #122;
- f) “First Nations” means collectively, FN1 and FN2;
- g) “GP Inc.” means B2M GP Inc., an affiliate of Xco that will be the general partner of the Limited Partnership;
- h) “Indian Act” means the *Indian Act* R.S.C. 1985, c.I-5, as amended;
- i) “Limited Partnership” refers to the Bruce-to-Milton L.P. to be formed to own and operate the recently constructed Line;
- j) “Line” means the high-voltage electrical transmission tower line with circuit number B561M and that portion of the high-voltage electrical transmission tower line with circuit number B560V spanning from Yco’s switchyard at the Bruce Power Nuclear Generating Facility located in Kincardine, Ontario to Yco’s electrical transmission line, constructed by Yco, from the Bruce Power Nuclear Generating Facility in Kincardine, Ontario to Yco’s switchyard in Milton, which traverses the traditional territory of the First Nations;
- k) “LP Inc.” refers to an affiliate of Xco that will be a limited partner of the Limited Partnership;
- l) “Member” means an individual whose name appears on the “Band List” of the FN2, as defined in the Indian Act and maintained by the FN2 in accordance with section 10 of the Indian Act (collectively, members);
- m) “Reserve” means the FN2’s reserves as described in paragraph 4 of this letter and that are “reserves” as defined in subsection 2(1) of the Indian Act;
- n) “Xco” means Hydro One Inc;
- o) “Yco” means Hydro One Networks Inc., a wholly owned subsidiary of Xco, which itself is owned by the Province of Ontario.

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**FACTS:**

1. The FN2's mailing address is:

Chippewas of Nawash First Nation  
135 Lakeshore Blvd. RR#5.  
Wiarton, Ontario NOH 2T0
2. The FN2 files any tax documentation with the Shawinigan-Sud Tax Centre. The FN2's business identification number is 106916414.
3. The FN2 is a Band.
4. The FN2's reserves are: Neyaashiinigiing Indian Reserve No. 27, located north of Wiarton Ontario, in Georgian Bay; Cape Croker Hunting Ground Indian Reserve Number 60B, located 70 kilometres north of the Reserve No. 27 along Highway 6 and is approximately 2,199.04 acres in size.
5. The FN2 has approximately 2,471 Members, of whom approximately 702 live on the Reserve
6. The FN2 is governed by a democratically elected chief and 9 elected councillors who were elected pursuant to the Indian Act. The chief and band council are responsible for the governance of the FN2 and have the power to make by-laws in accordance with the Indian Act.
7. The FN2 employs a First Nation Administrator who, under the direction of the chief and band council, is responsible for administrative management of the FN2.
8. The FN2 is one of the listed bands that are authorized pursuant to the *Indian Band Revenue Moneys Order*, # SOR/90-297, to control, manage, and expend in whole their revenue money under subsection 69(1) of the Indian Act.
9. The FN2 has enacted various by-laws pursuant to section 81 of the Indian Act concerning:
  - a. Animal Control
  - b. Ancillary Powers (i.e.: promote the enforcement of band by-laws)
  - c. Traffic
  - d. Fishing and Hunting
10. The FN2 has enacted by-laws pursuant to section 85.1 of the Indian Act.
11. The FN2 has entered into a Health Services Consolidated Contribution Agreement with Health Canada whereby the FN2 has accepted responsibility to provide certain health programs and services to its Members. The FN2 maintains a health department and hires nurses to provide these health services. The services

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provided are set out in the Community Health Plan and include: prenatal care, infant development, health education, substance abuse and addiction services, mental health, home care and other community health issues. The FN2 recently negotiated with Health Canada to renew its Health Services Transfer Agreement for a 3 year period commencing April of 2012.

12. The FN2 has a comprehensive funding arrangement with the Aboriginal Affairs and Northern Development Canada (“AANDC”) to assist the FN2 in providing services to its Members including: education (funding for the FN2 school and tuition support for off-reserve education); social assistance (funding for home care, employment training, income support and day care); infrastructure (funding for roads, bridges, water and waste water facilities).
13. The FN2 owns and maintains a school for junior kindergarten to grade 8. The FN2 hires the principal and teachers for this school and oversees the school board. Members of the FN2 attend secondary school at high schools operated by the Blue Water District School Board and the Bruce-Grey Catholic District School Board as a result of memorandum of understanding with these school boards under which the FN2 pays tuition for the FN2 students. The FN2 also provides adult education services to its Members including: computer training, an entrepreneurship course, academic upgrading, professional development, and wellness and health promotion.
14. The FN2 administers a welfare program on the Reserve. It has an agreement with the province of Ontario under which the FN2 administers welfare payments in accordance with provincial guidelines. The FN2 employs five people to administer these programs, which review applications for welfare and arrange for payments. Eligibility for welfare and the amount paid are administered by the FN2, based on the criteria established by the province of Ontario. Where necessary, the FN2 employees also visit the homes of welfare applicants. As part of the welfare program, the FN2 also administers an addiction services initiative. Under this initiative, individuals in need of treatment for addiction may qualify for welfare payments by obtaining addiction treatment instead of looking for work or engaging in work training.
15. The FN2 provides and administers the public works services on the Reserve, which includes road maintenance, water supply, garbage services and lagoon services. The FN2 owns the equipment and hires the employees to provide these services. The FN2 is responsible for the maintenance of the roads and the removal of snow on the Reserve. The FN2 receives a subsidy through the Ontario Ministry of Transportation for the maintenance of the roads.
16. The FN2 is responsible for the water supply for most Members living on the Reserve. The FN2 hires operators to ensure the efficient running of the water treatment and distribution system.
17. The FN2 has developed a community five year plan to manage the development of community lots, housing, commercial development and economic development

strategies. All land in the Reserve is held in a traditional manner and owned by the membership as a whole. The FN2 allows people and businesses to use the land and make any improvements to the land. Approximately 4,035 hectares (64%) of the Reserve are unallocated lands (referred to as “Band lands”), which are controlled by the band council. The use and occupation rights to the remaining lands, approximately 2,218 hectares (36%), have been allocated to individual band members and are held under Certificates of Possession.

18. The FN2 has a funding arrangement in place with the Canada Mortgage and Housing Corporation (CMHC) to assist the FN2 in providing housing to its Members. Through the funding provided by CMHC, the FN2 has been able to complete several residential housing projects including a senior residence. The FN2 currently owns and maintains 46 separate residential housing units including a large apartment complex. Allocations of band-provided housing are based on a Housing Policy established by the FN2.
19. Facilities located on the Reserve that are owned, operated and maintained by the FN2 include:
  - a) Administrative Building (This building houses a meeting room for meetings of Chief and Council, the offices for the executive of the FN2 including offices for the Chief, Executive Assistant to the Chief, HR Manager, Band Administrator, Finance Department (3, soon to be 4 employees), Land and Membership (2 employees), and Fisheries (3 employees).) Pump Station (used to pump water to residents of the Reserve)
  - b) Adult Education Centre
  - c) Health Station (This is a separate building where the FN2 administers its preventative health programs. The programs are run by a community health nurse and a clerk employed by the FN2, whose duties include administering non-insured health benefits for the FN2 members and arranging for transportation for the FN2 members in need of health care services away from the community.)
  - d) Landfill
  - e) Playgrounds
  - f) Tourism facilities (park with campsites)
  - g) Recreation centre/community complex
  - h) Ice rink (outdoor rink located at the baseball diamond)
  - i) Sewage lagoon / water infrastructure
20. Certain buildings including the sports centre are owned, maintained and operated by the FN2 for its Members. User fees and rental charges are levied for the use of recreational and meeting facilities for certain activities. The FN2 establishes the user fees.

21. The FN2 owns and maintains a radio tower and the related equipment to provide communication services to emergency response teams and the FN2's Public Works Department. The FN2 has entered into an agreement with an internet services provider that has equipment on the FN2's tower on the Reserve, to offer wireless internet access on the Reserve. By entering into this agreement, the FN2 has enabled its Members to receive internet service that they would not otherwise receive due to the low population.

#### **PROPOSED TRANSACTIONS:**

22. The First Nations have reached an agreement with Xco under which the First Nations will acquire an interest in the Limited Partnership.
23. Yco will transfer the Line to the Limited Partnership.
24. Bare Trustco will agree to hold title to the partnership interest as nominee and agent for and on behalf of the First Nations. The shares of Bare Trustco will be legally registered in the names of the Chiefs of each of the FN1 and the FN2, whom will hold the shares as nominee and agent for the FN1 and the FN2, respectively.
25. The proposed relationship between Bare Trustco and the First Nations will be evidenced in writing by the Draft Nominee Agreement.
26. There will be no transfer of partnership units or the issue of units to any person other than an Eligible Person.
27. The First Nations will contribute approximately \$72 million to the Limited Partnership for approximately a 34% interest in the Limited Partnership based on the expected value of the assets at closing and LP Inc. and GP Inc. will contribute approximately \$141 million to the Limited Partnership for approximately a 66% interest in the Limited Partnership based on the expected value of the assets at closing.
28. GP Inc. will negotiate, on behalf of the Limited Partnership, all contracts and manage all projects and operations to which the Limited Partnership is a party in respect of the Line.
29. The Limited Partnership will commence operations after the Ontario Energy Board approves the transfer of the Line to the Limited Partnership, grants the Limited Partnership a transmission licence and makes a transmission rate order in favour of the Limited Partnership. Thereafter, the Limited Partnership will make distributions and allocate income and loss to its partners from time-to-time in accordance with the partnership agreement.

#### **PURPOSES OF PROPOSED TRANSACTIONS**

30. The purposes of the proposed transactions are as follows:

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- a) To generate a long-term source of income for the FN2 to support the governance, public works and infrastructure needs of each community and to promote economic development such that the FN2 will become economically self-sufficient while maintaining a stewardship role over their lands.
- b) To protect the FN2 from liability arising from activities related to the Transmission Line.
- c) To provide employment and job training for Members of the FN2.
- d) To support projects and activities for the general benefit of the FN2.

**RULING GIVEN:**

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions and purposes of the proposed transactions, we rule as follows:

Because the FN2 is, and as long as it continues to be, a public body performing a function of government in Canada within the meaning of paragraph 149(1)(c) of the Act, and therefore exempt from tax under Part I of the Act, no tax will be payable under Part I of the Act by the FN2 on income allocated to the FN2 by the Limited Partnership in respect of the operation of the Line, carried on by the Limited Partnership as a result of the proposed transactions described above.

The above advance income tax ruling, which is based on the Act in its present form and does not take into account any proposed amendments thereto, is given subject to the general limitations and qualifications set out in Information Circular 70-6R5, "Advance Income Tax Rulings", dated May 17, 2002, and is binding on the Canada Revenue Agency ("CRA") provided that the proposed transactions are completed by December 31, 2014.

**OPINION:**

So long as Bare Trustco continues to hold the partnership interest in the Limited Partnership as nominee and agent for the First Nations as described in paragraphs 24 and 25, the income allocated to Bare Trustco by the Limited Partnership on such partnership interest will be the income of the First Nations and not the income of Bare Trustco for purposes of computing income under Part I of the Act.

It is not the practice of the CRA to issue an income tax ruling on an issue related solely to the common law. Therefore, nothing in this letter should be construed as implying that the CRA has reviewed or agreed that the Draft Nominee Agreement creates an agency relationship for income tax purposes.

**CAVEAT:**

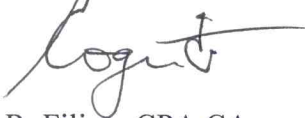
Nothing in this letter should be construed as implying that the CRA has reviewed or agreed:

.../cont'd

- that the partnership agreement creates a legal partnership for income tax purposes;
- to the determination of the adjusted cost base, paid-up capital or fair market value of any shares or other property referred to herein; or
- to any tax consequences relating to the facts and the Proposed Transactions described herein other than those described in the rulings given above.

This letter is based solely on the facts and the proposed transactions described above. The documentation submitted with your request does not form part of the facts and proposed transactions and any references thereto are provided solely for the convenience of the reader. A copy of this letter will be forwarded to the Charities Directorate of the CRA.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Filion", with a long horizontal flourish extending to the right.

R. Filion, CPA, CA  
For Director  
Business and Employment Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch



Michael Templeton  
McMillan LLP  
181 Bay Street, Suite 4400  
Toronto ON M5J 2T3

Your file Votre référence

Our file Notre référence  
2013-047875  
Ann Townsend  
905-721-5096

November 28, 2013

Dear Mr. Templeton:

Re: Advance Income Tax Ruling – Chippewas of Saugeen First Nation

This is in reply to your letter of February 14, 2013, in which you requested an advance income tax ruling on behalf of the above-named taxpayer. We acknowledge your additional submissions of February 15, 2013, March 11, 2013, July 5, 2013, September 24, 2013, October 22, 2013, November 14, 2013 and November 26, 2013 as well as various telephone conversations (Townsend/Templeton, Moore/Templeton, Filion/Templeton, Fron/Templeton and Erskine/Templeton).

We understand that, to the best of your knowledge, and that of the taxpayer, none of the issues involved in the ruling request are:

- (i) in an earlier return of the taxpayer or a related person;
- (ii) being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person;
- (iii) under objection by the taxpayer or a related person;
- (iv) before the courts, or if a judgment has been issued, the time limit for appeal to a higher court has expired; or
- (v) the subject of a ruling previously considered by the Directorate to the taxpayer or a related person.

Unless otherwise stated, all references to a statute are to the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter, (the “Act”), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions, the facts, proposed transactions and the purposes of the proposed transactions is as follows:

.../cont'd

## DEFINITIONS:

In this letter, the following terms have the following meanings:

- a) “Band” has the meaning provided under subsection 2(1) of the Indian Act;
- b) “Eligible Person” as defined in the partnership agreement, means:
  - (i) a Band, or;
  - (ii) Xco, or;
  - (iii) any person that is wholly owned, directly or indirectly, by persons described in (i) and (ii);
- c) “Bare Trustco” means 1893080 Ontario Inc. (which will be renamed Saugeen Ojibway Nations Finance Corporation), a new corporation incorporated for the purposes of holding legal title to an interest in the Limited Partnership on behalf of the First Nations;
- d) “FN1” means the Chippewas of Saugeen First Nation, band #123;
- e) “FN2” means the Chippewas of Nawash First Nation, band #122;
- f) “First Nations” means collectively, FN1 and FN2;
- g) “GP Inc.” means B2M GP Inc. an affiliate of Xco that will be the general partner of the Limited Partnership;
- h) “Indian Act” means the *Indian Act* R.S.C. 1985, c.I-5, as amended;
- i) “Limited Partnership” refers to the Bruce-to-Milton L.P. to be formed to own and operate the recently constructed Line;
- j) “Line” means the high-voltage electrical transmission tower line with circuit number B561M and that portion of the high-voltage electrical transmission tower line with circuit number B560V spanning from Yco’s switchyard at the Bruce Power Nuclear Generating Facility located in Kincardine, Ontario to Yco’s electrical transmission line, constructed by Yco, from the Bruce Power Nuclear Generating Facility in Kincardine, Ontario to Yco’s switchyard in Milton, which traverses the traditional territory of the First Nations;
- k) “LP Inc.” refers to an affiliate of Xco that will be a limited partner of the Limited Partnership;
- l) “Member” means an individual whose name appears on the “Band List” of the FN1, as defined in the Indian Act and maintained by the FN1 in accordance with section 10 of the Indian Act;
- m) “Reserve” means the FN1’s reserves as described in paragraph 3 of this letter and that are “reserves” as defined in subsection 2(1) of the Indian Act;
- n) “Xco” means Hydro One Inc;
- o) “Yco” means Hydro One Networks Inc., a wholly owned subsidiary of Xco, which itself is owned by the Province of Ontario.

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**FACTS:**

1. The FN1's mailing address is 6493, Highway 21, R. R. # 1, Southampton, Ontario, NOH 2LO. The FN1 is served by the Ottawa Tax Services Office and files any tax documentation with the Ottawa Tax Centre. The FN1's business identification number is 107957938.
2. The FN1 is a Band.
3. The FN1's reserves are: Chiefs Point Reserve No 28, Saugeen Reserve No. 29, Saugeen Hunting Grounds No 60A and Saugeen & Cape Croker Fishing Islands Indian Reserve No. I. The reserves are located on the shores of Lake Huron at the base of the Bruce Peninsula in Ontario.
4. The FN1 has approximately 1,676 Members, of whom approximately 774 live on the Reserve.
5. FN1 is governed by a democratically elected chief and 9 elected councillors who were elected pursuant to the Indian Act. The chief and band council are responsible for the governance of the FN1 and have the power to make by-laws in accordance with the Indian Act.
6. The FN1 employs a Chief Executive Officer who, under the direction of the chief and council, is responsible for administrative management of the FN1.
7. The FN1 has passed the following by-laws pursuant to section 81 of the Indian Act:
  - a. Animal Control By-law
  - b. Children's Curfew By-law
  - c. Nuisance By-law
  - d. Streets and Traffic By-law
  - e. Waste Management By-law
  - f. Firearms Regulation By-law
  - g. Use of Public Wells By-law
  - h. Control of Snow Vehicles By-law
  - i. Establish Fire Department By-law
  - j. Control of Motor Vehicles By-law
  - k. Sauble Park By-law
  - l. Control of Campgrounds By-law
  - m. Garbage Bag Tag Collection By-law

8. The FN1 is one of the listed Bands that are authorized pursuant to the Indian Band Revenue Moneys Order, #SOR/90-297, to control, manage, and expend in whole their revenue money under subsection 69(1) of the Indian Act.
9. The FN1 has entered into a Health Services Consolidated Contribution Agreement with Health Canada whereby the FN1 has accepted responsibility to provide certain health programs and services to its Members. The services to be provided are set out in the Community Health Plan. Programs include those related to prenatal care, infant development, health education, substance abuse and addiction services, mental health, home care and other community health issues. The FN1 negotiated with Health Canada to renew its Health Services Transfer Agreement for a 3-year period commencing 2013.
10. Each year the FN1 enters into a comprehensive funding agreement with Aboriginal Affairs and Northern Development Canada (AANDC). The funding covers essential services provided by the FN1 to and for its Members and funded by the Government of Canada. Under this agreement AANDC provides funding to the FN1 to assist in providing the following services to its Members: fire protection services, waste management services, education, day care, assisted living, and other social programs.
11. The FN1 is responsible for providing fire protection services on the reserve. To provide these services the FN1 owns, funds, maintains and operates a fire station, 2 fire trucks, and a rescue van. The FN1 employs a fire safety officer who oversees about 20 part time firefighters who are paid on a per call basis. In certain circumstances, if the fire or emergency is in the northern portion of the reserve, the dispatcher may call the Sauble Fire Department as the first responder to the call. If that occurs, the FN1 has an agreement with the Sauble Fire Department under which the FN1 compensates Sauble for the cost of the response. Similarly, if an emergency occurs outside the reserve, the dispatcher may direct the FN1 to be the first responder, in which case the FN1 would receive compensation from the responsible township.
12. The FN1 is responsible for garbage collection services on the reserves. It owns the necessary equipment and hires the personnel for these services.
13. The FN1 is responsible for providing education to the FN1 children that live on the Reserve. It meets this obligation through an agreement with the local municipal school boards under which the FN1 pays tuition to the local school boards for the attendance of the FN1 children at these schools.
14. The FN1 constructs housing for eligible Members who reside on the Reserve, which is funded by a subsidy from AANDC and borrowed funds. Allocations of band-provided housing are based on a Housing Policy established by the FN1.
15. The FN1 funds, owns, operates and maintains 4 apartment buildings, consisting of three 8 unit apartment buildings (one for singles, one for families and one for elders) and one 9 unit building for families.

16. The FN1 has entered into agreements with Canada Mortgage and Housing Corporation (CMHC) to allow the FN1 to assist Members in maintaining housing. It is the responsibility of the FN1 to apply, on behalf of the FN1 Members, for portions of this amount.
17. The FN1 has developed a community 20-year plan to manage the development of community lots, housing, commercial development and economic development strategies. The FN1 allows people and businesses to use the land and make any improvements to the land. The FN1 leases certain of its lands to persons that are not Members of the FN1. Where these tenants wish to construct or demolish buildings on the leased land, they are required to obtain permission and a building permit from the FN1.
18. The FN1 has a Works Department that is responsible for the repair and maintenance of the roads on the Reserve.
19. All of the buildings and facilities below are owned, funded, operated and maintained by the FN1:
  - a. Administrative Building (This building houses the offices for the executive of the FN1 including offices for the Chief, secretary to the Chief and Council, administrative secretary, human resources manager, band administrator, Finance Department (6 employees), Membership (1 employee), Education Department (3 employees), Adult Literacy (1 employee) and Housing Department (2 employees)).
  - b. Recreation Centre / Gymnasium (The gymnasium is located in the Recreation Centre owned by the FN1. The Recreation Centre includes a stage and an office for the building supervisor).
  - c. Employment Training Centre (Houses a couple of class rooms/meeting rooms used for adult employment training, a computer lab with several computers, an office for the director of adult training and his/her assistant as well as a workshop for woodworking training).
  - d. Health Clinic (The building is used to provide health services to the FN1 members. It houses the Health Director, a receptionist, a nurse and a part time doctor. Several departments operate out of the clinic including: mental health, healthy babies program, aids program and transportation aid for off-reserve medical appointments).
  - e. Landfill (The FN1 maintains a dump for the Reserve as well as a trash compactor. The FN1 is responsible for garbage collection and recycling which is handled by the FN1's Roads Department).
  - f. Roads and Bridges on the Reserve (This includes a works department building that houses several vehicles including: loaders, dump trucks, bulldozers, a grader, and a back hoe. 12 employees are employed to maintain and repair the roads on the reserves).
  - g. Playgrounds (The FN1 operates a baseball field with bleachers including a building which houses a change room and a canteen. The FN1 also

- provides three smaller playgrounds for use by its youth with slides and swings and other playground equipment).
- h. Tourism Facilities (The FN1 operates an amphitheater for presentations and a trailer that provides information about the history of the FN1. The FN1 patrols the beach located on the Reserve and keeps the beach clean and removes excess vegetation).
20. The FN1 purchases water from the Town of Southampton. The water runs to a booster substation, which is owned and operated by the FN1, and distributes the water throughout the Reserve. The FN1 is responsible for the infrastructure to accommodate this water supply.
  21. The FN1 has installed a communications system on the Reserve, which provides for constant telephone and internet access. The FN1 installed the fibre optics for the system and the system is administered and maintained by the FN1.
  22. Certain buildings and a sports centre owned and operated by the FN1 are made available for use by the FN1 Members. User fees and rental charges are levied for the use of recreational and meeting facilities for certain activities. The FN1 establishes the user fees.

**PROPOSED TRANSACTIONS:**

23. The First Nations have reached an agreement with Xco under which the First Nations will acquire an interest in the Limited Partnership.
24. Yco will transfer the Line to the Limited Partnership.
25. Bare Trustco will agree to hold title to the partnership interest as nominee and agent for and on behalf of the First Nations. The shares of Bare Trustco will be legally registered in the names of the Chiefs of each of the FN1 and the FN2, whom will hold the shares as nominee and agent for the FN1 and the FN2, respectively.
26. The proposed relationship between Bare Trustco and the First Nations will be evidenced in writing by the Draft Nominee Agreement.
27. There will be no transfer of partnership units or the issue of units to any person other than an Eligible Person.
28. The First Nations will contribute approximately \$72 million to the Limited Partnership for approximately a 34% interest in the Limited Partnership based on the expected value of the assets at closing and LP Inc. and GP Inc. will contribute approximately \$141 million to the Limited Partnership for approximately a 66% interest in the Limited Partnership based on the expected value of the assets at closing.



29. GP Inc. will negotiate, on behalf of the Limited Partnership, all contracts and manage all projects and operations to which the Limited Partnership is a party in respect of the Line.
30. The Limited Partnership will commence operations after the Ontario Energy Board approves the transfer of the Line to the Limited Partnership, grants the Limited Partnership a transmission licence and makes a transmission rate order in favour of the Limited Partnership. Thereafter, the Limited Partnership will make distributions and allocate income and losses to its partners from time-to-time in accordance with the partnership agreement.

#### **PURPOSES OF PROPOSED TRANSACTIONS**

31. The purposes of the proposed transactions are as follows:
  - a) To generate a long-term source of income for the FN1 to support the governance, public works and infrastructure needs of each community and to promote economic development such that the FN1 will become economically self-sufficient while maintaining a stewardship role over their lands.
  - b) To protect the FN1 from liability arising from activities related to the Transmission Line.
  - c) To provide employment and job training for Members of the FN1.
  - d) To support projects and activities for the general benefit of the FN1.

#### **RULING GIVEN:**

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions and purposes of the proposed transactions, we rule as follows:

Because the FN1 is, and as long as it continues to be, a public body performing a function of government in Canada within the meaning of paragraph 149(1)(c) of the Act, and therefore exempt from tax under Part I of the Act, no tax will be payable under Part I of the Act by the FN1 on income allocated to the FN1 by the Limited Partnership in respect of the operation of the Line, carried on by the Limited Partnership as a result of the proposed transactions described above.

The above advance income tax ruling, which is based on the Act in its present form and does not take into account any proposed amendments thereto, is given subject to the general limitations and qualifications set out in Information Circular 70-6R5, "Advance Income Tax Rulings", dated May 17, 2002, and is binding on the Canada Revenue Agency ("CRA") provided the Proposed Transactions are completed by December 31, 2014.

#### **OPINION:**

So long as Bare Trustco continues to hold the partnership interest in the Limited Partnership as nominee and agent for the First Nations as described in paragraphs 25 and

.../cont'd

26, the income allocated to Bare Trustco by the Limited Partnership on such partnership interest will be the income of the First Nations and not the income of Bare Trustco for purposes of computing income under Part I of the Act.

It is not the practice of the CRA to issue an income tax ruling on an issue related solely to the common law. Therefore, nothing in this letter should be construed as implying that the CRA has reviewed or agreed that the Draft Nominee Agreement creates an agency relationship for income tax purposes.

**CAVEAT:**

Nothing in this letter should be construed as implying that the CRA has reviewed or agreed:

- that the partnership agreement creates a legal partnership for income tax purposes;
- to the determination of the adjusted cost base, paid-up capital or fair market value of any shares or other property referred to herein; or
- to any tax consequences relating to the facts and the Proposed Transactions described herein other than those described in the rulings given above.

This letter is based solely on the facts and the proposed transactions described above. The documentation submitted with your request does not form part of the facts and proposed transactions and any references thereto are provided solely for the convenience of the reader. A copy of this letter will be forwarded to the Charities Directorate of the CRA.

Yours truly,



R. Fillion, CPA, CA  
For Director  
Business and Employment Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch



**Privileged and Confidential**

December 20, 2013

Chippewas of Nawash Unceded First Nation  
135 Lakeshore Blvd. RR#5,  
Warton, Ontario  
N0H 2T0

Chippewas of Saugeen First Nation  
Fire # 6493, Highway 21,  
R. R. # 1,  
Southampton, Ontario  
N0H 2L0

Dear Sirs/Mesdames:

**Re: Relationship between parties under the Nominee Agreement**

You have asked for our opinion as to (i) whether 1893080 Ontario Inc. (“**SON LPco**”) will be an agent of each of the Chippewas of Nawash First Nation (the “**Nawash First Nation**”) and the Chippewas of Saugeen First Nation (the “**Saugeen First Nation**”, and collectively, the “**First Nations**”) for purposes of the *Income Tax Act* (Canada) (the “**Tax Act**”), and (ii) whether income allocated to SON LPco by the Bruce-to-Milton L.P. (the “**Limited Partnership**”) will be income of the First Nations and not SON LPco for purposes of computing income under Part I of the Tax Act.

**Scope of Opinion**

This opinion is based on the current provisions of the Tax Act, the regulations promulgated thereunder, our understanding of the published administrative and assessing practices of the Canada Revenue Agency (the “**CRA**”) released prior to the date hereof, and all proposed amendments to the Tax Act and the regulations thereunder publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof.

Our opinion is restricted to the determination of (i) whether SON LPco will be an agent of each of the First Nations for purposes of the Tax Act, and (ii) whether income allocated to SON LPco by the Limited Partnership will be income of the First Nations and not SON LPco for purposes of computing income under Part I of the Tax Act, and does not address any other federal, provincial, territorial or foreign tax legislation or considerations.

Our opinion is based on the law as of the date hereof. The law may be changed by legislation, judicial decisions, or administrative pronouncements and such changes may apply with retroactive effect. Such changes may have a material, adverse impact on the opinion

expressed herein. We shall have no obligation to update or supplement this legal opinion with respect to any future change in law or the stated facts upon which our opinion is based.

Our opinion: (i) is intended solely for your benefit; (ii) may not be relied upon by any other person; and (iii) is strictly limited to the issues specifically dealt with in this letter.

## Facts

The views expressed herein are predicated on the accuracy and completeness of the facts set out below which we have not independently verified.

1. Each of the First Nations is a band established under the *Indian Act* (Canada) (the “**Indian Act**”).
2. SON LPco is a corporation duly incorporated under the laws of the Province of Ontario.
3. The Nawash First Nation and the Saugeen First Nation each own one common share in the capital of SON LPco, collectively being all of the issued and outstanding shares in the capital of SON LPco. The shares in SON LPco are legally registered in the name of the chief of each of the Nawash First Nation and Saugeen First Nation whom hold the shares as nominee and agent for the Nawash First Nation and the Saugeen First Nation, respectively.
4. B2M GP Inc. (the “**GP**”) is an affiliate of Hydro One Inc. (“**HOI**”) and is the general partner of the Limited Partnership.
5. Hydro One B2M LP Inc. (the “**HOI LP**”) is an affiliate of HOI and a limited partner of the Limited Partnership.
6. The First Nations have reached an agreement with HOI pursuant to which the First Nations will acquire an interest in the Limited Partnership.
7. Each of the First Nations has received an advance income tax ruling (together, the “**Tax Rulings**”) from the CRA that is subject to the general limitations and qualifications set out in Information Circular 70-6R5, “Advance Income Tax Rulings”, dated May 17, 2002, in respect of a proposed series of transactions.

## Assumptions

For the purpose of this opinion we have assumed that:

1. Each of the First Nations is a public body performing a function of government in Canada within the meaning of paragraph 149(1)(c) of the Tax Act.
2. Hydro One Networks Inc., a wholly owned subsidiary of HOI, will transfer a certain high-voltage electrical transmission tower line which traverses the traditional territory of the First Nations (the “**Line**”) to the Limited Partnership.

3. SON LPco and the First Nations will enter into a Nominee Agreement (the “**Nominee Agreement**”) that is substantially identical to the Draft Nominee Agreement attached as Schedule “A”.
4. At all material times, the provisions of the Nominee Agreement will be enforced and complied with in all respects.
5. The First Nations will contribute approximately \$72 million through SON LPco to the Limited Partnership for approximately a 34% interest in the Limited Partnership based on the expected value of the assets at closing and HOI LP and GP will contribute approximately \$141 million to the Limited Partnership for approximately a 66% interest in the Limited Partnership based on the expected value of the assets at closing.
6. GP will negotiate, on behalf of the Limited Partnership, all contracts and manage all projects and operations to which the Limited Partnership is a party in respect of the Line.
7. The Limited Partnership will commence operations after the required approvals are obtained from the Ontario Energy Board, the transmission line is transferred to the Limited Partnership and each of the partners have made their contributions to the Limited Partnership.
8. At all material times, the provisions of the limited partnership agreement will be enforced and complied with in all respects.
9. At all material times, the Tax Rulings will be complied with in all respects.
10. The Limited Partnership will commence operations on or before December 31, 2014.

## **Discussion and Analysis**

### **A. Agency**

Determining whether an agency relationship exists between two persons requires a highly fact dependent legal analysis. The Tax Act does not define what constitutes an agency relationship. Rather, an analysis of the underlying common law is required to identify the presence of a agency relationship.

In general terms, an agency relationship exists when one person, an agent, agrees to represent another person, the principal, and is given the authority to affect the contractual position of the principal. Generally, a principal will be able to exercise a high degree of control over the activities of the agent. Fridman has made the following observation as to when an agency relationship exists:

Agency is the relationship that exists between two persons when one, called the agent is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position by the making of contracts or the disposition of property.<sup>1</sup>

Similarly, the Federal Court of Appeal in *Kinguk Trawl Inc. v. R.* has cited the definition of agency put forward by Bowstead & Reynolds:

... a fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties and the other of whom similarly consents so to act or so acts.<sup>2</sup>

The court in *Kinguk* also cited the *Royal Securities Corp. v. Montreal Trust Co.* where it was noted that the elements of control, consent and ability to affect a principal's legal position were defining aspects of an agency relationship. Although there is some overlap between the categories, the court identified the following three factors as elements of an agency relationship:

1. The consent of both the principal and the agent;
2. Authority given to the agent by the principal, allowing the former to affect the latter's legal position; and
3. The principal's control of the agent's actions.<sup>3</sup>

An agency relationship is most easily identified when evidenced by a written agreement between the agent and principal. However, a written agreement is generally not required to establish an agency relationship. An agency arrangement may be identifiable from the actions of the parties or by their subsequent adoption by a principal of the acts of a purported agent. *Bowstead and Reynolds* explain that an agency relationship can emerge in the following ways:

1. by agreement, whether contractual or not, between principal and agent, which may be express, or implied from the conduct or situation of the parties;
2. retrospectively, by subsequent ratification by the principal of acts done on his behalf.<sup>4</sup>

Interestingly, the court in *Avotus* suggested that, absent a sham, a written agency agreement was sufficient to establish an agency arrangement, regardless of the parties conduct.

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<sup>1</sup> Gerald Fridman, *Canadian Agency Law*, (Markham: LexisNexis Canada Inc., 2009) at 4.

<sup>2</sup> *Kinguk Trawl Inc. v. R.* 2003 FCA 85 at para. 35 [*Kinguk*], citing Bowstead & Reynolds on Agency (17<sup>th</sup> edition, Sweet & Maxwell 2001).

<sup>3</sup> *Royal Securities Corp. v. Montreal Trust Co.*, [1967] 1 O.R. 137 (Ont. H.C.).

<sup>4</sup> *Bowstead and Reynolds*, supra note **Error! Reference source not found.**

However, where a written agency agreement exists and it is not alleged that the agreement is a sham, one does not need to examine the conduct of the parties in order to confirm the existence of their agreement. It is only in the absence of a written agreement that the conduct of the parties must be examined for the purpose of determining whether an agency agreement may be implied.<sup>5</sup>

A hallmark of agency is the ability of an agent to affect the contractual relations of a principal. Accordingly, a principal may become liable for an agent's negligence or misfeasance. Where a corporation acts as an agent to its shareholder(s), it could expose the shareholder(s) to liability for the actions of the agent. Litigants have argued that this results in an inappropriate "piercing of the corporate veil". Notwithstanding this concern, the courts have accepted that a corporation may be an agent for its shareholders if the corporation has agreed to waive its discretion over how property of the principal is to be account for. VanDuzer has noted that:

The third basis on which courts have purported to disregard separate corporate personality is by finding that the corporation is merely acting as the agent of someone else, usually the controlling shareholder that is, itself, a corporation. Conceptually, the corporate form is not disregarded by a holding that it is an agent. Rather, the business of the corporation or whatever activity gives rise to the claim by a third party is determined to be carried on not by the corporation directly but only as an agent of the controlling shareholder.<sup>6</sup>

For example, the court in *Avotus* found that a written agreement by a subsidiary to act as an agent of the shareholder had the intended effect.

... it is conceivable that there may be an arrangement between the shareholder and the company which will constitute the company the shareholder's agent, for the purpose of carrying on the business and so make the business that of the shareholder.

In *Denison Mines* ([1976] 1 S.C.R. 245) there was no express contract of agency between the taxpayer and its subsidiary corporation, and the court declined to find that there was an implied contract of agency between them. By contrast, in this case the Appellant and Americas entered into a written agency agreement.<sup>7</sup>

Although the Tax Court of Canada did not find an agency relationship in the *Prevost Car* decision, the court noted, with the Federal Court of Appeal's approval, that a corporation could act as an agent for its shareholders provided that the corporation waived its discretion over the impugned property in favour of the principal.

Where an agency or mandate exists or the property is in the name of a nominee, one looks to find on whose behalf the agent or mandatary is acting or for whom the nominee has lent his or her name. When corporate entities are concerned, one does not pierce the corporate veil unless the corporation is a conduit for another person and has absolutely no discretion as to the use or application of funds put through it as conduit, or has agreed to act on someone else's behalf

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<sup>5</sup> *Avotus Corp. v. R.*, 2006 TCC 505 at para. 51.

<sup>6</sup> J. Anthony VanDuzer, *The Law of Partnerships and Corporations*, 2<sup>nd</sup> ed., (Toronto: Irwin Law, 2003) at p. 112.

<sup>7</sup> *Avotus Corp. v. R.*, 2006 TCC 505 at para. 48-49.

pursuant to that person's instructions without any right to do other than what that person instructs it, for example, a stockbroker who is the registered owner of the shares it holds for clients.<sup>8</sup>

## B. Treatment of nominees under the Tax Act

While transfers of beneficial interests are generally recognized for tax purposes, transfers of bare legal title are generally not recognized for tax purposes. For example, paragraph (e) of the definition of “disposition” in subsection 248(1) of the Tax Act specifically excludes most transfers of property in which there is no change in the beneficial ownership of the property. Similarly, subsection 104(1) of the Tax Act specifically excludes from the definition of “trust” or “estate” most arrangements under which “the trust can reasonably be considered to act as agent for all the beneficiaries under the trust”.

The courts have frequently disregarded arrangements for tax purposes where a legal interest is held by an agent or nominee. For example, in *De Mond v. Canada*, an issue arose as to whether the appellant should have recognized certain partnership losses at the trust level or whether the trust should be disregarded on the basis that it was akin to an agency arrangement. The ruling made reference to a passage from *Trident Holdings Ltd. v. Danand Investments Ltd.* where it was noted:

A person may be both agent of and trustee for another. If he undertakes to act on behalf of the other and subject to his control he is an agent; but if he is vested with the title to property that he holds for his principal, he is also a trustee. In such a case, however, it is the agency relation that predominates, and the principles of agency, rather than the principles of trust, are applicable.<sup>9</sup>

After reviewing the facts, the court in *De Mond* concluded that the trustee did not have significant powers or responsibilities, could not take action without instructions from the settlor, and was subject to the control of the beneficiary (since the appellant was the settlor, trustee, and beneficiary). Accordingly, the court found the appellant to be the true owner of the partnership interest and allowed him to deduct the partnership losses.<sup>10</sup>

In *Peragine v. R.*, a taxpayer facilitated his brother's purchase of real property by registering title in his own name. The court found that the taxpayer did not have an interest in his brother's property and merely held the legal title as agent.

It seems to me that the Appellant was simply acting as the agent for Leo Peragine in holding the Victoria Property. The Appellant did not have any beneficial interest in the property nor did the Appellant have any independent power, discretion, or responsibility with respect to the Victoria Property. Therefore the trust would not be a trust as determined in accordance with the provisions of subsection 104(1) of the [Tax] Act and would be what has been described as a bare trust. As a

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<sup>8</sup> *Prevost Car Inc. v. R.* 2009 FCA 57 at para. 13.

<sup>9</sup> *Trident Holdings Ltd. v. Danand Investments Ltd.*, 64 O.R. (2d) 65 (Ont. C.A.) at para. 35.

<sup>10</sup> *De Mond v. R.*, 99 DTC 893 (TCC).



result any gain arising from the sale of the Victoria Property would not be included in the Appellant's income.<sup>11</sup>

*Roll v. R.* is an example of an agency relationship in which the principals were liable for the actions of the agent. At the Tax Court, the respondent was found liable for penalties imposed under the Tax Act for failing to withhold source deductions from salaries and wages paid to employees. However, the taxpayer was not found liable for the principal amount of the source deductions since the Tax Court found him to be a bare trustee acting as agent of the employer's funds. The Federal Court of Appeal vacated the assessment on the basis of the Tax Court's finding that the taxpayer could not exercise independent authority over the disposition of the funds. Accordingly, the decision to not remit source deductions was a decision of the principals alone, and not that of the respondent.<sup>12</sup>

In *Kyah Forest Products Ltd. v. Northwest Assessor, Area No. 25*,<sup>13</sup> the Moricetown Indian Band (the "**Moricetown Band**") sought to participate in a joint venture sawmill operation on reserve land. In doing so, the Moricetown Band sought to simultaneously take advantage of the exemption from taxation available to Indian Bands working on reserve lands found in section 87 of the Indian Act while avoiding the prohibition on mortgaging the property of an Indian Band found in section 89 of the Indian Act. To accomplish this arrangement, the Moricetown Band held its interest in the sawmill through a pair of nominee corporations and a loan was obtained in the name of one of the nominee corporations.

The municipal tax authorities sought to assess property taxes on the sawmill and leased properties. The Moricetown Band was successful in arguing on appeal that the real property was not subject to municipal taxes as the corporations held the property as agents and nominees for the Moricetown Band. The Moricetown Band was thus also able to claim the benefits of section 87 of the Indian Act and exempt the real property from taxation.

In assessing whether an agency agreement was in place, the court made reference to the Moricetown Band's high degree of control over the trustee and its lack of "independent" powers (as opposed to merely "administrative" or "ancillary" powers). Although the corporation was granted the authority to perform what might otherwise be described as significant active powers, these were each subject to the overriding direction of the Moricetown Band and thus found not to invalidate the bare trust arrangement.<sup>14</sup> This decision was subsequently overturned

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<sup>11</sup> *Peragine v. R.*, 2012 TCC 348 at para. 20.

<sup>12</sup> See also *Dr. Valcav Hyrman v. Her Majesty the Queen*, 95 D.T.C. 550 (T.C.C.), for an example of a case concerning agency relationships and whether an alleged agent was "carrying on business" for the appellant, for itself, or as a joint venture.

<sup>13</sup> *Kyah Forest Products Ltd.*, 2001 BCSC 549, ovr'd 2002 BCCA 344.

<sup>14</sup> See, also, *Whistler Village Land Co. v. North Sore-Squamish Valley Area* (1981), 121 D.L.R. (3d) 284 (B.C.S.C.) and *Cressey Development Corp. v. North Vancouver (District)* (1994), 1994 Carswell BC 1892 (B.C.S.C.) for other instances of inappropriately levied British Columbia municipal taxes that were overturned on appeal. In each case, the taxes were levied on a nominee where the beneficial owner of the real property was a municipality or the Crown, respectively.

on appeal on a technical issue and, at counsel's request, the Court of Appeal specifically declined to comment on the substantive merits of the trial decision.<sup>15</sup>

The CRA has accepted on numerous occasions that an agent is to be disregarded when assessing a beneficiary's taxes payable.<sup>16</sup>

### C. The Nominee Agreement

The terms of the Nominee Agreement demonstrate a common intention among the parties to have SON LPco act as a nominee and agent for and on behalf of the First Nations. SON LPco is to acknowledge under the Nominee Agreement that it is at all times subject to the direction and control of the First Nations and that it will not have any authority to make or take any decision or action, except on the express direction of the First Nations. If instructed to do so, SON LPco will enter into contracts on behalf of the First Nations that will affect the First Nations' rights.

### Opinion

On the basis that the facts and assumptions set out above remain correct at all material times, and subject to the limitations referenced herein, we are of the opinion that, (i) SON LPco will be the agent of the First Nations, and (ii) income allocated to SON LPco by the Limited Partnership will be income of the First Nations and not SON LPco for purposes of computing income under Part I of the Tax Act.

Yours truly,



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<sup>15</sup> *Kyah Forest Products Ltd.*, 2002 BCCA 344. The decision of the court of appeal suggests that the appeal was allowed with the consent of the respondent.

<sup>16</sup> See, for example, CRA Document #s 2006-016701117 (April 26, 2006), 2007-0234381E5 (July 21, 2008), 2008-0272121e5 (July 16, 2008), 2008-0280771E5 (July 28, 2008), 2008-0281841E5 (November 17, 2008), 2009-032485117 (June 24, 2009), 2010-0358161E5 (March 30, 2010), and 2011-0427801E5 (October 10, 2012).



January 8, 2014

B2M GP Inc.  
General Partner of the Bruce to Milton Limited Partnership  
483 Bay Street  
North Tower, 15<sup>th</sup> Floor  
Toronto, ON, M5G 2P5

Attn: Mike Penstone, Managing Director

Dear Sir:

**Re: Tax Status of Chippewas of Nawash First Nation (the "First Nation")**

Please find enclosed a copy of the letter from the Canada Revenue Agency containing their ruling regarding the tax exempt status of the First Nation and their opinion regarding the treatment of the income to be received by the corporation ("SON LPco") acting as the agent and nominee of the First Nation on its investment in the Bruce to Milton Limited Partnership. We also enclose the opinion of our tax counsel, McMillan LLP, regarding the status of the SON LPco as a nominee and agent for the First Nation.

Based on the rulings and the opinions we are satisfied that SON LPco will not be treated as a taxable entity with respect to its investment and interest in the Bruce to Milton Limited Partnership.

Yours truly,

Chief Arlene Chegahno

Encl.



# *Saugeen First Nation*

*Administration* January 8, 2014

B2M GP Inc.  
General Partner of the Bruce to Milton Limited Partnership  
483 Bay Street  
North Tower, 15<sup>th</sup> Floor  
Toronto, ON, M5G 2P5

Attn: Mike Penstone, Managing Director

Dear Sir:

**Re: Tax Status of Chippewas of Saugeen First Nation (the "First Nation")**

Please find enclosed a copy of the letter from the Canada Revenue Agency containing their ruling regarding the tax exempt status of the First Nation and their opinion regarding the treatment of the income to be received by the corporation ("SON LPco") acting as the agent and nominee of the First Nation on its investment in the Bruce to Milton Limited Partnership. We also enclose the opinion of our tax counsel, McMillan LLP, regarding the status of the SON LPco as a nominee and agent for the First Nation.

Based on the rulings and the opinions we are satisfied that SON LPco will not be treated as a taxable entity with respect to its investment and interest in the Bruce to Milton Limited Partnership.

Yours truly,

Chief Randall Kahgee

Encl.

*6493 Highway 21,  
Southampton, Ontario N0H 2L0  
519-797-2781 | Fax 519-797-2978*

Ministry of Finance  
Advisory Services and Program  
Policy Branch  
33 King Street West  
Oshawa ON L1H 8H5  
Tel.: 1 866 668-8297 Ext. 17025  
Fax: 905 436-4471

Ministère du Finances  
Direction des services consultatifs et des  
politiques relatives aux programmes  
33, rue King Ouest  
Oshawa ON L1H 8H5  
Tél. : 1 866 668-8297 poste 17025  
Télééc. : 905 436-4471



Reference: CT13-0203

October 16, 2013

Ms. Kimberley Wharram  
Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario M5X 1B8

Dear: Ms. Wharram:

Re:

**Request for Advance Ruling in respect of payments-in-lieu of federal corporate tax and Ontario corporate tax under the *Electricity Act, 1998* on behalf of Hydro One Inc., Hydro One Networks Inc., the Chippewas of Saugeen First Nation and the Chippewas of Nawash First Nation (collectively, the Taxpayers”).**

This is in reply to your letter dated January 25, 2013, your revised letters dated June 4, 2013 and September 17, 2013, and various e-mail correspondence, wherein you requested an advance ruling in respect of payments-in-lieu of federal corporate tax and Ontario corporate tax under the *Electricity Act, 1998* on behalf of the Taxpayers.

The text immediately below and in the sections entitled “Defined Terms,” “Facts,” “Proposed Transactions” and “Purpose of the Proposed Transactions” is similar to the text in the corresponding sections of your revised letter dated June 4, 2013. Notwithstanding your text, in certain instances where there is an inconsistency, vagueness or other issue, the Ministry of Finance has made necessary changes or made assumptions that may be contrary to your text.

This Ruling incorporates opinions provided by the Canada Revenue Agency. For clarity purposes, the text in the section entitled “Interchangeable Terms” lists the terms used by the Ministry of Finance and the Canada Revenue Agency that have essentially the same meaning.

Where a reference does not specify a statute, the reference is to the applicable provision of the ITA, as that provision applies for purposes of the *Electricity Act*. Also, any reference to an election that is required to be filed under a provision of the ITA

should be read as a reference to the corresponding election that is to be filed under the Electricity Act.

With respect to the Agreement in the defined terms below, the Ministry of Finance has not reviewed the text of this document nor any attachments to it. Therefore, the Ministry of Finance cannot confirm whether the provisions of the Agreement and its attachments are consistent with the facts described in this letter.

To the best of the knowledge of the Taxpayers, none of the issues contained herein:

- a. is in an earlier return of any of the Taxpayers or related persons;
- b. is being considered by the Ministry of Finance in connection with a previously filed return of any of the Taxpayers or related persons;
- c. is under objection or appeal by any of the Taxpayers or related persons;
- d. is before the courts or if a judgment has been issued, the time limit for appeal to a higher court has not expired; and
- e. is the subject of a ruling previously issued by the Ministry of Finance.

### **Interchangeable Terms**

In this letter, the following terms are interchangeable:

"Electricity Act" and "Act 1";

"OBCA" and "Act 4";

"Bruce-to-Milton LP" and "Partnership";

"First Nations" and "Group";

"Chippewas of Saugeen First Nation" and Sub-Group 1";

"Chippewas of Nawash First Nation" and Sub-Group 2";

"Hydro One" and "Parentco";

"HONI" and "Subco";

"GPco" and General Partner";

"HO LPco" and "Limited Partner";

"SON LPco" and "Holdco";

"BtoM LP Promissory Note" and "Promissory Note 1";

"GPco Promissory Note" and "Promissory Note 2";

"LP Promissory Note" and "Promissory Note 3";

"Newco Note Receivable" and "Promissory Note 4";  
"BtoM Project Assets" and "Project Assets"  
"Line" and "Infrastructure";  
"GPco Equity Ratio" and "General Partner Equity Ratio";  
"SON Equity Ratio" and "Holdco Equity Ratio";  
"SON Equity Contribution Amount" and "Holdco Equity Contribution Amount";  
"BtoM Project Asset Value" and "Project Asset Value";  
"OEB Act" and "Act 2";  
"Board" and "OEB";  
"LPA" and "Amended Partnership Agreement".

## **Defined Terms**

In this letter, the following terms have the meanings specified below:

"ACB" means adjusted cost base as that term is defined in section 54;

"Accumulated Profits" has the meaning indicated in paragraph 23 of Interpretation Bulletin IT-533 ("Interest Deductibility and Related Issues") and for greater certainty, no amounts are included in the Accumulated Profits of a corporation as the result of dividends received unless such dividends were paid out of the payer's Accumulated Profits;

"Act 1" means the Electricity Act, 1998 (Ontario);

"Act 2" means the Ontario Energy Board Act;

"Act 3" means the Indian Act;

"Act 4" means the Business Corporations Act (Ontario);

"Agreed Amount" in respect of an Eligible Property means the amount that the transferor and transferee of the property have agreed upon in an election under subsection 85(1) or 97(2), as the case may be, in respect of that property;

"Agreement" means the Anishnaabekiing Naagnigewin Agreement made between HONI and the First Nations dated June 18, 2012, as such agreement may be amended from time to time by letter agreement or otherwise;

"Amended Partnership Agreement" means the amended and restated limited partnership agreement in respect of the Partnership;

"APA" means the asset purchase agreement providing for the transfer of the BtoM Project Assets from HONI to the Bruce-to-Milton LP;

"Applicable Borrower" means Limited Partner or another corporation that is related to Limited Partner, other than Parentco;

"Approvals" means the licences, orders and other matters listed in Attachment "A" to the Agreement;

"Approvals Date" means the date that each of the conditions precedent set out in Section 3.2 of the Agreement has been satisfied (or otherwise waived in writing by the Parties) as confirmed in writing by the First Nations and HONI;

"Board" means the Ontario Energy Board;

"Board Approvals" means the approvals and orders requested from the Board described in paragraphs 12(b), 12(c) and 12(e);

"Bruce-to-Milton LP" means a limited partnership within the meaning of the *Limited Partnerships Act* (Ontario), to be comprised, as of the Closing, of two limited partners, SON LPco and HO LPco and one general partner, GPco;

"BtoM LP Promissory Note" has the meaning given to it in paragraph 14(e) of this letter;

"BtoM Project Assets" means the assets comprising the Line, including the LP Line Property Rights, but excluding sub-station facilities and all the assets relating to the connection of the Line to HONI's remaining structural assets;

"BtoM Project Asset Value" means the aggregate FMV of the BtoM Project Assets as of Closing which was estimated to be approximately \$532 million as of September 2013, which includes HONI's final construction and development costs that are to be incurred prior to Closing (subject to such inclusions or exclusions as may be imposed by the Board in connection with the rate application filed by the Bruce-to-Milton LP as contemplated in the Agreement);

"Canadian Partnership" has the meaning assigned by subsection 102(1);

"Capital of the Newco Shares" at any time means an amount not exceeding the Agreed Amounts described in paragraph 14(j);

"Closing" means the time when the transactions described in paragraphs 14(a) and 14(c) to (o) are undertaken;

"Cost Amount" has the meaning assigned by subsection 248(1);

"CRA" means the Canada Revenue Agency;



"Daylight Loan" means the loan granted to Subco in an amount equal to the principal amount of Promissory Note 3, which is not convertible into shares of Subco and bears interest at fixed rate that does not vary with the profits of Subco;

"Deemed Dividend" has the meaning given to it in Paragraph G of the Rulings Given in this letter;

"Dividends" has the meaning given to it in Paragraph H of the Rulings Given in this letter;

"Dividend Rental Agreement" has the meaning assigned by subsection 248(1);

"Effective Hydro One Equity Amount" means the amount calculated by multiplying the BtoM Project Asset Value by 40% and multiplying such amount by the Hydro One Equity Ratio;

"Elected Amount" in respect of a Qualifying Property means the amount that the transferor and transferee of the property have agreed upon in an election under subsection 97(2);

"Electricity Act" means the *Electricity Act, 1998* (Ontario);

"Eligible Property" has the meaning assigned by subsection 85(1.1);

"Excepted Dividend" has the meaning assigned by section 187.1;

"Excluded Dividend" has the meaning assigned by section 191;

"Excluded LP Units" means such number of LP Units as has an aggregate fair market value on Closing equal to the Initial HO LPco Equity Investment;

"Facility" means the Bruce Power facility located in Kincardine;

"Financial Intermediary Corporation" has the meaning assigned in subsection 191(1);

"First Nations" means the Chippewas of Saugeen First Nation and the Chippewas of Nawash First Nation;

"FMV" means fair market value, which refers to the amount, expressed in money terms, that is the highest price available in an open and unrestricted market between informed and prudent parties dealing at arm's length;

"General Partner" means B2M GP Inc., which is governed by Act 4, is wholly-owned directly or indirectly by Parentco and is the general partner of the Partnership;

"General Partner Equity Ratio" means the percentage equal to 99.9% minus the Holdco Equity Ratio;

"GPco" means B2M GP Inc., an OBCA corporation created and owned directly or indirectly by Hydro One to function as the general partner of the Bruce-to-Milton LP;

"GPco Equity Ratio" means the percentage equal to 99.9% minus the SON Equity Ratio;

"GPco Promissory Note" has the meaning given to it in Paragraph 14(d) of this letter;

"Group" means Sub-Group 1 and Sub-Group 2 (jointly);

"Holdco" means 1893080 Ontario Inc. (to be renamed the Saugeen Ojibway Nations Finance Corporation) resident, at all times, in Canada and governed by Act 4. It will be owned directly by the Group and will act as bare trustee for the Group in respect of its participation in the ownership and the distribution of the amounts derived from the operation of the Infrastructure;

"Holdco Equity Contribution Amount" means the amount to be contributed by Holdco as a capital contribution to the Partnership on the Closing, which shall be: (i) no less than 5% of the amount which is equal to 40% of the Project Asset Value and (ii) no greater than \$72,000,000;

"Holdco Equity Ratio" means the percentage determined by dividing the Holdco Equity Contribution Amount by the amount which is equal to 40% of the Project Asset Value (each as finally determined prior to the Closing);

"HO LPco" means Hydro One B2M LP Inc., an OBCA corporation created and owned directly or indirectly by Hydro One to hold a limited partnership interest in the Bruce-to-Milton LP;

"HO LPco Equity Ratio" means 0.1%;

"HONI" means Hydro One Networks Inc., a corporation with share capital incorporated under, and governed by, the provisions of the OBCA, all of the issued and outstanding shares of which are owned by Hydro One;

"HONI Dividend" has the meaning given to it in paragraph 14(1) of this letter;

"HONI Line Real Property" means all interests in real property or licenses over real property interests in respect of the Line owned or controlled by HONI;

"Hydro One" means Hydro One Inc., a corporation with share capital incorporated under, and governed by, the provisions of the OBCA;

"Hydro One Debt" has the meaning given to it in paragraph 14(1) of this letter;

"Hydro One Equity Ratio" means the percentage equal to 100% minus the SON Equity Ratio;

"Infrastructure" means the high-voltage electrical transmission tower line with circuit number B561M and that portion of the high-voltage electrical transmission tower line with circuit number B560V spanning from Subco's switchyard at the Facility to the Substation;

"Initial HONI Equity Investment" means an amount equal to 40% of the Tax Cost of the BtoM Project Assets to HONI at the time of the transfer described in paragraph 14(a) less an amount equal to the SON Equity Contribution Amount;

"Initial LPco Equity Investment" means an amount equal to the BtoM Project Asset Value multiplied by 40% times the LPco Equity Ratio;

"Interim Loan" has the meaning given to it in paragraph 14(p) of this letter and is a non-convertible loan in an amount equal to the Holdco Equity Contribution Amount that will bear interest at a fixed rate that will not vary with the profits of Applicable Borrower;

"ITA" means the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.) c.1, as amended to the date hereof, and unless otherwise indicated, every reference herein to a part, section, subsection, paragraph, subparagraph or clause is a reference to the relevant provision of the ITA;

"Limited Partner" means Hydro One B2M LP Inc., which is governed by Act 4, which is wholly-owned directly or indirectly by Parentco and the initial limited partner of the Partnership;

"Limited Partner Units" means such number of Units having an aggregate FMV on the Closing equal to 40% of the Project Asset Value times 0.1 %;

"Line" means the high-voltage electrical transmission tower line with circuit number B561M and that portion of the high-voltage electrical transmission tower line with circuit number B560V spanning from HONI's switchyard at the Bruce Power Nuclear Generating Facility located in Kincardine, Ontario to HONI's switchyard in Milton, Ontario;

"LP Line Property Rights" means the portion of the HONI Line Real Property to be transferred or licensed to the Bruce-to-Milton LP in accordance with the Agreement which are required to operate and maintain the BtoM Project Assets;

"LP Promissory Note" "LP Promissory Note" means a promissory note issued by the Bruce-to-Milton LP to HONI having a principal amount equal to the lesser of (i) the Tax Cost of the BtoM Project Assets; and (ii) an amount equal to the excess of the FMV of the BtoM Project Assets transferred to the Bruce-to-Milton LP as described in Paragraph 14(a) over the excess of 40% of the Tax Cost of the BtoM Project Assets to HONI at the time of such transfer over the SON Equity Contribution Amount, and bearing interest at a rate based on the interest rate of debt issued by Hydro One to arm's length parties at commercial terms, as may be adjusted from time to time;

"LP Units" means the partnership units representing the partnership interests in the Bruce-to-Milton LP;

"LPA" means the amended and restated limited partnership agreement in respect of the Bruce-to-Milton LP as may be amended from time to time;

"LPco Equity Ratio" means 0.1 %;

"Majesty" means Her Majesty in right of Ontario;

"Newco" means Hydro One B2M Holdings Inc., which is governed by Act 4. It is owned directly or indirectly by Parentco and will, following the completion of the Proposed Transactions, hold shares in Limited Partner and General Partner;

"Newco Common Shares" has the meaning assigned by Paragraph 14(m);

"Newco Preferred Shares" has the meaning assigned by Paragraph 14(j);

"Newco Note Receivable" has the meaning given to it in Paragraph 14(m) of this letter;

"OBCA" means the Business Corporations Act (Ontario);

"OEB" means the Ontario Energy Board;

"OEB Act" means the Ontario Energy Board Act;

"Operating Agreement" means the agreement to be entered into between GPco on behalf of the Bruce-to-Milton LP and HONI providing, among other things, for the operation of the Line;

"Operating Services" refers to the services required to operate the Infrastructure including, without limitation, all operating, maintenance, repair and refurbishment and including, without limiting the generality of the foregoing, all services in relation to the monitoring and control of the transmission of electricity across the Infrastructure;

"Outstanding Promissory Notes" means the BtoM LP Promissory Note, the GPco Promissory Note and the Newco Note Receivable;

"Paragraph" means a numbered paragraph in this letter;

"Parentco" means Hydro One Inc., which is a corporation with share capital governed by Act 4 which is wholly-owned by the Province of Ontario, is exempt from tax by virtue of paragraph 149(1)(d) and carries on electricity transmission, distribution, energy services and telecommunications services activities through its subsidiaries;

"Partnership" means B2M Limited Partnership, a limited partnership arrangement within the meaning of the *Limited Partnerships Act* (Ontario), to be comprised, following the completion of the Proposed Transactions, of two limited partners, Limited Partner and Holdco (as bare trustee for the Group) and a general partner referred as General Partner, which will be, at all times, resident in Canada;

"Payments" means the payments required to be paid under subsection 89(1) of Act 1, equal to the amount of tax payable under the Act by Parentco, Subco, Newco, General Partner or Limited Partner had such entities not been exempt under subsection 149(1) from the payment of tax;

"Project Assets" means the assets comprising the Infrastructure, including the Property Rights, but excluding sub-station facilities and all the assets relating to the connection of the Infrastructure to Subco's remaining structural assets (individually referred to as "Project Asset");

"Project Asset Value" means the aggregate FMV of the Project Assets as of Closing which was estimated to be approximately \$532 million as of September 2013, which includes Subco's final construction and development costs that are to be incurred prior to Closing (subject to such inclusions or exclusions as may be imposed by the Board in connection with the rate application filed by the Partnership as contemplated in the Agreement);

"Promissory Note 1" means a promissory note issued by the Partnership to General Partner as described in Paragraph 14(e), having a principal amount equal to the amount by which Project Asset Value exceeds the amount calculated by multiplying 40% of the Project Asset Value by the excess of 100% over the Holdco Equity Ratio, bearing interest at the same rate as applicable to Promissory Note 3, as may be adjusted from time to time;

"Promissory Note 2" means a promissory note issued by General Partner to Subco, which bears interest at the same rate as applicable to Promissory Note 3, less an interest rate spread, if any, to be determined by Subco and General Partner, as may be adjusted over time;

"Promissory Note 3" means a promissory note issued by the Partnership to Subco having a principal amount equal to the lesser of (i) the Tax Cost of the Project Assets; and (ii) an amount equal to the excess of the FMV of the Project Assets transferred to the Partnership as described in Paragraph 14(a) over the excess of 40% of the Tax Cost of the Project Assets to Subco at the time of such transfer over the Holdco Equity Contribution Amount, and bearing interest at a rate based on the interest rate of debt issued by Parentco to arm's length parties at commercial terms, as may be adjusted from time to time;

"Promissory Note 4" means a promissory note issued by Newco to Parentco having a principal amount equal to the amount by which the initial principal amount of Promissory Note 2 as described in Paragraph 14(d) exceeds the Holdco Equity Contribution Amount and with terms identical to Promissory Note 2 except that the interest rate accruing on Promissory Note 4 may be lower than the interest rate under the Promissory Note 2 by an interest rate spread to be determined by Parentco and Newco;

"Property Rights" means the portion of the Subco Real Property to be transferred or licensed to the Partnership in accordance with the Agreement which is required to operate and maintain the Project Assets;

"PILs" has the meaning given to it in Paragraph 3 of this letter;

"Province" means Her Majesty in right of Ontario;

"Proposed Transactions" means the transactions described in the Proposed Transactions section of this letter;

"PUC" means paid-up capital as that term is defined in subsection 89(1);

"Qualifying Property" means a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory;

"Redemption Value" means an amount equal to the aggregate FMV of the General Partner shares, Limited Partner shares, Limited Partner Units and the outstanding balance of Promissory Note 2 at the time described in Paragraph 14(j);

"Regulation" means Ontario Regulation 140/09 made under Act 1;

"Restricted Financial Institution" has the meaning assigned by subsection 248(1);

"series of transactions or events" has the extended meaning assigned by subsection 248(10) of the ITA;

"SON Equity Contribution Amount" means the amount to be contributed by SON LPco as a capital contribution to the Bruce-to-Milton LP on Closing, which shall be: (i) no less than 5% of the amount which is equal to 40% of the BtoM Project Asset Value and (ii) no greater than \$72,000,000;

"SON Equity Ratio" means the percentage determined by dividing the SON Equity Contribution Amount by the amount which is equal to 40% of the BtoM Project Asset Value (each as finally determined prior to Closing);

"SON LPco" means the 1893080 Ontario Inc. (which will be renamed Saugeen Ojibway Nation Finance Corporation), an OBCA corporation to be owned directly by the First Nations to hold a limited partnership interest in the Bruce-to-Milton LP, as bare trustee for the First Nations;

"Specified Financial Institution" has the meaning assigned by subsection 248(1);

"Subco" means Hydro One Networks Inc., a corporation governed by Act 4 which carries on electricity transmission and distribution activities in Ontario that were previously carried on by Ontario Hydro and which is exempt from tax under Part I by virtue of paragraph 149(1)(d.2);

"Subco Real Property" means all interests in real property or licenses over real property interests in respect of the Infrastructure owned or controlled by Subco;

"Sub-Group 1" means the Chippewas of Saugeen First Nation;

"Sub-Group 1 Board" means the Chippewas of Saugeen First Nation Band Council, a democratically elected executive and governing body, which represents Sub-Group 1 in all matters under its jurisdiction;

"Sub-Group 2" means the Chippewas of Nawash First Nation;

"Sub-Group 2 Board" means Chippewas of Nawash First Nation Band Council, a democratically elected executive and governing body, which represents Sub-Group 2 in all matters under its jurisdiction;

"Substation" means Subco's switchyard located in Milton, Ontario;

"Tax Cost" means the aggregate of all amounts in respect of each BtoM Project Asset that is equal to the lesser of the capital cost of that BtoM Project Asset to HONI and the undepreciated capital cost of property of HONI of the capital cost allowance class to which that BtoM Project Asset belongs;

"Taxable Canadian Corporation" has the meaning assigned by subsection 89(1);

"Taxable Dividend" has the meaning assigned by subsection 89(1);

"UCC" means undepreciated capital cost and has the meaning assigned to subsection 13(21);

"Units" mean the partnership units representing the partnership interests in the Partnership;

"Unrelated Person", with respect to a disposition of property or a significant increase in a person's or partnership's interest in a corporation, means a person or partnership that is an "unrelated person" with reference to HONI or Hydro One, as applicable, within the meaning of paragraph 55(3.01)(a) of the ITA immediately before that disposition or significant increase (as the case may be);

"Utility" means a municipal electric utility as defined in section 88 of Act 1.

## **Facts**

### *Hydro One and HONI*

1. Hydro One is a corporation that has been created by the Province pursuant to and for the purposes of the Electricity Act. Hydro One is principally a holding corporation, owing shares in a number of wholly-owned subsidiaries which carry on electricity transmission, distribution, energy services and telecommunications services businesses. HONI, Hydro One's direct wholly-owned subsidiary, carries on the electricity transmission and distribution business in Ontario that was previously carried on by the former Ontario Hydro. Hydro One was incorporated under and is governed by the provisions of the OBCA.
2. All of the issued and outstanding shares of Hydro One are held by the Province. As a result, Hydro One is currently exempt from tax under Part I of the ITA by virtue of paragraph 149(1)(d). HONI was incorporated under and is governed by the provisions of the OBCA in order to carry on the electricity transmission and distribution business in Ontario.

In addition, because all of the issued and outstanding shares of HONI are owned by Hydro One, HONI is currently exempt from tax under Part I of the ITA by virtue of paragraph 149(1)(d.2)

3. Hydro One and HONI are subject to subsections 89(1) and 90(1) of the Electricity Act and as such make payments in lieu of federal corporate tax and provincial corporate tax ("PILs") respectively.

#### *The First Nations*

4. The Chippewas of Saugeen First Nation are a band within the meaning of the *Indian Act* (Canada) represented by the Chippewas of Saugeen First Nation Band Council. The Chippewas of Nawash First Nation are a band within the meaning of the *Indian Act* (Canada) represented by the Chippewas of Nawash First Nation Band Council. Collectively, these parties are referred to as the First Nations.
5. Each First Nation is governed by a democratically elected Chief and band councillors. The Chief and band councillors for each First Nation represent the First Nations in all matters. The First Nations provides and administers an extensive list of public works, social services and infrastructure programs.
6. Each of the First Nations has passed by-laws pursuant to section 81 of the Indian Act. Each First Nation has an Order-in-council under Section 69 of the Indian Act, giving it permission to control, manage or expend its revenues.
7. As a public body performing a function of government in Canada, each First Nation is exempt from tax levied under Part I of the ITA by virtue of paragraph 149(1)(c) of the ITA.

#### **Proposed Transactions**

8. Hydro One has incorporated a new corporation, SON LPco. The authorized capital of SON LPco consists of an unlimited number of common shares. In connection with the incorporation of SON LPco, Hydro One acquired 2 common shares of SON LPco for \$2. In 2013, Hydro One will sell all of its shares in SON LPco to the First Nations, for a price equal to the fair market value of such shares at the time of transfer (such fair market value being equal to the costs of incorporation plus two dollars), subject to adjustment in the event of a reassessment by the tax authorities or otherwise upon the agreement of Hydro One and the First Nations.

SON LPco will be used by the First Nations as a single purpose holding company through which the First Nations will participate as a limited partner in the Bruce-to-Milton LP. The business of SON LPco will be restricted to the holding of the First Nation's limited partnership interest in the Bruce-to-Milton LP. SON LPco will act as a bare trustee for the First Nations.

9. HONI has incorporated and organized a new subsidiary as HO LPco, through which HONI will participate as a limited partner in the Bruce-to-Milton LP. The authorized capital of HO LPco consists of an unlimited number of common shares. In connection with the incorporation of HO LPco, HONI acquired 1 common shares of HONI for \$1.



As a wholly-owned subsidiary of HONI, and later, indirectly as a wholly-owned subsidiary of Hydro One, HO LPco is subject to the PILs tax regime.

10. HONI has incorporated and organized a new subsidiary, GPco, to act as the general partner in the Bruce-to-Milton LP and manage and operate the Line. The authorized capital of GPco consists of an unlimited number of common shares. In connection with the incorporation of GPco, HONI acquired 999 common shares of GPco for \$999. As a wholly-owned subsidiary of HONI, and later, indirectly as a wholly-owned subsidiary of Hydro One, GPco is subject to the PILs tax regime.
11. HO LPco and GPco have created and organized the Bruce-to-Milton LP pursuant to the Limited Partnerships Act, Ontario wherein HO LPco is the initial limited partner and GPco is the general partner. The initial capital shall be \$1,000 and the partnership interests of GPco and HO LPco shall be 99.9% and 0.1% respectively, represented by 999 LP Units and 1 LP Unit, respectively.
12. Following the execution of the Agreement:
  - a. The First Nations shall use commercially reasonable efforts to obtain a commitment for financing in an amount sufficient to enable the First Nations to meet the payment and investment obligations set out in Section 3.4 of the Agreement on terms and conditions satisfactory to the First Nations and HONI, including with respect to security obligations and lender step-in rights;
  - b. GPco, on behalf of the Bruce-to-Milton LP, will apply for a transmission licence to operate the BtoM Project Assets following the transfer of the BtoM Project Assets from HONI to the Bruce-to-Milton LP to occur on the Closing;
  - c. HONI has applied (with the co-operation and support of the Bruce-to-Milton LP and the First Nations as may be necessary) under s.86 of the OEB Act for approval to transfer the BtoM Project Assets to the Bruce-to-Milton LP effective on the Closing;
  - d. GPco, on behalf of the Bruce-to-Milton LP, will enter into an operating agreement with HONI on terms and conditions satisfactory to First Nations and HONI (the "Operating Agreement") pursuant to which HONI will perform Operating Services in consideration for the operation fees determined by sections 3.3 and 3.4 of the Operating Agreement;
  - e. GPco on behalf of the Bruce-to-Milton LP, (with the co-operation and support of the Parties hereto as may be necessary) will apply for a first transmission rate order from the OEB anticipating the transfer of the BtoM Project Assets from HONI to the Bruce-to-Milton LP on Closing; and

the parties shall otherwise apply for and pursue the Approvals as indicated in the Agreement with the full co-operation and support of each other Party.

13. The completion of the transactions contemplated by this letter are, unless otherwise waived in writing by the parties, subject to a number of conditions precedent, including the receipt of rulings from the Ministry of Finance in respect of the taxation of the Proposed Transactions under the Tax Statutes.

14. After the Approvals Date, the following transactions shall occur:

- a. HONI will transfer to the Bruce-to-Milton LP the BtoM Project Assets in exchange for (i) the issuance of LP Units of the Bruce-to-Milton LP, at a price of one dollar (\$1.00) per unit, subject to adjustment, and (ii) the LP Promissory Note. The LP Units will have an aggregate FMV equal to the excess of the aggregate FMV of the BtoM Project Assets over the principal amount of the LP Promissory Note. In any event, the principal amount of the LP Promissory Note will not exceed the aggregate Tax Cost of the BtoM Project Assets to HONI. In conjunction with the APA, HONI and the partners of the Bruce-to-Milton LP shall duly execute and file an election under subsection 97(2) of the ITA (as that provision applies for purposes of the Electricity Act) so that such transfer will occur on a tax deferred basis to HONI. In particular, the portion of the LP Promissory Note allocated to any particular asset or class of assets, and the elected amount for each particular asset or class of assets, will not exceed the Tax Cost of such asset or class of assets to HONI.

The APA will contain a price adjustment clause providing for an adjustment to the purchase price, the consideration and/or the elected amount under the tax election in respect of the transfer in the event of a reassessment by the tax authorities or otherwise upon the agreement of HONI and the Bruce-to-Milton LP. If HONI transfers (rather than licenses) the LP Line Property Rights, HONI will transfer the beneficial interest and will hold legal title as nominee for and on behalf of the Bruce-to-Milton LP;

- b. Hydro One has incorporated Newco and subscribed for 100 common shares for \$100. Newco will reside in Canada and will be exempt from the obligation to pay tax by virtue of paragraph 149(1)(d.2);
- c. HONI will borrow from a bank, on a daylight basis, or from Hydro One, cash under the Daylight Loan;
- d. HONI will contribute to GPco (i) the cash it received under the Daylight Loan and (ii) the LP Units received by HONI pursuant to the APA, (other than the Excluded LP Units), in exchange for (iii) additional common shares of GPco having an FMV equal to the excess of the Effective Hydro One Equity Amount over the FMV of the Excluded LP Units, and (iv) a promissory note from GPco in the principal amount equal to the BtM Project Asset Value less the Effective Hydro One Equity Amount, and bearing interest at same rate as the rate as applicable to the LP Promissory Note, less an interest rate spread, if any, to be determined by HONI and GPco, as it may be adjusted from time to time (the "GPco Promissory Note"), provided that, in any event, the principal amount of the GPco Promissory Note will not exceed the amount of the cash amount contributed by HONI to GPco.

HONI and GPco shall duly execute and file an election under subsection 85(1) of the ITA (as that provision applies for purposes of the Electricity Act) so that such transfer of the LP Units will occur on a tax deferred basis to HONI. In particular, the elected amount for the LP Units will not exceed the adjusted cost base of those LP Units to HONI. The terms of HONI's contribution to GPco will contain a price adjustment clause providing for an adjustment to the subscription price, the consideration and/or the elected amount under the tax election in respect of the transfer to GPco in the event of a reassessment by the tax authorities or otherwise upon the agreement of HONI and GPco;

- e. GPco will transfer a cash amount to Bruce-to-Milton LP in the amount that was borrowed by HONI under the Daylight Loan and in return shall receive additional LP Units as well as a promissory note in the principal amount equal to the BtoM Project Asset Value minus the Effective Hydro One Equity Amount and bearing interest at a rate equal the same rate as applicable to the LP Promissory Note as may be adjusted from time to time (the "BtoM LP Promissory Note"). The principal amount of the BtoM LP Promissory Note will equal the principal amount of the GPco Promissory Note;
- f. HONI will cause HO LPco and GPco to enter into the LPA, and First Nations will cause SON LPco (as bare trustee for First Nations) to enter into the LPA, and SON LPco (as bare trustee for First Nations) will make a capital contribution to the Bruce-to-Milton LP in the amount equal to the SON Equity Contribution Amount and in return shall receive (as bare trustee for First Nations) such number of LP Units such that (i) the total number of LP Units held by SON LPco (as bare trustee for First Nations) will be equal to the total issued and outstanding LP Units multiplied by the SON Equity Ratio; (ii) the total number of LP Units held by GPco (including, for greater certainty, those issued under Section 3.4(c) of the Agreement) will be equal to the total issued and outstanding LP Units multiplied by the GPco Equity Ratio; and (iii) the total number of LP Units held by HO LPco (following the transfer described in Paragraph 14(k) below) will be equal to 0.1% of the total issued and outstanding LP Units.
- g. The Bruce-to-Milton LP will pay to HONI a cash amount equal to the principal amount of the LP Promissory Note in full satisfaction of the LP Promissory Note held by HONI in connection with the APA;
- h. The Bruce-to-Milton LP will pay such portion of the BtoM LP Promissory Note such that the principal amount of the BtoM LP Promissory Note will, after such payment, be equal to 60% of the BtoM Project Asset Value;
- i. GPco will utilize the funds received from the Bruce-to-Milton LP to pay a portion of the GPco Promissory Note;
- j. HONI will transfer all of its shares owned in HO LPco and GPco, the GPco Promissory Note and the LP Units that HONI owns to Newco and will

receive from Newco preferred shares ("Newco Preferred Shares") having a fair market value equal to the aggregate fair market value of the HO LPco shares, GPco shares, LP Units and GPco Promissory Note acquired by Newco.

HONI and Newco will duly execute and file an election under subsection 85(1) of the ITA (as that provision applies for purposes of the Electricity Act) so that such transfer of the HO LPco and GPco shares, the GPco Promissory Note and the LP Units will occur on a tax deferred basis to HONI. In particular, the elected amounts will not exceed the respective adjusted cost bases of the HO LPco shares, GPco shares, the GPco Promissory Note and the LP Units transferred to Newco.

The terms of the Agreement of Purchase and Sale will contain an adjustment clause providing for an adjustment to the elected amount under the tax election in respect of the transfer to Newco in the event of a reassessment by the tax authorities or otherwise upon the agreement of HONI and Newco. In addition, the terms of the Newco Preferred Shares will provide for an adjustment to the redemption price of the Newco Preferred Shares in the event of a reassessment by the tax authorities or otherwise upon the agreement of HONI and Newco;

- k. Newco will transfer to HO LPco all of the LP Units it received from HONI as described in Paragraph 14(j) and will receive common shares of HO LPco having a fair market value equal to the fair market value of such LP Units;

Newco and HO LPco will duly execute and file an election under subsection 85(1) of the ITA (which provision applies for purposes of the Electricity Act) so that such transfer of the LP Units will occur on a tax deferred basis to Newco. In particular, the elected amount will not exceed the adjusted cost base of the LP Units to Newco. The terms of the Agreement of Purchase and Sale will contain an adjustment clause providing for an adjustment to the elected amount under the tax election in respect of the transfer to HO LPco in the event of a reassessment by the tax authorities or otherwise upon the agreement of Newco and HO LPco;

- l. HONI will pay cash to Hydro One in an amount equal to the Redemption Value of the Newco Preferred Shares in the form of a taxable dividend (the "HONI Dividend") and/or as a repayment of debt owing by HONI to Hydro One. Alternatively, Hydro One may borrow all or a portion of the amount it requires to fund the payment described in Paragraph 14(m) from one or more third parties (the "Hydro One Debt"). The Hydro One Debt will not be convertible and will bear interest at a fixed rate that does not vary based on Hydro One's profits;
- m. Hydro One will transfer the entire amount of cash received from HONI and/or as proceeds from the Hydro One Debt to Newco and will receive,
  - i. A note receivable ("Newco Note Receivable") having a fair market value, principal amount equal to, and terms identical to, the GPco

Promissory Note held by Newco, except that the interest rate may be lower than the interest rate under the GPco Promissory Note by an interest rate spread to be determined by Hydro One and Newco; and

- ii. Common shares in the capital of Newco ("Newco Common Shares") having a fair market value and tax basis equal to the aggregate fair market value of the HO LPco shares and the GPco shares held by Newco;
- n. Newco will redeem the Newco Preferred Shares held by HONI utilizing the cash obtained from the Hydro One investment as described in Paragraph 14(m);
- o. HONI will utilize the funds received on the redemption of the Newco Preferred Shares and, if necessary, the amount received as partial repayment of the GPco Promissory Note to repay the Daylight Loan;
- p. If the First Nations have, under the financing described in Paragraph 12(a), received an advance of funds from third party lenders prior to the grant of the Board Approvals Approvals, SON LPco (as bare trustee for the First Nations) will make the Interim Loan to HO LPco (or another corporation that is related to HO LPco, other than Hydro One) in an amount equal to the SON Equity Contribution Amount. On Closing, the applicable borrower will repay the Interim Loan and SON LPco (as bare trustee for the First Nations) will use the proceeds from that repayment to make the capital contribution to the Bruce-to-Milton LP described in Paragraph 14(f).

### **Purpose of the Proposed Transactions**

The purpose of the Proposed Transactions is to allow the First Nations to invest in, and to earn income through the acquisition of an equity participation in the Bruce to Milton electricity transmission line, an important infrastructure project which traverses the traditional lands of the First Nations; establish the relationship between HONI and the First Nations with respect to the operation and ownership of the Bruce to Milton electricity transmission line; establish the appropriate regulatory debt to equity ratio; and to retain the taxable income allocated to HO LPco and GPco within the PILs tax regime.

Parentco will participate, indirectly through Subco (and subsequently Newco), in the Partnership through a separate wholly-owned subsidiary, General Partner, in order to facilitate future compliance with regulatory requirements for the regulated entities. The Infrastructure is the first transmission asset that Parentco, Subco or Newco will own through a partnership vehicle with the Group.

All of the transmission assets owned by Subco are solely owned by it. It will assist Subco in its regulatory compliance to account for and report on its own transmission operations on the basis that all of its assets are solely owned.

## Additional Assumptions

For the purposes of this letter, it is assumed that, at all relevant times:

1. Each of Hydro One, HONI, HO LPco , GPco and Newco is subject to PILs pursuant to sections 89 and 90 of the Electricity Act;
2. For the purposes of the ITA and *Taxation Act, 2007* (Ontario), as those statutes apply for the purpose of calculating PILs under the Electricity Act:
  - a. All transactions described in the letter are part of a single series of transactions;
  - b. The Bruce-to-Milton LP is a Canadian partnership;
  - c. Each of Hydro One, HONI, HO LPco , GPco, Newco, SON LPco and the First Nations is resident in Canada;
  - d. Each of Hydro One, HONI, HO LPco , GPco, Newco and SON LPco would be a taxable Canadian corporation but for section 149 of the ITA;
  - e. Hydro One, HONI, HO LPco , GPco and Newco are related persons;
  - f. The properties transferred in the transaction referred to in Paragraph 14(a) are capital property or eligible capital property of HONI;
  - g. The properties transferred in each of the transactions referred to in Paragraphs 14(d), 14(j) and 14(k) are eligible property under subsection 85(1.1) of the ITA;
  - h. The HONI Dividend, and any other dividends arising as a result of the contemplated transactions, are taxable dividends;
  - i. Each of the BtoM LP Promissory Note and the LP Promissory Note create a legal obligation for the Bruce-to-Milton LP to pay interest at a commercial rate in exchange for the use of money; and
  - j. The proceeds from the BtoM LP Promissory Note will be used to repay the LP Promissory Note.
3. Neither Newco nor Subco is or will be, at any time during the Series of Transactions or Events that includes the Proposed Transaction, a Specified Financial Institution, a Restricted Financial Institution or a corporation described in any of paragraphs (a) to (f) of the definition of Financial Intermediary Corporation;
4. The Newco shares are not the subject of:
  - a. any undertaking that is a guarantee agreement;
  - b. a Dividend Rental Arrangement;

- c. any secured undertaking of the type described in paragraph 112(2.4)(a).
5. The Newco shares were not issued for consideration that is or includes:
- a. an obligation of the type described in subparagraph 112(2.4)(b)(i), other than an obligation of a corporation that is related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to Newco; or
  - b. any right of the type described in subparagraph 112(2.4)(b)(ii).
6. None of the Outstanding Promissory Notes are related to the acquisition of the Limited Partner's interest in the Partnership and each Promissory Note will be issued for commercial reasons and on commercial terms;
7. In a report issued on December 20, 2006 (Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors), the Board concluded that for ratemaking purposes, a single capital structure for all distributors is appropriate. The Board has determined that a split of 60% debt, 40% equity be used for all distributors. When approving or refusing to approve capital structures set out in applications by transmitters, the Board determines the capital structure on a case-by-case basis (OEB Report EB-2009-0084 on the Cost of Capital for Ontario's Regulated Utilities, paragraph 4.3, page 50) but generally uses the deemed capital structure for distributors unless there is a compelling reason justifying a different capital structure. That is what justifies the fact that the Partnership is capitalized with 60% of debt and 40% of equity.

## **Rulings Given**

The following rulings are given subject to the limitations and qualifications set out in Information Circular 70-6R5 issued by the CRA on May 17, 2002. The rulings given below are based on the Electricity Act and other relevant statutes in their present form and do not take into account any proposed amendments to the Electricity Act or other relevant statutes which, if enacted, could have an effect on the rulings provided herein. Any references in the rulings below to provisions of the ITA should be read as a reference to that provision, as it applies for purposes of the Electricity Act.

Rulings are considered to be binding on the Ministry of Finance only in respect of the taxpayer to whom the ruling was given. Each ruling given below is based on the particular facts set out in this letter and on the law in force at the time the ruling is published and, therefore, will not be amended for subsequent changes in the law.

It is understood that ruling request "D" and ruling request "K" have been withdrawn and as such rulings will not be given for these two requests. Also, ruling request "L" has been withdrawn and changed to a request for an interpretation which will be addressed in a separate letter.

Provided that the statements found in the Facts, Proposed Transactions, Purpose of the Proposed Transactions and Additional Assumptions are accurate and constitute a complete disclosure of all the relevant facts and proposed transactions and assuming that, pursuant to subsection 89(1) of Act 1, Parentco, Subco, Newco, General Partner and Limited Partner were not a person to which subsection 149(1) applies, the following rulings are given:

- A. The First Nations will not be regarded as municipal corporations for purposes of Part VI of the Electricity Act.
- B. None of the First Nations, SON LPco or the Bruce-to-Milton LP will be regarded as a "municipal electricity utility" as defined in Section 88 of the Electricity Act.
- C. Provided that the Bruce-to-Milton LP is a Canadian Partnership immediately after the transfer described in Paragraph 14a of this letter and each property transferred is a Qualifying Property and provided further that Honi and all the other members of the Bruce-to-Milton LP jointly elect under subsection 97(2), in prescribed form and within the time limit specified in subsection 96(4), the provisions of subsection 97(2) will apply to the transfer by Honi of the BtoM Project Assets to the Bruce-to-Milton LP as described in Paragraph 14(a) of this letter.

Subject to subsection 69(11) and paragraph 85(1)(b), provided that each property transferred is Eligible Property in respect of which shares have been issued in full or partial consideration therefor and that the appropriate elections are filed in the prescribed form and manner within the time limits specified in subsection 85(6), the provisions found in subsection 85(1) will apply to the transfers described in Paragraphs 14(d), 14(j) and 14(k) of this letter such that the Agreed Amount in respect of each such transfer will be deemed to be the transferor's proceeds of disposition of the particular property and the transferee's cost thereof. For greater certainty, paragraph 85(1)(e.2) will not apply to the transfers referred to herein.

- D. Request withdrawn.
- E. Provided that:
  - (a) the Bruce-to-Milton LP has a legal obligation to pay interest on LP Promissory Note;
  - (b) the LP Promissory Note represents an amount payable for property acquired for the purpose of gaining or producing income from the property or from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy);
  - (c) the Bruce-to-Milton LP has a legal obligation to pay interest on the BtoM LP Promissory Note;



- (d) the amount borrowed under the BtoM LP Promissory Note is used to repay the principal amount of the LP Promissory Note as described in Paragraph 14(g) of this letter;

the Bruce-to-Milton LP will be entitled to deduct, pursuant to subsection 20(3) and paragraph 20(1)(c), the lesser of (i) the interest, paid in the year or payable in respect of the year (depending on the method regularly followed by the Bruce-to-Milton LP in computing its income for the purposes of the Act) under the Bruce-to-Milton Promissory Note in computing its income for the purposes of the Act, or (ii) a reasonable amount in respect thereof.

- F. Provided that the payments made by the Bruce-to-Milton LP to HONI under the Operating Agreement are an outlay or expense made or incurred for the purpose of gaining or producing income from a business or property, paragraph 18(1)(a) will not prevent the deduction of such outlays or expenses made or incurred by the Bruce-to-Milton LP.
- G. As a result of the redemption by Newco of the preferred shares held by HONI described in Paragraph 14n of this letter, Newco will be deemed to have paid a dividend to HONI pursuant to paragraph 84(3)(a), and HONI will be deemed to have received a dividend pursuant to paragraph 84(3)(b) equal to the amount by which the Redemption Value of all the preferred shares of Newco held by HONI exceeds their PUC.

Provided that Newco and HONI are Taxable Canadian Corporations for purposes of the ITA and the Electricity Act, the amount of the dividend deemed to have been paid by Newco and received by HONI as described in this Ruling G will:

- a. be included in HONI's income pursuant to subsection 82(1) and paragraph 12(1)(j);
- b. be deductible in computing HONI's taxable income pursuant to subsection 112(1) in the taxation year in which the dividend is deemed to have been received and for greater certainty, the deduction of such dividend will not be denied by of subsection 112(2.1), (2.2), (2.3) and (2.4);
- c. be excluded from the proceeds of disposition of the redeemed preferred shares that HONI held in Newco pursuant to paragraph (j) of the definition of "proceeds of disposition" in section 54;
- d. by virtue of subsection 112(3), reduce the loss, if any, in respect of the disposition of the preferred shares that HONI held in Newco;
- e. not give rise to tax under Part IV except to the extent that the payer corporation is entitled to a dividend refund for its taxation year in which it paid such dividend; and
- f. not be subject to tax under Part IV.1 or Part VI.1.

- H. Provided that there is no disposition or increase in interest described in any of subparagraphs 55(3)(a)(i) to (v) as part of the series of transactions or events that includes the Proposed Transactions, by virtue of paragraph 55(3)(a), the provisions of subsection 55(2) will not apply to the deemed dividend described in Ruling G and to the dividend described in Paragraph 14(l) of this letter. For greater certainty, the Proposed Transactions, in and themselves, will not be considered to result in any disposition of property or an increase in interest described in subparagraphs 55(3)(a)(i) to (v).
  
- I. Provided that Newco has a legal obligation to pay interest on the Newco Note Receivable, and to the extent the aggregate of the amount borrowed under the Newco Note Receivable does not exceed the Capital of the Newco preferred shares that are redeemed as described in Paragraph 14(n) of this letter, determined immediately before such redemption, and provided that the capital so redeemed was being used for purposes that would have qualified for interest deductibility, had that capital been borrowed money in computing its income for a taxation year, Newco will be entitled to deduct, pursuant to paragraph 20(1)(c), the lesser of (i) the interest on the amount used to redeem the preferred shares of Newco as described in Paragraph 14(n) of this letter paid in the year or payable in respect of the year (depending on the method regularly followed by Newco in computing its income for the purposes of the Act) or (ii) a reasonable amount in respect thereof.
  
- J. Based on the CRA's administrative policy concerning certain amounts owing between non-arm's length parties, the Outstanding Promissory Notes will not, in and of themselves, result in the application of paragraph 96(2.2)(c) to reduce the at-risk amount of the HO LPco in respect of its interest in the Bruce-to-Milton LP.

According to this administrative policy, paragraph 96(2.2)(c) generally does not apply to amounts owing by a limited partner (or by a person or partnership not dealing at arm's length with the limited partner) to a partnership (or to a person or partnership not dealing at arm's length with the partnership) to the extent that such amounts arose as a result of legitimate commercial transactions that are unrelated to the acquisition of the limited partner's interest in the partnership and to the extent that the terms of payment conform to normal commercial arrangements comparable to those between parties dealing at arm's length.

- K. Request withdrawn.
  
- L. Request withdrawn.

## Comments

Nothing in this letter should be construed as implying that the Ministry of Finance has confirmed, reviewed or made any determination in respect of:

- a. the determination of the fair market value, adjusted cost base or paid-up capital of any shares or other property referred to herein;
- b. the balance of the capital dividend account, refundable dividend tax on hand account or general rate income pool of any corporation;
- c. any PILs consequences relating to the facts and proposed transactions described herein other than those specifically described in the rulings given above. Without restricting the generality of the foregoing, we are not confirming that any transaction that occurs following the proposed transactions will not be part of the series of transactions or events that include the receipt of the dividends referred to in Ruling H;
- d. any other tax consequences related to the Facts, Proposed Transactions, Purpose of the Proposed Transactions and Additional Assumptions Facts, or subsequent transactions, whether described in this letter or not, other than those specifically described in the rulings given above; or
- e. the characterization as capital or inventory of the assets owned by any of the entities listed herein.

Nothing in this letter should be construed as a confirmation, express or implied, that, for the purpose of any of the rulings given above, any adjustment to the FMV of the properties transferred or the consideration received, whether pursuant to a price adjustment clause or otherwise, will be effective retroactively to the time of the transfer. Furthermore, none of the rulings given in this letter are intended to apply to or in the event of the operation of a price adjustment clause, since such adjustment will be due to circumstances that do not constitute proposed transactions.

Yours truly,



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Ministry of Finance