



EB-2008-0339

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application pursuant to
subsection 86(2)(a) of the *Ontario Energy Board Act, 1998*
by the Town of Cochrane for leave to acquire shares of
Northern Ontario Wires Inc.

BEFORE: Gordon Kaiser
Vice-Chair and Presiding Member

Paul Vlahos
Member

Paul Sommerville
Member

DECISION AND ORDER

The Application

On October 17, 2008, the Town of Cochrane (“Cochrane” or “Applicant”) filed an application with the Ontario Energy Board under subsection 86(2)(a) of the *Ontario Energy Board Act* (the “Act”), seeking leave to acquire all of the outstanding shares of Northern Ontario Wires Inc. (“Northern Ontario Wires”). Cochrane is also acquiring all shares of Northern Ontario Energy Inc. (“Northern Ontario Energy”), a street lighting affiliate, but does not require Board approval for that transaction. The Board assigned the application file number EB-2008-0339.

Cochrane currently holds 67% of the shares in Northern Ontario Wires and Northern Ontario Energy. Cochrane has entered into a Share Purchase Agreement with the other shareholder of Northern Ontario Wires and Northern Ontario Energy, namely the Town of Iroquois Falls ("Iroquois Falls"), which owns the remaining 33% of the shares. The share purchase transaction will make Cochrane the sole shareholder of Northern Ontario Wires and Northern Ontario Energy.

The Proceeding

The Board issued its Notice of Application and Hearing on January 12, 2009. The Notice was published on January 15, 16 and 17, 2009 in the affected service areas.

In response to the Notice, several residents of Iroquois Falls sent letters raising concerns with the proposed transaction relating to a lack of public consultation by the Town Council of Iroquois Falls, alleging lack of public disclosure and questioning the valuation of the shares. A group of concerned citizens also submitted a petition requesting an immediate plebiscite vote on the sale of the Northern Ontario Wires' shares. Their argument was based on the notion that the Town Council of Iroquois Falls had not proven the benefit of the sale nor did the Town inform the public of the pending sale. Certain residents also objected to a written hearing process and requested an oral hearing.

The Applicant responded to these letters stating that the issues raised by these residents lie outside the Board's jurisdiction in its determination of applications under section 86 of the Act. The Applicant also stated that the concerned residents have not presented any reason in their letters to justify their requests for an oral hearing of this application.

Board Findings

The issue before the Board concerns the approval of the proposed transaction. The Board has proceeded with its determination of this application by way of written hearing as the Board did not find any issues raised in the letters from residents of Iroquois Falls that would support the requests for an oral hearing in this matter.

Subsection 86(2)(a) of the Act states:

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor.

The Board has in a previous decision dealing with proposed acquisitions and amalgamations (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) (the “Combined Decision”), made two important determinations in relation to the manner in which the Board will review applications for leave to acquire shares or to amalgamate under section 86 of the Act. First, the Board determined that the factors to be considered in deciding such applications are those identified in the Board’s objectives as set out in section 1 of the Act. Second, the Board determined that it will apply the “no harm” test in deciding whether to approve a share acquisition or amalgamation transaction. The Board, therefore, must determine whether the transaction contemplated in the application will have an adverse effect relative to the status quo in terms of the factors identified in the Board’s objectives set out in section 1 of the Act, as follows:

- i. the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; or
- ii. economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity or the maintenance of a financially viable electricity industry.

The Board will grant leave for a proposed transaction if it is satisfied that the transaction will not have an adverse effect relative to the status quo in terms of the factors identified in the Board’s objectives.

The Applicant has submitted that the proposed transaction will have no impact on consumers in terms of changes to rate levels or service changes and in terms of service quality and reliability. The Applicant has also submitted that the proposed transaction will be financed entirely from the financial resources of the Town of Cochrane. The Applicant has also indicated that there will be no changes to the capital structure of Northern Ontario Wires.

According to the documentation filed with the application, all internal approvals necessary to enable the parties to enter into the Share Purchase Agreement underlying the proposed transaction have been obtained.

Letters from the residents of Iroquois Falls have raised concerns regarding the process surrounding the negotiation of the transaction contemplated in the application, including concerns that the process was not transparent and that there was inadequate public consultation on, and public disclosure about, the proposed transaction. As well, concern was expressed about the valuation of the shares.

The Board refers to the Combined Decision regarding the relevance of price and process in its determination of this application.

In the Combined Decision, the Board stated that the sale price is relevant only if the price paid is so high that it creates a financial burden on the acquiring company.¹ This could adversely affect the economic viability of the purchaser, as any premium paid in excess of the book value of assets is not normally recoverable through rates. Given this, the Board notes that Cochrane should have no expectation for the recovery of any acquisition premium paid with respect to the proposed transaction through future rate increases.

With respect to the concerns expressed by the residents of Iroquois Falls relating to the valuation of the assets, the Board agrees with the Applicant that it is not the role of the Board to determine whether the vendor of the shares received market value. This determination is in the hands of the parties to the transaction and the Board is concerned only with the acquiring entity and the impact this transaction may have on the regulated distribution company going forward. The Board is satisfied that the Applicant has reasonably met the no harm test with respect to the impact that this transaction will have on the customers of Northern Ontario Wires relative to the status quo in light of the Board's objectives.

With respect to the sale process, the Board concluded in the Combined Decision that the conduct of the seller, including the degree of public consultation or public disclosure on the transaction, are not in and of themselves grounds for denying the approval of a

¹ *In the Matter of Greater Sudbury Hydro Inc., Power Stream Inc. and Veridian Connections Inc.*, (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) (August 31, 2005), page 7

transaction.² The Board's statutory mandate is to consider the effect of the transaction in light of the Board's objectives as identified in section 1 of the Act and not the process underlying the proposed transaction. In other words, the "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction.

Based on the submissions of the Applicant, the Board is satisfied that the transaction contemplated in the application will not have an adverse effect on the customers of Northern Ontario Wires relative to the status quo in relation to the factors identified in its objectives as set out in section 1 of the Act.

THE BOARD ORDERS THAT:

1. The Town of Cochrane is hereby granted leave to acquire the remaining shares of Northern Ontario Wires Inc. pursuant to subsection 86(2)(a) of the Act.
2. The Board's leave to acquire shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application for leave to acquire will be required in order for the transaction to proceed.
3. The Town of Cochrane shall promptly notify the Board of the completion of the transaction.

DATED at Toronto, February 11, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

² Ibid, pages 8-9