



**EB-2009-0072**  
**EB-2009-0073**  
**EB-2009-0075**

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

**AND IN THE MATTER OF** an application by Great Lakes Power Limited under section 86 of the of the *Ontario Energy Board Act, 1998* seeking leave to transfer its distribution system to Great Lakes Power Distribution Inc.;

**AND IN THE MATTER OF** an application by Great Lakes Power Distribution Inc. under section 57 of the *Ontario Energy Board Act, 1998* for an electricity distribution licence;

**AND IN THE MATTER OF** an application by Great Lakes Power Limited under section 18 of the *Ontario Energy Board Act, 1998* seeking leave to transfer its distribution rate order to Great Lakes Power Distribution Inc.;

**AND IN THE MATTER OF** an application by Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission LP under section 74 of the *Ontario Energy Board Act, 1998* for a licence amendment;

**AND IN THE MATTER OF** an application by Great Lakes Power Limited under section 18 of the *Ontario Energy Board Act, 1998* seeking leave to transfer its approved Customer Delivery Point Performance Standards and its approved Customer Connections Procedures to Great Lakes Power Transmission LP.

**BEFORE:** Paul Vlahos  
Presiding Member

Cynthia Chaplin  
Member

Ken Quenselle  
Member

**DECISION AND ORDER**

Great Lakes Power Limited (“GLPL”), Great Lakes Power Distribution Inc. (“GLPD”) and Great Lakes Power Transmission Inc. (“GLPT”) on behalf of Great Lakes Power Transmission LP (“GLPTLP”) (together, the "Applicants") filed applications with the Ontario Energy Board (the “Board”) dated March 6, 2009.

GLPL is a licensed transmitter, distributor and generator. Section 71 of the *Ontario Energy Board Act, 1998* (the “Act”) states that a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity. Pursuant to section 5(4) of Ontario Regulation 161/99 - *Definitions and Exemptions* (made under the Act), GLPL was exempt until December 31, 2008 from section 71 of the Act and was permitted to carry on the activities of transmission and distribution together with generation within the same corporation. These applications were made in anticipation of the expiry of the exemption.

### **The Applications**

GLPL applied for leave of the Board to sell all of its distribution assets to an affiliate, GLPD, under section 86(1)(a) of the Act. The Board assigned the application file number EB-2009-0073.

If the Board grants GLPL’s application for leave to sell its distribution assets and if the transaction closes, GLPD will require a distribution licence. GLPD applied for an electricity distribution licence under section 57 of the Act. GLPL, a licensed distributor, filed an application with the Board under section 18 of the Act to transfer its current distribution rate order (EB-2007-0744) to GLPD. GLPL subsequently requested the cancellation of its electricity distribution licence (ED-2008-0343) pursuant to section 77(5) of the Act. The Board assigned application file number EB-2009-0072 to these matters.

GLPT on behalf of GLPTLP applied for a licence amendment to its electricity transmission licence (ET-2002-0247) to operate the transmission system under section 74 of the Act. GLPL applied for leave of the Board under section 18 of the

Act to transfer its approved Customer Delivery Point Performance Standards (EB-2006-0201) and its approved Customer Connection Procedures (EB-2006-0200) to GLPT. GLPL also requested that the Board cancel its transmission licence (ET-2008-0342) pursuant to section 77(5) of the Act. The Board assigned application file number EB-2009-0075 to these matters.

### **The Proceeding**

In the interest of efficiency, the Board combined these applications pursuant to its power under section 21(5) of the Act. The Board issued a Notice of Application and Hearing on March 26, 2009. The Applicants served and published the Notice on April 9, 2009. Interested parties were given 21 days to provide written submissions on the applications to the Board. No submissions were received.

### **Board Findings**

The full record of the proceeding is available for review at the Board's offices. While the Board has considered the full record, the Board has summarized and referred to those portions of the record that it considers necessary to provide context to its findings.

#### Leave to Sell Distribution Assets

Section 86(1)(a) of the Act states that no transmitter or distributor shall sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety without first obtaining an order from the Board granting leave.

In determining this application (EB-2009-0073), the Board is guided by the principles set out in the Board's decision in the combined MAADs proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In that decision, the Board found that the "no harm" test is the relevant test for the purposes of applications for leave to acquire shares or amalgamate under

section 86 of the Act. The Board finds that this test should also be applied to asset disposals under section 86(1)(a) of the Act. The “no harm” test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board’s statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. Section 1 of the Act sets out the objectives of the Board in relation to electricity. The objectives are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of book value of assets is not normally recoverable through rates. This position is in keeping with the “no harm” test.

In support of the section 86(1)(a) application, the Applicants have submitted that:

- the transaction is an internal reorganization;
- both GLPL and GLPD are indirectly controlled by Brookfield Asset Management Inc. and the distribution business will remain effectively under the control of Brookfield Asset Management Inc.;
- the management, employees and assets currently operating the distribution system for GLPL will carry on the same business within GLPD, thus ensuring that there will be no change in quality and reliability of service and that operational safety and system integrity are maintained;
- the transaction does not change economic efficiency or cost effectiveness from current levels;

- the transaction price is set equal to the net book value of the underlying assets;
- no expectation for future rate increases at this time;
- other than the transaction costs, no incremental costs will be incurred; and
- GLPL has applied to the Board for leave to transfer its current electricity distribution rate order (EB-2007-0744) to GLPD.

The Board accepts the evidence submitted by the Applicants and concludes that the proposed transaction will not have an adverse effect in terms of the factors identified in the Board's objectives under section 1 of the Act. The Board is satisfied that the application meets the "no harm" test and therefore approves the sale of GLPL's distribution assets to an affiliate, GLPD, under section 86(1)(a) of the Act.

#### Distribution Licensing Matters

As the Board is granting leave to GLPL to sell its distribution assets to GLPD, the Board finds it is in the public interest to:

- (a) grant an electricity distribution licence to GLPD; and
- (b) cancel GLPL's electricity distribution licence, ED-2008-0342,

subject to the following conditions:

- (a) the GLPD distribution licence and the GLPL licence cancellation will not be effective until the commercial transaction closes;
- (b) in order for the GLPD distribution licence and the GLPL licence cancellation to become effective, the commercial transaction must close on or before December 31, 2009; and
- (c) the Applicants must inform the Board when the commercial transaction closes.

The Board is aware of GLPL's outstanding appeal to the Ontario Superior Court of Justice on the Board's EB-2007-0744 Decision and Order, regarding GLPL's recovery of the balance in account 1574. GLPL has requested that any amendments to its rate order that may arise from this appeal be given effect even if

its rate order has already been transferred to GLPD. The Board accepts this request.

The Board finds that when the transaction closes, it is in the public interest to transfer GLPL's distribution rate order (EB-2007-0744) to GLPD.

### Transmission Licensing Matters

GLPT, on behalf of GLPTLP, has requested an amendment to its electricity transmission licence to include GLPTLP as the operator. The transmission assets are currently operated on GLPTLP's behalf by GLPL under an OM&A agreement. To ensure its compliance with section 71 of the Act, GLPL plans to terminate this OM&A agreement. As such, GLPL has requested the cancellation of its transmission licence effective upon the closing of the distribution assets sale transaction.

The Board finds it is in the public's interest to:

- (a) amend GLPTLP's electricity transmission licence, ET-2002-0247, to include it as the operator; and
- (b) cancel GLPL's transmission licence, ET-2008-0342, upon the closing of the commercial transaction.

Under section 4.5.2 of the Board's Transmission System Code transmitters are required to develop performance standards at the customer delivery point level and to file those for approval by the Board. GLPL has applied for leave of the Board to transfer its approved Customer Delivery Point Performance Standards (EB-2006-0201) to GLPT. GLPL has also applied for leave of the Board to transfer its approved Customer Connection Process (EB-2006-0200) to GLPT.

The Board finds it is in the public interest to transfer the Customer Delivery Point Performance Standards and Customer Connection Procedures to GLPT.

**THE BOARD ORDERS THAT:**

1. Great Lakes Power Limited is granted leave to sell its distribution assets to Great Lakes Power Distribution Inc.
2. The Board's leave to sell Great Lakes Power Limited's distribution assets to Great Lakes Power Distribution Inc. shall expire on December 31, 2009. If the transaction has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.
3. The application for an electricity distribution licence by Great Lakes Power Distribution Inc. is granted, on such conditions as are contained in the attached licence.
4. Great Lakes Power Limited's electricity distribution licence, ED-2008-0343, is cancelled.
5. Great Lakes Power Limited's electricity distribution rate order, EB-2007-0744, is transferred to Great Lakes Power Distribution Limited, subject to any amendments that may arise from Great Lakes Power Limited appeal to the Ontario Superior Court of Justice (Court File No. 610/08).
6. Great Lakes Power Transmission LP's electricity transmission licence, ET-2002-0247, is amended to include Great Lakes Power Transmission LP as operator.
7. Great Lakes Power Limited's electricity transmission licence, ET-2008-0342, is cancelled.
8. Great Lakes Power Limited's Customer Delivery Point Performance Standards (EB-2006-0201) is transferred to Great Lakes Power Transmission Inc.
9. Great Lakes Power Limited's Customer Connection Procedures (EB-2006-0200) is transferred to Great Lakes Power Transmission Inc.
10. Great Lakes Power Limited shall pay the Board's costs of and incidental to this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto, May 5, 2009

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary