



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0050

HYDRO ONE INC.

Application for the acquisition of Great Lakes Power Transmission Inc. by Hydro One Inc.

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

Christine Long
Vice-Chair

Cathy Spoel
Member

October 13, 2016

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1 INTRODUCTION AND SUMMARY

This is the Decision of the Ontario Energy Board (OEB) regarding an application filed by Hydro One Inc. (Hydro One) requesting:

- Approval to purchase all of the voting shares of Great Lakes Power Transmission Inc. (GLPT).
- Acceptance of a proposed 10 year rate rebasing deferral period, earnings sharing mechanism, and methodology to calculate GLPT's revenue requirement for 2019 and for each subsequent year during the rate rebasing deferral period.

Section 86 of the *Ontario Energy Board Act, 1998* (Act) requires that the OEB review applications for a merger, acquisition of shares, divestiture or amalgamation that results in a change of ownership or control of an electricity transmitter or distributor and approve applications which are in the public interest.

The OEB recently issued a Handbook to Electricity Distributor and Transmitter Consolidation in January 2016 (Handbook) which provides guidance on the process for the review of an application, the information the OEB expects to receive in support, and the approach it will take in assessing whether the transaction is in the public interest.

In reviewing an application, the OEB applies a no harm test, first established in the OEB's Combined Decision.¹ The no harm test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives as set out in section 1 of the Act. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

¹ RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

In reaching the Decision, the OEB was aided by the participation of intervenors and OEB staff.

The OEB has determined that Hydro One's proposed share purchase transaction meets the no harm test. The OEB approves this transaction.

The OEB does not fully accept the rate-setting framework for GLPT rates, as proposed by Hydro One for the reasons set out in the Decision. The OEB is prepared to accept Hydro One's proposal to defer the rebasing of rates for GLPT for a 10 year period as well as the proposed earning sharing mechanism, but cannot simultaneously accept the proposal that rates for GLPT must be reset at the beginning of this ten year period. The OEB has determined that GLPT can continue with its existing revenue requirement and file a new rate application, proposing a revenue cap index framework for the deferral period. It should include the components set out in the updated Chapter 2 Filing Requirements for Electricity Transmission Applications (Transmission Filing Requirements).

2 THE APPLICATION

Hydro One filed an application with the OEB on March 18, 2016 seeking approval to purchase all of the issued and outstanding voting securities of GLPT under section 86(2)(b) of the Act. Hydro One is also requesting the OEB's acceptance of its proposal to defer the rate rebasing of GLPT for ten years from the date of closing of the proposed transaction, an earnings sharing mechanism proposal for years 6 to 10 of the deferred rebasing period and a proposed methodology to calculate GLPT's revenue requirement for 2019 and for each subsequent year during the rebasing deferral period.

The applicant also requested confidentiality of certain parts of the Share Purchase Agreement (SPA), which sets out the terms of the proposed transaction. The OEB accepts the confidentiality requests, addressed in detail later in the Decision.

GLPT is the general partner of Great Lakes Power Transmission LP (GLPTLP) and is licensed on behalf of GLPTLP to provide transmission services in accordance with the terms and conditions described in Electricity Transmission Licence ET-2007-0649.

The SPA enables Hydro One to acquire various entities that own and control GLPTLP. According to the terms of the SPA, Hydro One will purchase securities comprised of the voting securities of the general partners, Great Lakes Power Transmission Holdings Inc. (GLPT Holdings) and GLPT. These will be owned by Hydro One. The limited partnership units of Great Lakes Power Transmission Holdings II LP will be owned by 1937672 Ontario Inc., a wholly owned subsidiary of Hydro One. A cash payment of \$222 million has been agreed to by the parties for this transaction.

Following the completion of the share purchase transaction, GLPT and Hydro One will continue to operate as stand-alone licensed transmitters. Hydro One states that the existing GLPTLP debt covenants prevent GLPT from being amalgamated absent consent of the debt holders. This may involve renegotiation of the terms of the GLPTLP debt instruments which could result in substantial additional costs. Therefore, Hydro

One intends to allow GLPT's outstanding debt obligations to continue until they reach maturity in mid-2023. Amalgamation steps will be considered after this time.

Process

The OEB issued a Notice of Application and Hearing on April 7, 2016, inviting intervention and comment. The OEB approved intervention requests by Algoma Coalition, Association of Major Power Consumers in Ontario (AMPCO), Energy Probe Research Foundation (Energy Probe), Power Workers' Union (PWU), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC).

The OEB provided for interrogatories and submissions on the application and held two days of oral hearing.

3 REGULATORY PRINCIPLES

3.1 The No Harm Test

The OEB has confirmed in the Handbook that it will continue to apply the no harm test in its assessment of applications relating to consolidation transactions. The no harm test was first established by the OEB in 2005 in the Combined Decision, and has been considered in detail in several recent OEB decisions.²

The OEB considers whether the no harm test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The statutory objectives to be considered are those set out in section 1 of the Act:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
 - 1.1 To promote the education of consumers.
- 2 To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
- 3 To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario.
- 4 To facilitate the implementation of a smart grid in Ontario.

² Hydro One Inc./Norfolk Power Distribution Inc. Decision– OEB File No. EB-2013-0196/EB-2013-0187/EB-2013-0198

Hydro One Inc./Haldimand County Hydro Inc. Decision – OEB File No. EB-2014-0244

Hydro One Inc./Woodstock Hydro Services Inc. Decision– OEB File No. EB-2014-0213

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- 5 To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

As set out in the Handbook, while the OEB has broad statutory objectives, in applying the no harm test, the OEB's review has primarily focused on the impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and the financial viability of the consolidating utilities. The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB's existing performance monitoring framework.

The OEB has implemented a number of instruments, such as codes and licences that ensure regulated utilities continue to meet their obligations with respect to the OEB's statutory objectives relating to conservation and demand management, implementation of smart grid and the use and generation of electricity from renewable resources. With these tools and the existing performance monitoring framework, the OEB is satisfied that the attainment of these objectives will not be adversely affected by a consolidation and the no harm test will be met following a consolidation.

3.2 OEB Policy on Rate-Making Associated with Consolidation

The OEB sets out its policies on rate-making associated with consolidation in a report entitled *Rate-making Associated with Distributors Consolidation*, issued July 23, 2007³ (the 2007 Report) and a further report issued under the same name on March 26, 2015 (the 2015 Report). The Handbook consolidates information provided in these two reports and identifies the key rate-making considerations expected to arise in a

³ Report of the Board on Rate-making Associated with Distributor Consolidation, July 23, 2007

consolidation transaction. To encourage consolidations, the OEB has introduced policies that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved as a result of the consolidation. The 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction. The extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period. Consolidating entities, must, however, select a definitive timeframe for the deferred rebasing period.

The Handbook also clarified the rate-setting mechanisms during the deferred rebasing period. The OEB requires consolidating entities that propose to defer rebasing beyond five years to implement an earnings sharing mechanism for the period beyond five years to protect customers and ensure that they share in any increased benefits from consolidation.

The Handbook confirmed that the Incremental Capital Module (ICM), an additional mechanism under the Price Cap IR rate-setting option to allow adjustment to rates for discrete capital projects is available for any prudent discrete capital project that fits within an incremental capital budget envelope, not just expenditures that were unanticipated or unplanned. To encourage consolidation, the 2015 Report extended the availability of the ICM for consolidating distributors that are on Annual IR Index, thereby providing consolidating distributors with the ability to finance capital investments during the deferred rebasing period without being required to rebase earlier than planned.

The Handbook confirmed that rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation, e.g. a temporary rate reduction. Rate-setting for a consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

4 APPLICATION OF THE PRINCIPLES TO THE APPLICATION

4.1 The No Harm Test

Price, Cost Effectiveness and Economic Efficiency

Hydro One asserted that this transaction is expected to result in downward pressure on the cost structure of Hydro One and GLPT, as a result of savings opportunities in capital and operating, maintenance and administrative (OM&A) expenditures.

Hydro One provided a ten year forecast of capital expenditures and OM&A costs, reflecting “with transaction” and “without transaction” assumptions. Hydro One submitted that capital expenditure reductions are expected to result from some asset redundancy, the economic scale of Hydro One’s operations, and potential savings from adopting Hydro One’s asset management programs. Hydro One noted that the level of actual realized savings is uncertain and will depend on the experience gained by the parties in 2017 and 2018. Hydro One has anticipated operational synergies and savings to be achieved from 2019 onwards in the areas of procurement, maintenance programs, planning, operations, project management, engineering, scheduling, back-office administration, corporate governance, information technology and insurance.

Hydro One identified qualitative benefits associated with the transaction including coordinated regional planning, emergency response and ongoing outage management activities, and opportunities for GLPT’s management and staff to work within the Hydro One organization, which will help address expected retirements and other attrition.

Hydro One submitted that longer term synergy savings opportunities are reasonably expected to result in reductions to underlying cost structures which would not arise but for the transaction. The transaction therefore promotes economic efficiency and cost effectiveness, which benefits customers in the long term.

While SEC agreed that the application meets the no harm test, it argued that the OEB should not have a policy of providing incentives to encourage consolidation in the

transmission sector, as there are fundamental differences between the transmission and distribution sectors.

There are only a few transmitters. Hydro One owns 94.2% of the transmission system. This percentage will rise to 96.8% if this transaction is approved. SEC submitted that the transmitter consolidation might not promote economic efficiency and cost effectiveness as the consolidation degrades competition in the sector by removing one transmitter.

OEB staff submitted while the actual cost savings may be lower than projected, operational and capital synergies can reasonably be expected following the implementation of operational integration post-2018. OEB staff submitted that Hydro One's forecast of capital and OM&A expenditures does reflect expected reductions as a result of the transaction in the deferred rebasing period, which in OEB staff's view, is likely to continue to provide ratepayers with ongoing benefits when rebasing occurs in 2027.

OEB staff submitted that much like with distributors, as part of the OEB's performance-based regulatory framework, transmitters are also expected to achieve certain outcomes and provide value for money for customers. One of these outcomes is operational effectiveness, which requires continuous improvement in productivity and cost performance and delivery on system reliability and quality objectives.

OEB Findings

The OEB finds that the proposed share acquisition transaction meets the no harm test. The OEB accepts Hydro One's evidence that the transaction is expected to result in downward pressure on the cost structures of Hydro One and GLPT.

With respect to SEC's submissions on incentives to encourage consolidation in the transmission sector, the OEB recognizes that there may not be the same drivers for

consolidation in the transmission sector as there are in the distribution sector. However, the OEB finds that consolidations between transmitters can, and in the case of the proposed consolidation, does provide similar forms of benefits to ratepayers.

The OEB finds that with respect to the submissions of SEC regarding the impact of the transaction on competition in the transmission sector, there are no negative impacts to customers and given the regulated monopoly nature of the business, no ill effect on competition. The OEB considers the references made by SEC to OEB proceeding EB-2010-0059 and the OEB's Decision on the East-West Tie Transmission Line, EB-2011-0040 reflecting a desire for competition embedded in various frameworks and policy statements, to be aimed at the building of new transmission facilities, not the operation of existing assets. There is no competition between incumbent transmitters; there is not even a rate differential given the province wide uniform transmission rate.

Reliability and Quality of Electricity Service

Hydro One provided a comparison of Hydro One's regional reliability indices, both SAIDI and SAIFI, against that of GLPT for the past six years. The results show that Hydro One's measures in most years are better than GLPT's. Hydro One submitted that coordination of Hydro One and GLPT's existing staff is expected to improve regional system knowledge, which would lead to coordinated regional planning.

Hydro One submitted that it does not expect that the reliability of either transmission system will be materially impacted as a result of the transaction as both GLPT and Hydro One are both experienced licensed transmitters that are required to design and operate their respective systems in conformance with the IESO Market Rules and the Ontario Resource & Transmission Assessment Criteria (ORTAC), and that both systems must also comply with reliability standards established by the North American Electric Reliability Corporation (NERC).

Energy Probe submitted that the assurances provided by the applicants that the reliability of the GLPT system will not deteriorate and that costs will not increase more than under a business-as-usual scenario to be inadequate. Energy Probe submitted that more weight should be placed on evidence regarding positive and negative outcomes from the consolidation merger, given the goals of consolidation and the outcomes expected from the OEB's regulatory framework.

OEB staff submitted that based on the evidence, service quality and reliability can reasonably be expected to be maintained by these consolidating utilities. OEB staff also submitted that these utilities should continue to meet the customer delivery point performance standards as approved by the OEB.

OEB Findings

The OEB expects that both Hydro One and GLPT will continue to comply with rules set out for all transmitters and meet the reliability standards established by NERC and the OEB approved customer delivery point standards. In the OEB's view, the proposed transaction does not lead to any adverse impact with respect to the reliability and quality of service to be provided by these consolidating utilities and the OEB finds that the no harm test is met in this regard.

The OEB does not accept Energy Probe's argument that positive benefits are required in its assessment of the no harm test.

Financial Viability

Hydro One submitted that neither it nor GLPT will seek to increase future revenue requirements recovered from customers in order to recover transaction costs and premiums associated with this transaction. Hydro One also submitted that the amount

paid by Hydro One will not have a material impact upon its financial position, as it is approximately 2% of Hydro One's fixed assets, and will be paid in cash.

OEB staff agreed that the premium paid will have no material impact on Hydro One's financial viability.

OEB Findings

The OEB accepts Hydro One's evidence that the premium to be paid will not impact Hydro One's financial viability and finds that the proposed transaction therefore meets the no harm test with respect to financial viability.

4.2 Rate-making Considerations

Hydro One requested that the OEB accept its proposed selection of a 10 year rate rebasing deferral period for GLPT commencing on the closing date of the transaction, currently anticipated before or during the first quarter of 2017. The rate rebasing deferral period would end on December 31, 2026.

Hydro One has proposed an ESM that will take effect during the last five years of the rebasing deferral period: GLPT's revenue requirement will be adjusted so that prior year excess earnings are shared with ratepayers on a 50:50 basis for all earnings that exceed 300 basis points above the ROE approved by the Board for 2018 in GLPT's 2017-18 rates application. GLPT's audited financial statements will be used to calculate any earning sharing amounts if amalgamation has not occurred during the rebasing deferral period. If amalgamation occurs during the rebasing deferral period, GLPT's last available audited financial statement will serve as a proxy for the achieved ROE amount for purposes of calculating shared earnings. The shared amount will be held constant and treated as an annual credit to each subsequent revenue requirement amount in the remaining rebasing deferral period.

Subsequent to the filing of this consolidation application, GLPT filed a rate application for approval of its 2017 and 2018 revenue requirement. As part of the consolidation application, for 2019 and each subsequent year of the rebasing deferral period, Hydro One has proposed to calculate GLPT's annual revenue requirement by using GLPT's prior year revenue requirement and adjusting this amount with an inflation factor. Hydro One argued that it has put forward this proposal on the basis that there are certain unique aspects of this transaction, including that both Hydro One and GLPT are transmitters and, therefore have not been required to adopt to an IRM method of rate regulation. Hydro One suggested that the inflation adjustment proposal is akin to rate-setting proposals approved in other consolidation proceedings.

Hydro One submitted that the proposed inflation factor used during the rebasing deferral period aligns with the calculation described in Chapter 3 of the *Distribution Filing Requirements*. Hydro One proposed having the productivity and stretch factor be set at 0%, given that the circumstances in this case concern transmission entities and that the OEB does not have any established revenue adjustment mechanisms in place for transmission.

SEC and Energy Probe opposed Hydro One's proposal. They argued that under the deferred rebasing period, a transmitter or distributor is not able to rebase rates through a cost of service or a similar basis, yet GLPT intends to reset 2017 and 2018 rates. SEC also argued that the OEB should not allow a 10-year deferral period but instead apply the five-year deferral period that was originally set out in 2007.

OEB staff did not make submissions on the proposed deferred rebasing period but submitted that the proposed ESM follows the requirements of the 2015 Report and the Handbook. OEB staff submitted that it is feasible to use the ESM as a means to reduce the Uniform Transmission Rates (UTRs) to all Ontario transmission customers, and that it could be done in a way that is fair to all Ontario electricity customers.

In its reply submissions, Hydro One asserted that the use of cost-of-service methodology at the outset is reasonable because that's what transmitters are expected to come in to the OEB with, absent a consolidation transaction. Therefore, that is what GLPT is doing. Hydro One noted that GLPT does not have a rate order for the 2017 and 2018 period and that the notion put forward by SEC that higher rates will ensue after a cost-of-service methodology is wrong. Hydro One submitted that it has committed, in this application, that transaction costs and premium recovery will not be included in revenue requirements of Hydro One or GLPT.

Hydro One noted that intervenors, with the exception of OEB staff, took the view that the duration of the deferral period was something that could be challenged. However, Hydro One disagreed that the OEB has or should interpret the Handbook as suggesting that it has the discretion to impose a shorter or a period other than the one that has been selected by the applicant. Hydro One also argued that if the OEB were to reduce the deferral period to five years, it would hurt the ratepayer as it does not provide the ratepayer with the opportunity to share through the ESM.

Proposed Rate-Setting Methodology

OEB staff and the intervenors argued that the OEB should not approve Hydro One's rate-setting methodology. They argued that the proposal concerns a revenue-setting methodology which should properly be applied for and assessed by the OEB through a rate application.

With respect to the specific components of that methodology, SEC disagreed with Hydro One's proposed methodology to have GLPT's revenue requirements set for each year during the deferred rebasing period on a revenue cap basis and every year adjusted to take into account the OEB's set inflation factor. SEC noted that Hydro One is proposing no productivity or stretch factor, which is not consistent with how incentive regulation rates are set under IRM. SEC submitted that there should be no incentive at

all necessarily for transmission consolidation and there should not be an added incentive, by not requiring a stretch or productivity factor in the price cap or revenue cap IR model. Energy Probe submitted that Hydro One and GLPT should not receive prior approval of the form and nature of 2017-18 rates for GLPT arguing that parties affected by its rate application may have an opinion regarding an appropriate rate-setting approach within the scope allowed by the Filing Requirements for Transmitters.

VECC submitted that approving Hydro One's plan to change the rate-making process by applying generic policies that the OEB has formulated largely for consolidating distribution utilities is at the potential detriment and harm of ratepayers. In VECC's view, the harm arises in large part out of the fact that the OEB will not, after 2018, be able to ensure future efficiencies that it can within the revenue requirement approval process.

OEB staff stated that it does not agree with Hydro One's reason that the productivity and stretch factors be set at zero, as the OEB's policies set out that the achieved savings realized in the deferred rebasing period are to the benefit of the consolidating shareholder. OEB staff noted that it is the deferred rebasing period rather than the incentive rate-setting plan that is intended to enable distributors or, in this case, a transmitter to fully realize anticipated efficiency gains from the transaction and retain achieved savings for the period of time to help offset the costs of the transaction.

Hydro One submitted that the Handbook states that rate-setting methodologies during the deferral period are matters that can and should be decided in the consolidation application process.

Hydro One noted that parties involved in amalgamation transactions require time to create new cost structures and performance improvements, which is the purpose of the deferral period. Hydro One argued that it has paid a premium of \$150 million which provides enormous incentive for cost savings, cost structure reductions and

performance benefits to be achieved and therefore, there is no need for additional incentive in the form of a productivity factor.

Hydro One submitted that the model they are proposing is for the benefit of both ratepayers and shareholder and that they are prepared to accept risks outside the paradigm of a cost-of-service methodology. Hydro One argued that the OEB consider the unique circumstances of this transaction in requesting the relief sought – that these two transmitter entities operate under a cost of service method of regulation, which is presently at the end of the current rate approval, and are required to seek the OEB's approval for rates; that the size differential between Hydro One and GLPT should not be discounted; and that individual facts and circumstances that affect the transaction, for example, outstanding debt covenants, that preclude immediate amalgamation are relevant and need to be taken into account.

In support of the proposed rate-setting methodology, Hydro One argued that approval of this methodology provides certainty and clarity to Hydro One and generally to market participants wanting to enter into consolidation transactions. Hydro One has submitted that the OEB take into account the unique facts and circumstances of this transaction in its consideration of the proposed methodology. Hydro One also argued that there would be no better information in a separate section 78 application to look at the rate methodology than there is now.

OEB Findings

The OEB does not fully accept the proposed rate-setting framework.

Hydro One submitted that it modeled its proposal on the Handbook requesting the deferral of rate rebasing for GLPT for 10 years with an ESM in place for years 6 to 10 of this period. Hydro One has, however, also proposed that the rates for GLPT be reset at the initial stages of the 10 year period.

The OEB accepts that the applicant's proposals for a 10 year deferred rebasing period and ESM are aligned with the Handbook. However, Hydro One's proposal for a resetting of rates at the beginning of the 10 year deferred rebasing period is not contemplated by the Handbook and the OEB does not accept it. Rate-setting policies associated with consolidation are predicated on the notion that the going-in rates are the rates intended to provide the revenues required as the starting point to achieve savings over the deferred rebasing period.

Hydro One has submitted that the proposal to have rates reset and then have rebasing deferred for ten years enables it to recoup the premium (approximately \$150 million) and incremental transaction costs (\$7.4 million).

The OEB does not consider the premium unless it will affect the financial viability of the purchaser, which is not the case here. The purchaser should be able to determine how much it thinks it can earn based on the existing rate structure being continued for 10 years and bid accordingly. Presumably, a purchaser who thinks it can drive more savings will pay a higher premium. If Hydro One has based its projections on some higher, not yet approved, revenue requirement, that should not enter into it.

As set out by the OEB in the Decision on Hydro One's acquisition of Norfolk Power Distribution Inc. (EB-2013-0196):

The intent of the framework established by the 2007 Report is that the amount of a premium paid by a purchaser would be determined by the purchaser's ability to serve the acquired service area at a lower cost, over a given period. The difference between the actual cost of service and the revenues generated during the given rate deferral period is intended to provide the purchaser with the funds to cover the transaction costs of the acquisition, including any premium. This aspect of the framework acts as a positive economic factor in the consolidation marketplace by favoring the purchaser that is able to serve the acquired service area at the lowest cost. The Board's future rate setting (whether or not on a harmonized basis) will be based on forward costs, and a

purchaser should not expect that the revenues from future rates will provide any funds to cover any purchase premium.

In response to Hydro One's argument for predictability for the business community, the OEB finds that the setting of the price a purchaser is willing to pay should reasonably assume stable rates for 10 years - it does not assume that these rates will be adjusted either up or down immediately following the purchase. The OEB is not convinced that the approval of a proposed rate-setting methodology in the deferred rebasing period provides rate or revenue certainty. A purchaser will not know what the rates will be if they are to be reset. It is not clear why any purchaser would bid in the face of such an unknown. More importantly, the OEB's mandate is to make decisions in the public interest, not to set price signals for the market.

As the rates will not be reset, the OEB will not address the issues raised about inflation, productivity factors, and similar issues.

The OEB also finds that there is no basis for Hydro One's argument that approval of GLPT's revenue requirement must be sought at the end of its term in order to continue to collect revenue. The OEB notes that contrary to the submissions by Hydro One, the current rate/revenue requirement order does not expire but continues until a new rate/revenue requirement order is issued.

The OEB recognizes that the Handbook better defines the rate-setting framework for the deferred rebasing period for distributor consolidations. However, the deferral period is predicated on maintaining existing rates that are already in a rate order.

Consolidating distributors are permitted to move to an IRM rate-setting methodology once their existing rate terms expire. The OEB also recognizes that the incentive regulation framework for transmitters is not as well defined as it is for distributors, whose stretch factors are established through benchmarking by the OEB. Nevertheless, the OEB has put in place its expectations for revenue cap index frameworks, as defined in the Transmission Filing Requirements.

The OEB notes that a cost of service application was filed by GLPT on August 26, 2016. However, the OEB finds that GLPT can continue with its existing revenue requirement, and may bring forward a separate rate application to seek approval for the elements of a specific revenue cap index framework, for the deferral period. Such an application would be expected to encompass the following components as required by the Transmission Filing Requirements: the annual adjustment (expected inflation, productivity, stretch factors) and proposed performance reporting and monitoring (draft scorecard, RRR filings, etc).

Z-Factor and Capital Factor Events

Hydro One included in the application a request anticipating the recovery of Z-factor and capital factor events (i.e. material costs incurred due to unforeseen events beyond the control of transmitters). Hydro One has also put forward in the application its position that this should be allowed to be applied for in the normal course, notwithstanding approval of the deferred rebasing period and the methodology forecast establishing the GLPT revenue requirement in this period.

OEB staff submitted that the Handbook extended the availability of the ICM for consolidating distributors that are on an annual IR index, thereby providing those consolidating distributors with the ability to finance capital investments during the deferred rebasing period without being required to rebase earlier than planned.

Hydro One's expectations for the recovery of Z-factor and capital factor events are, in OEB's staff's submission, rate matters which lie outside the scope of this proceeding and which Hydro One can address through a rate application.

OEB Findings

The OEB finds that Hydro One will be granted recourse to file for recovery of Z-factor events, if required, through a separate rate application. The OEB expects in all cases that an applicant will have to demonstrate that failure to recover the sought-after amount would have significant impact on its operations.

4.3 Batchewana First Nations Correspondence

A letter was filed with the OEB by the Chief of Batchewana First Nation of Ojibways, dated July 7, 2016. In the letter, the Batchewana First Nations claimed that GLPT does not have a valid section 28.2 permit, which is a permit under the federal *Indian Act*, R.S.C., 1985, c. I-5 granted by the Minister for the use of reserve lands for various purposes for a particular purported 200-foot easement over the First Nation, affecting a former north transmission A and transmission B corridors that run west to east and are located on Rankin Reserve 15D, south of Old Garden River Road. The permits were issued by the predecessor of the Department of Indigenous and North Affairs Canada, which expired on December 31, 2008 and have not been renewed.

OEB staff submitted that the issues raised in the letter relate to the *Indian Act* which is outside the jurisdiction of the OEB and, as such, the matter of whether or not there is a permit and if there is an issue of trespass by GLPT with respect to the particular area of land referenced in the letter are matters that are outside the scope of this proceeding. OEB staff noted that this proceeding involves the purchase of voting securities and, as such, is not one which, even if the OEB did have jurisdiction, would be a matter that is relevant to this proceeding.

The Batchewana First Nation requested in its submission that the transaction be placed on hold until such time as the grievances outlined in the letter have been addressed.

OEB Findings

The OEB considers that the matters raised by the Batchewana First Nations group are outside of the OEB's jurisdiction and finds that these matters are not affected in any way by the proposed share acquisition transaction that the OEB is required to approve. The OEB also notes that the Decision on this transaction will not impact the rights or remedies of the Batchewana First Nation with respect to their existing ongoing grievance claims.

4.4 Confidentiality Requests

Hydro One made two requests for confidentiality.

In accordance with section 5.1.4 of the OEB's Practice Direction on Confidential Filings (Practice Direction), Hydro One filed a request for confidentiality relating to information in the SPA that it considers commercially sensitive. Hydro One also sought confirmation, in accordance with section 4.3.1 of the Practice Direction, that certain identified personal information also contained in the SPA would not be disclosed in this proceeding.

In Procedural Order No. 1, the OEB allowed, as an interim measure, parties to review the confidential information claimed as commercially sensitive after signing a copy of the OEB's Declaration and Undertaking, and filing it with the OEB. The OEB also stated that parties would not be allowed to review personal information filed in confidence until the OEB determined whether the disclosure of the personal information is permitted under the *Freedom of Information and Protection of Privacy Act*.

Procedural Order No. 1 provided for a process for parties to object to the requests for confidentiality and stated that subsequent to any and all submissions received, the OEB would make its findings with respect to Hydro One's claims for confidentiality. OEB staff made submissions questioning the need for confidential treatment of information

contained in sections 6.3.2, 9.6.2 and Schedule 9.6 of the SPA. Hydro One responded to OEB staff's submissions regarding section 6.3.2, stating that Hydro One was prepared to publicly disclose the redacted content as Hydro One's bond rating and asset valuation is publicly disseminated information.

Hydro One submitted that Section 9.6.2 and Schedule 9.6 concern information regarding Brookfield Infrastructure Holdings (Canada) Inc. which is unregulated and not subject to OEB oversight. Furthermore, the information set out in Schedule 9.6 is financial information relating to a letter of credit that will expire and be replaced on the closing of the transaction by a letter of credit obtained by Hydro One Inc. and 1937672 Ontario Inc. pursuant to Section 9.6 of the Purchase Agreement. As such, it does not form part of GLPT's operations post-closing and therefore is not relevant or material to the OEB's prospective consideration of the impact of the acquisition.

In Procedural Order No. 2, the OEB asked for further explanation as to why Section 2.4.1 (ii), Schedule 1.1.2.6 and Schedule 9.6 should be granted confidential status. Hydro One responded stating that each of these proposed redactions concerns financial information relating to unregulated entities that are not parties to the aspect of the transaction for which approval is being sought. Hydro One advised that the transacting parties have, however, reconsidered their position and submitted that public disclosure of these three particular items is acceptable and therefore withdrew its request for confidential treatment of this information..

The OEB also asked Hydro One to provide justification for all instances in which it has requested confidential treatment for an entire section or an entire schedule. The sections and schedules for which Hydro One, on behalf of the transacting parties, requested confidential treatment in their entirety are Sections 1.1.92 and 9.6.2, as well as Schedules 1.1.7, 1.1.116, 5.6 and 5.21. Hydro One advised that most of these redactions were requested on the basis that these sections and schedules concern financial information relating to unregulated entities that are not parties to the aspect of the transaction for which approval is being sought. Hydro One advised that despite this,

the transacting parties have reconsidered their position and Hydro One submitted that public disclosure of these particular items is acceptable and therefore withdrew its request for confidential treatment of this information. Moreover, in connection with the disclosure of Section 1.1.92, Hydro One confirmed that the disclosure of Section 1.1.76 is also acceptable.

The OEB asked whether, in respect of the information contained in Schedule 9.2, Item 2, the commercial negotiations are ongoing or anticipated. Hydro One advised that the commercial negotiations referenced at Items 2 (a), (b), (c), (h) and (k) are ongoing. The commercial negotiations referenced at Item 2 (m) is anticipated. The commercial negotiations referenced at Items (d), (e), (f), (g), (i), (j) and (l) are now completed. Based on discussion with the transacting parties, Hydro One advised that public disclosure of the completed negotiations (subject to the continued redaction of the name of the individual contained in Item 2(i)) is acceptable.

Based on the foregoing, Hydro One's request for confidential treatment applies to:

- parts of Sections 1.1.32 and 9.13, as well as parts of Schedules 1.1.85, 3.2.1.2, 5.11, 5.13, 5.17 and 5.18 as identified in the original confidentiality request; and
- the descriptions of ongoing and anticipated commercial negotiations in Schedule 9.2, Items 2 (a), (b), (c), (h), (k) and (m), as well as the name of the individual contained in Item 2(i).

OEB Findings

The OEB accepts the applicant's requests for the confidential treatment of information contained in the SPA, as amended by the applicant on June 21, 2016.

5 CONCLUSION

The OEB concludes that Hydro One's proposed share purchase transaction meets the no harm test and approves this transaction.

The OEB is prepared to accept Hydro One's proposal to defer the rebasing of rates for GLPT for a 10 year period as well as its proposed earning sharing mechanism, but does not accept the proposal that rates for GLPT must be reset at the beginning of this ten year period.

The OEB has determined that GLPT can continue with its existing revenue requirement and bring forward a separate rate application, proposing a revenue cap index for the deferral period, encompassing the components set out by the Transmission Filing Requirements, as described above.

6 ORDER

THE BOARD ORDERS THAT:

1. Hydro One Inc. is granted leave to purchase all of the issued and outstanding voting securities of Great Lakes Power Transmission Inc.
2. The applicant shall promptly notify the OEB of the completion of the transaction referred to in paragraph 1 above.
3. The leave granted in paragraph 1 above shall expire 18 months from the date of this Decision and Order.
4. Eligible intervenors shall file with the OEB and forward to the applicant their respective cost claims no later than 7 days from the date of issuance of this Decision and Order.
5. The applicant shall file with the OEB and forward to the intervenors any objections to the claimed costs of the intervenors within 17 days from the date of issuance of this Decision and Order.
6. Intervenors shall file with the OEB and forward to the applicant any responses to any objections for cost claims within 24 days from the date of issuance of this Decision and Order.
7. The applicant shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto October 13, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary