



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

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

**AND IN THE MATTER OF** an application by B2M Limited Partnership for an electricity transmission licence pursuant to section 60 of the *Ontario Energy Board Act, 1998*;

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

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

**BEFORE:** Ken Quesnelle  
Presiding Member

Ellen Fry  
Member

Peter Noonan  
Member

**Decision and Order**  
**November 28, 2013**

## **Introduction**

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

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

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

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

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

### **The Proceeding**

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

The Board has proceeded by way of a written hearing.

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

### **Board Findings**

#### ***Application by HONI Pursuant to Section 86(1)(b) of the Act***

HONI applied for leave of the Board to sell the Bruce to Milton Assets to B2M LP under section 86(1)(b) of the Act which states:

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

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

In determining this application, the Board is guided by the principles set out in the Board's decision in proceeding RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 (the "No Harm Decision"). In that decision, the Board found that the "no harm" test is the relevant test for the purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The "no harm" test is a consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. The factors to be considered are those set out in section 1 of the Act and are attached to this Decision and Order as Appendix A. According to the no-harm test, if the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted.

The Board recognizes that HONI's application is an application under section 86(1)(b) to dispose of transmission system assets, whereas the No Harm

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

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

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

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

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

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<sup>1</sup> Updated Final Joint Submission, Paragraph 6.2

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

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

SON LP Co. applied for leave of the Board to acquire up to a 34% partnership interest in B2M LP under section 86(2)(a) of the Act which states:

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

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

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

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

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<sup>2</sup> B2M LP’s Application for an Electricity Transmission Licence, Section 17

***Application by B2M LP for an Electricity Transmission Licence***

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

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

**THE BOARD ORDERS THAT:****Based on the information provided in the applications,**

1. B2M LP's application for an electricity transmission licence is granted, on such conditions as are contained in the attached licence.
2. HONI is granted leave to sell the Bruce to Milton Assets to B2M LP.
3. The leave granted in paragraph 2 above is conditional on the Applicants obtaining favourable tax rulings with respect to their tax status from the federal and provincial authorities, as contemplated by the Applicants in making the applications for this proceeding.

4. The Applicants shall promptly notify the Board of the completion of the transactions referred to in paragraph 2.
5. Dennis Threndyle and Randy Threndyle shall file with the Board and serve on the Applicants their cost claims on or before **December 9, 2013**.
6. The Applicants may file with the Board and serve on Dennis Threndyle and Randy Threndyle any objections to the claimed costs on or before **December 19, 2013**.
7. Dennis Threndyle and Randy Threndyle may file with the Board and serve on the Applicants a response to any objections to their cost claims on or before **December 27, 2013**.
8. The Applicants shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

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

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

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

**ADDRESS**

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

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

**DATED** at Toronto November 28, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

## Appendix A

### Board objectives, electricity

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

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.