

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7232

Petition of Great Bay Hydro Corporation, BayCorp)
Holdings, Ltd., BayCorp Interim Holdings, Inc., and)
Sloan Group Ltd for Approval of Indirect Transfer of)
Control, pursuant to 30 V.S.A. § 107)

Order entered: 11/16/2006

I. INTRODUCTION

In this proceeding, the Public Service Board ("Board") considers a petition that, if approved, would result in the indirect transfer of control of Great Bay Hydro Corporation ("GBH"), a New Hampshire Corporation subject to the Board's jurisdiction pursuant to a Certificate of Public Good issued on March 23, 2004, and a wholly-owned subsidiary of BayCorp Holdings, Ltd ("BayCorp").¹ BayCorp, itself, is currently owned by the Sloan Group Ltd., a Bahamas international business corporation (87 percent), Frank W. Getman Jr., BayCorp's President and Chief Executive Officer (9.65 percent) and Anthony M. Callendrello, BayCorp's Chief Operating Officer (3.35 percent).

On October 12, 2006, GBH filed a petition on behalf of itself, BayCorp, BayCorp Interim Holdings, Inc. ("BayCorp Interim"), and the Sloan Group Ltd. ("Sloan").² The co-petitioners seek Board approval, pursuant to 30 V.S.A. §107, to allow BayCorp Interim to acquire a controlling interest in GBH. Under the proposed transaction, BayCorp Interim would assume certain debt obligations of BayCorp in exchange for the transfer of Sloan's 87 percent interest in BayCorp to BayCorp Interim. BayCorp Interim is a newly formed corporation that is also owned by Sloan. Subsequent to the transfer, BayCorp will be owned by BayCorp Interim (87 percent),

1. Docket No. 6917, Order of March 23, 2004. Certificates were issued in relation to the ownership and operation of certain hydroelectric generating facilities located in Newport, West Charleston, and Troy and two non-power dams at Echo Lake and Seymour Lake.

2. This petition proposes the second indirect transfer of control of GBH in as many years.

Frank W. Getman, Jr. (9.65 percent) and Anthony M. Callendrello (3.35 percent). BayCorp would continue to have direct control of GBH. According to the petition, the proposed transfer will have no effect on the operation of GBH's electric generating facilities. If approved, the transfer would result in an indirect transfer of control of GBH under the meaning of 30 V.S.A. §107.

Along with the petition, GBH filed the affidavit of Frank W. Getman, Jr., President of GBH and Bay Corp., certifying that the statements contained in the petition were true and accurate to the best of his knowledge and belief.³

GBH owns and operates electric generation and non-generation facilities under the Federal Energy Regulatory ("FERC") licenses. GBH's generation facilities have been designated as "eligible facilities" for the purposes of exempt wholesale generation status. Under the terms of the Board's certificate of public good, which prohibit GBH from providing electric service to retail customers, the company is subject to *de minimis* regulation. In addition, GBH is required to continue to comply with the certifications under Section 401 of the Clean Water Act, as amended, issued by the Vermont Agency of Natural Resources ("ANR").

BayCorp is an unregulated holding company incorporated in Delaware in 1996. As of September 30, 2005, BayCorp had six wholly owned subsidiaries including Great Bay Power Marketing, Inc., Great Bay Hydro Corporation, Nacogdoches Power, LLC, Nacogdoches Gas, LLC, Great Bay Hydro Maine, LLC and BayCorp Ventures, LLC. BayCorp also held a majority interest in HoustonStreet Exchange, Inc. as of September 30, 2005.⁴ BayCorp became a private company when Sloan purchased its 87% share in 2005. BayCorp currently has outstanding debt obligations of approximately \$35 million to Beach Group SLF ("Beach Group"), a company organized in Iceland, with a branch office registered in the Grand Duchy of Luxembourg. The Beach Group is an affiliate of Sloan.

3. Affidavit of Frank W. Getman Jr., dated October 12, 2006.

4. See letter of November 16, 2005, from Barbara G. Ripley, Esq., counsel for GBH, Docket No. 7111. *See also*, 2005 Third Quarter 10-Q SEC report, <http://sec.gov/Archives/edgar/data/1012127/000101212705000050/baycorpq32005.txt>

On October 26, 2006, GBH filed a Proposal for Decision and notified the Board that the closing of this transaction is expected to occur in early December 2006.

On November 2, 2006, the Department of Public Service ("Department") informed the Board that it has reviewed the petition. Based on its review, the Department is of the opinion that the transaction will be virtually transparent and not inconvenience retail customers. In the Department's opinion the proposed transaction will also strengthen BayCorp's balance sheet and provide GBH and BayCorp with greater financial resources than are presently available. The Department recommends approval of the petition without further investigation or hearing.

Based on the record evidence, I hereby report the following findings to the Board in accordance with 30 V.S.A. §8.

II. FINDINGS

1. GBH is a corporation duly organized and existing under the laws of the State of New Hampshire. Pet. at 2.
2. All of GBH's issued and outstanding stock is held by BayCorp. Pet. at 2.
3. GBH owns and operates the Clyde River Hydroelectric facility (the "Project"), pursuant to FERC License Project No. 2306. The Clyde River project is a 4.80 MW merchant generating facility involved in wholesale electric generation. The project does not provide direct electricity sales to retail electric customers. Pet. at 2.
4. Currently, power is generated from the so-called Newport 1, 2, 3 generators which are part of the Clyde River Project. The West Charleston facility is also licensed under the FERC License Project No. 2306 , but is not currently operating. Pet. at 2.
5. GBH was authorized by the Board to purchase and operate the generation facilities pursuant to a Certificate of Public Good issued on March 23, 2004, in Docket Number 6917. Pet. at 2-3.
6. GBH and ANR are in the process of implementing a Purchase and Sales Agreement involving the conveyance of certain project and non-project lands that are not needed for power generation to the State for conservation and public recreation purposes. The conveyance was approved by the FERC. Pet. at 2.

7. Indirect transfer of control of GBH will have no effect on the operation of GBH's generation facilities, nor on the completion of the Purchase and Sales Agreement with ANR. Pet. at 3.

8. Bay Corp Interim, or Transferee, is a wholly-owned subsidiary of Sloan. Pet. at 1.

9. BayCorp currently has outstanding borrowings owed to Beach Group of approximately \$35 million. Beach Group, a company organized in Iceland with a branch office registered in the Grand Duchy of Luxembourg, is also an affiliate of Sloan. Amended petition at 1.

10. Bay Corp Interim will assume responsibility for BayCorp's obligations under the Beach Group Notes in exchange for the transfer of Sloan's 87% interest in BayCorp to Bay Corp Interim. Pet. at 3.

11. The remaining stock of BayCorp will continue to be held as follows: 9.65% by Frank W. Getman Jr., Bay Corp's President and Chief Executive Officer, and 3.35% by Anthony M. Callendrello, BayCorp's Chief Operating Officer. Pet. at 2.

12. Subsequent to the transfer, BayCorp will have substantially less debt on its balance sheet. Pet. at 3.

13. The transaction will strengthen BayCorp's balance sheet by substantially reducing the debt of the company and will provide GBH and BayCorp with improved liquidity and greater financial resources than are presently available to them. Pet. at 4.

14. GBH will continue to operate the generating facilities as a merchant power producer pursuant to the terms and conditions of its FERC License and its ANR Section 401 Water Quality Certification, as amended by the Water Resources Board on July 11, 2003, and on February 2, 2004, and as further amended on August 29, 2006, to allow for the conveyance of certain lands to the State. Pet. at 3.

15. The management and operations staff of GBH will also remain the same after the proposed transactions. Pet. at 3.

16. The transaction will be virtually transparent and will not cause inconvenience or confusion to retail electric customers in the State of Vermont. Pet. at 3.

III. CONCLUSION

30 V.S.A §107 states:

No Company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such company, without the approval of the public service board.

The Board may grant approval upon finding that such acquisition will promote the public good.

Based on the record evidence, I conclude that the proposed transactions will promote the public good and, therefore, I recommend that the Board approve the indirect transfer of control of GBH. The proposed transaction will result in the transfer of up to \$35 million in outstanding debt obligations of GBH's parent company to BayCorp Interim. Thus, BayCorp's balance sheet will improve and additional financial resources may become available to GBH. The proposed transaction will not affect the operations of GBH's generating facilities nor the company's ability to operate them safely.⁵ Additionally, the proposed transaction will be transparent to retail electricity customers of Vermont as GBH is a merchant power producer selling electricity into New England's wholesale market.

Opportunity to File Exceptions and Present Arguments

The Department and GBH have waived their opportunity to file exceptions and present arguments pursuant to 3 V.S.A §811.

Dated at Montpelier, Vermont, this 14th day of November, 2006.

s/Thomas S. Lyle

Thomas S. Lyle
Hearing Officer

5. See Electronic Response of GBH, dated November 3, 2006, and Petition at 2.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusion and recommendation of the Hearing Officer are hereby adopted.
2. In accordance with 30 V.S.A §107, the Board finds the indirect transfer of control of Great Bay Hydro Corporation, as described herein, will promote the general good of the state of Vermont.
3. GBH shall continue to be bound to and comply with the conditions of the Board's Order and Certificate of Public Good in Docket 6917.
4. Great Bay Hydro Corporation and Bay Corp Interim Holdings, Inc. shall notify the Board and the Department of the completion of the transfer within one week thereafter.

Dated at Montpelier, Vermont, this 16th day of November, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 16, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.