



EB-2012-0470

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 Hamilton Solar Farm Partnership for an electricity generation licence as a Feed-in Tariff Program participant.

By delegation, before: Adrian Pye

DECISION AND ORDER
March 14, 2013

THE APPLICATION

Hamilton Solar Farm Partnership filed an application dated December 19, 2012 with the Board under section 60 of the *Ontario Energy Board Act, 1998* for an electricity generation licence as a Feed-in Tariff ("FIT") Program participant. The applicant completed its application on January 9, 2013.

The Board posted the Notice of Application and Written Hearing for an electricity generation licence on January 25, 2013. The applicant informed the Board that it posted the Notice on its website on January 25, 2013. The Notice invited submissions from interested parties by February 15, 2013.

The Board received a submission from S. W. Henry on February 21, 2013 and Pamela Hambly on February 22, 2013. The Board noted that these submissions were filed late and the Board has accepted the submissions.

Mr. Henry filed a written submission in objection to the application based on several reasons. First, with regard to the agricultural land classification related to the land under consideration for the applicant's solar project ("Project"), the submission noted that "there may have been an apparent misinterpretation or possible misrepresentation of facts presented by the applicant during the public hearings held on June 7, 2010 and May 5, 2011." The submission also argued that the "environmental assessment did not address the issue of the Project's altering the temperature of the farmland immediately to the east (e.g. downwind) of this Project." And finally, with respect to the application, Mr. Henry submitted that granting this licence effectively "obligates the electricity users in this province with a totally unnecessary burden of \$104.9 million", on his estimate that this Project will cost the Ontario electricity users a total of \$128.5 million when the same amount of green energy can be purchased from Quebec Hydro over the twenty years for \$23.6 million. As well, Mr. Henry stated that "this Notice..without giving any reason whatsoever..has compressed the normal 30 day Notice period to just 17 days..."

With respect to the Notice of Application and Written Hearing which allowed 21 days to provide views on the application and the Board's guidelines which "allow a minimum of 30 days to submit a comment..", Ms. Hambly submitted that the "timing discrepancy warrants an explanation for the OEB's circumvention of its own guidelines." As well, Ms. Hambly commented that the approval process provides "little or no opportunity for residents to engage relevant government authorities about their concerns". She also stated that she has "serious reservations about the 200 acres concerned....the acres in question are currently productive, long-time, crop-bearing farmland."

In response to the submissions made by Mr. Henry and Ms. Hambly, the applicant filed two reply submissions on February 28, 2013.

In its response to Mr. Henry's submission on agricultural land classifications, the applicant objected to the allegation that it misrepresented eligibility. The applicant stated that it has complied with OPA's FIT eligibility requirements. The applicant further stated that its compliance with the prescribed rules is evidenced by the OPA granting to the applicant a FIT contract for the Project. As to Mr. Henry's concern with alteration of temperature, the applicant disagreed that the environmental effects of the Project have not been fully assessed. The applicant stated that all proposed renewable energy Projects are carefully considered and reviewed by the Ministry of Environment ("MOE")

before MOE issues the required approval. The applicant further stated that its compliance is evidenced by the MOE's approval of the project on May 16, 2012. With respect to the comment regarding the *Green Energy Act*, the applicant noted that Mr. Henry disagreed with the Ontario provincial policy. However, the applicant stated that it has followed and satisfied the appropriate regulatory requirements of the referenced government authorities including the requirements of the Board for an electricity generation licence. Accordingly, the applicant requested that the Board grant the applicant an electricity generation licence.

In response to Ms. Hambly's submission, the applicant disagreed with the suggestion that Ms. Hambly was not granted an opportunity to comment on the Project. The applicant stated that "at both prescribed public meetings, community members were encourage to submit feedback to the applicant which was documented and addressed in the Consultation Report required under Ontario Regulation 359/09 ("O.Reg")." The applicant also stated that "as part of the MOE review and approval process, the application was officially open for public comment on the Ontario Environmental Registry from .. November 1, 2011 to December 1, 2011..under EBR#011-4836." The applicant further stated that it has demonstrated compliance with consultation rules under the O.Reg by MOE granting the applicant Renewable Energy Approval on May 16, 2012 for the Project. With respect to agricultural land classifications, the applicant argued that it has demonstrated compliance with OPA's requirements based on the Canada Land Inventory maps posted on the OPA website. Accordingly, the applicant's compliance with the prescribed rules is demonstrated by the OPA granting the applicant a FIT contract for the Project. The applicant reaffirmed its request that the Board grant the applicant an electricity generation licence.

FINDINGS

Except for the timing issue between the Notice period and the Board's guidelines raised by Mr. Henry and Ms. Hambly, the Board finds that it is not within the scope of the matters considered by the Board when reviewing an application made by an OPA-contracted FIT Program participant for an electricity generation licence. The Board's main criteria for review in relation to the licensing of electricity generators under the FIT Program are whether the applicant has received an Ontario Power Authority (the "OPA")

Notice to Proceed or an approved OPA FIT Contract Assumption and Acknowledgment Agreement. With respect to the compressed time period for Notice of Application and Written Hearing, the Board decided that it was appropriate to adopt a shorter notice period because of the limited scope of the Board's jurisdiction with respect to a Feed-in Tariff Program participant application. Moreover, the Board was amenable to accepting the late filed submissions of Mr. Henry and Ms. Hambly.

After reviewing the application and having considered the submissions of the parties, the Board finds it in the public interest to issue an electricity generation licence to the applicant as a FIT Program participant under Part V of the Act.

IT IS THEREFORE ORDERED THAT:

Hamilton Solar Farm Partnership is granted an electricity generation licence as a Feed-in Tariff Program participant, on such conditions as are contained in the attached licence.

DATED at Toronto, March 14, 2013

ONTARIO ENERGY BOARD

Adrian Pye
Manager, Licence Applications



Electricity Generation Licence

EG-2012-0470

Hamilton Solar Farm Partnership

Valid Until

March 13, 2033

Original Signed By

Adrian Pye
Manager, Licence Applications
Ontario Energy Board
Date of Issuance: March 14, 2013

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1 Definitions

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“**generation facility**” means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system and includes any structures, equipment or other things used for that purpose;

“**Licensee**” means Hamilton Solar Farm Partnership;

“**regulation**” means a regulation made under the Act or the Electricity Act;

2 Interpretation

- 2.1 In this Licence words and phrases shall have the meaning ascribed to them in the Act or the Electricity Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this licence, to generate electricity or provide an ancillary service for sale under a contract with the Ontario Power Authority and the contract is entered into as part of a standard offer program offered by the Ontario Power Authority. This Licence authorizes the Licensee only in respect of those facilities set out in Schedule 1.

4 Obligation to Comply with Legislation, Regulations and Market Rules

- 4.1 The Licensee shall comply with all applicable provisions of the Act and the Electricity Act, and regulations under these acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

5 Obligation to Maintain System Integrity

- 5.1 Where the IESO has identified, pursuant to the conditions of its licence and the Market Rules, that it is necessary for purposes of maintaining the reliability and security of the IESO-controlled grid, for the Licensee to provide energy or ancillary services, the IESO may require the Licensee to enter into an agreement for the supply of energy or such services.

- 5.2 Where an agreement is entered into in accordance with paragraph 5.1, it shall comply with the applicable provisions of the Market Rules or such other conditions as the Board may consider reasonable. The agreement shall be subject to approval by the Board prior to its implementation. Unresolved disputes relating to the terms of the Agreement, the interpretation of the Agreement, or amendment of the Agreement, may be determined by the Board.

6 Restrictions on Certain Business Activities

- 6.1 Neither the Licensee, nor an affiliate of the Licensee shall acquire an interest in a transmission or distribution system in Ontario, construct a transmission or distribution system in Ontario or purchase shares of a corporation that owns a transmission or distribution system in Ontario except in accordance with section 81 of the Act.

7 Provision of Information to the Board

- 7.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 7.2 Without limiting the generality of paragraph 7.1 the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee, as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

8 Term of Licence

- 8.1 This Licence shall take effect on March 14, 2013 and expire on March 13, 2033. The term of this Licence may be extended by the Board.

9 Fees and Assessments

- 9.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

10 Communication

- 10.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.
- 10.2 All official communication relating to this Licence shall be in writing.
- 10.3 All written communication is to be regarded as having been given by the sender and received by the addressee:
- a) when delivered in person to the addressee by hand, by registered mail or by courier;
 - b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
 - c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

11 Copies of the Licence

11.1 The Licensee shall:

- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
- b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

SCHEDULE 1 LIST OF LICENSED GENERATION FACILITIES

The Licence authorizes the Licensee only in respect to the following:

1. The ownership and operator of Penn Energy – Hamilton Solar Farm with an installed capacity of 10 MW located at 2720 Payne Rd., Baltimore, Ontario.