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Date:	July 6, 2010	File:	94386
To:	John Pickernell	Fax:	416-440-7656
Title:	Assistant Board Secretary	Phone:	416-440-7605
Firm:	Ontario Energy Board		
From:	Mike Richmond	Phone:	416.865.7832
		E-mail:	mike.richmond@mcmillan.ca
Secretary:	Nadia Medalla	Phone:	416.865.7894

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Comments:

Please see attached.



Reply Attention of Mike Richmond
Direct Line 416.865.7832
Internet Address mike.richmond@mcmillan.ca
Our File No. 95610
Date June 28, 2010

E-MAIL

Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto, Ontario, Canada
M4P 1E4

Dear Board Secretary:

**Re: EB-2010-0166 – Applicant Response to Letter of
Comment from Cecelia Baker dated May 31, 2010**

We are counsel to EDF EN Canada Solar Elmsley East Limited Partnership, the Applicant in Ontario Energy Board File No. EB-2010-0166, and are submitting this response to the Letter of Comment cited above on the Applicant's behalf, based upon information provided to us by the Applicant.

Section 47.3 of the *Environmental Protection Act*, R.S.O. 1990, chap. E.19 (the "EPA"), which became law on September 24, 2009, states that no person shall engage in a renewable energy project except under the authority of and in accordance with a renewable energy approval ("REA").

Section 9(1)5 of Ontario Regulation 359/09, "Renewable Energy Approvals Under Part V.0.1 of the Act" (which also became law on September 24, 2009), states that Section 47.3 of the EPA (i.e. the requirement to obtain an REA) does not apply to a person who is engaging in a renewable energy project if, prior to September 24, 2009:

- (i) a power purchase agreement was signed with the Ontario Power Authority (the "OPA") in respect of the project;
- (ii) the use of land for the project was not prohibited by a zoning by-law or order under the *Planning Act*; and
- (iii) the project was not designated by regulation to be subject to the EPA.

In respect of the three requirements for exemption from the REA process described above, we can report as follows:



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- (i) a power purchase agreement, in the form of a Renewable Energy Standard Offer Contract, was signed with the OPA on May 4, 2008, which is prior to September 24, 2009. The contract was issued by the OPA to PV North Limited Partnership, and was legally assigned by PV North Limited Partnership to the Applicant as of April 1, 2009;
- (ii) prior to September 24, 2009, the use of land for the project was not prohibited by a zoning by-law or order under the *Planning Act*, a fact which was confirmed in writing by the Township of Rideau Lakes (see letter of October 19, 2009, attached); and
- (iii) solar PV facilities are not designated by any regulation as being subject to the EPA.

As a result, the Applicant is exempt from the application of Section 47.3 of the EPA in respect of the Elmsley East Solar Project (the "**Project**"), and no REA is required to be obtained.

With respect to the e-mail sent to Ms. Baker on October 28, 2009, by Byron Perry (who, incidentally, represented the Ministry of Energy and Infrastructure at the time and is now with the Ministry of Transportation, but at no relevant time represented the Ministry of the Environment, as suggested by Ms. Baker), I believe the intent of the comment was to convey that any future ground-mount solar project over 10 kW – future project being a project which did not meet the exemption conditions set out in (i), (ii) and (iii) above as of September 24, 2009 – would be subject to the REA process, since it would not qualify for the exemption. The Elmsley East Solar Project is not such a future project; it existed as a development stage project, was properly zoned, and had a power purchase agreement signed and in place long before September 24, 2009. Therefore the Project is not the type of project that Mr. Perry was addressing in his comments. He was referring to projects which did not exist or were not as advanced, from a regulatory perspective, as the Arnprior projects on September 24, 2009. The Project in Elmsley was in fact at the same regulatory stage as Arnprior on September 24, 2009.

In any event, the requirement to demonstrate compliance with or exemption from the provisions of the EPA, including the REA elements thereof, is not within the OEB's scope of review with respect to the issuance of electricity generation licenses. Applicants are entitled to apply for an OEB Generator's License prior to development and construction, and prior to satisfying the regulatory requirements of other government agencies or departments. The OEB's mandate is to apply the *Ontario Energy Board Act, 1998*, and consider the purposes of the *Electricity Act, 1998*, neither of which makes reference to the EPA or REAs. It is the mandate of the Ministry of Environment to ensure that the provisions of the EPA are complied with.



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I trust this response addresses any concerns raised by Ms. Baker regarding the Applicant's compliance with environmental laws. Please let me know if there are any further questions or if we can provide any additional information to facilitate the Board's review of Application EB-2010-0166.

Yours truly,

A handwritten signature in black ink that reads "Michael Richmond".

Mike Richmond

/MJR
Attach.

cc. Ms. Cecelia Baker
Mr. Byron Perry, Ministry of Transportation
Mr. John Yakabuski, MPP
Standard Offer Team, OPA
Ms. Irene Kuznetsova, OEB

mcmillan

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*"An Experience to Remember"*

October 19, 2009

Walter Hugo
Walker Nott Dragicevic Associates Ltd
90 Eglinton Ave, Suite 701
Toronto, ON
M4P 2Y3

Re: Solar Projects in the Township of Rideau Lakes

Mr. Hugo:

Further to your letter dated October 14, 2009 I can offer the following confirmations:

1. The properties described as Lots 13 and 16, Concession 3, South Elmsley were zoned Rural and designated Rural in the Official Plan on September 23, 2009;
2. The development of a 10MW solar project was generally not prohibited in the Rural land use designation of the Official Plan or Rural zoning in the Township's Zoning Bylaw provided all other requirements, including site plan control requirements, were satisfied; and
3. To my knowledge, there were no outstanding orders made under Part V of the Planning Act which would affect any of the foregoing.

I trust this meets your needs to continue with your application at the Provincial level. We look forward to reviewing the site plan when you proceed to that stage.

Regards,

Sheldon Laloman, MCIP RPP
Manager of Development Services

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