

From: [BoardSec](#)
To: [Shelly-Anne Connell](#)
Subject: FW: EB-2010-0220 OPA Application to Amend License
Date: October 5, 2010 4:50:42 PM

From: [REDACTED]
Sent: October 5, 2010 8:37 AM
To: BoardSec
Cc: miriam.heinz@powerauthority.on.ca; caroline.jageman@powerauthority.on.ca
Subject: Re: EB-2010-0220 OPA Application to Amend License

Ms. Walli:

Please find below my submission to the OEB in respect to the OPA's Application for their Licence Renewal. I have also attached this letter in both "OpenOffice.orgWriter" and "Microsoft Works Word Processor". I will forward two copies of this letter by regular mail.

Kindly ensure my personal information is redacted.

Thank you,

A. Parker Gallant

HERE IS MY LETTER OF SUBMISSION

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
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Fax: 416-440-7656
E-mail: Boardsec@oeb.gov.on.ca

October 5, 2010

Dear Ms. Walli,

RE: EB-2010-0220 (OPA Application to Amend License)

On October 1, 2010 the Board Staff submitted their position with respect to the Ontario Power Authority's (OPA) licence renewal application. This submission does not raise any issues with the existing Licence which expires December 31, 2010. The Board Staff have failed to address these matters or have chosen to ignore them. For that reason we believe the Board Staff's submission should at this time be rejected.

Further to my letter of October 1, 2010 in respect to the captioned License Application by the OPA I wish to submit hereunder evidence related to the Non-Compliance of the OPA in respect to their existing licence EB-2005-0302. As they are currently in Non-Compliance with their existing license it is incumbent on them to first restore their license granted by the OEB September 30, 2005 and terminating December 31, 2010. It should be a requirement that Board Staff ensure the OPA are in compliance with their existing licence prior to making any recommendations for renewal.

OPA Non-Compliance Issues:

5.1 The Licensee shall comply with all applicable provisions of the *OEB ACT, the Electricity Act* and the Regulations.

The OPA is not currently in compliance with all of the applicable provisions of the **Act**; to wit: They have failed to file an IPSP within the provisions of the **Act**.

History:

The OEB on October 2, 2008 suspended the review of the IPSP filed in August 2007 by the OPA. The reasoning behind the suspension was because the Minister of Energy (G. Smitherman), had issued a directive dated September 17, 2008 that asked the OPA to consider other objectives.

The OEB agreed to the suspension and required that the OPA file an update on their position by November 28, 2008 and file an updated IPSP by March 17, 2009. The OPA agreed to those requests by the OEB.

When the OPA's legal counsel filed the November 28th 2008 report they indicated that the date for submission would be met.

On March 12, 2009 the OPA wrote to the Board Secretary, to request a further extension and indicated that "The OPA intends to respond to the Minister's directive in the summer,".

The OEB by way of letter dated March 17, 2009 acceded to the OPA's request but failed to set a new date for submission.

At that time the OEB failed to point out to the OPA that they were Non-Compliant with 7.2 b) of their licence.

7.1 The Licensee shall provide, in the manner and form determined by the Board, such information as the Board may require from time to time.

The Board as stated in 10.2 required an updated IPSP and the OPA failed to provide it and still have not provided it putting them in the position of being Non-Compliant under this section of their Licence.

7.2 a) the Licensee shall: provide such information as the Board may require from time to time to enable the Board to monitor the Licensee's compliance with the conditions of this Licence and any other legislative or regulatory requirements set out in the licence;

The Board required an updated IPSP which the OPA has failed to deliver. The last document delivered to the OEB by the OPA in respect to their existing Licence & posted on the OEB's website in vision of the public is the March 12, 2009 letter requesting an extension of the time required to submit the IPSP. This clearly makes them Non-Compliant!

7.2 b) notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the Licensee's ability to comply with this Licence, its financial integrity, or its ability to carry out its responsibilities under the Act or the Electricity Act, as soon as practicable after the occurrence of any such change, but in any event within fifteen days of the date upon which such change becomes known to the Licensee;

As noted in 5.2 above the OPA failed to notify the OEB *within 15 days* as required, placing them in Non-Compliance with this section of their Licence.

7.2 f) provide the Board with a copy of the annual report of the Chief Energy Conservation Officer, as referred to in section 25.11 of the Electricity Act, at the time it is submitted to the Minister;

As this position has been declared redundant by the OPA this report cannot be produced therefore the OPA is Non-Compliant. If this section of the rules governing the licensing of the OPA has been changed it is not evident that the OEB has posted it or that the Legislature has in fact been advised to change that section of the **Act**, if required to do so.

10.1 The Licensee shall develop and submit an integrated power system plan to the Board

for review and approval at least once every three years, or more frequently if required by the Minister or the Board.

Refer to 5.1 above. The OPA has failed to produce the required IPSP or the revised IPSP as ordered by the Board so they are therefore Non-Compliant with this section of their Licence.

10.2. When required under section 25.30 (5) of the *Electricity Act*, the Licensee shall resubmit the integrated power system plan to the Board within such time as may be specified by the Board.

Refer to 5.2 above. The OEB ordered a revised IPSP be submitted by March 17, 2009 and the OPA failed to deliver it. The OEB could also be construed as being in Non-Compliance with their regulatory responsibilities as they granted an extension without setting a deadline for the OPA to submit it's plan.

11.1 The OPA shall, as required by the *Electricity Act*, develop appropriate procurement processes for managing electricity supply, capacity and demand in accordance with its approved integrated power system plans.

11.2 The OPA shall apply to the Board for approval of its proposed procurement processes, referred to in paragraph 11.1, and any amendments to the processes it proposes.

As the OPA never completed the IPSP they are in Non-Compliance with this section of the Licence. If no IPSP, or revised IPSP has been filed or approved by the OEB, under what authority did the OPA develop the FIT and MicroFIT plans? The OPA amended pricing on MicroFIT at least twice, once to drop ground mounted solar to 58 cents per kWh from 80.2 per kWh and then increased it to 64 cents per kWh all presumably without approval for the IPSP in which their authorities to effect pricing was included.. In the process of amending the pricing some 3000 additional MicroFIT applications were allowed at the original price without any explanation from the OPA.

Additional Evidence:

Additionally the OPA contracted for new power from private developers without ensuring access to the grid would be available when the developers were ready to deliver the power. These contracts (exclusively private and therefore not available for public scrutiny) were presumably executed on a "take or pay" basis with the developers, thereby impacting ratepayers. These ratepayers are reputedly protected from such events by the OEB as required under the ***Ontario Energy Board Act***. This indicates a failure on the part of the OPA to manage the electricity supply as required under the ***Act*** and the unapproved IPSP and a failure to protect ratepayers by the OEB under the ***Ontario Energy Board Act***.

Additionally, the OPA submits their annual budget to the OEB for approval and in that process submitted their Business Plan for the years 2010-2012 to the OEB in September 2009.

(http://www.powerauthority.on.ca/Storage/108/15619_2010-2012_OPA_Business_Plan_v2.pdf)

Included in the above "Business Plan" are planned expenditures for "conservation", estimated at \$286.6 Million. These expenditures find their way into the Global Adjustment Mechanism (GAM) or "variance account" resulting in the "electricity" line on ratepayers bills increasing when RPP or TOU rates are set by the OEB. It is my contention that the placing of this in that line of the ratepayers bill is wrong. The word "conservation" denotes the preservation or saving of something and it is reasonable to expect that it would naturally reflect itself as a reduction in "electricity" rates, not an increase. The costs of this exercise by the OPA to get us to conserve should be placed where it properly reflects the "regulatory" costs on that line of the ratepayers bills as contained in the ***Act***. Conservation as denoted by the ***Act*** is a regulatory matter not a "electricity" generation issue.

To summarize the OPA is clearly in breach of many of their licensing rules and in Non-Compliance with the ***Electricity Act***. Failure to address these breaches would be construed by the public to be setting precedents that place the standards of care and the rule of law in jeopardy in the Province of Ontario. If the OPA is allowed to proceed with its current application to renew it's License the matter should be brought to the attention of the Attorney General under the Provincial Offences Act.

Respectively yours,

A. Parker Gallant



NB: Please redact my personal information (address, phone, etc.) when you post this to your website

cc: Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
Attention: Miriam Heinz
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