

ONTARIO ENERGY BOARD

IN THE MATTER OF sections 25.20 and 25.21 of the *Electricity Act, 1998*;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2011.

FINAL ARGUMENT OF THE ONTARIO SUSTAINABLE ENERGY ASSOCIATION

I. INTRODUCTION

- 1 The Ontario Power Authority (OPA) has filed a Submission for Review in respect of the OPAs proposed expenditure and revenue requirements and fees for 2011 with the Ontario Energy Board.
- 2 The OPA is seeking an approval for a revenue requirement of \$78.882 million. The OPA proposes a usage fee of \$0.514 per MWh.
- 3 A number of issues were raised during this submission. The Ontario Sustainable Energy Association (OSEA) has interest in providing arguments on matters relating to the FIT program and renewable energy generation and Conservation and Demand Management (CDM) programs.
- 4 OSEA shares many issues raised by other intervenors, such as CEEA and GEC, about CDM programs. OSEA has therefore limited its arguments to the FIT program and renewable energy generation in these proceedings to limit duplication.
- 5 OSEA has two concerns with respect to this matter that relate to its management of the FIT program:
 - a) The fees allocated to the Electricity Resources function at the OPA – the unit responsible for managing the FIT (and MicroFit) Program; and

- b) The timeliness of the OPA in meeting its own deadlines is terms of managing the FIT program including its failure to even complete one Economic Connection Test (ECT) since the inception of the FIT program in September 2009 when it planned one ECT every six months and its ability to process FIT applications according to its own schedule.

II. THE BOARD'S POWERS

- 6 As stated by the Board in Procedural Order 2, "the powers of the Board arising from a section 25.21 review is limited to approving or rejecting the OPA's administration costs (i.e. the fees) and that the Board does not have the power to approve or reject the OPA's non-administrative program spending, such as generation procurement and Conservation and Demand Management ("CDM") procurement activities. OSEA also agrees with the Board's view:¹ "that an assessment of the OPA's administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities. This is necessary because the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board approved fees that give the OPA the means to acquire and allocate the resources (e.g., staff) that are required to undertake its various responsibilities, resulting in charge funded activities".

III. APPROPRIATENESS OF FEES ALLOCATED TO MANAGING THE FIT PROGRAM

- 7 In 2011, the OPA has budgeted \$473 thousand to manage the FIT Program. It has also budgeted \$600 thousand to manage the Green Energy Investment Agreement (Samsung Deal). OSEA is concerned that the OPA's priorities in terms of resource allocation is not appropriate. OSEA wonders how managing a contract with one (albeit large) proponent can be expected to cost significantly more than managing the applications and contracts with thousands of FIT proponents. See Schedule A.
- 8 At the same time, the OPA anticipates that procurement related registration fees and related interest will be about \$2 million; a sum that will be used to reduce the OPA total revenue requirement for fees without a clear indication that such fees will be dedicated to the management and implementation of the FIT program. Such an approach defies all regulatory principles with respect to cost causality. Further, it is unreasonable to expect applicants under the FIT program to fund other aspects of the OPAs work. The registration fees for the FIT program should be specifically earmarked for purposes related to the operation of the FIT program.

¹ EB-2011-0279, Ontario Energy Board: ISSUES DECISION AND PROCEDURAL ORDER NO. 2, Jan 11, 2011, page 5.

IV. TIMELINESS OF THE OPA IN MANAGING THE FIT PROGRAM

- 9 In the case of the ECT, the OPA's application states as a 2011 milestone that "The first ECT will be executed, with the first set of results available in the second quarter of 2011." Also, in response to Board Staff interrogatories that in the summer of 2010, the OPA stated that the first ECT was planned for completion in the first quarter of 2011. In addition, in 2010, the OPA stated that the first ECT would start in early August 2010. However, in response to Board staff interrogatory #4, the OPA stated that "The first ECT is not expected to start before March 2011." And, in fact, the ECT did not commence in March 2011 and during cross-examination the OPA (Mr. Cronkwright) stated that they "don't currently have an update on a revised date for launching the ECT at this point," but indicated they anticipated that "it would be within six months."
- 10 The ECT has implications for the OPA's FIT program targets for the fiscal year under review. The OPA stated in its pre-filed evidence that a 2011 milestone for Strategic Objective #3 is to "Continue to assess FIT and microFIT applications and execute contracts for additional capacity up to 850 MW." In response to Board staff interrogatory 18(a) the OPA stated that this 850 MW of capacity would be realized through "the results of the Economic Connection Test ("ECT") and the processing of new Capacity Allocation Exempt ("CAE") FIT applications and microFIT applications."
- 11 In a telling exchange between Mr. Millar and Mr. Cronkwright (attached in schedule B), the Board received a further glimpse into the lack of management of the FIT Program. Despite an oft repeated phrase heralding the success of the FIT Program – "it exceeded all expectations", the truth of the matter is that the OPA had "no expectations" despite the ability to reasonably foresee interest that would be taken in the program. The OPA had its own experience with the Renewable Energy Standard Offer and the opportunity to ascertain the experience of the many other jurisdictions in the world in managing FIT Programs. This exchange also demonstrates the lack of transparency with respect to making program changes – particularly when none were scheduled.

V. CONCLUSIONS

- 12 OSEA submits that the OPA request for approval of non-refundable application fees for the Feed-in-Tariff program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000 be granted on the condition that:
 - a) it can demonstrate that such fees shall be dedicated and restricted to the management of the FIT Program.
 - b) the OPA be required to develop a more comprehensive and transparent management and reporting system for the FIT Program that provides certainty for rate payers.

- c) the OPA manage all procurements, whether through RFPs, negotiations or standard form procurements like the FIT Program, in a fair and equitable manner, with transparency as to implementation, monitoring, registration fees and timing of resource allocations.

VI. COST

- 13 The Board found that OSEA is not eligible for an award of costs under the Board's Direction on Cost Awards.
- 14 OSEA submits that it participated responsibly in this proceeding and sought to limit its involvement to matters that are relevant to OSEA and that did not overlap with the concerns of other intervenors.
- 15 OSEA further submits that OSEA's participation in this proceeding related directly to promoting the public interest in renewable energy development and the responsible and efficient allocation of funding to the FIT program.
- 16 OSEA respectfully requests that OSEA be granted costs for its participation.

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AND TO: **ALL REGISTERED INTERVENORS**

SCHEDULE A

MS. BRANT(Counsel for OSEA): So I'll just repeat the question. What I wanted to know is, then, can we see from the information brought forward that the amount to operate the green energy investment agreement is going to be 600,000 versus the amount to carry out the renewable objectives for the year will be 472, as I said, and 057? Will it be less to carry out the renewable programs this year than it will be to carry out the Samsung agreement?

[Witness panel confers]

MR. GABRIELE: Due to the way we put together budgets, I don't think we can say clearly that it's 473 for renewables and six for -- for the other project. We have internal staff allocations, and we have general cross-functional allocations that are not made. So to derive that conclusion, I think it would be inappropriate. But those are the amounts for the renewable in program spending and the amount for the -- whatever that item is defined as.

MS. BRANT: So if we were to compare the program spending, it is going to cost more to implement the green energy investment agreement [Samsung] than it will to carry out the renewable objectives?

MR. CRONKWRIGHT: I think both of those initiatives are an important part of what we do in electricity resources. In the case of the green energy implementation agreement, it corresponds approximately 2,500 megawatts. So at least on a megawatt basis, it's a very big percentage of what we're doing. So we have to make sure that we allocate sufficient funds to make sure that we're doing the best -- the best job we can on that program.

MS. BRANT: Do you propose to receive any registration fees or interest income through those procurements under the green energy investment?

MR. CRONKWRIGHT: The procurement under the green energy investment agreement is a negotiation, and I would not anticipate receiving a registration fee in a negotiation-type agreement.

MS. BRANT: Okay, thank you.

SCHEDULE B

MR. MILLAR (Board Staff Counsel): Thank you for that. I have questions in four areas, but I think for three of them it should be two minutes or less, and hopefully the other one won't be all that long either. There were some questions about the economic connection test, and I don't plan to go through those in any detail, but I am looking for a status update. Last we heard, I guess it was the parties' understanding that we wouldn't have an ECT before March 2011. And I guess you've been good to your word, because we don't have it and it's past March 2011. Do you have an update on when that test might be finalized, if that's the correct word?

MR. CRONKWRIGHT (OPA Director, Renewable Energy): We don't currently have an update on a revised date for launching the ECT at this point.

MR. MILLAR: Can I ask if we're talking six months, a year, one month? Can you give any indication whatsoever as to when? Will it be in the planning period, for example, the year for which the revenue requirement covers?

MR. CRONKWRIGHT: I would anticipate that it would be in the planning period, yes.

MR. MILLAR: So less than a year?

MR. CRONKWRIGHT: Yes, that would be my anticipation.

MR. MILLAR: Less than six months? If you can't answer, that's fine. I'm just doing my best to get a handle on how long we're talking.

MR. CRONKWRIGHT: I would anticipate it would be within six months, as well.

MR. MILLAR: I won't press you further. Could I ask you to turn to Board Staff Interrogatory 14? Some questions with respect to the pricing for microFIT solar projects. And if I've got the wrong panel, of course I'll trust you to tell me. Before getting directly to the question, I just want to make sure I have the history of the pricing for this particular element correct. I understand that originally I'm not sure you'd actually broken out between solar and ground-mounted microFIT pricing, but the original pricing was 80.2 cents per kilowatt-hour; is that correct?

MR. CRONKWRIGHT: That's correct. The original solar PV price was 80.2 cents.

MR. MILLAR: I'm sorry, the original solar...?

MR. CRONKWRIGHT: Solar PV, photovoltaic.

MR. MILLAR: Thank you. I'm not sure if the program description was altered, but it was recognized at a subsequent time that this would apply to both rooftop and ground-mounted solar; is that correct?

MR. CRONKWRIGHT: That's correct.

MR. MILLAR: And initially the price was going to be the same for both, 80.2 cents?

MR. CRONKWRIGHT: That's correct. And the reason behind that is that when the program was launched, it was anticipated that the majority of the solar PV projects would correspond to rooftop. So, yes, the pricing for solar PV projects was set at 80.2 cents, and that was in anticipation that the majority of solar PV projects would correspond to rooftop installations. So that's why the price was set at that value.

MR. MILLAR: And as it happened, that's not how it turned out; is that correct?

MR. CRONKWRIGHT: That is correct. As the program launched and applications were received, it became apparent that a significant portion of the solar PV projects correlated to ground-mount installations.

MR. MILLAR: And in response to that, I take it in July 2010, you revised the price for ground-mounted solar; is that correct?

MR. CRONKWRIGHT: That's correct. The price category for ground-mount solar PV installations was presented in July.

MR. MILLAR: And that was 58.8 cents in July 2010?

MR. CRONKWRIGHT: That is correct, as referenced in the interrogatory 14.

MR. MILLAR: And then about a little more than a month later, five, six weeks later, you adjusted -- sorry, just on the 58.8 cents, that amount was not to be grandfathered; is that correct?

MR. CRONKWRIGHT: As proposed, that is correct.

MR. MILLAR: And then in August, you made a further amendment. You upped the price slightly to 64.2 cents; is that correct?

MR. CRONKWRIGHT: That is correct.

MR. MILLAR: And this price would be grandfathered. In other words, if you applied before July, you would get the 80 cents; is that right?

MR. CRONKWRIGHT: That is correct.

MR. MILLAR: And then if you applied after July, you would get the 64.2 cents?

MR. CRONKWRIGHT: Correct.

MR. MILLAR: So we asked you some questions about this. The first is Board Staff 14(a). It had asked what your original expectations were with respect to solar, and I suppose, in particular, ground-mounted solar. Your response -- and I don't want to put words in your mouth, but if I can paraphrase it, it was essentially that these are proponent-driven projects and you didn't really have an expectation as to how many applications you would be receiving. Have I paraphrased that correctly?

MR. CRONKWRIGHT: It's correct. We didn't have a specific target number of applicants we anticipated receiving, but, as I mentioned, we did anticipate that the majority of the solar PV projects would be roof-mounted type systems.

MR. MILLAR: Why did you assume that?

MR. CRONKWRIGHT: That was based on information from other jurisdictions and the experience that they had had with solar PV.

MR. MILLAR: And just so it's clear for the record, the reason why it's important whether it's solar or ground mounted is because ground-mounted installations tend to be larger. That is the distinction?

MR. CRONKWRIGHT: I think there are two important distinctions. I think a typical rooftop cannot typically accommodate the size of a generating capacity that you can with a ground-mount system. And, as well, the ground-mount systems are able to, if they so choose, employ a tracking system to increase their capacity factors.

MR. MILLAR: And that's whereby it turns to face the sun; is that right?

MR. CRONKWRIGHT: Yes. There are basically some sensors and motors that position the panels to optimize the sun.

MR. MILLAR: Now, when it was determined that the microFIT solar program would allow both rooftop and ground mounted, was there any specific analysis done on what portion would be on ground mounted versus rooftop?

MR. CRONKWRIGHT: During program design, again, based on the experience we had gleaned from other jurisdictions, we anticipated that the majority would be based on rooftop. And certainly the interest that we're seeing today in ground-mount solar wasn't evident or present at that point.

MR. MILLAR: Had you done any analysis on what pricing differences -- and I'm talking before you switched the price or when you originally set the price, let me put it that way -- any analysis on what different pricing might be appropriate for solar versus ground mount?

MR. CRONKWRIGHT: Sorry, I'd like to clarify that both situations we're referring to are both for solar. So whether it's rooftop PV or ground mount, just we're referring to solar in both situations.

MR. MILLAR: Understood.

MR. CRONKWRIGHT: So when the proposed price was put forth in July, that was an attempt to try to strike a balance between cost plus reasonable rate of return for the developer, as well as manage the impacts on Ontario ratepayers. So that was the price proposed to try to fairly address the balance between those two competing objectives.

MR. MILLAR: Okay. I don't want to harp on this, but you recognize -- did you recognize when you set the 80-cent price that there might be differences in the costs plus reasonable return standard as applied to rooftop versus ground mounted?

MR. CRONKWRIGHT: I think that we'd recognized that there would be differences in expectations. I don't think we anticipated at the time just the level of interest in a ground-mount system. It was certainly perceived that the uptake would be focussed on roofs and that ground-mount installations would certainly be a very minor part of those applications.

MR. MILLAR: To be clear, I'm not asking about the uptake. I'm asking: Did you recognize that there would be -- that the cost plus reasonable return amount - the number, in other words - would be different for rooftop than for ground mount?

MR. CRONKWRIGHT: I think that we recognized they'd be different. I'm not sure we anticipated that the size of the arrays and the complexity of the tracking systems would make the differences as great as they became.

MR. MILLAR: In Board Staff 14(b), you discuss the relative size of the project capacity for ground mount. I think the average came in at about 8.5 kilowatts; is that correct?

MR. CRONKWRIGHT: Yes, correct, as per our response.

MR. MILLAR: So at what point in time did you realize that you were going to have to look at separating the price for these? The actual -- the first change occurred in July. At what point did you realize that this was going to become necessary?

MR. CRONKWRIGHT: I think with the program launch and focussing primarily, first of all, on getting the program up and running and being able to receive -- receive applications, we were very happy the kind of application volume we had. I think as, you know, a few months transpired, and as we were able -- it's very hard to trend with a point or two, but as we had more points to trend, we saw that that average size was trending up above what we had anticipated for rooftop. And with a larger subset, that average was pushing higher as more points came in.

MR. MILLAR: I think my question was: When did you determine that a new price would be appropriate?

MR. CRONKWRIGHT: I think we anticipated, certainly in the early part of 2010, that the sizes of the projects were getting larger, and leading up in advance of the July announcement, we had done some analysis on what the appropriate cost and reasonable rate of return would be for these ground-mount systems that sort of were becoming apparent. So in advance of, obviously, publishing that change, or proposed change.

MR. MILLAR: Was there any indication to the public prior to the announcement in July that there would be a change in the price for ground-mount?

MR. CRONKWRIGHT: There was not any notification that I'm aware of.

MR. MILLAR: And why not?

MR. CRONKWRIGHT: I think one of the challenges there was to make sure that we had a very clear delineation date with respect to fairly process applications. So what we would want to avoid is sort of a rush of applications trying to get in or under a certain deadline. So we published the alternate pricing as a proposed change, but on the date of publishing, that allowed us to set a clear mark, by which we would then evaluate applications. So that's why that was done.

MR. MILLAR: Okay. In the interests of time, I'm going to move to my -- it's still on this topic, but my next question. If I could ask you to turn to Board Staff 14(d), and this asked you to describe your original expectations with regard to the other FIT and microFIT programs. You'll see, if you flip to the next page, you refer us to your response in (a), which was essentially -- again, without putting words in your mouth -- that that was proponent-driven, so you didn't have specific targets, if I can put it that way; is that correct?

MR. CRONKWRIGHT: Yeah. There were no specific volume targets for either FIT or microFIT, for applications.

MR. MILLAR: So is that correct, then, you would have no -- I don't want to say anticipation, but no targets or no expectations for how many people would sign up for any of these programs?

MR. CRONKWRIGHT: I think we had -- at least with the FIT program, we anticipated that the initial launch phase, we would see a sort of increased amount of activity, as there were sort of certain advantages in applying during launch period. And then we anticipated that following launch, that application volume would decrease. You know, there had been a lot of discussion throughout 2009 about the Green Energy Act and about the FIT program, and I think we reasonably thought there was some pent-up demand, and that once the programs officially

launched, we'd see a large swing in uptake in volumes, and that when some of that pent-up demand had subsided, that we'd expect them to taper off a little bit, sort of qualitatively.

MR. MILLAR: But no targets? Even soft targets?

MR. CRONKWRIGHT: No specific targets, no.

MR. MILLAR: Absent having targets, how do you know if the price is too high? For example, how do you know if there's too much uptake?

MR. CRONKWRIGHT: So this is one of the reasons why there was a program review concept built into the program, such that we'd have the ability, at least every two years, to examine any and all aspects of the FIT program, specifically including price, to determine if changes were required.

MR. MILLAR: Well, we didn't get to two years for the ground-mounted solar; is that correct?

MR. CRONKWRIGHT: That is correct.

MR. MILLAR: I guess without having set targets, how do we know that you're not over -- I don't want to say overachieving, but I think the fair way to describe what happened with ground-mounted solar is in hindsight, you decided the price was too high for that; is that correct?

MR. CRONKWRIGHT: I think in the case of ground-mounted, it provided a rate of return that we thought was more than -- was above reasonable, and that that needed to be adjusted so that it was a reasonable rate for those projects.

MR. MILLAR: And you determined that because you had way more application -- I don't want to say than you anticipated -- well, I guess more than you anticipated, even though you didn't have a target?

MR. CRONKWRIGHT: I think in the case of ground-mount, it was more not a volume of applications, but the applications related to a technology that we didn't anticipate receiving. So that perhaps makes it more unique than the others, in that we didn't anticipate receiving a significant volume of ground-mount applications, yet a significant amount of that specific stream came forward.

MR. MILLAR: Okay. Well, I'll leave it at that. Thank you.

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