

Christine E. Long
T (416) 367-6683
F (416) 361-2770
clong@blg.com

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street W
Toronto, ON, Canada M5H 3Y4
T 416.367.6000
F 416.367.6749
blg.com

File No. 316864/000003

December 23, 2011

Delivered by Courier and E-mail

Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 29th Floor
Toronto, ON M4P 1E4

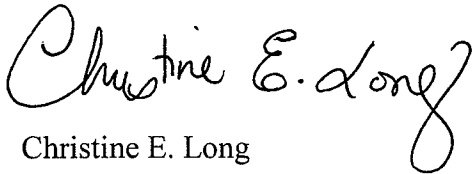
Dear Ms. Walli:

**Re: City of Kitchener 500 kW (PV) Generation Project (the "Project")
EB-2010-0214**

The City of Kitchener (the "Applicant") is advising the Ontario Energy Board (the "Board") that the Project reached Commercial Operation on March 31, 2011. As indicated in the Application filed, the Applicant will be assigning the FIT Contract (and the associated generation facility), to a new corporation, Kitchener Generation Corporation, which will be 100% owned by the Applicant. Paragraph 8 of the Board's Order approves the transfer of the FIT Contract. The OPA has advised that they will consent to the transfer. As such, the transfer will take place effective January 1, 2012.

The Applicant is providing this notice to the Board as a courtesy and for informational purposes only.

Yours truly,



Christine E. Long

CEL/nz

cc: Gona Jaff (by e-mail only)
Attach



EB-2010-0214

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a Notice of Proposal under
Section 80 of the *Ontario Energy Board Act*, 1998 by
the Corporation of the City of Kitchener.

BEFORE: Gordon Kaiser
Vice-Chair

DECISION AND ORDER

[1] This Decision concerns an application by the City of Kitchener (the "City" or the "Applicant") filed with the Ontario Energy Board on June 4, 2010 under Section 80 of the *Ontario Energy Board Act*, 1998 seeking approval for the construction and ownership of a 500 kW solar generation facility. For the reasons set out below, the Board approves the Application.

[2] The City of Kitchener is as an affiliate of Kitchener-Wilmot Hydro Inc., a licenced electricity distributor that serves the Kitchener – Waterloo region.

[3] The City of Kitchener has entered into a contract pursuant to the Ontario Power Authority's Feed-In Tariff ("FIT") Program to construct and operate a roof-mounted solar renewable energy generation facility with a capacity of 500kW. The project will sit on the roof-top of a City-owned maintenance building and will connect to the distribution grid. The cost of the project is \$4.1 million.

[4] Under Section 80 of the Act, a distributor or an affiliate of a distributor can not acquire a financial interest in a generation facility or construct a generation facility unless it has first given notice of its intention to do so to the Board. Section 82 (2) of the Act states that the Board shall approve a proposal under Section 80 of the Act if it

determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market or, if it is required to maintain the reliability of the transmission or distribution system of the relevant transmitter or distributor.

[5] In its Application, the City argued that a review of the Section 80 Notice for the project was not necessary because the project complies with the fundamental principles of the *Green Energy Act* in terms of developing renewable energy supply. They also argued that the project was selected in a competitive process and they have been successfully awarded a Feed-In Tariff ("FIT"). The Applicant noted that in granting the FIT contract, the Ontario Power Authority had conducted a thorough review of the proposed project including its ability to connect to the distribution system and that this project does not represent a material increase in generation capacity.

[6] On June 24, 2010, the Board notified the City that it would review the Notice of Proposal and intended to decide the matter by written hearing unless any party satisfied the Board that there is good reason for holding an oral hearing. The Board received no request from any party that the Board hold an oral hearing and therefore proceeded by way of a written hearing.

[7] As this was the first application of this type heard by the Board, the Board elected to review the project and requested the Applicant answer certain questions attached hereto as Appendix "A". At the Board's request, the Applicant also provided the Board with the Ontario Power Authority Feed-In Contract Schedule 1, General Terms and Conditions, Version 1.3.0 and various appendices to that contract as well as a certified copy of the October 13, 2009 Resolution authorizing the Applicant to enter into the FIT contract.

[8] Having reviewed the responses of the Applicant, the Board finds that the project should be approved in accordance with the statutory tests applicable to this proceeding. The Applicant has fully answered the Board's questions with respect to the financing of the project and the possibility that the project may impair other facilities with a FIT contract connecting to the local distribution system. The Board has determined that the impact of the proposed 500 kW solar generation facility and its operation would not adversely affect the development and maintenance of a competitive market. The Applicant has advised the Board that the City may transfer the FIT contract to a new corporation to be owned 100% by the City. The Board approves that transfer. In

approving this Application, the Board notes that no objection was received from any interested parties.

THE BOARD THEREFORE ORDERS THAT:

1. The City of Kitchener's Notice of Proposal under Section 80 for the construction and ownership of a 500 kW solar generation facility is approved.

DATED at Toronto, July 13, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix "A"

Board Decision and Order

Board File No: EB-2010-0214

**Notice of Proposal under Section 80 of the *Ontario Energy Board Act, 1998*
The Corporation of the City of Kitchener**

**ANSWERS TO QUESTIONS CONTAINED AT APPENDIX "B"
TO PROCEDURAL ORDER NO. 1
EB-2010-0214**

Question 1: Please confirm who the Notifying party is in this matter?

Answer: In its June 4, 2010 filing of the Section 80 Notice, the Corporation of the City of Kitchener (the "City") indicated that due to reasons related to Part VI of the *Electricity Act, 1998* (the "Electricity Act"), the City might be required to transfer the FIT contract to a newly formed corporation ("Newco"), which would be 100% owned by the City. As a result, the City provided the Section 80 Notice on its own behalf and on behalf of Newco.

The Electricity Act issue referenced in the Section 80 Notice deals with whether language contained within section 93 of the Electricity Act is so broad as to trigger unintended tax liabilities for the City of Kitchener and its ratepayers resulting from the City entering into a FIT Contract. The City has been advised by the Ontario Ministry of Revenue that it was not the intention of the legislation to tax all municipal forms of revenue as a consequence of taxing revenue associated with electricity generation. The City has been advised by the Ontario Ministry of Finance that regulations will be drafted to clarify the intent of the legislation. The City has not yet seen the draft regulations. Before the City can definitively determine whether Newco will own the proposed generation facility, the City must seek consent to transfer funding. The City has approached the Provincial Government office administering the Infrastructure Stimulus Fund program in order to determine if the Province (and by extension the Federal Government) will consent to a transfer of the Infrastructure Stimulus Funds granted to the City to a new corporation 100% wholly-owned by the City. The City has been advised that the Province expects to be in a position to provide an answer within the next two weeks.

Therefore the City reiterates its position that it is the Notifying party on its own behalf and on behalf of Newco. The City will advise the Board as soon as it receives notice from the Province as to whether it will grant consent and whether the proposed generation facility will be owned by the City or Newco.

Question 2: If the Notifying party is not the City,

- a. please provide the legal name of the notifying party; and**
- b. identify the entity that owns the notifying party.**

Answer: [Please see Question 1.]

Question 3: Please provide the total cost of construction of the proposed generation facility.

Answer: The total cost of construction of the proposed generation facility is 4.1 million dollars.

Question 4: Please explain in detail how this investment (i.e. construction of the proposed generation facility) will be funded.

Answer: Construction of the proposed generation facility is to be funded on an equal basis between the Federal Government of Canada, the Provincial Government of Ontario and the Corporation of the City of Kitchener. The proposed generation facility has been deemed eligible to receive funds from the Federal and Provincial Governments as part of an Infrastructure Stimulus Fund ("ISF") program. The ISF program is targeted at mitigating the impacts of the global economic recession by increasing the total amount of construction projects that can start and be substantially completed within fiscal 2009-2010 and 2010-2011. The proposed generation facility has been accepted as part of the ISF program. The maximum Federal financial assistance available is \$1,366,667 and the maximum Provincial financial assistance available is \$1,366,667, for a total of \$2,733,334. The remaining one-third share will be financed through the City's Local Environment Action Fund ("LEAF") which is a City reserve fund. The reserve fund was established to fund projects related to the environment, with the specific objective of reducing greenhouse gas emissions.

Question 5: Please confirm whether the connection of the proposed generation facility exceeds the connection cost cap set out in the Distribution System Code (the "DSC"). If so, please explain how the connection cost above the cap will be funded.

The Applicant has consulted Kitchener-Wilmot Hydro Inc. in order to provide answers to Questions 5-8.

Answer: Kitchener-Wilmot Hydro Inc. has confirmed that the proposed generation facility does not exceed the renewable energy expansion connection cost cap set out in the Distribution System Code (\$90,000 / MW). No distribution system expansion is required to connect the City's proposed generation facility.

Question 6: Please confirm whether there is capacity on Kitchener-Wilmot Hydro Inc.'s distribution system to connect generation facilities under FIT contracts with earlier time stamps than the City's proposed generation facility.

Answer: Kitchener-Wilmot Hydro Inc. advises that there are three proposed Capacity Allocation Exempt projects under the FIT program with earlier time stamps than the City's proposed generation facility. All three proposed projects received FIT contract offers. While the three applicants are not prevented from submitting their CIA Applications at a later date, none of the applicants submitted CIA applications to Kitchener-Wilmot Hydro Inc. within the CIA time window required by OPA. In any event, Kitchener-Wilmot Hydro Inc. confirms that there is enough capacity on Kitchener-Wilmot Hydro Inc.'s distribution system to connect all three other proposed generation projects in addition to the City's proposed generation project.

Question 7: If there are other generation facilities with FIT contracts awaiting connection to Kitchener-Wilmot Hydro Inc.'s distribution system,

- a. please confirm the cost of connecting those facilities based on the cost allocation prescribed in the DSC;**
- b. please confirm whether those connections are reflected in Kitchener-Wilmot Hydro Inc.'s distribution plan; and**
- c. please confirm whether those connections are reflected in Kitchener-Wilmot Hydro Inc.'s current rates.**

Answer:

- a. Although the detailed connection cost estimates (to determine the system expansion cost and the related cost responsibility) cannot be determined until CIAs are completed, Kitchener-Wilmot Hydro advises that preliminary review reveals that no distribution system expansion is required to connect any of the other three proposed Capacity Allocation Exempt generation projects. Thus the connections of the proposed other three generation facilities will not exceed the renewable energy expansion cost cap set out in the DSC (\$90,000 / MW).
- b. Kitchener-Wilmot Hydro Inc. has not yet filed its Green Energy Act (GEA) distribution system plan (as defined in EB-2009-0397) as required by the Board from all distributors filing cost-of-service applications for rates effective 2012 and beyond. Unless the Board mandates otherwise or other conditions change, Kitchener-Wilmot Hydro Inc. will not be filing its GEA plan until it rebases again in 2014.
- c. Kitchener-Wilmot Hydro Inc. confirms that its distribution rates do not include a return on any renewable generation assets. Kitchener-Wilmot Hydro Inc. will record all such assets in the Board-approved deferral accounts as defined in the Board's G-2009-0087 Guidelines.

Question 8: If there is no connection capacity on Kitchener-Wilmot Hydro Inc.'s distribution system to connect the generation facilities described in item number 6 above, please confirm whether a plan has been filed with the Board to expand the distribution system to create capacity for those generation facilities. If so, please confirm whether the plan includes facilities required to connect generation facilities owned/to be owned by Kitchener-Wilmot Hydro Inc. and/or any of its affiliates.

Answer: Kitchener-Wilmot Hydro Inc. confirms that there is adequate connection capacity on Kitchener-Wilmot Hydro Inc.'s distribution system to connect the generation facilities described in item number 6 above.

::ODMA\PCDOCS\TOR01\4394254\4