

# AIRD & BERLIS LLP

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April 13, 2012

VIA COURIER, EMAIL AND RESS

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor, Box 2329  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Brant County Power Inc. Response to Board Letter  
Notice of Proposal under Section 80  
Board File Number: EB-2012-0077**

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Brant County Power Inc. ("BCP") is responding to the Board's letter dated April 2, 2012. The information requested is not required as part of the section 80 application and BCP disagrees that the Application is incomplete.

Each of the issues raised in the letter deals with the operator or operation of the facilities. The *Ontario Energy Board Act, 1998* does not define the term "operator" and BCP is not aware of a Board guideline that defines "operator". Furthermore, BCP would note the term "operate" is not used in section 57(c) while operate is used in reference to licensing requirements, section 57(a) and (b), for distributors or transmitters. While it may be that the term "operator" should be defined as the person responsible for the operation of the facility, however, such a definition is not overly instructive in the circumstance.

It is BCP's position that operator refers to the person or entity with responsibility for the facility to ensure that the facility produces electricity as intended after commercial operation. BCP would note that a MicroFIT Solar facility is unlike a gas plant, or some other generating facilities, which would have personnel on site every day with the specific function of ensuring the equipment functions. Also, being an operator would not necessarily preclude or necessitate having employees carry out all functions related to the facility. Absent an agreement to specify a third party as the operating entity, then BCP would submit that the owner should be considered the person or entity responsible and would therefore be considered as the operator.

The responses to the issues are as follows:

1. County of Brant's final decision on the operator of their generation facilities is required.

It is BCP's understanding that the County of Brant is the operator. Specific activities may be contracted out to third parties. Neither Brant Renewable Energy ("BRE") nor BCP is performing such activities.

2. If County of Brant were to select Brant County Power Services Inc. as the operator of their facilities, please identify ARC issues, if any.

This is a hypothetical question as Brant County Power Services Inc. has not been asked to operate the County of Brant's facilities. If the County of Brant were to select Brant County Power Services Inc. to operate the facilities, BCP is not aware of any ARC issues. Part of the intent of the ARC is to ensure the regulated entity is not subsidizing an unregulated affiliate to allow the unregulated entity an unfair competitive advantage. As neither entity is regulated by the OEB and neither is conducting a regulated activity there is no possibility of such subsidization occurring.

3. Additional information provided includes three (3) generation facilities built and owned by Brant County Power Inc. What was the date when each became commercially operational? With respect to these facilities, please provide the name of the operator.

The two (2) facilities at 65 Dundas St. became commercially operational on March 1, 2011. The Rest Acres Road facility became operational on August 1, 2011. The operator of the facilities is BCP. However, it should be noted that maintenance will be performed by third party contractors.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll

SAS

cc: B. Noble  
I. McKenzie

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