

February 27, 2013

**VIA RESS AND COURIER**

Ms. Kirsten Walli, Board Secretary  
**ONTARIO ENERGY BOARD**  
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Toronto, Ontario  
M4P 1E4

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File No. T982615

Dear Ms. Walli:

**Re: EB-2013-0006 - Application to Amend ABW Solar General Partnership (ABW Partnership) Electricity Generation License EG-2011-0030**

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By cover letter dated January 7, 2013, we submitted a second letter, dated January 4, 2013 and styled as an *"Application to Amend Electricity Generation Licenses EG-2006-0036 and EG-2011-0030"*. We write at this time to:

1. Withdraw the earlier January 4, 2013 letter/application.
2. Clarify the status of the matters in respect of which the earlier January 4, 2013 letter/application was submitted.
3. If required, apply for amendment of the ABW Partnership Electricity Generation Licence EG-2011-0030 to add provision for operational authority for the solar generation facilities that ABW Partnership is acquiring from First Solar Development (Canada), Inc. (First Solar), in addition to the ownership authority for the subject facilities already granted to ABW Partnership.

## **Background**

By application to the Board dated January 24, 2011, under cover of our firm's letter dated January 28, 2011, ABW Partnership applied for an electricity generator licence. That application was made in contemplation of the acquisition by ABW Partnership of five Standard Offer Program solar generation facilities from First Solar.

The January, 2011 application specified that the responsibilities of ABW Partnership would be "own only" (section 6(b) of the application). An Addendum to the January 2011 application described the parties to the contemplated transaction, and explained that upon closing of the contemplated acquisition by ABW Partnership of the subject

generation facilities, *"First Solar will operate and maintain the projects on behalf of the Partnership"*. Schedule 6(B) of the January, 2011 application set out a similar statement, and referenced First Solar's existing generation licence [EG-2006-0336].

The January, 2011 application also provided, in Schedule 6(A), *inter alia*, commercial operation dates between September 2011 and December 2011 for the facilities.

The Board issued a Decision and Order dated May 11, 2011 granting the applied for licence [EG-2011-0030]. The licence is in standard form, and authorizes [section 3.1] ABW Partnership;

*"...to generate electricity or provide an ancillary service for sale under a contract with the Ontario Power Authority and the contract is entered into as part of a standard offer program offered by the Ontario Power Authority. This Licence authorizes the Licensee only in respect of those facilities set out in Schedule 1."*

While this grant of authority provided by ABW Partnership's generation licence is not confined to ownership only, in the body of the decision granting the licence the Board noted, in accord with the application, that *"title to the facilities and assets will be transferred to the Partnership. First Solar will operate and maintain the subject generation facilities on behalf of the Partnership."*

Schedule 1 to the ABW Partnership licence, as issued, states:

*Schedule 1 is incomplete.*

*When the Board receives written confirmation from ABW Solar General Partnership and First Solar Development (Canada), Inc. that the commercial transaction has closed and the generation assets have been transferred to ABW Solar General Partnership, Schedule 1 will be completed.*

This interim status of Schedule 1 to the ABW Partnership licence is in accord with the body of the Board's decision, which states:

*...Schedule 1 of the licence, which ordinarily describes the generation facility for which the applicant is being licensed, will remain incomplete until the Board receives written confirmation from the Partnership and First Solar that the commercial transaction has closed and the generation assets have been transferred to the Partnership. At that time, First Solar must apply to the Board to remove from generation licence EG-2006-0336 ownership authority for these generation facilities. When the confirmation and application from First Solar are received, the Board will amend the Partnership's licence to include the generation assets in Schedule 1 of the licence, and concurrently process the application for amendment to First Solar's licence. [Emphasis added]*

### **January 4, 2013 Letter/Application**

The January 4, 2013 letter submitted to the Board requested amendment of the ABW Partnership licence [EG-2011-0030] and the First Solar licence [EG-2006-0336] such that the Board *"approve the transfer of the licence to own and operate"* the five solar generation facilities (the Projects) included in the ABW Partnership January 24, 2011 licence application. The letter further requested *"an interim decision...to confirm that each of the transfer of the ownership and operation of the Projects from First Solar to ABW Partnership is approved by the Board, conditional upon the Board receiving written notice from the undersigned confirming that each such transfer has occurred."* The letter/application contemplates that the Projects will be transferred from First Solar to ABW Partnership in up to three tranches and that Schedule 1 of ABW Partnership's licence could thus be issued up to three times, once as each tranche of the transfer is completed and the Board so advised.

Upon reconsideration of the January 4, 2013 letter/application, we believe that the requests made of the Board may be confusing and merit clarification. It further appears to us that the requests made may have been overbroad, given that ownership authority, subject only to confirmation to the Board of completion of the transfer of ownership, has already been granted in ABW Partnership's existing licence [EG-2011-0030].

***We hereby withdraw the January 4, 2013 letter/application, and submit this letter of explanation and, if required, application in its stead.***

### **Update on Status of Transaction**

Since the time of issuance of the ABW Partnership licence:

1. The parties have determined that operational authority for the Projects will be transferred to ABW Partnership along with ownership.
2. The commercial operation dates of each of the Projects have changed. As such, the closings of the five transfers, in three tranches, are now anticipated to commence at the end of the first quarter of 2013 and continue through the second quarter of 2013.

### **Prayer for Relief**

As noted earlier in this letter, the ABW Partnership licence [EG-2011-0300], on its terms, grants a broad authority *"...to generate electricity or provide an ancillary service for sale under a [Standard Offer Program] contract with the Ontario Power Authority"*. As also noted above, the Board in the body of the decision granting the licence expressly refers to the advice of ABW Partnership in its licence application that while ownership of

the Projects would transfer to ABW Partnership, operation of the Projects would remain with First Solar. As advised above, that expectation has now changed. The parties intend to transfer both ownership and operation of the Projects from First Solar to ABW Partnership.

**In respect of the transfer of ownership of the Projects** from First Solar to ABW Partnership, we believe that the current ABW Partnership generation licence [EG-2011-0030] provides sufficient authority for ABW Partnership to own the Projects. As contemplated by Schedule 1 of that existing ABW Partnership licence, ABW Partnership and First Solar will advise the Board when ownership of each of the Projects is transferred, at the same time First Solar will request amendment to Schedule 1 of its licence to delete the transferred Projects, and we understand that the Board will<sup>1</sup> then issue amended Schedule 1s to both the ABW Partnership and First Solar licences to reflect transfer of the Projects (including, potentially, in three tranches and thus three Schedule 1 revisions). The Board's May 11, 2011 ABW Partnership licensing decision so states, and no further decision of the Board is required in that regard.

**In respect of the transfer of operation of the Projects**, it appears to us that the existing ABW Partnership generation licence [EG-2011-0030] grants authority to the licensee sufficiently broad to encompass operational authority for the Projects as well as ownership of the Projects. If the Board agrees with this position we would appreciate the Board's advice to this effect.

If, however, the Board is of the view that an amendment of the ABW Partnership licence is required, please consider this letter as an application for such amendment. To the extent that amendment is required, we can advise that:

1. As noted above:
  - (a) The parties have determined that operational authority for the Projects will be transferred to ABW Partnership along with ownership.
  - (b) The commercial operation dates of each of the Projects have changed. As such, the closings of the five transfers, in three tranches, are now anticipated to commence at the end of the first quarter of 2013 and continue through the second quarter of 2013. Schedule A to this letter sets out the commercial operation date for each of the Projects. Transfer of each Project will follow commercial operation, upon certification of substantial completion by the parties.
2. In addition to the foregoing:
  - (a) There have been minor subsequent updating amendments to the OPA contracts to adjust dates and some technical specifications for the projects.

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<sup>1</sup> See EB-2011-0030 *Decision and Order* dated May 11, 2011, page 2, first full paragraph, last sentence.

- (b) The "Key Individual" for the licensee has changed from Mr. Bruce Ripley, General Manager, to Mr. Murray Kroeker, General Manager
  - (c) The minority equity holder in the licensee has undergone a corporate merger, as described in Schedule B to this letter (for which confidential treatment is requested).
3. ABW Partnership repeats and relies on the information provided in its January 24, 2011 licence application, including the information about ABW Partnership and its partners, and its qualifications to both own and operate Standard Offer Program solar generation facilities. ABW Partnership notes that while its minority equity holder has undergone a corporate merger, its majority equity holder remains the same. The majority of the ABW Partnership equity is held by a subsidiary of GE Financial Services Inc., a unit of General Electric.
4. Both ABW Partnership and First Solar have acknowledged at the end of this letter their consent to disposing of an application to amend, should one be required, without a hearing pursuant to section 21(4)(b) of the *Ontario Energy Board Act, 1998*, and request that the Board so proceed on the basis that no person other than the applicant will be adversely affected in a material way by the outcome of the application.

We would appreciate the Board's timely attention to this matter. The parties plan to close the first of the Project transfers shortly.

We request that the Board direct all communications in respect of this matter to:

Rupert Legge  
Secretary  
**PLUTONIC ABW HOLDINGS INC.**  
Suite 600, 888 Dunsmuir Street  
Vancouver, British Columbia  
V6C 3K4  
Phone: 604-678-6744  
E-Mail: rlegge@alterrapower.ca

Vimal Chauhan  
Senior Vice President, Portfolio  
**GE ENERGY FINANCIAL SERVICES**  
800 Long Ridge Road 4260E  
Stamford, Connecticut 06927-4000  
U.S.A.  
Phone: 203-228-5223  
E-Mail: vimal.chauhan@ge.com

Danielle Waldman, Associate  
**GOWLING LAFLEUR HENDERSON LLP**  
Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto, Ontario  
M5X 1G5  
Phone: 416-369-6182  
E-Mail: Danielle.Waldman@gowlings.com





### Conclusion

We trust that the clarifications provided in this letter are of assistance to the Board, and we look forward to the Board's early advice on how it will proceed.

Yours truly,

  
Ian Mondrow

cc: Rupert Legge, Plutonic ABW Holdings Inc.  
Vimal Chauhan, GE Energy Financial Services  
Marc Adler, GE Energy Financial Services  
Julie Doherty, Board Staff

The undersigned confirm their agreement with this letter:

**FIRST SOLAR DEVELOPMENT  
(CANADA), INC.**

By: 

Name:

Title:

**ABW SOLAR GENERAL PARTNERSHIP**  
by its partners:

**GE ENERGY FINANCIAL SERVICES  
ABW SOLAR COMPANY**

By: \_\_\_\_\_

Name:

Title:

**PLUTONIC ABW HOLDINGS INC.**

By: 

Name: *Rupert Legge*

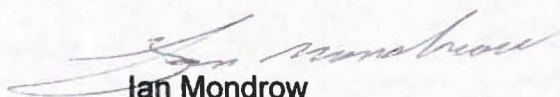
Title: *SECRETARY & DIRECTOR*



### Conclusion

We trust that the clarifications provided in this letter are of assistance to the Board, and we look forward to the Board's early advice on how it will proceed.

Yours truly,

  
Ian Mondrow

cc: Rupert Legge, Plutonic ABW Holdings Inc.  
Vimal Chauhan, GE Energy Financial Services  
Marc Adler, GE Energy Financial Services  
Julie Doherty, Board Staff

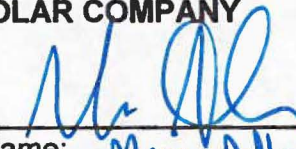
The undersigned confirm their agreement with this letter:

**FIRST SOLAR DEVELOPMENT  
(CANADA), INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ABW SOLAR GENERAL PARTNERSHIP**  
by its partners:

**GE ENERGY FINANCIAL SERVICES  
ABW SOLAR COMPANY**

By:  \_\_\_\_\_  
Name: Marc Adler  
Title: Vice President, Legal

**PLUTONIC ABW HOLDINGS INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**  
**COMMERCIAL OPERATION DATES**

1. Belmont Solar 1: Commercial Operation Date declared on January 25, 2013.
2. Belmont Solar 2: Commercial Operation Date declared on January 25, 2013.
3. Walpole Solar 1: Commercial Operation Date declared on February 22, 2013.
4. Walpole Solar 2: Commercial Operation Date declared on February 22, 2013.
5. Amherstburg Solar 1: Commercial Operation Date estimated to be March 1, 2013.



**SCHEDULE B**  
**FILED IN CONFIDENCE**

**LICENCEE OWNERSHIP**

**CONTENT REDACTED**