



EB-2012-0470

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

AND IN THE MATTER OF an application by Hamilton
Solar Farm Partnership for an electricity generation
licence as a Feed-in Tariff Program participant.

By delegation, before: Adrian Pye

DECISION AND ORDER
March 14, 2013

THE APPLICATION

Hamilton Solar Farm Partnership filed an application dated December 19, 2012 with the Board under section 60 of the *Ontario Energy Board Act, 1998* for an electricity generation licence as a Feed-in Tariff ("FIT") Program participant. The applicant completed its application on January 9, 2013.

The Board posted the Notice of Application and Written Hearing for an electricity generation licence on January 25, 2013. The applicant informed the Board that it posted the Notice on its website on January 25, 2013. The Notice invited submissions from interested parties by February 15, 2013.

The Board received a submission from S. W. Henry on February 21, 2013 and Pamela Hambly on February 22, 2013. The Board noted that these submissions were filed late and the Board has accepted the submissions.

Mr. Henry filed a written submission in objection to the application based on several reasons. First, with regard to the agricultural land classification related to the land under consideration for the applicant's solar project ("Project"), the submission noted that "there may have been an apparent misinterpretation or possible misrepresentation of facts presented by the applicant during the public hearings held on June 7, 2010 and May 5, 2011." The submission also argued that the "environmental assessment did not address the issue of the Project's altering the temperature of the farmland immediately to the east (e.g. downwind) of this Project." And finally, with respect to the application, Mr. Henry submitted that granting this licence effectively "obligates the electricity users in this province with a totally unnecessary burden of \$104.9 million", on his estimate that this Project will cost the Ontario electricity users a total of \$128.5 million when the same amount of green energy can be purchased from Quebec Hydro over the twenty years for \$23.6 million. As well, Mr. Henry stated that "this Notice..without giving any reason whatsoever..has compressed the normal 30 day Notice period to just 17 days..."

With respect to the Notice of Application and Written Hearing which allowed 21 days to provide views on the application and the Board's guidelines which "allow a minimum of 30 days to submit a comment..", Ms. Hambly submitted that the "timing discrepancy warrants an explanation for the OEB's circumvention of its own guidelines." As well, Ms. Hambly commented that the approval process provides "little or no opportunity for residents to engage relevant government authorities about their concerns". She also stated that she has "serious reservations about the 200 acres concerned....the acres in question are currently productive, long-time, crop-bearing farmland."

In response to the submissions made by Mr. Henry and Ms. Hambly, the applicant filed two reply submissions on February 28, 2013.

In its response to Mr. Henry's submission on agricultural land classifications, the applicant objected to the allegation that it misrepresented eligibility. The applicant stated that it has complied with OPA's FIT eligibility requirements. The applicant further stated that its compliance with the prescribed rules is evidenced by the OPA granting to the applicant a FIT contract for the Project. As to Mr. Henry's concern with alteration of temperature, the applicant disagreed that the environmental effects of the Project have not been fully assessed. The applicant stated that all proposed renewable energy Projects are carefully considered and reviewed by the Ministry of Environment ("MOE")

before MOE issues the required approval. The applicant further stated that its compliance is evidenced by the MOE's approval of the project on May 16, 2012. With respect to the comment regarding the *Green Energy Act*, the applicant noted that Mr. Henry disagreed with the Ontario provincial policy. However, the applicant stated that it has followed and satisfied the appropriate regulatory requirements of the referenced government authorities including the requirements of the Board for an electricity generation licence. Accordingly, the applicant requested that the Board grant the applicant an electricity generation licence.

In response to Ms. Hambly's submission, the applicant disagreed with the suggestion that Ms. Hambly was not granted an opportunity to comment on the Project. The applicant stated that "at both prescribed public meetings, community members were encourage to submit feedback to the applicant which was documented and addressed in the Consultation Report required under Ontario Regulation 359/09 ("O.Reg")." The applicant also stated that "as part of the MOE review and approval process, the application was officially open for public comment on the Ontario Environmental Registry from .. November 1, 2011 to December 1, 2011..under EBR#011-4836." The applicant further stated that it has demonstrated compliance with consultation rules under the O.Reg by MOE granting the applicant Renewable Energy Approval on May 16, 2012 for the Project. With respect to agricultural land classifications, the applicant argued that it has demonstrated compliance with OPA's requirements based on the Canada Land Inventory maps posted on the OPA website. Accordingly, the applicant's compliance with the prescribed rules is demonstrated by the OPA granting the applicant a FIT contract for the Project. The applicant reaffirmed its request that the Board grant the applicant an electricity generation licence.

FINDINGS

Except for the timing issue between the Notice period and the Board's guidelines raised by Mr. Henry and Ms. Hambly, the Board finds that it is not within the scope of the matters considered by the Board when reviewing an application made by an OPA-contracted FIT Program participant for an electricity generation licence. The Board's main criteria for review in relation to the licensing of electricity generators under the FIT Program are whether the applicant has received an Ontario Power Authority (the "OPA")

Notice to Proceed or an approved OPA FIT Contract Assumption and Acknowledgment Agreement. With respect to the compressed time period for Notice of Application and Written Hearing, the Board decided that it was appropriate to adopt a shorter notice period because of the limited scope of the Board's jurisdiction with respect to a Feed-in Tariff Program participant application. Moreover, the Board was amenable to accepting the late filed submissions of Mr. Henry and Ms. Hambly.

After reviewing the application and having considered the submissions of the parties, the Board finds it in the public interest to issue an electricity generation licence to the applicant as a FIT Program participant under Part V of the Act.

IT IS THEREFORE ORDERED THAT:

Hamilton Solar Farm Partnership is granted an electricity generation licence as a Feed-in Tariff Program participant, on such conditions as are contained in the attached licence.

DATED at Toronto, March 14, 2013

ONTARIO ENERGY BOARD

Adrian Pye
Manager, Licence Applications