

Bill No. 272
2012

By-law No. A.-

A by-law to approve and authorize the execution of an Occupancy Agreement for a Ground-Mounted Automatic-Tracking Solar Photovoltaic Energy System at the Manning Drive Material Recovery Facility between London Hydro Inc. and The Corporation of the City of London.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed appropriate for The Corporation of the City of London (the "City") to enter into an Occupancy Agreement for Ground-Mounted Automatic-Tracking Solar Photovoltaic Energy Systems (the "Agreement") with London Hydro Inc., whereby the City agrees to permit London Hydro Inc. to install a ground-mounted automatic dual-axis tracking solar photovoltaic energy systems ("Solar Equipment") owned or controlled by London Hydro Inc. on land owned by the City;

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Occupancy Agreement for Ground-Mounted Automatic-Tracking Solar Photovoltaic Energy Systems to be entered into between The Corporation of the City of London and London Hydro Inc., attached as Schedule A to this by-law, is hereby approved.
2. The Mayor and the City Clerk are authorized to execute the Agreement approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council June 26, 2012

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading – June 26, 2012
Second Reading – June 26, 2012
Third Reading – June 26, 2012

APPENDIX B

Schedule "A" to By-law No.

OCCUPANCY AGREEMENT FOR GROUND-MOUNTED AUTOMATIC-TRACKING SOLAR PHOTOVOLTAIC ENERGY SYSTEMS

This agreement made as of

Between

LONDON HYDRO INC ("London Hydro")

And

THE CORPORATION OF THE CITY OF LONDON ("the Land Owner")

Whereas:

- Ontario Bill 150, *The Green Energy and Green Economy Act, 2009*, gives the Minister of Energy authority to "direct" the Ontario Power Authority to develop a "feed-in tariff program";
- Ontario Bill 150, *The Green Energy and Green Economy Act, 2009*, gives local distribution companies, such as London Hydro, the authority to own and operate certain renewable and other generation facilities (under 10 MW per site) as well as energy storage facilities;
- Under clause 3 (1) of the Ontario Assessment Act, solar photovoltaic systems are considered "*machinery for producing electric power*" and do not affect property value assessments for tax purposes; and
- The parties have agreed that London Hydro may install ground-mounted automatic dual-axis tracking solar photovoltaic energy systems ("Solar PV Equipment") owned or controlled by London Hydro on lands (the "Lands") owned by the Land Owner and more particularly described and shown in Figure 1.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

Article 1

TERM, RENEWAL and TERMINATION

1.1 This agreement shall commence on the date first mentioned above and will continue for a term consisting of two consecutive components – the first being a period for London Hydro to install the Solar PV Equipment - the second being a period of twenty (20) years commencing on the date that the Solar PV Equipment is energized and starts to produce electricity onto the distribution grid (collectively the "Term").

1.2 If the Term is extended by mutual agreement, the Land Owner may terminate this agreement at its discretion following the end of the initial Term by giving at least six (6) months written notice to London Hydro.

1.3 London Hydro may terminate this agreement at any time during the Term with sixty (60) calendar day's prior written notice for any reason in its sole discretion.

1.4 The Land Owner may terminate this agreement if London Hydro is in breach of its material obligations hereunder, which has not been cured within thirty (30) days after receipt of written notice of such breach from the Land Owner.

1.5 The Land Owner may terminate this agreement at any time prior to the end of the Term provided that the Land Owner agrees to fully compensate London Hydro for all installation, operating and removal costs associated with the Solar PV Equipment that have not been recovered previously through the revenue produced by the Solar PV Equipment. The Land Owner shall give at least three (3) months written notice to London Hydro.

1.6 Upon termination of this agreement, the Land Owner may choose one of the following options:

(a) London Hydro shall remove the Solar PV Equipment and restore the Lands to the condition it was in before the installation of the Solar PV Equipment within a reasonable time following the end of the Term, or

(b) If the Term has lasted for the full initial Term, and if London Hydro has by then earned its regulated rate of return for the Solar PV Equipment, and if London Hydro and the Land Owner are able to reach agreement on appropriate compensation to be paid by the Land Owner to London Hydro prior to the end of the Term, then London Hydro shall transfer ownership of the Solar PV Equipment to the Land Owner.

Article 2
OCCUPANCY FEES

2.1 London Hydro will pay the Land Owner the sum of \$20.00 for the Term on a gross basis. No other fees of any kind are payable, including, without limitation, any real estate taxes, occupancy costs, common costs, or utility costs.

Article 3
ACCESS TO THE LANDS

3.1 The Land Owner shall provide London Hydro, its employees and contractors reasonable access to the Lands for the purposes of installing, inspecting, maintaining, and upgrading the Solar PV Equipment and any such acts as may be reasonably necessary or incidental to the business of London Hydro.

3.2 London Hydro, so long as it performs and observes the conditions of this agreement shall peacefully hold and enjoy the use of the Lands for the purposes of Solar PV Equipment without hindrance.

3.3 The Land Owner is not required to maintain or improve the right of way to the Solar PV Equipment (including any snow clearance) except as the Land Owner, in its sole discretion, requires.

3.4 London Hydro's right of access to the Lands shall be exercised at the sole risk of London Hydro. London Hydro shall indemnify the Land Owner from all loss, claims, actions, damages, and/or liability in connection with the loss of life, personal injury, or damage to property for any occurrence upon the Lands caused by the Solar PV Equipment or London Hydro's use of same, except to the extent caused by the negligence of the Land Owner or those for whom it is in law responsible, and except for any lost profit or revenue, or for special, indirect, consequential, incidental, or punitive damages however caused, whether in contract, tort, negligence, strict liability, operation of law or otherwise.

Article 4
INSURANCE

4.1 London Hydro shall maintain property damage and general liability insurance, in which limits of public liability shall be not less than \$5,000,000.00 per occurrence.

Upon request, London Hydro shall furnish the Land Owner with a certificate of insurance indicating that the above insurance is in effect.

Article 5
ASSIGNMENT OF RIGHTS

5.1 London Hydro may assign, sublease or transfer its interest in this agreement in whole or in part without obtaining consent of the Land Owner. London Hydro will be relieved from liability under its obligations hereunder to the extent the purchaser or assignee agrees in writing to perform same.

5.2 If the Land Owner sells or transfers its interest in the Lands or this agreement, the Land Owner will be relieved from liability under its obligations hereunder to the extent that the purchaser or assignee agrees in writing to perform same. The Land Owner will obtain from any successor a covenant to London Hydro in writing acknowledging this agreement and agreeing that London Hydro shall be entitled to possession pursuant to the terms contained herein.

Article 6
MISCELLANEOUS

6.1 London Hydro will ensure that the Solar PV Equipment installation is made in accordance with all applicable laws and codes, and to good engineering practice.

6.2 London Hydro shall maintain Solar PV Equipment in a good and safe state of repair and in a clean and orderly condition and co-operate with the Land Owner in preserving the lands and other facilities used in common in a clean and safe condition.

6.3 London Hydro shall bear all costs related to the procurement, installation, maintenance, change, modification, or upgrade of Solar PV Equipment. London Hydro shall obtain any and all licences and permits as may be required by any competent authority having jurisdiction with respect to its use and operations, work, installations or modifications, in connection with the Solar PV Equipment.

6.4 London Hydro will connect the Solar PV Equipment to its electrical distribution system.

6.5 London Hydro may include signage on the Lands, which will be subject to applicable municipal approvals, and the approval of the Land Owner, not to be unreasonably withheld.

6.6 The Land Owner will not, in the sole opinion of London Hydro, do anything to degrade the performance of the Solar PV Equipment, except where permission has been granted by London Hydro, which shall not be unreasonably withheld. The Land Owner will not do anything to jeopardize London Hydro's contract with the Ontario Power Authority to generate electricity.

6.7 London Hydro is entitled to all revenue generated from the Solar PV Equipment.

6.8 London Hydro may register a notice on lease on the title to the Lands. It will remove same upon termination of this agreement.

6.9 The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this agreement.

6.10 This agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. No oral or written representation that is not expressly contained in this agreement is binding on either party. This agreement cannot be amended or modified, other than by a change made in writing, dated and executed by the parties.

Article 7
NOTICES

7.1 Any notice required or permitted to be given under this Agreement shall be sufficiently given if sent by registered mail, postage prepaid, by personal delivery, or sent by facsimile, addressed as follows:

- to London Hydro at:
London Hydro Inc.
111 Horton Street
P.O. Box 2700
London, Ontario
N6A 4H6
Attention: Executive Offices
Facsimile: (519) 661-5052
- to the Land Owner at:
London, Ontario
300 Dufferin Ave.
P.O. Box 5035
London, Ontario
N6A 4L9
Attention: City Engineer
Facsimile: (519) 661-2354

Any notice delivered personally shall be deemed to have been received on the date of actual delivery. Any notice sent by facsimile shall be deemed to have been received on the next business day following the date of transmission. Any notice sent by registered mail shall be deemed to have been received five (5) business days after the date it was mailed. A business day as used herein shall mean any day other than a Saturday, Sunday, statutory holiday or a Civic Holiday.

IN WITNESS WHEREOF this agreement has been executed by the parties as of the date first set forth above.

LONDON HYDRO, INC

By:

By:

Name: Vinay Sharma

Title: CEO

Name:

Title:

CITY OF LONDON

By:

By:

Name: Joe Fontana

Title: Mayor

Name: Catharine Saunders

Title: City Clerk

FIGURE 1



3438 Manning Drive, London, Ontario

Part of Lots 17 and 18, Concession 6, geographic Township of Westminster (now City of London) designated as Part 1, Plan 33R-10514

PIN#08205-0066