



Bulletin

Energy/CleanTech

Ontario Launches Programs to Implement its Green Energy Act

SHARON WONG

The Ontario government recently announced a number of new regulations and programs to give effect to some of the major components of the *Green Energy and Green Economy Act* (the *Green Energy Act*) which was introduced earlier this year (see our February 2009 *Blakes Bulletin on Energy/Environmental Law/CleanTech*). The aim of the *Green Energy Act* is to provide the legal platform to establish an attractive investment climate for green power developers, provide certainty for the market, and make Ontario a leader in renewable energy and energy conservation in North America.

As of September 24, 2009, the following key features of the *Green Energy Act* have been implemented:

- Canada's first feed-in electricity tariff program will begin accepting applications as of October 1, 2009;
- the new Renewable Energy Approval (REA) required for renewable energy projects is now available;
- the province has announced a number of incentive programs to help with the costs related to developing a renewable energy project in Ontario;
- the Renewable Energy Facilitation Office (REFO) has been established; and
- a C\$2.3-billion program for major upgrades to Ontario's electricity transmission grid is underway.

FIT PROGRAM

The feed-in tariff is a major component of the province's plan to develop green energy and jobs in Ontario. The FIT program establishes a government procurement process for electricity generated from renewable sources (wind, solar, water, bio-energy), providing standard program rules, standard contracts and standard pricing. For example, Ontario proposes to pay 13.5 cents/kWh for electricity generated from onshore wind turbines, 19.5 cents/kWh for electricity generated from offshore wind turbines, and 80.2 cents/kWh for electricity from

small residential rooftop solar facilities. The Ontario government hopes the program will attract a diverse range of renewable energy producers including homeowners, community-based and First Nations groups, and larger scale commercial generators.

The FIT Contract contains Domestic Content requirements that are intended to help foster investment, green manufacturing, construction and installation jobs in Ontario. Wind and solar projects will be required to have a certain percentage of their project costs come from Ontario goods and labour at the time they reach commercial operation. For wind, the requirement will start at 25% and increase to 50% on January 1, 2012. For micro solar photovoltaic (10 kW or smaller), the requirement will start at 40% and increase to 60% on January 1, 2011. For larger solar photovoltaic, the requirement will start at 50% and increase to 60% on January 1, 2011.

Small renewable energy projects that generate less than 10 kW of electricity have a different application process than larger commercial projects and will be administered as micro-feed-in tariff (microFIT) projects. The Ontario Power Authority (OPA) is responsible for administering FIT, and applications to the program will be accepted starting October 1, 2009.

RENEWABLE ENERGY APPROVAL

Renewable energy projects are now exempted from existing environmental approval and permitting requirements, and instead these projects are required to obtain a new comprehensive Renewable Energy Approval (REA). The REA integrates two existing environmental approval processes. Environmental impact assessment requirements under the *Environmental Assessment Act* and air quality standards under the *Environmental Protection Act* are now combined in the single REA process. This new permit or approval replaces what was largely an applicant-driven environmental assessment framework and replaces it with specific provincial rules and requirements for Wind, Solar, Bio-Energy and Water generating facilities. Some highlights of the new rules follow.

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Wind

Wind facilities generating less than 3 kW do not require an REA. Small wind facilities between 3 kWh and 50 kW must get an REA but the requirements are simplified and there is no mandatory setback requirement. Facilities generating over 50 kW require an REA, and if the facilities generate a noise level of 102 dBA or louder, they must meet a minimum 550-metre setback from buildings used by people. Where roadway noise exceeds 40 decibels, a noise study can be done to determine the appropriate distance. All turbines over 50 kW must be set back the height of the tower from properties where the landowner is not involved in the project. This can be reduced to a distance equal to the blade length plus 10 metres where there are no surrounding land use concerns. These facilities must also be set back a distance equal to blade length plus 10 metres from the right-of-way for roads and railways.

Solar

The most current form of solar electricity generation is the photovoltaic cell. Roof-Top or Wall-Mounted Solar Facilities of any size do not require an REA. However, most facilities mounted on buildings will require a municipal building permit.

Ground-mounted solar facilities over 10 kW require an REA and also require a noise study demonstrating they can meet a 40-decibel noise level (approximately the noise level experienced in a quiet office). The noise study assesses the potential noise impacts for a residence or other building due to sound emitted by the solar facility's electrical equipment.

Bio-Energy

Bio-energy facilities use organic matter (such as agricultural residues, animal manure, waste wood, wood chips and bark) to generate electricity. To qualify for an REA, the facility must use biomass, biofuel or biogas source material as defined in regulations under the *Electricity Act*.

The requirements that must be met to obtain an REA vary depending on the location of the facility, the material used to generate the electricity and the size of the facility.

Large industrial facilities will have to submit studies identifying noise, odour and pollutant impacts and how these impacts will be addressed.

Water

Water projects do not require an REA because the approach to the environmental review of waterpower projects was revised in 2008 with the introduction of the Class Environmental Assessment for waterpower projects, and water generating facilities must continue to meet those requirements. Waterpower facilities must also obtain the existing permits and approvals required from the Ministry of the Environment and the Ministry of Natural Resources.

Consultation

The REA has established requirements for public consultation and community awareness. Proponents must notify nearby landowners and the community early in the planning process, and hold at least two community consultation meetings. Proponents must also consult with municipalities and engage in consultation with aboriginal communities.

INCENTIVE PROGRAMS

Ontario has announced a number of programs to help with the costs related to developing a renewable energy project.

The Community Energy Partnerships Program

Ontario will provide grants to community groups to pay for certain development costs like feasibility, engineering and environmental studies. Co-ops, charities, not-for-profit corporations, and individual Ontarians interested in being part of developing renewable energy projects can apply for the grants.

Aboriginal Support Programs

The C\$250-million Aboriginal Loan Guarantee Program and the Aboriginal Energy Partnerships Program will support First Nations and Métis communities in renewable energy development. Aboriginal communities will be eligible for loan guarantees for up to 75% of an aboriginal corporation's equity participation in an eligible project in renewable generation and transmission projects.

The Aboriginal Energy Partnerships Program will provide support for aboriginal community energy plans, funding for feasibility studies and the development of an Aboriginal Renewable Energy Network.

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There are also two incentives to encourage participation in the FIT Program by aboriginal communities:

- reduced security payments – projects for which an aboriginal community has a 50% interest are eligible for reduced application security (C\$5,000/MW, regardless of the renewable fuel type)
- price adders – if an aboriginal community has 10% or more of an economic interest in a project, the project is eligible to receive an increased price per kWh (a “price adder”) above the standard FIT price, proportional to the level of aboriginal involvement and up to a specified maximum amount. For example, the maximum aboriginal price adder for a wind or solar PV project is 1.5 cents/kWh above the standard FIT price. (Lower price adders are available for non-aboriginal community projects where community members have 10% or more of an economic interest in the project.)

Municipal Support Programs

The Municipal Renewable Energy Program reimburses municipalities for direct costs incurred as renewable energy generation facilities are developed. Examples of eligible costs to be paid through reimbursement intended under the program could include:

- infrastructure affected by construction/installation phases of projects, including roads, drains, easements, parklands, cultural and natural heritage sites;
- traffic management;
- surface drainage to protect adjacent property and roads; and
- emergency management costs, including details respecting on-site safety and measures to ensure emergency services personnel are adequately trained.

THE RENEWABLE ENERGY FACILITATION OFFICE

Ontario has established a Renewable Energy Facilitation Office (REFO) to assist renewable energy project proponents (developers, communities and municipalities). The REFO can connect proponents with the appropriate resources in various other government ministries and agencies, and provide information relating the various government incentive programs.

TRANSMISSION UPGRADES

Ontario has given the go-ahead to Hydro One (the operator of the province’s main electricity transmission grid) to begin work on 20 transmission projects across the province. Six core transmission network upgrades are moving forward, including North-South lines from Sudbury to Barrie and Barrie to the Greater Toronto Area and an East-West line from Nipigon to Wawa. Another series of core-supporting transmission projects and distribution upgrades are also moving ahead.

Currently, constraints on transmission facilities limit the ability to connect new generation facilities (including renewable generation projects) to the transmission grid. The planned transmission upgrades will relieve some of the existing constraint and allow the province to connect more renewable generation facilities to the grid.

STAY TUNED

More details on the new regulations and program rules will become available over the upcoming weeks and months. Blakes will continue to monitor and report on Ontario’s ground-breaking renewable energy program and the business opportunities it is creating.

You can obtain additional information about the *Green Energy Act* from:

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