

# Approval Queue Eases

## Ontario Overrides Municipal Planning Controls for Green Energy

By Tiffany Tsun



**Ontario's energy** regulatory framework underwent significant changes over the past year as the Province created a new approval regime for renewable energy projects. This includes solar, wind, biomass and hydropower energy generation. Renewable energy projects were formerly subject to the same approval requirements for all other energy projects and the new streamlined process is part of the effort to encourage investment in and development of its renewable energy supply.

The recent reforms could make it easier for building owners and managers to incorporate green energy technology into building retrofits. For example, small scale energy projects, such as solar panels and wind generators, could be more easily installed on walls or roof-tops of existing buildings.

### EXISTING STATUTES AMENDED

In 2009, Ontario introduced legislative amendments to a number of statutes in order to

simplify the approval process for renewable energy projects. Changes were made to the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Planning Act* in order to establish a new integrated Renewable Energy Approval process. These amendments are consistent with the government's efforts to create a streamlined regulatory framework for renewable energy producers, and they coincided with the enactment of the *Green Energy Act, 2009*.

Prior to the amendments, a green energy project, depending on the site and nature of the project, had to obtain multiple approvals including environmental assessments, certificates of approval, and permits to take water, while municipalities could delay or block renewable energy projects using their land use control power. This decentralized energy approval process contributed to delays and increased costs for proponents, sometimes making green energy projects economically unfeasible.

Now, the new integrated process for renewable energy projects establishes a single approval regime (at least at the provincial level) managed by the Ministry of the Environment. As a result, renewable energy projects are mostly exempted from the approval process under the *Environmental Assessment Act* and are no longer subject to land use controls passed under Part V of the *Planning Act*, such as municipal Official Plans and zoning by-laws.

One of the objectives of the integrated approval system is to remove the procedural barriers that can hinder green energy production from large-scale renewable energy development such as cogeneration and bio-energy generation. The new regime eliminates a patchwork of local approval requirements, while ensuring that some important environmental protections remain in place. The Province has also created the Renewable Energy Facilitation Office, which it promotes as a "one-window access point for information on renewable energy project requirements."

Applications for Renewable Energy Approval must still be supported by the required documents. Ontario Regulation 359/09 defines these as reports on project description, construction plans, consultation, design and operations reports, decommissioning plans and any additional reports required, depending on the renewable energy sources.

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**EXEMPTIONS, INCENTIVES,  
REMAINING OBSTACLES**

Other noteworthy implications of the statutory changes include the following:

• **Exemption from Approval Process for Certain Projects**

Exempted projects include wind turbines generating power output of 3 kilowatts (kW) or less and solar panels with a power output of 10 kW or less. Under the *Green Energy Act, 2009*, certain renewable energy projects have been designated as priorities, including roof or wall-mounted solar photovoltaic (PV) installations, roof or wall-mounted solar thermal air and water heating systems and ground source heat pumps. The designation has the effect of further exempting these energy projects from any approval requirements outside the renewable energy approval regime.

• **Cost Recovery through Feed-in Tariff Programs**

One of the most prominent elements of the *Green Energy Act*, is the government's FIT program for procuring new renewable energy generation. Renewable energy producers have the opportunity to sell excess power at guaranteed rates over long-term contracts. This includes two separate streams for generators with power output greater than 10 kW and the microFIT program for generators with output of 10 kW or less.

The Ontario Power Authority (OPA) now issues contracts to purchase power from successful applicants at guaranteed rates for 20 years or 40 years for water power projects. Previously, the Province had procured new renewable energy sources by issuing requests for proposals to large-scale producers and through the Renewable Energy Standard Offer Program (RESOP) from small-scale generators. The new FIT program allows proponents to develop new renewable projects on their own initiative rather than in response to the province's periodic requests for proposals, and it offers above-market tariff rates as a stimulus to green energy generation development.

Aside from this new approval regime, renewable energy projects remain subject to other approvals from federal requirements and municipal building code requirements.

Individual proponents also must work with local energy distributors to meet connection obligations for electricity transmission under the Electricity System Approval process. Additional approval requirements outside the renewable energy approval could also apply depending on the location of the property. **PMR**

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