



Proposed Mandatory Energy Conservation Planning for Public Agencies

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A proposed regulation under *Ontario's Green Energy Act, 2009* would require "public agencies" including municipalities, hospitals, universities and schools to report their annual energy consumption and greenhouse gas emission. The proposed requirement is part of the provincial government's effort to demonstrate the leadership role government can play in energy conservation.

Mandatory and Phasing in Reporting Requirements

The proposed regulation will likely be in place before the upcoming fall provincial election. In May 2011 the Ministry of Energy posted a description of the proposed regulation on the Environmental Registry for public comments before Ministry staff prepares the text of the final regulation.

Prescribed public agencies would be responsible for developing and implementing three-year energy conservation plans for designated facilities. These plans would include a "high level" description showing how the organization expects to conserve energy, as well as a forecast of the expected results. The first report would be due on July 1, 2013 and would require prescribed agencies to report on energy consumption and greenhouse gas emission using 2012 data. The second report would be due on July 1, 2014 and would require agencies to develop energy conservation and demand management plans covering a three-year period. These organizations would then have to prepare a new three-year plan on July 1, 2017.

Public comments from the Association of Municipalities of Ontario indicate a general support for the proposed regulation. One of the Association's recommended suggestions is to extend the planned frequency of updating the energy plans from three to five years to reduce the cost impacts of the regulatory burden.

Municipalities will have to report on the following facilities: offices, libraries, arts and culture facilities, emergency medical services, fire and police services, community centres, arenas, indoor pools, multi-use recreational complexes, public works/transit garages, water pumping stations, and wastewater and water treatment plants. Other agencies, including universities/colleges, schools and hospitals, would also be required to report on their facilities.

Integrated Provincial Process for Renewable Energy Approval

Ontario's energy regulatory framework has undergone significant changes in recent years as the province created a new approval regime for renewable energy projects, examples of which include solar panels, wind turbines, biomass and hydropower energy generation. Renewable energy projects were formerly subject to the same approval requirements for all other energy projects. The introduction of a new approval regime for green energy introduces a streamlined process and is part of the province's effort to encourage investment in and development of its renewable energy supply.

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*,⁽ⁱ⁾ the *Ontario Water Resources Act*⁽ⁱⁱ⁾ and the *Planning Act*⁽ⁱⁱⁱ⁾ 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 coincided with the enactment of the *Green Energy Act, 2009*.^(iv)

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

The new integrated process for renewable energy projects creates 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*^(v) and are no longer subject to land use controls passed under Part V of the *Planning Act*,^(vi) 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 hindered 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.^(vii)

Pursuant to the *Green Energy Act, 2009*^(viii) the province created the Renewable Energy Facilitation Office to be the "one-window access point for information on renewable energy project requirements."^(ix) Applications for Renewable Energy Approval must be supported by the required documents. Ontario Regulation 359/09 sets out the required supporting documents, including reports on project description, construction plans, consultation, design and operations reports, decommissioning plans and any additional reports required, depending on the renewable energy sources.

Green Energy Opportunities for Public Agencies

The recent changes to the approval process have presented new opportunities for public agencies interested in greening their property portfolios. The streamlined approval process in Ontario reduces the cost and time required to obtain the necessary permission to implement renewable energy projects. Implementing renewable energy projects may help property managers achieve higher ratings for their buildings under third-party "green building" certification such as LEED EB:O&M^(x) and BOMA BEST.^(xi) Other noteworthy implications of the statutory changes include the following:

1. Exemption from Approval Process for Certain Projects

Property owners now will find it easier to install certain small-scale renewable energy projects as they have been exempted from the Renewable Energy Approval requirements. Exempted projects include wind turbines generating power output of 3 kW or less and solar panels with a power output of 10 kW or less.^(xii) Under the *Green Energy Act, 2009*,^(xiii) certain renewable energy projects have been designated as priorities.^(xiv) These sources include roof or wall-mounted solar photovoltaic (PV) installations, roof or wall-mounted solar thermal air and water heating systems and ground source heat pumps.^(xv) The designation has the effect of further exempting these energy projects from any approval requirements outside the renewable energy approval regime.

2. Cost Recovery through Feed-in Tariff Programs

Property owners may be able to recover the cost of implementing their projects by participating in the Feed-in Tariff (FIT) program. One of the most prominent elements of the *Green Energy Act, 2009*^(xvi) is the government's FIT program for procuring new renewable energy generation. Renewable energy producers have the opportunity to sell excess power to the province at guaranteed rates over long-term contracts.

Under the *Green Energy Act, 2009*,^(xvii) the Ontario Power Authority (OPA) is responsible for administering the FIT program for generators with power output greater than 10 kW and the microFIT program for generators with output of 10 kW or less. While the rules and tariff rates differ, under both programs the OPA issues contracts to purchase power from successful applicants at guaranteed rates for 20 years (40 years for waterpower 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 businesses to develop new renewable projects on their own initiative rather than in response to the province's periodic requests for proposals.^(xviii) It also offers above-market tariff rates as a stimulus to green energy generation development.

Other Requirements besides Renewable Energy Approval

It should be noted that aside from the new approval regime, renewable energy projects remain subject to other approvals from federal requirements and municipal building code requirements. Individual proponents must work with their local energy distributors for making interconnections in order to satisfy obligations for electricity transmission under the Electricity System Approval process. Furthermore, additional approval requirements outside the renewable energy approval may apply depending on the location of the property.

As can be seen from the above, this new integrated approval regime presents some significant opportunities for property owners, but with some complexity. It is recommended to anyone who is considering applying for renewable energy approvals to consult with their legal and other advisers to determine site-specific requirements.

(i) R.S.O. 1990, c. E-19.

(ii) R.S.O. 1990, c. O-40.

(iii) R.S.O. 1990, c. P-13.

(iv) S.O. 2009, c. 12, Sched. A.

(v) R.S.O. 1990, c. E-18.

(vi) R.S.O. 1990, c. P-13.

(vii) Green technology installations remain subject to certain provincial legislation and local requirements depending on the property location.

(viii) S.O. 2009, c. 12, Sched. A.

(ix) For more information, visit: http://www.mei.gov.on.ca/en/energy/renewable/index.php?page=refo_office

(x) Leadership in Energy and Environmental Design for Existing Buildings: Operations & Maintenance.

(xi) Building Owners and Managers Association Building Environmental Standards.

(xii) O. Reg. 359/09, s. 8.

(xiii) S.O. 2009, c. 12, Sched. A, s. 5.

(xiv) See Green Energy Act, 2009, S.O. 2009, c. 12, Sched. A., s. 5 and O. Reg. 15/10.

(xv) O. Reg. 15/10.

(xvi) S.O. 2009, c. 12, Sched. A.

(xvii) Ibid.

(xviii) For more information on the FIT and microFIT rules and tariff rates, visit: <http://fit.powerauthority.on.ca/>

About the author



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Tiffany Tsun joined WeirFoulds as an associate after articling with the firm. She practises in a broad range of litigation matters with a focus on municipal and land use development law. She has experience appearing before various tribunals, the Ontario Court of Justice and the Superior Court of Justice. Tiffany studied urban planning at the University of Waterloo prior to her legal studies. Before joining the firm, she worked in provincial and federal government agencies dealing with land use and environmental management.