

Approval Queue Eases: Ontario Overrides Municipal Planning Controls for Green Energy

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Over the past year, Ontario's energy regulatory framework underwent significant changes 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. Small scale energy projects, such as solar panels and wind generators, can be easily installed on walls or roof-tops of existing buildings. The recent statutory reforms provide incentives for property managers, real estate industry players, businesses and homeowners to incorporate green energy technology into building retrofits. This article highlights significant aspects of the new approval regime so that one may benefit from these statutory changes.

Integrated Provincial Process for Renewable Energy Approval 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*,¹ the *Ontario Water Resources Act*² and the *Planning Act*³ 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*.⁴ 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*⁵ and are no longer subject to land use controls passed under Part V of the *Planning Act*,⁶ 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.⁷ Pursuant to the *Green Energy Act, 2009*⁸ the province created the Renewable Energy Facilitation Office to be the "one-window access point for information on renewable energy project requirements."⁹ 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.

Opportunities for Property Owners The recent changes to the approval process have presented new opportunities for building owners and managers interested in greening their property portfolios. The streamlined approval process 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&M¹⁰ and BOMA BESt. ¹¹ Other noteworthy implications of the statutory changes include the following:

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.¹² Under the *Green Energy Act, 2009*,¹³ certain renewable energy projects have been designated as priorities.¹⁴ 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.¹⁵ 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

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*¹⁶ 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*,¹⁷ 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.¹⁸ 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 your 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 that anyone considering applying for renewable energy approvals to consult with their legal and other advisors to determine site-specific requirements.

1. R.S.O. 1990, c. E-19.

2. R.S.O. 1990, c. O-40.

3. R.S.O. 1990, c. P-13.

4. S.O. 2009, c. 12, Sched. A.

5. R.S.O. 1990, c. E-18.

6. R.S.O. 1990, c. P-13.

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

8. S.O. 2009, c. 12, Sched. A.

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

10. Leadership in Energy and Environmental Design for Existing Buildings: Operations & Maintenance.

11. Building Owners and Managers Association Building Environmental Standards.

12. O. Reg. 359/09, s. 8.

13. S.O. 2009, c. 12, Sched. A, s. 5.

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

15. O. Reg. 15/10.

16. S.O. 2009, c. 12, Sched. A.

17. *Ibid.*

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

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