

September 25, 2009

More pieces of the Green Energy Act puzzle fall into place

Ontario is several steps closer to implementing its *Green Energy Act* (GEA). On September 24, 2009, the Ministries of the Environment and Natural Resources adopted the streamlined approval and permitting processes necessary to expedite dozens of wind, solar, biomass, biogas and other prescribed renewable energy projects across the province. The province also established a one-stop Ontario Renewable Energy Facilitation Office to get projects off the ground faster, finalized its feed-in tariff program to ensure the long-term financial stability of renewable energy projects, and launched two funding programs for First Nations and Métis communities interested in developing and owning renewable energy facilities. Finally, the province set domestic content requirements to ensure at least 25 per cent of wind project costs and 50 per cent of large solar project costs would benefit Ontario-sourced goods and labour.

REA requirements for renewable energy projects

The MOE's final Renewable Energy Approval (REA) Regulation (O. Reg. 359/09), under the *Environmental Protection Act*, follows a similar format to the draft posted earlier this summer for public comment although a number of technical provisions have been revised. It sets out the minimum setbacks for wind energy projects, ensures a six-month service guarantee per project, and integrates all the former regulatory approval requirements into one neat "complete submission" package. This includes municipal planning approvals, environmental assessments, Certificates of Approval, permits to take water and other provincial approvals and permits.

Additional authorizations will be required for projects situated on prescribed protected properties, heritage sites or archaeological resources. A natural heritage assessment, including a records review, a site investigation, the evaluation of significant natural features and confirmation that MNR has reviewed the findings, is also required. Projects situated within a prescribed distance from a lake, stream or seepage area must undertake a water assessment. There are also additional notification and sign-off requirements for projects situated on the Niagara Escarpment.

O. Reg. 359/09 also requires at least two pre-project consultation meetings with the local residents, as well as with any Aboriginal groups with constitutionally protected aboriginal or treaty rights that may be adversely impacted by the project. Formal consultation with municipalities and local authorities is also required. Despite the fast-track approach, the province insists that projects will be developed in a way "that is protective of human health, the environment, and Ontario's cultural and natural heritage."



Wind facilities generating 3 kilowatts (kW) or more and ground-mounted solar facilities over 10 kW will require a REA. The approval requirements for bio-energy projects (thermal treatment, anaerobic digestion, biofuels and landfill gas) depend on the facility location, the organic material employed and facility size (less than or greater than 500 kW). Large industrial facilities will have to submit studies identifying noise, odour and pollutant impacts and how these impacts will be addressed. Water power projects do not require an REA; they are covered by the Class Environmental Assessment for water power projects adopted in 2008.

Setbacks for wind turbines and other projects

The mandatory 550 metre setback for all wind turbines that was initially proposed in the draft regulation has been softened. Wind facilities generating over 3 kW, but less than 50 kW, will require a REA; however, the approval requirements are simplified and there are NO mandatory setbacks. Wind facilities over 50 kW generating a noise level of 102 dBA or louder must meet a minimum 550-metre setback from buildings used by people, such as a residence. (However, the 550 m setback rule can be avoided if the proponent can show ambient noise levels already exceed 40 dBA and the turbines won't exceed the lowest hourly ambient levels measured or calculated.) The setback distance increases from there depending on the number of turbines at a site and the collective noise produced; however, these setbacks need not apply if the proponent submits a report prepared in accordance with the MOE's "Noise Guidelines for Wind farms", dated October 2008.

All turbines over 50 kW must be set back the height of the tower from properties where the land owner 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. Additional setbacks for prescribed natural heritage features may also apply in certain circumstances.

Offshore wind facilities will require an REA. No province-wide standard setbacks have been established at this time, with each application to be reviewed based on the local situation. Applicants will need to conduct noise studies, and demonstrate they can meet a 40 decibel level, identify any negative impacts to the natural environment, and explain how they will mitigate any impacts.

Most farm-based anaerobic digestion facilities will also have to be set back at least 250 metres from buildings used by people. However, facilities that can meet a set of best management practices to mitigate potential odour and other impacts may qualify for a reduced setback of 125 m.

Additional setback provisions have been set for classes of renewable energy projects set within prescribed distances from a variety of natural heritage features and water bodies, including significant areas of natural and scientific interest (ANSIs), significant wetlands (northern, southern and coastal), significant valleylands, significant woodlands, significant wildlife habitat, provincial parks & conservation



reserves, lakes, permanent and intermittent streams, seepage areas, and trout lakes designated by MNR. In some cases, these setbacks can be reduced if a proponent prepares an environmental impact study and shows how monitoring and mitigation measures may mitigate any negative impacts that have been identified. Additional requirements have been set for projects to be located in the Greenbelt or on the Oak Ridges Moraine.

Transition requirements

Transition provisions will cover renewable energy projects currently in the approvals pipeline. Those that have already obtained the required Certificates of Approval and permits will not require an REA and will not be subject to the new rules. In addition, certain classes of wind facilities that have an Ontario Power Authority contract and have issued a Notice of Completion at the time the regulation is made can continue with the environmental assessment process and are required to apply for a Certificate of Approval. They must, however, comply with the 550 metre minimum noise setback, and the new property and road setbacks will apply.

More details on the REA process are contained in a series of fact sheet available on MOE's renewable energy webpage at www.ene.gov.on.ca/en/business/green-energy/. In addition, a *Renewable Energy Approval Guide* should be available in early October.

Protection of agricultural lands

There had been some concern raised about the siting of renewable energy projects on prime agricultural lands. Ontario will direct the Ontario Power Authority (OPA) that there is to be no ground-mounted solar procurement above 100 kilowatts on Class 1 and 2 or Specialty Crop Areas. Some ground-mounted solar procurement, up to 500 megawatts, will be allowed on Class 3 lands, as allocated on a regional basis.

MNR's approval process

The Ministry of Natural Resources has adopted with only minor revisions its own Approvals and Permitting Requirements Document, which also circulated for public comment earlier this summer. MNR has clarified the relationship between the MOE's REA Regulation and their approval document. The ministry also revised MNR's requirements for projects not subject to REA, removed the requirements for water power facilities (which are no longer covered by the new approvals process), and clarified how the MNR requirements apply to projects on Crown land and those on private property. Finally, MNR acknowledged that there may be additional requirements in Ontario's Far North based on the Far North Planning Initiative.



Apparently the Environmental Registry posting attracted a large number of comments related to topics and concerns “outside of the MNR’s mandate”. Among these were calls for more research on the purported health effects of wind turbines, the financial impact of projects on property values, and the potential noise from wind turbines.

Review of Crown land releases

One potential hiccup in the approval process: MNR has launched a review of its waterpower and windpower site release policies and procedures to ensure that they align with the direction provided for in the *Green Energy Act* and with the new approval process for renewable energy projects. Until the review is completed, the window for applications for Crown land will remain closed. The ministry has posted an announcement about the one-year review on the Environmental Registry, including links to its current site release and Crown land disposition policies and procedures.

Renewable Energy Facilitation Office

The newly created Renewable Energy Facilitation Office (REFO), an umbrella body with no regulatory responsibilities, will help guide Ontarians through the approvals and Feed-In Tariff (FIT) processes. Mandated to provide information to renewable energy developers, communities, and municipalities, REFO will also set up coordinated orientation meetings to discuss project requirements and act as a liaison between stakeholders and Ontario's ministries and agencies.

Domestic content rules

The domestic content rules appear to reflect similar requirements placed on stimulus projects south of the border and ensure at least some development dollars are spent at home. Developers 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. And for larger solar PV, the requirement will start at 50% and increase to 60% on January 1, 2011.

Feed-in tariffs set

The FIT program offers long-term price guarantees for renewable electricity generators. These can range from 10.3 cents per kilowatt-hour for landfill gas projects (larger than 10 MW) to 80.2 c/kWh for residential solar rooftop projects (10 kW or smaller). The FIT also includes a "price adder" for Aboriginal and community projects to encourage participation. The tariffs are intended to cover total project costs and provide a reasonable rate of return over a 20-year contract (40 years for waterpower). The Ontario



Power Authority will begin accepting FIT applications on Oct. 1, 2009, and expects to sign the first contracts in early December.

Support for First Nations involvement

To ensure the province's First Nations and Métis communities share in the job creation and economic development opportunities, Ontario is launching two new programs to maximize their participation in renewable energy projects. The \$250 million Aboriginal Loan Guarantee Program will allow communities to assume equity participation in renewable generation and transmission projects. The program will provide loan guarantees for up to 75 per cent of an Aboriginal corporation's equity in an eligible project. In addition, the Aboriginal Energy Partnerships Program will create an Aboriginal Renewable Energy Network and provide funds for the development of community energy plans, feasibility studies, technical research and business cases.

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