

## energy law bulletin

October 2009

### ready, set, apply: Ontario launches the feed-in tariff program

On October 1, 2009, the Ontario Power Authority ("OPA") began accepting applications for the province's new feed-in tariff program ("FIT"). Under FIT, operators of renewable energy projects ("Generators") can be paid anywhere from 10.3 to 80.2 ¢/kWh for the electricity their projects feed into the provincial energy grid.

FIT, which is enabled under the *Green Energy and Green Economy Act, 2009*, features simplified rules, price schedules and contracts. Generators that successfully secure a FIT contract ("Contract") will be paid a set price for electricity over a 20-year period (40 years in the case of waterpower projects). These long-term price guarantees are designed to increase investor confidence and generate funding for renewable energy projects. As a result, FIT is expected to encourage billions of dollars of investment into Ontario's renewable energy sector.

The program is divided into two streams: FIT for projects that generate more than 10 kilowatts ("kW"); and microFIT for projects that generate 10 kW or less. MicroFIT is designed to encourage homeowners and small businesses to participate in the program. For this reason, it features a simplified application and contract issuance process as compared to FIT.

#### Rates

Under FIT, the OPA will pay the Generator for every kWh of electricity that its project feeds into the provincial energy grid. The price per kWh is set to cover the project's costs and allow for the Generator to earn a reasonable return on investment. The exact price per kWh, therefore, depends on the size of the project and the renewable energy it employs. For example, an on-shore wind project will receive 13.5 ¢/kWh as compared to the 53.9 ¢/kWh for electricity generated by a large, rooftop solar photovoltaic ("PV") project.

Projects that qualify as "Aboriginal" or "Community" projects, however, can earn even more money per kWh ("Price Adder"). To qualify for the Aboriginal Price Adder, an Aboriginal Community (as defined in the FIT Rules) must hold at least a 10% economic interest in either: a) the entity that applies for the Contract; or b) the entity that will supply the electricity under the Contract ("Aboriginal Participation"). The Price Adder increases in relation to the level of a project's Aboriginal Participation. For example, a wind project with 50% Aboriginal Participation is entitled to the full Price Adder (1.5 ¢/kWh), whereas a similar project with 40% Aboriginal Participation is entitled to only 80% of the full Price Adder.

The Community Price Adder is similar to the Aboriginal Price Adder. However, it is available only to projects where Community Investment Members hold at least a 10% economic interest in either: a) the entity that applied for the Contract; or b) the entity that will supply the electricity under the Contract. Community Investment Members are:

- a. one or more individuals resident in Ontario;
- b. a registered charity with its head office in Ontario;
- c. a not-for-profit organization with its head office in Ontario; or
- d. a "co-operative corporation", all of whose members are resident in Ontario.

It is hoped that the Price Adders will encourage a significant number of Aboriginal and community-based renewable energy projects.

## Domestic Content

FIT is also designed to foster growth in Ontario's green manufacturing, construction and installation sectors. For example, it requires PV projects and large wind projects to include a minimum amount of goods and services from Ontario (the "Requirement"). The Requirement levels, which increase over time, range from 25% domestic content (for large wind projects with commercial operation dates before 2012) to 60% domestic content (for solar PV projects with commercial operation dates after 2010).

The Contract includes a grid of designated activities (the "Grid") that count towards fulfilling a project's Requirements. The Grid indicates, for example, that using wind turbine blades that: a) have been cast in a mould in Ontario; and b) include instrumentation assembled in Ontario, will qualify as a project having 16% domestic content. Some Generators have expressed concern, however, that the Grid does not provide a sufficiently comprehensive list of the goods and services that could count towards fulfilling a project's Requirements, and that early movers have not been provided with any transition period or grandfathering provisions.

## Launch Period

Generators interested in applying for FIT should act quickly. Applications received between October 1, 2009 and November 30, 2009 (the "Launch Period") have the advantage of being considered Launch Applications. Launch Applications receive priority over applications submitted after the Launch Period in securing access to the province's finite amount of connection capacity ("Capacity"). As Capacity may be limited in certain areas of Ontario, there is a significant advantage to submitting an application during the Launch Period.

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### a cautionary note

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