

Jun 21, 2019

Amendments to Ontario's Renewable Energy Facility Regulations

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On May 31, 2019, the Ontario government published two new regulations relating to renewable energy facilities. The first - O. Reg. 121/19: Transitional Matters - Renewable Energy Generation Facilities - made under the *Planning Act*, provides clarity on the authority of municipal planning authorities to regulate the siting of operational and in-progress renewable energy generation facilities. The second - O. Reg. 122/19: Renewable Energy Approvals Under Part V.0.1 of the Act - made under the *Environmental Protection Act*, amends the Renewable Energy Approvals regulation to add eligibility requirements related to electricity demand. The effect of the new regulations is to allow in-progress renewable energy projects to proceed, while adding new requirements for the approval of new renewable energy projects.

O. Reg. 121/19: Transitional Matter - Renewable Energy Generation Facilities

In December 2018, the Ontario government passed the *Green Energy Repeal Act, 2018* (see here), which amended the *Planning Act* to repeal exemptions that existed for renewable energy undertakings from most land use planning instruments and restore municipal planning authority related to the siting of renewable energy generation facilities. One issue that arose with the passage of this Act was the lack of transitional provisions leaving it up in the air how operational and in-process renewable energy facilities would be treated.

The new regulation provides clarity to this issue by stating that these facilities will be exempt from municipal siting approval, provided that one of the following conditions are met.

1. The facility has been issued with a renewable energy approval prior to June 1, 2019;
2. The facility is the subject of a contract with IESO under the Feed-in Tariff (FIT) Program, microFIT Program, Large Renewable Procurement, Renewable Energy Supply Program or Renewable Energy Standard Offer Program that was entered into before June 1, 2019, and that no party to the contract has exercised a right to terminate the contract before then; or
3. The construction or installation of the facility began before June 1, 2019, and will be completed before August 31, 2019.

The types of undertakings that are impacted include built facilities and eligible projects that are in-development, ranging from large scale wind and solar projects to smaller scale bioenergy or ground-mounted solar projects.

With respect to the expansion of existing projects, if an existing renewable project undertakes a change involving a geographic extension onto an adjacent property (beyond that set out in the approval or licence), the change would be subject to municipal planning authority. However, expansion within the same parcel or parcels of land on which the generation facility is presently situated will enjoy the same exemption from municipal siting approval.

O. Reg. 122/19: Renewable Energy Approvals Under Part V.0.1 of the Act

In Ontario, renewable energy approval is needed for large wind, solar or bio-energy projects. The Renewable Energy Approvals (REA) Regulation, O. Reg. 359/09, outlines criteria for applicants to get a renewable energy approval. O. Reg. 122/19 amends the REA Regulation to require project developers of new facilities to submit written confirmation from local municipal authorities indicating that the proposed use of land at the project location is not prohibited by a zoning by-law or zoning order under the *Planning*

Act. This confirmation will need to be provided in order for applicants to be eligible to apply for or receive a renewable energy approval.

The written confirmation must be prepared by:

1. Each local municipality where the project is located, or
2. Each planning board that has jurisdiction in the area, or
3. The Ministry of Municipal Affairs and Housing if the project location is situated in an area without municipal organization or a planning board.

These changes apply to new renewable energy projects as well as changes to existing facilities that would increase their name plate capacity and include expansion to a different parcel of land than the one in respect of which the prior approval was granted.

In addition, the new regulation prohibits the issuance of an approval unless the person who proposes to engage in the project submits documentation demonstrating that “there is demand for the electricity that is proposed to be generated at the renewable energy generation facility.” The regulation prescribes the types of documentation needed. These changes to the REA regulation mean that current and future applicants for renewable energy approvals will need to show that the proposed project fulfils a need for the electricity produced.

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