



North America's First Feed-in Tariff: Ontario's *Green Energy and Green Economy Act, 2009*

by Danielle Waldman

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The Government of Ontario introduced the *Green Energy and Green Economy Act, 2009* (the "Green Energy Act") to attract new investment, create new "green" economy jobs and better protect the environment. As of September 9, 2009, most of the *Green Energy Act* was proclaimed in force in order to facilitate the development of Ontario's "green" economy and to increase the presence of renewable energy generation and conservation as a way of life for Ontarians. While the *Green Energy Act* is a provincial initiative, it is groundbreaking for Canada, as it will set a standard for other provinces to follow in the future, and it will facilitate the introduction of the first feed-in-tariff program in North America. The *Green Energy Act* presents a rare suite of new business opportunities for companies to become involved in the development of Ontario's generation, transmission and distribution systems, among others, at the ground level.

Development of a Smart Grid

One of the main tenets of the *Green Energy Act* is the commitment of the Ontario government to the comprehensive development of a smart grid. A "smart grid" is a modern electricity system that enables two-way flows of electricity and information. It uses sensors, monitoring, communications, automation and computers to improve the flexibility,

security, reliability, efficiency and safety of the electricity system. The *Green Energy Act* provides regulators with the power to pass regulations to govern and implement the smart grid, with particular reference to the time frame for the development of the smart grid, assigning roles and responsibilities for the development of the smart grid and prescribing standards for communications and other aspects of the operation of the smart grid.

The job of developing the smart grid concept across the province will be vested in transmitters and distributors. Every transmitter or distributor will be required to submit to the Ontario Energy Board (OEB), the province's energy regulator, plans for the development and implementation of the smart grid in its system. Each transmitter and distributor will have, as a condition of licence from the OEB, a responsibility "to make investments for the development and implementation of the smart grid in relation to the licensees' transmission system or distribution system."

The Ontario Smart Grid Forum's report, released in February 2009, suggested that a key part of achieving the benefits of a smart grid would be through distributed and renewable energy. The launch of a smart grid will greatly enhance the reliability of Ontario's electricity system, provide

real choices to consumers and enable new opportunities in energy, ranging from opening the door to expanded distributed generation to facilitating the broad use of electric cars in the years to come.

The economic development potential created by smart grid technologies is considerable. According to a recent study prepared by Gridwise, a \$16 billion investment over the next four years will trigger smart grid projects worth \$64 billion, creating 420,000 direct and indirect jobs. For further information about the various opportunities related to smart grid, see www.smartgridlaw.com.

Ontario's Feed-In-Tariff Program

The Ontario Power Authority (OPA) is the local agency responsible for planning and procuring electricity supply, ensuring the reliability of electricity resources in Ontario, and facilitating the diversification of Ontario's energy supply, among other things. Pursuant to the *Green Energy Act*, the Minister of Energy and Infrastructure (Ontario) (the Minister) is provided with the ability to direct the OPA to develop a feed-in-tariff (FIT) program designed to procure energy from renewable energy sources, under the circumstances, conditions and other factors, including the period, as the Minister may require. A FIT program is a program for procurement; it includes a procurement process and provides standard program rules, standard contracts and standard pricing for various classes of generation facilities, as differentiated by energy source or fuel type, generator capacity and the manner by which the generation facility is used, deployed, installed or located.

As of October 1, 2009, the OPA began accepting applications for the FIT program. To be eligible to participate in the FIT program, a proposed generating facility must

- be a renewable generating facility,
- be located in the Province of Ontario,
- meet the contract capacity requirements (no more than 50 MW in the case of waterpower projects and 10 MW in the case of solar (PV)),

- in the case of solar (PV) projects that are not rooftop facilities and that have a contract capacity greater than 100 kW, not be located on certain classes of lands,
- not be an existing generating facility (although some limited exceptions apply for upgrades and expansions),
- connect to a distribution system or other similar facility, and
- not have had a power purchase agreement in respect of the facility.

The OPA shall have no responsibility to independently assess the viability of any application or project, and therefore any potential developers should determine the viability of a project prior to the submission of an application.

The term of the FIT contract is for a period of 20 years, or in the case of a waterpower project, a period of 40 years. The FIT program establishes long-term pricing for electricity delivered from projects. The pricing is based on the renewable fuel, the contract capacity and, in certain cases, the category of applicant or other project characteristics. The pricing is intended to cover development costs, plus a reasonable rate of return, for projects meeting certain assumptions relating to cost and efficiency. The pricing, in Canadian dollars, is dependent on the renewable fuel in question and the size of the project.

For wind and solar projects, the FIT program will require that the projects achieve a minimum level of domestic content. The domestic content level for a facility will be calculated as of the commercial operation date. The minimum percentage for the domestic content will be set out in each FIT contract, as applicable. The standard terms and conditions of the FIT contract and the pricing are available at the OPA's website at www.powerauthority.on.ca.