

The wind blows another way for renewable energy in Ontario

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In this Update

- The Government of Ontario published two regulations — [O. Reg. 121/19: Transitional Matters – Renewable Energy Generation Facilities](#) and [O. Reg. 122/19: Renewable Energy Approvals Under Part V.0.1 of the Act](#) (together, the Regulations)
- These regulations provide clarity on the authority of municipal planning authorities to regulate the siting of operational and in-progress renewable energy generation facilities
- O. Reg. 121/19 provides that operational and in-progress renewable energy generation facilities will remain exempted from municipal siting approval, provided that one of several conditions are met
- O. Reg. 122/19 establishes new requirements for the renewable energy approval (REA) required under Part V.0.1 of the *Environmental Protection Act* for new renewable energy generation facilities
- The Regulations usher in changes that will significantly impact the quantity and kind of renewable energy projects that can be developed in Ontario, and who has a say in which projects go forward

On May 31, 2019, the Government of Ontario published two regulations under the *Planning Act* and *Environmental Protection Act* (EPA) — [O. Reg. 121/19: Transitional Matters – Renewable Energy Generation Facilities](#) and [O. Reg. 122/19: Renewable Energy Approvals Under Part V.0.1 of the Act](#) (together, the Regulations) — which provide clarity on the authority of municipal planning authorities to regulate the siting of operational and in-progress renewable energy generation facilities, and the conditions for the approval of new renewable energy generation facilities.

O. Reg. 121/19: Transitional Matters – Renewable Energy Generation Facilities

Under the former *Green Energy and Green Economy Act, 2009*, proponents of renewable energy generation facilities were not required to secure land-use approval from municipal planning authorities regarding the siting of such facilities. Following the passing of the *Green Energy Repeal Act, 2018* — which restored municipal planning authority to ensure that new renewable energy proposals would only be able to proceed in municipalities that are willing hosts — it was uncertain whether operational and in-progress renewable energy generation facilities would remain exempted from municipal siting approval or whether those facilities would now be subject to municipal planning authority, potentially triggering the need for

planning amendments.

Proponents and other persons with an interest in operational and in-progress renewable energy generation facilities now have clarity through Ontario's adoption of O. Reg. 121/19, which provides that such facilities will remain exempted from municipal siting approval, provided that one of the following conditions is met:

1. The facility has a current renewable energy approval which was issued before June 1, 2019;
2. The facility is subject to a contract with the Independent Electricity System Operator (IESO) under one of the following programs, which was entered into before June 1, 2019, and no party to the contract has exercised a right to terminate the contract before that day:
 1. Feed-in Tariff (FIT) Program;
 2. microFIT Program;
 3. Large Renewable Procurement;
 4. Renewable Energy Supply Program (i.e. RES I, II or III procurements);
 5. Renewable Energy Standard Offer Program (RESOP); or
3. The construction and installation of the facility began before June 1, 2019, and will be completed before August 31, 2019.

In addition, if a renewable energy generation facility is subject to an extension, alteration, renovation, or addition that will take place on the same parcel or parcels of land on which the renewable energy generation facility is presently situated, those facilities will also continue to enjoy the benefit of an exemption from municipal siting approval. However, if a facility undertakes a change involving a geographic expansion onto an adjacent property, the project change would be subject to siting approval by the relevant municipal approval authority.

O. Reg. 122/19: Renewable Energy Approvals Under Part V.0.1 of the Environmental Protection Act (EPA)

Ontario Regulation 122/19 establishes new requirements for the renewable energy approval (REA) required under Part V.0.1 of the EPA for new renewable energy generation facilities, or changes to existing facilities, that would increase their name plate capacity by making a change on a different parcel of land than the one in respect of which the prior approval was granted.

Any REA applications for a new renewable energy generation facility will need to include written confirmation that the proposed facility will not violate any zoning by-laws or zoning order under Part V of the *Planning Act* from the following bodies:

1. Any local municipality in which the project location is situated.
2. Any planning board that has jurisdiction in an area without municipal organization in which the project location is situated.
3. The Ministry of Municipal Affairs and Housing, if the project location is situated in an area without municipal organization, and no planning board has jurisdiction in respect of that location.

In addition, the regulation prohibits the issuance of new REAs unless the project proponent submits documentation demonstrating that there is "demand for the electricity that is

proposed to be generated at the renewable energy generation facility.” Proof of demand for electricity can be established by submitting certain types of documentation prescribed by O. Reg 122/19.

Commentary

The Regulations usher in changes that will significantly impact the quantity and kind of renewable energy projects that can be developed in Ontario, and who has a say in which projects go forward.

Operational and in-progress renewable energy generation facilities, as well as extensions, alterations, renovations or additions to facilities that take place on the same parcel of land on which the project is presently situated, will effectively be “grandfathered in,” and will continue to enjoy the benefit of the exemption from municipal siting approval and existing renewable energy approvals under Part V.0.1 of the EPA. This approach recognizes the substantial investments that proponents, ranging from individual homeowners to large facility owners, have committed to their projects to date.

On the other hand, the power of municipal approval authorities to determine whether new renewable energy generation facilities should be permitted under their land use authority or whether existing facilities should be permitted to undergo a geographic expansion, is now restored. These changes may make it more difficult to gain approval to build land-based new renewable energy projects and make changes to existing projects, since municipalities will effectively have a veto power over whether such projects are entitled to proceed within a given municipality’s territorial boundaries. For the solar power industry, this may practically limit significant further development opportunities in Ontario to rooftop and other building-integrated solar installations for the near term.

Furthermore, for proponents seeking to construct new renewable energy generation facilities larger than 500 kW, O. Reg 122/19 presents a potentially significant new barrier in its requirement to demonstrate that there is demand for the electricity that is proposed to be generated by a renewable energy project. Since Ontario presently has a surplus in baseload electricity supply^[1], and since larger-scale renewable energy projects have historically been sited in rural or remote locations, typically far from large power consumers, this requirement will likely pose significant challenges to any new large-scale renewable energy projects proposed to be constructed in Ontario in the near term.

[1] This is not to be confused with dispatchable electricity generating *capacity*, for which the IESO forecasts some growing needs in the coming years associated with planned nuclear unit retirements and refurbishments.