



120 Adelaide Street West  
Suite 1600  
Toronto, Ontario M5H 1T1  
T 416-967-7474  
F 416-967-1947  
[www.powerauthority.on.ca](http://www.powerauthority.on.ca)

August 28, 2012

**VIA EMAIL:** [BoardSec@oeb.gov.on.ca](mailto:BoardSec@oeb.gov.on.ca)

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Requirements under the Ontario Power Authority - Licence  
Ontario Energy Board ("Board") File No. EB-2010-0220**

---

On July 11, 2012 the Ontario Power Authority received a directive from the Minister regarding the Feed-in Tariff Program Launch. I am writing to provide you with a copy of the directive, in accordance with the Ontario Power Authority's Licence (EO-2010-0220), Section 7 *Provision of Information to the Board*, item g) *provide the Board with any directions to the Licensee from the Minister, whether contained in a Ministerial directive or other document.*

Please find two copies enclosed. The directive may also be accessed from the OPA's website at: <http://www.powerauthority.on.ca/about-us/directives-opa-minister-energy-and-infrastructure>

Yours truly,

(original signed)

Miriam J. Heinz  
Regulatory Coordinator

encl

cc: Michael Lyle, General Counsel and Vice President, OPA  
Jennifer Lea, Counsel, Special Projects, OEB

**Ministry of Energy**

Office of the Minister

4<sup>th</sup> Floor, Hearst Block  
900 Bay Street  
Toronto ON M7A 2E1  
Tel.: 416-327-6758  
Fax: 416-327-6754

**Ministère de l'Énergie**

Bureau du ministre

4<sup>e</sup> étage, édifice Hearst  
900, rue Bay  
Toronto ON M7A 2E1  
Tél. : 416 327-6758  
Téléc. : 416 327-6754



**JUL 11 2012**

MC-2012-1992

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
1600–120 Adelaide Street West  
Toronto ON M5H 1T1

Dear Mr. Andersen:

**RE: Feed-in Tariff Program Launch**

The draft program rules and contract documents posted by the Ontario Power Authority in April yielded thousands of comments and insightful suggestions from stakeholders which were carefully reviewed and considered. The government's broad policy objectives of enhancing community and municipal participation, strengthening protection of prime agricultural lands and improving project siting as articulated in the FIT Review Report and my Direction of April 5, 2012 remain unchanged. However, the valuable feedback received through the public consultation phase has helped to inform me of opportunities to define and provide clarity to certain policies and make minor adjustments to the program rules and contract, where warranted.

**Direction**

Pursuant to the authority I have, as Minister of Energy, under sections 25.32 and 25.35 of the *Electricity Act*, 1998, I hereby direct the Ontario Power Authority (OPA) to continue the Feed-in Tariff (FIT) and microFIT programs developed pursuant to the direction issued September 24, 2009 and amended by the April 5, 2012 direction subject to such further amendments as may be required in order to implement the policies set out below:

**Encouraging Greater Community and Aboriginal Participation**

The OPA shall amend the FIT Program Rules by prioritizing applications through a modified points system in accordance with the document set out in Appendix A.

With respect to the contract capacity set-aside for projects with greater than or equal to 50 per cent community or Aboriginal equity participation provided for in the Minister's Direction dated April 5, 2012, the set-aside shall be available for projects with greater than 50 per cent community or Aboriginal equity participation as follows: Within any FIT application window, the OPA shall prioritize over any other applications that obtain prioritization points in accordance with Appendix A the applications of those projects that have a greater than 50 per cent community equity interest held by a co-operative in which at least 50 or more members are local property owners, or greater than 50 per cent Aboriginal equity

.../cont'd

participation in the project. The OPA shall offer contracts to these projects before offering contracts to other projects in the application window.

During the term of the FIT Contract, with respect to any facility that has received priority in accordance with the preceding paragraph, a change shall be prohibited if that change would (i) result in the Aboriginal community or community equity interest held in the project by an Aboriginal community or a community being reduced to 50 per cent or less or, (ii) in the case of a community project, the number of local property owners who are members in the co-operative drops below 50. The FIT Contract shall provide that, if such a prohibited change takes place from the contract effective date and during the term of the contract, it shall constitute a ground for termination of the contract. The OPA shall provide a cure period of six (6) months where a FIT Supplier experiences an event of default contemplated in clause (i) of this paragraph. The default shall only be cured in the case of a default described in clause (i) where the Supplier obtains equity participation from an entity which is in the same category of entity as the prior entity and the equity interest held by the new entity is greater than 50 per cent.

The OPA shall provide a cure period of six (6) months where a FIT Supplier experiences an event of default related to a change in the membership of its co-operative only if the Supplier discovers and reports the default to the OPA within twelve (12) months after the change in membership occurs. The default shall only be cured if the number of co-operative members is restored to a level that would have resulted in the same or a greater number of priority points being awarded to the Supplier, or in the case of an event of default contemplated in clause (ii) of the preceding paragraph, the membership of the co-operative who are local property owners is increased to a minimum of 50.

The OPA shall provide a cure period of six (6) months where a FIT Supplier experiences an event of default related to a drop in Aboriginal or community equity participation to a level below 15 per cent. The default shall only be cured where the Supplier obtains equity participation from an entity which is in the same category of entity as the prior entity and where the same or greater number of priority points as would have been awarded to the Supplier if the new entity had held an equity interest when the priority points were awarded.

The OPA shall provide a cure period of six (6) months where a FIT Supplier that was awarded prioritization points for having an education/health equity participation level of a minimum of 15 per cent or having an education/health host experiences an event of default related to a loss of the project's host or a reduction in equity participation to a level below 15 per cent. In the case of either type of default, the default shall only be cured where the FIT Supplier obtains equity participation or a new host such that if the equity participation or new host had been in place at the time the priority points were awarded, the same or greater number of priority points would have been awarded to the Supplier.

.../cont'd

The OPA shall amend the Community Energy Partnership Program eligibility requirements to align with the eligibility requirements for community projects under the FIT Rules as amended according to the April 5, 2012 direction. I further direct the OPA to allocate a total of not more than \$1 million annually for education funding and capacity building. Of that amount, \$100,000 shall be allocated to the Association of Municipalities of Ontario for education and outreach initiatives.

### **Protecting Agricultural Lands**

The OPA shall not enter into FIT contracts for ground-mounted solar photovoltaic generation facilities greater than ten (10) kW, or amend an existing FIT contract for a facility greater than ten (10) kW to relocate the facility location, where those facilities are proposed to be located on or relocated to a site that contains:

- Land with any Class 1, 2 and 3 soils as they appear on the Canada Land Inventory Agricultural Capability Maps published by the Ontario Ministry of Agriculture, Food and Rural Affairs and Agriculture and Agri-Food Canada, unless the site is located on one of the following:
  - An airport or aerodrome indicated on the municipal official plan in effect at the time the FIT application was made;
  - A closed landfill indicated on the municipal official plan in effect at the time the FIT application was made;
  - A contaminated site that meets the following definition as of the time the FIT application was made:
    - The site is located on a property that has undergone a phase 2 site assessment and as of the date of the phase 2 assessment, did not meet the standards that must be met under the *Environmental Protection Act*, s.168.4(1)4i;
  - An industrial site zoned primarily for industrial use where the solar project is a secondary use to an existing industrial use; or
  - A federal military installation as indicated on the municipal official plan in effect at the time the FIT application was made.
  - In the case of land with Class 3 soils only, land that was owned by a municipality at the time the FIT application was made, as evidenced by a land registry title search.

In which case the OPA may enter into a FIT contract, subject to any other approval that may apply.

- Land with a mix of Class 1, 2 or 3 soils with another soil class unless the solar facility is located on the non-Class 1, 2 or 3 soil portion of the property as evidenced by a soil study that involves a standardized methodology and peer review.
- Land comprised of organic order soils as it appears on the Canada Land Inventory Agricultural Capability Maps published by the Ontario Ministry of Agriculture, Food and Rural Affairs and Agriculture and Agri-Food Canada.
- Specialty Crop Areas within the meaning of the Provincial Policy Statement as amended from time to time.

.../cont'd

The foregoing land restrictions shall not apply to existing FIT contract holders who submitted requests for site amendments prior to the issue of the April 5, 2012 Minister's direction.

### **Strengthening Land Use Rules**

The OPA shall not amend an existing FIT Contract for a facility greater than ten (10) kW to relocate the facility location where those facilities are proposed to be relocated on property that:

- Is zoned to permit residential use or borders a property zoned to permit residential use,
- Is zoned for commercial or industrial use but where no such use is occurring, or
- Is zoned for commercial or industrial use where the solar ground-mounted PV generation facility is or will be the main or primary purpose for which the property is used.

The Ministry of Energy shall establish a working group comprised of a number of interested stakeholders, including the OPA, that will provide further recommendations to address project siting concerns. Specifically, the Working Group will advise on alternative options related to ground-mounted solar PV projects on rural zoned lands with multiple primary uses and rural/agricultural zoned lands with abutting residential uses. Subject to the working group's ability to arrive at solutions that are acceptable to the Ministry and the Minister, further revisions will be made to the FIT Rules.

### **Clarifying Transmission and Distribution**

The OPA shall revise the FIT Rules to provide for a limit for non-hydroelectric projects with respect to the distance between a project's connection point on the existing transmission or distribution grid and the land within the project's location to which the applicant has access rights at the time of application.

The OPA shall not enter into a FIT contract where the proposed project is located 50 km or more from its proposed connection point on the existing transmission or distribution grid according to the measurement in the preceding paragraph.

### **microFIT 'Offer to Connect' Timelines**

To provide sufficient time for LDCs to process Offer to Connect requests from microFIT applicants, the OPA shall amend the microFIT Rules to require microFIT applicants to seek an Offer to Connect within 30 days of the OPA confirming the application is complete. This period shall be prior to a 90 day period for an applicant to receive and accept an offer to connect from its LDC.

.../cont'd

### **Changes to the FIT Contract**

The OPA shall not create additional termination for convenience clauses in the new FIT contract. Existing clauses in FIT 1.0 addressing termination for convenience shall remain part of the FIT 2.0 contract.

The OPA shall extend the voluntary withdrawal period for existing FIT contract holders to September 30, 2012.

For rooftop solar facilities, the OPA shall continue to set the Milestone Date for Commercial Operation as the date that is 18 months following the Contract Date, unless the project includes: (i) a portfolio of rooftop solar facilities greater than 15 MW, (ii) the applications for the projects were submitted during the same application window, (iii) the project applications have the same applicant legal name, and (iv) the 15 MW worth of contracts must be awarded and executed during the same contract award period, in which case the OPA shall set the Milestone Date for Commercial Operation as the date that is 36 months following the Contract Date.

### **Pilot Program for Rooftop Solar Projects on Un-constructed Buildings**

The OPA shall design a pilot stream within the FIT program whereby applicants with un-constructed buildings could apply for small FIT rooftop solar contracts. In order to allow time to develop program rules and contract for the pilot stream, the OPA shall implement the pilot stream by the end of 2012. The OPA shall reserve up to 15MW of the total small FIT contract capacity in 2013 for the pilot stream and may renew the pilot in subsequent years.

### **General**

This direction supplements previous directions related to the FIT Program, the microFIT Program and FIT Support Programs and replaces provisions of these previous directions only to the extent that a particular provision of this direction is inconsistent with a provision of a previous direction.

This direction takes effect on the date issued.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Bentley', with a long horizontal flourish extending to the right.

Chris Bentley  
Minister



## APPENDIX A

### PRIORITIZATION TABLE

Applicant Type	Points
A project in which a local community has a minimum 15% equity interest held by a co-op with, in the case of large FIT projects, 50 or more property owners who live in the municipality where the project is located. In the case of small FIT projects, a project in which a local community has a minimum 15% equity interest held by a co-op with 35 or more property owners who live in the municipality where the project is located.	3
A project in which an Aboriginal community has a minimum 15% equity interest	3
A project in which publicly-funded schools, public colleges, public universities, hospitals and publicly-owned long-term care homes have a minimum 15% equity interest or that are a project host	2
Other Applicants	0
<b>Additional Points</b>	
Local Municipal Council Support Resolution	2
Aboriginal Community Support Resolution	2
Project Readiness (Maximum of 2 points)	2
<ul style="list-style-type: none"> <li>Applicants for wind, solar ground-mount, bioenergy and waterpower projects on Aboriginal Reserve, Federal land or private land have sufficient space for the project and a firm lease, firm option to lease/purchase, or ownership of the land</li> <li>Solar rooftop applicants either own the host building or if they do not own the host building have proof of firm site control in the form of a firm lease or option to lease</li> </ul>	1
Projects that applied on or before July 4, 2011.	1
Projects that applied on or after July 5, 2011.	0.5
System Benefit (water and bioenergy)	1

Priority between projects that have an equal number of points shall be determined based on each project's timestamp.

The OPA shall not offer a project a FIT contract if the project does not have at least one (1) prioritization point.

A publicly-owned long term care home is a municipal home, joint home or First Nations home as provided for under the *Long Term Care Homes Act, 2007*, S.O. 2007, c.8.