

MicroFIT: An Introduction



By Thomas Brett, Partner

Introduction

On September 24th, in conjunction with the FIT Program, the Ontario Government announced the MicroFIT Program ("MicroFIT"), a streamlined, user friendly version of the FIT Program for individuals, small businesses, and communities. A community can be a not for profit corporation, a co-op, an institution such as a church or school, or simply a group of individuals. MicroFIT is for small renewable generation, up to 10 kw in size. To be eligible for a MicroFIT Contract, the generator must be renewable, have its own meter, be capable of being connected to a local distribution grid (in other words, not "off-grid"), and have a "nameplate" (manufacturer's total installed rated capacity) capacity of 10 kw or less. In addition, it must not have an existing OPA Contract (although this may change). It can be an addition to an existing renewable generator by the same owner with same technology, using the same connection point and metering, provided the combined facility is under the 10 kw ceiling.

Price

The OPA will pay the 80.2 cents per kilowatt hour for power from small scale solar photovoltaic generation, and 13.5 cents for power from wind machines, for a contract period of 20 years. Power from water, biomass, and landfill gas will receive 13.1 cents kwh, 13.8 cents kwh, and

11.1 cents kwh, respectively, for 20 years, except water power, which gets a 40 year contract. The base prices are fixed for 20 (40) years. In addition, twenty percent (20%) of the revenue from the generator is indexed to the Consumer Price Index annually, except for solar photovoltaic facilities.

Organizing Your Project

You can participate in the MicroFIT in one of at least four ways:

- owning your own equipment and your own project
- leasing equipment for your project
- leasing your property, for example, your roof, to a renewable energy developer
- developing a project with others in your neighbourhood.

If you develop your own project, whether you own or lease the solar equipment, you will receive monthly payments from the electricity you generate from your local electricity distributor (eg. Toronto Hydro, in the City of Toronto) on behalf of the Ontario Power Authority ("OPA"). Most people who want to own their own project should consider hiring an installer, much as you would hire a contractor to install a new furnace or central air conditioner. The installer will purchase and install the equipment, obtain a building permit, and when construction is complete, approval from the Electrical Safety Authority, and work with the local distributor to ensure the facility is properly connected to the electricity grid. In some cases, the equipment vendor will also be the installer. You will need to insure the facility normally by an adder (rider) to your home insurance.

If you lease your roof to a solar developer, you will receive the lease payments you agree to with that developer. The developer or his assignee will own the solar PV generator and be paid for the power it produces. The developer/owner would hold the FIT Contract, pay the operating costs, and, likely carry the insurance on the project. He or the contractor (if they are different parties) will also be normally responsible for obtaining a building permit. Some developers may aggregate a large number of small projects to lower installation costs, and then, once commercial

operation has occurred, to sell the facilities to third party investors upon completion of construction. You will be asked to assign your roof lease to that third party.

Eligibility

The Contract Holder

The holder of the MicroFIT Contract must be the same entity that has the local distributor's facility account, which is separate from the distributor's account for the building's electricity consumption, and which signs the connection agreement with the distributor. If an entity other than the owner of the roof ends up owning the facility, it will need to take assignment of these agreements.

Connection with the Distributor

The distributor must allow the MicroFIT generator to connect to its system, provided the generator meets its Conditions of Service, which are approved by the Ontario Energy Board. The connection agreement is a standard one, entitled the Micro-Embedded Generation Facility Connection Agreement, which is part of the Distribution System Code, a set of legal rules developed and administered by the Ontario Energy Board ("the OEB" or "the Board"), which governs the relationship between the regulated electricity distribution companies ("LDCs") and their customers. The Board will also ensure that any account or administration charges the LDCs impose on connecting generators are reasonable. The costs of connection to the grid are borne by the generator, and must be included in your project budget. The LDC will provide an estimate of these costs and you will contract to pay them as part of the Connection Agreement. The actual construction work will be done by the LDC. MicroFIT generators can be connected to the LDC either directly or indirectly, and if indirectly, either in parallel, or in series. For most MicroFIT-eligible generators, indirect connection, that is, connection to the grid, through the building's existing electrical connection facilities will be cheaper than direct connection.

Canadian Content for Solar Projects

For solar PV projects that achieve commercial operation on or before December 31, 2010, the minimum required Ontario content level is 40%. For all other projects, the minimum is 60%.

The MicroFIT program rules set out 5 activities, with the number of points attributed to each. Compliance with each activity is an "all or nothing" proposition; in other words, to count the number of points for a particular activity against the requirements, the applicant must perform all the components of the activity, as listed in the regulation. A table describing each activity and the allocated points is reproduced from the MicroFIT Rules in Attachment A. Before signing a contract with an equipment supplier or installer, you need to obtain a confirmation from them (in binding legal form) that the solar PV facility meets the domestic content criteria. The government is determined to create solar manufacturing jobs in Ontario, one of the stated purposes of the Green Energy and Green Jobs Act, so these rules will likely be strictly enforced.

Process for Obtaining a MicroFIT Contract

- To begin the process, the applicant must register on the OPA's MicroFIT website. You will then receive your MicroFIT home page, accessible only by username and password.
- Applications are made online. The basic applicant and project information required is set out in an OPA document entitled "Renewable Energy/Micro feed-in tariff program" on the OPA website – MicroFIT section. A second document, entitled MicroFIT Program - Program Overview, may also be helpful.
- If the application is complete, and your project is determined to be eligible, the OPA will issue you a "conditional offer of MicroFIT Contract". This offer will become a firm offer to contract once you satisfy the conditions in the offer.
- The conditions are straightforward:
- You must comply with the MicroFIT rules (the key rules are in this article but you or your legal advisor should consult the document entitled MicroFIT Rules, September 24, 2009, Version 1.0, found on the OPA website).
- Your project must be connected to a distribution system with proper metering.
- Your project must comply with Ontario content requirements (see above).

- You must provide the OPA with your LDC connection details and formally accept the offer to contract.
- The conditional offer is valid for 12 months and cannot be transferred to another person or other legal entity. The conditional offer should be sufficient to allow you to obtain a loan for the project from your banker, provided you have good credit and a reasonable relationship.
- The conditional offer in hand, you then apply to your local distribution company for connection. The LDC must renew your application and make you an offer to connect within 15 days, provided your application is completed (see above cited documents for contents of the application to connect).
- You will work directly with your local distributor throughout the project.
- If you decide to proceed, you will probably hire a qualified contractor, if you have not already done so, and need to apply for a building permit.
- Construct the facility.
- Complete, as a condition prior to connection with the grid, a safety inspection with the Electrical Safety Authority. If you are using a qualified installer, this inspection should not be problematic.
- Complete your connection to the grid, including the payment for any outstanding connection costs incurred by the distributor.
- Once your connection to the grid is complete, the LDC will inform the OPA and the OPA will make a final offer of contract.
- The effective contract start date will be the connection date if you accept the offer within 15 days or the later of the connection date or the first day of the LDC's settlement period, if you take longer than 15 days to accept (my emphasis).

Payment Mechanism

The LDC will pay for the electricity you produce on behalf of the OPA according to its regular billing schedule of your LDCs (normally either monthly, bimonthly, or quarterly). You remain responsible for paying for all the electricity your home or business consumes, including the various non-commodity charges including transmission and distribution, regardless of whether the electricity was provided by the MicroFIT generator or the LDC.

Other Issues:

Taxes

In assessing the tax impact of developing a MicroFIT project, you must consider three taxes:

- GST/PST/Harmonized sales taxes, on both the sale of the electricity and the purchase of the generation equipment;
- Income tax or income received on the revenue the project generates, as well as any income tax deduction of the operating expenditures and capital cost allowances for the installed equipment; and
- Property tax on your building. As with any home improvement, a renewable generation facility may increase the assessed value of your property.

GST

So long as the contract value of the electricity sold to the OPA in any 12 month consecutive period is less than \$30,000, and the vendor is not GST registered, the sale of electricity would not be subject to GST, due to the "small supplier" exemption. However, the sale of electricity constitutes a "taxable supply" and is normally subject to GST at 5%, so if the value of the electricity sold exceeds \$30,000 annually, and the vendor is GST registered, it would have to collect GST. Second, the purchase of solar panels, invertors, other hardware and costs of installation would be subject to GST. However, if the person who acquires solar panels, equipment and installation services is registered for GST purposes, such person could claim an input tax credit against the GST that such person pays on the sale of electricity. An individual not registered for GST purposes should do so.

PST

There is an exemption from PST on the sale of "electricity for all purposes", so the owner would pay no PST on the sale of electricity to OPA.

Solar panels, invertors and other related equipment could possibly be purchased by a property owner on a PST-exempt basis using the exemption for "manufacturing and processing equipment". However, manufacturers or producers of electricity (other than utilities) are excluded from being eligible for the "manufacturing and processing equipment" PST exemption. There is, however, an exception for certain "small" manufacturers and producers of electricity who may be able to purchase such equipment on a PST-exempt basis if the total fair value of tangible personal property (e.g electricity) sold by such person in a fiscal year is less than \$5,000 or where the fair value of tangible personal property manufactured for such person's own use is less than \$50,000 in a fiscal year.

Where the solar panels, invertors and other equipment become fixtures when installed on a person's real property and where such equipment is acquired from a contractor who installs such equipment as a fixture, it is the contractor who is subject to and who would pay PST on the equipment, not the customer. Presumably the PST incurred by the contractor on acquiring such equipment would be priced into and passed along to the property owner as part of the total contract price for the equipment and installation.

HST

Commencing July 1, 2010, PST will be eliminated and instead will be "harmonized" with the GST as part of a combined federal/Ontario sales tax at the rate of 13% (i.e. 5% GST, plus 8% Ontario sales tax). It is expected that the HST consequences will be the same as the analysis above concerning GST except that the rate will be 13% instead of 5%.

Income Tax

The homeowner or the small business would both be considered to be in the business of generating power, and the revenue received under the FIT Contract will be taxable income. The

operating and interest costs of the facility would be deductible and the capital cost allowance can be taken, on the accelerated basis provided under the income tax act for renewable energy assets.

Conversion from "Net Metering Project"

Net Metered Projects that are under the 10 kw threshold may be converted into MicroFIT projects.

Environmental Attributes

All environmental attributes, such as renewable energy certificates, carbon credits, or the like generated by the MicroFIT Contract belong to the OPA.

Environmental Approvals

Solar PV rooftop projects of 10 kw or less do not require a Renewable Project Approval. Wind projects do, if they are larger than 3 kw.

Assignment

The project owner can assign its rights and obligations under the MicroFIT Contract (for example, if the owner sells its house) with the OPA's consent, and such consent cannot be unreasonably withheld.

Amendments

Future price changes, other program amendments, or the elimination of the program do not affect the status and rights of parties that have already received a conditional offer to enter into a MicroFIT Contract. Price changes and other changes will not be retroactive.

Final Comments

While MicroFIT Projects are not large relative to FIT Projects, they can represent substantial sums of money for homeowners, small business owners, institutions or communities. These parties should retain independent legal and accounting advice to assist them with the installer's contract, (and FIT Contract), regulatory requirements, insurance and tax. Some LDCs may still

use connection agreements that differ from the Board approved form. Installers/Suppliers will tend to have a "standard form" contract, but it may need to be adjusted to reflect the buyer's particular circumstances and interests, and perhaps to more evenly balance the risks.

ATTACHMENT A

Designated Activity	Qualifying Percentage
1. Silicon that has been used as input to solar photovoltaic cells manufactured in an Ontario refinery.	10%
2. Silicon ingots and wafer, where silicon ingots have been cast in Ontario, and wafers have been cut from the casting by a saw in Ontario.	12%
3. The crystalline silicon solar photovoltaic cells, where their active photovoltaic layer(s) have been formed in Ontario.	10%
4. Solar photovoltaic modules (i.e. panels), where the electrical connections between the solar cells have been made in Ontario, and the solar photovoltaic module materials have been encapsulated in Ontario.	13%
5. Inverter, where the assembly, final wiring and testing has been done in Ontario.	9%
6. Mounting systems, where the structural components of the fixed or moving mounting systems, have been entirely machined or formed or cast in Ontario. The metal for the structural components may not have been pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must entirely take place in Ontario (i.e. bending, welding, piercing, and bolting).	9%
7. Wiring and electrical hardware that is not part of other Designated Activities (i.e., items 1-6 and 8 of this table), sourced from an Ontario Supplier.	10%
8. All on- and off- site labour and services. For greater certainty, this Designated Activity shall apply in respect of all Facilities.	27%
Total	100%

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