

# The Boiron Report

*"Opportunity does not knock, it presents itself when you beat down the door." - Kyle Chandler*

## Rooftop Solar Projects – What You Need to Know

By Randy Williamson and Ajeet Grover

With Ontario's passage of the *Green Energy and Green Economy Act, 2009*, there are now numerous opportunities for building owners to benefit from solar electricity generating projects, whether as a landlord leasing a rooftop to a tenant developer who will install and operate the electricity generating facility, or by developing it on your own and selling the generated electricity into the grid. The Ontario Power Authority (OPA), an Ontario government agency, offers standard 20-year contracts to qualifying solar facilities, providing a fixed price for each kilowatt hour of electricity produced (the price received depends on the project size and type). The contracts offered are part of the OPA's feed-in tariff program (FIT), one of several initiatives of the *Green Energy Act*. There has been tremendous interest in FIT, with almost 7,500 contracts and applications (for nearly 1,400 megawatts of capacity) for commercial scale rooftop solar contracts so far. As well, almost 43,000 residential and small-business owners have applied for the smaller (under 10 kilowatt capacity) contracts under FIT's sister program, microFIT. Details about the FIT and microFIT programs, including eligibility rules, pricing and contract forms, can be found at <http://fit.powerauthority.on.ca/>.

### Important Considerations

*Not every rooftop will be suitable.* In addition to being flat and relatively free of obstructions, the rooftop needs to be exposed to the sun (unshaded by other structures) and physically capable of supporting the weight of a solar array. A new or recently rebuilt roof is preferred, as it is more likely to not require additional structural support to accommodate the array, and will be less likely to require significant maintenance during the solar facility's two-decade operating period.

*Future Use Matters.* An owner must consider its future plans for the building and be satisfied that there is little likelihood of significant alteration to the building which could otherwise result in the termination of the 20-year FIT contract.

*Choosing the Right Business Model.* A build-

ing owner needs to decide whether to lease the rooftop or develop its own solar facility. A joint venture with a solar developer may also be an option, whereby the owner may invest in the project and participate in the revenue generated from the FIT contract.

### Some Leasing Issues

*Preliminary Option Agreement.* Most solar facility developers will ask a landlord to sign an option agreement permitting the developer to inspect and test the rooftop to ensure its suitability for the project. This is usually done before applying for a FIT contract. The option grants the developer the right to enter into a lease agreement with the property owner once the FIT contract is obtained.

*Tenant "Track Record".* As with any prospective "under roof" tenant, a landlord must consider the financial strength and "track record" of a rooftop tenant, particularly the long-term nature of the tenancy and the fact that the tenant will conduct testing and development and install sophisticated equipment on the rooftop of the building, potentially affecting "under roof" operations.

*Term and Rent.* The term of the lease must be at least 20 years to match the term of the FIT contract. Term renewal rights may be important, as the productive life of the solar facility may be longer than 20 years. Rent will usually be structured as a fixed, all-inclusive "gross" rent, (but may be calculated based on the square footage, energy capacity of facility, etc...).

*Financing Issues.* It is critical to the tenant that its solar facility is never treated as a building fixture, but instead is always the sole property of the tenant. This will usually require that the landlord obtain a 'non-disturbance' (to the tenant's solar facility) from its lenders. In order to obtain financing for its equipment, the tenant may also need to assign its lease as collateral security to its own lender.

*Interference.* Similarly, it will be important to the tenant that nothing blocks or interferes with sunlight reaching its solar array. Consequently, it will require a landlord covenant that it will not take any action which would have this effect.

*Repair and Maintenance.* The lease should address the possibility for roof repairs and replacement. The landlord will want the tenant

to properly maintain its solar facility to ensure it is kept safe and in compliance with laws and regulations. The tenant will want the landlord to take adequate care of the building, especially the roof, to avoid any impairment of the tenant's ability to properly operate its solar facility.

### Closing Thoughts

Rooftop solar facilities are going to be commonly seen on building rooftops across Ontario. While not all rooftops will be suitable and not all building owners will want to lease their roofs for a twenty-year period, with careful planning and attention, rooftop solar facility developments can potentially be a win-win for both building owners and solar project developers.

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