**FIT Rules, Contract and Standard Definitions**
**Feedback Submission Form**

Completed forms should be sent to FITsubmissions@powerauthority.on.ca. Please identify the section number of the rules, contract and standard definitions you are providing feedback on. Note that there are separate sections for feedback on each of these documents. Feel free to add additional rows to the form.

Note that there is a separate form for microFIT submissions – please refer to the microFIT website for more information – microFIT.powerauthority.on.ca

*Optional Information:*
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Company: Association of Power Producers of Ontario

**FIT Rules**

| Section | Feedback |
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| 11.1; 9.1 | **Pricing.** The FIT 2.0 Rules provide that the Contract Price being offered will not be known until an Offer Notice is extended. While the FIT 2.0 Rules contemplate pricing being reviewed on an annual basis, it appears that the OPA could offer a different price at the time of any Offer Notice. This approach to pricing makes it very difficult for developers to determine the pricing for their suppliers and financiers during the period between pricing reviews. If different pricing is offered than that in effect at the time of application, the applicant should be able to decline the Contract Offer and receive its Application Security back without penalty. |
| 2.1(d)(k) | **Distance to Grid Connection.** The FIT 2.0 Rules refer to a requirement that the distance between a Facility and its grid connection not exceed an unspecified distance and contain a Note do Draft suggesting there will be consultation on this issue. Since the distance to connection is fundamental to any project, this provision could be unduly restrictive. APPrO requests an opportunity to participate in any consultation. |
| 2.1(g) | **Incremental Projects.** The FIT 2.0 Rules eliminate Incremental Projects as eligible projects. It is illogical to disallow expansions of large scale wind projects, particularly since such projects will have already received local public support and be familiar to the surrounding community. |
| 2.4(b) | **Termination prior to Notice to Proceed.** The compensation payable to the Supplier in the event of Termination prior to Notice to Proceed should be broadened to match the compensation payable if the OPA terminates the contract following Notice to Proceed. Given the sole and absolute discretion afforded to the OPA to terminate, there is no rationale for the distinction in reasonable compensation to the Supplier. |

**FIT Contract**

| Section | Feedback |
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| 9.6(a) | **Termination for Convenience.** The OPA now has the ability to terminate the contract for convenience at any time after Notice to Proceed, in its sole and absolute discretion, and without any time limitation. This new provision is extremely concerning, particularly since the OPA can exercise this right even after the Commercial Operation Date. This provision should be deleted as it places too much uncertainty on both equity and debt providers. The OPA right to terminate at any time up to Notice to Proceed (a right it does not have in its non-FIT Program contracts) should be sufficient. |
| 9.6(d) | **Stop Work Direction.** The OPA would have the right, also in its sole and absolute discretion, to issue a Stop Work Direction which requires the developer to permanently cease development and construction of the Facility. It is unclear whether this right can be exercised independently of the termination for convenience right. If this is the case, a developer could find itself in the unreasonable position of having to stop work, yet not be entitled to any compensation as would be the case under a termination for convenience. The Stop Work provision should also be deleted. The termination for convenience right and Stop Work Direction undermine the stability of a power purchase agreement typically relied upon by a developer and its financiers in the planning and financing of a generation project. APPrO believes that the proposed structure of future procurements under FIT 2.0 as well as the continued right to terminate for any reason prior to granting Notice to Proceed provide sufficient protections to the OPA so that these two provisions are unnecessary, and if retained, will be a major barrier to the viability of the FIT 2.0 Program. |
| 9.1(m); 9.1(n); 17.3(b); 17.3(c) | **New Events of Default.** A further concern is several new events of default. An event of default arises if (i) before the 10th anniversary of COD, where priority points were awarded for having an Education or Health Host, the Education or Heath Host ceases to qualify as such and (ii) a project with an Aboriginal Community, Community Investment member or Education and Health organizations as equity participants (i.e. a Participation Project) ceases to qualify as such (e.g. an Aboriginal Community decides it no longer wants to hold an equity interest). Under the proposed contract, the Price Adder will be lost as has been the case previously but, more problematically, an organization over which the developer has no control, could decide to terminate its involvement or breach its commitments to the developer and trigger an event of default. This seems an over-reaching result, particularly when the FIT 2.0 Program is being described by the Ontario Government as providing expanded opportunities for Aboriginal groups and MUSH sector participation. APPrO believes these provisions will make Participation Projects more difficult to pursue. These provisions should be dropped. The loss of the relevant Price Adder should be sufficient penalty. |

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| 2.1 (b) | **Changes to the Facility.** Certain provisions relating to the development and operation of the facility have the potential to remove key decision-making power from the developer. Section 2.1(b) changes the element of reasonableness to "sole and absolution discretion" in the decision of the OPA in response to a request from a Supplier for consent to a change in a facility. This should be returned to a standard of reasonableness (as should all decisions by the OPA in relation to the FIT 2.0 Contract). As a public body, the OPA should always be obligated to act in a reasonable manner. |
| 2.5(a) | **Liquidated Damages.** Section 2.5(a) in the FIT 2.0 Contract introduces liquidated damages for each day a project does not reach its Commercial Operation milestone. In addition, provisions that previously permitted a Supplier to pay liquidated damages to extend a Term in the event of a missed Milestone Date have been deleted. The OPA should revert to the original contract provisions as a more reasonable approach. |
| Exhibit B; 1.7 | **Curtailment.** The provisions dealing with payment for curtailment have been deleted. This needs to be addressed in a manner that provides satisfactory compensation and certainty as to when these provisions may be invoked. The draft FIT 2.0 Contract simply contains a note to draft indicating that provisions that address changes to IESO market rules will amended to incorporate the IESO's SE-91. The Minister's Direction which directed the OPA to make the revisions to the FIT Program states "For new large FIT projects, the OPA shall amend the FIT contract to provide for greater generator accountability in circumstances where generation must be dispatched off". Clarity on the treatment of curtailment is required and APPrO requests an opportunity to consult with both the OPA and the IESO on this contract issue. In addition, Suppliers should be provided with the option to terminate the agreement if implementation of the IESO's SE-91 Renewable Integration initiative materially adversely affects the Supplier. APPrO wishes to have an opportunity to consult further on this issue. |
| 16.1(g) | **Merger of the OPA and IESO.** The merger of the OPA and IESO raises issues around the continued management and responsibility for existing and future contracts. At a minimum, the resulting entity should have the same credit rating and credit-worthiness as the OPA. Please clarify the OPA's understanding of this issue. In addition, the OPA will continue to have the right to assign the contract to any third party while remaining liable for payment defaults by the assignee. This assignment right raises serious concerns in light of the termination for convenience provision. If the assignment is made to a non-governmental entity, that entity should not be allowed to exercise this termination right at any time after Notice to Proceed. For existing contracts, it will be necessary to ensure that the combined OPA-IESO continues to be responsible for assignee payment defaults. Clarity on these issues will be very important to APPrO members. APPrO is reviewing the legislation on the OPA-IESO merger which was introduced on April 26 and will be making further submissions on that legislation. |