

Tapping into the power of the sun

BY PAMELA GREEN & DAVID FORGIONE

There's a new money-making opportunity for Mississauga businesses: installing and operating a solar panel "farm" on your commercial or industrial building. Forget making hay—just make money while the sun shines.

In fact, the Ontario Green Energy Act (GEA), enacted in May 2009, is currently offering financial incentives for businesses that create solar energy, among other renewable energy types.

Here's how the GEA works. It sets up a Feed-in Tariff Program (FIT) that first guarantees access to the provincially-regulated power grid, when specific regulatory requirements are met; and second, pays producers specific rates for the energy generated.

The Ontario Power Authority operates the FIT Program and is currently offering 20-year contracts to producers of renewable energy. As a result of the FIT Program, owners of commercial and industrial buildings are now being approached by solar power companies seeking to lease rooftop space to install and operate solar panel facilities.

Here are some factors for property owners when considering a solar rooftop lease:

Review existing property leases. A detailed review of existing leases should include analyzing provisions governing the use, maintenance and control of the roof, the allocation of costs between the landlord and the tenants with respect to the roof, and how a rooftop tenant would affect the management and operation of the building generally.

It's likely that leases will need changes to allow for installation and maintenance or to address tenant concerns in relation to the rooftop solar panel system's impact on the tenant's business and expenses.

Check zoning issues. Property owners will also need to consider how solar panels might impact height restrictions on the buildings on the property. Most municipalities now have specific provisions in their zoning by-laws dealing with rooftop solar panel systems.

Consider property tax implications. The Municipal Property Assessment Corporation (MPAC) has not yet set a formal policy on how to classify and assess rooftop solar facilities. However, MPAC has indicated they will likely assign an industrial classification to their use. That said, a solar panel installation may impact the tax classification and/or assessed value of your property, increasing your property taxes.

You will want to know any property tax implications, particularly where the installation results in a mix of industrial and commercial uses, where the lower rate single use formerly applied.

Load bearing capacity of rooftop. Next, determine if your roof has load bearing capacity and what type of facilities may be appropriate, given issues such as weight limitations, wind velocities, placement of existing rooftop mechanicals and the orientation of the building on the property. It's a good idea to get an engineering firm to conduct this review.

Write a lease that is customized for the specific operational requirements of your rooftop. Property owners should avoid signing a letter of intent, an offer to lease, or standard lease form before it is reviewed by their lawyers.

Any lease should address not only where the panels will be located, but also their long-term impact on the roof and the allocation of responsibility for maintaining, repairing, upgrading, replacing, and insuring the panels and the roof.

The landlord should consider indemnities for damage to the roof by the solar tenant, nuisance and insurance issues, as well as relocation and interruption clauses that limit landlord liability in the event that the roof needs to be replaced (to protect the premises of other tenants) or other circumstances that may require the relocation and interruption of the solar panel system.

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Top: A 428.4 kWp solar installation by Enfinity atop the sloped rooftop of Van Cauwenberge, a family-run lumber business in Zottegem, Belgium. Below: Enfinity solar rooftop installation atop a distribution facility of a worldwide supplier of filter systems and replacement products, Donadson located in Bruges, Belgium producing 970 kWp per year. Courtesy of Enfinity Canada Ltd.



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