

FEBRUARY 23, 2009

# ONTARIO'S *GREEN ENERGY AND GREEN ECONOMY ACT, 2009* TURBO-CHARGING RENEWABLE GENERATION AND CONSERVATION

Earlier this afternoon at Queen's Park, the Hon. George Smitherman, Ontario's Deputy Premier and Minister of Energy and Infrastructure, introduced Bill 150, the *Green Energy and Green Economy Act, 2009* ("Bill 150" or the "GEA"). Bill 150 is intended to fast track a broad range of new renewable generation facilities, to establish a culture of conservation in Ontario, and to facilitate the inclusion of First Nations and Métis communities in the "green energy economy".

The entire GEA may also be seen as a climate change initiative. Through the increased development of renewable energy projects, Ontario's overall carbon footprint may be reduced over time. This will have implications for the province's contribution to federal and other emissions reductions targets.

The *Green Energy Act* amends no less than 21 existing statutes. While many of the important details associated with the implementation of the GEA will be contained in regulations (yet to be determined), the Act contains several important themes that will affect a very broad range of stakeholders in Ontario's energy sector. An overview of highlights contained in the *Green Energy Act* includes the following:

## **Aggressive Promotion of Renewable Energy**

Bill 150 focuses upon the promotion of renewable energy generation from renewable energy sources including wind, water, biomass, biogas, biofuel, solar, geothermal, tidal forces and other sources prescribed by regulations. Bill 150 directs that a feed-in tariff regime will be introduced to guarantee rates for new renewable generation with a streamlined approach to securing project approvals.

To facilitate the development of renewable energy projects across Ontario, the Ministry of Energy will establish the Renewable Energy Facilitation Office (which becomes a new office within the Ministry).

## **A New Feed-in Tariff Program**

Schedule B of Bill 150 proposes an amendment to section 25.35 of the *Electricity Act, 1998* to enable the creation of a feed-in tariff regime, the purpose of which is to guarantee prices and help spark new investment in renewable energy generation.

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From the generator's perspective, the benefits of a feed-in tariff include the availability of a guaranteed price, buyer, and long-term revenue stream without incurring the costs involved with participating in a standard RFP process. Market access can be enhanced by feed-in tariffs, as project timing is not constrained by periodic scheduled solicitations. In addition, project completion dates may not be constrained by artificial contractual requirements, and, with the proposed amendment to section 25.36, interconnection will, subject to achieving certain technical, economic and other requirements, be guaranteed. Together, these characteristics can help to reduce or alleviate generator revenue uncertainty, project risk, and associated financing concerns.

- Under the proposed section 25.35, the Minister may direct the Ontario Power Authority ("OPA") to develop a feed-in tariff program for which only generation from "renewable energy sources" will qualify.
- The feed-in tariff program itself is a program for procurement, which includes:
  - o standard program rules
  - o standard contracts, and
  - o standard pricing

regarding classes of generation facilities differentiated by energy source or fuel type, generator capacity and the manner by which the generation facility is used, deployed, installed or located.

- The Minister has retained the power to issue directives to the OPA to set the goals to be achieved during each feed-in tariff program. Domestic content requirements and the involvement of local community members and Aboriginal peoples in the development and establishment of renewable energy projects are all identified as likely goals.

### Streamlined Approvals

The requirements to obtain permits, licences and approvals relating to environmental issues have been streamlined to remove duplication and provide a "one-stop-shop" for renewable energy project approvals. Certificates of Approval typically sought under the *Environmental Protection Act* and *Ontario Water Resources Act* (relating to air, noise, waste and sewage) do not apply to a person who is engaging in a renewable energy project. In addition, discretionary powers under the *Conservation Authorities Act* have been curtailed where permission is requested for development related to a renewable energy project.

### Distributors and the Smart Grid

Proposed amendments to the *Electricity Act, 1998* contain a definition of the "smart grid":

"the advanced information exchange systems and equipment that when utilized together improve the flexibility, security, reliability, efficiency and safety of the integrated power system and distribution systems, particularly for the purposes of,

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- (a) enabling the increased use of renewable energy sources and technology, including generation facilities connected to the distribution system;
- (b) expanding opportunities to provide demand response, price information and load control to electricity customers;
- (c) accommodating the use of emerging, innovative and energy-saving technologies and system control applications; or
- (d) supporting other objectives that may be prescribed by regulation."

Bill 150 provides for regulations governing the smart grid and its implementation, including regulations in respect of timing of its development; assignment of roles and responsibilities for its development, implementation and standardization; and prescribing communication and other standards for the smart grid. Distributors and transmitters will be required to prepare plans as required by the Ontario Energy Board (the "OEB" or the "Board") or regulation, and to file them with the Board for approval, with respect to the expansion or reinforcement of their systems to accommodate the connection of renewable energy generation facilities and the development and implementation of the smart grid in relation to their systems.

The *Ontario Energy Board Act, 1998* currently contains certain objectives by which the OEB is to be guided in carrying out its responsibilities. In the context of electricity-related activities, these include the protection of the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and the promotion of economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and the facilitation of the maintenance of a financially viable electricity industry. The proposed amendments to the OEB Act would add three more:

- To promote the conservation of electricity;
- To facilitate the implementation of a smart grid in Ontario; and
- To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

We anticipate that once Bill 150 comes into force, the Board will begin considering smart grid implementation-related issues when dealing with licensed electricity distributors' rate applications – perhaps in the context of capital budgets and asset management plans.

### **Distributor Conservation and Demand Management ("CDM") Targets**

The Minister will have the power to issue directives to the Board to set CDM targets for individual distributors and other licensees. These CDM targets will be specified as a condition of the distributor's licence. Bill 150 provides for the directives to require the Board to specify that the distributor may meet portions of the targets by contracting with the OPA or by the distributor itself after obtaining the approval of the Board for the CDM programs to be offered in its service area.

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## Electricity Distributors Permitted to Pursue Generation

The *Ontario Energy Board Act, 1998* places limitations on the business activities that may be carried on directly (as opposed to through affiliates) by electricity distributors and transmitters. These permitted activities are currently limited to transmitting or distributing electricity and providing certain services that would assist the Government of Ontario in achieving its goals in electricity conservation. However, distributors are not currently permitted to generate electricity, even in the context of promotion of conservation and cleaner energy sources. The GEA would relax this prohibition. As proposed, distributors would be permitted to own and operate:

- (a) a renewable energy generation facility that does not exceed 10 MW or such other capacity as may be prescribed by regulation and meets the criteria prescribed by regulation;
- (b) a generation facility that uses technology that produces power and thermal energy from a single source that meets the criteria prescribed by regulation; or
- (c) an energy storage facility that meets the criteria prescribed by regulation.

The ability to pursue generation gives distributors considerable new scope.

## Connection Obligations

The *Electricity Act, 1998* currently contains an obligation for a distributor to connect a building to its distribution system if the building lies along any of the lines of the distributor's distribution system and the owner, occupant or other person in charge of the building requests the connection in writing. Bill 150 proposes a mandatory connection provision for renewable energy facilities, applicable to transmitters and distributors.

The facility must be connected in accordance with the regulations, the market rules and any licence issued by the OEB if (a) the generator requests the connection in writing; and (b) the applicable technical, economic and other requirements prescribed by regulation or mandated by the market rules or by an order or code issued by the Board have been met in respect of the connection. In the case of a conflict between a regulation and an OEB order or code, the regulation will take priority.

Bill 150 also contains requirements for transmitters, distributors, the OPA and the IESO to maintain current and prospective information about distribution and transmission systems' ability to accommodate generation from renewable energy generation facilities.

Transmitters and distributors will be required to provide, in accordance with their licences, "priority connection access" to their systems for renewable energy generation facilities that meet the requirements of the regulation.

## Minister of Energy Directives

Under the GEA the Minister has various Directive powers including:

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- directing the OPA to undertake any request for proposal (competitive or non-competitive process) that relates to renewable energy, electricity demand reduction, conservation and demand management initiatives;
- specifying the pricing or other economic factors to be used by the OPA;
- directing the OPA to implement procedures for consulting First Nations, Métis and other persons;
- directing the OPA to establish measures to facilitate the participation of First Nations and Métis in developing renewable energy generation including programs and funding for First Nations to develop renewable generation;
- directing the Ontario Energy Board to establish conservation and demand management targets to be met by distributors and other licensees (such as transmission providers);
- directing the Ontario Energy Board to take necessary steps relating to the connection of renewable generation to transmitters or distributors systems.

### Objectives of Ministry of Energy

Under Bill 150, the Minister of Energy assumes an increasingly important centralizing role in managing overall energy matters within the Province of Ontario including:

- reviewing short and long-term goals pertaining to the energy and infrastructure needs of Ontario;
- advising Ontario in its dealing with other levels of governments on energy and infrastructure matters;
- making recommendations for the effective co-ordination of all energy matters in Ontario including adequacy of supplies, prices and the development of energy resources indigenous to Ontario; and
- as the Minister determines appropriate, encouraging and promoting a broad range of energy initiatives including those to increase the availability of renewable energy in Ontario.

### Paying for Conservation Programs and Renewable Generation

The Ontario Energy Board will be responsible for assessing gas and electricity distributors, the IESO or any other person prescribed by regulation regarding expenses made by the Ministry of Energy regarding its conservation or renewable energy programs under the Act. The amounts, methods and rules applied by the Ontario Energy Board will be set pursuant to regulation.

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## Accommodating First Nations and Métis Interests

As part of Bill 150's objective in developing the capacity of local communities to participate in meeting the province's electricity needs, Aboriginal communities will be provided with opportunities to build, own and operate their own renewable energy projects. To this end, the Minister may direct the OPA to establish certain measures that more easily facilitate the participation of these communities in the generation, transmission and distribution of electricity.

For example, the Minister may:

- Require that the OPA implement a consultation process with Aboriginal peoples related to the planning, development or procurement of electricity supply, capacity, transmission systems and distribution systems;
- Direct the OPA to establish programs, potentially including funding, that assist Aboriginal communities in participating in the development of their own renewable energy generation facilities, transmission systems and distribution systems; and
- Set out goals regarding the province's feed-in tariff program related to the participation of Aboriginal communities, which the OPA must incorporate when preparing the program.

## Amendments to the *Environmental Protection Act*

The notion of a "renewable energy approval" is created in the amendments to the *Environmental Protection Act* ("EPA"):

- to engage in specified activities related to a renewable energy project, a person would need to do so under the authority of, and in accordance with, a renewable energy approval issued by the Director pursuant to the EPA. Such a person will be exempt from specified approval and permit requirements. Newly created Part V.0.1 of the EPA also provides for applications for renewable energy approvals and the related Director's powers;
- where an appeal is made to the Environmental Review Tribunal ("Tribunal") of a Director's decision to issue a renewable energy approval, the Tribunal must consider whether engaging in the project approved will cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment;
- the onus of proof is proposed to be on the person requiring the hearing of the appeal and will require them to prove that engaging in the renewable energy project in accordance with the renewable energy approval will cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment.

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## Climate Change Issues

In addition to the current responsibilities of the Environmental Commissioner, the GEA would require the Environmental Commissioner to report annually to the Legislature on the progress of the activities in Ontario to reduce emissions of greenhouse gases ("GHGs"). These reports will also include a review of any published annual reports of the Ontario Government on GHG reductions or climate change.

It should be noted that the requirements of the GEA as currently proposed include reports on all major GHGs and not just carbon dioxide. This will have implications outside the energy sector where many of the non-CO2 emissions occur.

Finally, an important issue to watch as the GEA is eventually passed into law and related regulations are developed will be how environmental attributes (including GHG emission reductions) are treated as they relate to the feed-in tariff. To date, the OPA has reserved such environmental attributes to itself. In the future, developers and operators of renewable energy facilities may want to see some value and recognition for the emission reductions they help create.

## Community Energy Cooperatives

Schedule I of Bill 150 proposes several amendments to the *Co-Operative Corporations Act* that would authorize the incorporation of "renewable energy co-operatives" and support the development of new community energy projects. As part of its business, a renewable energy co-operative may establish or develop generation facilities to generate electricity produced from renewable energy sources and may promote the purchase by consumers of electricity produced from renewable energy sources.

There are no restrictions on the lawful objects of a co-operative corporation, however the proposed amendment creates a new class of "renewable energy co-operative" whose articles would restrict its business to generating and selling electricity produced from "renewable energy sources."

While a co-operative corporation is granted all of the powers of a natural person, a co-operative's power to earn a profit and distribute that profit to its members is limited.

In general, a co-operative corporation must be operated as nearly as possible at cost and any surplus funds arising from the business of the organization must be distributed in whole or in part among the members of the co-operative corporation in proportion to the volume of business the members have done with or through the organization.

The proposed amendments to the Act authorize a renewable energy co-operative to distribute its surplus in accordance with the by-laws of the co-operative and not in accordance with the general patronage rules in the Act.

Other proposed amendments would allow renewable energy co-operatives to operate with an essentially inactive membership base. Specifically the amendments limit the ability of a renewable energy co-operative (i) with share

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capital to redeem a member's shares in a renewable energy co-operative if the member has not transacted any business with the co-operative for two years; and (ii) without share capital to terminate the membership and repay any outstanding loans owed to a member who has failed to transact any business with the co-operative for a period of two years.

## Conveyancing Controls

Proposed amendments to the *Planning Act* eliminate the requirement for consent for a renewable energy generation facility or renewable energy project if the conveyance is for a period of 40 years or less.

As a result, developers acquiring property interests in the nature of leases, easements or licences over a portion(s) of a property will be exempt from Section 50 of the *Planning Act*.

It is unclear why the exemption was limited to a maximum of 40 years. The infrastructure to be developed, in particular wind turbines and related equipment, may have an economic life that exceeds the 40-year exemption.

## Land Use Controls

The proposed amendments include:

- (i) limits on the application of policy statements and provincial plans to renewable energy generation facilities or projects;
- (ii) exempting renewable energy generation facilities and projects from the application of official plans; and
- (iii) exempting renewable energy generation facilities and projects from prescribed demolition control by-laws, zoning by-laws under Part V of the *Planning Act*, development permit regulations and bylaws under section 70.2, and by-laws under section 113 or 114 of the *City of Toronto Act, 2006*.

## Building Code Amendments

Proposed amendments will explicitly include energy conservation as a purpose of Ontario's Building Code.

The Building Code will be reviewed every five years to identify further opportunities to increase energy conservation.

In addition, the Building Code Energy Advisory Council will be established to provide advice to the Minister of Municipal Affairs and Housing on the Building Code with reference to standards for energy conservation.

## Energy Efficiency Requirements

Ontario government and broader public sector buildings and facilities will be required to meet certain prescribed standards. Although the proposed amendments do not explicitly refer to the standard that will be applied, background documents provided by the Ontario government refer to the Leadership in Energy and Environmental Design (LEED) Silver standard.

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The proposed Act sets out a framework that imposes energy efficiency standards or requirements on prescribed appliances or products. Although not explicitly stated, background documents suggest that the Energy Star standard will be applied to household appliances and products.

The proposed Act also contemplates powers of entry and inspection to ensure compliance with the framework with respect to the sale or lease of prescribed appliances and products. Every person who contravenes specified provisions of the proposed Act will be guilty of an offence and may be fined up to \$10,000, or \$25,000 for a corporation.

Bill 150 also requires new mandatory energy audits prior to the sale of houses.

## New Municipal Powers and Obligations

Under the proposed amendments, a person is permitted to use designated goods, services and technologies related to energy conservation, or undertake activities with respect to designated renewable energy projects or sources despite any restriction including those established by municipal by-law.

Municipalities may be required to prepare an energy conservation and demand management plan. Among other requirements, the plan will be required to include a summary of annual energy consumption for the municipality's operations; a description and forecast of the expected results of conservation initiatives; a summary of the progress and achievements since the previous plan, and additional information as may be prescribed. The municipality must also publish and implement the plan.

The proposed amendments grant municipalities the opportunity to participate through various bodies in renewable generation projects up to 10 MW (or such other capacity as prescribed by regulation).

## The Energy Conservation Bureau

As a result of a proposed amendment to the Electricity Act, the OPA no longer has a mandatory requirement to establish an Energy Conservation Bureau managed by the Chief Energy Conservation Officer. Under an amendment to the *Environmental Bill of Rights, 1993* the Environment Commissioner is now charged with reporting annually on energy conservation and greenhouse gas emissions – these were previously functions of the Chief Energy Conservation Officer.

## The Legislative Process - Next Steps

On Tuesday February 24, the GEA will be posted to the Ontario Environmental Registry for consultation. In addition, Bill 150 will then stand for second reading debate in the Legislature where the opposition and the Minister of Energy and Infrastructure can debate the proposed legislation. It is expected that this stage of the legislative process will move quickly with Bill 150 being referred to a Standing Committee of the Legislature for public hearings. At a press conference following the introduction of Bill 150, Deputy Premier Smitherman stated that details on the feed-in tariff would be released for industry input within the next three weeks. The Deputy Premier also stated that various Directives on transmission investment will be issued in the coming months.

If you would like further information with respect to Bill 150, please contact **Linda Bertoldi** at 416-367-6647 or **Mark Rodger** at 416-367-6190.

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