

Does the New *Green Energy Act* Make It Easier To Be Green?

The Ontario Government introduced the long-awaited *Green Energy Act, 2009* (the “**Act**”) in the Ontario Legislature on February 23, 2009. The Act, which is said to be a major milestone in Ontario’s path towards a cleaner economy, has been well received by a number of renewable energy proponents, including the Ontario Energy Association, Canadian Solar Industries Association and the Canadian Wind Energy Association. The Act introduces a wide range of amendments to existing energy, real estate, planning and environmental legislation, creating a comprehensive regulatory framework, with the objective to foster thmikee growth of renewable energy projects and instil a culture of energy conservation in the Province. This bulletin provides an overview of some key provisions of the Act.

New Regulatory Framework Created

The Act sets out a basis for extensive regulation of different aspects of the renewable energy industry by authorizing the Government to make various regulations such as:

- (a) Requiring sellers of real property to provide to buyers energy consumption and efficiency audit reports;
- (b) Designating goods, services and technologies under the Act in order to promote energy conservation. A person will be permitted to use such designated goods, services and technologies despite any restriction which may be imposed by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement (subject to certain exceptions);
- (c) Designating renewable energy projects or renewable energy sources under the Act for the purposes of promoting access to transmission systems and distribution systems for such projects. A person will be permitted to undertake activities with respect to a designated project or energy source despite any restriction which may be imposed by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement (subject to certain exceptions); and
- (d) Requiring prescribed consumers to prepare and file with the Ministry an energy conservation and demand management plan.

The Government will also have broad regulatory powers with respect to the Ontario public sector. The Act will allow Cabinet to regulate public agencies and municipalities and require them to:

- (a) prepare an energy conservation and demand management plan;
- (b) achieve prescribed emission reduction targets and meet prescribed energy conservation standards;
- (c) take into account energy conservation and energy efficiency considerations in their acquisition of goods and services and making capital investments.

The Government will be required to follow prescribed “green energy” principles in constructing and operating its own facilities. Ministries will be required to report on energy consumption and greenhouse gas emissions and meet minimum environmental standards for new construction or major renovations for government facilities.

The Act also provides for the creation of the Renewable Energy Facilitation Office (as part of the Ministry of Energy and Infrastructure of Ontario), the objectives of which include facilitating the development of renewable energy projects and assisting proponents of renewable energy projects to obtain the necessary approvals for their projects.

The Act will be enforced by government inspectors with broad powers of search and seizure. Every person in breach of the Act or any underlying regulations will be guilty of an offence and on conviction be liable to a fine up to \$10,000 (for an individual) or \$25,000 (for a corporation). Corporate directors and officers may also be convicted, even if the corporation they serve has not been charged.

Amendments to Existing Legislation

In addition to setting the basis for a new regulatory framework relating to renewable energy projects, the Act provides for a number of important amendments to several Ontario statutes, including the *Electricity Act*,

1998; Ministry of Energy Act; Ontario Energy Board Act, 1998; Clean Water Act, 2006; Environmental Bill of Rights, 1993; Environmental Protection Act; Ontario Water Resources Act; Co-operative Corporations Act; Building Code Act, 1992; Planning Act.

Smart Grid

The concept of a “smart grid”, an advanced information exchange system to facilitate the management and reliability of the grid, gains legislative recognition within the *Electricity Act, 1998*. The smart grid is viewed by the Government as one of the key tools in enabling the increased use of renewable energy sources and technology in the Province. Regulations governing the smart grid will be put in place, including with respect to the timeframe, roles and responsibilities for its development and implementation.

Energy Procurement

The Act provides for the development of a “feed-in tariff program” that is designed to ensure renewable energy supply and is based on the Government program rules and standard pricing depending on the type of a renewable energy project.

The independence of the Ontario Power Authority (“OPA”) with respect to procurement of energy generation is severely curtailed. The OPA is now prohibited from procuring any power (green or otherwise) unless specifically directed by the Minister, whose direction may address (i) the item to be procured (supply vs. conservation vs. demand management); (ii) the procurement process to be used; (iii) the price to be paid; and (iv) consultations to be conducted.

Funding of Conservation Programs and Renewable Energy Programs

The OPA’s Conservation Bureau is eliminated, with some of its responsibilities shifted to the Environmental Commissioner’s office. Targets for conservation and demand management will be set by Cabinet, and distributors and other licensees will be required to meet

those targets, under the supervision of the Ontario Energy Board (“OEB”), which shall allocate responsibility (subject to further Ministerial directives) for achieving those targets as between distributors.

Conservation and demand management programs will also be undertaken directly by the Ministry. In order to provide a funding mechanism for those Ministry programs, the OEB will be required allocate the costs of the Ministry’s programs as between gas distributors (such as Union Gas and Enbridge), local distribution companies (such as Toronto Hydro and Hydro One), the Independent Electricity System Operator and any other person prescribed by regulation. Each of those entities will be required to pay an amount directly to the Government in respect of expenses incurred by the Ministry of Energy and Infrastructure for its conservation and renewable energy programs. Those entities will then presumably be able to recoup those funds from consumers through their rates.

Changes to Existing Licensing Regime

The Act will amend the existing licenses of transmitters and distributors by automatically incorporating the following licensing conditions:

- (a) an obligation of the licensee to provide priority connection access to its transmission or distribution system for renewable energy generation facilities that meet prescribed requirements;
- (b) an obligation of the licensee to prepare plans and to file them with the OEB for approval for (i) the expansion or reinforcement of the licensee’s transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and (ii) the development and implementation of the smart grid in relation to the licensee’ transmission system or distribution system; and
- (c) an obligation of the licensee to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy

generation facilities, and to make investments for the development and implementation of the smart grid.

Regulations for Renewable Energy Facilities

Regulations will be put in place to provide rules relating to renewable energy generation facilities, including the connection of such facilities to transmission system and distribution system.

Obligation to Connect

Transmitters and distributors will be required to connect a renewable energy generation facility to its transmission or distribution system where the facility has met applicable requirements in respect of the connection. The Independent Electricity System Operator will be required to provide information prescribed by regulation about the distribution system’s or transmission system’s ability to accommodate generation from a renewable energy generation facility and such information must be made available to the public. Costs incurred by a local distributor to upgrade its system in order to accommodate the connection of a renewable energy generation facility will be socialized across all Ontario consumers.

When considering an application for leave to construct, expand or reinforce a transmission or distribution line, the OEB is now required to consider the promotion of the use of renewable energy sources, in a manner consistent with the Government’s policies.

Municipalities and Distributors Allowed to Own Renewable Energy Generation Facilities

The Act will allow a distributor or a municipality to own and operate directly, and no longer through an affiliate corporation, renewable energy generation facilities (10 MW or less) and facilities that meet the criteria prescribed by regulation.

Building Code Changes

The Act will amend the Building Code Act, 1992 by requiring the Minister of Municipal Affairs and Housing to initiate a periodic review of the Ontario Building Code with reference to standards for energy conservation. The Minister will also be required to establish the Building Code Energy Advisory Council, whose mandate is to advise the Minister on the Ontario Building Code with reference to standards for energy conservation.

Planning Act Changes

The *Planning Act* will be amended to exempt eligible renewable energy generation facilities and renewable energy projects from a number of regulatory requirements, including those contained in demolition control by-laws, zoning by-laws, development permit regulations, and certain other regulations. Leases for periods of up to 40 years obtained for the purposes of renewable energy generation projects will be exempt from subdivision control and part-lot control requirements under the *Planning Act*. Persons undertaking a renewable energy project will also be exempt from certain approval and permit requirements

under the *Environmental Protection Act* and *Ontario Water Resources Act*.

Conclusion

The bulk of the regulations under the Act remain to be developed. Once passed, the *Green Energy Act, 2009* will have a significant impact on most Ontario energy sector players. While the Ontario Government should be commended for developing an aggressive regulatory framework for supporting renewable energy projects, it should be remembered that the framework will likely come at a major cost to electricity consumers in Ontario – the price we pay to be green.

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A Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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