

# Update

## Energy Law

March 3, 2009

### Ontario Issues New Green Energy Bill

The Province of Ontario draft *Green Energy and Green Economy Act* (Bill 150) received its first reading in the legislature on February 23rd, 2009. The Bill's primary objective is a rapid acceleration in the development of renewable energy generation capacity in Ontario, and it creates an impressive framework of initiatives. A key feature of those initiatives is a transfer of decision-making authority away from entities such as Hydro One, the Ontario Energy Board, the Ontario Municipal Board and municipalities to the Lieutenant Governor in Council. At the same time, however, the Bill does not provide much of the detail with respect to tariff rates, connection rules and other vital matters that renewable energy developers and investors have been eagerly awaiting; that detail is left to be provided in further regulations and directives.

#### Streamlining Approvals

Until now, renewable energy developers in Ontario have faced a daunting array of regulatory approval requirements. The Bill would streamline these approval processes. The two primary tools of streamlining would be exemption from land use planning requirements and consolidation of permitting requirements under the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA).

Renewable energy generation facilities and projects will not be required to obtain planning approvals or permits under demolition control by-laws, official plans, zoning by-laws, site plan control by-laws and even development agreements. Such facilities and projects will require permits under the *Conservation Authorities Act* only to the extent permits are necessary to control pollution, flooding and erosion.

The Bill would eliminate the requirement for separate certificates of approval issued under the EPA and the OWRA; instead a single approval called a "Renewable Energy Approval" will be required.

While the approvals are consolidated under one approval programme, the Bill would give new appeal rights to third parties. The only ground for appeal proposed is that "engaging in the renewable energy project ... would cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment".

#### Streamlining Interconnection

Any generation facility must obtain from the operator of the transmission grid, an assessment with respect to the impact its generation facility will have on the grid, and an estimate of the costs of interconnection. Renewable energy developers in Ontario have long complained that Hydro One takes far too long to deliver its interconnection assessments (despite standards laid down in codes promulgated by the Ontario Energy Board (OEB)) and that its interconnection costs are far too high. The Bill would give the Lieutenant Governor in Council the power to enact regulations imposing standards for interconnection assessments and interconnection itself, and these regulations will take precedence

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over any OEB codes or directives. It will also make priority connection access to transmission systems and distribution systems for renewable energy generation facilities a condition of every transmitter's and distributor's license.

## Feed-In Tariff Program

The Bill would give the Minister of Energy the authority to direct the Ontario Power Authority (OPA) to develop a feed-in tariff program designed to procure energy from renewable energy sources. The "feed-in tariff program" will be familiar to persons already conversant with the Ontario Power Authority's "standard offer" program. It will be a program for procurement providing standard program rules, standard contracts and standard pricing differing by energy source. The Bill's feed-in tariff program provisions appear to be broad enough to enable the Minister of Energy, rather than the OPA, to set the feed-in tariff itself. The provisions also allow the Minister to issue directives mandating participation by aboriginal peoples in the development of renewable energy projects, local community involvement, and domestic content. The all-important question of what the "standard" kilowatt/hour price for wind and solar generated electricity will be, however, remains unanswered.

## Provisions of Special Interest to Local Distribution Companies

In addition to priority connection access for renewable energy generation facilities, all distribution companies will now have as a condition of their licenses a requirement to prepare plans for the expansion or reinforcement of their distribution systems to accommodate the connection of renewable energy generation facilities. Both municipalities and municipally-owned distribution companies will now be permitted to directly own and develop renewable energy generation facilities not exceeding 10 megawatts. Moreover, municipally-owned distribution companies will be permitted to directly own and operate combined heat and power facilities meeting criteria prescribed by

regulation. The manner in which distribution companies will be able to pass the costs of these facilities onto to their consumers is not yet clear. Finally, the OEB will now be required to assess distributors for the costs incurred by the Ministry of Energy and Infrastructure in respect of its energy conservation and renewable energy programs. The amount of this assessment will be prescribed by the Lieutenant Governor in Council.

## Conservation Awareness

In an effort to increase awareness of conservation opportunities, the Bill requires persons who are offering to sell or lease real property to provide information reports or ratings relating to energy consumption and efficiency to prospective purchasers and tenants. The content of the disclosure and the classes of property and buildings to which it will apply will be detailed in a future regulation.

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