

On February 23, Hon. George Smitherman, Minister of Energy and Infrastructure and Deputy Premier of Ontario, tabled for first reading Bill 150 - *An Act to Enact the Green Energy Act, 2009 And to Build a Green Economy, to Repeal the Energy Conservation Leadership Act, 2006 and the Energy Efficiency Act and to Amend Other Statutes*. The Act is complicated, amending no fewer than 21 statutes and making sweeping changes to Ontario's energy legislation and the responsibilities of its agencies, government Ministries, municipalities, and electricity transmitters and distributors.

On tabling the bill for first reading, the Minister said the government is "raising the bar" on its energy and environment agenda by increasing incentives and removing impediments to accelerate development of renewable energy, and promoting a culture of conservation in Ontario.

HIGHLIGHTS

- The Act does not undo the fundamental market reforms of the Energy Competition Act, 1998, and makes only incremental changes to the legal framework enacted in the Energy Restructuring Act, 2004.
- The IESO-administered market is largely unaffected. While not perfect, the Ontario market provides opportunities for consumers who can shift consumption from high to low-price periods and confers advantages generally on consumers with better-than-average load factors.
- The objectives of the OEB (to protect consumers, to promote efficiency, etc.) remain intact. The Act contains nothing to change or undermine the basic decision-making criteria of the board with respect to setting rates that are just and reasonable. If anything, the increased emphasis on efficient demand management should provide impetus to the Board's considerations on reforming transmission and distribution rates.
- The Act proposes new instruments for the government and its agencies to develop programs and improve incentives for conservation and demand management, including directing procurements by the OPA and entering into agreements directly with consumers.
- The Act provides additional flexibility to the government in regulating which costs are recovered from which classes of customers, for example, with respect to the allocation of the Global Adjustment.
- The Act, in a number of areas, creates broad new powers for government and its agencies and imposes new obligations that, while not necessarily intended to do so, could add a significant cost and regulatory burden for business consumers. Only when regulations are developed will the intent of these provisions be clear.

Increasing incentives and removing impediments for renewable energy investments

With a "feed-in tariff" (modeled after those in Denmark, Germany and Spain), the consolidation and stream-lining of permitting and approval processes into a single "renewable energy permit" and "service-time guarantees", the government aims to provide greater certainty for investors and developers of renewable power. The Act speaks to a new approach to grid infrastructure, accelerating investment in the transmission system and imposing on transmitters and distributors an obligation-to-connect for new renewable generation.

Feed in tariffs—the details of which are already under development by the Ontario Power Authority—would be available for defined renewable generating facilities: up to 10 MW for solar PV, 50 MW for

waterpower and unlimited capacity for other renewable fuels. The OPA's draft program rules propose an "economic connection test" to ensure that connection costs that borne by rate-payers are reasonable in light of the best available information regarding confirmed transmission developments and other proposed generating facilities.

As part of its stream-lining, the Province proposes to up-load municipal responsibilities for regulating such matters as "set-backs" from houses and sensitive areas for new renewable projects. The establishment of a Renewable Energy Facilitation Office is proposed to further assist investors and developers. The Act proposes a "domestic content requirement" for renewable energy and conservation products to ensure that the jobs and economic activity created by the anticipated surge in investment remain in Ontario.

Promoting conservation and demand management

The Act sets out a framework to promote greater conservation by energy consumers. The Act proposes new powers for the Minister, the government and its agencies to promote conservation and demand management. The Minister would acquire the power to direct distribution companies and other licensees¹ to meet conservation and demand management targets. The Act would create regulatory powers to require prescribed consumers to prepare energy conservation and demand management plans, to prescribe requirements for those plans and event to require that the plans be implemented.² The Minister would obtain the authority to contract or otherwise enter into agreements to promote energy conservation.³ The Minister would acquire the power the direct the OPA to undertake procurements in relation to reductions in electricity demand or measures related to conservation or the management of electricity demand, including via competitive or a non-competitive processes.⁴

The Act would require amendments to the Ontario Building Code, require regular reviews in future to incorporate new energy efficiency standards and provisions and create a Building Code Energy Advisory Council.

Increasing electricity costs

Electricity costs to customers are likely to increase substantially in the next few years. The Act itself is not necessarily the primary cause for this. Policies to limit carbon emissions, subsidize renewable forms of energy and promote conservation are not unique to Ontario; they are a common feature in the United States and Europe. In addition much of Ontario's electricity infrastructure is—or soon will be—in need of replacement. New supplies are more expensive than existing supplies.

The question is whether the Act will cause the costs of reducing carbon emissions, increasing renewable energy production and promoting conservation to be higher in Ontario than they might be otherwise. Another question is whether the regulatory infrastructure which the Act, and the many regulations, rules, codes and directives that will flow from it, will serve to protect the interests of consumers by managing the implementation of the government's policy agenda in a way which achieves its objectives at the lowest possible cost and in the most efficient manner.

¹ The Green Energy Act, 2009, Schedule D, Section 7. This provision would apply equally to all the persons set out in the Ontario Energy Board Act, 1998, Part V, Section 57, including those who "purchase electricity or ancillary services through the IESO-administered markets or directly from a generator", i.e., wholesale consumers.

² The Green Energy Act, 2009, Schedule A, Section 5.

³ The Green Energy Act, 2009, Schedule A, Section 8.

⁴ The Green Energy Act, 2009, Schedule B, Section 2.

While the Act itself does not answer these questions, the Minister's comments at first reading clarified that "Because all energy consumers would reap the benefits of an improved energy system, we want to recognize that our investments ... would be borne through energy rates." In other words, and unlike some other jurisdictions, the cost burden for the government's social and environmental objectives will not be shared with taxpayers. Premier McGuinty has acknowledged that "energy prices will most certainly increase", in part because of U.S. President Obama's stated commitment to limit carbon emissions through a cap and trade program.⁵

Protecting the interests of consumers

While the Act proposes broad changes to Ontario's electricity law and regulation, the Act does not undo the fundamental reforms affected over the past decade and a half: breaking up Ontario Hydro and dealing with its accumulated debt, creating regulated open-access transmission and distribution systems, introducing competition in generation, and establishing an independently administered wholesale power pool. Even with its flaws, Ontario's electricity market is vastly superior to the system it replaced or any alternative which might replace it. As a price signal, the Hourly Ontario Energy Price provides an effective index of the real-time cost of supplying energy demand.⁶

The Act proposes to amend the objectives of the Ontario Energy Board, by adding "to promote the conservation of electricity", "to facilitate the implementation of a smart grid" and "to promote the use and generation of electricity from renewable energy sources".

The Act does not remove the objectives of the Board "to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service" or "to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity". These objectives—fundamentally important principles for the oversight and regulation of the electricity sector—remain intact.

Decisions of the Ontario Energy Board affect between 15 and 25 percent of a customer's bill, depending whether that customer is directly connected to the transmission grid, or takes delivery from a distribution company. The Act does not change the basic power of the Board to order just and reasonable rates. The Act does, however, increase the scope for costs incurred by regulated parties that would be subject to Board oversight, including costs related to smart grid implementation, conservation and demand management programs of distribution companies, and "such other activity as may be prescribed"⁷.

Industrial customers concerns' about the inequities and inefficiencies embedded in electricity rates are not new and should be familiar to many in government, its agencies and the electricity sector: (1) transmission rates currently are designed to reduce incentives for efficient demand management, to over-charge customers who shift consumption from peak to off-peak hours, and to subsidize customers who choose not to do so; (2) distribution rates contain systemic cross subsidies from industrial consumers to residential and other low-volume consumers. The Ontario Energy Board should move more swiftly to reform the allocation of costs and rates for industrial customers. At its current pace, it will take decades to achieve parity for industrial customers.

⁵ In a speech on February 7, 2009, to the Ottawa Chamber of Commerce.

⁶ By obscuring these prices, the Regulated Price Plan administered by the Ontario Energy Board serves as the single largest impediment to efficient demand management for most consumers.

⁷ The Green Energy Act, 2009, Schedule D, Section 12(1).

In AMPCO's view, the onus on the Ontario Energy Board to pursue remedies to these problems not only is unchanged by the Act but should be given additional impetus by the increasing emphasis on promoting efficiency and effectiveness in demand management.

The Global Adjustment

The commodity price (the Hourly Ontario Energy Price established in the IESO-administered market) represents approximately 60 percent of a customer's bill. The balance of the bill is taken up by a variety of uplifts, surcharges and taxes, the most significant of which is the Global Adjustment.

The Global Adjustment is the difference between the total payments made to certain contracted or regulated generators and demand management projects, and any offsetting market revenues. The Global Adjustment operates like a contract for differences between contract prices and the Hourly Ontario Energy Price.

The single biggest impediment to efficient demand management at present is the regulation prescribing how the Global Adjustment is recovered from customers. Ontario Regulation 429/04 prescribes, by way of direction to the IESO, the formula to calculate the monthly Global Adjustment. The amount to be recovered from each customer is based on that customer's consumption in the month, regardless of when that consumption takes place or the cost of supplying that customer at that time. This approach runs counter to the objective of providing efficient price signals to customers and fairly allocating the costs of energy to those customers that cause them.

The Act proposes significant changes to provisions of the Electricity Act, 1998, which require the IESO, distributors and retailers to make adjustments, through billing and settlement systems, that ensure that electricity pricing reflects the cost of electricity. The proposed amendments would replace "payments by consumers" with "payments by classes of consumers in Ontario that are prescribed by regulation".⁸ Although it is not specific, the proposed amendment offers the prospect that the government might fix the problem with the Global Adjustment by making a regulation that prescribed different payments or payment mechanisms for different classes of customers.

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⁸ The Green Energy Act, 2009, Schedule B, Section 6(1), amending the Electricity Act, 1998, Part II2, Section 25.33.