

Ontario's *Green Energy and Green Economy Act, 2009* (GEA) is a far-reaching bill that introduces the *Green Energy Act* and amends 15 existing provincial statutes. The Act signals that the McGuinty government, like the Obama administration, appears to be serious about injecting some green initiatives into a waning economy. The GEA provides strong incentives for renewable energy projects and also promises to reduce much of the red tape that has been a significant impediment to development.

Will the new Act achieve these ambitious goals? Only if the government can resolve some key issues in the next few months.

Today's tough credit environment poses a significant challenge for renewable energy projects. The GEA proposes a feed-in tariff, a program for renewable energy projects that guarantees a fixed price for the electricity they supply. Given how difficult it is to arrange financing now, the tariff will need to do more than make projects economically viable for developers. It will need to be high enough to ensure an attractive return on investment for equity investors and lenders. Apart from the price certainty that will come with the feed-in tariff regime, there aren't any measures directed squarely at scarcity of capital available for big infrastructure projects.

Many had hoped the GEA might introduce some form of Green Energy Bonds – a government-backed bond with a fixed rate of return similar to a Canada Savings Bond, which could be used to raise funds to finance green power projects at reasonable interest rates. Another source of much-needed capital could be made available through government auctioning of emissions credits to the industries that will need them. Although the various measures contemplated in the current bill may be enough to encourage the active support of banks and other significant private sources of capital, having a mechanism in place to create a backup (or seed) capital pool to help initiate and keep the lending momentum going would be a welcome feature. This could come through amendments to the current bill or in a separate government initiative linked with other green-stimulus government initiatives.

Providing renewable projects with priority access to Ontario's electricity system will be no easy task. In practice, the relevant industry players will have to grapple with the expected influx of renewable projects wanting to be connected to the grid. Many parts of Ontario's electricity system are already at capacity and have limited ability to accept additional generation, which would require significant upgrades to the province's distribution and transmission system. This challenge is compounded by the fact that certain renewable resources such as wind and solar are not always available and therefore need to be accompanied by continuous sources.

Representatives of the Ministry of Energy and Infrastructure and Ontario Power Authority plan to consult stakeholders on the details of certain key features of the new Act, including the right of new renewable projects to connect to the grid. It is important that this consultation results in a process that balances the need to deal with the very real issues (such as system reliability) of connecting a large amount of new generation to the electricity system, on the one hand, with a requirement to significantly reduce the time and effort involved in going through that process, on the other hand. Moreover, upgrading the transmission and distribution system, including construction of new lines, will need to begin immediately to ensure that any of these renewable energy projects will be developed in the near future.

The government's promise of a streamlined environmental and municipal approval process has been eagerly awaited. The government is planning to introduce a new permit – the renewable energy permit – that will cover various environmental and municipal approvals; some of the elements of this new permit are currently within the purview of municipalities and are proposed to be uploaded to the provincial government to provide standardization. The government has promised that renewable energy permit applications will be processed within six months. But the government appears to be limiting this by extending the promise only for “complete” applications. In other contexts, that kind of qualifier has meant that even for applications that make it into the process, the review clock stops every time the regulator identifies issues or has questions, and does not restart until the proponent answers them to the satisfaction of the regulator – making the notion of certainty regarding the review timeline more illusion than reality. Perhaps partly to resolve this issue, the government is proposing a “completeness checklist,” which would presumably be used to screen out applications with material deficiencies, and once the regulator is satisfied, it should be possible to achieve (and impose) a hard six-month regulatory review deadline. The requirements of the checklist, and the application processing mechanics, have yet to be released. Until they are, the total time it will take proponents to complete their applications will remain unknown.

To oversee the GEA's implementation, the province plans to create the Renewable Energy Facilitation Office under the supervision of the Ministry of Energy and Infrastructure. It will require both the right tools and the right people to ensure it can achieve its stated goal, rather than being yet another hurdle in an already complex process. Most important, the person who assumes the job of the “Renewable Facilitator” will need to be credible to industry, environmental non-governmental organizations and government alike, and a person who has the clout to make some difficult decisions.

And finally, no one should overlook the importance of the involvement of First Nations in renewable energy projects. The new Act is only one part of this complicated issue, but it should help First Nations determine early on whether they support a project and what involvement they want to have in it. If the dollars are available to allow First Nations to participate meaningfully in the early stages, this could help eliminate what has been a significant practical impediment to date. Many would say that significantly furthering this goal would make the GEA a success.

The next few months will be a busy time for the many stakeholders involved in the renewable energy sector. The results of their work, particularly how they finalize and implement the details of the GEA, will ultimately determine whether the next few years will be favourable times for renewable energy projects in Ontario. However, the brutal reality of today's credit markets may mean that the objectives of this Act will be difficult to achieve without out more support from Ontario.

This article first appeared in The Globe and Mail's ReportonBusiness.com on February 24, 2009.