

# Torlys on Infrastructure and Energy

I&E 2009-1  
February 23, 2009

## Ontario Introduces Green Energy Legislation

By [Torlys' Infrastructure and Energy Practice](#)

On February 23, the Ontario government introduced into the legislature for first reading the *Green Energy and Green Economy Act, 2009* (the Act), which would enact a stand-alone *Green Energy Act, 2009* and amend and repeal various other statutes. The Act is a much-anticipated pillar of the government's plan to make the province a North American leader in renewable energy generation. According to government announcements, it would (i) expand Ontario's use of clean and renewable sources of energy, particularly wind, hydro, biomass, biogas, biofuel, solar, geothermal and tidal projects (collectively, "renewable energy projects"); (ii) create 50,000 or more jobs relating to the green economy over the next three years; (iii) further protect the environment, in part by encouraging conservation and mitigating the province's greenhouse gas (GHG) emissions; and (iv) help modernize Ontario's electricity transmission system.

The Act would also establish a Renewable Energy Facilitation Office to facilitate the development of renewable energy projects.

Among the Act's many features, the following key provisions, if brought into force, would have a significant impact on new renewable energy projects in Ontario.

### Renewable Energy Procurement and Feed-in Tariffs

The Act would amend the *Electricity Act, 1998* to authorize the Minister of Energy and Infrastructure (the Minister) to develop a feed-in tariff program for renewable energy projects, rather than have the Ontario Power Authority (OPA) continue to issue requests for proposals. This program would provide standard program rules, standard contracts and standard pricing with respect to classes of generation facilities, based on energy source or fuel type, generation capacity and the manner in which the generation facility is used, deployed, installed or located. The feed-in tariffs would be a greater incentive to developers of new renewable energy projects, provided they guarantee developers, as is expected, access to the transmission grid and a sufficiently attractive fixed contract price.

The Act would also provide the Minister with significant regulation-making authority, including for regulations governing the location, generating capacity, connection details and start-up dates of renewable energy projects.

Finally, to help the government procure new renewable energy capacity, the Act would extend the authority of the Minister under the Electricity Act to issue directives to OPA regarding the procurement of electricity supply. As part of this authority, the Minister would be able to direct OPA to undertake, among other things, any request for proposal or other form of procurement solicitation that relates to the procurement of electricity supply or the reduction in electricity demand. The Minister would also be able to specify whether OPA must use certain pricing or a competitive or non-competitive procurement process.

To discuss these issues, please contact any member of the Infrastructure and Energy Practice.

For media calls, please contact [Stuart Wood](#), Director, Marketing & Business Development, 416.865.8205.

To contact us, please email [info@torlys.com](mailto:info@torlys.com).

Torlys' bulletins are available on our website at [www.torlys.com](http://www.torlys.com), under Publications.

*This bulletin is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss with you the issues raised here in the context of your particular circumstances.*

© 2009 by Torlys LLP.  
All rights reserved.

## Transmission Grid Improvements and Connection

The Act would amend the Electricity Act to modify its existing guarantee of non-discriminatory access to transmission and distribution systems, by granting to renewable energy projects priority connection to these systems. According to the Act, a transmitter or distributor would be required to connect a renewable energy project (according to the regulations, market rules and any licence) if the generator requests the connection in writing, and applicable technical, economic and other regulatory requirements have been met.

To accommodate these connections, the Act would amend the *Ontario Energy Board Act, 1998* (OEB Act) so that transmission and distribution licences would be deemed to contain certain conditions, including those relating to (i) priority connection access to the transmission and distribution systems; (ii) preparation of plans to be approved by the Ontario Energy Board (OEB) for the expansion and reinforcement of systems and the development of a “smart” transmission grid; and (iii) the implementation of the expansion or reinforcement plan, or investments in the smart grid, subject to the OEB’s approval or as prescribed by regulation.

To accommodate cost recovery for connecting generation facilities, the Act would amend the OEB Act to provide a rate-protection scheme for prescribed consumers in a distributor’s service area where that distributor incurs costs to make an eligible investment. The Act also provides that the regulations will prescribe fixed timelines to complete connection assessments.

## Streamlined Approvals Process

The Act would consolidate the process of obtaining one or more approvals under the *Environmental Protection Act* and the *Ontario Water Resources Act*, currently issued separately by the Ministry of the Environment, into one permit application – leading to the issuance of a single “renewable energy approval.” The Act also contemplates changes to several pieces of legislation administered by the Ministry of Natural Resources. Minister Smitherman has indicated that the planned amendments taken together will result in coordinated “approvals from the Ministries of Environment and Natural Resources, into a streamlined process within a service guarantee. And so long as all necessary documentation is successfully completed, permits would be issued within a six-month service window.”

Perhaps more important, the Act would exempt renewable energy projects from municipal zoning by-laws, site plan control by-laws, demolition control by-laws and other provisions of the *Planning Act*, which have proven to be significant sources of uncertainty and delay. Land leases of 40 years or less (including renewal options) for renewable energy projects will not require municipal severance consents. These amendments may prove controversial, because they would effectively remove municipalities from any key decision making for renewable energy projects in favour of “uploading responsibilities to Queen’s Park” and having these projects regulated on a province-wide basis.

## Energy Conservation

The Act would amend the OEB Act to allow the Minister, with the approval of the Lieutenant Governor in Council, to issue directives to the OEB that contain targets relating to the management of electricity conservation and demand to be met by distributors and other licensees. Such directives could also require that a distributor meet all or part of its conservation target by contracting with OPA to meet the target through programs it offers. In addition, the Act would amend the *Building Code* to make energy efficiency one of the Code’s key purposes. It would also authorize regulations that would require persons who are offering to sell or to lease an interest in real property to provide energy-consumption and -efficiency

information with respect to a prescribed residence or other building. Finally, the Act would remove the Electricity Act's existing requirement for the establishment of the Conservation Bureau within OPA.

### **First Nations Incentives**

The Act enables the Minister to direct OPA to implement procedures for consulting aboriginal peoples on the planning, development or procurement of generation, transmission and distribution. In addition, the Minister may direct OPA to establish measures to facilitate the participation of aboriginal peoples in the development and implementation of renewable energy generation systems, including funding for such participation.

### **Implications for Cap-and-Trade and GHG Emissions Mitigation in Ontario**

Although the Act does not specifically discuss the issue of GHG cap-and-trade, comments from the regulators suggest that OPA's purchase of new renewable power under feed-in tariffs be done on terms under which OPA is entitled to all emissions credits and other environmental attributes. While it is understood that this was the subject of some study, the underlying rationale continues to be that OPA's acquisition of these credits will be necessary for the province to phase out coal and to meet its 2014 emissions targets. If this is the case, only renewable energy producers who choose to sell power other than through OPA will be entitled to retain emissions credits and related attributes.

The Act does not assist in defining the treatment of renewable energy under the cap-and-trade system being developed by the Western Climate Initiative (WCI), in which Ontario is participating, or under Ontario's own December 2008 proposal to develop a WCI-compliant cap-and-trade system.<sup>1</sup> Finally, the Act includes an amendment to Ontario's *Environmental Bill of Rights, 1993* to require the Environmental Commissioner to produce an annual report on activities in Ontario to reduce GHG emissions, with the first report to be submitted before the end of 2009.

### **Next Steps**

In the coming weeks, the Minister and OPA plan to consult stakeholders on the details of the Act. Meanwhile, the Act is expected to move quickly through the legislative process, with second reading and debate expected to occur on February 24, followed by review in legislative committee. We expect the Act to be passed sometime in April or May. How the Act's details are finalized and implemented will ultimately determine the outlook for renewable energy projects in the upcoming years. **1**

---

<sup>1</sup> See "Discussion Paper: A Greenhouse Cap-and-Trade System for Ontario," published by the Ontario government in December 2008 and subject to a public comment period to expire on March 3, 2009.