

THE GREEN ENERGY ACT - SUMMARY AND COMMENTS

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General Concerns:

1. It is important to note that MANY of the sections set out requirements or responsibilities that are "yet to be prescribed". This is serious in that so much of the application of the Act has yet to be determined and can be done at the whim and discretion of the Minister of Energy and Infrastructure.

For example, Part V of the Act states that "A regulation made under this Act may define any word or expression used in this Act that is not defined in this Act."

As noted by Keith Stelling, "... we have been presented with a distorted, scrappy bit of legislation, most of which is left to undisclosed procedural decisions by the Minister at a later date."

2. The language at key points in the Act are very vague. For example, "A person is permitted to undertake activities..." There is no definition of who is meant by "person". This could encompass just about anyone including a company, power generator, private person.

Another example of vague - Part V, Section 17 (1) of the proposed Act: "*The Lieutenant Governor in Council may make regulations prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations.*"

3. The power and discretion given to the Minister of Energy and Infrastructure is astounding. We have agencies stacked with the "energy experts" tasked with the planning and running of the power sector. The current Minister has had absolutely no background in the industry (see biography at end of this summary). He is making all the decisions, impacted and influenced by the "green" idealists. "*In no less than 20 sections of this bill ... the minister has broad and sweeping powers to direct. This allows him to have total and sole discretion about what he does.*" (John Yakabuski)

An oft repeated concern raised by stakeholders in submissions to the OEB regarding the proposed IPSP was the overinvolvement of the government in energy issues. This Act goes far beyond that.

4. Multiple small renewable generators will be demanding (and entitled to) access to the power grid. This is going to cause a nightmare to Hydro One (unless the government allows for private transmission infrastructure, which is a probability); juggling act for the IESO; increased natural gas use to fill in the blanks for intermittent generation.

5. Cost issues for connection to the grid are not discussed in a way as to determine who pays but it appears that the consumer will be hit with many new charges (billions of dollars) for many new services and infrastructure changes (miles and miles of new transmission lines to connect thousands of small scale generators to the provincial grid).

6. The "up to 50,000 jobs" created under this Act will include inspectors; home and business energy auditors; investigators; conservation police; "*persons or organizations to test and label appliances and products*" (yes, this is in the Act); persons to "*govern the keeping of information, records and documents by persons who manufacture sell or lease appliances or products*", etc.

7. The Act tramples on individual rights and is designed to stifle public input. It will further discourage business and industrial investment in Ontario. "*Despite the mom-and-apple-pie goodness invoked by its name, the Green Energy Act threatens to set a dangerous precedent.*" (Sarnia Observer Feb. 14/09)

SUMMARY

Three primary targets - (i) promoting renewable energy and removing barriers to it; (ii) forced measures for energy efficiency, conservation and demand management; (iii) establishing a "smart grid".

Note: "Prescribed" is defined as "prescribed by a regulation made under this Act"

1. No sale or lease of any property without an energy consumption and efficiency report.

- term of lease requiring the report to be prescribed
- cost of report to be determined in the prescribed manner
- report or ratings to be prescribed
- buildings, residence or class of residences yet to be prescribed
- in circumstances, at such times, and in such manner as is prescribed.

Comments: This could impact all homeowners; all landlords including those of large residential buildings; commercial and industrial property; farm land and buildings; cottages, etc. - in other words, all and any property that is sold or leased.

There is no mention of what must be done with the audit/report. Is there a standard for compliance? What then would be required to bring a property into compliance?

If there is nothing that needs to be done, what is the purpose of the report other than to make a buyer/lessee aware of the energy defects?

2. Regulations to designate goods, services and technologies to promote energy conservation.

Although unspecified and yet to be determined, people will be permitted to use these goods, services and technologies in spite of municipal or condominium by-laws to the contrary - this could include anything as simple as a clothesline to solar panels - power lines, etc.

3. Regulations to designate renewable energy projects or sources in order to remove barriers to and promote renewable energy and to promote access to transmission and distribution for renewable energy.

A person is permitted to undertake activities with respect to these designated projects despite any municipal or condominium by-law. Although "person" is undefined, the term "corporate body as a person" is noted in the Act. "Activities" is likewise not defined and leaves this very much open ended, subject to regulation and interpretation.

4. Energy conservation and demand management plans

- to be prepared by "public agencies" - this includes municipalities
- to be filed with the Ministry
- public agencies will be required to achieve "prescribed targets" and meet "prescribed" energy, environmental and conservation/demand management standards
- plans will be prepared according to prescribed requirements and will include a summary of annual energy consumption, forecast of expected measures taken to reduce consumption and summary of progress and achievements since the previous plan
- to be required by "prescribed consumers" - Again, these "prescribed consumers" are not defined and could include anyone or any group of people - homeowners, businesses, farmers, etc.

5. Government facilities to report energy use, greenhouse gas emissions, environmental and fiscal responsibility, use renewable energy sources.

6. Creation of Renewable Energy Facilitation Office/Renewable Energy Officer

- created within the Ministry of Energy and Infrastructure - supervised by a person employed in that Ministry (the Act removes the Conservation Office and Officer and merely replaces with this, but with extended powers and responsibilities)
- facilitates renewable energy projects and assists proponents with processes and procedures
- Renewable Energy Officer (REF) authorized to collect and share information regarding these projects BUT is considered confidential information - secret
- for purposes of the Freedom of Information Act (FIA), information collected is "*deemed to be a trade secret or scientific, technical, commercial, financial or labour relations information supplied by the proponent to the Facilitator in confidence*"
- in case of conflict between the FIA and this Act, this Act takes precedence

Comments:

The Facilitator is granted authority to collect information that is to be treated as "confidential or secret". My interpretation - outside the review of the public or public access. This will supersede the Freedom of Information Act. There will be a whole lot more that will not be disclosed to the public. The location of a wind farm, the technology used in a solar farm, a hydro dam - all of these would be kept secret from the public eye.

7. No sale or lease of any appliance or product unless it meets "prescribed" efficiency standards or requirements.

- will be labeled or marked to show compliance
- a prescribed date of manufacture or sale/lease will be regulated

Comments:

"Product" is not defined and could mean anything i.e. furnace blower, air conditioner, lawnmower etc. This could conceivably refer to a car. This will impact the sale of used appliances.

This part of the Act is entitled "Energy Efficiency and Water Efficiency" and could therefore include such things as size of bathtub, toilet, water heater, etc.

8. Inspectors to be designated for the purposes of "policing" sale of real property, appliances, products.

- the Deputy Minister may designate in writing any person as an inspector

- Regarding the real property Part, the Inspector may at any reasonable time enter any place where there are grounds to believe there are documents or things relating to the sale of lease of the property

- the Inspector may request documents or any things that might be relevant to this part of the act and may remove from a place any documents or things produced for copy or extract purposes

- the Inspector may require any person to co-operate and assist with an inspection

- the Inspector may do and require the above regarding any place where an appliance or product referred in this Act is manufactured, offered for sale, sold or leased and may also inspect or test an appliance or product

- note that the "inspectors" can't exercise right of entry to a place occupied as a dwelling without consent except when they have a warrant issued under this Act

A warrant is granted by a Justice of the Peace without notice upon information given under oath by an inspector. "Information or evidence relating to the contravention ... may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant."

The inspector may use persons who have "*special, expert or professional knowledge*" to assist.

- contravention of this section will land a fine up to \$10,000 or \$25,000 "if the person is a corporate body" (This is a clue as to what is meant by "person") Where a corporation contravenes, every director or officer who authorizes, permits or acquiesces in the contravention is a party to and guilty on conviction and liable to the penalty whether or not corporation has been prosecuted or convicted.

Comments:

I see now where some of the promised jobs are going to come from - Product police going around to garage sales and checking out for sale items on the web, the newspapers and perhaps even EBay

I smile at my young grandson who claims he wants to be a spy when he grows up. He might be much more progressive thinking that I would have thought.

9. Ministerial powers broadened

Minister will be given additional, significant authority to make regulations that would:

(i) Determine the location, generating capacity, grid connection and commencement date of new renewable generation;

(ii) Additional authority to issue directives instructing OPA regarding procurement of electricity supply, conservation and demand management - to use either a competitive or non-competitive process; specify pricing or other economic factors; what persons or groups are to be consulted when planning or developing electricity supply, capacity, transmission or distribution.

** It is important to note that the Procurement Process was part of the IPSP that was before the Ontario Energy Board for approval. Also, the Electricity Act specifically states that Stakeholders are to be consulted in the planning and development process. It would appear that this right is being negated through the Green Energy Act.

(iii) Additional duties and responsibilities of the Minister and Deputy Minister including advising government and other ministries regarding energy, infrastructure, planning,

10. Advantages to Renewable Energy Projects

(wind, water, biomass, biogas, biofuel, solar, geothermal, tidal and other sources prescribed by regulations)

(i) Exemption for renewable energy projects from municipal zoning by-laws, site plan control by-laws, official plans and other provisions of the Planning Act, effectively taking all decision making from the municipalities on projects within their geographic location. Land leases for renewable projects less than 40 years are exempt from municipal severance requirements.

(ii) Streamlining the approval process for renewable energy projects including the consolidation of approvals required, leading to a single "renewable energy approval". This involves changes to legislation administered by the Ministry of Natural Resources (including Conservation Authorities Act, Ministry of Natural Resources Act, Niagara Escarpment Planning and Development Act, Provincial Parks and Conservation Reserves Act); Clean Water Act; Ontario Water Resources Act; Environmental Protection Act) The changes in effect cancel out the checks and balances in place between ministries and devalues the expertise of individuals within those ministries.

The implications are far reaching. For example, under the changes, "*if a person requests permission ... for development related to a renewable energy project ... a conservation authority ... is not allowed to refuse the permission or impose conditions ...*"

Under the changes to the Public Lands Act, "*a person who has entered into an agreement, including a lease, a licence or an easement with the Crown under the Act ... is required to comply with the agreement ... It is an offense to contravene the requirement...*" What I read from this is the potential for the "Crown" to put "enter into an agreement" for an easement to allow for a transmission line or tower. With all the renewable energy proposed and the transmission guaranteed in the Act, this takes away any public opposition to transmission infrastructure on their lands.

When an appeal is made regarding an approval granted, proof must be provided demonstrating that the project would cause "serious and irreversible harm to plant life, animal life, human health or safety or the natural environment". Onus of proof is on the party requesting the appeal.

This is designed to counter the growing trend in NIMBYISM. The very fact that it is a growing trend should cause politicians to pause and consider fully the reasons.

(iii) "Feed-in tariff" program designed to procure renewable energy according to the goals set out by Ministerial directive - guaranteed rates

(iv) transmission and distribution - Priority connection to the transmission or distribution system for renewable energy projects that comply with regulation requirements

Distributors and transmitters will be required to prepare plans for expansion or reinforcement of their systems in order to accommodate renewable generation

The concern here is that Hydro One is already overburdened and facing staffing shortages as work forces ages. The system has been overloaded with applicants attempting to tie into the system.

11. Increasing Conservation and Demand Management

(i) Regulations would amend OEB Act allowing the Minister to direct the OEB to regulate conservation targets to be met by distributors and "other licensees". Distributors will be directed to meet the targets through programs offered by the OPA.

(ii) Changes to the Building Code to make energy efficiency a priority.

12. Greenhouse Gas Emissions

(i) Although not stated in the Act, it is expected that renewable energy projects under the feed in tariff will be required to hand over any emissions credits to the OPA.

(ii) Amendment to the Environmental Bill of Rights directing the Environmental Commissioner to report annually on Ontario activities to reduce ghg emissions. The first report is due by end of 2009. (This will include all ghgs, not just carbon dioxide.)

13. First Nations Incentives

The OPA will establish measures to facilitate the participation of aboriginal peoples in developing and implementing renewable energy projects, including funding.

14. The Act includes changes to 21 existing statutes

In addition to the items noted above, changes in existing legislation include:

Electricity Act

(i) Conservation Bureau - repealed (Electricity Act)

(ii) Cost issues are discussed regarding the IESO, distributors and retailers. However, the phrasing and future determination (ie through regulation) of electricity pricing is so vague that no real sense of cost can be evaluated.

(iii) Implementation of a "Smart Grid" - "advanced information exchange systems and equipment that when utilized together improve the flexibility, security, reliability and safety of the integrated power system and distribution systems"

According to a relevant article by Seeking Alpha, "The Ontario Smart Grid Forum estimates that \$1.6 Billion could be spent on a smart grid ramp up in Ontario over the initial 5 years of such a program."

There is no indication of how the spending responsibilities will be apportioned.

Ontario Energy Board Act

Presently distributors are not allowed to generate electricity. This Act grants permission to own and operate small (< 10 MW; CHP; storage).

It is worth noting that some municipal LDCs are being privatized.

Building Code

A "Building Code Energy Advisory Council" will be established to provide advice regarding standards for energy conservation.

Environmental Bill of Rights

Environmental Commissioner is to report annually on energy conservation as well as ghg emissions.

Summary

This piece of legislation is being rammed through the legislature. That in itself should cause concern. There does not appear to have been any consultation with the IESO, the OEB, or the OPA. There is a definite lack of understanding of the implications and ramifications of passing this Act. Any positive benefits that could arise are far outweighed by the erosion of civil rights and the consequences of reliability, sustainability and affordable of power in the province.

Mr. Smitherman, as Minister of Energy and Infrastructure, will have a direct and controlling impact on all energy related issues and decisions in the Province. He will be able to control all energy planning and development and direct those energy experts currently employed in the Ontario Power Authority, the Ontario Energy Board, the Independent Electricity System Operator (IESO), and Ontario Power Generation.