

Energy Law Update

Because of related content, this newsletter is also being sent to those with an interest in emissions trading and climate change.

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Ontario's energy renaissance continued: Green Energy Act passed

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On May 14, 2009, Ontario's Bill 150, the *Green Energy and Green Economy Act, 2009* (GEA) was passed by the Ontario Legislature. Modeled, in part, after successful programs in Europe, the GEA is intended to provide the catalyst for the development of the green economy in Ontario, improve the environment, implement Ontario's commitment to climate change initiatives and create a culture of energy conservation. To accomplish this, the GEA amends 15 other statutes – including the *Planning Act, Electricity Act, 1998* and *Ontario Energy Board Act, 1998*.

To re-cap our February update when we first reported on Bill 150, some of the key components of the GEA include the following.

Feed-in tariffs

Arguably the most fundamental element of the GEA is that it paves the way for North America's first feed-in tariff program (FIT) which aims to simplify current procurement methods and provide incentives for investments in renewable energy technologies through standardized prices and long term contracts. FITs will replace the Ontario Power Authority's current request for proposal process and standard offer program. On March 13, 2009, the Ontario Power Authority released draft FIT rules and a draft FIT price schedule. It is anticipated that the Ontario Power Authority will finalize its FIT program this summer with the passage of the GEA.

Project approval streamlining

The approvals process for renewable energy projects will be streamlined through a one-window, one-permit process with province-wide standards. The GEA also creates a Renewable Energy Facilitation Office within the Ministry of Energy for the purposes of facilitating the development of renewable energy projects, including working with proponents of renewable energy projects and other ministries to shepherd projects through the various approvals processes and through engagement with local communities.

Transmission and distribution

The GEA requires transmitters and distributors to connect renewable energy generation facilities provided that certain requirements are met. The GEA further empowers the Minister to direct the Ontario Energy Board to take such steps, including through license amendments, to require transmitters, distributors and others to reinforce, enhance or expand their transmission, distribution or other systems to accommodate the connection of renewable energy generation facilities

This newsletter was prepared by members of the Energy and Emissions Trading and Climate Change Groups at Stikeman Elliott.

Conservation

The GEA will help promote a culture of energy conservation in Ontario by setting energy conservation targets for consumers and distributors and encouraging the development of small-scale renewable energy projects.

Smart grid

The GEA expands the Ontario Energy Board's objects to include the facilitation of the implementation of a "smart grid" in Ontario. In addition, every licence issued to a transmitter or distributor under the *Ontario Energy Board Act* will be required to prepare plans, in the manner and at the times mandated by the OEB, for approval for the development and implementation of the "smart grid" in relation to the licensee's transmission or distribution system. A licensee will be required in connection with any approved plans to make investments for the development of the "smart grid" in relation to the licensee's transmission or distribution system.

The GEA provides the framework for a green energy renaissance in Ontario. The bulk of the detail regarding the implementation of that framework will only be known once draft regulations are released. Current expectations are that such regulations will be released later this summer.

Ontario introduces cap-and-trade legislation

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On May 27, 2009, the Government of Ontario introduced legislation to enable the creation of a "cap-and-trade" system in the province. If passed, Bill 185 – the full name of which is the *Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009* – would amend existing legislation to establish a system with hard caps on the absolute level of permitted emissions. This is expected to help the province meet its commitment to reduce greenhouse gas (GHG) emissions to 6% below 1990 levels by 2015 and 15% by 2020.

In developing Bill 185, the Government has consulted with environmental groups, as well as with nine industrial sectors expected to be involved in cap-and-trade that collectively represent approximately 40% of Ontario's total 2007 emissions.¹ While the Bill sketches the broad outlines of the province's commitment to cap-and-trade as a strategy in the fight against climate change, much of the detail of the province's plan is still to be worked out in forthcoming regulations. To this end, the Government has produced a discussion paper that presents design issues and options for the key elements of a cap-and-trade system. It is seeking stakeholder comments to be used in the development of the proposed regulations. The discussion paper has been posted on the Environmental Registry for a **60-day public comment period ending July 26, 2009**.

Key elements of Bill 185

Ontario's *Environmental Protection Act* (EPA) provides the Government with broad authority to implement emissions trading systems for contaminants (authority that has previously been used to establish cap-and-trade programs for nitrogen oxides and sulphur dioxide). In providing for the development of a GHG cap-and-trade system, Bill 185 deals with a number of key issues, including:

- > *Greenhouse gases*: the Bill adds a definition of GHGs to the EPA, adding within its purview of contaminants gases including carbon dioxide, methane, and nitrous oxide.
- > *Market-based approaches*: the Bill sets forth regulation-making powers with respect to establishing the scope of a cap-and-trade system, the persons and facilities to which such system would apply as well as monitoring and reporting requirements.
- > *Allowances and credits*: the Bill includes regulation-making power with respect to the establishment of allowances and offset credits and well as the distribution, use, trading and retirement of such credits.
- > *Regional linkages*: the Bill explicitly contemplates integration with other cap-and-trade systems, and further notes in its preamble that such linkages can provide emissions reductions at a lower cost, while improving the pace of innovation and allowing for larger trading volumes and improved liquidity. Significant action on this front has already been taken. In June 2008, the Governments of Ontario and Quebec signed a Memorandum of Understanding to collaborate on a GHG cap-and-trade initiative, while in July 2008, Ontario joined the Western Climate Initiative (WCI), a multi-sector trading program which includes British Columbia, Quebec and

Manitoba and seven U.S. states. As noted below, it is also possible that Ontario would link to a future North America-wide trading system if and when such a system is developed.

Next steps

Bill 185 leaves numerous regulatory details to be determined, including whether allowances will be auctioned, sold or distributed free of charge, as well as the exact nature of the emission caps and to whom the legislation would apply. As noted above, the province has posted a discussion paper which incorporates feedback received from stakeholders to date, and is seeking further public comment until July 26, 2009 as it develops proposed regulations.

Ontario would be the third province to adopt a GHG cap-and-trade system, after British Columbia and Quebec. On May 12, 2009, Quebec introduced Bill 42 to create a cap-and-trade system in the province. Ontario Premier McGuinty recently commented that Ontario and Quebec have a responsibility to “put in place a carbon-exchange register” that will “serve as kind of a pilot project” in other jurisdictions. The manner in which these two jurisdictions plan to harmonize their approaches is something else to look out for in the coming months.

Finally, the province anticipates that a North American cap-and-trade plan could be in place as early as 2012 – another development that will undoubtedly be the subject of future updates.

ⁱ Government of Ontario, news release, “Helping the Economy and the Environment – McGuinty Government Introduces Enabling Cap-and-Trade Legislation” (May 27, 2009), online: <http://www.ene.gov.on.ca/en/news/2009/052701.php>

Québec introduces bill aimed at reducing greenhouse gas emissions

Will require certain emitters to report emissions and will set emission caps using a 1990 baseline

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On May 12, 2009, Québec's Minister of Sustainable Development, Environment and Parks introduced a bill (Bill 42) to amend Québec's *Environmental Quality Act and Other Legislative Provisions in Relation to Climate Change* to Québec's National Assembly. Bill 42 aims at reducing greenhouse gas (GHG) emissions. Bill 42 proposes a cap-and-trade system which distances itself from the currently proposed Federal system and which is more in line with what the new Obama administration has suggested may be adopted in the United States.

When adopted, Bill 42 will establish:

- > the reporting of GHG emissions by certain categories of emitters determined by regulation, so that an inventory of GHG emissions may be taken and updated;
- > the ability of the Québec Government to set by order GHG reduction targets using 1990 GHG emissions as the baseline. It is currently expected that reduction targets will be phased in from 2012 to 2015 for certain electricity-producing companies and other major industries that emit more than 25,000 tonnes of GHG a year, and after 2015 for other emitters;
- > requirements for certain categories of emitters determined by regulation to cover their GHG emissions with an equivalent number of emission allowances, including emissions units, offset credits, early reduction credits and other specified emission allowances;
- > a cap-and-trade system to assist emitters to achieve the GHG reduction targets and to mitigate the cost of reducing or limiting GHG emissions. It is expected that the cap-and-trade system will allow persons and municipalities to trade emission allowances;

- > the ability of Québec's Minister of Sustainable Development, Environment and Parks to enter into agreements with foreign governments, international organizations and agencies for the harmonization and integration of cap-and-trade systems;
- > that all funds collected by the Government under the legislation will be used to finance GHG reduction, limitation or avoidance measures, the mitigation of the economic and social impact of emission reduction efforts, public awareness campaigns and adaptation to global warming and climate change, or to finance the development of and Québec's participation in related regional and international partnerships.

It is currently expected that Bill 42 will be adopted by the end of June and that the first set of regulations under the legislation will be implemented in Fall 2009. It is also expected that emission credits will be traded on the Montreal Climate Exchange (MCex) that was launched last year. ■

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