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CIELAP Brief on Ontario's *Green Energy and Green Economy Act, 2009* March 2009

On February 23, 2009, the Ontario Government introduced its proposed *Green Energy and Green Economy Act, 2009* (GEGEA). The Act received third reading and royal assent on May 14, 2009. The GEGEA supports Ontario's vision to reduce the province's carbon footprint and to move towards a green economy. The Act governs energy generation, regulation, pricing and use. It is intended to remove barriers and promote opportunities for green energy development and use, such as wind, solar, hydro, biomass and biogas, and also aims to improve the currently slow and uncertain approval process that has been a challenge for green projects. The GEA encourages energy conservation on the part of both residential and industrial consumers. The Government estimates that the Act will create 50,000 jobs in Ontario over three years across a wide range of sectors.

The GEGEA includes 12 Schedules that propose to enact the *Green Energy Act, 2009* (GEA) and also amend 21 statutes.¹ It is not yet clear how the green energy regime will be implemented; details will be provided in the regulations.

The following pages will provide highlights of the GEA as well as stakeholder comments and perspectives.

Green Energy Development

The GEGEA aims to significantly increase the amount of renewable energy in the province through a variety of measures, including the following:

- The GEA will establish a Renewable Energy Facilitation Office to facilitate the development of renewable energy projects by working with, assisting, and providing information to renewable energy project proponents relating to approval processes/procedures and possible requirements that the federal government may impose. The Office will be supervised by a Renewable Energy Facilitator. (Sched. A, s. 10)
- The Ontario Energy Board (OEB) will be required to consider promoting the use of renewable energy sources when it considers construction, expansion and reinforcement of electricity transmission lines and distribution lines. (Sched. D, s. 16) The Minister may also require the OEB to establish, implement or promote a smart power grid to support renewable energy projects and the potential for electric cars. (Sched. D, ss. 7, 8) The objectives of the Ontario Energy Board (OEB) will be amended to include the facilitation of investments to implement smart grids and promotion of the use and generation of energy from renewable energy sources. (Sched. D, s. 1)

¹ The text of the GEGEA (Bill 150) can be found at http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b150.pdf. The Province has also set up a homepage for the legislation, at <http://www.mei.gov.on.ca/english/energy/gea/>.

- The Minister of Energy and Infrastructure will have the discretion to direct the Ontario Power Authority to develop a feed-in tariff program to provide standard rules, contracts and pricing for classes of renewable energy facilities. (Sched. B, s. 7) This measure is intended to encourage renewable energy developments by giving investors greater confidence that projects will be profitable and by supporting community-based investment. This is a response to assertions by proponents of renewable energy that a feed-in tariff is the most effective way to promote renewable energy.
- The GEGEA will require that transmitters and distributors give renewable energy generation facilities that meet technical, economic and other regulatory requirements *priority access* to their systems. (Sched. B, s. 8, 10) This right to connect will allow many viable projects, that have been waiting for access, to connect to the grid.
- Renewable energy projects that meet regulatory requirements will be able to go through a streamlined approvals process with service guarantees. (Sched. G, s. 4) This will eliminate the need for such projects to obtain one or more approvals or permits under the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA), and try to provide a balance between approving green projects and ensuring public and environmental protection.
- Small-scale projects at the community and household levels will be offered incentives, such as zero- or low-interest loans.
- The GEGEA acknowledges the duty to consult aboriginal peoples, and will also facilitate the development of renewable energy projects in Aboriginal communities.

Energy Efficiency

The GEGEA will provide the means to increase energy efficiency for both businesses and individuals through measures that include:

- Energy efficiency will become a key purpose of Ontario's building code. Under the GEA, property owners and realtors will be required to do an energy audit prior to selling or leasing real property. This will target, for example, the significant impact buildings may have in releasing greenhouse gases. (Sched. A, s. 2)
- The government can require public agencies and prescribed consumers, including municipalities, universities, colleges, schools and hospitals, to establish energy conservation and demand management plans, and to meet prescribed targets and energy standards. The government can also require public agencies to consider energy conservation and efficiency when they acquire goods and services and make capital investments. (Sched. A, ss. 5, 7)
- The objectives of the Ontario Energy Board (OEB) will be amended to include the promotion of electricity conservation. (Sched. D, s. 1) The Minister will also be permitted to issue directives to the OEB concerning conservation and demand management targets that must be met by distributors and other licensees (Sched. D, ss. 7, 8)
- The Environmental Commissioner of Ontario will be required to prepare two new yearly reports, separate from the Commissioner's Annual Report, on: (1) energy conservation concerning electricity, natural gas, propane, oil and transportation fuels – this includes describing results of energy conservation initiatives during the previous year, progress in meeting government targets established by the government, and barriers to energy conservation; and (2) progress of provincial activities to reduce greenhouse gas emissions. (Sched. F, s. 1)

Stakeholder Perspectives

In general, stakeholders across a range of sectors see the GEGEA as a strong and positive piece of legislation. The Green Energy Act Alliance² (GEAA) has stated that the proposed GEA meets or exceeds most of their initial requests.³ Many stakeholders including the Ontario Clean Air Alliance (OCAA)⁴, the GEAA, and the Ontario River Institute⁵ support the proposed feed-in tariff, although the GEAA would like the legislation to say that the government “shall” rather than “may” establish it. The OCAA is happy about mandatory electricity conservation targets for Ontario’s municipal electric utilities and the streamlined approvals process. The GEAA is pleased with the establishment of the smart grid, conservation measures, encouragement of renewables, the right-to-connect, and the streamlined approvals process. First Nations communities, including Serpent River First Nations, have celebrated the fact that the plan encourages green power for Aboriginal communities.⁶

However, many stakeholders, including farmers and businesses, are looking for further details that have been left to regulation, and are apprehensive about how the GEGEA might be implemented. In addition, a range of stakeholders have put forward the following concerns:

Promotion of nuclear energy: The OCAA and Greenpeace⁷ have criticized the GEGEA for creating an enabling environment for nuclear power. In response Minister Smitherman has stated that Ontario will only be able to move to renewable power, which he implies is less reliable than other energy sources, because nuclear power will be available to cover the shortfalls.

Need to further promote energy conservation and efficiency: The OCAA has stated that a far greater amount of money has been spent on new electricity generation capacity than energy conservation. The organization has suggested that the government needs to make energy conservation and efficiency greater priorities and that the province should direct the Ontario Power Authority to provide more funding to municipal utilities for energy conservation and efficiency.

Need for long-term targets: In their February 2009 report "Regulatory Risk and Private Investment in Renewable Energy Technologies: A Study of the Ontario Wind Power Sector", authors Guy Holburn and Charles Morand from the Richard Ivey School of Business criticized the GEGEA for failing to include long-term targets for renewable capacity and for broadening Ministerial decision-making powers, which will further expose decisions to political pressures.

² The Green Energy Act Alliance is an alliance of a broad range of stakeholders that includes the Ontario Sustainable Energy Association, the Ivey Foundation, the Pembina Institute, the Community Power Fund, Environmental Defence, the Ontario Federation of Agriculture, the David Suzuki Foundation, and the First Nations Energy Alliance.

³ The GEAA’s March 26 2009 “Analysis of Bill 150 - The Green Energy and Green Economy Act, 2009” can be accessed at http://www.greenenergyact.ca/Storage/25/1680_GEAAEBRFinalWord.pdf.

⁴ “The Green Energy Act - A Preliminary Analysis”, submitted by the OCAA on February 23 2009, can be accessed at <http://www.cleanairalliance.org/node/665>.

⁵ The Ontario River Institute’s press release “Ottawa River Institute welcomes Green Energy Act” can be found at <http://csrwire.ca/article/1559/Ontario-Sustainable-Energy-Association/Ottawa-River-Institute-welcomes-Green-Energy-Act.html>.

⁶ The press release “First Nation communities take a green step forward (Mar-16-2009)” can be found on the GEAA’s website at <http://www.greenenergyact.ca/Page.asp?PageID=122&ContentID=1169&SiteNodeID=214>.

⁷ Greenpeace’s press release “Green Energy Act a Trojan horse for building more nuclear reactors” is available at <http://www.greenpeace.org/canada/en/press/press-releases/GEA-Trojan-Horse-News>.

Need for Combined Heat and Power (CHP) generation: Both GEAA and OCAA have called for measures that promote high efficiency CHP generation, on which topic the GEGEA is relatively silent. The GEAA has suggested that feed-in tariffs, the obligation to connect, and streamlined approvals should be expanded to include CHP.

Need for greater provisions for low-income access: While the GEGEA addresses low-income needs to a certain extent, the Low Income Energy Network, Canadian Environmental Law Association (CELA)⁸, and the Ontario Bar Association (OBA)⁹ have called for the GEGEA to include further provisions for low-income households including rate assistance and protection programs, and incentives for retrofits.

Need for further details in regulations: GEAA has noted that regulations should include details relating to: the feed-in tariff program, including provisions that there should be no cap on project size and that the price should be sufficient; the right-to-connect; approvals and permitting; funding for one or more entities to offer loans, capacity building and community support; targets; clarification of the role of green energy for First Nations' communities; and specifying domestic content requirements. The OBA has requested clarification on how the proposed differential rates would affect the cost of power, encourage innovation and make renewable energy more competitive over time. The OBA is also asking whether the government would fund expensive forms of renewable energy before maximizing less expensive options such as conservation.

Ensuring that renewable energy methods reflect strong sustainability principles: CELA has recommended that definitions and processes for methods of renewable energy, including biogas and biomass, should be clearly based on strong sustainability principles and processes so as to not inadvertently create new problems, including for agriculture and forests.

CIELAP perspective

CIELAP commends the Ontario Government for its foresight and leadership in introducing the GEA. The proposed Act promises to address a broad range of concerns and challenges and move Ontario forward towards a green economy. In particular, CIELAP supports the following proposals:

- the proposed feed-in tariff program;
- the capacity for conservation targets for Ontario's municipal electric utilities;
- introduction of a smart grid;
- energy conservation and demand management plans;
- encouragement of renewable energy projects,
- the right-to-connect;
- and the promotion of small power projects and green power initiatives for Aboriginal communities.

In addition, CIELAP has the following comments about specific aspects of the proposed GEGEA regime.

Streamlined approval process: CIELAP understands the need for a coordinated, efficient approvals regime, but it is important that the Government ensure that the approval process is transparent and responsive to public comments.

⁸ CELA's media release "Green Energy Act Promising for Low Income Ontarians Says CELA" is available at <http://www.cela.ca/newsevents/media-release/green-energy-act-promising-low-income-ontarians-says-cela>.

⁹ OBA's recommendations on the Green Energy Act can be found at <http://envirolaw.com/2009/04/21/oba-recommendations-on-green-energy-act/>.

Definition of "environment": The GEGEA proposes amendments to the EPA that would use the definition of "environment" found in the *Environmental Assessment Act* (EAA) for the purposes of the proposed Part V.0.1 of the EPA, governing renewable energy. The EAA definition of "environment" includes social, cultural and economic conditions, in contrast with the definition provided in the EPA which is confined to the "natural environment" – air, land and water. We support the use of this broader definition of the "environment" as part of the renewable energy regime, which will allow terms and conditions to be imposed that protect social and economic aspects of the environment as well as the natural environment.

Municipal planning tools: Renewable energy projects will also be exempted from certain *Planning Act* restrictions, such as official plans, zoning by-laws and site plan controls. (Sched K, s. 3) As a result, municipalities will lose their primary tools to regulate and prohibit the siting of renewable energy projects and generation facilities within their boundaries. While some municipalities will have concerns about the loss of planning powers, giving these powers to the Provincial Government should facilitate the establishment of potentially controversial renewable energy projects.

Hearings on renewable energy projects: Under the GEGEA, the right to appeal a renewable energy project would be available to both proponents of a project and other residents of Ontario. However, anyone who applies for a hearing relating to an approval for a renewable energy project would be required to show that the project will cause serious and irreversible harm to plant life, animal life, human health or safety, or the natural environment. This is a very difficult test that may be nearly impossible to meet.

Renewable energy co-operatives: The GEGEA will permit the incorporation of renewable energy co-operatives, and allow them to generate and sell in to the grid as much electricity as they are able to, regardless of how much electricity their members consume. These changes will remove existing legal barriers and encourage new sources of renewable energy.

Confidential information: Under the GEA, the Renewable Energy Facilitator is required to keep certain information relating to proponents secret; where there is conflict between the GEA and the *Freedom of Information & Protection of Privacy Act*, the GEA prevails. (Sched. A, s. 11(4)) There is nothing that overrides this secrecy requirement. Clarification is needed as to what information the Renewable Energy Facilitator may keep secret from the public, and how this would apply to information revealing threats to human health or the environment, and whether the Environmental Commissioner would have access to this information in preparing reports on the progress of green energy activities.

Energy rates: It is not clear how much energy will cost under the new regime; the feed-in tariff program would result in different rates for different classes of generators, depending on types and sources of energy, among other things. It will be important for the Government to be transparent as to how it proposes to juggle rates that must encompass both very costly power (e.g., from sources that are innovative and deserve further research and investigation) and less expensive power (e.g., from sources already fully developed and in use).

This brief is one of seven policy briefs prepared by CIELAP in the spring of 2009. CIELAP's other briefs and publications can be found on the CIELAP website at www.cielap.org.