

Green Energy Act Alliance

Analysis of Bill 150 - The Green Energy and Green Economy Act, 2009

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The Green Energy Act is a World Class Act

The Green Energy Act Alliance commends the Government of Ontario, and in particular the Honourable George Smitherman, Minister of Energy and Infrastructure, for the introduction of the Green Energy and Green Economy Act as well as their swift action in taking this through the legislative processes.

We share the concerns of Ontarians regarding future energy policy and the desire to phase out nuclear energy as soon as is practical. In our view, if the GEA legislation passes and is accompanied by regulations and directions that fully implement its potential, any case for nuclear energy and fossil fuels will steadily decline.

Before turning to specifics we would like to say up front that the proposed Green Energy Act is a world-class Act and is unique and revolutionary in the following important ways:

1. The GEA, gives priority to conservation and renewable energy in electricity supply.
2. The GEA, for the first time in North America, will pave the way for long-term secure pricing for renewable energy generation (feed-in tariffs) differentiated on the basis of technology, size, location and generating capacity.
3. The GEA guarantees renewable energy generators connection to the grid.
4. The GEA is the most comprehensive renewable energy policy in North America because it encompasses nearly all sources of renewable electricity generation of all sizes--from residential rooftop solar panels to wind power plants.
5. The GEA, changes how Ontario regulates new sources of electricity generation by ensuring that the promotion of renewables, conservation and smart grid implementation are mandatory considerations in ongoing regulation of the system by the Ontario Energy Board.
6. The GEA, for the first time in North America, specifically includes opportunity for renewable energy development by First Nations and Métis communities.
7. The GEA is unique in North America because it specifically targets the removal of barriers to community-owned renewable generation.
8. The GEA is unique in North America in its creation of an office to aid renewable energy development and the designation of a specific public official responsible for renewable energy development, a so-called renewable energy czar.
9. The GEA is unique in North America because it facilitates streamlining the approvals and permitting processes for renewable energy generators at the same time as ensuring that siting criteria are clearly defined that take into account potential environmental and health impacts.
10. The GEA, for the first time in North America, recognizes the need to integrate distribution and transmission planning and expansion with the development of renewable energy.

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Key Policy Initiatives in the Bill:

1. Enhanced policy commitment to conservation, smart grid and renewables

The statement of government policy on, and the inclusion of the promotion of, conservation, a smart grid, renewable power generation and wires infrastructure in the objectives of the OEB are vital. The OEB has been a narrow 'economic regulator'. Accordingly, we are pleased that the Bill delivers clear expanded objectives for the OEB to address these broader economic matters.

2. Enabling feed-in tariffs to procure renewables

As noted by such eminent observers as Sir Nicholas Stern, feed-in-tariffs (FITs) are the most cost-effective way to procure renewable power. At the same time, the simplified mechanism and certainty of FITs makes it possible for community-based investment in the emerging renewables sector. The stability of the FIT approach will minimize risk and attract investment to Ontario. Well-designed FITs (which should have no cap) will spur widespread, rapid deployment of renewable energy and create jobs throughout the province.

3. Guaranteeing and prioritizing connection of renewables

As evidenced by the experience in Europe, an obligation to connect renewables is a fundamental requirement for any successful strategy to grow a renewable power sector, especially one that includes smaller scale and community-based projects. Properly designed, such a mechanism harnesses the creativity of the utilities, protects the utilities and their customers from undue financial burdens, and maximizes societal benefits.

4. Streamlining approvals while protecting neighbouring uses

This Bill appropriately recognizes the urgent need for action to address climate change and meet our energy needs. However, we are acutely aware of the need to protect the public and the local environment while encouraging these greener forms of generation. The consolidated approvals and the regulated minimum safeguards mechanisms are designed to strike this balance.

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What's needed -- Proposed amendments to Bill 150

Our proposals for improving the Bill, below, will help to ensure that the policy initiatives in the Bill are achieved:

1. Ensure ongoing priority for conservation and renewables in planning, regulation, procurement and operation.

While the preamble of Schedule A (the Green Energy Act) recites the government's commitment to promoting and expanding conservation and renewables, it falls short of ensuring that government agencies including the OPA, IESO and OEB will give these options the priority intended. There is considerable inertia that must be overcome.

Of particular concern is the failure of the Bill to ensure the pursuit of all cost-effective conservation in the various fuel sectors. In the case of electricity, most conservation costs less than 3 cents/kWh whereas new supply exceeds 10 cents. Conservation is the first choice for bill reduction, economic stimulation, environmental sustainability and energy security. It is vital that the regulatory and planning entities receive the clearest direction on this point. Renewable generation must then be the first priority after conservation.

A more explicit statement of, and requirement to reinforce, the government's priorities for planning, development and operation of the energy infrastructure of Ontario would assist in this regard. We suggest that the various schedules be amended as follows:

Schedule C (Ministry of Energy Act), Objectives of the Ministry, section 6(1)(h), be changed to note priority for items ii (renewables), iii (research and development) and iv (conservation),

This can be accomplished by splitting and reordering section 6(1)(h) into two subsections (*new text in italics*):

6(1)(h) 1. ensure that the following objectives are pursued as priorities in the planning, development, procurement, and operation of energy services in Ontario and do any one or more of encouraging, promoting, developing or participating in such activities, projects and programs as the Minister considers appropriate:

(i) to stimulate **all cost-effective** energy conservation, through the establishment of programs and policies within the Ministry or such agencies as may be prescribed, load management and the use of renewable energy sources throughout Ontario,

(ii) to increase the availability of renewable energy in Ontario and to increase the use of renewable energy sources in Ontario,

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(iii) to increase the availability of combined heat and power generating facilities in Ontario,

*(iv) to stimulate the search for and development of sources of energy, including those that utilize waste **and waste energy** and those that are renewable, as alternatives to the sources of energy available for use in Ontario,*

6(1)(h) 2. do any one or more of encouraging, promoting, developing or participating in such activities, projects and programs as the Minister considers appropriate,

(i) to encourage prudence in the use of energy in Ontario,

(ii) to stimulate the planning and increase the development of infrastructure in Ontario, and

(iii) to support planning for growth and building strong communities in Ontario.

The prioritization included in 6(1)(h) should be reflected in the Electricity Act, and the OEB Act to ensure respect for these priorities in the regulatory, planning and operations functions that these agencies perform. Specifically:

Schedule D (OEB ACT)

In section 1 of the schedule, where new paragraphs 3, 4 and 5 are added to the Board's objectives in respect of electricity regulation, a sixth item should be added:

6. To promote the priorities set out in Section 6(1)(h) of the Ministry of Energy Act.

Similarly, in section 2, where a new paragraph 5 is added to the Board's objectives for gas regulation, a sixth paragraph should be added:

6. To promote the priorities set out in Section 6(1)(h) of the Ministry of Energy Act.

Schedule B (Electricity Act)

A new section should be added as follows:

In planning, procurement, regulation and operation of Ontario's electricity system the OPA and the IESO shall adopt the priorities set out in Section 6(1)(h) of the Ministry of Energy Act.

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2. Require feed-in Tariffs (FITs) as the *primary* procurement mechanism for renewables and refine the characteristics of FITs and Directives in that regard.

The Bill as drafted enables but does not require a feed-in tariff approach for the procurement of renewables. Well-designed FITs have been found to be the most efficient and cost-effective method to procure renewable energy.

The design of FITs is a complex matter best left in large part to regulation and directive mechanisms, but the choice to favour FITs should be entrenched in legislation to ensure its long-term availability.

Regard to resource intensity should be a necessary aspect of FIT development to ensure that FITs are cost effective and applicable to a broad range of communities.

We recommend that Schedule B, section 7 adding 25.35 (1) be changed to read “*shall*” rather than “*may*” and that the section apply to “*green energies*” which should be defined to include both renewables and high efficiency combined heat and power (see discussion of CHP, below):

“The Minister *shall* direct the OPA to *develop FITs that are designed to ensure they will be the primary mechanism for procuring green energies*. The Minister, in directing the OPA to develop FITs, may specify such circumstances and timelines as the Minister shall require.”

Similarly, in 25.35 (2) (b) the Minister’s issuance of directives to guide the FIT approach should be mandatory -- “*may*” should be changed to “*shall*”.

Section 25.35 (3) defining ‘feed-in tariff program’ should list “*natural resource intensity*” as a permissible basis of differentiation (in addition to energy source or fuel type, generating capacity etc.).

This will ensure that FITs do not overpay or underpay for projects and will allow a higher attainment of generating capacity per dollar spent.

3. Facilitate the development and enable the procurement of Combined Heat and Power (CHP) generation.

Apart from enabling investment in CHP by LDCs, the Bill is silent on this matter. CHP, if defined to include only highly efficient generation, offers the potential for vastly more efficient use of the gas resource, for dispersed development that will require less transmission and the potential to support greater penetration of intermittent renewables.

To accomplish this we recommend that the various sections enabling feed-in tariffs, the obligation to connect and streamlined approvals be expanded to include CHP.

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One manner in which this could be accomplished is illustrated above where we suggest that FITs be utilized for “green energies” which should be defined to include high efficiency CHP. Alternatively, the various sections could be repeated and altered to address high efficiency CHP.

High Efficiency Combined Heat and Power should be added to the definition section in the GEA (section 1(1)). It should adopt the language in Schedule D, section 11 and in addition require that the facility achieve a minimum average efficiency of 6000 Btu/kWh (the federally mandated level for class 43.1 capital cost allowance).

4. Ensure that connection charges shall be shallow, and that deep connection and enabler line costs are spread to all customers.

The costs of connecting renewable energy generation to the grid (apart from the “shallow” connection costs that are in the control of and should be borne by the project developer) are being incurred to benefit society as a whole.

Accordingly, it is not appropriate to visit these costs on the particular generator or a particular distributor’s customers.

Schedule D, section 15 proposes a regulation making authority to determine when generation connection costs are to be borne by a distributor or transmitter rather than by a generator. Schedule D, section 14, adds a new section 79.1 that would allow regulations to spread such costs out to “all customers” in the case of connection costs incurred by a distributor.

These sections should be amended to clarify that “all customers” is not limited to customers of that distributor, and to make the mechanism mandatory for all connection costs and enabler line costs beyond on-site (‘shallow’) connection costs for renewable generation.

5. Facilitate Community-based development.

The Minister’s power to direct the architecture of FITs in Schedule B, section 7, which adds 25.35 (2) Subparagraphs (a) and (b) referring to aboriginal and local community development and establishment of renewables, should also refer to “ownership” and therefore read:

“in the development, *ownership* and establishment...”

This will ensure the Minister has the authority to direct the OPA to encourage community investment.

In Schedule C, section 6 (1), where the objectives of the Ministry are set out, item (h)(vii) should be amended to read: “to support planning *by government and communities* for growth and building strong communities in Ontario” to recognize the dual level of planning that needs to be supported.

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The list of objectives should be expanded to explicitly include:

“(viii) to support community-owned renewable energy and conservation projects”.

The regulation-making authority should specify that regulations may designate an officer, committee or agency as responsible for determining which projects qualify as ‘community-owned renewable and conservation projects’. Selection of the appropriate authority and guidelines for the determination should be developed through a consultation process with organizations that represent the sector.

In several places the Bill empowers local communities, municipalities and distribution utilities to develop projects. These sections should be clarified to extend to First Nations. Specifically, Schedule B, section 5 creating subsection (4.5) should specify that it applies to facilities or systems both on and off of lawfully designated reserve and unceded reserve lands. Section 13 providing a definition for “municipal electric utility” should be extended to include First Nations utilities. Similarly, “municipal services corporation” defined in Schedule B, section 15(3) should include a First Nation Corporation incorporated under the laws of Ontario or Canada.

6. Clarify that large centralized non-renewable generating stations require IPSP approval.

In Schedule B, section 5.(2), the current draft of the Bill allows the Minister to direct the OPA to procure electricity supply or capacity that could include large non-renewable generation despite it not being part of an approved IPSP.

While the ability to direct procurement of conservation, renewables and decentralized CHP is in keeping with the policy intent of the Green Energy Act, the potential to avoid OEB scrutiny of major generation station procurement would defeat the legislative scheme that requires the OPA to periodically prepare an integrated plan and have it publicly reviewed by the OEB.

The proposed Electricity Act section (4.1)(a) should read:

*“the procurement of electricity supply or capacity **limited to** supply and capacity derived from renewable energy sources or high efficiency combined heat and power.”*

7. Ensure that all electricity costs are captured in the Time of Use pricing system.

The existing legislative regime does not ensure that the increasing portion of electricity-related payments that are related to the global adjustment are subject to time-of-use pricing.

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Relevant sections of the Electricity Act and the Ontario Energy Board Act should be amended to ensure that the OEB will and the government may, via regulation, require such a payment structure.

8. Support the expanded role of the environmental commissioner.

Schedule D section 6 adds section 26 (2) which defines “special purposes” for which the OEB shall assess costs to be included in rates.

A new section 26.2(2)7. should be added as follows:

“To fund the activities of the Environmental Commissioners Office under section 58 (1) 2 of Environmental Bill Of Rights, 1993, as amended.” This will cause these costs to appear in rates rather than taxes and will help ensure that the Commissioner has the resources required to do a thorough job.

9. Amend the Condominium Act and the legislative mandate of municipalities to facilitate investment in conservation and renewables.

Toronto Atmospheric Fund and the City of Toronto are investigating the possibility of creating a mechanism to enable condominium developers and condominium corporations to invest in renewable power facilities and to enable innovative approaches to municipal financing and cost recovery for conservation investments made by property owners. We support these objectives and would support changes to the GEA to facilitate such a proposal.

Required Green Energy Regulations, Directives and Programs

As noted above the Bill has the potential to revolutionize energy policy, planning and development in Ontario *but will only do so if accompanied by regulations and directions that fulfill the Bill’s promise.* We note the following goals that must be addressed by regulations and directions:

1. Tariff Program -- Necessary elements to be established in regulation:

- Tariffs must be simple, comprehensible, and transparent,
- Provide sufficient price per kilowatt-hour to drive development and manufacturing,
- Provide contract length sufficient to reward investment,
- Be differentiated by technology, size, and resource intensity,
- No cap on project size and overall FIT program. Successful programs have either no cap on the program size (Germany), or the cap is so high (France and Spain) that there is no fear of reaching the cap in the early years of the program.

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2. Right to Connect Details Established in Regulation

- Regulation developed detailing limits to the right to connect (economic test, cost sharing, cost recovery) must incorporate a shallow connection policy and ensure that community-based projects have equitable access to the grid.
- In situations where where the right to connect is constrained for a prolonged period while a distribution system is undergoing upgrades, the connection priority for renewable projects that is provided in Schedule B, section 10 should be further prioritized to municipal, distribution utility, First Nations and other community-based projects.
- Provide simplified interconnection.

3. Approvals and Permitting of Green Energy Projects Established in Regulation

New regulation is required to establish an updated Class EA for renewable energy projects as well as establish a “best practice” set of standards for set-backs, avoidance of key environmental features, etc.

GEAA expects that to adequately promote renewable energy, Ontario must embrace world-class standards for protecting communities. These standards, to be made under the regulation-making authority set out in the proposed Act should include:

- Stricter prohibitions on the siting of facilities that impact the environment. This should include so-called “no go” zones (e.g. preventing projects in Important Bird Areas and Provincially Significant Wetlands (PSW’s) or habitats of endangered species);
- Renewable energy projects should not be located within sensitive receptor areas near residential dwellings or sensitive institutional or commercial land use
- The Bill allows for applications to the Director for renewable energy approvals and for principled appeals of projects that may cause serious harm to health or the environment. To ensure that participatory rights of neighbouring members of the public are protected enhanced Notice and Comment provisions should be included.

4. Community Power Financing and Capacity Building

Fund one or more entities to offer loans, capacity building and community support –

The province should establish a comprehensive financing program and fund one or more entities to accelerate the development of eligible projects and the resultant benefits to Ontarians regardless of financial market conditions.

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The following functions are necessary to ensure the community power sector is successful in Ontario.

- Soft Loans and Grants – Community Power Projects require early stage funding to cover the soft cost of project development work:
 - Pre-feasibility: Grants
 - Capacity Building: Grants
 - Feasibility: Loan
 - Project Development: Loan
- Capitalization Loans – eligible Community Power Projects require simplified access to low-cost debt that enables them to retain control and ownership of projects.
- Capacity Building – The Community Power Sector requires resources to build the financial, technical, social, legal, and organizational templates and practices associated with the facilitation and development of locally-owned community-based renewable energy and conservation projects. There are several organizations (the Ontario Sustainable Energy Association, Green Communities Canada, the First Nations Energy Alliance, the Toronto Renewable Energy Co-operative/Our Power, Farmers for Economic Opportunity, Agri-Energy Producers of Ontario, the Ontario Federation of Agriculture, the Ontario Co-operative Association etc.), that have developed resources and expertise in this regard who need to be sufficiently resourced to vastly expand their efforts.

5. Renewable Energy Caps and Targets

IPSP revisions must leave a window open for the continued growth and expansion of renewable energy and conservation. GEAA calls for 10,000 MW of new installed renewable energy by 2015, over and above 2003 levels 25,000 MW of new installed renewable energy by 2025, over and above 2003 levels.

6. First Nations

It is expected that a separate regime, possibly involving the federal government, will clarify the future of green energy in First Nations' communities.

7. Low Income

Directions specifying the coordination and the nature and extent of multi-fuel conservation programming targeted at low income Ontarians will be needed to ensure adequate depth and breadth of coverage.

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8. Local Content

Schedule B, Section 7, grants the Minister authority to direct the OPA to incorporate domestic content goals in its feed-in tariff program. This is an encouraging indication of the Government's commitment to ensure that the transition to new forms of renewable power is accompanied by significant economic benefits for Ontario workers and their families. There is tremendous scope for these benefits - in design, engineering, manufacturing, construction and operation – but also reason to believe that affirmative policies are necessary to guarantee they are achieved. This requirement should be appropriately phased in to balance the need for rapid development of renewables with the benefits of encouraging local economic development and job creation.

A useful next step would be for the Minister to make available a draft directive, setting out a schedule of domestic content requirements that are tailored for the different forms of electricity generation and evolving over time.

The specific levels of domestic content will have to be set in the context of available resources, especially manufacturing capacity, and could increase over time to drive capacity creation. Quebec's 60% domestic content procurement policy for wind energy is an example that could be drawn from upon which Ontario could build a policy applicable to Ontario's unique manufacturing potential.

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