

First Ontario Energy Board Decision to Consider the Implementation of Ontario's Green Energy Act

May 6, 2010

The Ontario Energy Board ("OEB") released, on April 9, 2010, its decision in the application of Hydro One Networks Inc. ("HON") for approval of its distribution rates for 2010 and 2011. The decision is the first addressing the implementation of Ontario's *Green Energy Act* ("GEA").

The GEA was heavily promoted by the provincial government as evidencing its commitment to renewable energy generation. The OEB's decision may have a significant impact on how much of that generating capacity will actually be built.

The GEA requires electricity distribution and transmission companies to provide the infrastructure to connect their systems to renewable energy generation facilities. The costs of doing so are to be recovered principally from electricity consumers. However, before those costs can be recovered, the OEB must approve the expenditures as prudent. The OEB has a mandate to, among other things, protect the interests of consumers with respect to prices.

In its application, HON proposed to spend approximately \$556 million in capital expenditures in 2010 and 2011 on its green energy plan. Eighty-four per cent of that expenditure related to renewable generation connection.

The OEB found that it could not approve all of HON's proposed green energy plan expenditures, chiefly because it was not given sufficient information to allow it to find the proposed expenditures to be prudent. The OEB allowed HON funding for some expenditures, subject to a later review on whether those expenditures were prudent.

The OEB in effect reserved the right to find, subsequently, that connection expenditures were imprudent and that the costs could not be recovered from consumers. This raises the possibility that distribution companies may be more cautious in their approach to green energy plan expenditures and that the overall renewable energy plan may in the end be less ambitious than government pronouncements originally suggested.

The OEB's decision is also significant in that it requires HON to provide much more detail than had been the case in the past about the factors affecting electricity prices. The OEB ordered HON to include in its notices to its ratepayers statements that its prices were affected by, among other factors, the costs of implementing the GEA, by the province's new Harmonized Sales Tax, by the province's so-called Special Purpose Fund, and by the implementation of time-of-use rates.

The OEB's decision on the notice point addresses concerns that many provincial government initiatives have contributed to significant increases in electricity prices, but that the effect of those initiatives on the price increases has been hidden from consumers.

For a link to the decision, visit:

http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/rec/186722/view/Dec_Reasons_HONI_20100409.PDF.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110

Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110

Fax: 905.829.2035