

In the Matter of Proposed Filing Requirements: Distribution System Plans
Under the *Green Energy Act*

Board File No. : EB-2009-0349

Submissions of the Ontario Council of Hospital Unions

and the

Council of Canadians

February 2, 2010

These submissions are made on behalf of the Ontario Council of Hospital Unions (OCHU) and the Council of Canadians (COC).

The Ontario Council of Hospital Unions (OCHU) represents approximately 30,000 hospital, long-term care, ambulance and central laundry workers across Ontario. OCHU is committed to ensuring that hospitals in Ontario remain public not-for-profit institutions that provide high quality services under the medicare umbrella.

Ontario hospitals use a lot of energy and often do so inefficiently. Not only are there opportunities for significant efficiency and conservation improvements in the hospital sector, but many hospitals have the potential to not only meet their own energy needs but to contribute as well to the energy service needs of their communities through conservation, demand management, cogeneration and renewable energy projects, and several hospitals are doing so.

The Council is a not-for-profit civil society organization with members in every province and territory – more than 26,000 reside in Ontario and many participate in the 17 local chapters of the Council active in Ontario. The Council is primarily sustained by volunteer energy and financial contributions from its members.

Energy is one of four priority campaign issues for the Council, and its primary concern is for ensuring Canadian energy security in a manner that effectively addresses the challenges of climate change. It is in this regard that it is concerned with policy and regulation for the electricity sector, and with the need to take into account Canada's obligations under international trade laws as these apply to the sector.

Overview and Summary

Recent reforms implemented by the *Green Energy Act* (GEA) provide a welcome and overdue departure from policies of privatization and de-regulation that represented the Harris Government's agenda for Ontario's electricity sector. In many ways, the *Green Energy Act* repudiates those policies by re-establishing the key role that governments and other public bodies must play if the electricity sector is to meet the needs of Ontario consumers, and do so in a manner that addresses pressing environmental imperatives.

These reforms not only provide the Minister and his colleagues with sweeping new powers to ensure that renewable energy and conservation goals are met, but also foresee a much expanded and more proactive role for public entities in achieving green energy goals.

The Ontario Energy Board is now implementing this new policy direction. However, in doing so, we believe the Board has adopted a piecemeal approach that too often seeks to apply the new statutory and regulatory framework as if the old policies of de-regulation and privatization were still in place. Those policies actively promoted the corporatization and privatization of the electricity sector, and planning was, according to the market model, simply unnecessary. Under that construct, the role of public ownership was to diminish, even disappear.

Fortunately this regressive approach has now been abandoned and replaced by a very different agenda that requires publicly owned distributors to play a proactive and central role in meeting local and provincial energy service needs.

For the reasons set out below, the Board's proposed filing requirements should be revised to better reflect the policy direction engendered by GEA reforms. In particular we submit that:

1. Local distribution system planning for renewable and smart grid initiatives should not be carried out in isolation from an assessment of overall system needs. Accordingly, the purposes of the GEA plan should include providing a transparent, rational and environmentally sound distribution system plan to efficiently and effectively meet the energy service needs of local consumers. That plan should accommodate and support renewable generation and the development of a smart grid whenever these are compatible with overall distribution system needs.
2. GEA reforms unshackle municipalities and other public agencies from constraints that greatly limited their role in the electricity sector. Accordingly, local distribution system planning must recognize and facilitate the expanded role that public agencies have been accorded under GEA reforms to reflect and take advantage of the particular benefits of public ownership, which include increasing public revenue and implementing procurement practices that foster local Ontario economic development and green jobs. The potential for public-public partnerships, between distributors and other public agencies, to contribute to GEA goals should be assessed by GEA plans.

3. When US or Mexican investors make or acquire investments in renewable generation in Ontario they have rights under the North American Free Trade Agreement (NAFTA) which may directly impact Ontario energy security and the extent to which the benefits of renewable energy development are captured by Ontario. Accordingly, the extraordinary rights such investors enjoy under NAFTA must be taken into account by the Board and system planners.

The Proposed Planning Framework is Too Narrow

According to policies established by the Harris government for the electricity sector, planning was simply unnecessary because the private sector would anticipate and attend to the needs of Ontario energy consumers. Fortunately, the folly of letting ideology trump reason and prudent public policy making has been recognized. While the market may do many things, it will certainly not plan a power system. Accordingly, the Minister directed the Ontario Power Authority to develop an Integrated Power System Plan (IPSP) for the province. Unfortunately, that planning process is now in hiatus, which has left local utilities to grapple with distribution system planning without having a provincial power system plan to guide local planning. It would obviously be better for system-wide planning to proceed so that local distribution system planning could reflect and be integrated with an overall plan for Ontario.

In any event, we believe that the proposed filing requirements for distribution system plans under the *Green Energy Act* are too narrowly conceived, and that would be the case even with an IPSP in place. In fact, the approach engendered by these filing guidelines fails to reflect the basic planning principles that have guided electricity system planning in this jurisdiction and many others for decades. While the particular focus of the present planning exercise is to facilitate renewable energy and smart grid initiatives, planning itself must be more comprehensive if it is to ensure that local distribution systems are developed in an efficient and effective manner to meet local energy service needs.

Electricity system planning should begin with an assessment of the present and future needs of the community. Planners must then examine options for meeting those needs - including load reduction - within the overall framework of cost-minimization and environmental constraints. "Green" and "smart" grid objectives would be incorporated within this broader scheme. Load-flow studies would then be carried out to determine optimal locations for renewable generation. Yet present proposals would not include these fundamental steps. Instead, planning requirements would be set for the "green" and "smart" aspects of a distribution system de-contextualized from an actual system plan.

In our view, this very limited notion of distribution system planning is neither mandated by, nor does it logically follow from, GEA reforms. Thus, Section 70(2.1) of the *Ontario Energy Board Act* provides in part that:

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

2. *The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,*

i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

There is nothing that circumscribes the planning process to a consideration only of renewable or smart grid elements, nor does s. 70(2.1) require that distributors abandon the first principles of electricity system planning. While the particular approvals that may be sought are limited to renewable and smart grid projects, properly assessing such initiatives requires an understanding of how they would fit in an overall distribution system plan.

Take for example the circumstances of the public hospitals that rely upon a particular distribution system. As we know, hospitals often have high energy service needs, and meeting those needs effectively and efficiently might typically involve a mix of conservation, demand management, and supply options. The latter might in turn include renewable power, such as photovoltaics, and conventional power, such as co-generation, options. Smart grid technology might also play a role in optimizing the performance of efficiency of the hospital's system. It is obvious that planning to ensure that the distribution system is able to accommodate and in some cases facilitate that development requires an assessment of the hospital's load, as well as of the various ways in which its service needs might be met.

But as currently conceived¹ it is only the renewable or smart grid elements of the demand supply equation that need be considered. For example, in developing a detailed GEA plan the distributor is to present its:

...view of its outlook and objectives for the next five years for accommodating the connection of renewable generation facilities.

Information should be included regarding the number and MW of renewable generation connections anticipated over the five year period based on existing connection applications, information available from the OPA and any other information the distributor has about the potential for renewable generation in its service area. In addition, any information the distributor has regarding transmission constraints or other factors that may limit the distributor's ability to connect renewable generation facilities should be described.

¹ See p.8 "Planned Evolution of the System", where only reference to anticipate renewable generation connections are referenced.

The perspective such an assessment offers is simply too limited. In fact, it might well present a misleading picture of how local needs are likely to develop, or best be met.

By leaving so much of the supply equation to the serendipity of uncoordinated energy initiatives, the exercise isn't really a planning exercise so much as it is a way to facilitate and then accommodate decisions made by entrepreneurs in the market. But of course private sector players have no interest in nor mandate to concern themselves with the energy service needs of the community. Their priority is profit, not community service.

We recognize that the current regime allows for private investment in renewable power generation, however whatever the mix of private and public power generation in the system, the wisdom of making distribution system investments must at a minimum be assessed in the context of overall system needs. This would not be the case as the distribution system planning exercise is now conceived.

The Board has included among the three main purposes of the GEA plan, the following:

- *Providing information to the Board and the interested stakeholders regarding the readiness of a distributor's system to accommodate the connection of renewable generation and the expansion or reinforcement necessary to accommodate renewable generation, and, eventually, the development and implementation of the smart grid;*

Arguably, this purpose might be read broadly enough to engender the comprehensive distribution system planning we believe is necessary, but in our view more explicit direction is required to ensure this takes place.

We Recommend That:

Local distribution system planning for renewable and smart grid initiatives should not be carried out in isolation from an assessment of overall system needs. Accordingly, the purposes of the GEA plan should include providing a transparent, rational and environmentally sound distribution system plan to efficiently and effectively meet the energy service needs of local consumers. That plan should accommodate and support renewable generation and the development of a smart grid whenever these are compatible with overall distribution system needs.

The Guidelines Fail to Recognize the Important Role that Publicly Owned Entities Can Play in Meeting GEA and Related Goals

As noted, GEA reforms represent a very significant shift in the role and responsibilities of local public agencies, including municipalities, in relation to the electricity system. In fact, the new roles and capacities assigned to municipal utilities represent a sea-change in the traditional role that local government entities have played in meeting the energy service needs of their constituents and the province. In the past, the role of municipal electric utilities was circumscribed by the broad mandate and regulatory authority of Ontario Hydro. In a system

dominated by large central generation facilities connected to load centres by a high voltage transmission system, municipal utilities were primarily relegated to providing local distribution services. As Ontario Hydro was dismantled, Harris government reforms also sought to limit the role of publicly owned municipal utilities, in part by limiting their ability to own and operate generation facilities.

It is only with current reforms that municipalities, local distributors, and other public bodies are empowered, and indeed may be compelled, to play a proactive role in meeting the energy service needs of provincial consumers. For example under GEA reforms:

- i) Public agencies and prescribed consumers may be required to develop energy conservation and demand management plans [GEA s. 6];
- ii) the Minister may issue directives to the Board setting out conservation and demand management targets to be met by distributors [OEB Act s. 27.2];
- iii) transmitters and distributors must prepare plans as mandated by the Board or regulation [OEB Act s. 70 (2.1)]; and
- iv) distributors may own and operate certain renewable generation facilities and do so as public not-for-profit entities [OEB Act. s. 71(3)].

These reforms point to the emergence of a new paradigm for the power system of the province – one in which local planning, distributed generation, renewable power, aggressive conservation and demand management are driving forces. In this new model, local distributors and other public entities have new and often key roles and responsibilities.

In our view, the Board's present proposals fail to properly reflect this shift or fully consider ways in which distribution system planning might make the role of publicly owned bodies more effective and take into account the particular contributions that such entities can make to the realization of provincial goals for the electricity sector.

It is clear that important and distinct advantages flow from increasing the role of the public sector in the local power system – system planning being a case in point. But public ownership offers the community other benefits that private power projects do not. First, the profits derived from power system assets and activities flow back to community and may be used for other and public purposes. Second, public proponents can be required to adopt procurement policies that favour Canadian suppliers, and this fits well with provincial policies that seek to use public investment in renewable power as a device for stimulating the Ontario economy and creating jobs.

Public corporations are as a general rule more transparent and accountable to the community. This has the potential to materially impact the ability of distribution system planners to know about and assess plans for public sector renewable energy projects.

In addition, public sector proponents can be expected to treat the energy service needs of Ontario residents as their first and highest priority. Private sector generators may be prefer export markets.

Public-Public Partnerships

Hospitals represent an important demand on the electricity system, and at same time have considerable potential to be part of the solution for meeting their own energy service needs, and in some cases those of the community as well. While some hospitals have taken up this challenge, others are preoccupied with more immediate challenges, not the least of which is balancing their budgets at a time of escalating health care costs.

Given the fact that many distribution systems serve several hospitals, system proprietors have an important opportunity to work in partnership with hospitals and other public bodies to ensure that important opportunities on both the demand and supply sides are identified and pursued where that is warranted. In this regard there may be important opportunities for public-public partnerships between distributors, hospitals and other local public bodies. Not only do such partnerships hold the potential to achieve renewable power goals, but may as well facilitate local procurement and ensure that profits produce public benefits.

We Recommend That:

Local distribution system planning must recognize and facilitate the expanded role that public agencies have been accorded under GEA reforms to reflect and take advantage of the particular benefits of public ownership, which include increasing public revenue and implementing procurement practices that foster local Ontario economic development and green jobs. The potential for public-public partnerships, between distributors and other public agencies, to contribute to GEA goals should be assessed by GEA plans.

The Need to Account for NAFTA Risks

It is beyond the scope of these submissions to address the complexities of international trade rules as they apply to the Ontario electricity sector. That subject was addressed in some detail by submissions made on behalf of the Council of Canadians in the IPSP proceedings.² For present purposes we simply make the point that, given the constraints imposed by these rules on public policy and law as it relates to the sector, it is crucial that they be understood if unnecessary problems that might frustrate the achievement of GEA goals are to be averted.

² Report by Scott Sinclair, EB-2007-0707, Exhibit L, Tab 6, Schedule 2.

To illustrate these concerns:

US and Mexican investors in the electricity sector have rights under NAFTA investment rules that specifically constrain the regulatory options available to the government, the Ontario Energy Board, and even municipally owned utilities;

these include the rights: to sell energy and the attributes of 'green' energy into export markets; to the most favourable treatment accorded any like investor (including those in the public sector); and to be free from certain performance requirements such as the obligation to source materials and services locally; and

these rights may be asserted by way of a claim for damages against Canada that would be determined by an international arbitral tribunal.

These constraints have the potential for frustrating the realization of GEA and other public policy goals, including those of using green energy investments to foster Canadian economic development and to reduce greenhouse gas emissions. The right to sell 'green power' into US markets also threatens to significantly increase the price of power across the board in Ontario.

These NAFTA related risks are a consequence of privatization, and there are several examples of these rules being invoked to challenge public policy and regulatory initiatives by Canadian governments, including those by Ontario.³ It would be imprudent, therefore, to open the door to significant private investment in the renewable energy sector without taking these risks into account, yet we can find no evidence that this has taken place.

We Recommend That:

The extraordinary rights foreign investors in renewable generation enjoy under NAFTA must be taken into account by the Board and system planners if unnecessary impediments to realization of GEA goals are to be avoided.

Submitted: February 2, 2010

On behalf of the Ontario Council of Hospital Unions and the Council of Canadians

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³ A record of NAFTA investor claims can be found at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/disp-diff/gov.aspx>. For examples of claims involving measures taken by the government of Ontario, see *Gallo v. Canada*, and *GL Farms v. Canada*.