January, 2017

Strengthening the Ontario Energy Board

ISSUE:

On December 1, 2015 the government passed the *Strengthening Consumer Protection and Electricity System Oversight Act, 2015* which amends the *Ontario Energy Board Act, 1998* (OEBA) and the *Energy Consumer Protection Act, 2010 (ECPA).*

Amendments to the OEBA were proclaimed into force on March 4, 2016.

SUGGESTED RESPONSE:

- **The Government is committed to putting energy consumers first.**

- **On December 1, 2015, Ontario passed the *Strengthening Consumer Protection and Electricity System Oversight Act, 2015* which further protects Ontario's energy consumers and strengthens the role of the Ontario Energy Board (OEB).**

- **The OEB is an independent regulator responsible for setting just and reasonable rates for electricity and natural gas distributors, licensing market participants and protecting the interests of consumers.**

- **The amendments to the OEBA enhance the role of the OEB to ensure that it continues to have a robust set of tools to protect consumers and regulate the energy sector. Changes include:**

    - **Providing the OEB with stronger compliance and enforcement powers by increasing the amount of penalties that can be levied against companies for non-compliance to a maximum of $1 million per day;**
    - **Creating further opportunities to enhance consumer representation in OEB proceedings;**
    - **Enhancing the OEB's ability to ensure continuity of service;**
    - **Enhancing the OEB's oversight for ensuring best practices on utility consolidation activities; and**
    - **Increasing the OEB's flexibility to determine the types of business activities that an LDC can engage in.**

- **Amendments also provide the government with the ability to identify priority transmission projects to ensure that critical transmission infrastructure is built in a timely manner.**

<u>BACKGROUND</u>:

The Ontario Energy Board

- Electricity and natural gas are delivered to Ontario consumers by electricity and natural gas transmission and distribution utility companies.

- The Ontario Energy Board (OEB) is the Province's independent regulator for the energy sector. The OEB has the responsibility to set just and reasonable rates for the distribution and transmission monopolies that it regulates.
  - In the electricity sector, the OEB regulates over 70 LDCs and 5 transmitters across the Province.
  - In the natural gas sector, the OEB regulates 3 distributors (Enbridge and Union being the largest).

- The OEB functions as a quasi-judicial tribunal to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of service.

- The *Ontario Energy Board Act, 1998* (OEBA) sets out the OEB's mandate to act as a fair, impartial and independent regulator.

- The OEBA also provides the OEB with a robust set of powers to oversee and regulate the electricity sector, including:

  - Setting just and reasonable rates;
  - Enforcing its oversight powers through an ability to impose penalties for non-compliance;
  - Licencing market participants (including electricity transmitters and distributors) and imposing licence conditions; and
  - Making rules through codes and guidelines that govern the conduct of market participants. These rules of considered conditions of licence that must be followed.

- The OEB is also responsible for reviewing and approving applications for mergers, acquisitions and divestitures for transmission or distribution assets to ensure that ratepayers are not harmed as a result of the transaction.

Enhancing the Ontario Energy Board Act, 1998

- The legislative amendments further enhance the OEB's regulatory oversight over the transmission and distribution sectors in Ontario.

- These amendments:

  - Require the OEB to develop processes to enhance consumer advocacy at OEB proceedings, and provide Cabinet with the ability to prescribe the conditions that these processes must meet.

  - Provide the OEB with an enhanced ability to exercise emergency powers to ensure continued reliability and continuity of service to all consumers in Ontario. This includes extending the OEB's existing emergency provisions over electricity distributors to transmitters and providing the OEB with the power to appoint a supervisor to assist a struggling utility in getting back on track before emergency provisions are necessary.

  - Provide the OEB with higher and more flexible penalty provisions by:
    - Increasing the cap on the administrative penalties that it can levy for contraventions (up to a maximum of $1,000,000 per day); and
    - Providing the OEB with the authority to increase administrative penalties by an amount equal to the monetary benefit received as a result of the contravention.

  - Provide the OEB with a strengthened ability to oversee transactions and structure by:

- Reducing the threshold for OEB review of distributor or transmitter ownership changes from 20% of voting securities to 10%. This will allow for increased transparency in any change in ownership;
- Requiring that distributors maintain head offices, key personnel and records in Ontario; and
- Extending requirements that directors and officers of a corporation utilize care, diligence and skill in the exercise of their duties (this requirement currently only extends to energy retailers and not LDCs).

  - Provide the OEB with more flexibility to determine the types of business activities in which an LDC can engage by:
    - Giving the OEB discretion to decide the types of business activities other than transmitting or distributing electricity in which LDCs may engage (e.g. billing for other LDCs, billing for water services, renewable generation etc.); and
    - Creating a level playing field between utilities regardless of ownership by removing restrictions on business restrictions that are currently in place for affiliates of LDCs that are municipally owned.

  - Authorize Cabinet and the LGIC to identify priority transmission projects that would not need to go through an OEB 'needs' test to ensure that critical transmission infrastructure is built.

  - Clarify that the OEB's mandate with respect to the electricity sector includes "consumer education". Currently "consumer education" is part of the OEB's objects for gas, but not electricity.

  - Better enable the sharing of safety-related information between the OEB and the Electrical Safety Authority.

Consultation:

- The OEB was consulted during the development of the legislative amendments.

- The Ministry of Government and Consumer Services and the Electrical Safety Authority were consulted on the legislative amendments that interact with their mandates.

Burden Reduction Act, 2016

- In 2016 MEDG introduced the Burden Reduction Act, Bill 27, an act intended to reduce regulatory burdens and red tape across 11 different ministries including Energy.

  - The Burden Reduction Act contains 8 different energy related initiatives, 7 amendments to eh *Ontario Energy Board Act, 1998* and 1 to the *Electricity Act, 1998*.

  - The amendments identified by ENERGY are designed to:

    - Provide further transparency to the industry.
    - Provide regulatory efficiency and streamlining, thereby reducing the administrative / regulatory burden on industry participants and resources.
    - Ensure the OEB's authority is maintained in order to provide stability to the industry.
    - Provide increased opportunity to have a more effective and full review of market rules as required to provide a more open and transparent process.
    - Correct an error from previous changes – housekeeping issue.

  - The amendments are as follows:

  <u>Amendments to the *Electricity Act, 1998*</u>

1. Extend 60 day timeline for OEB review of IESO market rule amendment to 120 days.

Amendments to the *Ontario Energy Board Act, 1998*

2. Permit the OEB to publish audit and compliance results
3. Confirm the OEB's authority where liquidator is appointed to oversee regulated entity.
4. Allow the OEB greater flexibility in timing of review of deferral and variance accounts
5. Allow the OEB more discretion when reviewing acquisitions involving generators owning transmission/distribution assets or transmitters/distributors owning generation assets.
6. Allow the OEB greater flexibility to determine which LDC investments that connect renewable generation should be pooled for allocation across the full customer base.
7. Allow the OEB to prohibit distributors (gas and electric) to disconnect customers during certain times of the year.
8. Correct the definition of "enforceable provisions"

- The Bill is currently awaiting clause by clause reading in committee which is scheduled to occur later in late February.