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Exhibit H-9-44  
Attachment 1

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**Hydro One Inc.**  
Submission to the Regulatory and Environment  
Committee of the Board of Directors



**Date:** April 1, 2009

**Subject:** Green Energy and Green Economy Act – Summary and Implications

**Submitted by:**

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**REASON FOR REPORT**

This Report is submitted to the Regulatory and Environment Committee for its information.

The provincial omnibus Bill 150 went to first reading on February 23 2009, to enact the Green Energy Act. This Act will have broad and significant implications for Hydro One and other industry participants. While many aspects of the Act are yet to be determined, there are several areas where action by the Company is needed even before additional clarity is provided. The Committee's feedback is sought on the proposed regulatory approach to these issues.

**KEY HIGHLIGHTS**

1. Regulatory issues regarding Expansion Plans, Section 92 Applications, Cost Responsibility, Smart Grid, Conservation and Demand Management and Changes to Codes and Licences need to be addressed promptly in light of the new Act.
2. The actions to address these regulatory issues will require the Company to work cooperatively with the OEB, the government ministries and other stakeholders.
3. While Hydro One intends to respond proactively to the requirements of the Act, there are many matters that have yet to be addressed in the regulations. This uncertain environment may result in omissions and some loss of precision, possibly requiring more flexibility to make corrections and adjustments throughout the regulatory process.

Risk: In the absence of an approved Expansion Plan, Hydro One risks recovery of certain pre-investments associated with the renewable generation; particularly those investments that have not been reviewed in a Section 92 application or as part of a rate application.

Mitigation: Hydro One’s assessment is that this risk is not material and is manageable.

Risk: The OEB may determine that Expansion Plans must be filed earlier than our rate filing dates.

Mitigation: In that case, Hydro One may consider filing these plans in a staged manner, but would view this as an inefficient approach. Alternatively, we could ask the OEB to accept our Section 92 applications as meeting some of the needs for an Expansion Plan. Hydro One’s position is that preparation of expansion plans can only be justified if this work reduces other regulatory workload (e.g. displacing other filings or approval processes).

2. **Section 92 (Leave to Construct)**

Implications of the Act: The Act will require a significant increase in the number and frequency of Section 92 applications and approvals, and these may be associated with investments in “enabler lines” and other facilities where the need may not yet be fully defined.

Issue: The OEB will need to develop a new “completeness test” for Section 92 applications, recognizing that, by necessity, many such applications will be made with a lower level of planning certainty, quality of estimates, and rigour.

Certain parties have also proposed that Section 92 filings should be made for assets other than transmission lines in excess of 2 km in length, to assure a proper review in the absence of Expansion Plans.

Hydro One has advocated and still maintains that the Green Energy Act provides an opportunity to streamline approvals. Combining the Section 92 (Leave to Construct) applications and approvals with those of the Environmental Assessment while not specifically identified in the Act continues to be an issue.

Finally, the regulatory regime and investment to enable connecting new renewables could result in significant expenditures in assets over long periods, and some may not become

“used and useful” for some time for reasons beyond the Company’s control. This would be the case with enabler facilities that await generator connections. Hydro One maintains that to ensure utilities have sufficient cash to finance these investments, the OEB should allow recovery of development costs, Construction in Progress carrying costs, and abandonment costs, as they are incurred.

Recommended Action: Hydro One has already alerted the Executive of the OEB to the need for a lower ‘completeness’ threshold for Section 92 applications, and has received an acknowledgement that this is a valid request. In addition to working with the OEB on developing this threshold, Hydro One intends to test the process by filing certain Section 92 applications in the coming months.

Hydro One proposes that the application of the Section 92 process to all investments in new assets would only increase the regulatory burden. As noted above, Hydro One’s assessment is that the risk associated with non-recovery of investments that are not supported by an expansion plan is low and manageable.

Regarding streamlining of approvals, the issue has already been raised by Hydro One, and discussions continue with the government.

Regarding recovery of certain costs prior to the asset in-service dates, and other investments made in the spirit of the new Act, Hydro One has already put its position on the public record in the Transmission Connection Cost Responsibility Review in 2008. The proposal has been brought back in 2009 to the OEB by a number of LDCs including Hydro One. Regardless, Hydro One intends to explicitly request such cost recovery in some of its upcoming Section 92 applications.

Risk: The lower planning quality would likely lead to more frequent and larger variances from the original estimates, which would need to be managed both internally and with the regulator.

Mitigation: The financial impact of any variances should, ideally, be zero, as positive and negative variances offset each other. However, careful cost tracking and reporting will still be required so that variances from the original estimate can be disclosed and properly attributed to changes in scope and schedule, project issues, or planning accuracy.

3. Cost Responsibility

Implications of the Act: The intent of the Green Energy Act with respect to cost responsibility for investments that support connecting renewables is unclear. On one hand, the intent of the Act could be seen as facilitating the connection of renewables and removing obstacles from the process without changing the existing OEB cost allocation rules. Alternatively, the Act could be interpreted to go beyond merely facilitating renewables, but actually providing a greater incentive by reassigning some of the costs from generators to transmission or distribution ratepayers. The OEB agrees that this area is unclear.

Issues: What is the status of the Hybrid Option that the OEB had proposed for enabler facilities (radial transmission facilities that supply clusters of renewable generation)? Does the OEB deem the Hybrid Model (generators ultimately pay) as consistent with the intent of the Act?

Recommended Action: Hydro One has raised this issue with the OEB and has not received a clear response yet, although OEB staff seems to believe that the Hybrid Model may still be sustainable. In the absence of better information, Hydro One will assume that the Hybrid Model still applies for the enabler facilities identified in the IPSP or in future directives.

Issue: What will be the cost responsibility for transmission or distribution investments that support the connection of distribution-connected renewable generation? This issue was to be addressed as part of the Distribution Connection Cost Responsibility Review, which is still to be scheduled. Further, Hydro One maintains that the cost allocation between generators and ratepayer pools needs to be symmetrical for transmission and distribution, to ensure that business drivers do not cause connecting generators to choose one system over the other just because of cost responsibility.

Action: Hydro One will continue to advocate for early clarity of these rules, but in the interim, will apply the explicit connection cost responsibility rules that exist in the OEB's Codes, applying some judgment where this is consistent with Codes and the Act.

Issue: Hydro One has identified and plans to make a number of material investments as part of its "anticipative plans" to connect renewable generation. These could be investments in additional transmission station capacity, network lines, and static VAR compensators (SVCs). Similar investments may be required on the distribution system. Such investments are not deemed as enabler facilities, and with the exception of transmission lines do not

ensure that they are appropriate. However, Hydro One does not see the development of such plans as an efficient exercise prior to some guidance from the OEB. These uncertainties must not delay work on the smart grid.

Recommended Action: Hydro One has already identified this issue to the OEB Executive and alerted them to the "Smart Zone" pilot that is already underway. Hydro One will work with the OEB to put in place a mechanism for recording in a variance account the investments made on the Smart Grid to obtain, where possible, pre-approvals, and to initiate an early review by the OEB that would ensure prudent investments are recoverable.

**5. Conservation And Demand Management**

Implications of the Act: The Act appears to transfer Conservation and Demand Management ("CDM") accountabilities of the OPA to the Ministry and to distributors, with cost recovery for CDM programs to be implemented through the Global Adjustment. CDM Program design and implementation may now fall to distributors, and the OEB may be directed to implement steps to establish conservation and demand management targets to be met by LDCs and hold hearings in this regard.

Issue: The process by which CDM targets would be established is unclear at this time, and may prevent utilities from implementing programs promptly.

Recommended Action: Hydro One will undertake the development and implementation of such CDM programs that may be of benefit to its customers in managing their electricity consumption and costs, in advance of further regulatory guidance from the Board.

Risk: There is a risk that the programs undertaken would be viewed by the regulator as imprudent, inconsistent with the eventual targets (once developed), or inconsistent with the ultimate business model for delivery of CDM.

Mitigation: Hydro One's assessment is that any investments that would be made would be consistent with the Government's direction and will likely be recoverable. Further, it is expected that the period of exposure would be short, until the OEB develops its targets and processes, so that any at-risk investments would not be material. As such, Hydro One's view is that the investments would be viewed positively by the regulator and/or the shareholder.