

Ministry of the
Attorney General
Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9
Tel: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

Ministère du
Procureur général
Direction du droit constitutionnel

4^e étage, 720 rue Bay
Toronto ON M7A 2S9
Tél.: (416) 326-0131
Télé.: (416) 326-4015



September 20, 2011

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

RE: Motion by the Consumer's Council of Canada ("CCC") in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10 Board File No.: EB-2010-0184

Please find attached the Written Submission of the Intervenor, Attorney General of Ontario for the Hearing on the Merits, scheduled for October 6, 2011.

Yours truly,

Arif Virani
Counsel

AV/gb

cc: Robert Warren (by email)
Mahmud Jamal (by email)
All Intervenors (by email)

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15,
Schedule B;

AND IN THE MATTER OF a motion by the Consumers Council of Canada and
Aubrey LeBlanc in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and
Ontario Regulation 66/10.

**WRITTEN SUBMISSION OF THE INTERVENOR,
THE ATTORNEY GENERAL OF ONTARIO
(MOTION ON THE MERITS)**

September 20, 2011

MINISTRY OF THE ATTORNEY GENERAL
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario
M7A 2S9

Robert E. Charney (**LSUC # 23652S**)
Tel: 416-326-4452
Robert.Charney@ontario.ca

Arif Virani (**LSUC # 44463H**)
Tel: 416-326-0131
Arif.Virani@ontario.ca

Robert Donato (**LSUC # 44544F**)
Tel: 416-326-4473
Robert.Donato@ontario.ca

Fax: 416-326-4015

Counsel for the Intervenor,
The Attorney General of Ontario

TO:

Robert B. Warren
Weir Foulds LLP
The Exchange Tower, Suite 1600
130 King Street West
Toronto ON M5X 1J5

Tel: 416-365-1110
Fax: 416-365-1876
rwarren@weirfoulds.com

Counsel for the Moving Parties,
The Consumers Council of Canada and Aubrey Leblanc

AND TO:

Mahmud Jamal
Geoffrey Grove
Osler Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Tel: 416-862-6764/4264
Fax: 416-862-6666
mjamal@osler.com
ggrove@osler.com

Counsel for the Ontario Energy Board Staff

Peter C.P. Thompson, Q.C.
Borden Ladner Gervais LLP
Barristers & Solicitors
1100-100 Queen St.
Ottawa, ON K1P 1J9
Tel: 613-787-3528
Fax: 613-230-8842
pthompson@blgcanada.com

Counsel for the Intervenor,
The Canadian Manufacturers and Exporters

George Vegh

McCarthy Tetrault LLP
Toronto Dominion Bank Tower
Suite 4700, Box 48
Toronto ON M5K 1E6
Tel: 416-601-7709
Fax: 416-868-0673
gvegh@mccarthy.ca

Counsel for the Intervenor,
Union Gas Limited

Michael Janigan

Public Interest Advocacy Centre
1204-One Nicholas Street
Ottawa ON K1N 7B7
Tel: 613-562-4002, ext. 26
Fax: 613-562-0007
mjanigan@piac.ca

Michael Buonaguro

Public Interest Advocacy Centre
1102-34 King Street East
Toronto ON M5C 2X8
Tel: 416-767-1666
Fax: 416-348-0641
mbuonaguro@piac.ca

Counsel for the Intervenor,
Vulnerable Energy Consumers Coalition

INDEX

	PAGE
I. OVERVIEW	2
II. STATEMENT OF FACTS.....	7
A. The Cost Recovery Charge.....	7
B. The Regulatory Scheme.....	8
C. The HESP and OSTHI Conservation Programs.....	12
D. The Fee Payors.....	15
E. Nexus Between Revenues and Costs.....	16
III. ISSUES	18
IV. ARGUMENT	18
A. The Principles of Law.....	18
1. Constitutional Authority for the Regulatory Scheme and Charge.....	18
2. Distinguishing Taxes and Regulatory Charges.....	21
B. Application of the <i>Westbank/Connaught</i> Test to the Cost Recovery Charge	25
Step 1: The <i>Indicia</i> of a Regulatory Scheme.....	25
(i) A complete and detailed code of regulation.....	25
(ii) A specific regulatory purpose.....	35
(iii) Actual or properly estimated costs of regulation.....	39
(iv) A relationship between the regulation and the person being regulated.....	43
Step 2: Relationship between the Charge and the Scheme.....	50
V. ORDER SOUGHT	55
SCHEDULE “A”	56
SCHEDULE “B”	57

PART I: OVERVIEW

1. This case concerns the validity of a cost recovery charge for energy conservation and renewable energy programs established pursuant to ss. 26.1 and 26.2 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B and Ontario Regulation 66/10. The charge was collected as of July 30, 2010, in respect of costs incurred during the 2009/10 fiscal year only. On November 2, 2010, the Minister of Energy announced in the Legislature that the government has no plans to reintroduce this charge for future years.

2. The Attorney General of Ontario submits that the cost recovery charge is a valid regulatory charge, restricted to the recovery of specific costs of the Ministry of Energy in respect of energy conservation or renewable energy programs ancillary to Ontario's scheme regulating electricity, energy and energy conservation. Accordingly, the regulatory charge is constitutionally valid, *intra vires* the province pursuant to s. 92(9) and one or more of ss. 92(10), 92(13), 92(16) and 92A(1)(c) of the *Constitution Act, 1867*.

3. The cost recovery charge satisfies the two-step test set out in the Supreme Court of Canada's decisions in *Westbank First Nation v. British Columbia Hydro and Power Authority* and *620 Connaught v. Canada*. The government has clearly established: (1) the existence of a regulatory scheme governing electricity, energy and energy conservation; and (2) a relationship between the regulatory charge and the regulatory scheme, in which the charge is tied to the specific costs of the energy conservation programs within the regulatory scheme.

Westbank First Nation v. British Columbia Hydro and Power Authority, [1999] 3 S.C.R. 134

620 Connaught Ltd. v. Canada (Attorney General), [2008] 1 S.C.R. 131

4. With respect to the first step of the *Westbank/Connaught* test, the four indicia of a regulatory scheme are satisfied in this case:

- (i) The *Ministry of Energy Act, 2011*, *Ontario Energy Board Act, 1998*, *Electricity Act, 1998* and numerous other statutes amending those acts, including the *Electricity Restructuring Act, 2004*, *Green Energy and Green Economy Act, 2009* and *Green Energy Act, 2009*, the regulations made under those statutes, and the energy conservation and renewable energy programs established under the statutes and regulations, manifestly constitute a “complete, complex and detailed code of regulation” governing electricity, energy and energy conservation. Ontario’s complex and detailed code of regulation is further complemented by Ontario Energy Board codes, the IESO Market Rules and the rules and programs established by the Ontario Power Authority and local distribution companies to achieve conservation goals.
- (ii) The programs funded by the regulatory charge have the clear regulatory purpose of encouraging energy conservation and reducing reliance on non-renewable energy sources.
- (iii) The charge was limited to recovery of a fixed amount (i.e. \$53,695,310), specifically referred to in s.4 of O. Reg. 66/10, which corresponds to the

estimated annual cost of the Home Energy Savings Program and Ontario Solar Thermal Heating Initiative energy conservation and renewable energy programs in the 2009/10 fiscal year. O. Reg. 66/10 specifically restricted the revenue raised by the charge to this amount.

- (iv) Consumers, local distribution companies and the Independent Electricity System Operator, who demand and supply electricity, cause the need for the energy conservation programs and/or benefit from such programs.
5. With respect to the second step of the test, the revenue generated by the cost recovery charge is closely and directly tied to the regulatory costs of the specific programs for which cost recovery is sought. The charge was clearly intended and structured to only recover the costs of the two programs. It was not intended or designed to create additional revenue for government.
6. Accordingly, a simple application of the Supreme Court jurisprudence, and specifically the Westbank/Connaught test, leads to the conclusion that the cost recovery charge is a regulatory charge and not a tax.
7. Nonetheless, much of the argument of the moving parties and the intervenors appears to ignore some of the significant principles established in the jurisprudence. In particular, several of the opposing parties appear to argue that a regulatory scheme cannot be defined broadly, and that regulated fee payors must be “uniquely impacted by the

programs” (Union Gas Factum, at para. 4). On the contrary, the jurisprudence clearly indicates that:

- (a) A regulatory scheme, particularly when it is highly complex, can transcend *multiple* statutes and regulations. In the *Ontario Home Builders’ Assn. v. York Region Board of Education* case, the majority of the Supreme Court of Canada described the regulatory scheme governing the “entirety” of land development and land use planning in Ontario as encompassing at least *nine* different statutes (and numerous regulations thereunder).

***Ontario Home Builders’ Assn. v. York Region Board of Education*, [1996] 2 S.C.R. 929 at para. 28**

- (b) Rather than defining a complex regulatory scheme in a narrow manner, the Supreme Court has explained that the real “safeguard” that ensures sufficient connection between fee payors and a very broad scheme is an assessment of the relationship between the regulation and the person being regulated (i.e., the fourth indicium of the *Westbank/Connaught* test). If the fee payor causes the need for the regulation *or* derives a benefit, the relationship between the fee payor and the scheme will be satisfied.

***Connaught, supra* at paras. 34, 36**

- (c) The fee payors need not be the *sole* group that obtains a benefit or causes the need for the regulation. For example, in *Ontario Home Builders*, the benefit derived by the public in having new schools constructed did not negate the benefit to the developers of having more marketable new

homes. In *Connaught*, the benefit derived by all visitors to Jasper National Park (or by all Canadians generally) of having the park well maintained did not negate the benefit to alcohol vendors in the park. Similarly, in *Allard Contractors*, the fact that *all* motorists are involved in causing the need for road maintenance did not negate the fact that gravel excavators, who paid the charge, caused the need for road maintenance.

***Ontario Home Builders, supra* at para. 66**

***Connaught, supra* at para. 34**

***Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371 at para. 64**

- (d) A regulatory purpose that seeks to change behaviour may be based on incentives that encourage voluntary behaviour. In the *Westbank* case, the Supreme Court described a deposit-refund charge on bottles as a regulatory charge. The choice to return a bottle for recycling purposes, rather than discarding it as non-recyclable waste, is voluntary: seeking to influence this choice through a small financial incentive remains a regulatory purpose.

***Westbank, supra* at para. 29, citing with approval *Cape Breton Beverages v. Nova Scotia (Attorney General)*, (1997), 144 D.L.R. (4th) 536 (N.S.S.C.), *aff'd* (1997), 151 D.L.R. (4th) 575 (N.S.C.A.), leave to appeal refused [1997] 3 S.C.R. vii)**

- (e) A regulatory charge may simply exist to defray the expenses of a regulatory scheme. While the charge *itself* may also act to change behaviour (e.g., where it acts as a financial disincentive to purchasing a product or service), it need not do so: cost recovery is a sufficient purpose.

It is the *scheme* funded that will typically “regulate” by seeking to affect behaviour, not necessarily the charge itself.

Westbank, supra at para. 29

Connaught, supra at para. 20

- (f) A regulatory scheme may emerge incrementally and evolve; it need not be predetermined. The countless provisions in the nine statutes cited in *Ontario Home Builders* clearly emerged over time and did not impugn the “regulatory” nature of the land use planning scheme.

Ontario Home Builders, supra at para. 28

PART II: STATEMENT OF FACTS

A. The Cost Recovery Charge

8. Section 26.1 of the *Ontario Energy Board Act* requires the Ontario Energy Board (“Board”) to issue “assessments” to recover specific costs of the Ministry in respect of energy conservation programs or renewable energy programs. The cost recovery charge established by s. 26.1 of the *OEBA* is initially imposed on local distribution companies (“LDCs”) and the Independent Electricity System Operator (“IESO”) in respect of electricity consumers in their service areas. Each utility and the IESO pays its share of the total program costs on the basis of the volume of electricity delivered to electricity consumers. Under s. 7 of O. Reg. 66/10, electricity utilities and the IESO may recover the amount of the charges from electricity consumers on a volumetric basis.

Ontario Energy Board Act, 1998, S.O. 1998, c. 15 [OEBA], s. 26.1

O. Reg. 66/10, ss. 2, 3, 7

9. Section 4 of O. Reg. 66/10 specifies the precise amount of costs to be recovered by the Board's assessments: \$53,695,310. This figure corresponds to the estimated total annual cost (for the 2009/10 fiscal year) of two specific energy conservation and renewable energy programs delivered by the Ministry. The two programs funded by the charge are the Home Energy Savings Program ("HESP") and Ontario Solar Thermal Heating Initiative ("OSTHI"). HESP provides financial incentives to residential homeowners to carry out certain conservation measures. An incentive is provided for obtaining a home energy audit or for carrying out the energy saving improvements recommended by a home energy audit. OSTHI provides similar incentives to businesses for the installation of large commercial solar air and solar water roofs.

O. Reg. 66/10, s. 4

Transcript of Cross-Examination of Barry Beale, November 16, 2010 at p. 10, lines 22-26; Attorney General Motion Record ["AGMR"] at Tab 2, p. 49

Affidavit of Barry Beale, sworn November 5, 2010 at para. 5; AGMR at Tab 1, p. 2

B. The Regulatory Scheme

10. Energy conservation and the renewal of Ontario's electricity infrastructure are principal goals of the government's energy policy. Section 26.1 of the *OEBA* and O. Reg. 66/10 creates a one-time funding mechanism for two conservation programs that form part of an integrated policy of energy conservation. Incentives paid to home-owners under HESP and to institutions under OSTHI were recovered by the Ministry through a cost recovery charge assessed against LDCs and the IESO, which has been passed on to consumers. The sole purpose of the cost recovery charge was to fund the electricity-related regulatory costs of these two conservation programs.

Affidavit of Barry Beale, sworn November 5, 2010,, sworn November 5, 2010, at paras. 5, 52; AGMR at Tab 1, pp. 2, 11

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 5 lines 7-9 (AGMR at Tab 2, p. 44), p. 8 lines 20-22 (AGMR at Tab 2, p. 47), p. 10 lines 12-26 (AGMR at Tab 2, p. 49), p. 17, lines 12-20 (AGMR at Tab 2, p. 56)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.6 and JT 1.7 Exhibit 2; AGMR at Tab 4K, p. 359

11. In 2004, the government began taking major steps toward addressing concerns with grid reliability and Ontario's aging electricity infrastructure. These concerns arose in 2002, when the vulnerability of the grid was made evident by increasing strains on the electricity system, high prices and warnings of blackouts and brownouts. The concerns were heightened since the 2003 North American blackout.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 7, 26; AGMR at Tab 1, pp. 2, 6

12. The *Electricity Restructuring Act, 2004* established the Ontario Power Authority ("OPA"), which was provided with a mandate to integrate supply, transmission and conservation planning for a twenty-year period. As of 2007, the OPA began to focus on three key principles, namely: (1) the creation of a conservation culture; (2) strong preference for renewable sources of energy; and (3) replacement of coal-fired generation, for environmental reasons.

***Electricity Restructuring Act, 2004*, S.O. 2004, c. 23 [ERA]**

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 7-9; AGMR at Tab 1, p. 2

13. In May of 2009, the *Green Energy and Green Economy Act, 2009* received Royal Assent, reinforcing the government's long-standing commitment to reduce electricity

demand and foster a culture of conservation throughout Ontario, in part by encouraging the use of cleaner energy sources, including wind, solar, water and bio-fuels.

***Green Energy and Green Economy Act, 2009*, S.O. 2009, c. 12 [GEGEA]**

Affidavit of Barry Beale, sworn November 5, 2010, at para. 10; AGMR at Tab 1, p. 3

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 171, line 23 – p. 172 line 1 (AGMR at Tab 2, p. 210)

14. Pursuant to the *Electricity Restructuring Act, 2004* and the *Green Energy and Green Economy Act, 2009*, a number of amendments were made to the legislative scheme governing electricity generation and distribution, including amendments to the *Electricity Act, 1998* that focus on new energy procurement and conservation initiatives, and changes to the *OEBA* that promote conservation initiatives. The provisions that establish the cost recovery charge in this case (s. 26.1 and 26.2 of the *OEBA* and O. Reg. 66/10 thereunder) are one part of this multi-faceted approach to conservation and promotion of renewable energy sources.

***Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A [EA]**

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 7-10; AGMR at Tab 1, pp. 2-3

VECC Factum at para. 17

15. Section 26.1 of the *OEBA* provides legislative authority for the government to recover costs of conservation or renewable energy programs from the IESO, LDCs and consumers, as defined in s. 26.2(2) of the *OEBA*. These purposes are:

1. To fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:

- i. natural gas,
- ii. electricity,

- iii. propane,
- iv. oil,
- v. coal, and
- vi. wood.

2. To fund conservation or renewable energy programs aimed at causing consumers of fuel to change from one or more of the fuels listed in paragraph 1 to any other fuel or fuels listed in that paragraph.
3. To fund conservation or renewable energy programs aimed at decreasing peak electricity demand, while increasing or decreasing the consumption of another type of fuel.
4. To fund research and development or other engineering or scientific activities aimed at furthering the conservation or the efficient use of fuels.
5. To fund conservation or renewable energy programs aimed at a specific geographical, social, income or other sector of Ontario.
6. To reimburse the Province for expenditures it incurs for any of the above purposes.

***OEBA*, ss. 26.1-26.2**

16. Ontario's complex code of regulation is further complemented by the Ontario Power Authority ("OPA") and the Ontario Energy Board itself. The OPA was created by the passage of the *Electricity Restructuring Act, 2004*, with a mandate to prepare an Integrated Power System Plan to integrate electricity supply, transmission and conservation planning. The Board itself retains control over the rates charged to electricity consumers, and licences and regulates, *inter alia*, LDCs, the OPA and the IESO.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 8; AGMR at Tab 1, p. 3

***OEBA*, s. 57, 60, 70, 78**

***ERA*, at Part II.1**

17. There are additional requirements established by the Board and the IESO (established under the *Electricity Act, 1998*), with which industry participants must comply. These include Board codes established under sections 70.1 *et sequ.* of the *OEBA*, such as the Transmission System Code, the Distribution System Code and the Retail Settlement Code, as well as the IESO Market Rules established under ss. 32-34 of the *Electricity Act, 1998*.

***OEBA*, s. 70.1ff**

***EA* at ss. 5, 32-34**

Affidavit of Barry Beale, sworn November 5, 2010, at para. 11; AGMR at Tab 1, p. 3

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 37, line 22 – p. 38, line 7; AGMR at Tab 2, pp. 76-77

C. The HESP and OSTHI Conservation Programs

18. In fiscal year 2007/08, Ontario implemented two conservation programs aimed at reducing overall electricity demand and reliance on peak-demand electricity resources, such as coal. The HESP and OSTHI programs have three primary goals: increasing grid reliability, addressing the environmental impacts of energy consumption and reducing electricity costs. The funding for these programs in the first two fiscal years of their existence was provided from general revenues, including the additional \$19 million required in fiscal year 2009/10 due to the success of the conservation programs.

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 11, line 2 – p. 12, line 2 (AGMR at Tab 2, pp. 50-51), p. 12, lines 17 – 23 (AGMR at Tab 2, p. 51), p. 53 lines 2-5 (AGMR at Tab 2, p. 92), p. 86, lines 14-19 (AGMR at Tab 2, p. 125), p. 100 line 26 – p. 101, line 4 (AGMR at Tab 2, pp. 139-140), p. 114 lines 11-23 (AGMR at Tab 2, p. 153)

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 3, lines 7-23 (AGMR at Tab 3, p. 223), p. 3, line 28 – p. 4, line 2 (AGMR at Tab 3, p. 223-224), p. 20, line 13 – p. 21, line 12 (AGMR at Tab 3, p. 233-241), p. 24, lines 18-26 (AGMR at Tab 3, p. 244)

cf. CME Factum at para. 17

19. As noted above, HESP and OSTHI provide incentives to home-owners and institutions to decrease their overall energy consumption and reduce their reliance on non-renewable energy sources. For example, HESP funds 50% of the cost of a home energy audit (i.e., a review of the home by a licensed specialist to determine the areas of the home where energy benefit potential exists), up to \$150. Applicants can also receive incentives for energy saving improvements recommended by an audit, such as a \$60 per unit provincial incentive for the installation of Energy Star qualified windows or for the installation of an electronic thermostat. OSTHI funds organizations in the commercial, industrial or institutional sector that install a qualifying solar air or solar water heating system. The rebates provided by Ontario reach a maximum of \$80,000 per solar thermal air installation, and \$400,000 per solar thermal water installation.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 13-23

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 170 line 6 – p. 171, line 10; AGMR at Tab 2, pp. 209-210

20. By reducing overall energy demand, the HESP and OSTHI programs assist in improving system reliability. Through their use of electricity, consumers place significant demands on the electricity grid, which can compromise its reliability under certain circumstances. Conservation programs assist in decreasing the likelihood that short-term energy demand spikes will undermine transmission and/or distribution system reliability. Given the advanced age of Ontario's electricity generation assets, these programs were designed to assist in providing system relief.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 25

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 23 lines 2-18 (AGMR at Tab 2, p. 61), p. 24, lines 2-16 (AGMR at Tab 2, p. 63), p. 28, line 28 – p. 29 line 8 (AGMR at Tab 2, pp. 67-69), p. 139, lines 8-16, p. 146, lines 10-15 (AGMR at Tab 2, p. 185)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.2, 1.8, 1.9; AGMR at Tab 4B, pp. 262—265

21. These programs are also part of the government's general policy to reduce the environmental impact caused by consumers. By assisting in decreasing energy consumption in the province, the HESP and OSTHI programs assist in reducing greenhouse gas emissions and moving toward Ontario's plan of closing all coal-fired electricity generation plants by the end of 2014, which is expected to decrease Ontario's greenhouse gas emissions by 30 mega tonnes annually.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 36-40; AGMR at Tab 1, pp. 8-9

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 41, line 28 – p. 42, line 21 (AGMR at Tab 2, p. 80)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.10; AGMR at Tab 4B, pp. 265-266

22. These programs also assist in reducing electricity costs to consumers, and benefit LDCs and the IESO by assisting in deferring the need for costly system upgrades. Reductions in overall energy consumption in the province assist in reducing the commodity price of electricity, with ultimate cost-savings to consumers. In addition, consumers derive a further benefit of decreasing their individual electricity consumption through HESP- or OSTHI-funded retrofits, with resultant cost savings.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 42-50; AGMR at Tab 1, pp. 9-10

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 148, lines 10-14 (AGMR at Tab 2, p. 187), p. 172 lines 15-21 (AGMR at Tab 2, p. 211)

Attorney General Undertaking JT 1.6 and JT 1.7 Exhibit 3 at p. 3; AGMR at Tab 4K, p. 365

D. The Fee Payors

23. O. Reg. 66/10 is structured to allow recovery of the electricity-related costs of HESP and OSTHI by using existing relationships between regulated entities to facilitate collection. The Board issues assessments against LDCs and the IESO, and permits them to recover that cost from consumers on a volumetric basis, as set out in s. 4 of the Regulation. Since neither the Board nor the Ministry has individualised information about the volume of electricity each person consumes, the participation of LDCs and the IESO is required in order to collect the volumetric charge.

O. Reg. 66/10, ss. 2, 3, 4, 7

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 80 lines 23-27; AGMR at Tab 2, p. 111

Affidavit of Barry Beale, sworn November 5, 2010, at para. 52; AGMR at Tab 1, p. 11

cf. CCC Factum, at para. 26

24. LDCs are licensed by the Board to convert electricity from the transmission system to lower voltages, and distribute that electricity to smaller individual, industrial and commercial consumers. There are approximately 80 LDCs across the province, who service all consumers, save those large industrial operators connected directly to the transmission grid.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 30; AGMR at Tab 1, p. 7

25. The IESO serves as the not-for-profit system operator responsible for supervising all activity that occurs on the IESO-controlled grid (including the electricity transmission system) from a supply/demand perspective. The IESO's mandate, as set out in s. 5 of the *Electricity Act*, includes maintaining the reliability of the grid and ensuring the adequacy and reliability of the integrated power system. In this capacity, the IESO serves the electricity needs of LDCs as well as a small number of large industrial operators who require higher voltages and are therefore connected directly to the transmission grid.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 33-34; AGMR at Tab 1, p. 8

EA, s. 5

26. O. Reg. 66/10 expressly authorises the LDCs and the IESO to recover the regulatory charge from consumers. Both LDCs and the IESO have already utilised this authority and commenced recovering the regulatory charge from the electricity consumers they supply. This consumer group includes all residential, industrial and commercial consumers of electricity in Ontario.

O. Reg. 66/10, s. 7

Affidavit of Barry Beale, sworn November 5, 2010, at para. 52; AGMR at Tab 1, p. 11

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 80 lines 23-27 (AGMR at Tab 2, p. 119), p. 81 lines 2-8 (AGMR at Tab 2, p. 120)

E. Nexus between Revenues and Costs

27. In January 2010, the government estimated the total electricity-related costs of the HESP and OSTHI programs for the fiscal year ending March 31, 2010, using a rigorous

estimation and cost-allocation methodology. This estimate of the total electricity-related cost of providing these programs – \$53,695,310 – was directly inserted into s. 4 of O. Reg. 66/10, and recovered by the Board from LDCs and the IESO. As contemplated by the Regulation, LDCs and the IESO have, in turn, passed on the charges to all classes of electricity consumers supplied by them.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 52, 57 and Appendix (AGMR at Tab 1, pp. 11, 12, 29)

28. After the close of the fiscal year on March 31, 2010, the government determined the actual cost of these programs for 2009/10. The actual cost was \$51,253,901, an amount within 4.55% of the estimated costs (and of the total collected) of \$53,695,310. The excess amount of \$2,441,409 reflects a very small margin of error in estimating costs. This quantum has been placed in a special purpose account, as required by s. 26.2(1) of the Act, and may only be used for the conservation or renewable energy programs identified in s. 26.2 of the *OEBA*.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 56; AGMR at Tab 1, p. 10

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 9, line 13 – p. 10, line 26; AGMR at Tab 2, p. 48-49

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 31, lines 22-25; AGMR at Tab 3, p. 251

***OEBA*, s. 26.2**

***Financial Administration Act*, R.S.O. 1990, c. F.12, ss. 7(1), 11.1(3.1), 11.2(1)(a)**

***Connaught*, *supra* at para. 40**

PART III: ISSUES

29. The issue before the Board is whether the cost recovery charge established under ss. 26.1 and 26.2 of the *OEBA* and O. Reg. 66/10 constitutes a valid regulatory charge authorized by s. 92(9) and one or more of ss. 92(10), 92(13), 92(16) and 92A(1)(c) of the *Constitution Act, 1867*, or rather, whether it constitutes an indirect tax, which the moving parties contend would be *ultra vires* the province under the division of powers.

Constitution Act, supra s. 92

OEB Preliminary Decision and Reasons, dated August 5, 2010

PART IV: ARGUMENT

A. The Principles of Law

1. Constitutional Authority for the Regulatory Scheme and Charge

30. The province has the constitutional authority to regulate the generation and distribution of electricity pursuant to its power to make laws in relation to “Local Works and Undertakings” under s. 92(10) of the *Constitution Act, 1867*. Most other sources of energy are governed by the same constitutional principles.

P.W. Hogg, *Constitutional Law of Canada*, 5th ed. Supplemented, looseleaf ed. (Toronto: Carswell, 2007) at 30-18 to 30-19:

The provincial Legislatures have power over the generation and distribution of hydro-electricity, because dams, generating stations and distribution systems are “local works and undertakings” within s. 92(10) of the *Constitution Act, 1867*. [...] Electricity generated from oil, gas, coal or other sources of energy other than water power would be governed by the same constitutional principles as hydro-electricity [noting an exception for nuclear power, which is subject to federal regulation]

***Fulton v. Alberta (Energy Resources Conservation Board)*, [1981] 1 S.C.R. 153 at p. 8 [QL]**

Constitution Act, 1867, s. 92(10)

31. While s. 92(10) of the *Constitution Act, 1867* is generally referred to as the major head of power authorizing such provincial legislation, s. 92A(1)(c), which formed part of the 1982 constitutional amendments relating to natural resources, also authorizes the provinces to make laws in relation to the “development, conservation and management of sites and facilities for the generation and production of electrical energy.”

Constitution Act, 1867, ss. 92(10), 92A(1)(c)***Fulton, supra***

***Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 S.C.R. 327 at para. 41 (per Lamer C.J.), at paras. 55 and 82 (per LaForest J.)**

32. Furthermore, s. 92(13) of the *Constitution Act, 1867* (“Property and Civil Rights”) and s. 92(16) (“Generally all Matters of a merely local or private Nature in the Province”) provide further complementary bases of constitutional authority for the regulation of electricity, energy and energy conservation. For example, s. 92(13) authorizes the regulation of most aspects of manufacturing and business activity, and aspects of environmental regulation such as the regulation of emissions that could pollute the environment; it also authorizes the regulation of markets, and property and contract rights. Section 92(16) is often cited together with, or as an alternative to, s. 92(13).

Constitution Act, 1867, ss. 92(13), 92(16)

Hogg, *supra* at 30-24, 21-8 to 21-10, 21-16 (re: s. 92(13); 21-4 to 21-5 (re: s.92(16))

33. The province also has the constitutional authority to impose a regulatory charge that is “ancillary or adhesive to a valid regulatory scheme”. The constitutional authority

for such a charge is provided by section 92(9) of the *Constitution Act, 1867* (raising of revenue by licensing), in conjunction with the other head or heads of power that provide authority for the regulatory scheme itself. In *Allard Contractors Ltd. v. Coquitlam (District)*, a unanimous Supreme Court explained:

In the above cases, decided either by this Court or the Privy Council, one can discern a consistent treatment of the scope of s. 92(9) of the *Constitution Act, 1867*. Although somewhat broad language was used by Lord Atkin in *Shannon*, *supra* it appears generally true that s. 92(9), in combination with ss. 92(13) and (16), comprehends a power of regulation through licences. It is a power which is not confined to the requirement of direct taxation in s. 92(2). However, in so far as it comprehends indirect taxation, these cases -- either explicitly or upon their facts -- have limited the power of indirect taxation such that it can only be used to defray the costs of regulation.

***Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371 at paras. 52 and 58**

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --

...

(9) Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes

Constitution Act, 1867, s. 92(9)

34. Similarly, in *Eurig Estate (Re)*, the Court noted as follows:

Conversely, a province may charge a fee, regardless of whether it is an indirect tax, provided that it is validly enacted under a provincial head of power other than the taxing power: see *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371, at p. 412, and *Ontario Home Builders' Association v. York Region Board of Education*, [1996] 2 S.C.R. 929, at p. 988.

***Eurig Estate (Re)*, [1998] 2 S.C.R. 565 at para. 14**

***Connaught, supra* at para. 18**

35. As the above excerpts note, while indirect taxation is *ultra vires* the general provincial power to make laws in relation to “Direct Taxation in the Province” under s.

92(2) of the *Constitution Act, 1867*, regulatory charges (or user fees, which have been described by the Supreme Court as “a subset of ‘regulatory charges’”) may be direct or indirect in incidence. Thus, both direct and indirect levies are within provincial authority, if they are characterized as charges “ancillary or adhesive to a valid regulatory scheme.”

Allard, supra at para. 52

Eurig, supra at para. 14

Westbank, supra at para. 22

36. Ontario further notes that, contrary to the contention of Union Gas, indirect taxation on sales of electricity is not foreclosed to the province, because of the existence of the 1982 “resource amendment” to the *Constitution Act, 1867*. As Ontario’s position is that the cost recovery charge is a clear regulatory charge, and not a tax, the Attorney General does not rely on s. 92A(4)(b) in this case.

Constitution Act, 1867, s. 92A(4)(b) (“In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of [...] (b) sites and facilities in the province for the generation of electrical energy and the production therefrom.”)

R.D. Cairns, M.A. Chandler and W.D. Moull, “Constitutional Change and the Private Sector: The Case of the Resource Amendment” (1986) 24 Osgoode Hall L.J. 299 at 306-307

Hogg, *supra* at 31-17 (explaining that the phrase “any mode or system of taxation” extends to both direct and indirect taxation)

Union Gas factum at para. 20, bullet 3

2. Distinguishing Taxes and Regulatory Charges

37. Both taxes and regulatory charges raise revenue. Section 92(9) of the *Constitution Act, 1867*, like s. 92(2), is explicit in permitting “the raising of a Revenue”. In distinguishing taxes and regulatory charges, the Supreme Court has explained that “the

central task for the court is to determine whether the levy's primary purpose is, in pith and substance: (1) to tax, i.e., to raise revenue for general purposes; [or] (2) to finance or constitute a regulatory scheme, i.e., to be a regulatory charge or to be ancillary or adhesive to a regulatory scheme". In other words, the question is whether the levy relates to taxation, or rather, is validly connected to a regulatory scheme authorized by constitutional heads of power other than the taxing power.

Constitution Act, 1867, s. 92(9), s. 92(2) [emphasis added]

Westbank, supra at para. 30 [the quotation's reference to a third category of levy, the "user fee" for services rendered, is omitted]

38. The Supreme Court has identified five fundamental features of a "tax": (1) a tax is compulsory and enforceable by law; (2) it is imposed under the authority of the legislature; (3) it is levied by a public body; (4) it is intended for a public purpose; and (5) it is unconnected to any form of a regulatory scheme. If a levy has all the above features, then "the levy in question will generally be described as a tax".

Westbank, supra at para. 43

Connaught, supra at para. 25

39. However, the Supreme Court has cautioned that the first four features of a tax (which originate in early jurisprudence that continued to evolve beyond those four criteria) "will likely apply to most government levies". As such, the Court has emphasized that the critical question is generally whether the levy meets the fifth feature of a tax – that is, whether it is "unconnected to any form of a regulatory scheme". As the Court explained in *Connaught*, the question is "whether there is a relevant regulatory

scheme and whether the fees are connected to that regulatory scheme, in which case the [...] fees will be considered regulatory charges and not taxes.”

***Connaught, supra* at paras. 23, 24, 29**

***Lawson v. Interior Tree Fruit & Vegetable Committee of Direction*, [1931] S.C.R. 357**

40. In assessing whether a levy is connected or unconnected to a regulatory scheme (i.e., in assessing the fifth feature of a tax), the Supreme Court has established a two-step test in its decisions in *Westbank* and *Connaught* (“the *Westbank/Connaught* test”).

***Westbank, supra* at paras. 24, 44**

***Connaught, supra* at paras. 25-27**

41. The first step is to identify the existence of a relevant regulatory scheme, which involves identifying the presence of some or all of the following *indicia*: (1) a complete, complex and detailed code of regulation; (2) a specific regulatory purpose which seeks to affect the behaviour of individuals; (3) the existence of actual or properly estimated costs of regulation; and (4) a relationship between the regulation and the person being regulated, where the person being regulated either causes the need for the regulation or benefits from it.

***Westbank, supra* at para. 24**

***Connaught, supra* at para. 25**

42. The Supreme Court has emphasized that not all *indicia* need be present to find a regulatory scheme, and that “[a]lthough this list of factors provides a useful guide, it is not to be treated as if the factors were prescribed by statute.” The critical point is that there must be a regulatory scheme and it must be relevant to the parties being regulated.

Westbank, supra at paras. 24, 44

Connaught, supra at paras. 25-26

Confédération des Syndicats Nationaux v. Canada (Attorney General), [2008]
3 S.C.R. 511 at para. 72

43. The second step of the test is to find a relationship between the regulatory charge and the regulatory scheme. This relationship will exist “when the revenues are tied to the costs of the regulatory scheme, or where the charges themselves have a regulatory purpose, such as the regulation of certain behaviour”. Thus, where a charge is intended to defray regulatory costs, a nexus is required between the fee revenue and the costs of the regulatory scheme.

Westbank, supra at para. 44

Connaught, supra at paras. 27, 48

44. While the cost recovery charge in this case, like “most government levies”, meets the first four features of a tax (see para. 38 above), the critical question is whether it satisfies the two-step *Westbank/Connaught* test, as a regulatory charge connected to a regulatory scheme (rather than a tax “unconnected to any form of a regulatory scheme”). The cost recovery charge in this case meets the Supreme Court’s test: as it is connected to a valid regulatory scheme, as set out below, it constitutes a regulatory charge and not a tax.

Connaught, supra at para. 23

B. Application of the *Westbank/Connaught* Test to the Cost Recovery Charge

STEP 1: The *Indicia* of a Regulatory Scheme

(i) A complete and detailed code of regulation

45. The first indicium of a regulatory scheme is the presence of a “complete, complex and detailed code” of regulation. In *Westbank*, Gonthier J. described this factor as follows:

The first factor to consider is the nature of the purported regulation itself. Regulatory schemes are usually characterized by their complexity and detail. In *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371, at p. 409, the regulatory scheme there was described as a “complete and detailed code for the regulation of the gravel and soil extraction and removal trade”. In *Ontario Home Builders' Association v. York Region Board of Education*, [1996] 2 S.C.R. 929, at para. 28, the charge was described as part of a “complex regulatory framework governing land development”. And, in *General Motors of Canada Ltd. v. City National Leasing*, *supra* at p. 676, the *Combines Investigation Act* was described as “a complex scheme of economic regulation”.

Westbank, *supra* at para. 25

Allard, *supra* at para. 67

Connaught, *supra* at para. 30

46. The jurisprudence makes clear that a regulatory scheme, particularly when it is very complex, can transcend multiple statutes and regulations. A “complete, complex and detailed code” of regulation, as one would expect, may extend beyond a single statute (and will almost always extend beyond a single provision authorizing the charge). In *Ontario Home Builders*, the majority of the Supreme Court of Canada (per Iacobucci J.) cited no less than nine different statutes that comprised parts of the “comprehensive regulatory framework” governing land development and land use planning in Ontario, to which the educational development charges were related:

As noted above, the Act is one component of a comprehensive regulatory framework governing land development in Ontario, comprised of at least nine different statutes: the *Building Code Act*, R.S.O. 1990, c. B.13, the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Fire Marshals Act*, R.S.O. 1990, c. F.17, the *Municipal Act*, R.S.O. 1990, c. M.45, the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, the *Planning Act*, R.S.O. 1990, c. P.13, and the *Conservation Authorities Act*, R.S.O. 1990, c. C.27. While the regulatory scheme of which EDCs are only a small part is clearly very complex, the complexity is necessitated by the very scope of the matter regulated -- urban planning. It is only to be expected that a variety of provincial actors would be involved in the various phases of the scheme's operation. However, this fact does not serve to invalidate the regulatory nature of the scheme. In my view, the appellants impose an artificial and rigid distinction between the school board and the municipality. This distinction fails to reflect the true nature of the regulatory framework.

***Ontario Home Builders' Assn. v. York Region Board of Education*, [1996] 2 S.C.R. 929 at para. 65**

***Connaught*, *supra* at para. 15**

47. The Supreme Court has emphasized that a “narrow” approach to what constitutes a regulatory scheme should *not* be adopted. This principle was established at least as early as *Ontario Home Builders*, where the majority held that educational development charges, imposed by virtue of an independent statute (the *Development Charges Act*), formed part of the broad regulatory scheme that regulated the “entirety” of land development and land use planning in the province (and which, as noted above, encompassed at least nine statutes). The majority accepted that the educational development charges were “only a small part” of a “very complex” scheme, but this in no way negated the ancillary nature of the charges or the regulatory nature of the scheme.

***Ontario Home Builders*, *supra* at paras. 65, 86**

48. Iacobucci J., writing for the majority of the Court, was explicit and categorical in rejecting the “narrow” approach of LaForest J. (nonetheless relied upon by Union Gas),

The key finding that I make is that the EDC scheme is part of a comprehensive and integrated regulatory scheme, namely, *the entirety of planning, zoning, subdivision and development of land in the province*. The fact that the scheme specifically provides for the use that will be made of the funds levied, and that the amount levied is carefully limited to such purposes, is mentioned as further support for the main finding, not as the only hallmarks, contrary to my colleague's interpretation. [...]

My colleague obviously takes a much narrower view of what can be considered to be "regulatory activity" by a province. He simply does not see EDCs as part of a comprehensive land use planning scheme. With respect, however, I find his characterization of the EDC scheme is so narrow that he ultimately seems to deny the complexity that necessarily and appropriately exists within the realm of land use planning. Of course, housing development does not by itself dictate the building of schools. This is not what I have said in my reasons. Rather, I have recognized that the province has made a legislative, regulatory decision that new development is to pay its own way for the infrastructure, including schools, that the province considers necessary to successful communities.

***Ontario Home Builders, supra* at para. 86 [italics added; underlining in original]**

Union Gas Factum at paras. 43, 54

49. In *Connaught*, the Supreme Court again cautioned against an unduly narrow approach to characterizing the scope of the regulatory scheme. That case concerned the validity of a business licence fee imposed on hotels, restaurants and bars in Jasper National Park for the right to sell alcoholic beverages in the park. The fee offset the costs of administering and operating each of Canada's national parks. The appellants in that case argued that the regulatory scheme was limited to the regulation of alcoholic beverages or of businesses in the park. The Court rejected this narrow approach, holding that the regulatory scheme consisted of the administration and operation of the whole of Jasper National Park:

The narrow scheme proposed by the appellants focuses exclusively on the regulation of the sale of alcoholic beverages, or alternatively the regulation of businesses, in Jasper National Park. However, the appellants benefit from such things as heritage presentations, visitors' services and highway maintenance in the park. To focus only on the regulation of the sale of alcohol or the regulation of businesses ignores the reality that the appellants' businesses benefit from their location in and the operation and regulation of the park as a whole. The *National Parks Act*, the *Parks Agency Act* and the regulations together comprise the regulatory scheme governing Jasper National Park. I conclude that the appropriate regulatory scheme to consider in this case is therefore the regulatory scheme governing the administration and operation of Jasper National Park.

Connaught, supra at para. 15

50. Rather than taking a narrow approach to defining the scope of a regulatory scheme, the unanimous Court made clear that a sufficient connection between the fee payors and a very broad regulatory scheme is ensured through an assessment of the relationship between the person being regulated and the regulation:

However, where a regulatory scheme is very broad, the scheme may not be sufficiently related to the persons being regulated either because the regulation does not benefit those persons, or because those persons do not cause the need for the regulation, except in a very indirect manner. In such a case, the fees may be found to be a tax. [...]

The safeguard against an insufficient relationship can be found in this *Westbank* criterion: "[The] relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation." Here, there is a close relationship between the appellants' businesses and the regulation of Jasper National Park.

Connaught, supra at paras. 35-36

51. In this case, as in *Ontario Home Builders*, the regulatory scheme (governing electricity, energy and energy conservation) comprises multiple statutes and regulations made thereunder. It also includes the orders of regulatory bodies such as the Board. This is unsurprising, given that the regulation of electricity/energy markets and energy conservation is *at least as complex* as the land use planning scheme considered in *Ontario Home Builders*. The electricity, energy and energy conservation scheme includes

the *Ministry of Energy Act, 2011* (“*MEA*”) (formerly *Ministry of Energy Act*), the *OEBA*, the *Electricity Act, 1998*, and numerous other statutes amending those acts, including the *Electricity Restructuring Act, 2004*, the *Energy Conservation Responsibility Act, 2006* the *Green Energy and Green Economy Act, 2009* and the *Green Energy Act, 2009*. Numerous regulations and programs effecting the regulatory policy established in those statutes have also been adopted, including O. Reg. 66/10.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 6-12

EA

OEBA

Ministry of Energy Act, 2011, S.O. 2011, c. 9 [MEA]

ERA

GEGEA

Green Energy Act, 2009, S.O. 2009, c. 12, Sched. A [GEA]

Energy Conservation Responsibility Act, 2006, S.O. 2006, c. 3

52. HESP and OSTHI are energy conservation programs authorized by s. 7(1)(e)(iii) of the *MEA*. Section 26.1 of the *OEBA* then authorizes the regulatory charge that defrays the costs of these programs, *specifically referring* to conservation programs under the *MEA* and the *Green Energy Act, 2009*. This evidences the integrated nature of the scheme. The fact that multiple statutes are employed, rather than a single statute, does not change this. The integrity of the entire scheme across multiple statutes is further demonstrated by the fact that, in order to effect the conservation and renewable energy goals in the *Green Energy and Green Economy Act, 2009*, that Act amended each of the *MEA*, the *OEBA*, the *Electricity Act, 1998* and created the *Green Energy Act, 2009* (as well as amending eight other statutes). To characterize HESP and OSTHI as “stand-

alone features of the government's policy of promoting conservation" ignores this legislative reality.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 6-12; AGMR at Tab 1, pp. 2-3

***MEA*, s. 7(1)(e)(iii)**

***OEBA*, ss. 26.1, 26.2**

***EA*, s. 25.32**

GEA

GEGEA

CME Factum at para. 9 (see also para. 43)

cf. Union Gas Factum at paras. 12-13

53. Furthermore, energy conservation is referred to in s. 7(1)(e) of the *MEA* (which authorizes the HESP and OSTHI programs) and ss. 26.1-26.2 of the *OEBA* (which authorize the cost recovery charge). Additional examples can be found in ss. 1(1), para. 3 and 2(5) of the *OEBA*, and s. 25.32 of the *Electricity Act, 1998*.

***MEA*, s. 7(1)(e)**

***OEBA*, ss. 1(1)(3), 2(5) 26.1-26.2**

***EA*, s. 25.32**

54. In this case, the impugned charge established under O. Reg. 66/10 recovers the specific costs of the HESP and OSTHI programs, described above. These programs are two conservation measures undertaken by the province to further its regulatory goals. As described above, they are integral to Ontario's regulation of electricity, energy and energy conservation under the *MEA*, the *OEBA*, the *Electricity Act, 1998*, the *Green Energy and Green Economy Act, 2009*, and the *Electricity Restructuring Act, 2004*.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 6-13; AGMR at Tab 1, pp. 2-3

**Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 10
lines 22-26; AGMR at Tab 2, p. 49**

55. The moving parties and intervenors seek to define the regulatory scheme in an unduly narrow manner, as limited either to the *OEBA* or to that part of the regulatory scheme over which the Board has jurisdiction. In the words of the moving parties, “the defining characteristic of the relevant regulatory scheme is the exercise of discretion by the Board to approve the recovery, from ratepayers, of spending by transmitters and distributors of electricity”.

CCC Factum at para. 6; see also paras. 29, 45, 57-78

CME Factum at paras. 23, 25, 38

56. This conception is entirely inconsistent with the jurisprudence. It imposes, in Iacobucci J.’s words, an “artificial and rigid distinction” between the *OEBA* or the Board, on the one hand, and other significant components of the scheme intended to regulate energy use and promote energy conservation (such as the HESP and OSTHI programs). As noted above, the provision of the *OEBA* that authorizes the cost recovery charge specifically refers to conservation programs under the *MEA*, which authorize HESP and OSTHI program. The statutes cross-reference each other and all have energy conservation as an explicit regulatory purpose. There is simply no reason to attempt to parcel the scheme into smaller, wholly artificial parts. (Even on the moving parties’ narrow view of the regulatory scheme as connected to the Board’s approval of rates under s. 78, the *OEBA* cross-references the *Electricity Act, 1998*, which again illustrates the broader integration of the overall scheme governing electricity, energy and energy conservation.)

***Home Builders, supra* at para. 65**

***OEBA*, ss. 26.1, 78**

CCC Factum at paras. 61-62

57. In essence, such an argument is no different from the one made and rejected by the majority of the Supreme Court in *Ontario Home Builders*. In that case, the educational development charge was imposed on home builders in order to finance new school construction. The new school construction was *not* held to be part of a separate “education” scheme, nor was it held to be a part of the scheme that should be examined independently. As noted, the Supreme Court explained in *Connaught* that the “safeguard” that ensures that fee payors are connected to the regulation is a review of whether they cause the need for the regulation or derive a benefit from it; the safeguard is *not* an attempt, at the outset, to characterize the scheme narrowly. As discussed in detail below at para. 93, the fee payors in this case (i.e., utilities, consumers) are related not only to the scheme as it is broadly defined, but are also related to the *specific programs* for which cost recovery is sought (i.e., HESP and OSTHI).

***Ontario Home Builders*, supra**

***Connaught*, supra at para. 36**

58. The argument that the scheme should be restricted to those aspects over which the Board has jurisdiction, simply because the Board has been accorded a role in overseeing the administration of the cost recovery charge (under ss. 26.1-26.2 *OEBA*), runs wholly counter to the reasoning in the Supreme Court of decisions. A review of the *Development Charges Act* that was considered in *Ontario Home Builders* reveals that the statute accorded the Ontario Municipal Board (“OMB”) a role in overseeing the implementation of those charges. For example, objections to development charge by-laws could be filed

with the OMB, and the OMB was authorized to amend or repeal such by-laws. This in no way affected the breadth of the land use planning scheme, as determined by the Court.

Development Charges Act, R.S.O. 1990, c. D.9, s. 4.

Ontario Home Builders, supra at pars. 65, 66, 86

CCC Factum at para. 56(i)

Union Gas Factum at para. 36

CME Factum at para. 25 (“[i]f there is a regulatory scheme that supports the Assessment, then it is a regulatory scheme other than that applied by the OEB in its regulation of utility rates.”)

59. The moving parties also emphasize the fact that the HESP and OSTHI programs have their origins in the federal government’s eco-Energy Homes and eco-Energy Renewable Heat programs. Patterning provincial programs on federal counterparts, or through referential incorporation of federal standards, is an inherent feature of co-operative federalism, and does not negate the existence of a detailed and complex code of provincial regulation, or affect the constitutional authority of the province to establish such programs or recover the province’s costs in respect of such regulation.

Hogg, *supra* at 14-22

Union Gas Factum at paras. 14-15

CCC Factum at para. 25

60. Although eligibility and initial approvals are determined by the federal government pursuant to memoranda of understanding with Natural Resources Canada, the province adopts such criteria, and then matches the federal funding with its own Ontario rebates. The significant fact is that Ontario’s cost recovery charge is wedded to the recovery of the costs of *Ontario’s* provincial rebates. The provincial cost recovery

charge is *not* defraying the costs of the federal government: it is defraying the *province's* costs in respect of the province's programs, which comprise part of the province's electricity scheme.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 14

***OEBA*, s. 26.2(2)(6)**

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 11, lines 5-15 (AGMR at Tab 2, p. 50), p. 15, line 26 – p. 16 (AGMR at Tab 2, pp. 54-55), line 18, p. 21, lines 11-15 (AGMR at Tab 2, p. 57), p. 63, lines 9-18 (AGMR at Tab 2, 92), p. 66, lines 19-24 (AGMR at Tab 2, p. 105), p. 76, lines 9-13 (AGMR at Tab 2, p. 115)

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 7, lines 6-27, p. 8, line 27 – p.9, line 7; AGMR at Tab 3, pp. 227-229

61. A regulatory scheme may emerge incrementally and evolve; its precise contours need not be predetermined at a fixed point in time. To posit this as a legal requirement is inconsistent with the jurisprudence and ignores the fact that regulatory schemes are responsive to societal needs and government policy direction, each of which develop over time. The many provisions in the nine statutes cited in *Ontario Home Builders* clearly emerged over an extended period, none of which affected the Court's description of the "regulatory" nature of the land use planning scheme in that case.

***Ontario Home Builders*, supra at para. 28**

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p.97, lines 10 – 23; AGMR at Tab 2, p. 136

cf. VECC Factum at para. 17 and 28

cf. CME Factum at paras. 11, 14, 19, 33, 41-42, 45

62. In summary, the regulatory scheme governing electricity, energy and energy conservation manifestly constitutes a "complete, complex and detailed code of regulation". The scheme may be considered a paradigmatic example of a "complete,

complex and detailed code”. Ontario respectfully submits that there are few provincial schemes in existence as complete, complex and detailed as this scheme governing electricity, energy and energy conservation. The HESP and OSTHI programs, whose costs are recovered by the regulatory charge in this case, clearly form part of this regulatory scheme as programs intended to foster energy conservation, reduce reliance on non-renewable energy and support overall system reliability.

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 92, lines 1-6 (AGMR at Tab 2, p. 131), p. 94, lines 15-25 (AGMR at Tab 2, p. 96)

(ii) A specific regulatory purpose

63. The second indicium of a regulatory scheme is a specific regulatory purpose “which seeks to affect the behaviour of individuals.” In *Westbank*, Gonthier J. described this factor as follows:

A regulatory scheme will have a defined regulatory purpose. A purpose statement contained in the legislation may provide assistance to the court in this regard. [...] [A] regulatory scheme usually “delineates certain required or prohibited conduct”. [...] In sum, a regulatory scheme must “regulate” in some specific way and for some specific purpose.

***Westbank*, supra at paras. 24 and 26**

64. It is entirely clear from the jurisprudence that the purpose of a regulatory *charge* itself may simply be to defray the expenses of a regulatory scheme. It is the *scheme* funded that will typically “regulate” by seeking to affect behaviour. While the charge itself may also act to change behaviour (e.g., where it acts as a financial disincentive to purchasing a product or service), it need not do so. As Gonthier J. explained in *Westbank*, cost recovery is a sufficient purpose:

A regulatory charge may exist to defray the expenses of the regulatory scheme, as was the case in *Allard* or *Ontario Home Builders'*, or the regulatory charges themselves may be the means of advancing a regulatory purpose.

***Westbank*, supra at para. 29**

***Connaught*, supra at para. 20**

***Constitution Act, 1867*, s. 92(9)**

cf. VECC Factum, at paras. 19- 22

cf. CME Factum, at paras. 26, 30, 44

65. Furthermore, a regulatory purpose that seeks to change behaviour may be based on incentives that encourage voluntary behaviour. In *Westbank* (citing *Cape Breton Beverages v. Nova Scotia (Attorney General)* with approval), the Supreme Court described a deposit-refund charge on bottles as a regulatory charge. The choice to return a bottle for recycling purposes, rather than discarding it as non-recyclable waste, was clearly voluntary: seeking to influence this choice through a small financial incentive remained a regulatory purpose.

***Westbank*, supra at para. 29**

***Cape Breton Beverages v. Nova Scotia (Attorney General)*, supra**

CCC Factum, at para. 27; see also paras. 82(iii), 86(ii)

66. In this case, the regulation for which cost recovery is sought, namely the HESP and OSTHI programs, clearly seeks to affect the behaviour of individuals. The programs provide financial incentives to conserve energy and reduce reliance on non-renewable energy sources. For example, providing a financial incentive of \$150 for a home energy audit encourages consumers to obtain such an audit (consisting of a detailed report about the energy consumption of the home and the means by which the home can be made more energy-efficient through replacement or upgrading of equipment). Providing a

financial incentive of \$60 for the replacement of old, single-pane glass windows with modern thermal-pane Energy Star qualified windows, encourages the installation of the more energy-efficient equipment.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 22; AGMR at Tab 1, p. 6

67. Energy conservation is the primary tool for addressing supply and distribution constraints in Ontario's electricity system. Conservation programs increase grid reliability by reducing peak-demand stresses on the system. The evidentiary record indicates that the HESP and OSTHI programs have resulted in modest success in limiting peak-demand (although the success of the regulatory scheme is not part of the constitutional analysis – see paras. 91-92 below). Conservation programs of these types assist in avoiding the need to invest in system upgrades and new generation facilities. These programs also assist in achieving the goals of a reliable electricity system and reducing the costs of maintaining electricity-related infrastructure.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 13, 16, 19, 24-25, 27, 29, 31-32, 34-35; AGMR at Tab 1, pp. 4-8

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 24, lines 2-16 (AGMR at Tab 2, p. 63), p.26, lines 26 – p.27, line 7 (AGMR at Tab 2, p. 65-67), p. 139 lines 8-16 (AGMR at Tab 2, p. 178), p. 146, lines 10-15 (AGMR at Tab 2, p. 185)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.2, 1.8, 1.9; AGMR at Tab 4B, pp. 262—265

cf. CCC Factum, at para. 86(ii)

cf. Union Gas Factum, at paras. 17, 50

68. Energy conservation is also fundamental to reducing the adverse environmental impacts of the use of fossil fuels. Reducing electricity consumption directly decreases

Ontario's greenhouse gas emissions, and is part of Ontario's plan to close all coal-fired electricity generation plants by the end of 2014.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 36-41; AGMR at Tab 1, pp. 8-9

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 23, lines 11-13 (AGMR at Tab 2, p. 62), p. 41, line 38 – p. 42, line 21 (AGMR at Tab 2, pp. 77-82), p. 149, line 28 – p. 150 line 3 (AGMR at Tab 2, p. 188)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.10; AGMR at Tab 4B, pp. 265-266

O. Reg. 496/07 made under the *Environmental Protection Act*, R.S.O. 1990, c. E.19

69. The regulatory scheme as a whole has numerous, varied examples of requirements and prohibitions related to conservation. For example, ss. 53.16 and 53.18 of the *Electricity Act, 1998* impose requirements on distributors and consumers. Another example is the requirement on distributors, imposed under s. 27.2 of the *OEBA*, to meet Board-imposed conservation targets as a condition of their license. Yet another example is the requirement that Ontario Power Generation close all of its coal-generating facilities by the end of 2014, imposed under ss. 28 and 28.1 of the *OEBA* and O.Reg. 496/07 (under the *Environmental Protection Act*).

***EA*, ss. 53.16, 53.18**

***OEBA*, s. 27.2, 28, 28.1**

O. Reg. 496/07

70. Moreover, the HESP and OSTHI programs have their own requirements for eligibility. Applicants who seek to avail themselves of rebates under the programs are required to comply with certain requirements prior to the receipt of incentive payments. For example, within HESP, the provincial incentive of \$60 for the installation of Energy Star qualified windows can only be obtained after a second energy audit has been performed and the auditor verifies that the qualifying windows have been installed. Similarly, in order to receive the \$150 incentive for a home energy audit, it is a requirement that the auditor be selected from a list of auditors qualified to conduct the audit.

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p.170, line 6 – p. 171, line 10; AGMR at Tab 2, pp. 209-210

Affidavit of Barry Beale, sworn November 5, 2010, at para. 17; AGMR at Tab 1, p. 5

See, for e.g., Re OSTHI: Affidavit of Barry Beale, sworn November 5, 2010, Exhibit “C” at 2-3; AGMR at Tab 1, pp. 26-27

(iii) Actual or properly estimated costs of regulation

71. The third indicium of a regulatory scheme is the presence of actual or properly estimated costs of regulation. In *Westbank*, Gonthier J. described this factor as follows:

Regulatory schemes usually involve expenditures of funds on costs which are either known, or properly estimated. In the indirect tax cases, evidence was provided demonstrating how the revenues would be used and how the regulatory costs of the scheme were estimated. In *Ontario Home Builders'*, *supra* at para. 55, the charge levied was “meticulous in its detail” and “clearly operate[d] so as to limit recoupment to the actual costs”. In *Allard*, *supra* evidence was led by city officials demonstrating the actual costs of annual road repair, based on estimates from similar repairs in the municipality. In both cases, there was a fairly close “nexus” between the estimated costs and the revenues raised through the regulatory scheme.

***Westbank*, *supra* at para. 27**

72. In this case, the Ministry conducted an estimate of the regulatory costs of the HESP and OSTHI programs as of December 31, 2009. The cost estimate limited itself to the specific costs, during the fiscal year 2009/10, of the financial incentives provided by the Ministry. While the Supreme Court jurisprudence permits regulatory charges to defray the full cost of regulation, including public service labour costs, the impugned regulatory charge seeks to defray only the cost of the financial incentives provided. Accordingly, it can be described as a particularly conservative estimate.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 53 and Appendix; AGMR at Tab 1, pp. 11, 29

Transcript of Cross-examination of Barry Beale at p. 9, line 13 – p. 10, line 26; AGMR at Tab 2, pp. 48-49

73. The assessment amount of \$53,695,310 reflected the Ministry's best estimate, based on a rigorous cost estimation and allocation methodology, of the total electricity-related cost of the HESP and OSTHI program financial incentives for fiscal year 2009/10. Costs associated with conservation of other fuels were excluded. The charge was intended to recover only those costs incurred for electricity conservation measures, as prescribed under the *OEBA* and O. Reg. 66/10.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 53-57; AGMR at Tab 1, pp. 11-12

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 9 line 13 – p. 10 line 26 (AGMR at Tab 2, pp. 48-49), p. 12, lines 17-23 (AGMR at Tab 2, p. 51), p.17, lines 12-20 (AGMR at Tab 2, p. 56), p. 85 lines 8-19 (AGMR at Tab 2, p. 124), p. 86, lines 14-19 (AGMR at Tab 2, p. 125), p. 114 lines 11-23 (AGMR at Tab 2, p. 153), p. 123, lines 13- 24 (AGMR at Tab 2, p. 162), p. 129, lines 14-22 (AGMR at Tab 2, p. 168)

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 3, line 28 – p. 4, line 2, p. 21, lines 7-12; AGMR at Tab 3, pp. 223, 241

***OEBA*, s.26.2(2)(6)**

cf. CME Factum at para. 19

74. The estimated cost of the programs was actually inserted into s. 4 of O. Reg. 66/10 as the total amount to be recovered by the cost recovery charge. This step guaranteed that no more than the amount of the estimated costs would be recovered. This process of fee-setting, which commenced with cost estimation and proceeded to fix the amount of revenue raised on the strict basis of estimated costs, was “meticulous in its detail” and plainly served to ensure that monies recovered did not exceed the estimated costs. Indeed, the government’s decision to specify the amount of the estimated costs in the regulation, so as to ensure that revenue raised would not exceed those estimated costs, exceeds the level of precision utilised by governments in other cases (relied upon by Union Gas at para. 45 of their factum), in which cost recovery charges have been upheld.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 53; AGMR at Tab 1, p. 11

***Ontario Home Builders, supra* at para. 55**

***Westbank, supra* at para. 27**

***Connaught, supra* at paras. 40-43**

VECC Factum at paras. 23-24

CME Factum at para. 49

CCC Factum at para. 86(iii)

Union Gas Factum at paras. 43-45, 56

75. The accuracy of the Ministry’s estimate is reflected by the very small margin of error between the estimated costs and the actual cost of the program. On December 31, 2009, the Ministry estimated the costs of the programs as \$53,695,310. The actual cost, determined following the end of the fiscal year, was \$51,253,901. The \$2,441,409 difference between the estimated and actual cost amounted to only 4.55% of the

estimated cost. The jurisprudence does not require perfection in the cost estimation process. Given the very small margin of error in this case, it is clear that program costs were “properly estimated”.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 56, 58 Appendix; AGMR at Tab 1, pp. 12, 13, 29

***Allard, supra* at paras. 72-73**

***Connaught, supra* at para. 40**

See also: *Charter Construction Ltd. v. Ontario (Minister of Transportation)*, (2008) 69 R.P.R. (4th) 1 (Sup. Ct.) at para. 19

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 31, lines 22-25

cf. VECC Factum at para. 23

76. The small excess recovery in this case is maintained in a special purpose account. It cannot be appropriated for purposes other than the special purposes specified in s. 26.2 of the *OEBA* – that is, to fund, *inter alia*, conservation and renewable energy programs.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 58; AGMR at Tab 1, p. 14

***Financial Administration Act, supra* s. 7(1), 11.2(1)(a)**

***OEBA*, s. 26.2**

77. The moving parties contend that there are “no proper estimates of the cost of regulation” because s. 26.1 of the *OEBA* would authorize cost recovery for conservation programs other than HESP and OSTHI. Yet it is evident from the very nature of the *Westbank/Connaught* analysis that costs and revenue are assessed in respect of the regulation *actually undertaken*. The matter is not to be determined on the basis of speculation as to hypothetical future regulation.

VECC Factum, at para. 19

Union Gas Factum, at paras. 4, 7, 33, 55

CME Factum, at para. 48

(iv) A relationship between the regulation and the person being regulated, where the person being regulated either causes the need for the regulation or benefits from it

78. The fourth indicium consists of a relationship between the regulation and the persons being regulated, in which those regulated either cause the need for the regulation or benefit from it. In *Westbank*, Gonthier J. described the fourth indicium as follows:

Finally, the individual subject to the regulatory charge will usually either benefit from the regulation, or cause the need for the regulation: *Magnet, supra* at p. 459. In *Allard, supra* the gravel trucks caused the need for the repair to the roads; in *Ontario Home Builders', supra* the developers and the new home-owners caused the need for the new schools. In both cases the individuals being charged also benefited from the regulation.

***Westbank, supra* at para. 28**

79. The test is disjunctive: all that is required for the indicium to be satisfied is that a fee payor “either” cause the need “or” derive a benefit from the regulation. The Supreme Court has repeatedly indicated that the fourth indicium can be met either by showing a causal relationship or a benefit.

***Westbank, supra* at paras. 24, 44**

***Connaught, supra* at para. 25**

***Confédération des Syndicats Nationaux, supra* at para. 72**

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 165, lines 27 – p. 166, line 10; AGMR at Tab 2, p. 174-175

cf. CME Factum at para. 32 [addresses only deriving a benefit]

80. Contrary to the argument of the opposing parties, the fee payors need not be the *sole* group that obtains a benefit or causes the need for the regulation. There is no requirement, as Union Gas contends, that the fee payors be “*uniquely* impacted by the

programs [...] in the sense that, when compared to the general public, they [...] *uniquely* cause the need for these programs or benefit from them.” Not only does the jurisprudence never qualify the fourth indicium with the word “unique”, a review of some of the key cases (below) demonstrates that the regulations did not “uniquely impact” the fee payors in each instance.

Union Gas Factum at paras. 4 [emphasis added], 18, 50 , 52, 58

See also: CCC Factum, at para. 82(vi), 86(vi)

81. For example, in *Ontario Home Builders*, the benefit clearly derived by the public in having new schools constructed did not negate the benefit to the developers of having more marketable new homes. In *Connaught*, the benefit derived by all visitors to Jasper National Park (or by all Canadians generally) of having the park well maintained did not negate the benefit to alcohol vendors in the park. Similarly, in *Allard Contractors*, the fact that *all* motorists are involved in causing the need for road maintenance did not negate the fact that gravel excavators, who paid the charge, caused the need for road maintenance.

***Ontario Home Builders, supra* at para. 66**

***Connaught, supra* at para. 34**

***Allard, supra* at para. 64**

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 119, line 24 – p. 120, line 26; AGMR at Tab 2, pp. 158-160

82. In this case, all of the individuals and entities subject to the regulatory charge – consumers, LDCs and the IESO – either cause the need for the energy conservation programs or derive a benefit from such programs. As the moving parties in this case are

Consumers

83. Through their consumption of electricity, consumers place significant demands on the electricity grid, which can compromise its reliability, particularly in peak demand periods. As conservation programs, HESP and OSTHI are intended to assist in addressing the need for grid reliability, caused by electricity consumption, by reducing the load of electricity on the system and eventually reducing the need for generation at peak demand periods. Modest reductions in consumption resulting from the conservation programs assist in improving system reliability by decreasing the likelihood that short-term energy demand spikes will undermine system-wide or local distribution system reliability.

**Affidavit of Barry Beale, sworn November 5, 2010, at paras. 25 and 27;
AGMR at Tab 1, pp. 6-7**

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 23, lines 2-18 (AGMR at Tab 2, p. 62), p.24, lines 2-16 (AGMR at Tab 2, p. 63), p. 30, lines 15-24, p. 41, line 28 – p. 42, line 21 (AGMR at Tab 2, p. 69-70), p. 139, lines 8-16 (AGMR at Tab 2, p. 178), p. 146, lines 10-15 (AGMR at Tab 2, p. 185)

**Answers to Undertakings/Under Advisements (Attorney General), JT 1.2;
AGMR at Tab 4C, p. 268**

84. Electricity consumption from certain sources (e.g., fossil fuels) also has a detrimental impact on the environment due to pollutants being emitted, including greenhouse gases. The conservation programs are intended to assist in the regulatory objective of protecting the environment. In this respect also, electricity consumers cause

the need for the HESP and OSTHI programs, which seek to reduce energy consumption and thereby limit adverse environmental impact.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 36; AGMR at Tab 1, p. 8

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 172, lines 9-21; AGMR at Tab 2, p. 218

85. Although the fourth indicium in the *Westbank/Connaught* test is satisfied simply by demonstrating that consumers *cause the need* for the energy conservation programs, consumers also *derive a benefit* from the HESP and OSTHI programs. These energy conservation programs assist in maintaining grid reliability, which benefits consumers who use electricity. Consumers receive stable electrical supply during all periods of the day, month or year, including peak demand periods. Business, manufacturing, technology and other industrial sectors depend on and benefit from reliable supply in order to support their business operations. Residential and small business consumers depend on, and benefit from, adequate and consistent supply to meet their daily energy needs.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 29

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 119, line 27 – p.120, line 4 (AGMR at Tab 2, pp. 158), p. 139, lines 8-16 (AGMR at Tab 2, p. 178), p. 146, lines 10-15 (AGMR at Tab 2, p. 185)

Answers to Undertakings/Under Advisements (Attorney General), JT 1.8, 1.9; AGMR at Tab 4B, p. 265

86. Finally, consumers benefit from reduced costs associated with conservation programs. In addition to savings by consumers who reduce their individual electricity demand, reductions in overall electricity consumption assist the system in shifting to lower-cost, non-peak resources and assist in reducing the overall commodity costs of electricity.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 43-47; AGMR at Tab 1, p. 10

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 148, lines 10-14; AGMR at Tab 2, p. 187

87. Moreover, the conservation programs assist in deferring the need for costly system upgrades. By assisting in avoiding or reducing system upgrade and expansion costs, HESP and OSTHI benefit consumers, since they would ultimately bear the expenses of such upgrades through rate changes set by the Board.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 46-49; AGMR at Tab 2, p. 10

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 120 lines 1-4 (AGMR at Tab 2, p. 149), p. 172 lines 9-21 (AGMR at Tab 2, p. 211)

cf. VECC Factum, at para. 25

LDCs and the IESO

88. While s. 7 of Regulation 66/10 contemplates that the cost recovery charge will ultimately be passed on and paid by consumers (as has already occurred in this case), the charge is initially imposed on LDCs and the IESO. Like consumers, LDCs and the IESO derive a benefit from the HESP and OSTHI programs. These programs are intended to assist in maintaining grid reliability, which is critical for LDCs and the IESO in order to supply electricity to their clients. The LDCs and the IESO benefit significantly from improved grid reliability, since system failures affect the viability and profitability of their entire operations. Even a short-term breakdown of the transmission and distribution grid would prevent the IESO and LDCs from delivering electricity to their customers, resulting in adverse economic consequences.

Regulation 66/10, ss. 3, 7

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 31, 32, 52; AGMR at Tab 1, pp. 7, 8, 11

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 119, line 27 – p. 120, line 7 (AGMR at Tab 2, pp. 158-159), p. 139, lines 8-16 (AGMR at Tab 2, p. 178), p. 146, lines 10-15 (AGMR at Tab 2, p. 185)

89. As conservation programs such as HESP and OSTHI assist in deferring the need for system upgrades, LDCs and the IESO also avoid the immediate short-term and financing costs associated with such infrastructure improvements and expansion. In addition, conservation programs assist the IESO in complying with its statutory mandate to ensure the stability and reliability of the grid, and to ensure the adequacy and reliability of the integrated power system.

Affidavit of Barry Beale, sworn November 5, 2010, at paras. 34, 49; AGMR at Tab 1, pp. 8, 10

EA, s. 5.5

90. While the *benefit* derived by LDCs and the IESO is sufficient to satisfy the fourth indicium, Ontario further submits that LDCs and the IESO also *cause the need* for the programs. As suppliers of electricity, utilities place their own demands on the electricity grid. LDCs are obligated under the *Electricity Act, 1998* and their license conditions to serve all consumers in their service areas. LDCs are the only entities in the position to provide the service of delivering electricity to most consumers. In serving their consumers by delivering electricity, LDCs necessarily place demands on the grid.

EA, s. 29

cf. Union Gas Factum at para. 49

Effectiveness Irrelevant to Constitutional Question

91. The extent of the programs' effectiveness in its attaining objectives is entirely irrelevant to the constitutional analysis. In *Reference re Firearms Act*, a unanimous Supreme Court of Canada explained that efficacy is not relevant to a division of powers analysis:

We also appreciate the concern of those who oppose this Act on the basis that it may not be effective or it may be too expensive. Criminals will not register their guns, Alberta argued. The only real effect of the law, it is suggested, is to burden law-abiding farmers and hunters with red tape. These concerns were properly directed to and considered by Parliament; they cannot affect the Court's decision. The efficacy of a law, or lack thereof, is not relevant to Parliament's ability to enact it under the division of powers analysis.

***Re Firearms Act*, [2000] 1 S.C.R. 783 at para. 57; see also para. 18**

Hogg at 15-18 to 15-19

***Ward v. Canada*, [2002] 1 S.C.R. 569 at para. 26**

92. It is not for the courts or administrative tribunals to pass judgment on the level of efficacy or wisdom of the regulatory measures. It is clear from the *Westbank/Connaught* test that the legal question is simply whether there is a regulatory scheme, and whether the regulatory charge is tied to that scheme. The question is *not* the extent to which the government regulation was effective in achieving its stated objectives. The Board is not called upon to assess the wisdom of public policy established by valid legislative enactments.

Allard Contractors*, *supra

Ontario Home Builders*, *supra

Eurig*, *supra

Westbank*, *supra

Connaught, supra

Confédération des Syndicats Nationaux, supra

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 12, lines 12-17; AGMR at Tab 2, p. 51

CCC Factum, at paras. 28, 79-81

Union Gas Factum, at para. 46

STEP 2: Relationship between the Charge and the Scheme

93. The second step of the *Westbank/Connaught* test is to find a relationship between the charge and the scheme itself. Such a relationship will exist when there is a “nexus” between the revenues raised and the costs of regulation.

Westbank, supra at para. 44

Connaught, supra at para. 27

94. In *Eurig*, the Court emphasized that in determining whether a nexus exists, “courts will not insist that fees correspond precisely to the cost of the relevant service. As long as a reasonable connection is shown between the cost of the service provided and the amount charged, that will suffice.” Thus, the test is whether there is a “reasonable connection” between the charge and costs, as opposed to perfect correspondence between the two.

Eurig, supra at para. 22

95. Furthermore, the Court has indicated that it is not the role of the reviewing court or tribunal to “undertake a rigorous analysis” of a government’s accounts, and that government is permitted “reasonable leeway” in determining a fee structure intended to recover the costs of a regulatory scheme:

[I]t is not for this Court to undertake a rigorous analysis of a municipality's accounts. A surplus itself is not a problem so long as the municipalities made reasonable attempts to match the fee revenues with the administrative costs of the regulatory scheme, which is what occurred in this case. It is easy to imagine reasons for the existence of a so-called "surplus" at any given time. For example, changes in forecasted prices might lead to road repair being over-budgeted, or a municipality might choose not to repair a certain road in order to undertake more extensive repairs or reconstruction at a later date.

Although it might be possible to attack a fee structure demonstrably intended to raise revenue in excess of regulatory needs on constitutional grounds, in this case no evidence of such intention has been proved. On this point, therefore, the municipalities may be given reasonable leeway.

Allard, supra at paras. 72-73

96. This finding was reiterated by the unanimous Supreme Court in *Connaught*:

[A]s stated in *Allard*, at pp. 411-12, the government needs to be given some reasonable leeway with respect to the limit on fee revenue generation. *While a significant or systematic surplus above the cost of the regulatory scheme would be inconsistent with a regulatory charge and would be a strong indication that the levy was in pith and substance a tax, a small or sporadic surplus would not*, as long as there was a reasonable attempt to match the revenues from the fees with the cost associated with the regulatory scheme.

Connaught, supra at para. 40 [emphasis added]

See also: *Charter Construction Ltd. v. Ontario (Minister of Transportation)*, (2008) 69 R.P.R. (4th) 1 (Sup. Ct.) at para. 19

97. As outlined above, the cost recovery charge in this case was designed to recover only those electricity-related costs incurred by the Ministry in providing the HESP and OSTHI programs in fiscal year 2009/10. The estimated cost of these programs was \$53,695,310, as entrenched in s. 4 of O. Reg. 66/10. The cost recovery charge was restricted to raising revenue equal to this estimated cost, and is therefore directly tied to the costs of the programs.

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 114 lines 20-23; AGMR at Tab 2, p. 153

***OEBA*, s.26.2(2)(6)**

98. In this case, the revenue raised did not exceed the *estimated* costs of the programs. In addition, the revenue raised exceeded the *actual* regulatory costs by an amount equal to only 4.55% of estimated costs (i.e., \$2,441,409). Some variance between an estimate and the actual costs of a program is to be expected, and clearly falls within the reasonable leeway accorded to governments by the Supreme Court.

99. For example, in *Charter Construction*, the Superior Court upheld a regulatory charge that generated an unexpected surplus of approximately 11%. *Connaught* also illustrates the deferential approach the Supreme Court employs on this part of the constitutional analysis. In that case, the government had not even provided the Court with a full accounting of the operations of Jasper National Park, yet the Supreme Court was willing to infer from incomplete Hansard evidence that the “fee revenues from Jasper National Park likely did not exceed, and certainly did not significantly exceed, the cost of the regulatory scheme for the park.”

***Charter Construction, supra* at para. 19 (where the court notes that the over-recovery was \$580,000, out of a total recovered amount of \$5,700,000)**

***Connaught, supra* at para. 44**

100. In this case there is a clear “nexus” between the revenues raised by the cost recovery charge and the electricity-related costs of the HESP and OSTHI programs. The revenue generated from the levy recovers the specific costs of providing incentives to consumers incurred by the Ministry during the fiscal year 2009/10. Costs associated with conservation of other fuels were excluded. Furthermore, while the Ministry could have

recovered other administrative costs associated with running HESP and OSTHI, it elected not to do so.

Affidavit of Barry Beale, sworn November 5, 2010, at para. 53 and Appendix, Table 4; AGMR at Tab 1, pp. 11, 31

Transcript of Cross-examination of Barry Beale, November 16, 2010 at p. 9, line 13 – p. 10, line 26 (AGMR at Tab 2, p. 48-49), p. 12, lines 17-23 (AGMR at Tab 2, p. 51), p. 17, lines 12-20 (AGMR at Tab 2, p. 56), p. 85, lines 8-19 (AGMR at p. 124), p. 86, lines 14-19 (AGMR at Tab 2, p. 125), p. 114, lines 11-23 (AGMR at Tab 2, p. 153), p. 123, lines 13-24 (AGMR at Tab 2, p. 162), p. 129, lines 14-22 (AGMR at Tab 2, p. 168)

Transcript of Cross-examination of Barry Beale, July 25, 2011 at p. 3, line 28 – p. 4, line 2, p. 21, lines 7-12; AGMR at Tab 3, pp. 223-224

101. In conclusion, it is clear that the cost recovery charge established under s. 26.1 of the *OEBA* and Regulation 66/10 constitutes a regulatory charge ancillary to a regulatory scheme governing electricity consumption and distribution, and not a tax. The first step of the *Westbank/Connaught* test is met in this case, as the indicia of a regulatory scheme are clearly satisfied:

(1) The HESP and OSTHI programs form part of a “complete, complex and detailed code of regulation” governing electricity, energy, and energy conservation. This code comprises multiple statutes, and the regulations, rules and codes thereunder.

(2) The HESP and OSTHI programs funded by the regulatory charge provide financial incentives to homeowners and institutions, seeking to alter their energy consumption behaviour. There is a clear regulatory purpose of encouraging energy conservation and reducing reliance on non-renewable energy sources.

(3) The electricity-related costs of these programs were properly estimated; and

(4) Consumers, LDCs and the IESO all benefit from and/or cause the need for the energy conservation programs.

102. The second step of the *Westbank/Connaught* test is also clearly satisfied in this case, as the revenue raised by the charge is directly tied to the program costs. The cost

recovery charge was structured so that it could not, and did not, recover more than the estimated costs of the programs entrenched in the Regulation. The program costs were reasonably and properly estimated, as the actual costs were within 4.55% of the estimated costs. In addition, all revenue was placed within a special purposes fund that may only be used for the specific purposes identified in the legislation.

103. Having satisfied both steps of the *Westbank/Connaught* test, Ontario respectfully submits that the cost recovery charge is a valid regulatory charge connected to Ontario's regulatory scheme governing electricity, energy and energy conservation, and not a tax. Accordingly, the charge is within provincial jurisdiction under s. 92(9), and one or more of ss. 92(10), 92(13), 92(16) and 92A(1)(c) of the *Constitution Act, 1867*.

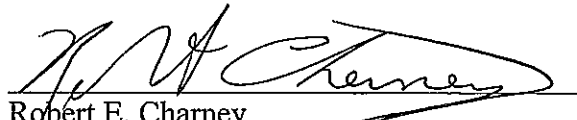
PART V: ORDER SOUGHT

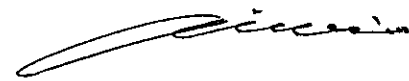
104. The Attorney General requests:


- (a) that this motion be dismissed; and
- (b) such further and other relief as counsel may advise and the Board deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 20, 2011


Robert E. Charney


Arif Virani


Robert Donato

Counsel for the Intervenor,
The Attorney General of Ontario

SCHEDULE “A”

Jurisprudence

1. *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134
2. *620 Connaught Ltd. v. Canada (Attorney General)*, [2008] 1 S.C.R. 131
3. *Ontario Home Builders’ Assn. v. York Region Board of Education*, [1996] 2 S.C.R. 929
4. *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371
5. *Cape Breton Beverages v. Nova Scotia (Attorney General)* (1997), 144 D.L.R. (4th) 536 (N.S.S.C.), aff’d (1997), 151 D.L.R. (4th) 575 (N.S.C.A.), leave to appeal refused [1997] 3 S.C.R. vii
6. *Fulton v. Alberta (Energy Resources Conservation Board)*, [1981] 1 S.C.R. 153
7. *Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 S.C.R. 327
8. *Eurig Estate (Re)*, [1998] 2 S.C.R. 565
9. *Lawson v. Interior Tree Fruit & Vegetable Committee of Direction*, [1931] S.C.R. 357
10. *Confédération des Syndicats Nationaux v. Canada (Attorney General)*, [2008] 3 S.C.R. 511
11. *Charter Construction Ltd. v. Ontario (Minister of Transportation)* (2008), 69 R.P.R. (4th) 1, [2008] O.J. No. 1838
12. *Reference Re Firearms Act*, [2000] 1 S.C.R. 783
13. *Ward v. Canada*, [2002] 1 S.C.R. 569

Legal Writings

14. P.W. Hogg, *Constitutional Law of Canada*, 5th ed. Supplemented, looseleaf ed. (Toronto: Carswell, 2007)
15. R.D. Cairns, M.A. Chandler and W.D. Moull, “Constitutional Change and the Private Sector: The Case of the Resource Amendment” (1986) 24 Osgoode Hall L.J. 299

SCHEDULE “B”

1. *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B, ss. 26.1, 26.2, 27.2, 28, 28.1, 57, 60, 70, 70.1, 78
2. *Ontario Energy Board Act, 1998*, O. Reg. 66/10
3. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), ss. 92, 92A(1)(c), (4)(b)
4. *Financial Administration Act*, R.S.O. 1990, c. F.12, ss. 7(1), 11.1(3.1), 11.2(1)(a)
5. *Ministry of Energy Act, 2011*, S.O. 2011, c. 9, Sch. 25 (formerly *Ministry of Energy Act*), s. 7(1)(e)(iii)
6. *Electricity Act, 1998*, S.O. 1998, c. 15, Sch. A, ss.5, 25.32, 29, 32-34
7. *Electricity Restructuring Act, 2004*, S.O. 2004, c. 23, Part II.1
8. *Green Energy and Green Economy Act, 2009*, S.O. 2009, c. 12
9. *Green Energy Act, 2009*, S.O. 2009, c. 12, Sch. A
10. *Energy Conservation Responsibility Act, 2006*, S.O. 2006, c. 3
11. *Development Charges Act*, R.S.O. 1990, c. D.9, s. 4
12. *Environmental Protection Act*, R.S.O. 1990, c. E.19, O. Reg. 496/07

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15

Schedule B

Consolidation Period: From June 6, 2011 to the e-Laws currency date

Last amendment: 2011, c. 9, Sched. 27, s. 34

Assessment, Ministry conservation programs, etc.

26.1 (1) Subject to the regulations, the Board shall assess the following persons or classes of persons, as prescribed by regulation, with respect to the expenses incurred and expenditures made by the Ministry of Energy in respect of its energy conservation programs or renewable energy programs provided under this Act, the *Green Energy Act, 2009*, the *Ministry of Energy Act, 2011* or any other Act:

1. In respect of consumers in their service areas, gas distributors and licensed distributors.
2. The IESO.
3. Any other person prescribed by regulation. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (2).

Assessments, collection by gas distributors and licensed distributors

(2) Gas distributors and licensed distributors may collect the amounts assessed under subsection (1) from the consumers or classes of consumers as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessments, IESO

(3) The IESO may collect the amounts assessed under subsection (1) from market participants or classes of market participants as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, amount and timing

(4) For the purposes of subsection (1), the Board shall assess the amount prescribed by regulation within the time prescribed by regulation in accordance with the methods or rules prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, obligation to pay

(5) Every person assessed under subsection (1) shall pay the amount assessed in accordance with the Board's assessment by remitting the amount to the Minister of Finance. 2009, c. 12, Sched. D, s. 6.

Failure to pay

(6) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order the person to pay the assessment. 2009, c. 12, Sched. D, s. 6.

Reporting

(7) Persons referred to in subsection (1) shall report such information in such manner and at such times to the Board or to the Minister as is prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

(a) governing assessments under this section, including,

(i) prescribing the amount to be assessed or the amounts to be assessed against each person, or class of person liable to pay an assessment or the method of calculating the amount or amounts, and

(ii) prescribing the time within which the assessments must occur;

(b) prescribing persons or classes of persons liable to pay an assessment under subsection (1);

(c) prescribing the frequency of the assessments;

(d) respecting the manner by which an assessment under this section is carried out;

(e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;

(f) with respect to subsection (7), prescribing the time at which such reports must be made or submitted, the manner by which such reports must be made or submitted, and governing the information to be provided, including the manner in which such information is presented or provided;

(g) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate. 2009, c. 12, Sched. D, s. 6.

Special purposes

26.2 (1) For the purpose of the *Financial Administration Act*, all amounts collected under section 26.1 relating to assessments paid shall be deemed to be money paid to Ontario for the special purposes set out in subsection (2). 2009, c. 12, Sched. D, s. 6.

Same

(2) The following are the special purposes for which amounts collected under section 26.1 relating to assessments are paid to Ontario:

1. To fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:

i. natural gas,

ii. electricity,

iii. propane,

iv. oil,

v. coal, and

vi. wood.

2. To fund conservation or renewable energy programs aimed at causing consumers of fuel to change from one or more of the fuels listed in paragraph 1 to any other fuel or fuels listed in that paragraph.
 3. To fund conservation or renewable energy programs aimed at decreasing peak electricity demand, while increasing or decreasing the consumption of another type of fuel.
 4. To fund research and development or other engineering or scientific activities aimed at furthering the conservation or the efficient use of fuels.
 5. To fund conservation or renewable energy programs aimed at a specific geographical, social, income or other sector of Ontario.
 6. To reimburse the Province for expenditures it incurs for any of the above purposes.
- 2009, c. 12, Sched. D, s. 6.

Special Purpose Conservation and Renewable Energy Fund

(3) The Minister of Finance shall maintain in the Public Accounts an account to be known as the Ministry of Energy Special Purpose Conservation and Renewable Energy Fund in which shall be recorded all receipts and disbursements of public money under this section. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (3).

Non-interest bearing account

(4) The balances from time to time in the account do not bear interest. 2009, c. 12, Sched. D, s. 6.

Interpretation

(5) For the purposes of this section, the terms used in it that are not defined in this Act but that are defined in section 1 of the *Financial Administration Act* have the meanings provided in that Act. 2009, c. 12, Sched. D, s. 6.

Directives re conservation and demand management targets

27.2 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directive to establish conservation and demand management targets to be met by distributors and other licensees. 2009, c. 12, Sched. D, s. 7.

Directives, specified targets

(2) To promote conservation and demand management, a directive may require the Board to specify, as a condition of a licence, the conservation targets associated with those specified in the directive, and the targets shall be apportioned by the Board between distributors and other licensees in accordance with the directive. 2009, c. 12, Sched. D, s. 7.

Same

(3) A directive made under subsection (2) may require the OPA to provide information to the Board or to the Ministry about the conservation targets referred to in subsection (2) or the contracts referred to in subsection (5). 2009, c. 12, Sched. D, s. 7.

Directives re distributors

(4) Subject to subsection (7), a directive may require the Board to specify, as a condition of a licence, that a distributor may meet, at its discretion, any portion of its conservation target by seeking the approval of the Board for the conservation and demand management programs to be offered in its service area. 2009, c. 12, Sched. D, s. 7.

Directives, contracting with the OPA

(5) A directive may require the Board to specify, as a condition of a licence, that a distributor meet, at its discretion, any portion of its conservation target by contracting with the OPA to meet the target through province-wide programs offered by the OPA. 2009, c. 12, Sched. D, s. 7.

Public reporting

(6) To promote a culture of conservation and demand management, a directive may require the Board to specify, as a condition of a licence, that the licensee make public, by such means and at such time as specified in the directive, the steps that the licensee has taken to meet its targets and the results that have been achieved in meeting those targets. 2009, c. 12, Sched. D, s. 7.

Hearings

(7) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held. 2009, c. 12, Sched. D, s. 7.

Publication

(8) A directive issued under this section shall be published in *The Ontario Gazette*. 2009, c. 12, Sched. D, s. 7.

Directives re: market rules, conditions

28. (1) In order to address the abuse or possible abuse of market power in the electricity sector, the Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council concerning market rules made under section 32 of the *Electricity Act, 1998* and existing or proposed licence conditions. 1998, c. 15, Sched. B, s. 28 (1).

Hearing

(2) A directive issued under subsection (1) may require the Board to hold a hearing or not to hold a hearing. 1998, c. 15, Sched. B, s. 28 (2).

Licence condition directives

28.1 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the directive issued to the Board pursuant to an order of the Lieutenant Governor in Council that was dated March 24, 1999 and is available on request from the Minister. 2002, c. 23, s. 4 (5).

No hearing

(2) The Board shall amend the conditions as required by a directive without holding a hearing. 2002, c. 23, s. 4 (5).

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

- (a) own or operate a distribution system;
- (b) own or operate a transmission system;
- (c) generate electricity or provide ancillary services for sale through the IESO-administered markets or directly to another person;
- (c.1) engage in unit sub-metering;
- (d) retail electricity;
- (e) purchase electricity or ancillary services in the IESO-administered markets or directly from a generator;
- (f) sell electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer;
- (g) direct the operation of transmission systems in Ontario;
- (h) operate the market established by the market rules; or
- (i) engage in an activity prescribed by the regulations that relates to electricity. 1998, c. 15, Sched. B, s. 57; 2002, c. 1, Sched. B, s. 6; 2004, c. 23, Sched. B, s. 10; 2006, c. 3, Sched. C, s. 4; 2010, c. 8, s. 38 (8).

Application for licence

60. (1) A person may apply to the Board for the issuance or renewal of a licence authorizing one or more of the activities referred to in section 57 as specified in the application. 1998, c. 15, Sched. B, s. 60 (1); 2003, c. 3, s. 43 (1).

(2) Repealed: 2003, c. 3, s. 43 (2).

Licence conditions

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

- (a) specifying the period of time during which the licence will be in effect;
- (b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;
- (c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;
- (d) governing the conduct of the licensee, including the conduct of,
 - (i) a transmitter or distributor as that conduct relates to its affiliates,
 - (ii) a distributor as that conduct relates to a retailer,
 - (ii.1) a distributor or suite meter provider as such conduct relates to,
 - (A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place,
 - (B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and
 - (C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,
 - (1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,
 - (2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,
 - (3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and
 - (4) such other matters as the Board may determine in respect of security deposits,
 - (iii) a retailer, and
 - (iv) a generator, retailer or person licensed to engage in an activity described in clause 57
- (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;
- (d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;
- (e) specifying methods or techniques to be applied in determining the licensee's rates;
- (f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;
- (g) specifying performance standards, targets and criteria;

- (h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;
- (i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;
- (j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;
- (k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;
- (l) requiring the licensee to implement transmission requirements identified in an integrated power system plan approved under Part II.2 of the *Electricity Act, 1998*;
- (m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11).

Deemed conditions of licences, transmitters and distributors

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

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
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.
3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,
 - i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
 - ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean*

Energy Benefit Act, 2010 and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Where no agreement

(3) If the parties to an agreement under clause (2) (k) cannot agree on a proposed amendment to the agreement, the parties may jointly apply to the Board for a resolution of the matter. 1998, c. 15, Sched. B, s. 70 (3).

Market rules

(4) Every licence shall be deemed to contain a condition that the licensee comply with the market rules that apply to that licensee. 1998, c. 15, Sched. B, s. 70 (4).

Abuse of market power

(5) Without limiting the generality of subsection (1), a licence to engage in an activity described in clause 57 (c), (d) or (f) may contain conditions to address the abuse or possible abuse of market power, including conditions,

(a) establishing minimum and maximum prices or a range of prices at which electricity may be offered for sale or sold through the IESO-administered markets or directly to another person or class of persons;

(b) restricting the duration of contracts between licensees and any other person; and

(c) restricting significant investment in or acquisition of generation facilities located in Ontario. 1998, c. 15, Sched. B, s. 70 (5); 2004, c. 23, Sched. B, s. 11 (4).

Non-exclusive

(6) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity. 1998, c. 15, Sched. B, s. 70 (6).

Distributors: connection of generation facilities

(6.1) The licence issued to a distributor shall contain conditions governing the connection of generation facilities to the distribution system, including the maximum cumulative generating capacity from generators to whom the regulations made under clause 88 (1) (g.1) apply that the distributor must allow to be connected to the distribution system. 2002, c. 23, s. 4 (8).

Requirement to provide information

(7) Every licence shall be deemed to contain a condition that the licensee is required to provide such reasonable information to the IESO or the OPA as either of them may require, in the manner and form specified by whichever of them makes the request for the information. 2004, c. 23, Sched. B, s. 11 (5).

Conditions of OPA licence

(8) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council respecting conditions to be included by the Board in a licence issued to the OPA. 2004, c. 23, Sched. B, s. 11 (5).

Affiliates

(9) The licence of a distributor shall specify whether the distributor will comply with section 29 of the *Electricity Act, 1998*,

- (a) directly;
- (b) through an affiliate;
- (c) through another person with whom the distributor or an affiliate of the distributor has a contract; or
- (d) through a combination of methods described in clauses (a), (b) and (c), as specified. 1998, c. 15, Sched. B, s. 70 (9); 2002, c. 1, Sched. B, s. 7.

Exception

(10) Despite clause (9) (a) and any licence, a distributor shall not comply with section 29 of the *Electricity Act, 1998* directly after the date prescribed by regulation. 1998, c. 15, Sched. B, s. 70 (10).

Service area of distributor

(11) The licence of a distributor shall specify the area in which the distributor is authorized to distribute electricity. 1998, c. 15, Sched. B, s. 70 (11).

Non-discriminatory access

(12) If a transmitter or distributor is exempt from the requirement to provide non-discriminatory access to its transmission or distribution system in Ontario by regulation made under the *Electricity Act, 1998*, a licence under this Part shall not include a condition requiring the provision of non-discriminatory access unless the licensee has consented to the condition. 1998, c. 15, Sched. B, s. 70 (12).

Limitation

(13) A licence under this Part shall not require a person to dispose of assets or to undertake a significant corporate reorganization. 1998, c. 15, Sched. B, s. 70 (13).

Exclusion

(14) Despite subsection (13), a licence under this Part may require a distributor to establish an affiliate through which it shall comply with subsection (9) or section 73. 1998, c. 15, Sched. B, s. 70 (14).

Scope

(15) This section applies to the exercise of any power under this Act or the *Electricity Act, 1998* in relation to a licence referred to in section 57. 1998, c. 15, Sched. B, s. 70 (15).

Codes that may be incorporated as licence conditions

70.1 (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section. 2003, c. 3, s. 48.

Quorum

(2) For the purposes of this section and section 70.2, two members of the Board constitute a quorum. 2003, c. 3, s. 48.

Approval, etc., of Board

(3) A code issued under this section may provide that an approval, consent or determination of the Board is required, with or without a hearing, for any of the matters provided for in the code. 2003, c. 3, s. 48.

Incorporation of standards, etc.

(4) A code issued under this section may incorporate by reference, in whole or in part, any standard, procedure or guideline. 2003, c. 3, s. 48.

Scope

(5) A code may be general or particular in its application and may be limited as to time or place or both. 2003, c. 3, s. 48.

Legislation Act, 2006, Part III

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a code issued under this section. 2003, c. 3, s. 48; 2006, c. 21, Sched. F, s. 136 (1).

Transition

(7) The following documents issued by the Board, as they read immediately before this section came into force, shall be deemed to be codes issued under this section and the Board may change or amend the codes in accordance with this section and sections 70.2 and 70.3:

1. The Affiliate Relationships Code for Electricity Transmitters and Distributors.
2. The Distribution System Code.
3. The Electricity Retailer Code of Conduct.
4. The Retail Settlement Code.
5. The Transmission System Code.
6. Such other documents as are prescribed by the regulations. 2003, c. 3, s. 48.

Proposed codes, notice and comment

70.2 (1) The Board shall ensure that notice of every code that it proposes to issue under section 70.1 is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(2) The notice must include,

- (a) the proposed code or a summary of the proposed code;
- (b) a concise statement of the purpose of the proposed code;
- (c) an invitation to make written representations with respect to the proposed code;
- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Opportunity for comment

(3) On giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Exceptions to notice requirement

(4) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing code. 2003, c. 3, s. 48.

Notice of changes

(5) If, after considering the submissions, the Board proposes material changes to the proposed code, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(6) The notice must include,

- (a) the proposed code with the changes incorporated or a summary of the proposed changes;
- (b) a concise statement of the purpose of the changes;
- (c) an invitation to make written representations with respect to the proposed code;
- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Representations re: changes

(7) On giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Issuing the code

(8) If notice under this section is required, the Board may issue the code only at the end of this process and after considering all representations made as a result of that process. 2003, c. 3, s. 48.

Public inspection

(9) The Board must make the proposed code and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 2003, c. 3, s. 48.

Amendment of code

(10) In this section, a code includes an amendment to a code and a revocation of a code. 2003, c. 3, s. 48.

Orders by Board, electricity rates**Order re: transmission of electricity**

78. (1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re: distribution of electricity

(2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re the Smart Metering Entity

(2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 5 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit smart meter provider

(2.2) No unit smart meter provider shall charge for unit smart metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (12).

See: 2010, c. 8, ss. 38 (12), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit sub-meter provider

(2.3) No unit sub-meter provider shall charge for unit sub-metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (13).

See: 2010, c. 8, ss. 38 (13), 40.

Rates

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*. 2009, c. 12, Sched. D, s. 12 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "electricity or such other activity" and substituting "electricity, unit sub-metering or unit smart metering or such other activity". See: 2010, c. 8, ss. 38 (14), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Rates, unit sub-metering and unit smart-metering

(3.0.0.1) The Board shall, in accordance with rules prescribed by the regulations, make orders approving or fixing separate rates for unit sub-metering and for unit smart metering,

(a) for classes of consumers, as may be prescribed by regulation; and

(b) for different circumstances, as may be prescribed by regulation. 2010, c. 8, s. 38 (15).

See: 2010, c. 8, ss. 38 (15), 40.

Rates

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts

(3.0.2) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations. 2006, c. 3, Sched. C, s. 5 (1).

Orders re recovery of smart metering initiative costs

(3.0.3) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts, s. 27.2

(3.0.4) The Board may make orders permitting the OPA, distributors or other licensees to establish one or more deferral or variance accounts related to costs associated with complying with a directive issued under section 27.2. 2009, c. 12, Sched. D, s. 12 (2).

Methods re incentives or recovery of costs

(3.0.5) The Board may, in approving or fixing just and reasonable rates or in exercising the power set out in clause 70 (2) (e), adopt methods that provide,

(a) incentives to a transmitter or a distributor in relation to the siting, design and construction of an expansion, reinforcement or other upgrade to the transmitter's transmission system or the distributor's distribution system; or

(b) for the recovery of costs incurred or to be incurred by a transmitter or distributor in relation to the activities referred to in clause (a). 2009, c. 12, Sched. D, s. 12 (2).

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

(a) to such different classes of consumers as may be prescribed by the regulations; and

(b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Same

(3.2) The first rates approved or fixed by the Board under subsection (3.1) shall remain in effect for not less than 12 months and the Board shall approve or fix separate rates under subsection (3.1) after that time for periods of not more than 12 months each or for such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

- (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect these costs; and
- (b) the Board shall take into account balances in the OPA's variance accounts established under section 25.33 of the *Electricity Act, 1998* and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Forecasting cost of electricity

(3.4) In forecasting the cost of electricity for the purposes of subsection (3.3), the Board shall have regard to such matters as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Imposition of conditions on consumer who enters into retail contract

(3.5) A consumer who enters into or renews a retail contract for electricity after the day he or she becomes subject to a rate approved or fixed under subsection (3.1) is subject to such conditions as may be determined by the Board. 2004, c. 23, Sched. B, 14 (1).

Rates

(4) The Board may make an order under subsection (3) with respect to the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998* even if the distributor is meeting its obligations through an affiliate or through another person with whom the distributor or an affiliate of the distributor has a contract. 1998, c. 15, Sched. B, s. 78 (4).

(5) Repealed: 2004, c. 23, Sched. B, s. 14 (2).

Same, obligations under s. 29 of *Electricity Act, 1998*

(5.0.1) In approving or fixing just and reasonable rates for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*, the Board shall comply with the regulations made under clause 88 (1) (g.5). 2003, c. 8, s. 1.

Same, Hydro One Inc. and subsidiaries

(5.1) In approving or fixing just and reasonable rates for Hydro One Inc. or a subsidiary of Hydro One Inc., the Board shall apply a method or technique prescribed by regulation for the calculation and treatment of transfers made by Hydro One Inc. or its subsidiary, as the case may be, that are authorized by section 50.1 of the *Electricity Act, 1998*. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (2).

Same, statutory right to use corridor land

(5.2) In approving or fixing just and reasonable rates for a transmitter who has a statutory right to use corridor land (as defined in section 114.1 of the *Electricity Act, 1998*), the Board shall apply a method or technique prescribed by regulation for the treatment of the statutory right. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (3).

Conditions, etc.

(6) An order under this section may include conditions, classifications or practices, including rules respecting the calculation of rates, applicable,

- (a) to the Smart Metering Entity in respect of meeting its obligations;
- (b) to an activity prescribed for the purposes of subsection (3); and

(c) to the transmission, distribution or retailing of electricity. 2009, c. 12, Sched. D, s. 12 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) to the transmission, distribution or retailing of electricity or unit sub-metering or unit smart metering.

See: 2010, c. 8, ss. 38 (16), 40.

Deferral or variance accounts

(6.1) If a distributor has a deferral or variance account that relates to the commodity of electricity, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.2) If a distributor has a deferral or variance account that does not relate to the commodity of electricity, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.3) An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations. 2003, c. 3, s. 52 (4).

Same

(6.4) If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (6.1) or (6.2) and the delay is due in whole or in part to the conduct of a distributor, the Board may reduce the amount that is reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.5) If an amount recorded in a deferral or variance account of a distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers. 2003, c. 3, s. 52 (4).

Same

(6.6) Subsections (6.1), (6.2) and (6.4) do not apply unless section 79.6 has been repealed under section 79.11. 2003, c. 3, s. 52 (4).

Fixing other rates

(7) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable. 1998, c. 15, Sched. B, s. 78 (7).

Burden of proof

(8) Subject to subsection (9), in an application made under this section, the burden of proof is on the applicant. 1998, c. 15, Sched. B, s. 78 (8).

Order

(9) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter or distributor, as the case may be. 1998, c. 15, Sched. B, s. 78 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed and the following substituted:

Order

(9) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter, distributor or unit sub-meter provider, as the case may be. 2010, c. 8, s. 38 (17).

See: 2010, c. 8, ss. 38 (17), 40.

ONTARIO REGULATION 66/10

ASSESSMENTS FOR MINISTRY OF ENERGY CONSERVATION AND RENEWABLE ENERGY PROGRAM COSTS

Definitions

1. (1) In this Regulation,

“IESO-controlled grid” means the IESO-controlled grid as defined in the *Electricity Act, 1998*;

“market participant” has the same meaning as in section 56 of the Act;

“Ministry” means the Ministry of Energy;

“net distributor volume” means the sum of the amount of electricity withdrawn from the IESO-controlled grid by a distributor licensed under Part V of the Act, the amount of electricity purchased from any host distributor and the amount of electricity supplied by qualified embedded generators, less the amount of electricity supplied to qualified embedded distributors;

“qualified embedded distributor” means a distributor that is licensed under Part V of the Act that is provided electricity by another licensed distributor;

“qualified embedded generator” means a generator who is connected to a distributor’s distribution system;

“qualified host distributor” means a distributor licensed under Part V of the Act that distributes electricity to another distributor;

“Retail Settlement Code” has the same meaning as in section 56 of the Act. O. Reg. 66/10, s. 1 (1); O. Reg. 201/11, s. 1 (2).

(2) In this Regulation, a reference to a volume of electricity distributed by or to a licensed distributor includes the volume for total losses, as defined in the Retail Settlement Code. O. Reg. 66/10, s. 1 (2).

Board assessments re energy conservation or renewable energy programs

2. The Board shall, with respect to the expenses incurred and expenditures made by the Ministry in respect of its energy conservation programs or renewable energy programs,

(a) assess the persons and members of classes of persons referred to in section 3 for the amounts set out in section 4;

(b) apportion the amount in accordance with section 5; and

(c) issue the assessment on or before April 15, 2010. O. Reg. 66/10, s. 2.

Persons and classes of persons to be assessed

3. The following are the persons and classes of persons to be assessed for the purposes of subsection 26.1 (1) of the Act:

1. Distributors licensed under Part V of the Act.
2. The IESO. O. Reg. 66/10, s. 3.

Assessed amount

4. For the purposes of section 2, the total amount to be assessed by the Board in respect of persons and classes of persons referred to in paragraphs 1 and 2 of section 3 is \$53,695,310. O. Reg. 66/10, s. 4.

Rules re apportioning assessments

5. (1) For the purposes of this Regulation, the Board shall calculate a quotient based on the following formula:

$$A \div (C + D)$$

where,

“A” is the amount prescribed under section 4,

“C” is the total amount of electricity withdrawn from the IESO-controlled grid by all persons referred to in subsection 7 (3), as determined in accordance with the market rules, for use in Ontario for the most recent 12-month period for which the information is available for the person, and

“D” is the sum of the net distributor volumes of all distributors licensed under Part V of the Act for the 12-month period ending December 31, 2008 or for the most recent 12-month period ending before December 31, 2008 for which the information is available for each distributor.

O. Reg. 66/10, s. 5 (1).

(2) The Board shall publish the quotient referred to in subsection (1) on its website as soon as is practical after the Board calculates it. O. Reg. 66/10, s. 5 (2).

(3) For the purposes of section 2, the Board shall calculate the amount of the assessment for each distributor licensed under Part V of the Act according to the following formula:

$$Q \times B$$

where,

“Q” is the quotient calculated under subsection (1), and

“B” is the net distributor volume for each distributor licensed under Part V of the Act for the 12-month period ending December 31, 2008 or for the most recent 12-month period ending before December 31, 2008 for which the information is available for the distributor as used in the calculation of “D” in subsection (1).

O. Reg. 66/10, s. 5 (3).

(4) For the purposes of section 2, the Board shall calculate the amount of the assessment of the IESO according to the following formula:

$$Q \times C$$

where,

“Q” is the quotient calculated under subsection (1), and

“C” has the same meaning as in subsection (1).

O. Reg. 66/10, s. 5 (4).

Payment of assessment

6. On or before July 30, 2010, each person or member of a class of persons assessed under section 2 shall remit the assessed amount, together with such identifying information as may be specified by the Board, to the Minister of Finance in accordance with the instructions issued by the Board. O. Reg. 66/10, s. 6.

Recovery of funds

7. (1) A distributor licensed under Part V of the Act may recover from persons to whom it distributes electricity in its service area, other than persons who are distributors licensed under Part V of the Act, amounts calculated using the following formula:

$$Q \times E$$

where,

“Q” is the quotient published by the Board and referred to in subsection 5 (2), and

“E” is the volume of electricity distributed to the person during the current billing period in each bill referred to in section 9.

O. Reg. 66/10, s. 7 (1).

(2) The IESO may recover from the persons who are market participants and are referred to in subsection (3) the amount calculated under subsection 5 (4) using the following formula:

$$H \times (I \div J)$$

where,

“H” is the amount assessed under subsection 5 (4),

“I” is the volume of electricity withdrawn by the market participant from the IESO-controlled grid, as determined in accordance with the market rules, for use in Ontario over the most recent 12-month period for which information is available for the market participant, and

“J” is the sum of all volumes of electricity withdrawn from the IESO-controlled grid, as determined in accordance with the market rules, for use in Ontario by market participants from which the IESO may recover in accordance with subsection (3), over the most recent 12-month period for which information is available for the market participant.

O. Reg. 66/10, s. 7 (2).

(3) The IESO may recover the amount assessed under subsection 5 (4) from persons,

(a) who are market participants as of the date when the IESO calculates the amounts to recover under subsection (2) and who are not distributors licensed under Part V of the Act; and

(b) who are not licensed under Part V of the Act as a generator, unless their primary business activity is not the generation of electricity. O. Reg. 66/10, s. 7 (3).

Variance accounts

8. (1) Every distributor licensed under Part V of the Act shall apply to the Board by no later than April 15, 2012 for an order authorizing it to clear any debit or credit balance in any variance account established by the distributor and authorized by the Board to track the difference between the amounts remitted by the distributor pursuant to the assessment under subsection 5 (3) and the amounts recovered by the distributor under subsection 7 (1). O. Reg. 66/10, s. 8 (1).

(2) The IESO shall add any variance between the assessment referred to in subsection 5 (4) of this Regulation and the recovery referred to in subsection 7 (2) of this Regulation to the amount it may recover with respect to any future assessment under section 26.1 (1) of the Act. O. Reg. 66/10, s. 8 (2).

Customer billing, distributors

9. A distributor licensed under Part V of the Act shall bill the persons referred to in subsection 7 (1) of this Regulation the amounts calculated in that subsection in each bill issued during the one-year period starting on the date the distributor begins the billing. O. Reg. 66/10, s. 9.

Information

10. (1) Every person assessed under section 2 shall provide the Board with the information, in the manner and at the times set out by the Board, that the Board requires to implement and administer the assessments. O. Reg. 66/10, s. 10 (1).

(2) The Ministry and the Board may share any invoicing and payment information that each may require from the other. O. Reg. 66/10, s. 10 (2).

11. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 66/10, s. 11.

THE CONSTITUTION ACT, 1867

30 & 31 Victoria, c. 3. (U.K.)

(Consolidated with amendments)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, —

1. Repealed.⁽⁴⁸⁾
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:
 - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

**Non-Renewable Natural Resources, Forestry Resources and Electrical Energy
Laws respecting non-renewable natural resources, forestry resources and electrical energy**

92A. (1) In each province, the legislature may exclusively make laws in relation to

...

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

...

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

...

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

...

Financial Administration Act

R.S.O. 1990, CHAPTER F.12

Consolidation Period: From December 8, 2010 to the e-Laws currency date.

Last amendment: 2010, c. 26, Sched. 7.

Money received for special purpose

7. (1) Money received by or on behalf of the Crown for a special purpose and paid into the Consolidated Revenue Fund may, subject to any Act applicable thereto, be paid out of the Consolidated Revenue Fund for that purpose. R.S.O. 1990, c. F.12, s. 7 (1).

...

Appropriation required

Effect of statutory appropriation for a specified purpose

11.1 (3.1) A provision of an Act that provides a statutory appropriation authorizing money to be paid out of the Consolidated Revenue Fund for a specified purpose is deemed to provide an additional statutory appropriation authorizing the Crown to incur non-cash expenses for the same purpose. 2010, c. 26, Sched. 7, s. 8.

...

Limits on charges to appropriations

11.2 (1) No appropriation shall be charged with an amount,

(a) that is for a purpose other than that for which the appropriation was provided; or

...

Ministry of Energy Act, 2011

S.O. 2011, CHAPTER 9

Schedule 25

Consolidation Period: From June 6, 2011 to the e-Laws currency date.

No amendments.

Responsibilities of the Minister

7. (1) The Minister or, subject to the direction and control of the Minister, the Deputy Minister, shall,

...

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

(i) to provide for the availability of energy, including renewable energy, in Ontario,

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

(iii) to stimulate 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, and

(iv) to encourage prudence in the use of energy in Ontario. 2011, c. 9, Sched. 25, s. 7 (1).

Electricity Act, 1998
S.O. 1998, CHAPTER 15
Schedule A

Consolidation Period: From June 6, 2011 to the e-Laws currency date.

Last amendment: 2011, c. 9, Sched. 27, s. 23.

Objects and character

5. (1) The objects of the IESO are,

- (a) to exercise the powers and perform the duties assigned to the IESO under this Act, the market rules and its licence;
- (b) to enter into agreements with transmitters giving the IESO authority to direct the operation of their transmission systems;
- (c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;
- (d) to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems;
- (e) to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities;
- (f) to collect and provide to the OPA and the public information relating to the current and short-term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
- (g) to operate the IESO-administered markets to promote the purposes of this Act. 2004, c. 23, Sched. A, s. 5 (1).

Not for profit

(2) The business and affairs of the IESO shall be carried on without the purpose of gain and any profits shall be used by the IESO for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 5 (2); 2004, c. 23, Sched. A, s. 5 (2).

Capacity

(3) The IESO has the capacity and the rights, powers and privileges of a natural person for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 5 (3); 2004, c. 23, Sched. A, s. 5 (2).

Dissolution

(4) Upon the dissolution of the IESO and after the payment of all debts and liabilities, the remaining property of the IESO is vested in Her Majesty in right of Ontario. 2004, c. 23, Sched. A, s. 5 (3).

Procurement contracts

25.32 (1) When the OPA considers it advisable, it shall enter into contracts in accordance with procurement processes approved under section 25.31 for the procurement of,

- (a) electricity supply or capacity, including supply or capacity to be generated using alternative energy sources, renewable energy sources or both; or
- (b) measures that will manage electricity demand or result in the improved management of electricity demand on an on-going or emergency basis. 2004, c. 23, Sched. A, s. 36.

Contract to comply with regulations and directions

- (2) The OPA shall not enter into a procurement contract that does not comply with,
 - (a) the regulations; or
 - (b) a direction issued under subsection (4), (4.1), (4.4), (4.5), (4.6) or (4.7) or section 25.35. 2009, c. 12, Sched. B, s. 5 (1).

Resolution of procurement contract disputes

- (3) The parties to a procurement contract shall ensure that the contract provides a mechanism to resolve any disputes between them with respect to the contract. 2004, c. 23, Sched. A, s. 36.

Transition

- (4) Despite subsection (2), the Minister may direct the OPA to assume, as of such date as the Minister considers appropriate, responsibility for exercising all powers and performing all duties of the Crown, including powers and duties to be exercised and performed through an agency of the Crown,
 - (a) under any request for proposals, draft request for proposals, another form of procurement solicitation issued by the Crown or through an agency of the Crown or any other initiative pursued by the Crown or through an agency of the Crown,
 - (i) that was issued or pursued after January 1, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4), and
 - (ii) that relates to the procurement of electricity supply or capacity or reductions in electricity demand or to measures for the management of electricity demand; and
 - (b) under any contract entered into by the Crown or an agency of the Crown pursuant to a procurement solicitation or other initiative referred to in clause (a). 2004, c. 23, Sched. A, s. 36.

Same

- (4.1) The Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,
 - (a) the procurement of electricity supply or capacity derived from renewable energy sources;
 - (b) reductions in electricity demand; or
 - (c) measures related to conservation or the management of electricity demand. 2009, c. 12, Sched. B, s. 5 (2).

Direction re process

- (4.2) The Minister may, as part of a direction under subsection (4.1), specify that the OPA is to use a competitive or a non-competitive process as part of the initiative or activity. 2009, c. 12, Sched. B, s. 5 (2).

Direction re pricing

(4.3) A direction issued by the Minister under subsection (4.1) may allow the Minister to specify the pricing or other economic factors to be used or achieved by the OPA. 2009, c. 12, Sched. B, s. 5 (2).

Directions re consultation

(4.4) The Minister may direct the OPA to implement procedures for consulting aboriginal peoples and other persons or groups as may be specified in the direction, on the planning, development or procurement of electricity supply, capacity, transmission systems and distribution systems and the direction may specify the manner or method by which such consultations shall occur and the timing within which such consultations shall occur. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for aboriginal participation

(4.5) The Minister may direct the OPA to establish measures to facilitate the participation of aboriginal peoples in the development of renewable energy generation facilities, transmission systems and distribution systems and such measures may include programs or funding for, or associated with, aboriginal participation in the development of such facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for participation of groups

(4.6) The Minister may direct the OPA to establish measures to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the measures may include programs or funding for or associated with the participation of groups and organizations, including but not limited to municipalities, in the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re municipal programs

(4.7) The Minister may direct the OPA to develop programs that are designed to reimburse the direct costs incurred by a municipality in order to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the funding may include funding for infrastructure associated with or affected by the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Release of the Crown, etc.

(5) As of the day specified in the Minister's direction under subsection (4), the OPA shall assume responsibility in accordance with that subsection and the Crown and any Crown agency referred to in that subsection are released from any and all liabilities and obligations with respect to the matters for which the OPA has assumed responsibility. 2004, c. 23, Sched. A, s. 36.

Deemed compliance

(6) The following contracts shall be deemed to be procurement contracts entered into in accordance with any integrated power system plan and procurement process approved by the Board:

1. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in clause (4) (a).
2. A contract referred to in clause (4) (b).
3. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in subsection (4.1), (4.4), (4.5) or (4.6) or section 25.35 or an expenditure made under subsection (4.7). 2004, c. 23, Sched. A, s. 36; 2009, c. 12, Sched. B, s. 5 (3).

Same

(7) The OPA shall enter into any contract following a procurement solicitation or other initiative referred to in clause (4) (a) if directed to do so by the Minister of Energy, and that contract shall be deemed to be a procurement contract that was entered into in accordance with any integrated power system plan and procurement process approved by the Board. 2004, c. 23, Sched. A, s. 36.

Distributor's obligation to sell electricity

29. (1) A distributor shall sell electricity to every person connected to the distributor's distribution system, except a person who advises the distributor in writing that the person does not wish to purchase electricity from the distributor. 1998, c. 15, Sched. A, s. 29 (1).

Same

(2) If, under subsection (1), a person has advised a distributor that the person does not wish to purchase electricity from the distributor, the person may at any time thereafter request the distributor in writing to sell electricity to the person and the distributor shall comply with the request in accordance with its licence. 1998, c. 15, Sched. A, s. 29 (2).

Same

(3) If a person connected to a distributor's distribution system purchases electricity from a retailer other than the distributor and the retailer is unable for any reason to sell electricity to the person, the distributor shall sell electricity to the person. 1998, c. 15, Sched. A, s. 29 (3).

Exemptions

(4) The Board may exempt a distributor from any provision of this section if, after holding a hearing, the Board is satisfied that there is sufficient competition among retailers in the distributor's service area. 1998, c. 15, Sched. A, s. 29 (4).

Same

(5) An exemption under subsection (4) may be subject to such conditions and restrictions as may be specified by the Board. 1998, c. 15, Sched. A, s. 29 (5).

Same

(6) The Board shall not exempt a distributor entirely from all the provisions of this section unless, after holding a hearing, the Board is satisfied that consumers in the

distributor's service area will continue to have access to electricity. 1998, c. 15, Sched. A, s. 29 (6).

Market rules

32. (1) The IESO may make rules,

- (a) governing the IESO-controlled grid;
- (b) establishing and governing markets related to electricity and ancillary services; and
- (c) establishing and enforcing standards and criteria relating to the reliability of electricity service or the IESO-controlled grid, including standards and criteria relating to electricity supply generated from sources connected to a distribution system that alone or in aggregate could impact the reliability of electricity service or the IESO-controlled grid. 1998, c. 15, Sched. A, s. 32 (1); 2004, c. 23, Sched. A, s. 41 (1, 2); 2009, c. 12, Sched. B, s. 11 (1).

Examples

(2) Without limiting the generality of subsection (1), the market rules may include provisions,

- (a) governing the making and publication of market rules;
- (b) governing the conveying of electricity into, through or out of the IESO-controlled grid and the provision of ancillary services;
- (c) governing standards and procedures to be observed in system emergencies;
- (d) authorizing and governing the giving of directions by the IESO, including,
 - (i) for the purpose of maintaining the reliability of electricity service or the IESO-controlled grid, directions requiring persons, including persons providing electricity supply generated from sources connected to a distribution system, within such time as may be specified in the direction, to synchronize, desynchronize, increase, decrease or maintain electrical output, to take such other action as may be specified in the direction or to refrain from such action as may be specified in the direction, and
 - (ii) other directions requiring market participants, within such time as may be specified in the direction, to take such action or refrain from such action as may be specified in the direction, including action related to a system emergency; and
- (e) authorizing and governing the making of orders by the IESO, including orders,
 - (i) imposing financial penalties on market participants,
 - (ii) authorizing a person to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid, or
 - (iii) terminating, suspending or restricting a person's rights to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid. 1998, c. 15, Sched. A, s. 32 (2); 2004, c. 23, Sched. A, s. 41 (2-6); 2009, c. 12, Sched. B, s. 11 (2).

General or particular

(3) A market rule may be general or particular in its application. 1998, c. 15, Sched. A, s. 32 (3).

Legislation Act, 2006, Part III

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the market rules or to any directions or orders made under the market rules. 1998, c. 15, Sched. A, s. 32 (4); 2006, c. 21, Sched. F, s. 136 (1).

Publication and inspection of market rules

(5) The IESO shall publish the market rules in accordance with the market rules and shall make the market rules available for public inspection during normal business hours at the offices of the IESO. 1998, c. 15, Sched. A, s. 32 (5); 2004, c. 23, Sched. A, s. 41 (7).

Notice to Board

(6) The IESO shall not make a rule under this section unless it first gives the Board an assessment of the impact of the rule on the interests of consumers with respect to prices and the reliability and quality of electricity service. 2004, c. 23, Sched. A, s. 41 (8).

Transition

(7) All rules made before subsection 4 (1) of Schedule A to the *Electricity Restructuring Act, 2004* comes into force remain in effect until amended or revoked in accordance with this Act. 2004, c. 23, Sched. A, s. 41 (8).

(8), (9) Repealed: 2004, c. 23, Sched. A, s. 41 (8).

Amendment of market rules

33. (1) The IESO shall, in accordance with the market rules, publish any amendment to the market rules at least 22 days before the amendment comes into force. 2004, c. 23, Sched. A, s. 42.

Notice to the Board

(2) The IESO shall give the Board a copy of the amendment and such other information as is prescribed by the regulations on or before the date the IESO publishes the amendment under subsection (1). 2004, c. 23, Sched. A, s. 42.

Board's power to revoke

(3) Despite section 4.1 of the *Statutory Powers Procedure Act* and section 35.1 of this Act, the Board may, not later than 15 days after the amendment is published under subsection (1) and without holding a hearing, revoke the amendment on a date specified by the Board and refer the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 42.

Application for review

(4) Any person may apply to the Board for review of an amendment to the market rules by filing an application with the Board within 21 days after the amendment is published under subsection (1). 2004, c. 23, Sched. A, s. 42.

Application of Ontario Energy Board Act, 1998

(5) Subsection 19 (4) of the *Ontario Energy Board Act, 1998* applies to an application under subsection (4). 2004, c. 23, Sched. A, s. 42.

Review by Board

(6) The Board shall issue an order that embodies its final decision within 60 days after receiving an application for review of an amendment. 2004, c. 23, Sched. A, s. 42.

Stay of amendment

(7) No application for review of an amendment under this section shall stay the operation of the amendment pending the completion of the Board's review of the amendment unless the Board orders otherwise. 2004, c. 23, Sched. A, s. 42.

Same

(8) In determining whether to stay the operation of an amendment, the Board shall consider,

- (a) the public interest;
- (b) the merits of the application;
- (c) the possibility of irreparable harm to any person;
- (d) the impact on consumers; and
- (e) the balance of convenience. 2004, c. 23, Sched. A, s. 42.

Order

(9) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

- (a) revoking the amendment on a date specified by the Board; and
- (b) referring the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 42.

Urgent amendments

34. (1) Section 33 does not apply if the IESO files a statement with the Board indicating that, in its opinion, an amendment to the market rules is urgently required for one or more of the following reasons:

1. To avoid, reduce the risk of or mitigate the effects of conditions that affect the ability of the integrated power system to function normally.
2. To avoid, reduce the risk of or mitigate the effects of the abuse of market power.
3. To implement standards or criteria of a standards authority.
4. To avoid, reduce the risk of or mitigate the effects of an unintended adverse effect of a market rule.
5. A reason prescribed by the regulations. 1998, c. 15, Sched. A, s. 34 (1); 2002, c. 23, s. 3 (14); 2004, c. 23, Sched. A, s. 43 (1).

Publication of urgent amendment

(2) The IESO shall publish the amendment in accordance with the market rules at the same time or as soon as reasonably possible after the statement referred to in subsection (1) is filed. 1998, c. 15, Sched. A, s. 34 (2); 2004, c. 23, Sched. A, s. 43 (2).

Notice to the Board

(2.1) The IESO shall give the Board a copy of the amendment and such other information as may be prescribed by the regulations on or before the date the IESO publishes the amendment under subsection (2). 2004, c. 23, Sched. A, s. 43 (3).

Board's power to revoke

(2.2) Despite section 4.1 of the *Statutory Powers Procedure Act* and section 35.1 of this Act, the Board may, not later than 15 days after the amendment is published under subsection (2) and without holding a hearing, revoke the amendment on a date specified by the Board and refer the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 43 (3).

Review by Board

(3) On application by a person who is directly affected by the amendment, the Board shall review the amendment. 1998, c. 15, Sched. A, s. 34 (3); 2002, c. 23, s. 3 (17).

Time for application

(4) The application must be filed within 21 days after the amendment is published under subsection (2). 1998, c. 15, Sched. A, s. 34 (4).

Effect of revocation by Board

(4.1) If the Board revokes the amendment under subsection (2.2),

- (a) subsection (3) ceases to apply to the amendment; and
- (b) the Board shall not proceed with any review that arises from an application that was made under subsection (3) before it revoked the amendment. 2009, c. 33, Sched. 14, s. 2 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4.1) is repealed. See: 2009, c. 33, Sched. 14, s. 2 (6), 4 (2).

Stay of amendment

(5) An application under this section does not stay the operation of the amendment pending the completion of the review. 1998, c. 15, Sched. A, s. 34 (5).

Referral back to IMO

(6) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board,

- (a) shall make an order referring the amendment back to the IESO for further consideration; and
- (b) may make an order revoking the amendment on a date specified by the Board. 1998, c. 15, Sched. A, s. 34 (6); 2004, c. 23, Sched. A, s. 43 (4).

Electricity Act, 1998

S.O. 1998, CHAPTER 15 SCHEDULE A

- 5.** (1) The objects of the IESO are,
- (a) to exercise the powers and perform the duties assigned to the IESO under this Act, the market rules and its licence;
 - (b) to enter into agreements with transmitters giving the IESO authority to direct the operation of their transmission systems;
 - (c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;
 - (d) to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems;
 - (e) to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities;
 - (f) to collect and provide to the OPA and the public information relating to the current and short-term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
 - (g) to operate the IESO-administered markets to promote the purposes of this Act. 2004, c. 23, Sched. A, s. 5 (1).

Procurement contracts

25.32 (1) When the OPA considers it advisable, it shall enter into contracts in accordance with procurement processes approved under section 25.31 for the procurement of,

- (a) electricity supply or capacity, including supply or capacity to be generated using alternative energy sources, renewable energy sources or both; or
- (b) measures that will manage electricity demand or result in the improved management of electricity demand on an on-going or emergency basis. 2004, c. 23, Sched. A, s. 36.

Contract to comply with regulations and directions

(2) The OPA shall not enter into a procurement contract that does not comply with,

- (a) the regulations; or

- (b) a direction issued under subsection (4), (4.1), (4.4), (4.5), (4.6) or (4.7) or section 25.35. 2009, c. 12, Sched. B, s. 5 (1).

Resolution of procurement contract disputes

(3) The parties to a procurement contract shall ensure that the contract provides a mechanism to resolve any disputes between them with respect to the contract. 2004, c. 23, Sched. A, s. 36.

Transition

(4) Despite subsection (2), the Minister may direct the OPA to assume, as of such date as the Minister considers appropriate, responsibility for exercising all powers and performing all duties of the Crown, including powers and duties to be exercised and performed through an agency of the Crown,

- (a) under any request for proposals, draft request for proposals, another form of procurement solicitation issued by the Crown or through an agency of the Crown or any other initiative pursued by the Crown or through an agency of the Crown,
 - (i) that was issued or pursued after January 1, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4), and
 - (ii) that relates to the procurement of electricity supply or capacity or reductions in electricity demand or to measures for the management of electricity demand; and
- (b) under any contract entered into by the Crown or an agency of the Crown pursuant to a procurement solicitation or other initiative referred to in clause (a). 2004, c. 23, Sched. A, s. 36.

Same

(4.1) The Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,

- (a) the procurement of electricity supply or capacity derived from renewable energy sources;
- (b) reductions in electricity demand; or
- (c) measures related to conservation or the management of electricity demand. 2009, c. 12, Sched. B, s. 5 (2).

Direction re process

(4.2) The Minister may, as part of a direction under subsection (4.1), specify that the OPA is to use a competitive or a non-competitive process as part of the initiative or activity. 2009, c. 12, Sched. B, s. 5 (2).

Direction re pricing

(4.3) A direction issued by the Minister under subsection (4.1) may allow the Minister to specify the pricing or other economic factors to be used or achieved by the OPA. 2009, c. 12, Sched. B, s. 5 (2).

Directions re consultation

(4.4) The Minister may direct the OPA to implement procedures for consulting aboriginal peoples and other persons or groups as may be specified in the direction, on the planning, development or procurement of electricity supply, capacity, transmission systems and distribution systems and the direction may specify the manner or method by which such consultations shall occur and the timing within which such consultations shall occur. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for aboriginal participation

(4.5) The Minister may direct the OPA to establish measures to facilitate the participation of aboriginal peoples in the development of renewable energy generation facilities, transmission systems and distribution systems and such measures may include programs or funding for, or associated with, aboriginal participation in the development of such facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for participation of groups

(4.6) The Minister may direct the OPA to establish measures to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the measures may include programs or funding for or associated with the participation of groups and organizations, including but not limited to municipalities, in the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re municipal programs

(4.7) The Minister may direct the OPA to develop programs that are designed to reimburse the direct costs incurred by a municipality in order to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the funding may include funding for infrastructure associated with or affected by the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Release of the Crown, etc.

(5) As of the day specified in the Minister's direction under subsection (4), the OPA shall assume responsibility in accordance with that subsection and the Crown and any Crown agency referred to in that subsection are released from any and all liabilities and obligations with respect to the matters for which the OPA has assumed responsibility. 2004, c. 23, Sched. A, s. 36.

Deemed compliance

(6) The following contracts shall be deemed to be procurement contracts entered into in accordance with any integrated power system plan and procurement process approved by the Board:

1. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in clause (4) (a).
2. A contract referred to in clause (4) (b).
3. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in subsection (4.1), (4.4), (4.5) or (4.6) or section 25.35 or an expenditure made under subsection (4.7). 2004, c. 23, Sched. A, s. 36; 2009, c. 12, Sched. B, s. 5 (3).

Same

(7) The OPA shall enter into any contract following a procurement solicitation or other initiative referred to in clause (4) (a) if directed to do so by the Minister of Energy, and that contract shall be deemed to be a procurement contract that was entered into in accordance with any integrated power system plan and procurement process approved by the Board. 2004, c. 23, Sched. A, s. 36.

ELECTRICITY RESTRUCTURING ACT, 2004

CHAPTER 23

An Act to amend the Electricity Act, 1998 and the Ontario Energy Board Act, 1998 and to make consequential amendments to other Acts

PART II.1 ONTARIO POWER AUTHORITY

Ontario Power Authority

25.1 (1) A corporation without share capital to be known in English as the Ontario Power Authority and in French as Office de l'électricité de l'Ontario is hereby established.

Composition

(2) The OPA is composed of those persons who, from time to time, comprise its board of directors.

Objects and character

25.2 (1) The objects of the OPA are,

- (a) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the medium and long term;
- (b) to conduct independent planning for electricity generation, demand management, conservation and transmission and develop integrated power system plans for Ontario;
- (c) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;
- (d) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;
- (e) to establish system-wide goals for the amount of electricity to be produced from alternative energy sources and renewable energy sources;

- (f) to engage in activities that facilitate load management;
- (g) to engage in activities that promote electricity conservation and the efficient use of electricity;
- (h) to assist the Ontario Energy Board by facilitating stability in rates for certain types of consumers;
- (i) to collect and provide to the public and the Ontario Energy Board information relating to medium and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs.

Not for profit

(2) The business and affairs of the OPA shall be carried on without the purpose of gain and any profits shall be used by the OPA for the purpose of carrying out its objects.

Dissolution

(3) Upon the dissolution of the OPA and after the payment of all debts and liabilities, the remaining property of the OPA is vested in Her Majesty in right of Ontario.

Capacity

(4) The OPA has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects, except as limited under subsection (6).

Powers

(5) Without limiting the generality of subsection (4), the OPA has the power,

- (a) to enter into contracts relating to the adequacy and reliability of electricity supply;
- (b) to enter into contracts relating to the procurement of electricity supply and capacity in or outside Ontario;
- (c) to enter into contracts relating to the procurement of electricity supply and capacity using alternative energy sources or renewable energy sources to assist the Government of Ontario in achieving goals in the development and use of alternative or renewable energy technology and resources;
- (d) to enter into contracts relating to the procurement of reductions in electricity demand and the management of electricity demand to assist the Government of Ontario in achieving goals in electricity conservation;

- (e) to take such steps as it considers advisable to facilitate the provision of services relating to,
 - (i) electricity conservation and the efficient use of electricity,
 - (ii) electricity load management, or
 - (iii) the use of cleaner energy sources, including alternative energy sources and renewable energy sources;
- (f) to take such steps as it considers advisable to ensure there is adequate transmission capacity as identified in the integrated power system plan;
- (g) to enter into contracts with distributors to provide services referred to in clause (e);
- (h) to act as a settlement agent for amounts determined under sections 78.1 and 78.2 of the *Ontario Energy Board Act, 1998* and to contract with the IESO or another entity to perform or assist in performing the settlements;
- (i) to create a security interest in any property currently owned or subsequently acquired by the OPA, including fees receivable, rights, powers and undertakings, in order to secure any debt, obligation or liability of the OPA.

Limitation

(6) The OPA's power to borrow and to invest its funds and to manage its financial assets, liabilities and risks is subject to such rules and restrictions as may be prescribed.

Not a Crown agent

25.3 The OPA is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act*.

Board of directors

25.4 (1) The OPA's board of directors shall manage and supervise the management of the OPA's business and affairs.

Composition

- (2) The board of directors shall be composed of,
 - (a) the chief executive officer of the OPA; and
 - (b) 10 additional individuals appointed by the Minister.

Directors to be independent

(3) Every director shall hold office as an independent director and not as a representative of any class of persons.

Directors

(4) No person who is a member of a class of persons prescribed by the regulations may hold office as a director of the OPA.

Term of office and reappointment

(5) A director appointed in accordance with clause (2) (b) shall hold office at pleasure for an initial term not exceeding two years and, subject to subsection (4), may be reappointed for successive terms not exceeding five years each.

Quorum

(6) A majority of the members of the board of directors constitute a quorum of the board.

Chair

(7) The board of directors shall appoint one of the directors as chair of the board.

Ceasing to hold office

(8) A director ceases to hold office in the circumstances specified in the Governance and Structure By-law.

Vacancy in board

(9) If there are one or more vacancies in the board of directors, the remaining directors may exercise all the powers of the board if they would constitute a quorum of the board of there were no vacancies.

Director duties

25.5 Every director of the OPA shall, in exercising and performing his or her powers and duties,

- (a) act honestly and in good faith in the best interests of the OPA; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Chief executive officer

25.6 (1) The board of directors of the OPA shall appoint a chief executive officer of the OPA.

Exception

(2) Despite subsection (1), the Minister shall appoint the first chief executive officer of the OPA, but nothing in this subsection prevents the board of directors of the OPA from appointing any subsequent chief executive officer.

Conflict of interest

25.7 The directors and officers of the OPA shall comply with the provisions of the Governance and Structure By-law relating to conflict of interest.

Codes of conduct

25.8 (1) The board of directors of the OPA may establish codes of conduct applicable to the directors, officers, employees and agents of the OPA and to members of panels established by the OPA.

Conflict

(2) Any provision of a code of conduct that conflicts with this Act or the OPA's by-laws is void.

Delegation

25.9 Subject to the Governance and Structure By-law, the board of directors of the OPA may delegate any of the OPA's powers or duties to a committee of the board, to a panel established by the board or to any other person or body, subject to such conditions and restrictions as may be specified by the board of directors.

Panels

25.10 The board of directors of the OPA shall establish such panels as the board considers necessary for the purposes of this Act.

Conservation Bureau

25.11 (1) The board of directors of the OPA shall establish an office known in English as the Conservation Bureau and in French as Bureau des économies d'énergie to provide leadership in planning and co-ordination of measures for electricity conservation and load management in Ontario and to engage in such activities as may be prescribed in the regulations.

Chief Energy Conservation Officer

(2) The Chief Energy Conservation Officer shall, as an employee of the OPA, be responsible for managing and supervising the management of the business and affairs of the Conservation Bureau.

Appointment

(3) The Minister shall appoint the first Chief Energy Conservation Officer and the board of directors of the OPA shall appoint any subsequent Chief Energy Conservation Officer.

Annual report

(4) At least 60 days before the beginning of the following fiscal year, the Chief Energy Conservation Officer shall submit a report to the board of directors and the Minister that includes,

- (a) the Conservation Bureau's proposals for the following fiscal year regarding steps to be taken,
 - (i) to promote electricity conservation and load management,
 - (ii) to procure reductions in electricity demand and promote management of electricity demand to assist the Government of Ontario in achieving goals in electricity conservation, and

- (iii) to facilitate the provision of services relating to energy conservation and load management;
- (b) a detailed description of the steps taken to implement the current year's proposals and detailed information on the results achieved;
- (c) a detailed review of the Government of Ontario's progress in meeting its goals relating to the development and implementation of electricity conservation and load management measures; and
- (d) information on any government policy or legislation identified by the Conservation Bureau that results in a barrier to the development or implementation of electricity conservation measures.

Same

(5) The Chief Energy Conservation Officer shall make the report public within seven days of submitting it to the board of directors and the Minister under subsection (4).

Stakeholder input

25.12 The OPA shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the OPA.

Staff and assistance

25.13 (1) Subject to the by-laws of the OPA, a panel established by the board of directors may use the services of,

- (a) the OPA's employees, with the consent of the OPA; and
- (b) persons other than the OPA's employees who have technical or professional expertise that is considered necessary.

Provision of information to the IESO

(2) The OPA shall provide the IESO with such information as the IESO may require from time to time.

Confidential information relating to a market participant

(3) A record that contains information provided to or obtained by the OPA relating to a market participant and that is designated by the OPA as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Liability

25.14 (1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the OPA or a member of the Advisory Committee or a panel established by the board for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this or any other Act, the regulations, the OPA's licence, the OPA's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Subsection (1) does not relieve the OPA of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1).

Liability of directors under the *Employment Standards Act, 2000*

25.15 Part XX of the *Employment Standards Act, 2000* does not apply to a director of the OPA.

By-laws

25.16 (1) The board of directors of the OPA may make by-laws regulating the business and affairs of the OPA.

Governance and Structure By-law

(2) The board of directors shall make a by-law under subsection (1) dealing with matters of corporate governance and structure, including,

- (a) the appointment of the chief executive officer of the OPA;
- (b) the appointment of the Chief Energy Conservation Officer;
- (c) the circumstances in which a director ceases to hold office;
- (d) the remuneration and benefits of the chair and the other members of the board;
- (e) conflict of interest;
- (f) the delegation of the OPA's powers and duties;
- (g) the establishment, composition and functions of panels.

Same

(3) The Governance and Structure By-law may be made only with the approval in writing of the Minister.

Amendment or repeal of Governance and Structure By-law

(4) A by-law that amends or repeals the Governance and Structure By-law shall be filed with the Minister by the board of directors.

Disallowance

(5) The Minister may disallow a by-law to which subsection (4) applies by written notice to the board of directors given within 60 days after the by-law is filed with the Minister.

Effective date

(6) A by-law to which subsection (4) does not apply comes into force on the day it is made or on such later date as may be specified in the by-law.

Same

(7) Subject to subsections (5) and (8), a by-law to which subsection (4) applies comes into force on the earlier of the following dates:

1. The expiry of the 60-day period referred to in subsection (5).
2. The date on which the Minister notifies the board of directors in writing that he or she will not disallow the by-law.

Same

(8) Subject to subsection (5), a by-law to which subsection (4) applies may specify that it comes into force on a date later than the date determined under subsection (7).

Conflict between by-laws

(9) In the event of a conflict between the Governance and Structure By-law and another by-law, the Governance and Structure By-law prevails.

Regulations Act

(10) The *Regulations Act* does not apply to by-laws made under this section.

Province may purchase securities, etc.

25.17 (1) The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of or make loans to the OPA at such times and on such terms and conditions as the Minister of Finance may determine subject to the maximum principal amount and to any other terms and conditions that are specified by the Lieutenant Governor in Council.

Payment from C.R.F.

(2) The Minister of Finance may pay out of the Consolidated Revenue Fund any amount required for the purposes of subsection (1).

Delegation

(3) In an order under subsection (1), the Lieutenant Governor in Council may delegate to an officer or employee of the Crown or an agency of the Crown or to a solicitor engaged to act for the Minister of Finance, any or all of the powers of the Minister of Finance under this section.

Fees payable to Minister of Finance

(4) The OPA shall pay to the Minister of Finance such fees as are prescribed by the regulations in respect of securities purchased and sums loaned under this section.

Reimbursement of costs incurred by the Crown

25.18 (1) The OPA shall reimburse the Crown or, if so directed by the Minister of Finance, an agency of the Crown for costs relating to the OPA, a procurement contract, an initiative described in clause 25.32 (4) (a) or a matter within the objects of the OPA, if,

- (a) the costs were incurred by the Crown or an agency of the Crown after January 20, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4); or
- (b) the liability of the Crown or an agency of the Crown for the costs arose during the period described in clause (a).

Payment of reimbursement

(2) The OPA shall make the reimbursement by making one or more payments in such amount or amounts at such time or times as may be determined by the Minister of Finance.

Minister's determinations final

(3) The determinations of the Minister under subsection (2) are final and conclusive and shall not be stayed, varied or set aside by any court.

30. The Act is amended by adding the following section:**Transition**

25.19 (1) On such conditions as the Minister determines and at any time before the repeal of this section, the Minister may direct a person to enter into contracts, agreements, undertakings or arrangements on behalf of the OPA in respect of its establishment or initial operation and the OPA shall be bound by them in the same manner as if it had entered into the contracts, agreements, undertakings or arrangements after its establishment.

Same

(2) When, after the OPA is established, the Minister is satisfied that the OPA is capable of acting, the Minister shall cease to direct persons under subsection (1).

Repeal

(3) This section is repealed on the later of the day that section 29 of Schedule A to the *Electricity Restructuring Act, 2004* is proclaimed in force and January 31, 2005.

31. (1) The Act is amended by adding the following section:

Fees and charges

- 25.20** (1) The OPA may establish and impose fees and charges to recover,
- (a) the costs of doing anything the OPA is required or permitted to do under this or any other Act; and
 - (b) any other type of expenditure the recovery of which is permitted by the regulations, subject to any limitations and restrictions set out in the regulations.

Collection

- (2) The IESO shall, in accordance with the regulations, collect and pay to the OPA all fees and charges payable to the OPA.

(2) Section 25.20 of the Act, as enacted by subsection (1), is amended by adding the following subsections:

May recover costs of procurement contracts

- (3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts.

Board deemed to approve recovery

- (4) The OPA's recovery of its costs and payments related to procurement contracts shall be deemed to be approved by the Board.

32. The Act is amended by adding the following sections:

Review of requirements and fees

- 25.21** (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22.

Board's powers

- (2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations.

Same

- (3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA.

Changes in fees

- (4) The OPA shall not establish, eliminate or change any fees without the approval of the Board.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so.

Transitional, 2005 fiscal year

(6) Despite subsection (1), the OPA shall submit its proposed expenditure and revenue requirements for its 2005 fiscal year and the fees it proposes to charge during that fiscal year to the Minister for review not later than 30 days after the Minister approves or is deemed to approve the OPA's proposed business plan for the 2005 fiscal year under section 25.22.

Same

(7) Despite subsections (2) and (4), the fees for the OPA's 2005 fiscal year or for part of that year may be established and imposed by regulation.

Business plan

25.22 (1) At least 90 days before the beginning of its 2006 and each subsequent fiscal year, the OPA shall submit its proposed business plan for the fiscal year to the Minister for approval.

Minister's approval

(2) The Minister may approve the proposed business plan or refer it back to the OPA for further consideration.

Deemed approval

(3) If the Minister does not approve the proposed business plan and does not refer it back to the OPA for further consideration at least 70 days before the beginning of the fiscal year to which it relates, the Minister shall be deemed to have approved the OPA's proposed business plan for the fiscal year.

Transitional, 2005 fiscal year

(4) The following rules apply in respect of the OPA's proposed business plan for its 2005 fiscal year:

1. The OPA shall, within the time period specified by the Minister, submit its proposed business plan for its 2005 fiscal year to the Minister for approval.
2. If the Minister does not approve the proposed business plan and does not refer it back to the OPA within 20 days of receipt, the Minister shall be deemed to have approved the proposed business plan.

Auditor

25.23 The board of directors of the OPA shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit annually the accounts and transactions of the OPA.

Provincial Auditor

25.24 The Provincial Auditor may audit the accounts and transactions of the OPA.

Annual report

25.25 (1) The OPA shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of its board of directors.

Financial statements

(2) The audited financial statements of the OPA shall be included in the annual report.

Tabling

(3) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

Other persons

(4) The OPA may give its annual report to other persons before the Minister complies with subsection (3).

Other reports

25.26 (1) The OPA shall submit to the Minister such reports and information as the Minister may require from time to time.

Same

(2) The OPA shall submit to the Minister of Finance and the Minister such reports and information as the Minister of Finance may require from time to time.

Information to Board

25.27 The OPA shall provide the Board with such information as the Board may require from time to time.

Application of corporations statutes

25.28 Except as otherwise provided by the regulations, the *Corporations Act* and the *Corporations Information Act* do not apply to the OPA.

GREEN ENERGY AND GREEN ECONOMY ACT

An Act to enact the Green Energy Act, 2009 and to build a green economy, to repeal the Energy Conservation Leadership Act, 2006 and the Energy Efficiency Act and to amend other statutes

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Same

(2) The Schedules to this Act come into force as provided in each Schedule.

Same

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Green Energy and Green Economy Act, 2009*.

SCHEDULE A GREEN ENERGY ACT, 2009

Preamble

The Government of Ontario is committed to fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy.

The Government of Ontario is committed to ensuring that the Government of Ontario and the broader public sector, including government-funded institutions, conserve energy and use energy efficiently in conducting their affairs.

The Government of Ontario is committed to promoting and expanding energy conservation by all Ontarians and to encouraging all Ontarians to use energy efficiently.

PART I INTERPRETATION AND GENERAL APPLICATION

Definitions and interpretation

Definitions

1. (1) In this Act,

"distribution system" has the same meaning as in the *Electricity Act, 1998*; ("réseau de distribution")

"generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production")

"Minister" means the Minister of Energy and Infrastructure or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; ("ministre")

"Ministry" means the ministry of the Minister; ("ministère")

"prescribed" means prescribed by a regulation made under this Act; ("prescrit")

"public agency" means a ministry of the Government of Ontario or an entity, including a municipality, or class of entities that is prescribed as a public agency; ("organisme public")

"regulation" means a regulation made under this Act; ("règlement")

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy project" means the construction, installation, use, operation, changing or retiring of a renewable energy generation facility; ("projet d'énergie renouvelable")

"renewable energy source" means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source; ("source d'énergie renouvelable")

"renewable energy testing facility" means devices or structures to be used to gather information about natural conditions at the location of the structures or devices and related infrastructure and that meet such criteria as may be

prescribed by the regulations; ("installation d'évaluation du potentiel en énergie renouvelable")

"renewable energy testing project" means the construction, installation, use, operation, changing or retiring of a renewable energy testing facility;
("projet d'évaluation du potentiel en énergie renouvelable")

"transmission system" has the same meaning as in the *Electricity Act, 1998*.
("réseau de transport")

Interpretation

(2) This Act shall be interpreted in a manner that is consistent with section 35 of the *Constitution Act, 1982* and with the duty to consult aboriginal peoples.

Administration, community consultation

2. This Act shall be administered in a manner that promotes community consultation.

Mandatory home efficiency disclosure

3. (1) A person making an offer to purchase an interest in real property has the right to receive from the person offering to sell the property such information, reports or ratings as are prescribed,

(a) relating to energy consumption and efficiency with respect to a prescribed residence on the property or a class of prescribed residences on the property; and

(b) in such circumstances and at such times as are prescribed and in such manner as is prescribed.

Provision before accepting offer

(2) The person offering to sell the property shall, in accordance with subsection (1), provide the information, reports or ratings to the person making the offer to purchase before accepting that person's offer.

Waiver

(3) Subsections (1) and (2) do not apply where the person making the offer waives, in writing, the provision and receipt of the information, reports or ratings.

Agent

(4) A person acting as an agent on behalf of the person offering to sell shall inform that person promptly of any request for the information, reports or ratings.

Same

(5) Subsection (4) applies only to agents acting for or in anticipation of receiving valuable consideration with respect to the offer to sell.

Make available

(6) In this section, the obligation to provide information, reports or ratings is satisfied where the person offering to sell makes the information, reports or ratings reasonably available to the person making the offer to purchase.

PART II**DESIGNATED GOODS, SERVICES AND TECHNOLOGIES AND
RENEWABLE ENERGY PROJECTS AND ENERGY CONSERVATION IN
THE PUBLIC SECTOR****Permissive designation of goods, services and technologies**

4. (1) The Lieutenant Governor in Council may, by regulation, designate goods, services and technologies in order to promote energy conservation.

Effect of designation

(2) A person is permitted to use designated goods, services and technologies in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict their use, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement.

Same

(3) A restriction imposed at law that would otherwise prevent or restrict the use of designated goods, services or technologies is inoperative to the extent that it would otherwise prevent or restrict the use.

Exception

(4) Subsections (2) and (3) do not apply with respect to a restriction imposed by an Act or regulation.

Permissive designation of renewable energy projects, etc.

5. (1) The Lieutenant Governor in Council may, by regulation, designate renewable energy projects, renewable energy sources or renewable energy testing projects for the following purposes:

1. To assist in the removal of barriers to and to promote opportunities for the use of renewable energy sources.
2. To promote access to transmission systems and distribution systems for proponents of renewable energy projects.

Effect of designation

(2) A person is permitted to engage in activities with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict the activity, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement.

Same

(3) A restriction imposed at law that would otherwise prevent or restrict an activity with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project is inoperative to the extent that it would otherwise prevent or restrict the activity.

Exception

- (4) Subsections (2) and (3) do not apply,
- (a) with respect to a restriction imposed by an Act or regulation; or
 - (b) with respect to prescribed by-laws, instruments or other restrictions or prescribed classes of by-laws, instruments or other restrictions.

Energy conservation and demand management plans**Public agencies**

6. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to prepare an energy conservation and demand management plan.

Prescribed consumers

(2) The Lieutenant Governor in Council may, by regulation, require prescribed consumers to prepare an energy conservation and demand management plan.

Same, regulations

(3) The regulations may provide that the plan required under subsection (1) or (2) cover such period as is prescribed and may be required at such intervals as are prescribed and may require that the plan be filed with the Ministry.

Specified targets and standards, public agencies

(4) The Lieutenant Governor in Council may, by regulation, require a public agency to achieve prescribed targets and meet prescribed energy and environmental standards, including standards for energy conservation and demand management.

Contents, public agencies

(5) For the purposes of subsection (1), the plan must be prepared in accordance with the requirements, as may be prescribed, and must include the following information:

1. A summary of annual energy consumption for each of the public agency's operations.
2. A description and a forecast of the expected results of current and proposed activities and measures to conserve the energy consumed by the public agency's operations and to otherwise reduce the amount of energy consumed by the public agency, including by employing such energy conservation and demand management methods as may be prescribed.

3. A summary of the progress and achievements in energy conservation and other reductions described in paragraph 2 since the previous plan.
4. Such additional information as may be prescribed.

Contents, prescribed consumers

(6) For the purposes of subsection (2), the plan must be prepared in accordance with such requirements as may be prescribed.

Publication

(7) The public agency shall publish the plan in accordance with such requirements as may be prescribed.

Implementation

(8) The public agency or prescribed consumer shall implement the plan and shall do so in accordance with such requirements as may be prescribed.

Joint plans, public agencies

7. (1) Two or more public agencies may prepare a joint energy conservation and demand management plan and may publish and implement it jointly.

Effect

(2) If the joint plan satisfies the requirements established under section 6, the public agencies are not required to prepare, publish and implement separate energy conservation and demand management plans for the same period.

Duty to consider energy conservation, etc.**When acquiring goods and services**

8. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency in their acquisition of goods and services and to comply with such requirements as may be prescribed for that purpose.

When making capital investments

(2) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency when making capital investments and to comply with such requirements as may be prescribed for that purpose.

Transactions, arrangements or agreements to promote conservation, etc.

9. The Minister may enter into such transactions, arrangements or agreements as are necessary to promote energy conservation and energy efficiency and the transactions, arrangements or agreements must conform to such requirements as may be prescribed.

Government facilities, guiding principles

10. (1) In constructing, acquiring, operating and managing government facilities, the Government of Ontario shall be guided by the following principles:

1. Clear and transparent reporting of energy use and of the amount of greenhouse gas emissions associated with government facilities.
2. Planning and designing government facilities to ensure the efficient use of energy.
3. Making environmentally and financially responsible investments in government facilities.
4. Using renewable energy sources to provide energy for government facilities.

Directives

- (2) The Minister may, with the approval of the Lieutenant Governor in Council, issue directives,
- (a) requiring the ministries responsible for the government facilities that the Minister specifies in the directive to report on energy consumption and greenhouse gas emissions associated with the facilities to the Minister at such time and in such manner as may be provided for in the directive;
 - (b) establishing energy and environmental standards which must be met as minimum standards for new construction or major renovations for government facilities; and
 - (c) specifying such other requirements relating to energy conservation, energy efficiency and the adoption of renewable energy technologies as the Minister considers appropriate.

Same

- (3) In a directive, the Minister may,
- (a) designate or specify the government facilities or class of government facilities to which the directive applies and may specify which part of a directive applies to which facility or class of facilities;
 - (b) specify the content of the report on energy consumption and greenhouse gas emissions; and
 - (c) specify the time in which a ministry must provide the report.

Publication

- (4) Part III of the *Legislation Act, 2006* does not apply to a directive, but the Minister shall ensure that directives are published in *The Ontario Gazette*.

Definition

- (5) In this section,
- "government facilities" means government owned or occupied buildings, properties and facilities or such classes of buildings, properties and facilities as the Minister may by directive designate.

Renewable Energy Facilitation Office

11. (1) There shall be created, within the Ministry, an office to be known in English as the Renewable Energy Facilitation Office and in French as Bureau de facilitation en matière d'énergie renouvelable.

Objects of the Office

(2) The following are the objects of the Office:

1. To facilitate the development of renewable energy projects.
2. To work with proponents of renewable energy projects and other ministries to foster the development of renewable energy projects across Ontario and to assist proponents with satisfying the requirements of associated approval processes and procedures, including providing proponents with information in respect of interactions with local communities.
3. To work with proponents of renewable energy projects to alert them to potential requirements imposed by the Government of Canada.

Renewable Energy Facilitator

(3) The Office shall be supervised by a person employed in the Ministry and designated as the Renewable Energy Facilitator.

Facilitator's authority to collect information

12. (1) The Renewable Energy Facilitator is authorized to collect, directly or indirectly, and share information about the proponent of a renewable energy project, the proponent's project and the process or processes associated with the approval by any ministry of the project.

Records maintained in confidence

(2) The Renewable Energy Facilitator, or a person employed in the Renewable Energy Facilitation Office, shall maintain in confidence,

- (a) a record or information relating to a renewable energy project of a proponent that has been supplied to the Facilitator by the proponent or that has been obtained by the Facilitator from another institution, person or entity; and
- (b) a record or information maintained in the Renewable Energy Facilitation Office that would reveal a record or information relating to a renewable energy project of a proponent that has been supplied to the Facilitator by the proponent or another person or entity.

Exception

(3) Despite subsection (2), the Renewable Energy Facilitator, or a person employed in the Renewable Energy Facilitation Office, may disclose a record or information,

- (a) where the proponent to whom the record or information relates consents to its disclosure;
- (b) where the disclosure is necessary to achieve the objects of the Office;
- (c) to counsel or to an advisor to the Renewable Energy Facilitation Office;
- (d) for the purpose of complying with an Act of the Legislature or an Act of Parliament;
- (e) as authorized under the *Regulatory Modernization Act, 2007*;
- (f) where disclosure is to an institution or a law enforcement agency in Canada to aid a law enforcement investigation; or
- (g) where disclosure is further to an order of a tribunal.

Information deemed to have been supplied in confidence

(4) A record or information to which subsection (2) applies is deemed, for the purposes of section 17 of the *Freedom of Information and Protection of Privacy Act*, to have been supplied by the proponent in confidence to the Renewable Energy Facilitation Office.

Record or information deemed to be supplied in confidence

(5) A record or information to which subsection (2) applies that the Renewable Energy Facilitator or a person employed in the Renewable Energy Facilitation Office supplies to a person employed in the Ministry or to another institution is deemed, for the purposes of section 17 of the *Freedom of Information and Protection of Privacy Act*, to have been supplied by the proponent in confidence to that person or institution.

Definition

(6) In this section,

"institution" has the same meaning as in the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

Testimony

13. Neither the Renewable Energy Facilitator nor any person employed in the Renewable Energy Facilitation Office or the Ministry shall be required to give evidence in a civil proceeding with respect to information obtained in the course of fulfilling the objects of the Office.

PART III
ENERGY EFFICIENCY AND EFFICIENT USE OF WATER

Application

14. This Part applies to prescribed appliances and products.

Appliances and products, efficiency standards

15. (1) No person shall offer for sale, sell or lease an appliance or product to which this Part applies unless,

- (a) the appliance or product meets the prescribed efficiency standard or requirement with respect to the appliance or product; and
- (b) a prescribed label or other prescribed marking that confirms compliance with prescribed efficiency standards or requirements in respect of the appliance or product is affixed to the appliance or product or provided with the appliance or product in the prescribed manner and under the prescribed circumstances.

Labels

(2) No person shall affix to or provide with an appliance or product to which this Part applies a prescribed label or other prescribed marking unless the appliance or product meets the prescribed efficiency standard or requirement with respect to the appliance or product.

Application of subs. (1)

- (3) Subsection (1) does not apply to,
- (a) an appliance or product that is manufactured on or before a prescribed date and that is sold or leased on or before a prescribed date; or
 - (b) a person who is not in the business of offering for sale, selling or leasing appliances or products to which this Part applies.

PART IV REGULATIONS

Regulations

16. (1) The Lieutenant Governor in Council may make regulations prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations.

Examples

(2) As examples of matters about which the Lieutenant Governor in Council may make regulations, the Lieutenant Governor in Council may make regulations:

- (a) governing renewable energy testing facilities in relation to,
 - (i) planning, design, siting, buffer zones, notification and consultation, establishment, insurance, facilities, staffing, operation, maintenance, monitoring, record-keeping and improvement, and
 - (ii) the discontinuance of the operation of any part of the renewable energy testing facility;

- (b) governing the location of renewable energy testing facilities, including prohibiting or regulating the construction, installation, use, operation or changing of renewable energy testing facilities in parts of Ontario;
- (c) prescribing appliances and products to which Part III applies;
- (d) prescribing energy efficiency standards or requirements or water efficiency standards or requirements for the appliances or products prescribed under clause (c);
- (e) regulating the installation, testing, maintenance and repair of appliances and products to which Part III applies;
- (f) designating persons or organizations to test appliances and products to which Part III applies;
- (g) for the purposes of Part III, providing for the placing of a prescribed label or mark on or with appliances and products that conform to the prescribed standards;
- (h) prescribing the contents of labels or marks that may be placed on or with appliances and products to which Part III applies;
- (i) for the purposes of Part III, prescribing fees to be paid to designated persons or organizations for the testing or labelling of appliances and products and prescribing by whom the fees shall be paid;
- (j) providing for information to be reported by persons who manufacture, offer for sale, sell or lease appliances or products to which Part III applies, including the frequency, time and manner for reporting;
- (k) governing the keeping of information, records and documents by persons who manufacture, offer for sale, sell or lease appliances or products to which Part III applies.

Incorporation of documents

(3) A regulation under this Act that incorporates another document by reference may provide that the reference to the document include amendments made to the document from time to time after the regulation is made.

Defining words or expressions

(4) A regulation under this Act may define any word or expression used in this Act that is not defined in this Act.

Classes of persons, etc.

(5) A regulation may create different classes of persons, entities, appliances or products and may establish different entitlements for, or relating to, each class or impose different requirements, conditions or restrictions on, or relating to, each class.

Exemptions, etc.

(6) A regulation may exempt a class or a person, entity, appliance or product from a specified requirement imposed by this Act or a regulation or provide that a specified provision of this Act or a regulation does not apply to the class, person, entity, appliance or product and may prescribe conditions for the exemption.

Regulations, transition

17. The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of this Act.

PART V
REPEALS, COMMENCEMENT AND SHORT TITLE

Repeals

Energy Conservation Leadership Act, 2006

18. (1) The *Energy Conservation Leadership Act, 2006* is repealed.

Energy Efficiency Act

(2) The *Energy Efficiency Act* is repealed.

Commencement

19. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

20. The short title of the Act set out in this Schedule is the *Green Energy Act, 2009*.

SCHEDULE B
ELECTRICITY ACT, 1998

1. (1) The definition of "Minister" in subsection 2 (1) of the *Electricity Act, 1998* is repealed and the following substituted:

"Minister" means the Minister of Energy and Infrastructure or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

(2) Subsection 2 (1) of the Act is amended by adding the following definitions:

"renewable energy generation facility" means a generation facility that generates electricity from a renewable energy source and that meets such criteria as may be prescribed by regulation and includes associated or ancillary equipment, systems and technologies as may be prescribed by regulation, but does not include an associated waste disposal site, unless the

site is prescribed by regulation for the purposes of this definition;
("installation de production d'énergie renouvelable")

"renewable energy project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'énergie renouvelable")

(3) The definition of "renewable energy source" in subsection 2 (1) of the Act is repealed and the following substituted:

"renewable energy source" means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source;
("source d'énergie renouvelable")

(4) Subsection 2 (1) of the Act is amended by adding the following definitions:

"smart grid" means the advanced information exchange systems and equipment described in subsection (1.3); ("réseau intelligent")

"waste disposal site" has the same meaning as in section 25 of the *Environmental Protection Act*. ("lieu d'élimination des déchets")

(5) Section 2 of the Act is amended by adding the following subsection:

Smart grid

(1.3) For the purposes of this Act, the smart grid means the advanced information exchange systems and equipment that when utilized together improve the flexibility, security, reliability, efficiency and safety of the integrated power system and distribution systems, particularly for the purposes of,

- (a) enabling the increased use of renewable energy sources and technology, including generation facilities connected to the distribution system;
- (b) expanding opportunities to provide demand response, price information and load control to electricity customers;
- (c) accommodating the use of emerging, innovative and energy-saving technologies and system control applications; or
- (d) supporting other objectives that may be prescribed by regulation.

2. Clause 25.2 (5) (h) of the Act is amended by striking out "sections 78.1 and 78.2" and substituting "sections 78.1, 78.2 and 78.5".

3. Section 25.11 of the Act is repealed.

4. Clause 25.16 (2) (b) of the Act is repealed.

5. (1) Subsection 25.32 (2) of the Act is repealed and the following substituted:

Contract to comply with regulations and directions

(2) The OPA shall not enter into a procurement contract that does not comply with,

- (a) the regulations; or
- (b) a direction issued under subsection (4), (4.1), (4.4), (4.5), (4.6) or (4.7) or section 25.35.

(2) Section 25.32 of the Act is amended by adding the following subsections:

Same

(4.1) The Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,

- (a) the procurement of electricity supply or capacity derived from renewable energy sources;
- (b) reductions in electricity demand; or
- (c) measures related to conservation or the management of electricity demand.

Direction re process

(4.2) The Minister may, as part of a direction under subsection (4.1), specify that the OPA is to use a competitive or a non-competitive process as part of the initiative or activity.

Direction re pricing

(4.3) A direction issued by the Minister under subsection (4.1) may allow the Minister to specify the pricing or other economic factors to be used or achieved by the OPA.

Directions re consultation

(4.4) The Minister may direct the OPA to implement procedures for consulting aboriginal peoples and other persons or groups as may be specified in the direction, on the planning, development or procurement of electricity supply, capacity, transmission systems and distribution systems and the direction may specify the manner or method by which such consultations shall occur and the timing within which such consultations shall occur.

Direction re programs for aboriginal participation

(4.5) The Minister may direct the OPA to establish measures to facilitate the participation of aboriginal peoples in the development of renewable energy generation facilities, transmission systems and distribution systems and such

measures may include programs or funding for, or associated with, aboriginal participation in the development of such facilities or systems.

Direction re programs for participation of groups

(4.6) The Minister may direct the OPA to establish measures to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the measures may include programs or funding for or associated with the participation of groups and organizations, including but not limited to municipalities, in the development of the facilities or systems.

Direction re municipal programs

(4.7) The Minister may direct the OPA to develop programs that are designed to reimburse the direct costs incurred by a municipality in order to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the funding may include funding for infrastructure associated with or affected by the development of the facilities or systems.

(3) Subsection 25.32 (6) of the Act is amended by adding the following paragraph:

3. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in subsection (4.1), (4.4), (4.5) or (4.6) or section 25.35 or an expenditure made under subsection (4.7).

6. (1) Subsections 25.33 (1) and (2) of the Act are repealed and the following substituted:

**Electricity pricing to reflect costs
IESO to make adjustments**

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the Financial Corporation, whether the amounts are determined under the market rules or under sections 78.1 to 78.5 of the *Ontario Energy Board Act, 1998*.

Distributors and retailers to make adjustments

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of consumers in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the Financial Corporation, whether the amounts are determined under the market rules or under sections 78.1 to 78.5 of the *Ontario Energy Board Act, 1998*.

(2) Paragraph 1 of subsection 25.33 (3) of the Act is repealed.

7. Part II.2 of the Act is amended by adding the following section:

Feed-in tariff program

25.35 (1) The Minister may direct the OPA to develop a feed-in tariff program that is designed to procure energy from renewable energy sources under such circumstances and conditions, in consideration of such factors and within such period as the Minister may require.

Minister's directions

(2) Where the Minister has issued a direction under subsection (1), the Minister may issue, and the OPA shall follow in preparing its feed-in tariff program, directions that set out the goals to be achieved during the period to be covered by the program, including goals relating to,

- (a) the participation by aboriginal peoples in the development and establishment of renewable energy projects; and
- (b) the involvement of members of the local community in the development and establishment of renewable energy projects.

Same, domestic content

(3) Where the Minister has issued a direction under subsection (1), the Minister shall issue, and the OPA shall follow in preparing its feed-in tariff program, directions that set out the goals relating to domestic content to be achieved during the period to be covered by the program.

Definition

(4) In this section,

"feed-in tariff program" means a program for procurement, including a procurement process, providing standard program rules, standard contracts and standard pricing regarding classes of generation facilities differentiated by energy source or fuel type, generator capacity and the manner by which the generation facility is used, deployed, installed or located.

8. Part III of the Act is amended by adding the following section:

Mandatory connection to transmission or distribution system

25.36 (1) A transmitter or distributor shall connect a renewable energy generation facility to its transmission system or distribution system in accordance with the regulations, the market rules and any licence issued by the Board if,

- (a) the generator requests the connection in writing; and
- (b) the applicable technical, economic and other requirements prescribed by regulation or mandated by the market rules or by an order or code issued by the Board have been met in respect of the connection.

Conflicts

(2) In the event of a conflict between a regulation referred to in subsection (1) and an order or code issued by the Board, the regulation prevails.

Regulations

(3) A regulation referred to in subsection (1) may specify requirements which must be met in relation to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system.

9. Part III of the Act is amended by adding the following section:

Information re connections

25.37 (1) A distributor, transmitter, the OPA and the IESO shall provide such information as may be prescribed by regulation about the distribution system's or transmission system's ability to accommodate generation from a renewable energy generation facility and the information shall be current and prospective in nature and be made available to the public.

Completion time re connection assessments

(2) Connection assessments described in the Board's Distribution System Code and the IESO market rules shall be completed in the time prescribed by regulation.

Providing information and reports

(3) The IESO, a transmitter or a distributor shall file with the Board, on a quarterly basis, the information and reports that are prescribed by regulation relating to their ability to meet the prescribed time requirements referred to in subsection (2).

Immediate publication

(4) The Board may publish the information and reports referred to in subsection (3) immediately upon their receipt.

10. Section 26 of the Act is amended by adding the following subsections:

Priority access re renewable energy generation facilities

(1.1) Despite subsection (1), a transmitter or distributor shall provide, in accordance with its licence, priority connection access to its transmission system or distribution system for a renewable energy generation facility that meets the requirements prescribed by regulation.

Conflicts

(1.2) In the event of a conflict between a regulation referred to in subsection (1.1) and a market rule or licence issued by the Board, the regulation prevails.

Regulations

(1.3) A regulation referred to in subsection (1.1) may specify criteria related to the renewable energy generation facility which must be met in order for the facility to receive priority connection access.

11. (1) Subsection 32 (1) of the Act is amended by adding "and" at the end of clause (b) and by adding the following clause:

- (c) establishing and enforcing standards and criteria relating to the reliability of electricity service or the IESO-controlled grid, including standards and criteria relating to electricity supply generated from sources connected to a distribution system that alone or in aggregate could impact the reliability of electricity service or the IESO-controlled grid.

(2) Subclause 32 (2) (d) (i) of the Act is repealed and the following substituted:

- (i) for the purpose of maintaining the reliability of electricity service or the IESO-controlled grid, directions requiring persons, including persons providing electricity supply generated from sources connected to a distribution system, within such time as may be specified in the direction, to synchronize, desynchronize, increase, decrease or maintain electrical output, to take such other action as may be specified in the direction or to refrain from such action as may be specified in the direction, and

12. Part IV of the Act is amended by adding the following section:

Regulations, smart grid

53.0.1 The Lieutenant Governor in Council may make regulations governing the smart grid and its implementation, including regulations,

- (a) in respect of the timeframe for the development of the smart grid;
- (b) assigning roles and responsibilities for the development, implementation and standardization of the smart grid;
- (c) prescribing the standards for communications and any other aspects in respect of the operation of the smart grid.

13. The definition of "municipal electricity utility" in section 88 of the Act is amended by adding the following clause:

- (d.2) any corporation or other entity through which, pursuant to subsection 144 (2), a municipal corporation, municipal service board, a city board or municipal services corporation generates electricity,

14. (1) Subsection 114 (1) of the Act is amended by adding the following clause:

(d.1) governing renewable energy generation facilities including, but not limited to,

- (i) the location of the facilities,
- (ii) the generating capacity of such facilities,
- (iii) the connection of such facilities to transmission systems and distribution systems, including technical specifications with respect to the connection, and
- (iv) when such facilities must have commenced operation in order to be considered a renewable energy generation facility under this Act;

(2) Subsection 114 (1.1) of the Act is amended by adding the following clause:

- (a.1) prescribing criteria and associated or ancillary equipment, systems and technologies for the purposes of the definition of "renewable energy generation facility" in subsection 2 (1) and prescribing works for the purposes of the definition;

(3) Subclauses 114 (1.3) (f) (i) and (ii) of the Act are repealed and the following substituted:

- (i) prescribing methods for determining the amounts of adjustments under subsection 25.33 (1), the classes of market participants and consumers to whom those adjustments apply, the time periods to which the adjustments apply and the time periods within which the adjustments must or may be made and the manner in which the amounts are paid to generators, distributors, the OPA and the Financial Corporation,
- (ii) prescribing adjustments that must or may be made by distributors or retailers with respect to classes of consumers or other distributors or retailers, methods for determining the amount of the adjustments, the time periods to which the adjustments apply and the time periods within which the adjustments must or may be made and the manner in which the amounts are paid to generators, distributors, the OPA and the Financial Corporation,

(4) Clause 114 (1.3) (f) of the Act is amended by adding the following subclause:

- (xv) requiring a market participant or a consumer or a member of a class of market participants or consumers to meet specified requirements and to provide information to the IESO, a distributor

or a retailer for the purpose of section 25.33 or a regulation made under this clause;

(5) Subsection 114 (1.3) of the Act is amended by adding the following clause:

- (g.1) prescribing locations or land or classes of locations or land where the OPA shall not provide for a procurement process or enter into a contract for energy from a prescribed renewable energy generation facility or a prescribed class of renewable energy generation facility;

(6) Subsection 114 (1.4) of the Act is amended by adding the following clauses:

- (0.a) governing the connection of generation facilities to transmission systems and distribution systems for the purposes of section 25.36;
- (0.a.1) governing information and reports with respect to a distribution system's or transmission system's ability to accommodate generation from a renewable energy generation facility for the purposes of section 25.37;

(7) Section 114 of the Act is amended by adding the following subsection:

Transition, *Green Energy Act, 2009*

(8) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act 2009* and to facilitate the implementation of the *Green Energy Act, 2009*.

15. Section 144 of the Act is amended by adding the following subsections:

Exception, renewable energy generation facilities

(2) Despite subsection (1) and section 143, a municipal corporation, a municipal service board, a city board or municipal services corporation may, subject to the prescribed rules, generate electricity by means other than through a corporation incorporated under the *Business Corporations Act* if,

- (a) the generation facility is a renewable energy generation facility that does not exceed 10 megawatts or such other capacity as may be prescribed by regulation; or
- (b) the generation facility meets the prescribed criteria.

Definition

- (3) In this section,

"municipal services corporation" means a corporation established by a municipal corporation under section 203 of the *Municipal Act, 2001* or under section 148 of the *City of Toronto Act, 2006*.

Commencement

16. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE C MINISTRY OF ENERGY ACT

1. The title of the *Ministry of Energy Act* is repealed and the following substituted:

Ministry of Energy and Infrastructure Act

2. Section 1 of the Act is repealed and the following substituted:

Definitions

1. In this Act,

"Deputy Minister" means the Deputy Minister of Energy and Infrastructure; ("sous-ministre")

"Minister" means the Minister of Energy and Infrastructure; ("ministre")

"Ministry" means the Ministry of Energy and Infrastructure; ("ministère")

"renewable energy source" has the same meaning as in the *Electricity Act, 1998*. ("source d'énergie renouvelable")

3. Section 2 of the Act is repealed and the following substituted:

Ministry continued

2. The Ministry of the public service known in English as the Ministry of Energy and Infrastructure and in French as ministère de l'Énergie et de l'Infrastructure is continued.

4. Section 4 of the Act is amended by striking "the *Electricity Act, 1998*" and substituting "the *Green Energy Act, 2009*, the *Electricity Act, 1998*".

5. Subsection 5 (1) of the Act is amended by striking out "Deputy Minister of Energy" and substituting "Deputy Minister of Energy and Infrastructure".

6. (1) Subsection 8 (1) of the Act is repealed and the following substituted:

Objectives of the Ministry

(1) The Minister or the Deputy Minister, subject to the direction and control of the Minister, shall,

- (a) review energy and infrastructure matters on a continuing basis with regard to both short-term and long-term goals in relation to the energy and infrastructure needs of the Province of Ontario;
- (b) advise and assist the Government of Ontario in its dealings with other governments regarding energy and infrastructure matters;
- (c) advise and make recommendations on growth planning and developing and implementing growth plans in support of strong communities;
- (d) make recommendations for the effective co-ordination of all energy matters within the Government of Ontario with a view to ensuring the consistent application of policy in every area of concern regarding energy and, despite the generality of the foregoing, with respect to adequacy of supplies, prices, franchises and the development of energy resources indigenous to Ontario;
- (e) make recommendations regarding priorities for and the development of research into all aspects of energy of significance to Ontario, including the conservation of energy and the improvement of efficiency in its production and utilization and the development of new energy sources;
- (f) make recommendations for the effective co-ordination and development of infrastructure within the Government of Ontario;
- (g) make recommendations regarding priorities for, and the planning and development of, infrastructure of significance within Ontario; and
- (h) do any one or more of encouraging, promoting, developing or participating in such activities, projects and programs as the Minister considers appropriate,
 - (i) to increase the availability of energy in Ontario,
 - (ii) to increase the availability of renewable energy in Ontario and to increase the use of renewable energy sources in Ontario,
 - (iii) to stimulate the search for and development of sources of energy, including those that utilize waste and those that are renewable, as alternatives to the sources of energy available for use in Ontario,
 - (iv) to stimulate 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,
 - (v) to encourage prudence in the use of energy in Ontario,
 - (vi) to stimulate the planning and increase the development of infrastructure in Ontario, and

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

(2) Clause 8 (2) (f) of the Act is repealed and the following substituted:

- (f) make grants, including grants subject to conditions to encourage energy conservation and to encourage the use of renewable energy sources; and
- (g) make loans, subject to the approval of the Lieutenant Governor in Council.

Commencement

7. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE D
ONTARIO ENERGY BOARD ACT, 1998**

1. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraphs:

- 3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
- 4. To facilitate the implementation of a smart grid in Ontario.
- 5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

2. Paragraph 5 of section 2 of the Act is repealed and the following substituted:

- 5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

3. (1) Section 3 of the Act is amended by adding the following definitions:

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less; ("distribuer")

"distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose; ("réseau de distribution")

"distributor" means a person who owns or operates a distribution system; ("distributeur")

"IESO" means the Independent Electricity System Operator established under the *Electricity Act, 1998*; ("SIERE")

(2) The definition of "Minister" in section 3 of the Act is repealed and the following substituted:

"Minister" means the Minister of Energy and Infrastructure or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

(3) Section 3 of the Act is amended by adding the following definitions:

"OPA" means the Ontario Power Authority established under the *Electricity Act, 1998*; ("OEO")

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy source" has the same meaning as in the *Electricity Act, 1998*; ("source d'énergie renouvelable")

"smart grid" has the same meaning as in the *Electricity Act, 1998*; ("réseau intelligent")

"transmission system" means a system for transmitting electricity, and includes any structures, equipment or other things used for that purpose; ("réseau de transport")

"transmit", with respect to electricity, means to convey electricity at voltages of more than 50 kilovolts; ("transporter")

"transmitter" means a person who owns or operates a transmission system; ("transporteur")

4. Subsection 4.2 (6) of the Act is amended by adding the following paragraph:

3.1 Section 26.1.

5. Subsection 4.13 (1) of the Act is amended by striking "Despite Part I of the *Financial Administration Act*" at the beginning and substituting "Despite Part I of the *Financial Administration Act* and subject to subsection 26.1 (5)".

6. The Act is amended by adding the following sections:

Assessment, Ministry conservation programs, etc.

26.1 (1) Subject to the regulations, the Board shall assess the following persons or classes of persons, as prescribed by regulation, with respect to the expenses incurred and expenditures made by the Ministry of Energy and Infrastructure in respect of its energy conservation programs or renewable energy

programs provided under this Act, the *Green Energy Act, 2009*, the *Ministry of Energy and Infrastructure Act* or any other Act:

1. In respect of consumers in their service areas, gas distributors and licensed distributors.
2. The IESO.
3. Any other person prescribed by regulation.

Assessments, collection by gas distributors and licensed distributors

(2) Gas distributors and licensed distributors may collect the amounts assessed under subsection (1) from the consumers or classes of consumers as are prescribed by regulation and in the manner prescribed by regulation.

Assessments, IESO

(3) The IESO may collect the amounts assessed under subsection (1) from market participants or classes of market participants as are prescribed by regulation and in the manner prescribed by regulation.

Assessment, amount and timing

(4) For the purposes of subsection (1), the Board shall assess the amount prescribed by regulation within the time prescribed by regulation in accordance with the methods or rules prescribed by regulation.

Assessment, obligation to pay

(5) Every person assessed under subsection (1) shall pay the amount assessed in accordance with the Board's assessment by remitting the amount to the Minister of Finance.

Failure to pay

(6) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order the person to pay the assessment.

Reporting

(7) Persons referred to in subsection (1) shall report such information in such manner and at such times to the Board or to the Minister as is prescribed by regulation.

Regulations

- (8) The Lieutenant Governor in Council may make regulations,
 - (a) governing assessments under this section, including,
 - (i) prescribing the amount to be assessed or the amounts to be assessed against each person, or class of person liable to pay an assessment or the method of calculating the amount or amounts, and
 - (ii) prescribing the time within which the assessments must occur;

- (b) prescribing persons or classes of persons liable to pay an assessment under subsection (1);
- (c) prescribing the frequency of the assessments;
- (d) respecting the manner by which an assessment under this section is carried out;
- (e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;
- (f) with respect to subsection (7), prescribing the time at which such reports must be made or submitted, the manner by which such reports must be made or submitted, and governing the information to be provided, including the manner in which such information is presented or provided;
- (g) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate.

Special purposes

26.2 (1) For the purpose of the *Financial Administration Act*, all amounts collected under section 26.1 relating to assessments paid shall be deemed to be money paid to Ontario for the special purposes set out in subsection (2).

Same

- (2) The following are the special purposes for which amounts collected under section 26.1 relating to assessments are paid to Ontario:
1. To fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:
 - i. natural gas,
 - ii. electricity,
 - iii. propane,
 - iv. oil,
 - v. coal, and
 - vi. wood.
 2. To fund conservation or renewable energy programs aimed at causing consumers of fuel to change from one or more of the fuels listed in paragraph 1 to any other fuel or fuels listed in that paragraph.
 3. To fund conservation or renewable energy programs aimed at decreasing peak electricity demand, while increasing or decreasing the consumption of another type of fuel.

4. To fund research and development or other engineering or scientific activities aimed at furthering the conservation or the efficient use of fuels.
5. To fund conservation or renewable energy programs aimed at a specific geographical, social, income or other sector of Ontario.
6. To reimburse the Province for expenditures it incurs for any of the above purposes.

Special Purpose Conservation and Renewable Energy Conservation Fund

(3) The Minister of Finance shall maintain in the Public Accounts an account to be known as the Ministry of Energy and Infrastructure Special Purpose Conservation and Renewable Energy Fund in which shall be recorded all receipts and disbursements of public money under this section.

Non-interest bearing account

- (4) The balances from time to time in the account do not bear interest.

Interpretation

(5) For the purposes of this section, the terms used in it that are not defined in this Act but that are defined in section 1 of the *Financial Administration Act* have the meanings provided in that Act.

7. The Act is amended by adding the following section:

Directives re conservation and demand management targets

27.2 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directive to establish conservation and demand management targets to be met by distributors and other licensees.

Directives, specified targets

(2) To promote conservation and demand management, a directive may require the Board to specify, as a condition of a licence, the conservation targets associated with those specified in the directive, and the targets shall be apportioned by the Board between distributors and other licensees in accordance with the directive.

Same

(3) A directive made under subsection (2) may require the OPA to provide information to the Board or to the Ministry about the conservation targets referred to in subsection (2) or the contracts referred to in subsection (5).

Directives re distributors

(4) Subject to subsection (7), a directive may require the Board to specify, as a condition of a licence, that a distributor may meet, at its discretion, any portion of its conservation target by seeking the approval of the Board for the conservation and demand management programs to be offered in its service area.

Directives, contracting with the OPA

(5) A directive may require the Board to specify, as a condition of a licence, that a distributor meet, at its discretion, any portion of its conservation target by contracting with the OPA to meet the target through province-wide programs offered by the OPA.

Public reporting

(6) To promote a culture of conservation and demand management, a directive may require the Board to specify, as a condition of a licence, that the licensee make public, by such means and at such time as specified in the directive, the steps that the licensee has taken to meet its targets and the results that have been achieved in meeting those targets.

Hearings

(7) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held.

Publication

(8) A directive issued under this section shall be published in *The Ontario Gazette*.

8. The Act is amended by adding the following sections:**Directives, smart grid**

28.5 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the establishment, implementation or promotion of a smart grid for Ontario.

Hearings

(2) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held.

Publication

(3) A directive issued under this section shall be published in *The Ontario Gazette*.

Directives, connections

28.6 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system.

Directives, transmission and distribution systems

(2) A directive issued under subsection (1) may require the Board to amend the licence conditions of distributors, transmitters and other licensees to take the

actions specified in the directive in relation to their transmission systems, distribution systems or other associated systems, including enhancing, re-enforcing or expanding their transmission system or distribution system.

Hearings

(3) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held.

Guidelines re processes and timing

(4) In relation to paragraph 5 of subsection 1 (1), the Minister may issue guidelines setting out goals or targets for the Board in relation to its processes associated with the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities, including the timing of those processes and the time within which the Board completes the processes.

9. The definitions of "distribute", "distribution system", "distributor", "IESO", "OPA", "transmission system", "transmit" and "transmitter" in section 56 of the Act are repealed.

10. Section 70 of the Act is amended by adding the following subsections:

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence.

.

Deemed conditions of licences, transmitters and distributors

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

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
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.
- 3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,
 - i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
 - ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

11. Section 71 of the Act is amended by adding the following subsection:

Exception

- (3) Despite subsection (1), a distributor may own and operate,
 - (a) a renewable energy generation facility that does not exceed 10 megawatts or such other capacity as may be prescribed by regulation and meets the criteria prescribed by regulation;
 - (b) a generation facility that uses technology that produces power and thermal energy from a single source that meets the criteria prescribed by regulation; or
 - (c) an energy storage facility that meets the criteria prescribed by regulation.

12. (1) Subsection 78 (3) of the Act is repealed and the following substituted:

Rates

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*.

(2) Section 78 of the Act is amended by adding the following subsections:

Orders re deferral or variance accounts, s. 27.2

(3.0.4) The Board may make orders permitting the OPA, distributors or other licensees to establish one or more deferral or variance accounts related to costs associated with complying with a directive issued under section 27.2.

Methods re incentives or recovery of costs

(3.0.5) The Board may, in approving or fixing just and reasonable rates or in exercising the power set out in clause 70 (2) (e), adopt methods that provide,

- (a) incentives to a transmitter or a distributor in relation to the siting, design and construction of an expansion, reinforcement or other upgrade to the transmitter's transmission system or the distributor's distribution system; or
- (b) for the recovery of costs incurred or to be incurred by a transmitter or distributor in relation to the activities referred to in clause (a).

(3) Subsection 78 (6) of the Act is repealed and the following substituted:

Conditions, etc.

(6) An order under this section may include conditions, classifications or practices, including rules respecting the calculation of rates, applicable,

- (a) to the Smart Metering Entity in respect of meeting its obligations;
- (b) to an activity prescribed for the purposes of subsection (3); and
- (c) to the transmission, distribution or retailing of electricity.

13. Section 78.5 of the Act is repealed and the following substituted:

Payments to distributors or the OPA under conservation and demand management programs

78.5 (1) The IESO shall make payments to a distributor or to the OPA on behalf of other persons prescribed by the regulations with respect to amounts approved by the Board for conservation and demand management programs approved by the Board pursuant to a directive issued under section 27.2.

Amount and timing of payment

(2) The amount and timing of each payment referred to in subsection (1) shall be determined by the Board in accordance with such rules, methods and criteria as may be prescribed by the regulations or mandated by a code issued by the Board or an order of the Board.

Regulations review

(3) A regulation made under subsection (2) may require the Board to undertake its review of the amounts referred to in this section at the time or times prescribed by the regulation.

OPA may act as settlement agent

(4) The OPA may act as a settlement agent to settle amounts payable to a distributor under this section.

Conflict with market rules

78.6 In the event of a conflict, sections 78.1 to 78.5 prevail over the market rules to the extent of the conflict.

14. The Act is amended by adding the following section:**Cost recovery, connecting generation facilities**

79.1 (1) The Board, in approving just and reasonable rates for a distributor that incurs costs to make an eligible investment for the purpose of connecting or enabling the connection of a qualifying generation facility to its distribution system, shall provide rate protection for prescribed consumers or classes of consumers in the distributor's service area by reducing the rates that would otherwise apply in accordance with the prescribed rules.

Distributor entitled to compensation re lost revenue

(2) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1) that is associated with costs that have been approved by the Board and incurred by the distributor to make an eligible investment referred to in subsection (1).

Consumers' contributions

(3) All consumers are required to contribute towards the amount of any compensation required under subsection (2) in accordance with the regulations.

Regulations

- (4) The Lieutenant Governor in Council may make regulations,
- (a) prescribing consumers or classes of consumers eligible for rate protection under this section;
 - (b) prescribing criteria to be met by a qualifying generation facility;
 - (c) prescribing the criteria to be satisfied for an investment to be an eligible investment;
 - (d) prescribing rules for the calculation of the amount of the rate reduction;
 - (e) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;
 - (f) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,
 - (i) respecting the calculation of those amounts,
 - (ii) establishing the time and manner of collection,
 - (iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,
 - (iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and

- (v) respecting the distribution of the amounts collected;
- (g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;
- (h) respecting any other matter that the Lieutenant Governor in Council considers necessary for the purposes of this section.

Definitions

(5) In this section,

"eligible investment" means an investment in the construction, expansion or reinforcement of a distribution line, transformer, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less that meets the criteria prescribed by regulation; ("investissement admissible")

"qualifying generation facility" means a generation facility that meets the criteria prescribed by regulation. ("installation de production admissible")

15. Subsection 88 (1) of the Act is amended by adding the following clauses:

(g.3.2) governing,

- (i) the capacity of a renewable energy generation facility referred to in clause 71 (3) (a) and criteria for a renewable energy generation facility for the purposes of clause 71 (3) (a),
- (ii) criteria for a generation facility that uses technology that produces power and thermal energy from a single source for the purposes of clause 71 (3) (b), and
- (iii) criteria for an energy storage facility for the purposes of clause 71 (3) (c);

.....

(g.6.0.1) prescribing circumstances under which a transmitter or distributor shall bear the costs of construction, expansion or reinforcement associated with the connection of a renewable energy generation facility to the transmitter's transmission system or the distributor's distribution system;

.....

(j) governing all matters relating to payment amounts under section 78.5;

16. Subsection 96 (2) of the Act is repealed and the following substituted:

Applications under s. 92

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

17. Paragraph 6 of subsection 107 (2) of the Act is amended by striking out "78.4" and substituting "78.5".

18. Section 127 of the Act is amended by adding the following subsection:

Transition, *Green Energy Act, 2009*

(5) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act 2009* and to facilitate the implementation of the *Green Energy Act, 2009*.

Commencement

19. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE E CLEAN WATER ACT, 2006

1. (1) Subclause 15 (2) (c) (iii) of the *Clean Water Act, 2006* is amended by striking out "a permit under section 34 of the *Ontario Water Resources Act*" at the end and substituting "a permit under section 34 of the *Ontario Water Resources Act* or a renewable energy approval under section 47.3 of the *Environmental Protection Act*".

(2) Subclause 15 (2) (c) (iv) of the Act is amended by striking out "a permit under section 34 of the *Ontario Water Resources Act*" and substituting "a permit under section 34 of the *Ontario Water Resources Act* or a renewable energy approval under section 47.3 of the *Environmental Protection Act*".

Commencement

2. This Schedule comes into force on the day subsection 4 (1) of Schedule G to the *Green Energy and Green Economy Act 2009* comes into force.

SCHEDULE F
ENVIRONMENTAL BILL OF RIGHTS, 1993

1. The *Environmental Bill of Rights, 1993* is amended by adding the following sections:

Reports on energy conservation

58.1 (1) The Environmental Commissioner shall report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels, and the Speaker shall lay the report before the Assembly as soon as reasonably possible.

Same

- (2) Each report shall,
 - (a) describe the results of initiatives in Ontario during the year covered by the annual report to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels;
 - (b) describe the progress in meeting targets established by the Government of Ontario for reducing the use or making more efficient use of electricity, natural gas, propane, oil and transportation fuels; and
 - (c) identify,
 - (i) any Acts or regulations of Canada or Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels,
 - (ii) any by-laws of municipal councils in Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels, and
 - (iii) any policies of the Government of Canada, the Government of Ontario or municipal councils in Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels.

Powers

(3) In addition to his or her powers under section 60, the Environmental Commissioner may, for the purpose of this section, require any of the following persons to prepare and submit to the Commissioner, within such time as is specified by the Commissioner, a report containing such information as is specified by the Commissioner:

1. The Ontario Energy Board.
2. The Ontario Power Authority.
3. The Independent Electricity System Operator.
4. The Smart Metering Entity within the meaning of the *Electricity Act, 1998*.
5. A generator, transmitter or distributor, as those terms are defined in the *Electricity Act, 1998*.
6. A gas distributor, gas transmitter, producer or storage company, as those terms are defined in the *Ontario Energy Board Act, 1998*.
7. Any other prescribed person or class of persons.

Same

(4) The first report under subsection (1) shall be submitted before the end of 2010 and shall cover the period beginning on January 1, 2009 and ending on December 31, 2009.

Reports on greenhouse gas emissions

58.2 (1) The Environmental Commissioner shall report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce emissions of greenhouse gases, and the Speaker shall lay the report before the Assembly as soon as reasonably possible.

Same

(2) Each report under subsection (1) shall include a review of any annual report on greenhouse gas reductions or climate change published by the Government of Ontario during the year covered by the report under subsection (1).

Powers

(3) In addition to his or her powers under section 60, the Environmental Commissioner may, for the purpose of this section, require a prescribed person or class of persons to prepare and submit to the Commissioner, within such time as is specified by the Commissioner, a report containing such prescribed information as is specified by the Commissioner.

Same

(4) The first report under subsection (1) shall be submitted before the end of 2009.

Definition: greenhouse gas

(5) In this section,

"greenhouse gas" means,

- (a) carbon dioxide,
- (b) methane,

- (c) nitrous oxide,
- (d) hydrofluorocarbons,
- (e) perfluorocarbons, or
- (f) sulphur hexafluoride.

Separate reports

58.3 The reports required by sections 58, 58.1 and 58.2 shall be made separately.

Commencement

2. This Schedule comes into force on the day section 3 of Schedule B to the *Green Energy and Green Economy Act, 2009* comes into force.

SCHEDULE G ENVIRONMENTAL PROTECTION ACT

1. (1) Subclause (a) (i) of the definition of "regulated person" in subsection 1 (1) of the *Environmental Protection Act* is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(2) Subsection 1 (1) of the Act is amended by adding the following definitions:

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'énergie renouvelable")

2. Sections 40 and 41 of the Act are repealed and the following substituted:

Prohibition as to deposit of waste

40. No person shall deposit, or cause, permit or arrange for the deposit of, waste upon, in, into or through any land or land covered by water or in any building that is not a waste disposal site for which a certificate of approval, provisional certificate of approval or renewable energy approval has been issued and except in accordance with the terms and conditions of the certificate or approval.

Prohibition as to use of facilities, etc.

41. No person shall use, or cause, permit or arrange for the use of, any facilities or equipment for the storage, handling, treatment, collection, transportation, processing or disposal of waste that is not part of a waste management system for which a certificate of approval, provisional certificate of

approval or renewable energy approval has been issued and except in accordance with the terms and conditions of the certificate or approval.

3. (1) Subsection 42 (3) of the Act is repealed and the following substituted:

Certificate of approval

(3) Subsections (1) and (2) apply only in respect of a waste disposal site for which a certificate of approval, provisional certificate of approval or renewable energy approval is in force.

(2) Subsection 42 (5) of the Act is repealed and the following substituted:

Liability

(5) Subsections (1) to (4) do not relieve any person from liability except liability as owner of waste that is delivered to and accepted by the operator of a waste disposal site in accordance with law including an applicable certificate of approval, provisional certificate of approval or an applicable renewable energy approval.

4. (1) The Act is amended by adding the following Part:

**PART V.0.1
RENEWABLE ENERGY**

Definition

47.1 In this Part,

"environment" has the same meaning as in the *Environmental Assessment Act*.

Purpose

47.2 (1) The purpose of this Part is to provide for the protection and conservation of the environment.

Application of s. 3 (1)

(2) Subsection 3 (1) does not apply to this Part.

Requirement for renewable energy approval

47.3 (1) A person shall not engage in a renewable energy project except under the authority of and in accordance with a renewable energy approval issued by the Director if engaging in the project involves engaging in any of the following activities:

1. An activity for which, in the absence of subsection (2), subsection 9 (1) or (7) of this Act would require a certificate of approval.
2. An activity for which, in the absence of subsection (2), subsection 27 (1) of this Act would require a certificate of approval or provisional certificate of approval.

3. An activity for which, in the absence of subsection (2), subsection 34 (3) of the *Ontario Water Resources Act* would require a permit.
4. An activity for which, in the absence of subsection (2), section 36 of the *Ontario Water Resources Act* would require a well construction permit.
5. An activity for which, in the absence of subsection (2), subsection 53 (1) or (5) of the *Ontario Water Resources Act* would require an approval.
6. An activity for which, in the absence of subsection (2), a provision prescribed by the regulations would require an approval, permit or other instrument.
7. Any other activity prescribed by the regulations.

Exemptions

(2) The following provisions do not apply to a person who is engaging in a renewable energy project:

1. Subsections 9 (1) and (7) of this Act.
2. Subsection 27 (1) of this Act.
3. Subsection 34 (3) of the *Ontario Water Resources Act*.
4. Section 36 of the *Ontario Water Resources Act*.
5. Section 53 of the *Ontario Water Resources Act*.
6. A provision prescribed by the regulations for the purpose of paragraph 6 of subsection (1).

Application

47.4 (1) An application for the issue or renewal of a renewable energy approval shall be prepared in accordance with the regulations and submitted to the Director.

Director may require information

(2) The Director may require an applicant under subsection (1) to submit any plans, specifications, engineers' reports or other information and to carry out and report on any tests or experiments relating to the renewable energy project.

Director's powers

47.5 (1) After considering an application for the issue or renewal of a renewable energy approval, the Director may, if in his or her opinion it is in the public interest to do so,

- (a) issue or renew a renewable energy approval; or
- (b) refuse to issue or renew a renewable energy approval.

Terms and conditions

(2) In issuing or renewing a renewable energy approval, the Director may impose terms and conditions if in his or her opinion it is in the public interest to do so.

Other powers

(3) On application or on his or her own initiative, the Director may, if in his or her opinion it is in the public interest to do so,

- (a) alter the terms and conditions of a renewable energy approval after it is issued;
- (b) impose new terms and conditions on a renewable energy approval; or
- (c) suspend or revoke a renewable energy approval.

Same

(4) A renewable energy approval is subject to any terms and conditions prescribed by the regulations.

Water transfers: Great Lakes-St. Lawrence River, Nelson and Hudson Bay Basins

47.6 A renewable energy approval shall not authorize a person to take water contrary to subsection 34.3 (2) of the *Ontario Water Resources Act*.

Policies, renewable energy approvals

47.7 (1) The Minister may, in writing, issue, amend or revoke policies in respect of renewable energy approvals.

Same

(2) A policy or the amendment or revocation of a policy takes effect on the later of the following days:

- 1. The day that notice of the policy, amendment or revocation, as the case may be, is given in the environmental registry established under the *Environmental Bill of Rights, 1993*.
- 2. The effective day specified in the policy, amendment or revocation, as the case may be.

Same

(3) Subject to section 145.2.2, decisions made under this Act in respect of renewable energy approvals shall be consistent with any policies issued under subsection (1) that are in effect on the date of the decision.

(2) Paragraph 3 of subsection 47.3 (1) of the Act, as enacted by subsection (1), is repealed and the following substituted:

- 3. An activity for which, in the absence of subsection (2), subsection 34 (1) of the *Ontario Water Resources Act* would require a permit, if the

activity would not involve a transfer as defined in subsection 34.5 (1) of that Act.

(3) Paragraph 3 of subsection 47.3 (2) of the Act, as enacted by subsection (1), is repealed and the following substituted:

3. Subsection 34 (1) of the *Ontario Water Resources Act*, if the person engaging in the renewable energy project is not engaged in a taking of water that involves a transfer as defined in subsection 34.5 (1) of that Act.

5. Subsection 96 (2) of the Act is repealed and the following substituted:

Direction or approval by Director

(2) The Director may give to any person, employee or agent mentioned in subsection (1), and may amend or revoke, a direction or approval mentioned in clause (1) (b) and may do so despite the terms of or conditions in,

- (a) a certificate of approval or provisional certificate of approval issued under Part V in respect of a waste disposal site; or
- (b) a renewable energy approval issued under Part V.0.1 in respect of a waste disposal site.

6. The definition of "approval" in section 131 of the Act is amended by striking out "certificate of approval or provisional certificate of approval" and substituting "certificate of approval, provisional certificate of approval or renewable energy approval".

7. (1) Clauses 139 (1) (c), (d) and (e) of the Act are repealed and the following substituted:

- (c) refuses to issue a certificate of approval, provisional certificate of approval or renewable energy approval;
- (d) refuses to renew a certificate of approval, provisional certificate of approval or renewable energy approval;
- (e) suspends or revokes a certificate of approval, provisional certificate of approval or renewable energy approval; or

(2) Clauses 139 (2) (b), (c) and (d) of the Act are repealed and the following substituted:

- (b) imposes terms and conditions in issuing or renewing a certificate of approval, provisional certificate of approval, renewable energy approval, licence or permit or approval;
- (c) alters the terms and conditions of a certificate of approval, provisional certificate of approval, renewable energy approval, certificate of property use, licence or permit or approval after it is issued; or

- (d) imposes new terms and conditions on a certificate of approval,
renewable energy approval or certificate of property use,

.

(3) Subsection 139 (2) of the Act is amended by striking out "provisional certificate of approval or certificate of property use" in the portion after clause (d) and substituting "provisional certificate of approval, renewable energy approval or certificate of property use".

8. Section 142 of the Act is amended by adding the following subsection:

Non-application, s. 142.1 hearing

(4) This section does not apply in the case of a hearing required under section 142.1.

9. The Act is amended by adding the following section:

Hearing re renewable energy approval

142.1 (1) This section applies to a person resident in Ontario who is not entitled under section 139 to require a hearing by the Tribunal in respect of a decision made by the Director under section 47.5.

Same

(2) A person mentioned in subsection (1) may, by written notice served upon the Director and the Tribunal within 15 days after a day prescribed by the regulations, require a hearing by the Tribunal in respect of a decision made by the Director under clause 47.5 (1) (a) or subsection 47.5 (2) or (3).

Grounds for hearing

(3) A person may require a hearing under subsection (2) only on the grounds that engaging in the renewable energy project in accordance with the renewable energy approval will cause,

- (a) serious harm to human health; or
- (b) serious and irreversible harm to plant life, animal life or the natural environment.

10. The Act is amended by adding the following section:

Contents of notice requiring hearing, s. 142.1 hearing

142.2 (1) An applicant for a hearing required under section 142.1 shall state in the notice requiring the hearing,

- (a) a description of how engaging in the renewable energy project in accordance with the renewable energy approval will cause,
 - (i) serious harm to human health, or
 - (ii) serious and irreversible harm to plant life, animal life or the natural environment;

- (b) the portion of the renewable energy approval in respect of which the hearing is required; and
- (c) the relief sought.

Effect of contents of notice, s. 142.1 hearing

(2) Except with leave of the Tribunal, at a hearing by the Tribunal an applicant mentioned in subsection (1) is not entitled to appeal a portion of the renewable energy approval that is not stated in the applicant's notice requiring the hearing.

Leave by Tribunal, s. 142.1 hearing

(3) The Tribunal may grant the leave referred to in subsection (2) where the Tribunal is of the opinion that to do so is proper in the circumstances, and the Tribunal may give such directions as the Tribunal considers proper consequent upon the granting of the leave.

11. Section 145 of the Act is amended by adding the following subsection:

Same, s. 142.1 hearing

(2) In the case of a hearing required under section 142.1, the holder of the renewable energy approval is a party to the hearing.

12. Section 145.2 of the Act is amended by adding the following subsection:

Non-application of subs. (1)

(2) Subsection (1) does not apply in respect of a hearing required under section 142.1.

13. The Act is amended by adding the following sections:

Hearing required under s. 142.1

145.2.1 (1) This section applies to a hearing required under section 142.1.

What Tribunal must consider

(2) The Tribunal shall review the decision of the Director and shall consider only whether engaging in the renewable energy project in accordance with the renewable energy approval will cause,

- (a) serious harm to human health; or
- (b) serious and irreversible harm to plant life, animal life or the natural environment.

Onus of proof

(3) The person who required the hearing has the onus of proving that engaging in the renewable energy project in accordance with the renewable energy approval will cause harm referred to in clause (2) (a) or (b).

Powers of Tribunal

(4) If the Tribunal determines that engaging in the renewable energy project in accordance with the renewable energy approval will cause harm referred to in clause (2) (a) or (b), the Tribunal may,

- (a) revoke the decision of the Director;
- (b) by order direct the Director to take such action as the Tribunal considers the Director should take in accordance with this Act and the regulations; or
- (c) alter the decision of the Director, and, for that purpose, the Tribunal may substitute its opinion for that of the Director.

Same

(5) The Tribunal shall confirm the decision of the Director if the Tribunal determines that engaging in the renewable energy project in accordance with the renewable energy approval will not cause harm described in clause (2) (a) or (b).

Deemed confirmation of decision

(6) The decision of the Director shall be deemed to be confirmed by the Tribunal if the Tribunal has not disposed of the hearing in respect of the decision within the period of time prescribed by the regulations.

Consistency with policies

145.2.2 A decision or order of the Tribunal under this Part in respect of a renewable energy approval shall be consistent with any policies issued by the Minister under section 47.7 that are in effect on the date of the Director's decision.

14. (1) Subclause 156 (1) (d) (i) of the Act is repealed and the following substituted:

- (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, approval, certificate of approval, provisional certificate of approval, certificate of property use, renewable energy approval, program approval, agreement, or order under this Act,

(2) Subclause 156 (1) (d) (ii) of the Act is amended by striking out "certificate of approval or provisional certificate of approval" and substituting "certificate of approval, provisional certificate of approval or renewable energy approval".

(3) Subclause 156 (1) (e) (i) of the Act is amended by striking out "certificate of property use, program approval" and substituting "certificate of property use, renewable energy approval, program approval".

(4) Subclause 156 (1) (e) (ii) of the Act is amended by striking out "certificate of approval or provisional certificate of approval" and

substituting "certificate of approval, provisional certificate of approval or renewable energy approval".

15. (1) Clause 157 (1) (c) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(2) Clause 157 (3) (h) of the Act is amended by striking out "provisional certificate of approval, licence" and substituting "provisional certificate of approval, renewable energy approval, licence".

(3) Subsection 157 (3) of the Act is amended by striking out "and" at the end of clause (i), by adding "and" at the end of clause (j) and by adding the following clause:

- (k) if the provincial officer reasonably believes that a term or condition of a renewable energy approval is being or has been contravened, doing any other thing referred to in subsection 16 (3) of the *Ontario Water Resources Act*.**

16. Section 165 of the Act is amended by striking out "provisional certificate of approval or certificate of property use" in both places where it appears and substituting in each case "provisional certificate of approval, certificate of property use or renewable energy approval".

17. Subsection 174 (2) of the Act is amended by striking out "certificate of property use, licence" in the portion after clause (i) and substituting "certificate of property use, renewable energy approval, licence".

18. Clause (a) of the definition of "official document" in subsection 175 (1) of the Act is repealed and the following substituted:

- (a) an approval, consent, licence, notice, permit, order, return, renewable energy approval or certificate of approval, provisional certificate of approval, certificate of property use or other certificate under this Act or the regulations,**

19. (1) Clause 175.1 (f) of the Act is amended by striking out "certificates of property use, permits" and substituting "certificates of property use, renewable energy approvals, permits".

(2) Section 175.1 of the Act is amended by adding the following clauses:

- (f.1) governing applications for the issue, renewal and revocation of certificates of approval, provisional certificates of approval, certificates of property use, renewable energy approvals, permits and licences;**
- (f.2) governing the inclusion of terms and conditions in certificates of approval, provisional certificates of approval, certificates of property use, renewable energy approvals, permits and licences;**

20. (1) Subsection 176 (1) of the Act is amended by adding the following clause:

- (h.3) deeming a renewable energy approval to exist in respect of a renewable energy project to which subsection 47.3 (1) would apply but for an exemption from the requirement to obtain a renewable energy approval set out in a regulation;

(2) Section 176 of the Act is amended by adding the following subsection:

Regulations relating to Part V.0.1

(4.1) The Lieutenant Governor in Council may make regulations relating to Part V.0.1,

- (a) governing the preparation and submission of applications for the issue, renewal or revocation of renewable energy approvals and applications to alter the terms and conditions of renewable energy approvals or to impose conditions on renewable energy approvals;
- (b) governing eligibility requirements relating to applications for the issue, renewal or revocation of renewable energy approvals, applications to alter the terms and conditions of renewable energy approvals or to impose conditions on renewable energy approvals, including requirements for consultation;
- (c) governing renewable energy generation facilities in relation to,
 - (i) planning, design, siting, buffer zones, notification and consultation, establishment, insurance, facilities, staffing, operation, maintenance, monitoring, record-keeping, submission of reports to the Director and improvement,
 - (ii) the discontinuance of the operation of any plant, structure, equipment, apparatus, mechanism or thing at a renewable energy generation facility,
 - (iii) the closure of renewable energy generation facilities;
- (d) governing the location of renewable energy generation facilities, including prohibiting or regulating the construction, installation, use, operation or changing of renewable energy generation facilities in parts of Ontario;
- (e) prohibiting the transfer of a renewable energy approval or prescribing requirements for transferring a renewable energy approval, including requiring the written consent of the Director;

- (f) providing for transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of Part V.0.1.

(3) Section 176 of the Act is amended by adding the following subsections:

Regulations relating to Part XIII

(9.1) The Lieutenant Governor in Council may make regulations relating to Part XIII,

- (a) governing procedures for hearings required under section 142.1 and for applications to stay the operation of a decision made in respect of a renewable energy approval;
- (b) providing that section 142.1 does not apply in respect of a renewable energy approval, or prescribing circumstances in which section 142.1 does not apply in respect of a renewable energy approval, if,
 - (i) under Part II or II.1 of the *Environmental Assessment Act*, the holder of the renewable energy approval is authorized to proceed with the renewable energy project or was authorized, immediately before Part V.0.1 of this Act came into force, to proceed with the project,
 - (ii) pursuant to an exempting regulation made under the *Environmental Assessment Act*, a statement of completion in respect of the renewable energy project was filed with the Director appointed under that Act before Part V.0.1 of this Act came into force, or
 - (iii) all the approvals, permits and other instruments required under this Act and the *Ontario Water Resources Act* to engage in the renewable energy project were obtained before Part V.0.1 of this Act came into force.

Same

(9.2) A regulation made under clause (9.1) (a) may provide that it prevails over a provision of the *Statutory Powers Procedure Act*, despite anything in that Act.

21. Section 177.1 of the Act is amended by striking out "provisional certificate of approval or permit" at the end and substituting "provisional certificate of approval, renewable energy approval or permit".

22. (1) Subclause 182.1 (1) (a) (v) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(2) Subclause 182.1 (1) (b) (iii) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(3) Clause 182.1 (13) (b) of the Act is amended by striking out "provisional certificate of approval, licence" and substituting "provisional certificate of approval, renewable energy approval, licence".

(4) Clause 182.1 (13) (c) of the Act is amended by striking out "provisional certificate of approval, licence" and substituting "provisional certificate of approval, renewable energy approval, licence".

23. Subsection 186 (3) of the Act is amended by striking out "provisional certificate of approval or certificate of property use" and substituting "provisional certificate of approval, certificate of property use or renewable energy approval".

24. (1) Subparagraph 1 ii of subsection 187 (3) of the Act is amended by striking out "27, 40 or 41" and substituting "27, 40, 41 or 47.3".

(2) Paragraph 3 of subsection 187 (3) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

25. (1) Subclause 194 (1) (a) (ii) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(2) Subclause 194 (1) (b) (ii) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

(3) Clause 194 (1) (c) of the Act is amended by striking out "27, 40 or 41" and substituting "27, 40, 41 or 47.3".

(4) Clause 194 (1) (e) of the Act is amended by striking out "certificate of property use, licence" and substituting "certificate of property use, renewable energy approval, licence".

Commencement

26. (1) Subject to subsection (2), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Subsections 4 (2) and (3) come into force on the later of the following days:

1. The day subsection 4 (1) comes into force.

2. The day subsection 1 (8) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force.

SCHEDULE H
ONTARIO WATER RESOURCES ACT

1. (1) If this subsection comes into force before the day subsection 1 (8) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force, subsection 34 (3) of the *Ontario Water Resources Act* is amended by striking out "Despite any other Act" at the beginning and substituting "Despite any other Act but subject to section 47.3 of the *Environmental Protection Act*".

(2) Subsection 34 (1) of the *Ontario Water Resources Act*, as re-enacted by subsection 1 (8) of the *Safeguarding and Sustaining Ontario's Water Act, 2007*, is amended by striking out "Despite any other Act" at the beginning and substituting "Despite any other Act but subject to section 47.3 of the *Environmental Protection Act*".

2. Section 36 of the Act is amended by adding "Subject to section 47.3 of the *Environmental Protection Act*" at the beginning.

3. (1) Subsection 53 (1) of the Act is amended by adding "Subject to section 47.3 of the *Environmental Protection Act*" at the beginning.

(2) Subsection 53 (5) of the Act is amended by adding "Subject to section 47.3 of the *Environmental Protection Act*" at the beginning.

4. (1) Clause 75 (1.2) (b) of the Act, as re-enacted by subsection 1 (18) of the *Safeguarding and Sustaining Ontario's Water Act, 2007*, is repealed and the following substituted:

- (b) governing the implementation of the provisions listed in subsection (1.3) and,**
 - (i) prescribing requirements that apply to the Director under section 34.1 for the purpose of implementing the provisions listed in subsection (1.3) and specifying which decisions of the Director that are subject to the prescribed requirements are also subject to sections 34.10 and 34.11, and**
 - (ii) prescribing requirements that apply to the Director under section 47.5 of the *Environmental Protection Act* for the purpose of implementing the provisions listed in subsection (1.3) and specifying which decisions of the Director that are subject to the prescribed requirements are also subject, with necessary modifications, to sections 34.10 and 34.11;**

(2) Subclause 75 (1.5) (d) (ii) of the Act is amended by striking out "under this Act until" and substituting "under this Act, or any renewable energy approval that has been issued to the person under the *Environmental Protection Act*, until".

(3) Subclause 75 (1.5) (d) (iii) of the Act is amended by striking out "under this Act until" and substituting "under this Act, or to refuse to issue a renewable energy approval to the person under the *Environmental Protection Act*, until".

Commencement

5. (1) Subject to subsections (2) and (3), this Schedule comes into force on the day subsection 4 (1) of Schedule G to the *Green Energy and Green Economy Act, 2009* comes into force.

(2) Subsection 1 (2) comes into force on the later of the following days:

1. The day subsection 4 (1) of Schedule G to the *Green Energy and Green Economy Act, 2009* comes into force.
2. The day subsection 1 (8) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force.

(3) Subsection 4 (1) comes into force on the later of the following days:

1. The day subsection 4 (1) of Schedule G to the *Green Energy and Green Economy Act, 2009* comes into force.
2. The day subsection 1 (18) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force.

SCHEDULE I CO-OPERATIVE CORPORATIONS ACT

1. Clause (d) of the definition of "co-operative basis" in subsection 1 (1) of the *Co-operative Corporations Act* is repealed and the following substituted:

- (d) the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members,
- (i) in accordance with the by-laws of the co-operative if the corporation is a renewable energy co-operative, or
 - (ii) in proportion to the volume of business the members have done with or through the organization if the corporation is not a renewable energy co-operative; ("mode coopératif")

2. The Act is amended by adding the following section:

Renewable energy co-operative

2. (1) For the purposes of this Act, a renewable energy co-operative is a co-operative whose articles restrict the business of the co-operative to,

- (a) generating, within the meaning of the *Electricity Act, 1998*, electricity produced from one or more sources that are renewable energy sources for the purposes of that Act; and
- (b) selling, as a generator within the meaning of that Act, electricity it produces from one or more renewable energy sources.

Ancillary powers

(2) As part of its business of generating and selling electricity produced from one or more renewable energy sources, a renewable energy co-operative,

- (a) may establish or develop one or more generation facilities, within the meaning of the *Electricity Act, 1998*, to generate electricity produced from one or more renewable energy sources; and
- (b) may promote the purchase by electricity users of electricity produced from renewable energy sources.

3. The Act is amended by adding the following section:

Renewable energy co-operative

21.1 The directors of a renewable energy co-operative shall pass one or more by-laws governing how the surplus arising from the business of the co-operative is to be allocated, credited or paid to the members of the co-operative.

4. Subsection 32 (1) of the Act is repealed and the following substituted:

Purchase of preference and membership shares

(1) Subject to subsection (2),

- (a) a co-operative may, with a person's consent, purchase all or a part of the shares in the co-operative held by the person on payment to the person of such amount as they have agreed that does not exceed the sum of the par value of the shares and any premium and unpaid dividends; and
- (b) a co-operative may redeem a member's shares, without the consent of the member, on payment to the member of an amount equal to the lesser of the book value of the shares and the sum of the par value of the shares and any premium and unpaid dividends if,
 - (i) the member has not transacted any business with the co-operative for two years and the co-operative is not a renewable energy co-operative, or
 - (ii) the member, if it is a corporation, is about to be dissolved.

5. Subsection 49 (3) of the Act is repealed and the following substituted:

Termination of membership

(3) The directors of a co-operative without share capital may, by resolution passed by a majority of the board, terminate the membership of a member of the co-operative and, subject to section 67, repay to the member the amount outstanding on any loans to the co-operative that are repayable to the member on demand, together with any accrued interest, if,

(a) the member has not transacted any business with the co-operative for two years and the co-operative is not a renewable energy co-operative; or

(b) the member, if it is a corporation, is about to be dissolved.

6. (1) Subsection 55 (1) of the Act is amended by striking out "Subject to subsection (4)" at the beginning and substituting "Subject to subsections (4) and (6)".

(2) Subsection 55 (3) of the Act is repealed and the following substituted:

Patronage return

(3) The amount that is allocated, credited or paid in each fiscal year to members or non-members of a co-operative other than a renewable energy co-operative is known as the patronage return.

(3) Section 55 of the Act is amended by adding the following subsection:

Renewable energy co-operative

(6) The surplus arising from the business of a renewable energy co-operative in each fiscal year shall be allocated, credited or paid to the members in accordance with the by-laws of the co-operative.

7. Paragraph 18 of subsection 134 (3) of the Act is amended by striking out the portion before subparagraph (i) and substituting the following:

18. In the case of a co-operative, other than a renewable energy co-operative, that transacts business with non-members,

.

8. Subsections 144 (8) and (9) of the Act are repealed and the following substituted:

Exceptions

(8) This section does not apply to the following co-operatives:

1. A co-operative whose articles provide that the co-operative's primary object is to provide employment to its members.
2. A non-profit housing co-operative.
3. A renewable energy co-operative.

Commencement

9. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE J BUILDING CODE ACT, 1992

1. (1) Clause 34 (5) (a) of the *Building Code Act, 1992* is amended by striking out "conservation and environmental integrity" and substituting "conservation, including, without limitation, energy and water conservation, and environmental integrity".

(2) Section 34 of the Act is amended by adding the following subsection:

Review

(6) The Minister shall initiate a review of the building code with reference to standards for energy conservation on or before the day that is six months after the day Schedule J of the *Green Energy and Green Economy Act, 2009* comes into force and thereafter within five years of the end of the previous review.

2. The Act is amended by adding the following section:

Building Code Energy Advisory Council

34.1 (1) The Minister shall establish a council to be known in English as the Building Code Energy Advisory Council and in French as Conseil consultatif des questions énergétiques liées au code du bâtiment.

Same

(2) The Minister may appoint one or more persons to the Council and fix its terms of reference.

Functions

(3) The Council shall,

(a) advise the Minister on the building code with reference to standards for energy conservation; and

(b) perform such other functions as the Minister may specify.

Commencement

3. This Schedule comes into force on the day the *Green Energy and Green Economy Act, 2009* receives Royal Assent.

SCHEDULE K PLANNING ACT

1. Subsection 1 (1) of the *Planning Act* is amended by adding the following definitions:

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'énergie renouvelable")

"renewable energy testing facility" has the same meaning as in the *Green Energy Act, 2009*; ("installation d'évaluation du potentiel en énergie renouvelable")

"renewable energy testing project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'évaluation du potentiel en énergie renouvelable")

"renewable energy undertaking" means a renewable energy generation facility, a renewable energy project, a renewable energy testing facility or a renewable energy testing project; ("entreprise d'énergie renouvelable")

2. (1) Subsection 50 (3) of the Act is amended by adding the following clause:

(d.1) the land or any use of or right therein is being acquired, directly or by entitlement to renewal for a period of 21 or more years but not more than 50 years, for the purpose of a renewable energy generation facility or renewable energy project, and in respect of which the person acquiring the land or any use of or right therein has made a declaration that it is being acquired for such purpose, which shall be conclusive evidence that it is being acquired for such purpose;

(2) Subsection 50 (5) of the Act is amended by adding the following clause:

(c.1) the land or any use of or right therein is being acquired, directly or by entitlement to renewal for a period of 21 or more years but not more than 50 years, for the purpose of a renewable energy generation facility or renewable energy project, and in respect of which the person acquiring the land or any use of or right therein has made a declaration that it is being acquired for such purpose, which shall be conclusive evidence that it is being acquired for such purpose;

3. The Act is amended by adding the following section:

Renewable energy undertakings

Policy statements and provincial plans

62.0.2 (1) Despite any Act or regulation, the following do not apply to a renewable energy undertaking, except in relation to a decision under section 28 or Part VI:

1. A policy statement issued under subsection 3 (1).
2. A provincial plan, subject to subsection (2).

Exception

- (2) Subsection (1) does not apply in respect of,
- (a) the Niagara Escarpment Plan;
 - (b) another provincial plan, if the provincial plan is prescribed for the purposes of this subsection; or
 - (c) a provision of another provincial plan, if the provision is prescribed for the purposes of this subsection.

Official plans

(3) For greater certainty, an official plan does not affect a renewable energy undertaking.

Same

- (4) Section 24 does not apply to,
- (a) the undertaking of a public work that is a renewable energy undertaking or is intended to facilitate or support a renewable energy undertaking;
 - (b) the passing of a by-law with respect to a public work described in clause (a); or
 - (c) the passing of a by-law that is intended to facilitate or support a renewable energy undertaking.

Demolition control area

(5) A by-law passed under section 33 does not apply to a renewable energy undertaking.

By-laws and orders under Part V

(6) A by-law or order passed or made under Part V does not apply to a renewable energy undertaking.

Transition, existing agreements

(7) An agreement that is entered into under Part V before the day subsection 4 (1) of Schedule G to the *Green Energy and Green Economy Act, 2009* comes into force applies to a renewable energy project, and to any related renewable energy testing facility and renewable energy testing project, until the day a renewable energy approval is issued under section 47.5 of the *Environmental Protection Act* in relation to the renewable energy project.

Development permit system

(8) A regulation or by-law made or passed under section 70.2 does not apply to a renewable energy undertaking.

City of Toronto Act, 2006, ss. 113, 114

(9) A by-law passed under section 113 or 114 of the *City of Toronto Act, 2006* does not apply to a renewable energy undertaking.

Ontario Planning and Development Act, 1994, s. 17

(10) An order made under section 17 of the *Ontario Planning and Development Act, 1994* does not apply to a renewable energy undertaking.

Commencement

4. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE L
MINISTRY OF NATURAL RESOURCES**

CLEAN WATER ACT, 2006

1. The French version of clause 39 (5) (c) of the *Clean Water Act, 2006* is amended by striking out "plan de l'escarpement du Niagara" and substituting "Plan d'aménagement de l'escarpement du Niagara".

CONSERVATION AUTHORITIES ACT

2. Section 28 of the *Conservation Authorities Act* is amended by adding the following subsection:

Grounds for refusing permission

(13.1) If the permission that the person requests is for development related to a renewable energy project, as defined in section 1 of the *Green Energy Act, 2009*, the authority or executive committee, as the case may be,

- (a) shall not refuse the permission unless it is necessary to do so to control pollution, flooding, erosion or dynamic beaches; and
- (b) shall not impose conditions unless they relate to controlling pollution, flooding, erosion or dynamic beaches.

CONSERVATION LAND ACT

3. The French version of the definition of "Niagara Escarpment Planning Area" in section 1 of the *Conservation Land Act* is amended by striking out "plan de l'escarpement du Niagara" and substituting "Plan d'aménagement de l'escarpement du Niagara".

ENVIRONMENTAL PROTECTION ACT

4. The French version of subsection 27 (2) of the *Environmental Protection Act* is amended by striking out "plan de l'escarpement du Niagara" and substituting "Plan d'aménagement de l'escarpement du Niagara".

GREENBELT ACT, 2005

5. The French version of the following provisions of the *Greenbelt Act, 2005* is amended by striking out "plan de l'escarpement du Niagara" wherever that expression appears and substituting in each case "Plan d'aménagement de l'escarpement du Niagara":

- 1. The definition of "Niagara Escarpment Plan" in subsection 1 (1).**
- 2. Clause 2 (2) (b).**
- 3. Section 4.**
- 4. Subsection 8 (2).**
- 5. Clause 22 (1) (c).**

MINISTRY OF NATURAL RESOURCES ACT

6. The *Ministry of Natural Resources Act* is amended by adding the following section:

Information relating to renewable energy projects

13.2 The Minister may require that the proponent of a renewable energy project, as defined in section 1 of the *Green Energy Act, 2009*, provide to the Minister the information or studies that the Minister considers necessary before the Minister issues a permit or approval under an Act for whose administration the Minister is responsible under the *Executive Council Act*.

NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT

7. The French version of the following provisions of the *Niagara Escarpment Planning and Development Act* is amended by striking out "plan de l'escarpement du Niagara" wherever that expression appears and substituting in each case "Plan d'aménagement de l'escarpement du Niagara":

- 1. The definition of "Niagara Escarpment Plan" in section 1.**
- 2. Subsection 3 (2).**
- 3. Subsection 4 (1).**
- 4. Subsection 4 (2).**
- 5. Subsection 6.1 (2).**
- 6. Section 7.**
- 7. Section 8.**
- 8. Section 9 in the portion before clause (a).**
- 9. Subsection 10 (1) in the portion before clause (a).**

- 10. Clause 10 (11) (b).**
- 11. Subsection 10 (15).**
- 12. Section 11.**
- 13. Section 12.**
- 14. Subsection 13 (1) in the portion before clause (a).**
- 15. Subsection 13 (2).**
- 16. Section 14.**
- 17. Subsection 15 (1).**
- 18. Subsection 15 (2).**
- 19. Section 16.**
- 20. Subsection 17 (1).**
- 21. Subsection 17 (5).**
- 22. Subsection 18 (1).**
- 23. Subsection 18 (2) in the portion before clause (a).**
- 24. Clauses 19 (1) (a) and (b).**
- 25. Subsection 19 (2) in the portion before clause (a).**
- 26. Subsection 19 (3).**
- 27. Section 20.**
- 28. Subsection 21 (1).**
- 29. Section 23.1.**
- 30. Subsection 25 (4).**
- 31. Subsection 27 (1).**
- 32. Clauses 28 (1) (a) and (b).**

8. The French version of the definition of "Niagara Escarpment Plan" in section 1 of the Act is amended by striking out "le plan" and substituting "le Plan".

9. (1) The French version of the following provisions of the Act is amended by striking out "du plan" wherever that expression appears and substituting in each case "du Plan":

- 1. Subsection 6.1 (2).**
- 2. Subsection 6.1 (2.1).**

(2) The French version of subsections 6.1 (2.2) and (2.3) of the Act is repealed and the following substituted:

Restriction : demandes de modification du Plan

(2.2) Une personne ou un organisme public ne doit pas présenter une demande de modification du Plan d'aménagement de l'escarpement du Niagara si la demande se rapporte à un bien-fonds appartenant à la désignation d'utilisation du sol «zone naturelle», «zone protégée», «zone d'extraction de ressources minérales» ou «zone rurale», au sens du Plan et qu'elle vise, selon le cas :

- a) à attribuer au bien-fonds la nouvelle désignation d'utilisation du sol «petit centre urbain», «zone urbaine» ou «zone récréative», au sens du Plan;
- b) à apporter toute autre modification pour autoriser des utilisations urbaines.

Exception

(2.3) Malgré le paragraphe (2.2), peut être présentée pendant l'examen visé au paragraphe 17 (1) une demande ou une proposition visant à attribuer à un bien-fonds, dans le Plan d'aménagement de l'escarpement du Niagara, la nouvelle désignation d'utilisation du sol «petit centre urbain», «zone urbaine» ou «zone récréative», au sens du Plan ou visant à modifier celui-ci pour autoriser des utilisations urbaines. Toutefois, elle ne peut être examinée pendant l'examen que si elle est comprise dans les paramètres établis pour celui-ci en application du paragraphe 17 (2).

10. The French version of section 8 of the Act is amended by striking out "au plan" in the portion before clause (a) and substituting "au Plan".

11. The French version of the following provisions of the Act is amended by striking out "plan" wherever that expression appears and substituting in each case "Plan":

- 1. Clause 9 (e).**
- 2. Clause 9 (f).**
- 3. Section 9 in the portion after clause (f).**

12. (1) The French version of clauses 13 (1) (a) and (b) of the Act is amended by striking out "le plan" wherever that expression appears and substituting in each case "le Plan".

(2) The French version of subsection 13 (2) of the Act is amended by striking out "du plan" and substituting "du Plan".

13. Subsection 15 (2) of the Act is amended by striking out "Minister of Municipal Affairs" at the end and substituting "Minister of Municipal Affairs and Housing".

14. (1) The French version of the following provisions of the Act is amended by striking out "plan" wherever that expression appears and substituting in each case "Plan":

1. Subsection 17 (3).

2. Subsection 17 (4).

(2) The French version of subsection 17 (5) of the Act is amended by striking out "Le plan confirmé" at the beginning and substituting "Le Plan confirmé".

15. (1) The French version of clause 19 (2) (b) of the Act is amended by striking out "au plan" and substituting "au Plan".

(2) Section 19 of the Act is amended by adding the following subsection:

Definition of utility

(2.1) On the day the *Green Energy Act, 2009* comes into force, the definition of "utility" in Appendix 2 of the Niagara Escarpment Plan is revoked and the following substituted:

Utility — a water supply; storm or sanitary sewage system; gas or oil pipeline; the generation, transmission and distribution of electric power, including renewable energy projects as defined in the *Green Energy Act, 2009*, commercial or otherwise, and all associated infrastructure; the generation, transmission and distribution of steam or hot water; telegraph and telephone lines and other cabled services; a public transportation system; licensed broadcasting, receiving and transmitting facilities; or any other similar works or systems necessary to the public interest, but does not include:

- the establishment of a new waste disposal site;
- any expansion or alteration to an existing waste disposal site from what has been approved under the applicable legislation (including any expansion in area or height of a landfill site or any change in the type of waste material being disposed);
- incineration facilities (including energy from waste facilities); or
- large scale packer and/or recycling plants or similar uses.

(3) Subsection 19 (3) of the Act is amended by striking out "the amendment referred to in clause (1) (b)" and substituting "the amendments described in clause (1) (b) and subsection (2.1)".

16. The French version of the following provisions of the Act is amended by striking out "du plan" wherever that expression appears and substituting in each case "du Plan":

1. Section 20.

2. Section 23.1.

17. The French version of subsection 27 (1) of the Act is amended by striking out "au plan" and substituting "au Plan".

PLACES TO GROW ACT, 2005

18. The French version of clause 14 (5) (c) of the *Places to Grow Act, 2005* is amended by striking out "plan de l'escarpement du Niagara" and substituting "Plan d'aménagement de l'escarpement du Niagara".

PLANNING ACT

19. The French version of clause (b) of the definition of "provincial plan" in subsection 1 (1) of the *Planning Act* is amended by striking out "plan de l'escarpement du Niagara" and substituting "Plan d'aménagement de l'escarpement du Niagara".

PROVINCIAL PARKS AND CONSERVATION RESERVES ACT, 2006

20. Subsection 19 (2) of the *Provincial Parks and Conservation Reserves Act, 2006* is amended by striking out "and subject to the approval of the Lieutenant Governor in Council" and substituting "and subject to the approval of the Minister".

21. Section 21 of the Act is repealed and the following substituted:

Conditions for approval

21. In approving the development of a facility for the generation of electricity under subsection 19 (2), (3) or (4) or approving a resource access road or trail or a utility corridor under section 20, the Minister must be satisfied that the following conditions are met:

1. There are no reasonable alternatives.
2. Lowest cost is not the sole or overriding justification.
3. Environmental impacts have been considered and all reasonable measures will be undertaken to minimize harmful environmental impact and to protect ecological integrity.

PUBLIC LANDS ACT

22. The French version of subsection 12.4 (4) of the *Public Lands Act* is amended by striking out "confirmer" and substituting "conformer".

23. Subsection 42 (1) of the Act is amended by striking out "Subject to the approval of the Lieutenant Governor in Council" at the beginning.

24. The Act is amended by adding the following section:

Compliance with agreement or permit

69.1 (1) A person who has entered into an agreement, including a lease, a licence or an easement, with the Crown under this Act or to whom a permit to occupy public lands has been issued under this Act shall comply with the agreement or permit, as the case may be.

Offence

(2) A person who contravenes subsection (1) is guilty of an offence.

Compliance order

(3) A court that convicts a person of an offence under subsection (2) may, in addition to imposing a fine, order the person to take the action that the court specifies, within the time period that the court specifies, to come back into compliance, in the manner that the court considers appropriate, with the agreement or permit with which the person has failed to comply.

COMMENCEMENT**Commencement**

25. This Schedule comes into force on the day the *Green Energy and Green Economy Act, 2009* receives Royal Assent.

Green Energy Act, 2009

S.O. 2009, CHAPTER 12 SCHEDULE A

Preamble

The Government of Ontario is committed to fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy.

The Government of Ontario is committed to ensuring that the Government of Ontario and the broader public sector, including government-funded institutions, conserve energy and use energy efficiently in conducting their affairs.

The Government of Ontario is committed to promoting and expanding energy conservation by all Ontarians and to encouraging all Ontarians to use energy efficiently.

PART I INTERPRETATION AND GENERAL APPLICATION

Definitions and interpretation

Definitions

1. (1) In this Act,

“distribution system” has the same meaning as in the *Electricity Act, 1998*; (“réseau de distribution”)

“generation facility” has the same meaning as in the *Electricity Act, 1998*; (“installation de production”)

“Minister” means the Minister of Energy or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“prescribed” means prescribed by a regulation made under this Act; (“prescrit”)

“public agency” means a ministry of the Government of Ontario or an entity, including a municipality, or class of entities that is prescribed as a public agency; (“organisme public”)

“regulation” means a regulation made under this Act; (“règlement”)

“renewable energy generation facility” has the same meaning as in the *Electricity Act, 1998*; (“installation de production d’énergie renouvelable”)

“renewable energy project” means the construction, installation, use, operation, changing or retiring of a renewable energy generation facility; (“projet d’énergie renouvelable”)

“renewable energy source” means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source; (“source d’énergie renouvelable”)

“renewable energy testing facility” means devices or structures to be used to gather information about natural conditions at the location of the structures or devices and related infrastructure and that meet such criteria as may be prescribed by the regulations; (“installation d’évaluation du potentiel en énergie renouvelable”)

“renewable energy testing project” means the construction, installation, use, operation, changing or retiring of a renewable energy testing facility; (“projet d’évaluation du potentiel en énergie renouvelable”)

“transmission system” has the same meaning as in the *Electricity Act, 1998*. (“réseau de transport”) 2009, c. 12, Sched. A, s. 1 (1); 2011, c. 9, Sched. 27, s. 27.

Interpretation

(2) This Act shall be interpreted in a manner that is consistent with section 35 of the *Constitution Act, 1982* and with the duty to consult aboriginal peoples. 2009, c. 12, Sched. A, s. 1 (2).

Administration, community consultation

2. This Act shall be administered in a manner that promotes community consultation. 2009, c. 12, Sched. A, s. 2.

Note: Section 3 comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 12, Sched. A, s. 19.

Mandatory home efficiency disclosure

3. (1) A person making an offer to purchase an interest in real property has the right to receive from the person offering to sell the property such information, reports or ratings as are prescribed,

(a) relating to energy consumption and efficiency with respect to a prescribed residence on the property or a class of prescribed residences on the property; and

(b) in such circumstances and at such times as are prescribed and in such manner as is prescribed. 2009, c. 12, Sched. A, s. 3 (1).

Provision before accepting offer

(2) The person offering to sell the property shall, in accordance with subsection (1), provide the information, reports or ratings to the person making the offer to purchase before accepting that person's offer. 2009, c. 12, Sched. A, s. 3 (2).

Waiver

(3) Subsections (1) and (2) do not apply where the person making the offer waives, in writing, the provision and receipt of the information, reports or ratings. 2009, c. 12, Sched. A, s. 3 (3).

Agent

(4) A person acting as an agent on behalf of the person offering to sell shall inform that person promptly of any request for the information, reports or ratings. 2009, c. 12, Sched. A, s. 3 (4).

Same

(5) Subsection (4) applies only to agents acting for or in anticipation of receiving valuable consideration with respect to the offer to sell. 2009, c. 12, Sched. A, s. 3 (5).

Make available

(6) In this section, the obligation to provide information, reports or ratings is satisfied where the person offering to sell makes the information, reports or ratings reasonably available to the person making the offer to purchase. 2009, c. 12, Sched. A, s. 3 (6).

PART II

DESIGNATED GOODS, SERVICES AND TECHNOLOGIES AND RENEWABLE ENERGY PROJECTS AND ENERGY CONSERVATION IN THE PUBLIC SECTOR

Permissive designation of goods, services and technologies

4. (1) The Lieutenant Governor in Council may, by regulation, designate goods, services and technologies in order to promote energy conservation. 2009, c. 12, Sched. A, s. 4 (1).

Effect of designation

(2) A person is permitted to use designated goods, services and technologies in such circumstances as may be prescribed, despite any restriction imposed at law

that would otherwise prevent or restrict their use, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement. 2009, c. 12, Sched. A, s. 4 (2).

Same

(3) A restriction imposed at law that would otherwise prevent or restrict the use of designated goods, services or technologies is inoperative to the extent that it would otherwise prevent or restrict the use. 2009, c. 12, Sched. A, s. 4 (3).

Exception

(4) Subsections (2) and (3) do not apply with respect to a restriction imposed by an Act or regulation. 2009, c. 12, Sched. A, s. 4 (4).

Permissive designation of renewable energy projects, etc.

5. (1) The Lieutenant Governor in Council may, by regulation, designate renewable energy projects, renewable energy sources or renewable energy testing projects for the following purposes:

1. To assist in the removal of barriers to and to promote opportunities for the use of renewable energy sources.
2. To promote access to transmission systems and distribution systems for proponents of renewable energy projects. 2009, c. 12, Sched. A, s. 5 (1).

Effect of designation

(2) A person is permitted to engage in activities with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict the activity, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement. 2009, c. 12, Sched. A, s. 5 (2).

Same

(3) A restriction imposed at law that would otherwise prevent or restrict an activity with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project is inoperative to the extent that it would otherwise prevent or restrict the activity. 2009, c. 12, Sched. A, s. 5 (3).

Exception

- (4) Subsections (2) and (3) do not apply,
- (a) with respect to a restriction imposed by an Act or regulation; or
 - (b) with respect to prescribed by-laws, instruments or other restrictions or prescribed classes of by-laws, instruments or other restrictions. 2009, c. 12, Sched. A, s. 5 (4).

Energy conservation and demand management plans

Public agencies

6. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to prepare an energy conservation and demand management plan. 2009, c. 12, Sched. A, s. 6 (1).

Prescribed consumers

(2) The Lieutenant Governor in Council may, by regulation, require prescribed consumers to prepare an energy conservation and demand management plan. 2009, c. 12, Sched. A, s. 6 (2).

Same, regulations

(3) The regulations may provide that the plan required under subsection (1) or (2) cover such period as is prescribed and may be required at such intervals as are prescribed and may require that the plan be filed with the Ministry. 2009, c. 12, Sched. A, s. 6 (3).

Specified targets and standards, public agencies

(4) The Lieutenant Governor in Council may, by regulation, require a public agency to achieve prescribed targets and meet prescribed energy and environmental standards, including standards for energy conservation and demand management. 2009, c. 12, Sched. A, s. 6 (4).

Contents, public agencies

(5) For the purposes of subsection (1), the plan must be prepared in accordance with the requirements, as may be prescribed, and must include the following information:

1. A summary of annual energy consumption for each of the public agency's operations.
2. A description and a forecast of the expected results of current and proposed activities and measures to conserve the energy consumed by the public agency's operations and to otherwise reduce the amount of energy consumed by the public agency, including by employing such energy conservation and demand management methods as may be prescribed.
3. A summary of the progress and achievements in energy conservation and other reductions described in paragraph 2 since the previous plan.
4. Such additional information as may be prescribed. 2009, c. 12, Sched. A, s. 6 (5).

Contents, prescribed consumers

(6) For the purposes of subsection (2), the plan must be prepared in accordance with such requirements as may be prescribed. 2009, c. 12, Sched. A, s. 6 (6).

Publication

(7) The public agency shall publish the plan in accordance with such requirements as may be prescribed. 2009, c. 12, Sched. A, s. 6 (7).

Implementation

(8) The public agency or prescribed consumer shall implement the plan and shall do so in accordance with such requirements as may be prescribed. 2009, c. 12, Sched. A, s. 6 (8).

Joint plans, public agencies

7. (1) Two or more public agencies may prepare a joint energy conservation and demand management plan and may publish and implement it jointly. 2009, c. 12, Sched. A, s. 7 (1).

Effect

(2) If the joint plan satisfies the requirements established under section 6, the public agencies are not required to prepare, publish and implement separate energy conservation and demand management plans for the same period. 2009, c. 12, Sched. A, s. 7 (2).

Duty to consider energy conservation, etc.**When acquiring goods and services**

8. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency in their acquisition of goods and services and to comply with such requirements as may be prescribed for that purpose. 2009, c. 12, Sched. A, s. 8 (1).

When making capital investments

(2) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency when making capital investments and to comply with such requirements as may be prescribed for that purpose. 2009, c. 12, Sched. A, s. 8 (2).

Transactions, arrangements or agreements to promote conservation, etc.

9. The Minister may enter into such transactions, arrangements or agreements as are necessary to promote energy conservation and energy efficiency and the transactions, arrangements or agreements must conform to such requirements as may be prescribed. 2009, c. 12, Sched. A, s. 9.

Government facilities, guiding principles

10. (1) In constructing, acquiring, operating and managing government facilities, the Government of Ontario shall be guided by the following principles:

1. Clear and transparent reporting of,
 - i. energy use associated with government facilities,
 - ii. the amount of greenhouse gas emissions associated with government facilities, and

- iii. water use associated with government facilities.
- 2. Planning and designing government facilities to ensure the efficient use of energy and water.
- 3. Making environmentally and financially responsible investments in government facilities.
- 4. Using renewable energy sources to provide energy for government facilities.
- 5. Using technologies, services and practices that promote the efficient use of water and reduce negative impacts on Ontario's water resources. 2009, c. 12, Sched. A, s. 10 (1); 2010, c. 19, Sched. 4, s. 1 (1, 2).

Directives

- (2) The Minister may, with the approval of the Lieutenant Governor in Council, issue directives,
- (a) requiring the ministries responsible for the government facilities that the Minister specifies in the directive to report to the Minister, at such time and in such manner as may be provided for in the directive, on energy consumption, greenhouse gas emissions and water use associated with the facilities;
 - (b) establishing energy, water conservation and environmental standards which must be met as minimum standards for new construction or major renovations for government facilities; and
 - (c) specifying such other requirements as the Minister considers appropriate relating to energy conservation, energy efficiency, water conservation, the adoption of renewable energy technologies, and the adoption of technologies and services that promote the efficient use of water and reduce negative impacts on Ontario's water resources. 2009, c. 12, Sched. A, s. 10 (2); 2010, c. 19, Sched. 4, s. 1 (3).

Same

- (3) In a directive, the Minister may,
- (a) designate or specify the government facilities or class of government facilities to which the directive applies and may specify which part of a directive applies to which facility or class of facilities;
 - (b) specify the content of a report required under clause (2) (a); and
 - (c) specify the time in which a ministry must provide the report. 2009, c. 12, Sched. A, s. 10 (3); 2010, c. 19, Sched. 4, s. 1 (4).

Publication

(4) Part III of the *Legislation Act, 2006* does not apply to a directive, but the Minister shall ensure that directives are published in *The Ontario Gazette*. 2009, c. 12, Sched. A, s. 10 (4).

Definition

(5) In this section,

“government facilities” means government owned or occupied buildings, properties and facilities or such classes of buildings, properties and facilities as the Minister may by directive designate. 2009, c. 12, Sched. A, s. 10 (5).

Renewable Energy Facilitation Office

11. (1) There shall be created, within the Ministry, an office to be known in English as the Renewable Energy Facilitation Office and in French as Bureau de facilitation en matière d’énergie renouvelable. 2009, c. 12, Sched. A, s. 11 (1).

Objects of the Office

(2) The following are the objects of the Office:

1. To facilitate the development of renewable energy projects.
2. To work with proponents of renewable energy projects and other ministries to foster the development of renewable energy projects across Ontario and to assist proponents with satisfying the requirements of associated approval processes and procedures, including providing proponents with information in respect of interactions with local communities.
3. To work with proponents of renewable energy projects to alert them to potential requirements imposed by the Government of Canada. 2009, c. 12, Sched. A, s. 11 (2).

Renewable Energy Facilitator

(3) The Office shall be supervised by a person employed in the Ministry and designated as the Renewable Energy Facilitator. 2009, c. 12, Sched. A, s. 11 (3).

Facilitator’s authority to collect information

12. (1) The Renewable Energy Facilitator is authorized to collect, directly or indirectly, and share information about the proponent of a renewable energy project, the proponent’s project and the process or processes associated with the approval by any ministry of the project. 2009, c. 12, Sched. A, s. 12 (1).

Records maintained in confidence

(2) The Renewable Energy Facilitator, or a person employed in the Renewable Energy Facilitation Office, shall maintain in confidence,

- (a) a record or information relating to a renewable energy project of a proponent that has been supplied to the Facilitator by the proponent or

that has been obtained by the Facilitator from another institution, person or entity; and

- (b) a record or information maintained in the Renewable Energy Facilitation Office that would reveal a record or information relating to a renewable energy project of a proponent that has been supplied to the Facilitator by the proponent or another person or entity. 2009, c. 12, Sched. A, s. 12 (2).

Exception

(3) Despite subsection (2), the Renewable Energy Facilitator, or a person employed in the Renewable Energy Facilitation Office, may disclose a record or information,

- (a) where the proponent to whom the record or information relates consents to its disclosure;
- (b) where the disclosure is necessary to achieve the objects of the Office;
- (c) to counsel or to an advisor to the Renewable Energy Facilitation Office;
- (d) for the purpose of complying with an Act of the Legislature or an Act of Parliament;
- (e) as authorized under the *Regulatory Modernization Act, 2007*;
- (f) where disclosure is to an institution or a law enforcement agency in Canada to aid a law enforcement investigation; or
- (g) where disclosure is further to an order of a tribunal. 2009, c. 12, Sched. A, s. 12 (3).

Information deemed to have been supplied in confidence

(4) A record or information to which subsection (2) applies is deemed, for the purposes of section 17 of the *Freedom of Information and Protection of Privacy Act*, to have been supplied by the proponent in confidence to the Renewable Energy Facilitation Office. 2009, c. 12, Sched. A, s. 12 (4).

Record or information deemed to be supplied in confidence

(5) A record or information to which subsection (2) applies that the Renewable Energy Facilitator or a person employed in the Renewable Energy Facilitation Office supplies to a person employed in the Ministry or to another institution is deemed, for the purposes of section 17 of the *Freedom of Information and Protection of Privacy Act*, to have been supplied by the proponent in confidence to that person or institution. 2009, c. 12, Sched. A, s. 12 (5).

Definition

- (6) In this section,

“institution” has the same meaning as in the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. 2009, c. 12, Sched. A, s. 12 (6).

Testimony

13. Neither the Renewable Energy Facilitator nor any person employed in the Renewable Energy Facilitation Office or the Ministry shall be required to give evidence in a civil proceeding with respect to information obtained in the course of fulfilling the objects of the Office. 2009, c. 12, Sched. A, s. 13.

PART III ENERGY EFFICIENCY

Application

14. This Part applies to prescribed appliances and products. 2009, c. 12, Sched. A, s. 14.

Appliances and products, efficiency standards

15. (1) No person shall offer for sale, sell or lease an appliance or product to which this Part applies unless,

- (a) the appliance or product meets the prescribed efficiency standard or requirement with respect to the appliance or product; and
- (b) a prescribed label or other prescribed marking that confirms compliance with prescribed efficiency standards or requirements in respect of the appliance or product is affixed to the appliance or product or provided with the appliance or product in the prescribed manner and under the prescribed circumstances. 2009, c. 12, Sched. A, s. 15 (1).

Labels

(2) No person shall affix to or provide with an appliance or product to which this Part applies a prescribed label or other prescribed marking unless the appliance or product meets the prescribed efficiency standard or requirement with respect to the appliance or product. 2009, c. 12, Sched. A, s. 15 (2).

Application of subs. (1)

- (3) Subsection (1) does not apply to,
 - (a) an appliance or product that is manufactured on or before a prescribed date and that is sold or leased on or before a prescribed date; or
 - (b) a person who is not in the business of offering for sale, selling or leasing appliances or products to which this Part applies. 2009, c. 12, Sched. A, s. 15 (3).

PART IV REGULATIONS

Regulations

16. (1) The Lieutenant Governor in Council may make regulations prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations. 2009, c. 12, Sched. A, s. 16 (1).

Examples

(2) As examples of matters about which the Lieutenant Governor in Council may make regulations, the Lieutenant Governor in Council may make regulations:

- (a) governing renewable energy testing facilities in relation to,
 - (i) planning, design, siting, buffer zones, notification and consultation, establishment, insurance, facilities, staffing, operation, maintenance, monitoring, record-keeping and improvement, and
 - (ii) the discontinuance of the operation of any part of the renewable energy testing facility;
- (b) governing the location of renewable energy testing facilities, including prohibiting or regulating the construction, installation, use, operation or changing of renewable energy testing facilities in parts of Ontario;
- (c) prescribing appliances and products to which Part III applies;
- (d) prescribing energy efficiency standards or requirements for the appliances or products prescribed under clause (c);
- (e) regulating the installation, testing, maintenance and repair of appliances and products to which Part III applies;
- (f) designating persons or organizations to test appliances and products to which Part III applies;
- (g) for the purposes of Part III, providing for the placing of a prescribed label or mark on or with appliances and products that conform to the prescribed standards;
- (h) prescribing the contents of labels or marks that may be placed on or with appliances and products to which Part III applies;
- (i) for the purposes of Part III, prescribing fees to be paid to designated persons or organizations for the testing or labelling of appliances and products and prescribing by whom the fees shall be paid;
- (j) providing for information to be reported by persons who manufacture, offer for sale, sell or lease appliances or products to which Part III applies, including the frequency, time and manner for reporting;

- (k) governing the keeping of information, records and documents by persons who manufacture, offer for sale, sell or lease appliances or products to which Part III applies. 2009, c. 12, Sched. A, s. 16 (2); 2010, c. 19, Sched. 4, s. 3.

Incorporation of documents

(3) A regulation under this Act that incorporates another document by reference may provide that the reference to the document include amendments made to the document from time to time after the regulation is made. 2009, c. 12, Sched. A, s. 16 (3).

Defining words or expressions

(4) A regulation under this Act may define any word or expression used in this Act that is not defined in this Act. 2009, c. 12, Sched. A, s. 16 (4).

Classes of persons, etc.

(5) A regulation may create different classes of persons, entities, appliances or products and may establish different entitlements for, or relating to, each class or impose different requirements, conditions or restrictions on, or relating to, each class. 2009, c. 12, Sched. A, s. 16 (5).

Exemptions, etc.

(6) A regulation may exempt a class or a person, entity, appliance or product from a specified requirement imposed by this Act or a regulation or provide that a specified provision of this Act or a regulation does not apply to the class, person, entity, appliance or product and may prescribe conditions for the exemption. 2009, c. 12, Sched. A, s. 16 (6).

Regulations, transition

17. The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of this Act. 2009, c. 12, Sched. A, s. 17.

18. Omitted (amends, repeals or revokes other legislation). 2009, c. 12, Sched. A, s. 18.

19. Omitted (provides for coming into force of provisions of this Act). 2009, c. 12, Sched. A, s. 19.

20. Omitted (enacts short title of this Act). 2009, c. 12, Sched. A, s. 20.

ENERGY CONSERVATION ACT RESPONSIBILITY ACT, 2006

CHAPTER 3

An Act to enact the Energy Conservation Leadership Act, 2006 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act

Assented to March 28, 2006

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Same

(2) The Schedules to this Act come into force as provided in each Schedule.

Same

(3) If a Schedule to this Act provides that any provision comes into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Energy Conservation Responsibility Act 2006*.

SCHEDULE A

ENERGY CONSERVATION LEADERSHIP ACT, 2006

Preamble

The Government of Ontario is committed to removing barriers to, and promoting opportunities for, energy conservation and to using energy efficiently in conducting its affairs.

Definitions

1. In this Act,

"enforcement officer" means a person designated under section 9 as an enforcement officer; ("agent d'exécution")

"prescribed" means prescribed by a regulation made under this Act; ("prescrit")

"public agency" means a ministry of the Government of Ontario or an entity, including a municipality, or class of entities that is prescribed as a public agency. ("organisme public")

Mandatory conservation practices

2. (1) The Lieutenant Governor in Council may, by regulation, require persons who are selling, leasing or otherwise transferring an interest in real property or personal property to provide such information as is prescribed in such circumstances as are prescribed.

Effect of non-compliance

(2) A regulation may provide for consequences if a person fails to comply with a requirement established under this section, including consequences if the non-compliance occurs in the context of an activity for which a permit or other type of authorization is required under any Act.

Same

(3) A regulation may provide for the manner in which any matters required for the purposes of subsection (2) are determined and may authorize an enforcement officer to make the determinations.

Notice of non-compliance

(4) A regulation may provide for the manner in which notice relating to the non-compliance is given to the appropriate official for the purposes of subsection (2).

Permissive designation of goods, services and technologies

3. (1) In order to assist in the removal of barriers and to promote opportunities for energy conservation, the Lieutenant Governor in Council may, by regulation, designate goods, services and technologies.

Effect of designation

(2) A person is permitted to use designated goods, services and technologies in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict their use, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement.

Same

(3) A restriction imposed at law that would otherwise prevent or restrict the use of designated goods, services or technologies is inoperative.

Exception

(4) Subsections (2) and (3) do not apply with respect to a restriction imposed by an Act or regulation.

Energy conservation plans

4. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to prepare an annual energy conservation plan or, if the regulations so provide, an energy conservation plan respecting such other period as may be prescribed.

Specified targets

(2) The Lieutenant Governor in Council may, by regulation, require a public agency to which subsection (1) applies to achieve prescribed energy conservation targets.

Contents

(3) The plan must be prepared in accordance with such requirements as may be prescribed and must include the following information:

1. An itemized description of the public agency's significant energy-consuming technologies and operations.
2. A summary of annual energy usage for each of the public agency's technologies and operations.
3. A description of current and proposed activities and measures to conserve the energy used by the public agency's technologies and in the public agency's operations and to otherwise reduce the amount of energy used by the public agency.
4. A summary of the progress and achievements in energy conservation and other reductions described in paragraph 3 since the previous plan.
5. Such additional information as may be prescribed.

Publication

(4) The public agency shall publish the plan in accordance with such requirements as may be prescribed.

Implementation

(5) The public agency shall implement the plan and shall do so in accordance with such requirements as may be prescribed.

Joint plans

5. (1) Two or more persons may prepare a joint energy conservation plan and may publish and implement it jointly.

Effect

(2) If the joint plan satisfies the requirements established under section 4, the persons are not required to prepare, publish and implement separate energy conservation plans for the same period.

Duty to consider energy conservation, etc.**When acquiring goods and services**

6. (1) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency in their acquisition of goods and services and to comply with such requirements as may be prescribed for that purpose.

When making capital investments

(2) The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency when making capital investments and to comply with such requirements as may be prescribed for that purpose.

Agreements to promote conservation, etc.

7. The Minister of Energy may enter into agreements to promote energy conservation and energy efficiency and the agreements must conform to such requirements as may be prescribed.

Compliance orders

8. (1) This section applies if, in the opinion of an enforcement officer,
- (a) a person has contravened or failed to comply with a requirement established under this Act; or
 - (b) a person has prevented or interfered with another person's permitted use of designated goods, services or technologies under section 3.

Proposal re order

(2) The enforcement officer may propose to order the person to cease committing an act or to perform such acts as, in the enforcement officer's opinion, are necessary to remedy the situation.

Notice of proposal

(3) The enforcement officer shall give written notice of the proposed order to the person, including the reasons for the proposal, and shall also inform the person that he, she or it can request a hearing by the Ontario Energy Board about

the proposed order and shall advise the person about the process for requesting the hearing.

Hearing requested

(4) If the person requests a hearing and makes the request in the prescribed manner within 15 days after receiving notice of the proposed order, the Board shall hold a hearing.

Energy conservation guiding objective

(5) Despite subsection 1 (1) of the *Ontario Energy Board Act, 1998*, for the purpose of a hearing under subsection (4), the Board shall be guided by the objective of promoting energy conservation.

Order of Board

(6) The Board may, by order, direct the enforcement officer to carry out the proposed order or, if the Board considers the proposed order to be unreasonable, the Board may substitute its opinion for that of the enforcement officer and may, by order, direct the enforcement officer not to carry out the proposed order or direct him or her to carry it out with such changes as the Board considers appropriate.

Hearing not requested

(7) If the person does not request a hearing or does not make the request in the prescribed manner within 15 days after receiving notice of the proposed order, the enforcement officer may carry out the proposed order.

Court enforcement

(8) The enforcement officer may file a certified copy of an order made under this section in the Superior Court of Justice and the Court may enforce the order in such manner as the Court considers just in the circumstances.

Designation of enforcement officer

9. The Minister of Energy may, in writing, designate one or more persons who are employed in the Ministry of Energy to act as enforcement officers for the purposes of this Act and may impose such conditions relating to the designation as the Minister considers appropriate.

Regulations

10. (1) The Lieutenant Governor in Council may make regulations prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations.

Classes of persons, etc.

(2) A regulation may create different classes of persons or entities and may establish different entitlements for, or relating to, each class or impose different requirements, conditions or restrictions on, or relating to, each class.

Scope

- (3) A regulation may be general or specific in its application.

Exemptions, etc.

(4) A regulation may exempt a class or a person or entity from a specified requirement imposed by the Act or a regulation or provide that a specified provision of the Act or a regulation does not apply to the class, person or entity.

Commencement

11. (1) This section and section 12 come into force on the day the *Energy Conservation Responsibility Act, 2006* receives Royal Assent.

Same

(2) Sections 1 to 10 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

12. The short title of the Act set out in this Schedule is the *Energy Conservation Leadership Act, 2006*.

SCHEDULE B AMENDMENTS TO THE ELECTRICITY ACT, 1998

1. Subsection 2 (1) of the *Electricity Act, 1998* is amended by adding the following definitions:

"smart metering data" means data derived from smart meters, including data related to the consumers' consumption of electricity; ("données des compteurs intelligents")

"Smart Metering Entity" means the corporation incorporated, the limited partnership or the partnership formed or the entity designated pursuant to section 53.7 to accomplish the government's smart metering initiative; ("Entité responsable des compteurs intelligents")

"smart metering initiative" means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters; ("initiative des compteurs intelligents")

2. The Act is amended by adding the following Part:

PART IV.2 THE SMART METERING ENTITY

The Smart Metering Entity

53.7 (1) To accomplish the government's policies in relation to its smart metering initiative, the Minister,

- (a) may cause the Smart Metering Entity to be incorporated as a corporation under the *Business Corporations Act*;

- (b) may cause the Smart Metering Entity to be formed as a limited partnership under the *Limited Partnerships Act*;
- (c) may cause the Smart Metering Entity to be formed as a partnership; or
- (d) may designate an entity by regulation as the Smart Metering Entity.

Name of the Smart Metering Entity

(2) Subject to the *Business Corporations Act*, the *Business Names Act* and the *Limited Partnerships Act*, as applicable, the Smart Metering Entity shall have the name prescribed for it by regulation and the regulation may require that the Smart Metering Entity maintain the prescribed name.

Objects or nature of the business of the Smart Metering Entity

53.8 The objects of the Smart Metering Entity, if it is a corporation, or the nature of its business activities, if the Smart Metering Entity is a limited partnership or a partnership, include, in addition to any other objects or business activities, the following:

1. To plan and implement and, on an ongoing basis, oversee, administer and deliver any part of the smart metering initiative as required by regulation under this or any Act or directive made pursuant to sections 28.3 or 28.4 of the *Ontario Energy Board Act, 1998*, and, if so authorized, to have the exclusive authority to conduct these activities.
2. To collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data.
3. To establish, to own or lease and to operate one or more databases to facilitate collecting, managing, storing and retrieving smart metering data.
4. To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy, by distributors, retailers, the OPA and other persons,
 - i. to the information and data referred to in paragraph 2, and
 - ii. to the telecommunication system that permits the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including access to its telecommunication equipment, systems and technology and associated equipment, systems and technologies.
5. To own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that

permit the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.

6. To engage in such competitive procurement activities as are necessary to fulfil its objects or business activities.
7. To procure, as and when necessary, meters, metering equipment, systems and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
8. To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities.
9. To undertake any other objects that are prescribed by regulation.

Status of the Smart Metering Entity

53.9 The Smart Metering Entity is not an agent of Her Majesty for any purpose and, if the Smart Metering Entity is a corporation, its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*.

Powers of Smart Metering Entity corporation

53.10 If the Minister incorporates or designates a corporation as the Smart Metering Entity, it shall have the powers of a natural person except as limited under this Act.

Mandatory provisions in articles

53.11 (1) If the Smart Metering Entity is a corporation, its articles of incorporation and of such of its subsidiaries as may be prescribed by regulation must contain the conditions, restrictions, criteria or requirements that are prescribed by regulation.

Application of *Business Corporations Act*

(2) Despite clause 2 (3) (a) of the *Business Corporations Act*, the *Business Corporations Act* applies to the Smart Metering Entity, if it is a corporation, except that a regulation made under this Act may provide for the non-application of provisions of the *Business Corporations Act* to the Smart Metering Entity.

Smart Metering Entity participation in partnerships, etc.

53.12 (1) Nothing in this Part prevents the Smart Metering Entity, if it is incorporated, from participating in partnerships, limited partnerships, joint ventures or any other transaction or arrangement that may be prescribed by

regulation, subject to such conditions or restrictions as may be prescribed by regulation.

Same

(2) For the purpose of subsection (1), the Smart Metering Entity may participate in transactions or arrangements directly or indirectly as a partner, limited partner, general partner or as a participant in a joint venture or may hold an interest in, directly or through one or more subsidiaries, a partnership, limited partnership, joint venture or any other transaction or arrangement.

Reporting requirements

53.13 The Smart Metering Entity shall provide the reports and information to the Minister that the Minister requires.

Collection of consumer information

53.14 In carrying out its objects or business activities, the Smart Metering Entity,

- (a) may directly or indirectly collect information and data relating to the consumption or use of electricity from consumers, distributors or any other person; and
- (b) may manage and aggregate the data related to consumers' electricity consumption or use.

Reciprocal obligations concerning information

53.15 (1) Distributors, retailers and other persons shall provide the Smart Metering Entity with such information as it requires to fulfil its objects or conduct its business activities.

Restrictions on the Smart Metering Entity

(2) If the Smart Metering Entity has provided access to a distributor, retailer or another person to information under this Part, it shall not engage in a business activity prescribed by regulation if,

- (a) the person to whom access has been provided is also engaged in the business activity; and
- (b) the access was granted for the purpose of the person engaging in the business activity.

Obligations of distributors, etc., re: installing meters

53.16 (1) When a distributor or any person licensed by the Board to do so installs a smart meter, metering equipment, systems and technology and any associated equipment, systems and technologies or replaces an existing meter, the distributor or person shall use a meter, metering equipment, systems and technology and associated equipment, systems and technologies of a type, class or kind prescribed by regulation or that meets the criteria or requirements prescribed by regulation or mandated by a code issued by the Board or by an order of the

Board for the classes of property or classes of consumers prescribed by regulation or required by the Board.

Same

(2) A regulation, code or order referred to in subsection (1) may require that a distributor or other person take certain actions and may require that the actions be taken within a specified time.

Exclusive authority of Board

(3) A regulation referred to in subsection (1) may provide the Board with exclusive authority to approve or authorize the meters, the metering equipment, systems and technology and associated equipment, systems and technologies after a prescribed date.

Obligations of distributors, etc., re: procurement, contracts or arrangements

(4) When a distributor or any person licensed by the Board to conduct the activities referred to in subsection (1) enters into a procurement process, contract or arrangement in relation to the smart metering initiative, the procurement process, contract or arrangement shall meet the criteria or requirements prescribed by regulation or mandated by a code issued by the Board or by an order of the Board.

Sub-metering: condominiums

53.17 (1) Despite the *Condominium Act, 1998* and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation, in a property or class of properties prescribed by regulation at a location prescribed by regulation and for consumers or classes of consumers prescribed by regulation at or within the time prescribed by regulation.

Non-application of registered declaration

(2) If a smart meter or smart sub-metering system is installed in accordance with subsection (1) in respect of a unit of a condominium, the distributor, retailer or any other person licensed to conduct activities referred to in subsection (1) shall bill the consumer based on the consumption or use of electricity by the consumer in respect of the unit despite a registered declaration made in accordance with the *Condominium Act, 1998*.

Priority over registered declaration

(3) Subsection (2) applies in priority to any registered declaration made in accordance with the *Condominium Act, 1998* or any by-law made by a condominium corporation registered in accordance with that Act and shall take priority to the declaration or by-law to the extent of any conflict or inconsistency.

Exclusive authority of Board

(4) A regulation referred to in subsection (1) may provide the Board with exclusive authority to approve or authorize, after a prescribed date,

- (a) the smart meter, metering equipment, systems and technology and any associated equipment, systems and technologies; and
- (b) the smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies.

Prohibition re: discretionary metering activities

53.18 (1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this Act, a regulation, an order of the Board or a code issued by the Board or it is required to do so under the *Electricity and Gas Inspection Act* (Canada).

Definition

(2) For the purpose of this section,

"discretionary metering activity" means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the *Electricity and Gas Inspection Act* (Canada), by regulation, by an order of the Board or by a code issued by the Board or authorized by a regulation made under this Act.

Procurement contracts, transition

53.19 (1) The Minister may direct the Smart Metering Entity to assume, as of the date the Minister considers appropriate, responsibility for exercising all powers and performing all duties of the Crown, including powers and duties to be exercised and performed through an agency of the Crown,

- (a) under any request for proposals, draft request for proposals, another form of procurement solicitation issued by the Crown or through an agency of the Crown or any other initiative pursued by the Crown or through an agency of the Crown, which relate to the government's smart metering initiative that was issued or pursued after November 3, 2005 and before January 1, 2008; and
- (b) under any contract that relates to a procurement that was entered into by the Crown or an agency of the Crown pursuant to a request for proposal, a draft request for proposal or another form of procurement solicitation referred to in clause (a).

Release of the Crown, etc.

(2) As of the day specified in the Minister's direction under subsection (1), the Smart Metering Entity shall assume responsibility in accordance with that

subsection and the Crown and any Crown agency are released from any and all liabilities and obligations with respect to the matters for which the Smart Metering Entity has assumed responsibility.

Reimbursement of costs incurred by the Crown

53.20 (1) The Smart Metering Entity shall reimburse the Crown or, if so directed by the Minister, an agency of the Crown for costs relating to the Smart Metering Entity, a procurement contract or a matter within the objects of the Smart Metering Entity, if,

- (a) the costs were incurred by the Crown or an agency of the Crown after November 3, 2005 and before January 1, 2008; or
- (b) the liability of the Crown or an agency of the Crown for the costs arose during the period described in clause (a).

Payment of reimbursement

(2) The Smart Metering Entity shall make the reimbursement by making one or more payments in such amount or amounts at such time or times as may be determined by the Minister.

Minister's determinations final

(3) The determinations of the Minister under subsection (2) are final and conclusive and shall not be stayed, varied or set aside by any court.

Regulations

53.21 (1) The Lieutenant Governor in Council may make regulations,

- (a) designating an entity as the Smart Metering Entity;
- (b) prescribing the name of the Smart Metering Entity;
- (c) governing the smart metering initiative;
- (d) authorizing the Smart Metering Entity to have exclusive authority to conduct the metering activities referred to in section 53.8;
- (e) prescribing objects for the purposes of section 53.8;
- (f) governing the collection, use and disclosure of information relating to consumers' consumption or use of electricity, including personal information;
- (g) prescribing, for the purposes of subsection 53.11 (1), conditions, restrictions, criteria or requirements to be included in the Smart Metering Entity's articles of incorporation and in the articles of incorporation of such of its subsidiaries as may be prescribed;
- (h) prescribing subsidiaries of the Smart Metering Entity for the purposes of subsection 53.11 (1);

- (i) prescribing provisions of the *Business Corporations Act* that do not apply to the Smart Metering Entity or to any of its subsidiaries that are prescribed;
- (j) prescribing transactions or arrangements for the purposes of subsection 53.12 (1) and conditions or restrictions that apply to them;
- (k) governing smart meters and the installation and maintenance of smart meters, metering equipment, systems and technology and any associated equipment, systems and technologies;
- (l) identifying actions to be taken by the Smart Metering Entity, distributors and other persons licensed by the Board in respect of the installation of prescribed meters, metering equipment, systems and technology and any associated equipment, systems and technologies at prescribed locations throughout Ontario or for prescribed classes of properties and prescribed classes of consumers in priority to other locations or classes of property or classes of consumers and prescribing the time within which such actions must be taken;
- (m) prescribing the date for the purpose of subsections 53.16 (3) and 53.17 (4), as the case may be;
- (n) prescribing criteria or requirements that the procurement process, contract or arrangement must meet for the purpose of subsection 53.16 (4);
- (o) governing the installation of smart meters and smart sub-metering systems for the purposes of section 53.17, including sub-metering equipment and technology and any associated equipment, systems and technologies;
- (p) prescribing the circumstances in which smart meters or smart sub-metering systems shall be installed under section 53.17, including sub-metering equipment and technology and any associated equipment, systems and technologies, the property or classes of property in which they are to be installed, the consumers or classes of consumers for which they are to be installed and the time by or within which they must be installed;
- (q) authorizing activity as discretionary metering activity for the purpose of section 53.18;
- (r) prescribing measures to be taken by the Smart Metering Entity to facilitate the achievement of the targets associated with the smart metering initiative;
- (s) identifying specific objectives or criteria applicable to the Smart Metering Entity's metering and telecommunications technologies;

- (t) approving, with respect to a class of consumers, meters or a class of meters and metering equipment, systems and technology and associated equipment, systems and technologies to be installed by a distributor or a person licensed by the Board to do so, including approving or fixing the maximum costs of the meters and metering equipment, systems and technology and associated equipment, systems and technologies and specifying criteria which any one of them must meet.

General or specific

- (2) A regulation may be general or specific in its application.

Commencement

3. (1) This section comes into force on the day the *Energy Conservation Responsibility Act, 2006* receives Royal Assent.

Same

(2) Sections 1 and 2 come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE C

AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. Section 3 of the *Ontario Energy Board Act, 1998* is amended by adding the following definitions:

"Smart Metering Entity" means the corporation incorporated, the limited partnership or the partnership formed or the entity designated pursuant to section 53.7 of the *Electricity Act, 1998*; ("Entité responsable des compteurs intelligents")

"smart metering initiative" means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters; ("initiative des compteurs intelligents")

2. The Act is amended by adding the following sections:

Directives re smart metering initiative

28.3 (1) The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council relating to the government's smart metering initiative.

Directives re licence conditions

(2) The directives may require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the Smart Metering Entity, distributors, retailers and transmitters or licences issued pursuant to section 57, including the following:

1. Conditions granting the exclusive right to the Smart Metering Entity to carry out any or all of its objects set out in section 53.8 of the *Electricity Act, 1998*.
2. Conditions granting the exclusive right to store information and data derived from smart meters to the Smart Metering Entity, including conditions in respect of the manner in which the information and data is stored.
3. Conditions providing for performance standards to be achieved by the Smart Metering Entity.
4. Conditions identifying arrangements and agreements, including procurement, service or operating arrangements or agreements, to be entered into by the Smart Metering Entity, distributors, transmitters, retailers or other persons and providing that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements.
5. Conditions providing for circumstances in which the Smart Metering Entity shall provide a person with access to information and data relating to consumers' consumption or use of electricity collected pursuant to paragraph 2 of section 53.8 of the *Electricity Act, 1998*, including conditions relating to the protection of privacy.
6. Conditions providing the Smart Metering Entity with the authority to conduct its metering activities in relation to the distribution of gas.
7. Conditions providing the Minister with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers.
8. After a date prescribed by regulation made under the *Electricity Act, 1998*, conditions providing the Board with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers.

Directives re amending conditions in licences

(3) A directive may require the Board, in the manner specified in the directive, to amend conditions in licences granted to the Smart Metering Entity, distributors, transmitters, retailers or others granting the Smart Metering Entity

exclusive jurisdiction in Ontario with respect to some or all of the activities it is authorized to undertake under Part IV.2 of the *Electricity Act, 1998*.

Publication

(4) A directive issued under this section shall be published in *The Ontario Gazette*.

No hearing

(5) The Board shall amend the conditions as required by a directive without holding a hearing.

Directives re regulatory and accounting treatment of costs

28.4 The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council in respect of the regulatory and accounting treatment of costs in orders made under section 78 and associated with meters owned before January 1, 2006 to ensure that distributors, transmitters, retailers or other persons are not financially disadvantaged by the implementation of the smart metering initiative.

3. Section 36 of the Act is amended by adding the following subsection:

Order of Board re Smart Metering Entity

(1.1) Neither the Smart Metering Entity nor any other person licensed to do so shall conduct activities relating to the metering of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

4. Section 57 of the Act is amended by striking out the portion before clause (a) and substituting the following:

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

.

5. (1) Section 78 of the Act is amended by adding the following subsections:

Order re the Smart Metering Entity

(2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract.

.

Rates

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*.

Orders re deferral or variance accounts

(3.0.2) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations.

Orders re recovery of smart metering initiative costs

(3.0.3) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered.

(2) Subsection 78 (6) of the Act is repealed and the following substituted:

Conditions, etc.

(6) An order under this section may include conditions, classifications or practices applicable to the Smart Metering Entity in respect of meeting its obligations and to the transmission, distribution or retailing of electricity, including rules respecting the calculation of rates.

6. Subsection 88 (1) of the Act is amended by adding the following clauses:

(g.6.1) prescribing the circumstances in which the Board may make orders permitting the Smart Metering Entity or distributors to establish deferral or variance accounts for the purposes of subsection 78 (3.0.2);

(g.6.2) in respect of orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative for the purposes of subsection 78 (3.0.3);

7. Clause 112.1 (b) of the Act is repealed and the following substituted:

(b) section 25.33, 25.34, 26, 27, 28, 29, 31, 53.11, 53.13, 53.15, 53.16, 53.17 or 53.18 of the *Electricity Act, 1998*, or any other provision of that Act that is prescribed by the regulations,

Commencement

8. (1) This section comes into force on the day the *Energy Conservation Responsibility Act, 2006* receives Royal Assent.

Same

(2) Sections 1 to 7 come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE D
AMENDMENT TO THE CONSERVATION AUTHORITIES ACT

1. Subsection 35 (2) of the *Conservation Authorities Act* is repealed.

Commencement

2. (1) This section comes into force on the day the *Energy Conservation Responsibility Act, 2006* receives Royal Assent.

Same

(2) Section 1 comes into force on a day to be named by proclamation of the Lieutenant Governor.

CHAPTER D.9

Development Charges Act

CONTENTS

1. Definitions
2. Administration

PART I

DEVELOPMENT CHARGES

3. By-laws respecting development charges
4. Public meeting
5. Date by-law effective
6. Expiration of by-law
7. Amendments
8. Complaints
9. When charge is due
10. Upper tier municipalities
11. Notice of by-law
12. Collection
13. Credit for services
14. Credits
15. Multiple requirements
16. Reserve fund
17. Statement of treasurer
18. Interest
19. Regulations

PART II

FRONT-END PAYMENTS

20. Definition
21. Front-ending agreement
22. Front-ending agreement
23. O.M.B. approval not required
24. Registration
25. Compliance necessary
26. Payments to parties to agreement
27. Special accounts
28. Distribution of s. 26 funds

PART III

EDUCATION DEVELOPMENT CHARGES

29. Definitions
30. Education development charge by-law
31. Public meeting
32. When by-law effective
33. Expiration of by-law
34. Amendment
35. Payment of charge
36. Complaints
37. Distribution of by-law
38. Registration of notice
39. Collection
40. Transfer of money
41. Upper tier municipalities
42. Interest

CHAPITRE D.9

Loi sur les redevances d'exploitation

TABLE DES MATIÈRES

1. Définitions
2. Ministres responsables

PARTIE I

REDEVANCES D'EXPLOITATION

3. Règlements municipaux concernant les redevances d'exploitation
4. Réunion publique
5. Date d'entrée en vigueur des règlements municipaux
6. Expiration des règlements municipaux
7. Modifications
8. Plaintes
9. Date d'exigibilité de la redevance
10. Municipalités de palier supérieur
11. Avis de règlement municipal
12. Perception
13. Crédit pour services
14. Crédits
15. Nécessité de mesures multiples
16. Fonds de réserve
17. État du trésorier
18. Intérêts
19. Règlements

PARTIE II

PAIEMENTS ANTICIPÉS

20. Définition
21. Accord initial
22. Accord initial
23. Approbation de la C.A.M.O. non requise
24. Enregistrement
25. Nécessité de se conformer
26. Paiements aux parties à l'accord
27. Comptes spéciaux
28. Répartition des fonds prévus à l'art. 26

PARTIE III

REDEVANCES D'EXPLOITATION RELATIVES À L'ÉDUCATION

29. Définitions
30. Règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation
31. Réunion publique
32. Date d'entrée en vigueur des règlements scolaires
33. Expiration des règlements scolaires
34. Modification
35. Paiement des redevances
36. Plaintes
37. Diffusion des règlements scolaires
38. Enregistrement de l'avis
39. Perception

43. Regulations

- 40. Transfert d'argent
- 41. Municipalités de palier supérieur
- 42. Intérêts
- 43. Règlements

PART IV
GENERAL

- 44. Existing development charges by-law
- 45. Certain agreements under *Planning Act*
- 46. Referrals to continue
- 47. Agreements not affected
- 48. No right of petition
- 49. Conflicts

PARTIE IV
DISPOSITIONS GÉNÉRALES

- 44. Règlement municipal prévoyant l'imposition de redevances d'exploitation existant
- 45. Certaines conventions prévues par la *Loi sur l'aménagement du territoire*
- 46. Maintien des renvois
- 47. Aucune incidence sur les conventions
- 48. Aucun droit de pétition
- 49. Incompatibilités

Definitions

1. In this Act,

“area municipality” means,

- (a) a town, other than a separated town, township or village in a county, and
- (b) a city, town, village or township in a regional, metropolitan or district municipality; (“municipalité de secteur”)

“benefiting area” means an area defined by a map, plan or legal description in a front-ending agreement as an area that will receive a benefit from the construction of a service; (“secteur avantagé”)

“capital cost” means costs incurred or proposed to be incurred by a municipality or a local board thereof directly or under an agreement,

- (a) to acquire land or an interest in land,
- (b) to improve land,
- (c) to acquire, construct or improve buildings and structures,
- (d) to acquire, construct or improve facilities including,
 - (i) rolling stock, furniture and equipment, and
 - (ii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, and
- (e) to undertake studies in connection with any of the matters in clauses (a) to (d),

required for the provision of services designated in a development charge by-law within or outside the municipality, including interest on borrowing for those expenditures under clauses (a), (b), (c) and (d) that are growth-related; (“coût en immobilisations”)

1 Les définitions qui suivent s'appliquent à la présente loi.

«accord initial» Accord conclu en vertu de l'article 21. («front-ending agreement»)

«Commission des affaires municipales» La Commission des affaires municipales de l'Ontario. («Municipal Board»)

«conseil local» Conseil local au sens de la *Loi sur les affaires municipales*, à l'exclusion d'un conseil au sens du paragraphe 30 (6). («local board»)

«coût en immobilisations» Coûts qu'une municipalité ou un de ses conseils locaux engage ou se propose d'engager directement ou en vertu d'un accord pour :

- a) l'acquisition d'un terrain ou d'un intérêt dans un terrain,
- b) l'amélioration d'un terrain,
- c) l'acquisition, la construction ou l'amélioration de bâtiments et constructions,
- d) l'acquisition, la construction ou l'amélioration d'installations, y compris :
 - (i) du matériel roulant, des meubles et de l'équipement,
 - (ii) des documents acquis aux fins de distribution, de référence ou d'information par un conseil de bibliothèques au sens de la *Loi sur les bibliothèques publiques*,
- e) la conduite d'études reliées à l'une des activités prévues aux alinéas a) à d).

Ces coûts doivent être nécessaires à la fourniture, à l'intérieur ou à l'extérieur de la municipalité, de services désignés dans un règlement municipal prévoyant l'imposition de redevances d'exploitation. Sont inclus dans la présente définition les intérêts sur les emprunts contractés pour couvrir les dépenses visées aux alinéas a), b), c) et d) qui sont liées à la croissance. («capital cost»)

- “development” includes redevelopment; (“exploitation”)
- “development charge” means a charge imposed with respect to growth-related net capital costs against land under a by-law passed under section 3; (“redevance d’exploitation”)
- “development charge by-law” means a by-law passed under section 3; (“règlement municipal prévoyant l’imposition de redevances d’exploitation”)
- “front-end payment” means a payment made by an owner pursuant to a front-ending agreement, which may be in addition to a development charge that the owner is required to pay under a development charge by-law, to cover the net capital costs of the services designated in the agreement that are required to enable the land to be developed; (“paiement anticipé”)
- “front-ending agreement” means an agreement made under section 21; (“accord initial”)
- “growth-related net capital cost” means the portion of the net capital cost of services that is reasonably attributable to the need for such net capital cost that results or will result from development in all or a defined part of the municipality; (“coût en immobilisations net lié à la croissance”)
- “local board” means a local board as defined in the *Municipal Affairs Act*, other than a board defined in subsection 30 (6); (“conseil local”)
- “municipality” means a city, town, village, township, improvement district or county or a regional, metropolitan or district municipality; (“municipalité”)
- “Municipal Board” means the Ontario Municipal Board; (“Commission des affaires municipales”)
- “net capital cost” means the capital cost less capital grants, subsidies and other contributions made to a municipality or that the council of the municipality anticipates will be made, including conveyances or payments under sections 42, 51 and 53 of the *Planning Act*, in respect of the capital cost; (“coût en immobilisations net”)
- “owner” means the owner of land or a person who has made application for an approval for the development of land upon which a development charge is imposed; (“propriétaire”)
- “prescribed” means prescribed by regulations made under this Act; (“prescrit”)
- “services” means services designated in a development charge by-law or in an agreement
- «coût en immobilisations net» Le coût en immobilisations moins les subventions d’immobilisation, subsides et autres contributions versés à une municipalité ou dont le conseil de la municipalité prévoit le versement, y compris les cessions ou paiements prévus aux articles 42, 51 et 53 de la *Loi sur l’aménagement du territoire*, à l’égard du coût en immobilisations. («net capital cost»)
- «coût en immobilisations net lié à la croissance» Part du coût en immobilisations net des services que l’on peut raisonnablement attribuer au besoin de ce coût en immobilisations net et qui résulte ou résultera de travaux d’exploitation dans toute la municipalité ou une partie définie de celle-ci. («growth-related net capital cost»)
- «exploitation» S’entend en outre d’une réexploitation. («development»)
- «municipalité» Cité, ville, village, canton, district en voie d’organisation, comté, municipalité régionale ou municipalité de communauté urbaine ou de district. («municipality»)
- «municipalité de palier supérieur» Comté, municipalité régionale ou municipalité de communauté urbaine ou de district. («upper tier municipality»)
- «municipalité de secteur» S’entend de ce qui suit :
- a) une ville, à l’exclusion d’une ville séparée, un canton ou un village situé dans un comté,
 - b) une cité, une ville, un village ou un canton situé dans une municipalité régionale ou une municipalité de communauté urbaine ou de district. («area municipality»)
- «paiement anticipé» Paiement qu’effectue un propriétaire en vertu d’un accord initial pour couvrir les coûts en immobilisations nets des services désignés dans l’accord comme étant nécessaires afin de permettre l’exploitation du terrain. Ce paiement peut venir s’ajouter à une redevance d’exploitation que le propriétaire doit payer aux termes d’un règlement municipal prévoyant l’imposition de redevances d’exploitation. («front-end payment»)
- «prescrit» Prescrit par les règlements pris en application de la présente loi. («prescribed»)
- «propriétaire» Le propriétaire d’un terrain ou quiconque a présenté une demande d’approbation visant l’exploitation d’un terrain à l’égard duquel est imposée une redevance d’exploitation. («owner»)

ment made under section 21, as applicable; ("services")

"upper tier municipality" means a county or a regional, metropolitan or district municipality. ("municipalité de palier supérieur") 1989, c. 58, s. 1.

Administration

2. The Minister of Municipal Affairs is responsible for the administration of Parts I, II and IV and the Minister of Education is responsible for the administration of Part III. 1989, c. 58, s. 2.

PART I

DEVELOPMENT CHARGES

By-laws respecting development charges

3.—(1) The council of a municipality may pass by-laws for the imposition of development charges against land if the development of the land would increase the need for services and the development requires,

- (a) the passing of a zoning by-law or of an amendment thereto under section 34 of the *Planning Act*;
- (b) the approval of a minor variance under section 45 of the *Planning Act*;
- (c) A conveyance of land to which a by-law passed under subsection 50 (7) of the *Planning Act* applies;
- (d) the approval of a plan of subdivision under section 51 of the *Planning Act*;
- (e) a consent under section 53 of the *Planning Act*;
- (f) the approval of a description under section 50 of the *Condominium Act*; or
- (g) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

«redevance d'exploitation» Redevance imposée à l'égard des coûts en immobilisations nets liés à la croissance pour un terrain en vertu d'un règlement municipal adopté en vertu de l'article 3. («development charge»)

«règlement municipal prévoyant l'imposition de redevances d'exploitation» Règlement municipal adopté en vertu de l'article 3. («development charge by-law»)

«secteur avantagé» Secteur défini par une carte, un plan ou une description légale dans un accord initial comme un secteur devant tirer un avantage de la construction d'un service. («benefiting area»)

«services» Services désignés dans un règlement municipal prévoyant l'imposition de redevances d'exploitation ou dans un accord conclu en vertu de l'article 21, selon le cas. («services») 1989, chap. 58, art. 1.

2 Le ministre des Affaires municipales est chargé de l'application des parties I, II et IV et le ministre de l'Éducation, de l'application de la partie III. 1989, chap. 58, art. 2.

Ministres responsables

PARTIE I

REDEVANCES D'EXPLOITATION

3 (1) Le conseil d'une municipalité peut adopter des règlements municipaux prévoyant l'imposition de redevances d'exploitation à l'égard de terrain si l'exploitation de ces terrains augmente le besoin de services et nécessite, selon le cas :

Règlements municipaux concernant les redevances d'exploitation

- a) l'adoption ou la modification d'un règlement municipal de zonage en vertu de l'article 34 de la *Loi sur l'aménagement du territoire*;
- b) l'autorisation d'une dérogation mineure en vertu de l'article 45 de la *Loi sur l'aménagement du territoire*;
- c) la cession d'un terrain auquel s'applique un règlement municipal adopté en vertu du paragraphe 50 (7) de la *Loi sur l'aménagement du territoire*;
- d) l'approbation d'un plan de lotissement en vertu de l'article 51 de la *Loi sur l'aménagement du territoire*;
- e) une autorisation aux termes de l'article 53 de la *Loi sur l'aménagement du territoire*;
- f) l'approbation d'une description aux termes de l'article 50 de la *Loi sur les condominiums*;
- g) la délivrance d'un permis aux termes de la *Loi sur le code du bâtiment* rela-

		tivement à un bâtiment ou à une construction.	
Exceptions	(2) Subsection (1) does not apply in respect of an action mentioned in clauses (1) (a) to (g) that would have the effect only,	(2) Le paragraphe (1) ne s'applique pas à l'égard des mesures visées par les alinéas (1) a) à g) qui n'auraient d'autre effet que :	Exceptions
	(a) of permitting the enlargement of an existing dwelling unit; or	a) soit de permettre l'agrandissement d'un logement existant;	
	(b) of creating one or two additional dwelling units as prescribed, in prescribed categories of existing residential buildings.	b) soit de créer un ou deux logements additionnels, selon ce qui est prescrit, dans des catégories prescrites d'immeubles d'habitation existants.	
Mandatory provisions	(3) A by-law passed under subsection (1) shall,	(3) Les règlements municipaux adoptés en vertu du paragraphe (1) :	Dispositions obligatoires
	(a) designate those uses of land, buildings or structures upon which a development charge shall be imposed;	a) désignent les utilisations de terrains, de bâtiments ou de constructions à l'égard desquelles est imposée une redevance d'exploitation;	
	(b) designate the areas within which a development charge shall be imposed;	b) désignent les secteurs à l'intérieur desquels est imposée une redevance d'exploitation;	
	(c) establish the development charge, or the schedule of development charges, to be imposed in respect of the designated uses of land, buildings or structures; and	c) fixent la redevance d'exploitation, ou le barème des redevances d'exploitation qui seront imposées à l'égard des utilisations désignées de terrains, de bâtiments ou de constructions;	
	(d) designate services for which a development charge may be imposed.	d) désignent les services à l'égard desquels des redevances d'exploitation peuvent être imposées.	
Other provisions	(4) A by-law passed under subsection (1) may,	(4) Les règlements municipaux adoptés en vertu du paragraphe (1) peuvent :	Autres dispositions
	(a) provide for the indexing of development charges based on one of the prescribed indices; and	a) prévoir l'indexation des redevances d'exploitation d'après l'un des indices prescrits;	
	(b) provide that a development charge shall be payable in money or by the provision of services or by a combination of both as may be agreed upon under subsection 9 (9) by the municipality and the owner.	b) prévoir le paiement d'une redevance d'exploitation soit en argent, soit sous forme de services fournis, soit par une combinaison des deux, comme peuvent en convenir la municipalité et le propriétaire en vertu du paragraphe 9 (9).	
Idem	(5) Despite subsection (3), a by-law passed under subsection (1) may,	(5) Malgré le paragraphe (3), les règlements municipaux adoptés en vertu du paragraphe (1) peuvent :	Idem
	(a) designate categories of institutions for the purposes of clause (b);	a) désigner des catégories d'établissements pour l'application de l'alinéa b);	
	(b) provide for a full or partial exemption of designated categories of institutions from the payment of development charges;	b) prévoir une dispense totale ou partielle du paiement des redevances d'exploitation en faveur des catégories d'établissements désignées;	
	(c) designate categories of dwelling units as affordable housing; and	c) désigner des catégories de logements à titre de logements abordables;	
	(d) provide for a full or partial exemption of designated categories of affordable housing from the payment of development charges.	d) prévoir une dispense totale ou partielle du paiement des redevances d'exploitation en faveur des catégories de logements abordables désignées.	

Limited
exemption

(6) No land, except land owned by and used for the purposes of a board as defined in subsection 30 (6) or a municipality, is exempt from a development charge under a by-law passed under subsection (1) by reason only that it is exempt from taxation under section 3 of the *Assessment Act*.

(6) Aucun terrain, à l'exception d'un terrain appartenant à un conseil au sens du paragraphe 30 (6) ou à une municipalité et utilisé pour les fins de l'un ou l'autre, ne fait l'objet d'une dispense de redevance d'exploitation aux termes d'un règlement municipal adopté en vertu du paragraphe (1) du seul fait qu'il fait l'objet d'une exemption d'impôt aux termes de l'article 3 de la *Loi sur l'évaluation foncière*.

Dispense
limitéeRestriction
on develop-
ment charges

(7) No development charge may be imposed with respect to,

- (a) local services installed at the expense of the owner within a plan of subdivision as a condition of approval under section 51 of the *Planning Act*;
- (b) local services installed at the expense of the owner as a condition of approval under section 53 of the *Planning Act*; or
- (c) local connections to water mains, sanitary sewers and storm drainage facilities installed at the expense of the owner including amounts imposed under a by-law passed under section 222 of the *Municipal Act*, 1989, c. 58, s. 3.

(7) Aucune redevance d'exploitation ne peut être imposée à l'égard de :

Restriction

- a) services locaux installés aux frais du propriétaire dans le cadre d'un plan de lotissement à titre de condition préalable à l'approbation prévue à l'article 51 de la *Loi sur l'aménagement du territoire*;
- b) services locaux installés aux frais du propriétaire à titre de condition préalable à l'approbation prévue à l'article 53 de la *Loi sur l'aménagement du territoire*;
- c) raccordements locaux au réseau d'adduction d'eau, d'égout séparatif et d'égout pluvial installés aux frais du propriétaire, y compris les montants imposés en vertu d'un règlement municipal adopté en vertu de l'article 222 de la *Loi sur les municipalités*, 1989, chap. 58, art. 3.

Public
meeting

4.—(1) Before passing a development charge by-law, except a by-law passed pursuant to an order of the Municipal Board made under clause (11) (b), the council,

- (a) shall hold at least one public meeting;
- (b) shall give notice of the meeting in the manner and to the persons and organizations prescribed; and
- (c) shall ensure that sufficient information is made available at the meeting to enable the public to understand generally the development charges proposal.

4 (1) Avant d'adopter un règlement municipal prévoyant l'imposition de redevances d'exploitation, sauf s'il s'agit d'un règlement municipal adopté conformément à une ordonnance de la Commission des affaires municipales rendue en vertu de l'alinéa (11) b), le conseil :

Réunion
publique

- a) tient au moins une réunion publique;
- b) donne avis de la réunion de la manière et aux personnes et organisations prescrites;
- c) veille à ce que des renseignements suffisants soient fournis à la réunion pour permettre au public de comprendre dans l'ensemble les redevances d'exploitation qu'il est proposé d'imposer.

Right to be
heard

(2) The meeting referred to in subsection (1) shall be held no earlier than twenty days after the requirements for the giving of notice have been complied with and any person who attends the meeting may make representations in respect of the proposed development charges.

(2) La réunion visée au paragraphe (1) est tenue au plus tôt vingt jours après que les exigences concernant la signification de l'avis ont été observées. Quiconque assiste à la réunion peut présenter des observations sur les redevances d'exploitation qui sont proposées.

Droit d'être
entenduNotice of
by-law

(3) If the council passes a development charge by-law, except a by-law passed pursuant to an order of the Municipal Board under clause (11) (b), the clerk of the municipality shall, not later than fifteen days after the day the by-law is passed, give written notice of

(3) Si le conseil adopte un règlement municipal prévoyant l'imposition de redevances d'exploitation, sauf s'il s'agit d'un règlement municipal adopté conformément à une ordonnance de la Commission des affaires municipales rendue en vertu de l'alinéa (11)

Avis de règle-
ment munici-
pal

the passing of the by-law in the form and to the persons and organizations prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (4).

b), le secrétaire de la municipalité, au plus tard quinze jours après l'adoption du règlement municipal, donne un avis écrit de l'adoption du règlement municipal selon la formule et aux personnes et organisations prescrites. L'avis précise le dernier jour où l'on peut déposer un avis d'appel en vertu du paragraphe (4).

Appeal

(4) Any person or organization may, not later than twenty days after written notice under subsection (3) is given, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

(4) Toute personne ou organisation peut, au plus tard vingt jours après que soit donné l'avis écrit prévu au paragraphe (3), interjeter appel devant la Commission des affaires municipales en déposant auprès du secrétaire de la municipalité un avis motivé d'appel énonçant l'opposition au règlement municipal.

Timing of notice

(5) For the purposes of subsection (4), the written notice shall be deemed to be given,

(5) Pour l'application du paragraphe (4), l'avis écrit est réputé donné :

- (a) where notice is given by publication in a newspaper, on the day that the publication occurs;
- (b) where notice is given by personal service, on the day that service of all required notices is completed; or
- (c) where notice is given by mail, on the day that the mailing of all required notices is completed.

- a) s'il est donné par voie de publication dans un journal, le jour de sa publication;
- b) s'il est donné par voie de signification à personne, le jour où la signification de tous les avis exigés a été faite;
- c) s'il est donné par courrier, le jour où tous les avis exigés ont été mis à la poste.

Record

(6) A clerk of a municipality who receives a notice of appeal shall compile a record which shall include,

(6) Le secrétaire d'une municipalité qui reçoit un avis d'appel constitue un dossier qui comprend les pièces suivantes :

- (a) a copy of the by-law certified by the clerk;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice under subsection (3) have been complied with; and
- (c) the original or a true copy of all written submissions and material received in respect of the by-law before it was passed.

- a) une copie du règlement municipal certifiée conforme par le secrétaire;
- b) un affidavit ou une déclaration attestant que les exigences touchant la signification de l'avis prévu au paragraphe (3) ont été observées;
- c) l'original ou une copie conforme de toutes les observations écrites et de tous les documents reçus relativement au règlement municipal avant son adoption.

Notice and record to O.M.B.

(7) The clerk shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information or material as the Board may require in respect of the appeal.

(7) Le secrétaire envoie l'avis d'appel et le dossier au secrétaire de la Commission des affaires municipales dans les trente jours suivant l'expiration du délai d'appel et fournit les renseignements ou documents que la Commission peut exiger relativement à l'appel.

Affidavit, declaration conclusive evidence

(8) An affidavit or declaration of the clerk of the municipality that notice was given as required by subsection (3) or that no notice of appeal was filed under subsection (4) within the time allowed for appeal is conclusive evidence of the facts stated therein.

(8) L'affidavit ou la déclaration du secrétaire de la municipalité indiquant que l'avis prévu au paragraphe (3) a été donné ou qu'aucun avis d'appel n'a été déposé en vertu du paragraphe (4) avant l'expiration du délai d'appel constitue une preuve concluante des faits qui y sont énoncés.

Hearing

(9) The Municipal Board shall hold a hearing notice of which shall be given to such persons or organizations and in such manner as the Board may determine.

(9) La Commission des affaires municipales tient une audience et en donne avis aux personnes ou organisations et de la manière qu'elle peut préciser.

Early
dismissal of
appeal

(10) The Municipal Board may, where it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant an opportunity to make representations as to the merits of the appeal.

(10) La Commission des affaires municipales peut, si elle est d'avis que l'opposition au règlement municipal énoncée dans l'avis d'appel est insuffisante, rejeter l'appel sans tenir d'audience complète. Avant de rejeter l'appel, cependant, elle en avise l'appellant et lui donne la possibilité de présenter des observations concernant le bien-fondé de l'appel.

Reje
de l'

Determi-
nation by
O.M.B.

(11) The Municipal Board may,

(11) La Commission des affaires municipales peut :

Déci
la C

- (a) dismiss the appeal;
- (b) order the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Board's order; or
- (c) repeal the by-law in whole or in part or amend the by-law in such manner as the Board may determine.

- a) rejeter l'appel;
- b) ordonner au conseil de la municipalité d'abroger le règlement municipal, en totalité ou en partie, ou de le modifier conformément à son ordonnance;
- c) abroger le règlement municipal, en totalité ou en partie, ou le modifier de la manière qu'elle peut préciser.

Restrictions
on amend-
ments

(12) Despite subsection (11), the Municipal Board may not amend or order the amendment of a by-law so as to,

(12) Malgré le paragraphe (11), la Commission des affaires municipales ne peut modifier un règlement municipal, ni en ordonner la modification, de façon à :

Rest
relat
aux
tion:

- (a) increase a development charge imposed by the by-law; or
- (b) alter the term of the by-law. 1989, c. 58, s. 4.

- a) augmenter une redevance d'exploitation qui a été imposée par le règlement municipal;
- b) changer la durée d'application du règlement municipal. 1989, chap. 58, art. 4.

Date by-law
effective

5.—(1) A development charge by-law comes into force on the date it is passed or the date specified in the by-law, whichever is later.

5 (1) Les règlements municipaux prévoyant l'imposition de redevances d'exploitation entrent en vigueur le jour de leur adoption ou à la date précisée dans le règlement municipal si cette date est postérieure.

Dat
en
des
mer
pau:

Retroactive
repeal

(2) If the Municipal Board orders the council of a municipality to repeal a by-law in whole or in part, that part of the by-law that is repealed shall be deemed to have been repealed on the day the by-law came into force.

(2) Si la Commission des affaires municipales ordonne au conseil d'une municipalité d'abroger un règlement municipal, en totalité ou en partie, la partie du règlement municipal qui est abrogée est réputée avoir été abrogée le jour où le règlement municipal est entré en vigueur.

Abr
rétr

Refund

(3) The municipality shall refund all development charges paid under the by-law or that part of the by-law that is repealed under subsection 4 (11),

(3) La municipalité rembourse les redevances d'exploitation payées aux termes du règlement municipal ou de la partie du règlement municipal qui est abrogée en vertu du paragraphe 4 (11) :

Rer
met

- (a) if repealed by the Municipal Board, within thirty days of the date of the order of the Board; or
- (b) if repealed by the council of the municipality, within thirty days of the date of repeal.

- a) en cas d'abrogation par la Commission des affaires municipales, dans les trente jours suivant la date où la Commission a rendu l'ordonnance;
- b) en cas d'abrogation par le conseil de la municipalité, dans les trente jours suivant la date de l'abrogation.

Retroactive
amendments

(4) If the Municipal Board orders the council of a municipality to amend a by-law, the amendment shall be deemed to have come into force on the day the by-law came into force.

(4) Si la Commission des affaires municipales ordonne au conseil d'une municipalité de modifier un règlement municipal, la modification est réputée être entrée en vigueur le

Mo
rétr

		jour où le règlement municipal est entré en vigueur.	
Refunds	<p>(5) The municipality shall refund the difference between the development charges paid under that part of the by-law that is amended under subsection 4 (11) and the development charges required to be paid under the amendment,</p> <p>(a) if the by-law is amended by the Municipal Board, within thirty days of the date of the order of the Board; or</p> <p>(b) if the by-law is amended by the council of the municipality, within thirty days of the date of the amendment.</p>	<p>(5) La municipalité rembourse la différence entre les redevances d'exploitation payées aux termes de la partie du règlement municipal qui est modifiée en vertu du paragraphe 4 (11) et les redevances d'exploitation devant être payées aux termes de la modification :</p> <p>a) si le règlement municipal est modifié par la Commission des affaires municipales, dans les trente jours suivant la date où la Commission a rendu l'ordonnance;</p> <p>b) si le règlement municipal est modifié par le conseil de la municipalité, dans les trente jours suivant la date de la modification.</p>	Remboursements
Restrictions on appeal	(6) A repeal or amendment made under subsection 4 (11) is not subject to appeal under subsection 4 (4).	(6) L'abrogation ou la modification effectuée en vertu du paragraphe 4 (11) ne peut faire l'objet de l'appel prévu au paragraphe 4 (4).	Restrictions
Notice of by-law	(7) A municipality shall give notice of the particulars of a development charge by-law that is in force in the manner and to the persons prescribed. 1989, c. 58, s. 5.	(7) La municipalité donne, de la manière et aux personnes prescrites, un avis précisant les détails de tout règlement municipal prévoyant l'imposition de redevances d'exploitation qui est en vigueur. 1989, chap. 58, art. 5.	Avis de règlements municipaux
Expiration of by-law	6.—(1) A development charge by-law expires five years after the date it comes into force.	6 (1) Les règlements municipaux prévoyant l'imposition de redevances d'exploitation expirent cinq ans après la date de leur entrée en vigueur.	Expiration des règlements municipaux
Idem	<p>(2) Despite subsection (1), the council of a municipality may,</p> <p>(a) provide in the by-law for a term of less than five years; or</p> <p>(b) repeal the by-law.</p>	<p>(2) Malgré le paragraphe (1), le conseil d'une municipalité peut :</p> <p>a) prévoir dans le règlement municipal une durée d'application inférieure à cinq ans;</p> <p>b) abroger le règlement municipal.</p>	Idem
Term of by-law	(3) Amendments to a by-law by council under subsection 4 (11) or 7 (1) do not affect the term of the by-law.	(3) Les modifications que le conseil apporte aux règlements municipaux en vertu du paragraphe 4 (11) ou 7 (1) n'ont aucune incidence sur la durée d'application de ceux-ci.	Durée d'application des règlements municipaux
New by-law	(4) Subject to subsections (5), (6) and (7), the council of a municipality in which a development charge by-law is in force may pass a new development charge by-law.	(4) Sous réserve des paragraphes (5), (6) et (7), le conseil d'une municipalité dans laquelle un règlement municipal prévoyant l'imposition de redevances d'exploitation est en vigueur peut adopter un nouveau règlement municipal prévoyant l'imposition de redevances d'exploitation.	Nouveau règlement municipal
Review of policies	(5) Before passing a new development charge by-law, the council shall conduct a review of the development charge policies of the municipality.	(5) Avant d'adopter un nouveau règlement municipal prévoyant l'imposition de redevances d'exploitation, le conseil examine la politique de la municipalité en matière de redevances d'exploitation.	Examen de la politique
Public meeting	(6) In conducting a review under subsection (5), council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one	(6) Dans le cadre de l'examen prévu au paragraphe (5), le conseil veille à ce que les renseignements voulus soient fournis au public. À cette fin, il tient au moins une réunion	Réunion publique

public meeting, notice of which shall be given in at least one newspaper having general circulation in the municipality.

Procedures

(7) Sections 4 and 5 apply with necessary modifications to the passing of a by-law under subsection (4). 1989, c. 58, s. 6.

Amendments

7.—(1) The council of a municipality that has passed a development charge by-law may amend the by-law.

Procedures

(2) Sections 4 and 5 apply with necessary modifications to an amendment of a development charge by-law under subsection (1). 1989, c. 58, s. 7.

Complaints

8.—(1) An owner may complain in writing to the council of a municipality in respect of the development charge imposed by the municipality on the owner's development that,

- (a) the amount of the development charge imposed was incorrect or was based on incorrect data;
- (b) the amount credited to the owner under section 13 is incorrect;
- (c) the amount of a previous development charge being credited under section 14 is incorrect; or
- (d) there was an error in the application of the development charge by-law.

When complaint to be made

(2) An owner may not submit a complaint under subsection (1) after ninety days following the latest of,

- (a) the date a building permit is issued;
- (b) the date a development charge is payable under subsection 9 (3); or
- (c) the date a development charge is payable under an agreement under subsection 9 (4) or (8).

Idem

(3) The complaint shall state the name and address where notices can be given to the complainant and shall state the reasons for the complaint.

Hearing

(4) The council shall give the complainant the opportunity to make representations and notice of the hearing shall be mailed to the complainant by the clerk not less than fourteen days before the date the complaint is to be considered.

nion publique et en donne avis dans au moins un journal généralement lu dans la municipalité.

(7) Les articles 4 et 5 s'appliquent avec les adaptations nécessaires à l'adoption d'un règlement municipal en vertu du paragraphe (4). 1989, chap. 58, art. 6.

7 (1) Le conseil d'une municipalité qui a adopté un règlement municipal prévoyant l'imposition de redevances d'exploitation peut modifier le règlement municipal.

(2) Les articles 4 et 5 s'appliquent avec les adaptations nécessaires à la modification d'un règlement municipal prévoyant l'imposition de redevances d'exploitation en vertu du paragraphe (1). 1989, chap. 58, art. 7.

8 (1) Un propriétaire peut se plaindre par écrit au conseil d'une municipalité, en ce qui a trait à la redevance d'exploitation que la municipalité a imposée à l'égard de ses travaux d'exploitation, que :

- a) le montant de la redevance d'exploitation imposée est inexact ou fondé sur des données inexactes;
- b) le montant porté au crédit du propriétaire en vertu de l'article 13 est inexact;
- c) le montant d'une redevance d'exploitation antérieure accordé à titre de crédit en vertu de l'article 14 est inexact;
- d) il y a eu erreur dans l'application du règlement municipal prévoyant l'imposition de redevances d'exploitation.

(2) Aucun propriétaire ne peut porter plainte en vertu du paragraphe (1) plus de quatre-vingt-dix jours après la dernière des dates suivantes :

- a) la date où le permis de construire est délivré;
- b) la date où la redevance d'exploitation est payable aux termes du paragraphe 9 (3);
- c) la date où la redevance d'exploitation est payable aux termes d'un accord prévu au paragraphe 9 (4) ou (8).

(3) La plainte indique le nom du plaignant et l'adresse où les avis peuvent lui être envoyés ainsi que les motifs de la plainte.

(4) Le conseil donne au plaignant la possibilité de présenter des observations. Le secrétaire envoie l'avis d'audience au plaignant par la poste au moins quatorze jours avant la date où la plainte doit être examinée.

Modalités

Modifications

Modalités

Plaintes

Moment où il faut porter plainte

Idem

Audience

Determina-
tion by
council

(5) After hearing the evidence and submissions of the complainant, the council may,

- (a) confirm the development charge; or
- (b) amend the development charge to the extent that, in the opinion of the council, a review of any or all of the matters in subsection (1) justifies such an amendment.

Notice of
decision

(6) The clerk of the municipality shall, not later than fifteen days after the day a decision is made by the council, give written notice of the decision by mail to the complainant, and the notice shall specify the last day for filing an appeal, which date shall be no earlier than twenty days after the date the letter is mailed.

Appel

(7) The complainant may appeal the decision of the council to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the reasons for the appeal.

Record

(8) The clerk of the municipality who receives a notice of appeal under subsection (7) shall compile a record which shall include,

- (a) a copy of the development charge by-law certified by the clerk;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice have been complied with; and
- (c) the original or a true copy of all written submissions and material in support of the complaint.

Notice and
record to
O.M.B.

(9) The clerk shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information and material that the Board may require in respect of the appeal.

Parties

(10) The parties to the appeal are the complainant and the municipality.

Notice of
hearing

(11) The Municipal Board shall hold a hearing notice of which shall be given to the parties to the appeal.

Early
dismissal

(12) Despite subsection (11), the Municipal Board may, where it is of the opinion that the complaint set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant an opportunity to make representations as to the merits of the appeal.

(5) Après avoir entendu le témoignage et les observations du plaignant, le conseil peut :

- a) confirmer la redevance d'exploitation;
- b) modifier la redevance d'exploitation dans la mesure où, de l'avis du conseil, un examen de la totalité ou d'un des points figurant au paragraphe (1) justifie une telle modification.

(6) Le secrétaire de la municipalité, au plus tard quinze jours après que le conseil a rendu une décision, envoie par la poste un avis écrit de la décision au plaignant. L'avis précise le dernier jour où l'on peut déposer un avis d'appel, date qui ne doit pas être fixée à moins de vingt jours après la date de mise à la poste de la lettre.

(7) Le plaignant peut interjeter appel de la décision du conseil à la Commission des affaires municipales en déposant auprès du secrétaire de la municipalité un avis motivé d'appel.

(8) Le secrétaire de la municipalité reçoit l'avis d'appel prévu au paragraphe (7) et constitue un dossier qui comprend les pièces suivantes :

- a) une copie du règlement municipal prévoyant l'imposition de redevance d'exploitation certifiée conforme par le secrétaire;
- b) un affidavit ou une déclaration attestant que les exigences touchant la signification de l'avis ont été observées;
- c) l'original ou une copie conforme de toutes les observations écrites et de tous les documents reçus à l'appui de la plainte.

(9) Le secrétaire envoie l'avis d'appel et le dossier au secrétaire de la Commission des affaires municipales dans les trente jours suivant l'expiration du délai d'appel et fournit les renseignements et documents que la Commission peut exiger relativement à l'appel.

(10) Sont parties à l'appel le plaignant et la municipalité.

(11) La Commission des affaires municipales tient une audience et en avise les parties à l'appel.

(12) Malgré le paragraphe (11), la Commission des affaires municipales peut, si elle est d'avis que la plainte énoncée dans le notice d'appel est insuffisante, rejeter l'appel sans tenir d'audience complète. Avant de rejeter l'appel, cependant, elle avise l'appellant et lui donne la possibilité de présenter des observations concernant le bien-fondé de l'appel.

Decision by O.M.B.	(13) The Municipal Board may make any decision that could have been made by the council of the municipality.	(13) La Commission des affaires municipales peut rendre toute décision que le conseil de la municipalité aurait pu rendre.	Décision de la C.A.M.O.
Refund	(14) If the development charge is amended by the council or by the Municipal Board, the municipality shall immediately refund the difference between the development charge paid that was in dispute and the amount of the charge required by the council or the Municipal Board to be paid. 1989, c. 58, s. 8.	(14) Si le conseil ou la Commission des affaires municipales modifie la redevance d'exploitation, la municipalité rembourse sans délai la différence entre la redevance d'exploitation payée qui faisait l'objet du litige et le montant de la redevance dont le conseil ou la Commission des affaires municipales exige le paiement. 1989, chap. 58, art. 8.	Remboursement
When charge is due	9.—(1) A development charge is payable on the date a building permit is issued in relation to a building or structure on land to which a development charge applies.	9 (1) La redevance d'exploitation est payable à la date de délivrance du permis de construire à l'égard d'un bâtiment ou d'une construction sur un terrain auquel s'applique une redevance d'exploitation.	Date d'exigibilité de la redevance
Effect of non-payment	(2) Despite any other Act, a municipality is not required to issue a building permit in relation to a building or structure on land to which a development charge applies unless the development charge has been paid.	(2) Malgré toute autre loi, la municipalité n'est pas tenue de délivrer un permis de construire à l'égard d'un bâtiment ou d'une construction sur un terrain auquel s'applique une redevance d'exploitation à moins que celle-ci n'ait été payée.	Effet du non-paiement
Exception	(3) Despite subsection (1), a municipality may, in a development charge by-law, provide that a development charge with respect to water supply services, sanitary sewer services, storm drainage services, transportation services and electrical power or energy services shall be payable, with respect to an approval of a plan of subdivision under section 51 of the <i>Planning Act</i> , immediately upon entering into the subdivision agreement.	(3) Malgré le paragraphe (1), la municipalité peut, dans un règlement municipal prévoyant l'imposition de redevances d'exploitation, prévoir qu'une redevance d'exploitation à l'égard de services d'approvisionnement en eau, d'égout séparatif et d'égout pluvial, de services de transport et de services d'électricité ou d'énergie est payable à l'égard de l'approbation d'un plan de lotissement en vertu de l'article 51 de la <i>Loi sur l'aménagement du territoire</i> , dès la conclusion d'une convention de lotissement.	Exception
Agreement respecting payments	(4) A municipality may enter into an agreement with an owner providing for the payment of a development charge before the date otherwise required for payment under subsection (1) or (3).	(4) Une municipalité peut conclure avec un propriétaire un accord prévoyant le paiement d'une redevance d'exploitation avant la date fixée pour le paiement aux termes du paragraphe (1) ou (3).	Accord relativement aux paiements
Idem	(5) Despite any provision of a development charge by-law, an owner entering into an agreement under subsection (4) is required to pay only the development charge in effect on the date it is payable under the agreement.	(5) Malgré toute disposition d'un règlement municipal prévoyant l'imposition de redevances d'exploitation, le propriétaire qui conclut un accord en vertu du paragraphe (4) n'est tenu de payer que la redevance d'exploitation en vigueur à la date où elle est payable aux termes de l'accord.	Idem
Payments non-transferable	(6) The payments agreed to under subsection (4) are payable by the owner entering into the agreement and are not transferable to a subsequent owner.	(6) Les paiements prévus aux termes du paragraphe (4) doivent être effectués par le propriétaire qui conclut l'accord et ne peuvent être transférés à un propriétaire subséquent.	Paiements non transférables
Credits non-transferable	(7) Credits given under section 13 or 14 to an owner who has entered into an agreement under subsection (4) are not transferable to a subsequent owner.	(7) Les crédits accordés aux termes de l'article 13 ou 14 à un propriétaire qui a conclu un accord en vertu du paragraphe (4) ne peuvent être transférés à un propriétaire subséquent.	Crédits non transférables
Exceptions in agreements	(8) Despite subsections (1) and (3), a municipality may enter into an agreement with an owner providing for the payment of	(8) Malgré les paragraphes (1) et (3), une municipalité peut conclure avec un propriétaire un accord prévoyant le paiement de la	Exceptions

décision de
C.A.M.O.

rembourse-
ment

date d'exigibi-
lité de la
redevance

effet du non-
paiement

exception

accord relati-
vement aux
paiements

lem

paiements
non transféra-
bles

crédits non
transférables

exceptions

all or any portion of the development charge on dates later than the issuing of a building permit or the entering into of a subdivision agreement.

Services in
lieu of
payment

Interest

Upper tier
municipali-
ties

Collection of
development
charges

Idem

Certification

Idem

Idem

(9) Despite subsections (1) and (3), a municipality may by agreement permit an owner to provide services in lieu of the payment of all or any portion of a development charge.

(10) A municipality that has entered into an agreement under subsection (8) may charge interest, at a rate stipulated in the agreement, on that part of the development charge not paid in accordance with subsection (1). 1989, c. 58, s. 9.

10.—(1) If a development charge is imposed by an upper tier municipality, the treasurer of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that the charge has been imposed, the amount of the charge, the manner in which the charge is to be paid and when the charge is due.

(2) The treasurer of the area municipality shall collect the charge imposed by the upper tier municipality when due and shall, unless an extension of time is agreed to by the upper tier municipality, remit the amount of the charge to the treasurer of the upper tier municipality on or before the 25th day of the month following the month in which the charge is received by the area municipality.

(3) Despite subsection (2), a development charge imposed by an upper tier municipality under subsection 9 (3), (4) or (8) may be collected by the upper tier municipality.

(4) The treasurer of an upper tier municipality that has collected a development charge under subsection (3) shall certify to the treasurer of the area municipality in which the land is located that the charge has been collected.

(5) If building permits are issued by an upper tier municipality, the chief building official of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that all applicable law within the meaning of the *Building Code Act*, except the payment of development charges, has been complied with.

(6) The treasurer of the area municipality shall, upon receipt of the certificate under subsection (5) and upon payment of all development charges and education development charges under Part III imposed on the development, immediately certify to the chief building official of the upper tier municipality

totalité ou d'une partie de la redevance d'exploitation à des dates postérieures à la date de délivrance d'un permis de construire ou la conclusion d'une convention de lotissement.

(9) Malgré les paragraphes (1) et (3), une municipalité peut, au moyen d'un accord, permettre à un propriétaire de fournir des services au lieu de payer la totalité ou une partie de la redevance d'exploitation.

(10) La municipalité qui a conclu un accord en vertu du paragraphe (8) peut charger des intérêts, à un taux précisé dans l'accord, sur la partie de la redevance d'exploitation qui n'a pas été payée conformément au paragraphe (1). 1989, chap. 58, art. 9.

10 (1) Si une municipalité de palier supérieur impose une redevance d'exploitation, le trésorier de cette municipalité certifie au trésorier de la municipalité de secteur dans laquelle est situé le terrain que la redevance a été imposée et lui indique le montant de la redevance ainsi que le mode de paiement et la date d'exigibilité de celle-ci.

(2) Le trésorier de la municipalité de secteur perçoit la redevance imposée par la municipalité de palier supérieur à la date d'exigibilité et, à moins que la municipalité de palier supérieur n'accorde une prolongation de l'échéance, remet le montant de la redevance au trésorier de la municipalité de palier supérieur au plus tard le 25^e jour du mois suivant celui au cours duquel la municipalité de secteur a reçu la redevance.

(3) Malgré le paragraphe (2), les redevances d'exploitation imposées par une municipalité de palier supérieur en vertu du paragraphe 9 (3), (4) ou (8) peuvent être perçues par cette dernière.

(4) Le trésorier de la municipalité de palier supérieur qui a perçu une redevance d'exploitation en vertu du paragraphe (3) certifie au trésorier de la municipalité de secteur dans laquelle le terrain est situé que la redevance a été perçue.

(5) Si une municipalité de palier supérieur délivre des permis de construire, le directeur de la construction de cette municipalité certifie au trésorier de la municipalité de secteur dans laquelle le terrain est situé que toutes les dispositions applicables au sens de la *Loi sur le code du bâtiment*, à l'exception du paiement de la redevance d'exploitation, ont été respectées.

(6) Lorsqu'il reçoit l'attestation prévue au paragraphe (5) ainsi que le paiement de la redevance d'exploitation et des redevances d'exploitation relatives à l'éducation, le trésorier de la municipalité de secteur certifie sans délai au directeur

that all development charges and education development charges have been paid.

la construction de la municipalité de palier supérieur que toutes les redevances d'exploitation et les redevances d'exploitation relatives à l'éducation ont été payées.

Delegation of collection powers

(7) If building permits are issued by an upper tier municipality, the upper tier municipality may, if agreed to by the area municipality, collect all development charges and education development charges. 1989, c. 58, s. 10

(7) Si une municipalité de palier supérieur délivre des permis de construire, cette municipalité peut, si la municipalité de secteur y consent, percevoir les redevances d'exploitation et les redevances d'exploitation relatives à l'éducation. 1989, chap. 58, art. 10.

Délégation des pouvoirs de perception

Notice of by-law

11. A municipality that has passed a development charge by-law may register the by-law or a certified copy of it on the land to which it applies. 1989, c. 58, s. 11.

11 La municipalité qui a adopté un règlement municipal prévoyant l'imposition de redevances d'exploitation peut enregistrer le règlement municipal ou une copie certifiée conforme de ce dernier à l'égard du terrain auquel il s'applique. 1989, chap. 58, art. 11.

Avis de règlement municipal

Collection

12.—(1) If the development charge or any part thereof imposed by a municipality, other than an upper tier municipality, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected as taxes.

12 (1) Si la redevance d'exploitation, ou une partie de celle-ci, qui a été imposée par une municipalité, à l'exclusion d'une municipalité de palier supérieur, demeure impayée après la date d'exigibilité, le montant impayé est ajouté au rôle de perception et perçu à titre d'impôts.

Perception

Idem

(2) If the development charge or any part thereof imposed by an upper tier municipality remains unpaid after the due date, the treasurer of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that the amount is unpaid and the amount unpaid shall be added to the tax roll of the area municipality and shall be collected as taxes. 1989, c. 58, s. 12.

(2) Si la redevance d'exploitation, ou une partie de celle-ci, qui a été imposée par une municipalité de palier supérieur demeure impayée après la date d'exigibilité, le trésorier de la municipalité de palier supérieur certifie au trésorier de la municipalité de secteur dans laquelle le terrain est situé que le montant est impayé. Ce montant est alors ajouté au rôle de perception de la municipalité de secteur et perçu à titre d'impôts. 1989, chap. 58, art. 12.

Idem

Credit for services

13.—(1) A municipality that permits the provision of services in lieu of the payment of all or any portion of a development charge shall give a credit for an amount equal to the reasonable cost to the owner of providing the services.

13 (1) La municipalité qui permet la fourniture de services au lieu du paiement de la totalité ou d'une partie d'une redevance d'exploitation accorde un crédit d'un montant égal aux frais raisonnables engagés par le propriétaire pour fournir les services.

Crédit pour services

Idem

(2) If a municipality and owner enter an agreement that permits an owner to provide services additional to or of a greater size or capacity than is required under a development charge by-law, the municipality may agree to give a credit for an amount up to the reasonable cost to the owner of providing the services.

(2) Si une municipalité et un propriétaire concluent un accord permettant à ce dernier de fournir des services supplémentaires ou des services d'une envergure ou d'une capacité supérieure à ce qui est exigé aux termes d'un règlement municipal prévoyant l'imposition de redevances d'exploitation, la municipalité peut accepter d'accorder un crédit d'un montant pouvant égaler les frais raisonnables engagés par le propriétaire pour fournir les services.

Idem

Idem

(3) A credit given under subsection (2) shall not be charged to a reserve fund established under section 16. 1989, c. 58, s. 13.

(3) Aucun crédit accordé en vertu du paragraphe (2) ne doit être imputé à un fonds de réserve créé en vertu de l'article 16. 1989, chap. 58, art. 13.

Idem

Credits

14.—(1) If an owner or a former owner has, before the coming into force of a development charge by-law, paid all or any portion of a charge related to development pursuant to an agreement under section 51 or 53 of the *Planning Act* or a predecessor thereof

14 (1) Si, avant l'entrée en vigueur d'un règlement municipal prévoyant l'imposition de redevances d'exploitation, un propriétaire ou un ancien propriétaire a payé la totalité ou une partie de la redevance relative à des travaux d'exploitation conformément à une

Crédits

with respect to land within the area to which the by-law applies, the municipality shall give a credit for the amount of the charge paid.

Idem

(2) If an owner or a former owner has, before the coming into force of a development charge by-law, provided services in lieu of the payment of all or any portion of a charge related to development pursuant to an agreement under section 51 or 53 of the *Planning Act* or a predecessor thereof with respect to land within the area to which the by-law applies, the municipality shall give a credit for an amount equal to the reasonable cost to the owner or to the former owner of providing the services.

Idem

(3) If an owner is required to pay a charge to a municipality under a by-law passed under section 218 of the *Municipal Act*, section 4 of *The City of Ottawa Act, 1960-61* or section 1 of *The City of Toronto Act, 1961-62*, the municipality shall reduce the development charge payable under the development charge by-law by an amount equal to the charge imposed by that by-law.

Conflicts

(4) If a conflict exists between the provisions of a development charge by-law and an agreement referred to in subsection (1) or (2), the provisions of the agreement prevail to the extent of the conflict.

Idem

(5) If a conflict exists between the provisions of a development charge by-law and any other agreement between a municipality and an owner or a former owner with respect to land within the area to which the by-law applies, the provisions of the agreement prevail to the extent that there is a conflict. 1989, c. 58, s. 14.

Multiple requirements

15.—(1) A municipality shall not levy more than one development charge on land to which a development charge applies even though two or more of the actions described in clauses 3 (1) (a) to (g) are required before that land can be developed.

Idem

(2) Despite subsection (1), if two or more of the actions described in clauses 3 (1) (a) to (g) occur at different times, a municipality

convention conclue en vertu de l'article 51 ou 53 de la *Loi sur l'aménagement du territoire* ou de dispositions que ces articles remplacent à l'égard d'un terrain situé dans le secteur auquel s'applique le règlement municipal, la municipalité accorde alors un crédit d'un montant égal à la redevance payée.

Idem

(2) Si, avant l'entrée en vigueur d'un règlement municipal prévoyant l'imposition de redevances d'exploitation, un propriétaire ou un ancien propriétaire a fourni des services au lieu de payer la totalité ou une partie de la redevance relative à des travaux d'exploitation conformément à une convention conclue en vertu de l'article 51 ou 53 de la *Loi sur l'aménagement du territoire* ou de dispositions que ces articles remplacent à l'égard d'un terrain situé dans le secteur auquel s'applique le règlement municipal, la municipalité accorde alors un crédit d'un montant égal aux frais raisonnables engagés par le propriétaire ou l'ancien propriétaire pour fournir les services.

Idem

(3) Si un propriétaire est tenu de payer une redevance à une municipalité aux termes d'un règlement municipal adopté en vertu de l'article 218 de la *Loi sur les municipalités*, de l'article 4 de la loi intitulée *The City of Ottawa Act, 1960-61* ou de l'article 1 de la loi intitulée *The City of Toronto Act, 1961-62*, la municipalité diminue la redevance d'exploitation payable aux termes du règlement municipal prévoyant l'imposition de redevances d'exploitation d'un montant égal à la redevance imposée par ce règlement municipal.

Incompatibilités

(4) S'il y a incompatibilité entre les dispositions d'un règlement municipal prévoyant l'imposition de redevances d'exploitation et celles de la convention visée au paragraphe (1) ou (2), les dispositions de la convention l'emportent dans la mesure de l'incompatibilité.

Idem

(5) S'il y a incompatibilité entre les dispositions d'un règlement municipal prévoyant l'imposition de redevances d'exploitation et celles de tout autre accord conclu entre une municipalité et un propriétaire ou un ancien propriétaire à l'égard d'un terrain situé dans le secteur auquel le règlement municipal s'applique, les dispositions de l'accord l'emportent dans la mesure de l'incompatibilité. 1989, chap. 58, art. 14.

Nécessité de mesures multiples

15 (1) Une municipalité ne doit pas prélever plus d'une redevance d'exploitation à l'égard d'un terrain auquel s'applique une redevance d'exploitation, même si au moins deux des mesures décrites aux alinéas 3 (1) a) à g) sont nécessaires avant que ce terrain ne puisse être exploité.

Idem

(2) Malgré le paragraphe (1), si au moins deux des mesures décrites aux alinéas 3 (1) a) à g) sont prises à des moments différents,

may require the payment of an additional development charge if the subsequent action has the effect of increasing the need for services. 1989, c. 58, s. 15.

Reserve fund

16.—(1) Payments received by a municipality under this Part shall be maintained in a separate reserve fund or funds and shall be used only to meet growth-related net capital costs for which the development charge was imposed.

s. 163 (2, 3) of *Municipal Act* apply

(2) Subsections 163 (2) and (3) of the *Municipal Act* apply with necessary modifications to payments received by a municipality under this Part. 1989, c. 58, s. 16.

Statement of treasurer

17. The treasurer of the municipality shall, in each year, on or before such date as council may direct, furnish to the council a statement in respect of each reserve fund established under section 16 containing the information prescribed. 1989, c. 58, s. 17.

Interest

18.—(1) A municipality shall pay interest to persons to whom overpayments are refunded under subsection 5 (3), 5 (5) or 8 (14) calculated in the manner prescribed.

Idem

(2) Interest shall be calculated from the time that the overpayment was collected to the time that the refund is paid.

Idem

(3) The refund shall include the interest owed. 1989, c. 58, s. 18.

Regulations

19. The Lieutenant Governor in Council may make regulations,

- (a) prescribing, for the purposes of section 3, the manner in which development charges shall be calculated;
- (b) prescribing the number of additional dwelling units and the categories of existing residential buildings for the purposes of clause 3 (2) (b);
- (c) prescribing, for the purposes of section 3, those services for which development charges shall not be imposed;
- (d) prescribing, for the purposes of clause 3 (4) (a), an index or indices that may be used;
- (e) prescribing, for the purposes of subsection 4 (1), the persons that are to be given notice and the manner in which notice is to be given;
- (f) prescribing, for the purposes of subsection 4 (3), the persons and agencies that are to be given notice and the manner and form in which notice is to be given;
- (g) prescribing, for the purposes of subsection 5 (7), the information to be

la municipalité peut exiger le paiement d'une redevance d'exploitation additionnelle si la mesure subséquente a pour effet d'augmenter le besoin de services. 1989, chap. 58, art. 15.

Fonds de réserve

16 (1) Les paiements reçus par une municipalité aux termes de la présente partie sont conservés dans un ou plusieurs fonds de réserve distincts et ne sont utilisés que pour couvrir les coûts en immobilisations nets liés à la croissance pour lesquels la redevance d'exploitation a été imposée.

(2) Les paragraphes 163 (2) et (3) de la *Loi sur les municipalités* s'appliquent avec les adaptations nécessaires aux paiements reçus par une municipalité aux termes de la présente partie. 1989, chap. 58, art. 16.

Application des par. 163 (2) et (3) de la *Loi sur les municipalités*

17 Le trésorier de la municipalité fournit chaque année au conseil, au plus tard à la date que peut préciser ce dernier, un état concernant chaque fonds de réserve créé en vertu de l'article 16 et contenant les renseignements prescrits. 1989, chap. 58, art. 17.

État du trésorier

18 (1) La municipalité paie des intérêts, calculés de la manière prescrite, aux personnes auxquelles sont remboursés des trop-perçus aux termes du paragraphe 5 (3), 5 (5) ou 8 (14).

Intérêts

(2) Les intérêts sont calculés à partir du moment où le trop-perçu a été perçu jusqu'au moment du remboursement.

Idem

(3) Le remboursement comprend les intérêts qui sont dus. 1989, chap. 58, art. 18.

Idem

19 Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) prescrire, pour l'application de l'article 3, la façon de calculer les redevances d'exploitation;
- b) prescrire le nombre de logements additionnels et les catégories d'immeubles d'habitation existants pour l'application de l'alinéa 3 (2) b);
- c) prescrire, pour l'application de l'article 3, les services pour lesquels il n'est pas imposé de redevances d'exploitation;
- d) prescrire, pour l'application de l'alinéa 3 (4) a), le ou les indices qui peuvent être utilisés;
- e) prescrire, pour l'application du paragraphe 4 (1), les personnes auxquelles un avis doit être donné ainsi que le mode de signification de l'avis;
- f) prescrire, pour l'application du paragraphe 4 (3), les personnes et organismes auxquels un avis doit être donné ainsi que le mode de signification de l'avis et la formule à respecter;
- g) prescrire, pour l'application du paragraphe 5 (7), les renseignements qui

provided in the notice and the persons to whom notice is to be given;

doivent figurer dans l'avis ainsi que les personnes auxquelles celui-ci doit être donné;

- (h) prescribing, for the purposes of section 13, the manner in which credits shall be calculated;
- (i) prescribing the information to be provided in a statement of the treasurer under section 17;
- (j) prescribing methods of calculating and establishing interest rates under section 18;
- (k) prescribing anything that in Parts I, II and IV of this Act may be prescribed by regulation. 1989, c. 58, s. 19.

- h) prescrire, pour l'application de l'article 13, le mode de calcul des crédits;
- i) prescrire les renseignements qui doivent figurer dans l'état du trésor prévu à l'article 17;
- j) prescrire les méthodes de calcul et de fixation des taux d'intérêt prévus à l'article 18;
- k) prescrire tout ce qui, dans les parties I, II et IV de la présente loi, peut être prescrit par règlement. 1989, chap. art. 19.

PART II

FRONT-END PAYMENTS

Definition **20.** In this Part, "benefiting owner" means an owner of land within a benefiting area other than an owner who is party to a front-ending agreement. ("propriétaire avantagé") 1989, c. 58, s. 20.

Front-ending agreement **21.**—(1) A municipality that has passed a development charge by-law may enter into a front-ending agreement or agreements with any or all owners within a benefiting area providing for the payment by those owners of a front-end payment or for the installation of services by the owners, or any combination thereof.

- Contents of agreement**
- (2) A front-ending agreement shall contain,
 - (a) a list of the services for which front-end payments shall be made or services installed by the owner;
 - (b) the estimated cost of installing the services;
 - (c) the proportion of the front-end payment or the cost of the installation of services to be paid by each owner who is a party to the agreement;
 - (d) the agreement of the owners to immediately pay to the municipality the actual costs incurred by the municipality in the installation of the services in accordance with the proportions determined under clause (c);
 - (e) the agreement of the municipality to immediately reimburse the owners if the actual cost incurred by the municipality in the installation of the services is lower than the estimated cost in

PARTIE II

PAIEMENTS ANTICIPÉS

20 Dans la présente partie, «propriétaire avantagé» s'entend du propriétaire d'un terrain situé dans un secteur avantagé, mais pas d'un propriétaire qui est partie à un accord initial. («benefiting owner») 1989, chap. art. 20.

21 (1) La municipalité qui a adopté un règlement municipal prévoyant l'imposition de redevances d'exploitation peut conclure avec l'un quelconque ou l'ensemble des propriétaires à l'intérieur d'un secteur avantagé un ou plusieurs accords initiaux prévoyant le versement d'un paiement anticipé ou l'installation de services par ces propriétaires, ou une combinaison des deux.

(2) L'accord initial contient :

- a) la liste des services pour lesquels des paiements anticipés sont versés ou des services installés par le propriétaire;
- b) le coût estimatif de l'installation des services;
- c) la part du paiement anticipé ou du coût de l'installation des services que doit assumer chaque propriétaire qui est partie à l'accord;
- d) une disposition selon laquelle les propriétaires conviennent de payer immédiatement à la municipalité les coûts réels engagés par celle-ci pour l'installation des services, en tenant compte des parts fixées en vertu de l'alinéa c);
- e) une disposition selon laquelle la municipalité convient de rembourser immédiatement les propriétaires du coût réel engagé par la municipalité pour l'installation des services, si ce coût est inférieur au coût estimatif, en tenant

	accordance with the proportions determined under clause (c);	compte des parts fixées en vertu de l'alinéa c);
	(f) a description of the benefiting area for each of the services;	f) la description du secteur avantage pour chacun des services;
	(g) a list of the services in the agreement for which a development charge is payable;	g) la liste des services visés par l'accord pour lesquels une redevance d'exploitation est payable;
	(h) a list of the services in the agreement which are services described in subsection 3 (7);	h) la liste des services visés par l'accord qui sont des services décrits au paragraphe 3 (7);
	(i) a description of the manner in which the portion of the payment to be made by each benefiting owner with respect to the services listed in clause (g) is to be calculated;	i) la description du mode de calcul de la part du paiement que chaque propriétaire avantage doit verser à l'égard des services indiqués à l'alinéa g);
	(j) if the agreement provides for the installation of services by the owners who are parties to the agreement, the agreement of the municipality to use the reasonable cost to the owners of installing the services in making the calculations under clause (i);	j) si l'accord prévoit l'installation de services par les propriétaires qui sont parties à l'accord, une disposition selon laquelle la municipalité convient d'utiliser, aux fins des calculs prévus à l'alinéa i), les frais raisonnables engagés par les propriétaires pour installer les services;
	(k) the agreement of the municipality to require each benefiting owner to pay, with respect to the services listed in clause (g), that benefiting owner's portion of the front-end payment; and	k) une disposition selon laquelle la municipalité convient d'exiger de chaque propriétaire avantage le versement, à l'égard des services énumérés à l'alinéa g), de sa part du paiement anticipé;
	(l) the period of time during which the agreement is in force.	l) la durée de l'accord.
Idem	(3) A front-ending agreement may provide that the reasonable costs to the municipality of administering the agreement, including the cost of consultants and studies required in preparation of the agreement, are to be included in calculating the front-end payment.	(3) L'accord initial peut prévoir l'inclusion Idem dans le calcul du paiement anticipé des frais raisonnables engagés par la municipalité pour administrer l'accord, y compris le coût des services d'experts-conseils et des études nécessaires à sa préparation.
Idem	(4) A front-ending agreement may provide for the indexing of the payments required to be made by the benefiting owner under clause (2) (k). 1989, c. 58, s. 21.	(4) L'accord initial peut prévoir l'indexation Idem des paiements que le propriétaire avantage doit effectuer en vertu de l'alinéa (2) k). 1989, chap. 58, art. 21.
Front-ending agreement	22. —(1) The municipality shall give notice of the front-ending agreement,	22 (1) La municipalité donne un avis de l'accord initial : Accord initial
	(a) by mailing it to all owners within the benefiting area; or	a) soit par la poste à tous les propriétaires à l'intérieur du secteur avantage;
	(b) by publishing it in a newspaper having general circulation in the municipality.	b) soit par publication dans un journal généralement lu dans la municipalité.
Contents of notice	(2) The notice referred to in subsection (1) shall explain the nature and purpose of the agreement and shall indicate that the agreement can be viewed in the office of the clerk during normal office hours.	(2) L'avis visé au paragraphe (1) explique la nature et le but de l'accord et précise que celui-ci peut être examiné au bureau du secrétaire pendant les heures normales de bureau. Contenu de l'avis
Objections	(3) Any owner to whom notice of the agreement is given, except a party to the agreement, may object to the agreement by filing a written objection with the clerk of the municipality within twenty-one days of the	(3) Sauf s'il est partie à l'accord, tout propriétaire auquel est donné avis de l'accord peut s'opposer à celui-ci en déposant une opposition écrite auprès du secrétaire de la municipalité dans les vingt et un jours sui- Opposition

	date of the giving of the notice of the agreement.	vant la date où l'avis de l'accord lui est donné.	
Notice	(4) For the purposes of subsection (3), notice shall be deemed to be given, (a) where notice is given by mail, on the day the mailing of all required notices is completed; or (b) where notice is given by publication in a newspaper, on the day that the publication occurs.	(4) Pour l'application du paragraphe (3), l'avis est réputé donné : a) s'il est donné par courrier, le jour où tous les avis exigés ont été mis à la poste; b) s'il est donné par voie de publication dans un journal, le jour de sa publication.	Avis
Effective date of agreement	(5) If no objection is filed within twenty-one days, the agreement shall be deemed to have come into effect on the date it was fully executed.	(5) Si aucune opposition n'est déposée dans les vingt et un jours, l'accord est réputé entré en vigueur à la date où il a été pleinement passé.	Date d'entrée en vigueur de l'accord
Objections to O.M.B.	(6) If an objection is filed, the clerk shall immediately forward it to the Municipal Board.	(6) S'il y a dépôt d'une opposition, le secrétaire la fait parvenir sans délai à la Commission des affaires municipales.	Opposition signalée à la C.A.M.O.
Hearing to O.M.B.	(7) The Municipal Board shall hold a hearing and shall confirm the agreement, refuse to confirm the agreement or direct a municipality to make changes to the agreement.	(7) La Commission des affaires municipales tient une audience et confirme l'accord, refuse de le confirmer ou ordonne à la municipalité d'y apporter des modifications.	Audience de la C.A.M.O.
Effective date where objection	(8) If an objection is filed under subsection (3), the agreement comes into effect when approved by the Municipal Board or, if changes are directed by the Board, when the municipality and the other parties to the agreement have executed the agreement as directed to be changed by the Board.	(8) Si une opposition est déposée en vertu du paragraphe (3), l'accord entre en vigueur lorsqu'il est approuvé par la Commission des affaires municipales ou, si celle-ci ordonne des modifications, lorsque la municipalité et les autres parties à l'accord ont passé l'accord tel qu'il a été modifié par ordonnance de la Commission.	Date d'entrée en vigueur s'il y a opposition
Parties	(9) The parties to the Municipal Board hearing are the municipality, the other parties to the agreement and the owners who filed written objections within the period referred to in subsection (3).	(9) Sont parties à l'audience de la Commission des affaires municipales la municipalité, les autres parties à l'accord et les propriétaires qui ont déposé des oppositions écrites dans le délai mentionné au paragraphe (3).	Parties
Early dismissal of objection	(10) The Municipal Board may, where it is of the opinion that the objection to the agreement is insufficient, dismiss the objection without holding a full hearing, but before dismissing the objection it shall notify the objector and give the objector an opportunity to make representations as to the merits of the objection. 1989, c. 58, s. 22.	(10) La Commission des affaires municipales peut, si elle est d'avis que l'opposition à l'accord est insuffisante, rejeter l'opposition sans tenir d'audience complète. Avant de rejeter l'opposition, cependant, elle avise l'opposant et lui donne la possibilité de présenter des observations concernant le bien-fondé de l'opposition. 1989, chap. 58, art. 22.	Rejet anticipé de l'opposition
O.M.B. approval not required	23. Section 65 of the <i>Ontario Municipal Board Act</i> does not apply to a front-ending agreement or to special accounts established under sections 27 and 28. 1989, c. 58, s. 23.	23 L'article 65 de la <i>Loi sur la Commission des affaires municipales de l'Ontario</i> ne s'applique pas aux accords initiaux ni aux comptes spéciaux créés en vertu des articles 27 et 28. 1989, chap. 58, art. 23.	Approbation de la C.A.M.O. non requise
Registration	24. An agreement entered into under section 21 may be registered against the land in the benefiting area, and subject to the <i>Registry Act</i> and the <i>Land Titles Act</i> , the municipality, (a) may enforce the provisions of the agreement against any and all subse-	24 L'accord conclu en vertu de l'article 21 peut être enregistré à l'égard du terrain situé dans le secteur avantagé. Sous réserve de la <i>Loi sur l'enregistrement des actes</i> et de la <i>Loi sur l'enregistrement des droits immobiliers</i> , la municipalité peut : a) faire respecter les clauses de l'accord par l'un quelconque et par l'ensemble des propriétaires subséquents des ter-	Enregistrement

quent owners of the lands owned by the parties thereto; and

- (b) may enforce the provisions of the agreement made under clauses 21 (2) (d) and (k), subsection 21 (4) and section 26 against any and all owners and subsequent owners of lands in the benefiting area. 1989, c. 58, s. 24.

Compliance
necessary

25. If a front-ending agreement is in effect, no person shall undertake any development that requires an approval mentioned in subsection 3 (1) within a benefiting area until section 26 has been complied with. 1989, c. 58, s. 25.

Payments to
parties to
agreement

26. A municipality that has entered into a front-ending agreement shall require a benefiting owner to pay the benefiting owner's portion of the front-end payment as a condition of an approval granted during the term of the agreement of any development on that portion of the benefiting owner's land located within the benefiting area. 1989, c. 58, s. 26.

Special
accounts

27.—(1) The municipality shall place all money received from the parties to the front-ending agreement in a special account and shall use the funds in such account only for,

- (a) paying the actual net cost of the installation of the services specified in the agreement; and
- (b) reimbursing to the parties to the agreement any funds remaining in the account after the installation of the services referred to in clause (a).

Idem

(2) During the term of the agreement the municipality shall provide annually to the parties to the front-ending agreement a statement setting out the particulars of payments made out of the account, the balance remaining in the account and additional payments, if any, that are or will be required from the parties pursuant to the agreement. 1989, c. 58, s. 27.

Distribution
of s. 26
funds

28.—(1) The municipality shall place money received under section 26 in a special account and shall, immediately upon receipt of the money, by registered mail,

- (a) notify the parties to the front-ending agreement that the money is available to be paid out; and
- (b) request the parties to give directions to the municipality as to whom the money is to be paid.

Payment to
party

(2) Upon receipt of a direction from a party to a front-ending agreement, the municipality shall pay to the party named in the direction the proportion of the money

rains appartenant aux parties à l'accord;

- b) faire respecter les clauses de l'accord prévues aux alinéas 21 (2) d) et k), au paragraphe 21 (4) et à l'article 26 par l'un quelconque et par l'ensemble des propriétaires actuels et subséquents des terrains situés dans le secteur avantage. 1989, chap. 58, art. 24.

25 Si un accord initial est en vigueur, nul ne doit entreprendre de travaux d'exploitation nécessitant une approbation mentionnée au paragraphe 3 (1) dans un secteur avantage avant de s'être conformé à l'article 26. 1989, chap. 58, art. 25.

Nécessité de
se conformer
à l'art. 26

26 La municipalité qui a conclu un accord initial exige des propriétaires avantageés le versement de leur part du paiement anticipé en en faisant une condition de l'obtention d'une approbation pendant la durée de l'accord à l'égard de travaux d'exploitation sur la partie de leur terrain qui est située dans le secteur avantage. 1989, chap. 58, art. 26.

Paiements
aux parties à
l'accord

27 (1) La municipalité verse l'argent reçu des parties à l'accord initial dans un compte spécial et utilise les fonds qui s'y trouvent uniquement pour :

Comptes
spéciaux

- a) payer le coût net réel de l'installation des services précisés dans l'accord;
- b) rembourser aux parties à l'accord les fonds qui restent dans le compte une fois installés les services visés à l'alinéa a).

Idem

(2) Pendant la durée de l'accord, la municipalité fournit chaque année aux parties à l'accord initial un état précisant les détails des paiements effectués par prélèvement sur le compte, le solde du compte et les paiements additionnels, le cas échéant, que les parties sont ou seront tenues de faire conformément à l'accord. 1989, chap. 58, art. 27.

28 (1) La municipalité verse l'argent reçu en vertu de l'article 26 dans un compte spécial et, par courrier recommandé, dès qu'elle reçoit l'argent, elle :

Répartition
des fonds
prévus à
l'art. 26

- a) avise les parties à l'accord initial que l'argent peut être affecté;
- b) demande aux parties d'indiquer à la municipalité, par voie de directives, à qui l'argent doit être versé.

(2) Dès qu'elle reçoit une directive d'une partie à l'accord initial, la municipalité verse à la partie nommée dans la directive la part de l'argent reçu par la municipalité à laquelle

Paiement aux
parties

	received by the municipality to which the party is entitled. 1989, c. 58, s. 28 (1, 2).	cette partie a droit. 1989, chap. 58, par. 28 (1) et (2).	
Payment into court	(3) If within ninety days of mailing the notice under subsection (1) the municipality has not received a direction from a party, the municipality may pay the money owing to that party into the Ontario Court (General Division). 1989, c. 58, s. 28 (3), <i>revised</i> .	(3) Si, dans les quatre-vingt-dix jours suivant la mise à la poste de l'avis prévu au paragraphe (1), elle n'a toujours pas reçu de directive d'une partie, la municipalité peut verser l'argent qui est dû à cette partie à la Cour de l'Ontario (Division générale). 1989, chap. 58, par. 28 (3), <i>révisé</i> .	Paiement au tribunal
Notification of payment	(4) A municipality that has paid money into court under subsection (3) shall immediately notify the party to whom the money is owing, by registered mail sent to the party's last known address, that, (a) the money has been paid into court; and (b) the party must apply to the court for the release of the money.	(4) La municipalité qui a versé de l'argent au tribunal en vertu du paragraphe (3) avise sans délai la partie à qui l'argent est dû, par courrier recommandé envoyé à sa dernière adresse connue, que : a) l'argent a été versé au tribunal; b) la partie doit présenter une requête au tribunal pour obtenir la restitution de l'argent.	Avis de consignation
Application for release of funds	(5) If the party to whom notice was sent, or an heir, successor or assign thereof, has not applied to the court under clause (4) (b) within twelve months of the mailing of the notice, the municipality may apply to the court for the release of the money to the municipality.	(5) Si la partie à qui l'avis est envoyé ou l'un de ses héritiers, successeurs ou ayants droit ne présente pas de requête au tribunal aux termes de l'alinéa (4) b) dans les douze mois suivant la mise à la poste de l'avis, la municipalité peut, par voie de requête, demander au tribunal de lui restituer l'argent.	Demande de restitution des fonds
Release of funds	(6) If the court has not received a request for the release of the money before the application of the municipality is received, it shall release the money to the municipality.	(6) Si le tribunal n'a reçu aucune demande de restitution de l'argent avant de recevoir la requête de la municipalité, il restitue l'argent à la municipalité.	Restitution des fonds
Funds to general account	(7) The municipality may place money released by the court in its general account.	(7) La municipalité peut verser l'argent que lui a restitué le tribunal dans son compte d'administration générale.	Compte d'administration générale
Limited responsibility	(8) The municipality is required to reimburse the parties to the agreement only when the money referred to in subsection (1) is paid and only in accordance with subsections (1) to (4).	(8) La municipalité n'est tenue de rembourser les parties à l'accord que si l'argent visé par le paragraphe (1) est versé et seulement conformément aux paragraphes (1) à (4).	Responsabilité limitée
Deductions	(9) Payments made under subsection (1) with respect to services referred to in clause 21 (2) (g) shall be deducted from the amount otherwise payable by an owner pursuant to a development charge by-law. 1989, c. 58, s. 28 (4-9).	(9) Les paiements effectués aux termes du paragraphe (1) à l'égard des services visés par l'alinéa 21 (2) g) sont déduits du montant que le propriétaire doit normalement payer conformément à un règlement scolaire prévoyant l'imposition de redevances d'exploitation. 1989, chap. 58, par. 28 (4) à (9).	Déductions

PART III

EDUCATION DEVELOPMENT CHARGES

Definitions

29.—(1) In this Part,

“board” means a board defined in subsection 1 (1) of the *Education Act*, other than,

- (a) a board established under section 70 of the *Education Act*,

PARTIE III

REDEVANCES D'EXPLOITATION RELATIVES À L'ÉDUCATION

Définitions

29 (1) Les définitions qui suivent s'appliquent à la présente partie.

«compte de redevances d'exploitation relatives à l'éducation» Compte créé conformément aux règlements afin d'y déposer l'argent perçu en vertu d'un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation.

- (b) a board of education for an area municipality in The Municipality of Metropolitan Toronto,
- (c) The Metropolitan Toronto French-Language School Council, and
- (d) The Ottawa-Carleton French-language School Board,

but includes the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board and The Metropolitan Toronto School Board; ("conseil")

"commercial development" means a development other than a residential development; ("exploitation à des fins commerciales")

"education capital cost" means costs incurred or proposed to be incurred by a board,

- (a) to acquire school facilities to provide pupil accommodation,
- (b) to construct, expand, alter or improve school facilities to provide pupil accommodation,
- (c) to furnish or equip the school facilities described in clauses (a) and (b), and
- (d) to undertake studies in connection with any of the matters in clauses (a), (b) and (c); ("coût en immobilisations relatif à l'éducation")

"education development charge" means a development charge imposed under a by-law passed under section 30 respecting growth-related net education capital costs incurred or proposed to be incurred by a board; ("redevance d'exploitation relative à l'éducation")

"education development charge by-law" means a by-law passed under subsection 30 (1); ("règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation")

"education development charges account" means an account established in accordance with the regulations for money collected under an education development charge by-law; ("compte de redevances d'exploitation relatives à l'éducation")

"growth-related net education capital cost" means the prescribed portion of the net education capital cost reasonably attributable to the need for such net education capital cost that is attributed to or will result from development in all or part of the area of jurisdiction of a board; ("coût en immobilisations net relatif à l'éducation lié à la croissance")

"net education capital cost" means the education capital cost reduced by any capital grants and subsidies paid or that may be

("education development charges account")

«conseil» Conseil au sens de la définition du terme «conseil» figurant au paragraphe 1 (1) de la *Loi sur l'éducation*, à l'exclusion :

- a) d'un conseil créé en vertu de l'article 70 de la *Loi sur l'éducation*,
- b) d'un conseil de l'éducation d'une municipalité de secteur dans la municipalité de la communauté urbaine de Toronto,
- c) du Conseil des écoles françaises de la communauté urbaine de Toronto,
- d) du Conseil scolaire de langue française d'Ottawa-Carleton.

La présente définition inclut toutefois la section publique et la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton et le Conseil scolaire de la communauté urbaine de Toronto. («board»)

«coût en immobilisations net relatif à l'éducation» Coût en immobilisations relatif à l'éducation moins les subventions d'immobilisation et les subsides payés ou pouvant être payés au conseil à l'égard d'un tel coût en immobilisations relatif à l'éducation. («net education capital cost»)

«coût en immobilisations net relatif à l'éducation lié à la croissance» La part prescrite du coût en immobilisations net relatif à l'éducation qui est raisonnablement attribuable au besoin d'un tel coût en immobilisations net relatif à l'éducation et qui est imputée à des travaux d'exploitation dans la totalité ou une partie du secteur de compétence d'un conseil ou résultera de ces travaux. («growth-related net education capital cost»)

«coût en immobilisations relatif à l'éducation» Frais qu'un conseil a engagés ou se propose d'engager :

- a) pour acquérir des installations scolaires afin de fournir des places pour des élèves,
- b) pour construire, agrandir, modifier ou améliorer des installations afin de fournir des places pour des élèves,
- c) pour meubler ou équiper les installations scolaires visées aux alinéas a) et b),
- d) pour entreprendre des études ayant trait à l'une des questions visées aux alinéas a), b) et c). («education capital cost»)

paid to the board in respect of such education capital cost; ("coût en immobilisations net relatif à l'éducation")

"owner" means the owner of the land or a person who has made application for an approval for the development of the land upon which an education development charge is imposed; ("propriétaire")

"pupil accommodation" means a building to accommodate pupils or an addition or alteration to a building that enables the building to accommodate an increased number of pupils; ("places pour des élèves")

"school facilities" means a school site defined in subsection 1 (1) of the *Education Act*. ("installations scolaires")

«exploitation à des fins commerciales»
Exploitation à des fins autres que résidentielles. («commercial development»)

«installations scolaires» Emplacement scolaire au sens de la définition du terme «emplacement scolaire» figurant au paragraphe 1 (1) de la *Loi sur l'éducation*. («school facilities»)

«places pour des élèves» Bâtiment destiné à accueillir des élèves ou agrandissement ou transformation de bâtiment qui permet d'accueillir un nombre accru d'élèves. («pupil accommodation»)

«propriétaire» Le propriétaire du terrain ou quiconque a présenté une demande d'approbation visant l'exploitation du terrain à l'égard duquel est imposée une redevance d'exploitation relative à l'éducation. («owner»)

«redevance d'exploitation relative à l'éducation» Redevance d'exploitation imposée en vertu d'un règlement scolaire adopté en vertu de l'article 30 à l'égard de coûts en immobilisations nets relatifs à l'éducation liés à la croissance que le conseil engage ou se propose d'engager. («education development charge»)

«règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation» Règlement scolaire adopté en vertu du paragraphe 30 (1). («education development charge by-law»)

Interpretation

(2) In this Part, reference to the area of jurisdiction of a board, in the case of a county combined separate school board or a district combined separate school board, is the area designated by the regulations made under the *Education Act*, 1989, c. 58, s. 29.

Education development charge by-law

30.—(1) If there is residential development in the area of jurisdiction of a board that would increase education capital costs, the board may pass by-laws for the imposition of education development charges against land undergoing residential and commercial development in that area if the residential and commercial development require,

(a) the passing of a zoning by-law or of an amendment thereto under section 34 of the *Planning Act*;

(b) the approval of a minor variance under section 45 of the *Planning Act*;

(2) Dans la présente partie, la mention du secteur de compétence d'un conseil, s'il s'agit d'un conseil fusionné d'écoles séparées de comté ou d'un conseil fusionné d'écoles séparées de district, s'entend d'une mention du secteur désigné par les règlements pris en application de la *Loi sur l'éducation*, 1989, chap. 58, art. 29.

Interprétation

30 (1) S'il est procédé, dans le secteur de compétence d'un conseil, à des travaux d'exploitation à des fins résidentielles qui augmenteraient les coûts en immobilisations relatifs à l'éducation, le conseil peut adopter des règlements scolaires prévoyant l'imposition de redevances d'exploitation relatives à l'éducation à l'égard d'un terrain faisant l'objet de travaux d'exploitation à des fins commerciales et à des fins résidentielles dans ce secteur si l'exploitation à des fins commerciales et à des fins résidentielles nécessite :

Règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation

a) l'adoption ou la modification d'un règlement municipal de zonage en vertu de l'article 34 de la *Loi sur l'aménagement du territoire*;

b) l'autorisation d'une dérogation mineure en vertu de l'article 45 de la *Loi sur l'aménagement du territoire*;

- (c) a conveyance of land to which a by-law passed under subsection 50 (7) of the *Planning Act* applies;
- (d) the approval of a plan of subdivision under section 51 of the *Planning Act*;
- (e) a consent under section 53 of the *Planning Act*;
- (f) the approval of a description under section 50 of the *Condominium Act*; or
- (g) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

Exceptions

(2) Subsection (1) does not apply in respect of an action mentioned in clauses (1) (a) to (g) that would have the effect only,

- (a) of permitting the enlargement of an existing dwelling unit; or
- (b) of creating one or two additional dwelling units as prescribed, in prescribed categories of existing residential buildings.

Contents of by-law

(3) A by-law passed under subsection (1) shall,

- (a) designate the categories of residential development and commercial development upon which an education development charge shall be imposed;
- (b) designate those uses of land, buildings or structures upon which an education development charge shall be imposed;
- (c) designate the areas in which an education development charge shall be imposed; and
- (d) subject to the regulations, establish the education development charges to be imposed in respect of the designated categories of development and the designated uses of land, buildings or structures.

Indexing

(4) A by-law passed under subsection (1) may provide for the indexing of education development charges based on one of the prescribed indices.

Limited exemption

(5) No land, except land owned by and used for the purposes of a board or a municipality, is exempt from an education development charge under a by-law passed under

- c) la cession d'un terrain auquel s'applique un règlement municipal adopté en vertu du paragraphe 50 (7) de la *Loi sur l'aménagement du territoire*;
- d) l'approbation d'un plan de lotissement en vertu de l'article 51 de la *Loi sur l'aménagement du territoire*;
- e) une autorisation en vertu de l'article 53 de la *Loi sur l'aménagement du territoire*;
- f) l'approbation d'une description en vertu de l'article 50 de la *Loi sur les condominiums*;
- g) la délivrance d'un permis en vertu de la *Loi sur le code du bâtiment* relativement à un bâtiment ou à une construction.

(2) Le paragraphe (1) ne s'applique pas à l'égard des mesures visées par les alinéas (1) a) à g) qui n'auraient d'autre effet que :

- a) soit de permettre l'agrandissement d'un logement existant;
- b) soit de créer un ou deux logements additionnels, selon ce qui est prescrit, dans des catégories prescrites d'immeubles d'habitation existants.

(3) Les règlements scolaires adoptés en vertu du paragraphe (1) :

- a) désignent les catégories de travaux d'exploitation à des fins résidentielles et de travaux d'exploitation à des fins commerciales à l'égard desquelles est imposée une redevance d'exploitation relative à l'éducation;
- b) désignent les utilisations de terrains, de bâtiments ou de constructions à l'égard desquelles est imposée une redevance d'exploitation relative à l'éducation;
- c) désignent les secteurs à l'intérieur desquels est imposée une redevance d'exploitation relative à l'éducation;
- d) sous réserve des règlements, fixent les redevances d'exploitation relatives à l'éducation qui seront imposées à l'égard des catégories de travaux d'exploitation désignées et des utilisations de terrains, de bâtiments ou de constructions désignées.

(4) Les règlements scolaires adoptés en vertu du paragraphe (1) peuvent prévoir l'indexation des redevances d'exploitation relatives à l'éducation d'après l'un des indices prescrits.

(5) Aucun terrain, à l'exception d'un terrain appartenant à un conseil ou à une municipalité et utilisé pour les fins de l'un ou l'autre, ne fait l'objet d'une dispense d'une

Exceptions

Teneur des règlements scolaires

Indexation

Dispense limitée

subsection (1) by reason only that it is exempt from taxation under section 3 of the *Assessment Act*.

redevance d'exploitation relative à l'éducation aux termes d'un règlement scolaire adopté en vertu du paragraphe (1) du seul fait qu'il fait l'objet d'une exemption d'impôt aux termes de l'article 3 de la *Loi sur l'évaluation foncière*.

Interpretation

(6) In subsection (5), "board" has the same meaning as in section 29 except that it includes the boards described in clauses (a) to (d) of that definition.

(6) Au paragraphe (5), «conseil» s'entend au sens de l'article 29, mais s'entend en outre des conseils énumérés aux alinéas a) à d) de cette définition.

Interprétation

Conditions

(7) The imposition of an education development charge by a board is subject to the prescribed conditions. 1989, c. 58, s. 30.

(7) L'imposition d'une redevance d'exploitation relative à l'éducation par un conseil quelconque est assujettie aux conditions prescrites. 1989, chap. 58, art. 30.

Conditions

Public meeting

31.—(1) Before passing an education development charge by-law, except a by-law passed pursuant to an order of the Municipal Board made under clause (11) (b), the board,

31 (1) Avant d'adopter un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation, sauf s'il s'agit d'un règlement scolaire adopté conformément à une ordonnance de la Commission des affaires municipales rendue en vertu de l'alinéa (11) b), le conseil :

Réunion publique

- (a) shall hold at least one public meeting;
- (b) shall give notice of the meeting in the manner and to the persons and organizations prescribed; and
- (c) shall ensure that sufficient information is made available to enable the public to understand generally the education development charge proposal.

- a) tient au moins une réunion publique;
- b) donne avis de la réunion de la manière et aux personnes et organisations prescrites;
- c) veille à ce que des renseignements suffisants soient fournis pour permettre au public de comprendre dans l'ensemble les redevances d'exploitation relatives à l'éducation qu'il est proposé d'imposer.

Right to be heard

(2) The meeting referred to in subsection (1) shall be held no earlier than twenty days after the requirements for the giving of notice have been complied with and any person who attends the meeting may make representations in respect of the proposed education development charges.

(2) La réunion visée au paragraphe (1) est tenue au plus tôt vingt jours après que les exigences concernant la signification de l'avis ont été observées. Quiconque assiste à la réunion peut présenter des observations sur les redevances d'exploitation relatives à l'éducation qui sont proposées.

Droit d'être entendu

Notice of by-law

(3) If the board passes an education development charge by-law, other than a by-law passed pursuant to an order of the Municipal Board under clause (11) (b), the secretary of the board shall, not later than fifteen days after the day the by-law is passed, give written notice of the passing of the by-law in the manner and in the form and to the persons and organizations prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (4).

(3) Si le conseil adopte un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation, sauf s'il s'agit d'un règlement scolaire adopté conformément à une ordonnance de la Commission des affaires municipales rendue en vertu de l'alinéa (11) b), le secrétaire du conseil, au plus tard quinze jours après l'adoption du règlement scolaire, donne un avis écrit de l'adoption du règlement scolaire de la manière et selon la formule et aux personnes et organisations prescrites. L'avis précise le dernier jour où l'on peut déposer un avis d'appel en vertu du paragraphe (4).

Avis de règlement scolaire

Appeal

(4) Any person or organization may, not later than twenty days after written notice under subsection (3) is given, appeal to the Municipal Board by filing with the secretary of the board a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

(4) Toute personne ou organisation peut, au plus tard vingt jours après que soit donné l'avis écrit prévu au paragraphe (3), interjeter appel devant la Commission des affaires municipales en déposant auprès du secrétaire du conseil un avis d'appel motivé énonçant l'opposition au règlement scolaire.

Appel

Timing of
notice

(5) For the purposes of subsection (4), written notice shall be deemed to be given,

- (a) where notice is given by publication in a newspaper, on the day that the publication occurs;
- (b) where notice is given by mail, on the day that the mailing of all required notices is completed; or
- (c) where notice is given by publication and by mail, on the later of the days that publication occurs or mailing is completed.

Record

(6) The secretary of the board who receives a notice of appeal shall compile a record which shall include,

- (a) a copy of the by-law certified by the secretary;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice under subsection (3) have been complied with; and
- (c) the original or a true copy of all written submissions and material received in respect of the by-law before it was passed.

Notice and
record to
O.M.B.

(7) The secretary of the board shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information or material as the Municipal Board may require in respect of the appeal.

Affidavit,
declaration
conclusive
evidence

(8) An affidavit or declaration of the secretary of the board that notice was given as required by subsection (3) or that no notice of appeal was filed under subsection (4) within the time allowed for appeal is conclusive evidence of the facts stated therein.

Hearing

(9) The Municipal Board shall hold a hearing notice of which shall be given to such persons or organizations and in such manner as the Municipal Board may determine.

Early
dismissal of
appeal

(10) The Municipal Board may, where it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant the opportunity to make representations as to the merits of the appeal.

Determi-
nation by
O.M.B.

(11) The Municipal Board may,

- (a) dismiss the appeal;
- (b) order the board to repeal the by-law in whole or in part or to amend the by-

(5) Pour l'application du paragraphe (4), l'avis écrit est réputé donné : Avis réputé
donné

- a) s'il est donné par voie de publication dans un journal, le jour de sa publication;
- b) s'il est donné par courrier, le jour où tous les avis exigés ont été mis à la poste;
- c) s'il est donné par voie de publication et par courrier, le jour de sa publication ou le jour où tous les avis ont été mis à la poste, si cette date est postérieure.

(6) Le secrétaire du conseil qui reçoit un avis d'appel constitue un dossier qui comprend les pièces suivantes : Dossier

- a) une copie du règlement scolaire certifiée conforme par le secrétaire;
- b) un affidavit ou une déclaration attestant que les exigences touchant la signification de l'avis prévu au paragraphe (3) ont été observées;
- c) l'original ou une copie conforme de toutes les observations écrites et de tous les documents reçus relativement au règlement scolaire avant son adoption.

(7) Le secrétaire du conseil envoie l'avis d'appel et le dossier au secrétaire de la Commission des affaires municipales dans les trente jours suivant l'expiration du délai d'appel et fournit les renseignements ou documents que la Commission peut exiger relativement à l'appel.

Envoi de
l'avis et du
dossier à la
C.A.M.O.

(8) L'affidavit ou la déclaration du secrétaire du conseil indiquant que l'avis prévu au paragraphe (3) a été donné ou qu'aucun avis d'appel n'a été déposé en vertu du paragraphe (4) avant l'expiration du délai d'appel constitue une preuve concluante des faits qui y sont énoncés.

L'affidavit ou
la déclaration
constitue une
preuve con-
cluante

(9) La Commission des affaires municipales tient une audience et en donne avis aux personnes ou organisations et de la manière qu'elle peut préciser.

Audience

(10) La Commission des affaires municipales peut, si elle est d'avis que l'opposition au règlement scolaire énoncée dans l'avis d'appel est insuffisante, rejeter l'appel sans tenir d'audience complète. Avant de rejeter l'appel, cependant, elle avise l'appelant et lui donne la possibilité de présenter des observations concernant le bien-fondé de l'appel.

Rejet anticipé
de l'appel

(11) La Commission des affaires municipales peut :

Décision de
la C.A.M.O.

- a) rejeter l'appel;
- b) ordonner au conseil d'abroger le règlement scolaire, en totalité ou en partie,

	law in accordance with the Municipal Board's order; or	ou de le modifier conformément à son ordonnance;	
	(c) repeal the by-law in whole or in part or amend the by-law in such manner as the Municipal Board may determine.	c) abroger le règlement scolaire, en totalité ou en partie, ou le modifier de la manière qu'elle peut préciser.	
Restriction on amendments	(12) Despite subsection (11), the Municipal Board may not amend or order the amendment of a by-law so as to,	(12) Malgré le paragraphe (11), la Commission des affaires municipales ne peut modifier un règlement scolaire, ni en ordonner la modification, de façon à :	Restrictions relativement aux modifications
	(a) increase an education development charge imposed by the by-law; or	a) augmenter une redevance d'exploitation relative à l'éducation qui a été imposée par le règlement scolaire;	
	(b) alter the term of the by-law. 1989, c. 58, s. 31.	b) changer la durée d'application du règlement scolaire. 1989, chap. 58, art. 31.	
When by-law effective	32. —(1) An education development charge by-law comes into force on the fifth day following the day it is passed or the day specified in the by-law, whichever is later.	32 (1) Les règlements scolaires prévoyant l'imposition de redevances d'exploitation relatives à l'éducation entrent en vigueur le cinquième jour suivant le jour de leur adoption ou à la date précisée dans le règlement scolaire, si cette date est postérieure.	Date d'entrée en vigueur des règlements scolaires
Retroactive repeal	(2) If the Municipal Board orders a board to repeal a by-law in whole or in part, that part of the by-law that is repealed shall be deemed to have been repealed on the day the by-law came into force.	(2) Si la Commission des affaires municipales ordonne à un conseil d'abroger un règlement scolaire, en totalité ou en partie, la partie du règlement scolaire qui est abrogée est réputée avoir été abrogée le jour où le règlement scolaire est entré en vigueur.	Abrogation rétroactive
Refund	(3) The treasurer of the education development charges account shall refund all education development charges paid under the by-law or that part of the by-law that is repealed under subsection 31 (11),	(3) Le trésorier du compte de redevances d'exploitation relatives à l'éducation rembourse les redevances d'exploitation relatives à l'éducation qui ont été payées aux termes du règlement scolaire ou de la partie du règlement scolaire qui est abrogée en vertu du paragraphe 31 (11) :	Remboursement
	(a) if repealed by the Municipal Board, within thirty days of the date of the order of the Municipal Board; or	a) en cas d'abrogation par la Commission des affaires municipales, dans les trente jours suivant la date où la Commission a rendu l'ordonnance;	
	(b) if repealed by the board, within thirty days of the date of repeal.	b) en cas d'abrogation par le conseil, dans les trente jours suivant la date de l'abrogation.	
Retroactive amendments	(4) If the Municipal Board orders a board to amend a by-law in whole or in part, that part of the by-law that is amended ceases to be in force and the amendment shall be deemed to have come into force on the date the by-law came into force.	(4) Si la Commission des affaires municipales ordonne au conseil de modifier un règlement scolaire, en totalité ou en partie, la partie modifiée cesse d'être en vigueur et la modification est réputée être entrée en vigueur le jour où le règlement scolaire est entré en vigueur.	Modifications rétroactives
Refunds	(5) The treasurer of the education development charges account shall refund the difference between the education development charges paid under that part of the by-law that is amended under subsection 31 (11) and the education development charges required to be paid under the amendment,	(5) Le trésorier du compte de redevances d'exploitation relatives à l'éducation rembourse la différence entre les redevances d'exploitation relatives à l'éducation payées aux termes de la partie du règlement scolaire qui est modifiée en vertu du paragraphe 31 (11) et les redevances d'exploitation relatives à l'éducation devant être payées aux termes de la modification :	Remboursements

	<p>(a) if the by-law is amended by the Municipal Board, within thirty days of the date of the order of the Municipal Board; or</p> <p>(b) if the by-law is amended by the board, within thirty days of the date of the amendment.</p>	<p>a) si le règlement scolaire est modifié par la Commission des affaires municipales, dans les trente jours suivant la date où la Commission a rendu l'ordonnance;</p> <p>b) si le règlement scolaire est modifié par le conseil, dans les trente jours suivant la date de la modification.</p>	
Restrictions on appeal	(6) A repeal or amendment made under subsection 31 (11) is not subject to appeal under subsection 31 (4).	(6) L'abrogation ou la modification effectuée en vertu du paragraphe 31 (11) ne peut faire l'objet de l'appel prévu au paragraphe 31 (4).	Restrictions
Direct refund	(7) A refund under this section shall be paid to the owner and the treasurer of the education development charges account shall inform the municipal treasurer of the amount of the refund. 1989, c. 58, s. 32.	(7) Le remboursement prévu au présent article est versé au propriétaire et le trésorier du compte de redevances d'exploitation relatives à l'éducation communique le montant du remboursement au trésorier de la municipalité. 1989, chap. 58, art. 32.	Remboursement direct
Expiration of by-law	33. —(1) An education development charge by-law expires five years after the date it comes into force.	33 (1) Les règlements scolaires prévoyant l'imposition de redevances d'exploitation relatives à l'éducation expirent cinq ans après la date de leur entrée en vigueur.	Expiration des règlements scolaires
Idem	<p>(2) Despite subsection (1), a board may,</p> <p>(a) provide in the by-law for a term of less than five years; or</p> <p>(b) repeal the by-law.</p>	<p>(2) Malgré le paragraphe (1), un conseil peut :</p> <p>a) prévoir dans le règlement scolaire une durée d'application inférieure à cinq ans;</p> <p>b) abroger le règlement scolaire.</p>	Idem
Concurrent terms	(3) Despite subsection (1), if an education development charge by-law is in force in respect of an area, the term of an education development charge by-law passed by another board with respect to the same area shall expire on the date of expiration of the first-mentioned by-law.	(3) Malgré le paragraphe (1), si un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation est en vigueur à l'égard d'un secteur, la durée d'un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation adopté par un autre conseil à l'égard du même secteur expire à la date d'expiration du règlement scolaire mentionné en premier.	Durées concomitantes
Change of term	(4) Where a board repeals its education development charge by-law and another board that has jurisdiction in all or part of the same area has passed a by-law that under subsection (3) would expire on the date of expiration of the first-mentioned by-law, that other board may determine that the by-law shall be in effect for up to five years after the date it comes into force and, where it does so, the board shall give notice of its determination to the same persons and in the same manner as provided under subsection 37 (1).	(4) Lorsqu'un conseil abroge son règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation et qu'un autre conseil ayant compétence dans la totalité ou une partie du même secteur a adopté un règlement scolaire qui, en vertu du paragraphe (3), expirerait à la date d'expiration du règlement scolaire mentionné en premier, cet autre conseil peut décider que le règlement scolaire sera en vigueur jusqu'à cinq ans après la date de son entrée en vigueur. Dans ce cas, le conseil donne avis de sa décision aux mêmes personnes et de la même manière qu'il est prévu au paragraphe 37 (1).	Modification de la durée
New education development charge by-law	(5) Subject to subsections (6), (7) and (8), a board that has passed an education development charge by-law that is in force may pass a new education development charge by-law.	(5) Sous réserve des paragraphes (6), (7) et (8), le conseil qui a adopté un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation qui est en vigueur peut adopter un nouveau règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation.	Nouveau règlement scolaire

Review of policies	(6) Before passing a new education development charge by-law, the board shall conduct a review of the education development charge policies of the board.	(6) Avant d'adopter un nouveau règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation, le conseil examine sa politique en matière de redevances d'exploitation relatives à l'éducation.	Examen d politique
Public meeting	(7) In conducting a review under subsection (6), the board shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in at least one newspaper having general circulation in the area of jurisdiction of the board.	(7) Dans le cadre de l'examen prévu au paragraphe (6), le conseil veille à ce que les renseignements voulus soient fournis au public. À cette fin, il tient au moins une réunion publique et en donne avis dans au moins un journal généralement lu dans le secteur de compétence du conseil.	Réunion publique
Idem	(8) Sections 31 and 37 apply with necessary modifications to a by-law under subsection (5). 1989, c. 58, s. 33.	(8) Les articles 31 et 37 s'appliquent avec les adaptations nécessaires à l'adoption d'un règlement scolaire en vertu du paragraphe (5). 1989, chap. 58, art. 33.	Idem
Amendment	34. —(1) A board may amend an education development charge by-law and the amendment shall come into force on the fifth day following the date the amendment is passed and the part of the by-law that is amended ceases to be in force on that day.	34 (1) Un conseil peut modifier un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation. La modification entre en vigueur le cinquième jour suivant l'adoption de la modification et la partie modifiée du règlement scolaire cesse d'être en vigueur ce jour-là.	Modificati
Idem	(2) Sections 31 and 37 apply with necessary modifications to an amendment made under this section. 1989, c. 58, s. 34.	(2) Les articles 31 et 37 s'appliquent avec les adaptations nécessaires à une modification apportée en vertu du présent article. 1989, chap. 58, art. 34.	Idem
Payment of charge	35. —(1) An education development charge is payable, (a) to the municipality in which the development takes place on the date a building permit is issued in relation to a building or structure on land to which an education development charge applies; or (b) if the development takes place in territory without municipal organization, to the board that imposed the education development charge thirty days after the board mails a notice to the owner setting out the amount of the charge.	35 (1) Les redevances d'exploitation relatives à l'éducation sont payables : a) à la municipalité dans laquelle les travaux d'exploitation s'effectuent à la date de délivrance d'un permis de construire à l'égard d'un bâtiment ou d'une construction sur un terrain auquel s'applique une redevance d'exploitation relative à l'éducation; b) si les travaux d'exploitation s'effectuent dans un territoire non érigé en municipalité, au conseil qui a imposé la redevance d'exploitation relative à l'éducation, trente jours après que le conseil a envoyé par la poste au propriétaire un avis indiquant le montant de la redevance.	Paiement redevance:
Commercial development	(2) An education development charge imposed by a board in respect of commercial development is the amount determined in the manner prescribed or calculated using the formula prescribed.	(2) La redevance d'exploitation relative à l'éducation qu'un conseil impose à l'égard de travaux d'exploitation à des fins commerciales correspond au montant fixé de la manière prescrite ou calculé selon la formule prescrite.	Exploitat des fins cc merciales
Charge to be paid before building permit issued	(3) Despite any other Act, a municipality is not required to issue a building permit in relation to a building or structure on land to which an education development charge by-law applies unless the education development charge has been paid.	(3) Malgré toute autre loi, une municipalité n'est tenue de délivrer un permis de construire à l'égard d'un bâtiment ou d'une construction sur un terrain auquel s'applique un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation que si la redevance d'exploitation relative à l'éducation a été payée.	Paiement la redevan avant la d vrance du permis de construire

Facilities in lieu of payment

(4) Despite subsection (1), and subject to subsection (5) and the consent of the Minister of Education, a board may by agreement permit an owner to provide school facilities in lieu of the payment of all or any portion of an education development charge and the board,

- (a) shall advise the treasurer of the municipality in which the land is situate of the amount of the credit that shall be applied against the education development charge; or
- (b) if the land is located in territory without municipal organization, shall provide a credit to the owner against the educational development charge.

Necessary parties

(5) If more than one board has jurisdiction in an area and one or more boards are to receive school facilities under subsection (4), all of the boards that have imposed an education development charge in that area are required to be parties to the agreement. 1989, c. 58, s. 35.

Complaints

36.—(1) An owner or board may complain in writing to the council of the municipality in which the land is situate or, where the land is situate in territory without municipal organization, an owner may complain to the board that, in respect of the education development charge of that owner,

- (a) the amount of the education development charge imposed was incorrect or based on incorrect data;
- (b) there was an error in the application of the education development charge by-law; or
- (c) the amount credited to an owner under subsection 35 (4) is incorrect.

When complaint to be made

(2) An owner or board may not submit a complaint under subsection (1) after ninety days following the later of,

- (a) the date a building permit is issued, or if development takes place in territory without municipal organization, the date that the education development charge is payable under clause 35 (1) (b); or
- (b) the date an agreement is entered into under subsection 35 (4).

(4) Malgré le paragraphe (1), et sous réserve du paragraphe (5) et de l'autorisation du ministre de l'Éducation, un conseil peut conclure un accord permettant à un propriétaire de fournir des installations scolaires au lieu de payer la totalité ou une partie de la redevance d'exploitation relative à l'éducation. Le conseil :

- a) communique au trésorier de la municipalité dans laquelle se situe le terrain le montant du crédit qui est accordé à l'égard de la redevance d'exploitation relative à l'éducation;
- b) si le terrain est situé dans un territoire non érigé en municipalité, accorde au propriétaire un crédit à l'égard de la redevance d'exploitation relative à l'éducation.

Installations tenant lieu de paiement

(5) Si plus d'un conseil a compétence dans un secteur et qu'un ou plusieurs conseils doivent recevoir des installations scolaires en vertu du paragraphe (4), tous les conseils qui ont imposé une redevance d'exploitation relative à l'éducation dans ce secteur sont tenus d'être parties à l'accord. 1989, chap. 58, art. 35.

Parties nécessaires

36 (1) Un propriétaire ou un conseil peut se plaindre par écrit au conseil de la municipalité dans laquelle se situe le terrain ou, si celui-ci se situe dans un territoire non érigé en municipalité, un propriétaire peut se plaindre au conseil, en ce qui a trait à la redevance d'exploitation relative à l'éducation qui lui est imposée, que :

Plaintes

- a) le montant de la redevance d'exploitation relative à l'éducation imposée est inexact ou fondé sur des données inexactes;
- b) il y a eu erreur dans l'application du règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation;
- c) le montant porté au crédit du propriétaire en vertu du paragraphe 35 (4) est inexact.

(2) Aucun propriétaire ou conseil ne peut porter plainte en vertu du paragraphe (1) plus de quatre-vingt-dix jours après la dernière des dates suivantes :

Moment où il faut porter plainte

- a) la date où le permis de construire est délivré ou, si les travaux d'exploitation s'effectuent dans un territoire non érigé en municipalité, la date où la redevance d'exploitation relative à l'éducation est payable aux termes de l'alinéa 35 (1) b);
- b) la date où est conclu un accord en vertu du paragraphe 35 (4).

Procedures adopted	(3) Subsections 8 (3) to (14) apply with necessary modifications to a complaint under subsection (1).	(3) Les paragraphes 8 (3) à (14) s'appliquent avec les adaptations nécessaires à la plainte prévue au paragraphe (1).	Procédure adoptée
Refunds	(4) If a final determination of a complaint has been made and a refund is due to the owner, the treasurer of the education development charges account shall pay the amount of the refund to the treasurer of the municipality who shall reimburse the owner.	(4) Si une décision définitive a été rendue sur une plainte et qu'un remboursement est dû au propriétaire, le trésorier du compte de redevances d'exploitation relatives à l'éducation verse le montant du remboursement au trésorier de la municipalité, qui se charge de rembourser le propriétaire.	Rembour- ments
Idem	(5) If a final determination of a complaint has been made and a refund is due to the board, the treasurer of the municipality shall pay the amount of the refund to the treasurer of the education development charges account.	(5) Si une décision définitive a été rendue sur une plainte et qu'un remboursement est dû au conseil, le trésorier de la municipalité verse le montant du remboursement au trésorier du compte de redevances d'exploitation relatives à l'éducation.	Idem
Underpay- ments	(6) If a final determination of a complaint has been made and the owner is required to pay an additional amount, the treasurer of the municipality or, in respect of territory without municipal organization, the treasurer of the board, shall collect the additional amount due from the owner and shall remit the amount to the treasurer of the education development charges account. 1989, c. 58, s. 36.	(6) Si une décision définitive a été rendue sur une plainte et que le propriétaire est tenu de payer un montant additionnel, le trésorier de la municipalité ou, dans le cas d'un territoire non érigé en municipalité, le trésorier du conseil perçoit le montant additionnel que doit le propriétaire et le remet au trésorier du compte de redevances d'exploitation relatives à l'éducation. 1989, chap. 58, art. 36.	Moins-pe
Distribution of by-law	37. —(1) A board that passes a by-law under subsection 30 (1) shall submit to the treasurer of each municipality all or part of which is made subject to an education development charge a copy of the by-law and provide a copy to the secretary of any other board that has jurisdiction in the same or part of the same area of the board that passed the by-law and forward a copy to the Minister of Education.	37 (1) Le conseil qui adopte un règlement scolaire en vertu du paragraphe 30 (1) remet au trésorier de chaque municipalité dont la totalité ou une partie fait l'objet d'une redevance d'exploitation relative à l'éducation une copie du règlement scolaire. Il en fournit aussi une copie au secrétaire de tout autre conseil ayant compétence dans le même secteur ou dans une partie du même secteur que le conseil qui a adopté le règlement scolaire et en fait parvenir une copie au ministre de l'Éducation.	Diffusion règlement scolaires
Special accounts	(2) Educational development charges accounts shall be established in accordance with the regulations and deposited with a bank listed in Schedule I to the <i>Bank Act</i> (Canada) or a trust corporation registered under the <i>Loan and Trust Corporations Act</i> .	(2) Des comptes de redevances d'exploitation relatives à l'éducation sont créés conformément aux règlements et déposés dans une des banques mentionnée à l'annexe I de la <i>Loi sur les banques</i> (Canada) ou dans une société de fiducie inscrite aux termes de la <i>Loi sur les sociétés de prêt et de fiducie</i> .	Comptes spéciaux
Territory without municipal organization	(3) Where the area of jurisdiction of a board includes territory without municipal organization, all or part of which is made subject to an education development charge, the board shall exercise the powers and duties of a municipal council for such territory in respect of collecting the charge and the officers of the board have the same powers and duties as similar officers in a municipality.	(3) Lorsque le secteur de compétence d'un conseil comprend un territoire non érigé en municipalité dont la totalité ou une partie fait l'objet d'une redevance d'exploitation relative à l'éducation, le conseil exerce les pouvoirs et les fonctions d'un conseil municipal à l'égard de ce territoire pour ce qui est de la perception des frais. Les agents du conseil ont les mêmes pouvoirs et fonctions que des agents semblables d'une municipalité.	Territoire érigé en municipal
Collection of charge	(4) Where an education development charge is imposed by a board, the treasurer of the municipality or board, as the case requires, shall collect the charge imposed when due and, on or before the 25th day of the month next following the month in which	(4) Lorsqu'un conseil impose une redevance d'exploitation relative à l'éducation, le trésorier de la municipalité ou le conseil, selon le cas, perçoit la redevance imposée à la date d'exigibilité et, au plus tard le 25 ^e jour du mois suivant celui au cours duquel la	Perceptio la redeva

the charge is collected, shall deposit the amount of the charge in the education development charges account established in respect of the by-law under which the charge is imposed.

Statement

(5) On or before the fifth day of the month following a month in which a deposit is made under subsection (4), the treasurer of the municipality shall forward to the treasurer of the board or the treasurer of the board shall prepare a statement setting out the prescribed information in respect of the period that began on the 26th day of the month before the preceding month and that ended on the 25th day of the preceding month.

Idem

(6) If two or more boards have imposed an education development charge by-law upon an area, the statement mentioned in subsection (5) shall be prepared in respect of the money collected and forwarded to the treasurer of each board that passed a by-law under which the money was collected. 1989, c. 58, s. 37.

Registration of notice

38. A board that has passed an education development charge by-law may register the by-law or a certified copy of it on the land to which it applies. 1989, c. 58, s. 38.

Collection

39. If an education development charge or any part thereof remains unpaid after the due date, the amount unpaid shall be added to the tax roll of the municipality or board, as the case requires, and shall be collected as taxes and remitted to the treasurer of the education development charges account established in respect of the by-law under which the education development charge is imposed. 1989, c. 58, s. 39.

Transfer of money

40. On or before the 25th day of the month next following the month in which an education development charge is collected under section 39, the municipality shall pay to the treasurer of the education development charges account all money received in payment of education development charges. 1989, c. 58, s. 40.

Upper tier municipalities

41. If an upper tier municipality issues building permits, subsections 32 (7), 35 (1) and (4) and sections 36, 37 and 40 apply to the upper tier municipality and not to the area municipality. 1989, c. 58, s. 41.

Interest

42.—(1) The treasurer of the education development charges account shall pay interest out of the account to persons to whom

redevance est perçue, dépose le montant de la redevance dans le compte de redevances d'exploitation relatives à l'éducation créé à l'égard du règlement scolaire en vertu duquel la redevance est imposée.

(5) Au plus tard le cinquième jour du mois suivant un mois au cours duquel un dépôt est effectué en vertu du paragraphe (4), le trésorier de la municipalité envoie au trésorier du conseil, ou le trésorier du conseil prépare, un état où figurent les renseignements prescrits concernant la période qui a débuté le 26^e jour du mois qui précède le mois précédent et s'est terminée le 25^e jour du mois précédent.

État

(6) Si deux conseils ou plus ont imposé un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation dans un secteur, l'état prévu au paragraphe (5) est préparé à l'égard de l'argent perçu et remis au trésorier de chaque conseil qui a adopté un règlement scolaire en vertu duquel est perçu l'argent. 1989, chap. 58, art. 37.

Idem

38 Le conseil qui a adopté un règlement scolaire prévoyant l'imposition de redevances d'exploitation relatives à l'éducation peut enregistrer le règlement scolaire ou une copie certifiée conforme à ce dernier à l'égard du terrain auquel il s'applique. 1989, chap. 58, art. 38.

Enregistrement de l'avis

39 Si une redevance d'exploitation relative à l'éducation ou une partie de celle-ci demeure impayée après la date d'exigibilité, le montant impayé est ajouté au rôle de perception de la municipalité ou du conseil, selon le cas. Il est perçu à titre d'impôts et remis au trésorier du compte de redevances d'exploitation relatives à l'éducation créé à l'égard du règlement scolaire en vertu duquel la redevance d'exploitation relative à l'éducation est imposée. 1989, chap. 58, art. 39.

Perception

40 Au plus tard le 25^e jour du mois suivant celui au cours duquel une redevance d'exploitation relative à l'éducation est perçue en vertu de l'article 39, la municipalité verse au trésorier du compte de redevances d'exploitation relatives à l'éducation l'argent reçu au titre du paiement des redevances d'exploitation relatives à l'éducation. 1989, chap. 58, art. 40.

Transfert d'argent

41 Si une municipalité de palier supérieur délivre des permis de construire, les paragraphes 32 (7), 35 (1) et (4) ainsi que les articles 36, 37 et 40 s'appliquent à la municipalité de palier supérieur, mais non à la municipalité de secteur. 1989, chap. 58, art. 41.

Municipalités de palier supérieur

42 (1) Le trésorier du compte de redevances d'exploitation relatives à l'éducation paie des intérêts, calculés de la manière pres-

Intérêts

overpayments are refunded under subsections 32 (3) and (5) and 36 (4) calculated in the manner prescribed.

Period
during which
interest is
payable

(2) Interest shall be calculated from the time that the overpayment was collected to the time that the refund is paid.

Payment of
interest

(3) The refund shall include the interest owed. 1989, c. 58, s. 42.

Regulations

43. The Lieutenant Governor in Council may make regulations that may have general or particular application in respect of a board,

- (a) respecting any matter that is referred to as prescribed by the regulations;
- (b) prescribing forms and providing for their use;
- (c) governing the establishment and administration of the education development charges account;
- (d) providing for the application, placement in a reserve, withdrawal and use of the money deposited in or accredited to an education development charges account and requiring the approval of the Minister in respect of the manner in which or the rate at which the money is withdrawn;
- (e) prescribing the powers of the treasurer of the education development charges account in relation to the withdrawal of funds;
- (f) requiring the approval of the Minister of Education to any factor, criterion, rate, amount, portion, estimate or project used in determining an education development charge;
- (g) prescribing the manner of calculating or determining education development charges and prescribing classes of persons that may make determinations necessary for the calculation of education development charges;
- (h) providing for the sharing of proceeds where more than one board establishes a charge in respect of the same area;
- (i) prescribing, for the purposes of subsection 30 (4), an index or indices that may be used;
- (j) prescribing information which boards must provide to other boards and to the Minister for the purposes of developing education development charges under this Part;

crite, aux personnes auxquelles sont remboursés des trop-perçus en vertu des paragraphes 32 (3) et (5) et 36 (4). Les sommes nécessaires sont prélevées sur le compte.

(2) Les intérêts sont calculés à partir du moment où le trop-perçu a été perçu jusqu'au moment du remboursement.

(3) Le remboursement comprend les intérêts qui sont dus. 1989, chap. 58, art. 42.

43 Le lieutenant-gouverneur en conseil peut prendre des règlements qui peuvent s'appliquer de façon générale ou particulière à l'égard d'un conseil. Il peut notamment, par règlement :

- a) traiter de questions qui sont prescrites par les règlements;
- b) prescrire des formules et prévoir les modalités de leur emploi;
- c) régir la création et l'administration du compte de redevances d'exploitation relatives à l'éducation;
- d) prévoir l'affectation, le placement dans un fonds de réserve, le retrait et l'utilisation de l'argent déposé dans un compte de redevances d'exploitation relatives à l'éducation ou attribué à celui-ci et exiger l'approbation du ministre quant au mode ou à la fréquence de retrait de l'argent;
- e) prescrire les pouvoirs du trésorier du compte de redevances d'exploitation relatives à l'éducation relativement au retrait de fonds;
- f) exiger l'approbation du ministre de l'Éducation quant aux facteurs, critères, taux, montants, parts, prévisions ou projets utilisés afin de fixer les redevances d'exploitation relatives à l'éducation;
- g) prescrire le mode de calcul ou de fixation des redevances d'exploitation relatives à l'éducation ainsi que les catégories de personnes qui peuvent faire les déterminations nécessaires au calcul des redevances d'exploitation relatives à l'éducation;
- h) prévoir le partage du produit lorsque plus d'un conseil établit une redevance à l'égard d'un même secteur;
- i) prescrire, pour l'application du paragraphe 30 (4), le ou les indices qui peuvent être utilisés;
- j) prescrire les renseignements que les conseils doivent fournir aux autres conseils et au ministre afin de permettre l'élaboration de redevances d'ex-

Période
durant
laquelle les
intérêts sont
payables

Paiement des
intérêts

Règlements

- (k) prescribing methods of calculating and establishing interest rates under section 42;
- (l) prescribing the manner in which notice shall be given wherever notice is required under this Part, the persons and agencies to whom notice shall be given, and the form of the notice;
- (m) prescribing the terms of agreements for credit in lieu of payment of education development charges, determining the amount of the credit and governing the allocation of the credit between or among boards;
- (n) requiring a board to exempt an owner from an educational development charge if the owner meets the prescribed conditions. 1989, c. 58, s. 43.

PART IV

GENERAL

Existing development charges by-law

44.—(1) A by-law or resolution providing for the payment of charges related to development that was in effect on the 23rd day of November, 1989 shall remain in effect until the earliest of,

- (a) the repeal of the by-law or resolution;
- (b) the coming into force of a by-law under section 3; or
- (c) the 23rd day of November, 1991.

No amendments permitted

(2) A by-law or resolution referred to in subsection (1) shall not be amended during the period it remains in effect.

Exceptions

(3) Subsection (1) does not apply with respect to a by-law referred to in subsection 14 (3) or to a by-law passed under section 42 of the *Planning Act*. 1989, c. 58, s. 44.

Certain agreements under *Planning Act*

45.—(1) A municipality shall not enter into an agreement under section 51 or 53 of the *Planning Act* that imposes a charge related to a development, except a charge referred to in subsection 3 (7), after the earlier of,

- (a) the coming into force of a by-law under section 3; or
- (b) the 23rd day of November, 1991.

exploitation relatives à l'éducation en vertu de la présente partie;

- k) prescrire les méthodes de calcul et fixer les taux d'intérêt prévus à l'article 42;
- l) prescrire le mode de signification des avis exigés aux termes de la présente partie, les personnes et organismes auxquels ils doivent être donnés et la formule à respecter;
- m) prescrire les clauses des accords permettant d'accorder un crédit tenant lieu de paiement des redevances d'exploitation relatives à l'éducation, fixer le montant du crédit et régir la répartition du crédit entre les conseils;
- n) exiger d'un conseil qu'il dispense un propriétaire d'une redevance d'exploitation relative à l'éducation si celui-ci respecte les conditions prescrites. 1989, chap. 58, art. 43.

PARTIE IV

DISPOSITIONS GÉNÉRALES

44 (1) Les règlements municipaux ou les résolutions prévoyant le paiement de frais liés à des travaux d'exploitation qui étaient en vigueur le 23 novembre 1989 demeurent en vigueur jusqu'à la première des dates suivantes :

Règlement municipal prévoyant l'imposition de redevances d'exploitation existant

- a) la date de l'abrogation du règlement municipal ou de la résolution;
- b) la date d'entrée en vigueur d'un règlement municipal adopté en vertu de l'article 3;
- c) le 23 novembre 1991.

(2) Aucune modification ne doit être apportée aux règlements municipaux ou aux résolutions visés au paragraphe (1) durant la période où ils demeurent en vigueur.

Modifications non permises

(3) Le paragraphe (1) ne s'applique pas aux règlements municipaux visés au paragraphe 14 (3) ni à ceux adoptés en vertu de l'article 42 de la *Loi sur l'aménagement du territoire*. 1989, chap. 58, art. 44.

Exceptions

45 (1) Aucune municipalité ne doit conclure, en vertu de l'article 51 ou 53 de la *Loi sur l'aménagement du territoire*, une convention qui impose une redevance à l'égard de travaux d'exploitation, sauf s'il s'agit d'une redevance visée au paragraphe 3 (7), après la première des dates suivantes :

Certaines conventions prévues

- a) la date d'entrée en vigueur d'un règlement municipal adopté en vertu de l'article 3;
- b) le 23 novembre 1991.

Idem	(2) An agreement with respect to charges related to development made under section 51 or 53 of the <i>Planning Act</i> that is in effect on the earlier of the dates referred to in clauses (1) (a) and (b) remains in effect. 1989, c. 58, s. 45.	(2) La convention ayant trait à des redevances à l'égard de travaux d'exploitation conclue en vertu de l'article 51 ou 53 de la <i>Loi sur l'aménagement du territoire</i> demeure en vigueur si elle est déjà en vigueur à la première des dates prévues aux alinéas (1) a) et b). 1989, chap. 58, art. 45.	Idem
Referrals to continue	46. —(1) A request made before the 23rd day of November, 1989 for a referral under subsection 51 (17) of the <i>Planning Act</i> with respect to a condition relating to a charge related to development shall be continued and disposed of under the <i>Planning Act</i> .	46 (1) Les demandes faites avant le 23 novembre 1989 pour obtenir un renvoi en vertu du paragraphe 51 (17) de la <i>Loi sur l'aménagement du territoire</i> à l'égard d'une condition ayant trait à une redevance à l'égard de travaux d'exploitation sont maintenues et il est statué sur ces demandes en vertu de la <i>Loi sur l'aménagement du territoire</i> .	Maintien des renvois
Appeals under <i>Planning Act</i> continued	(2) An appeal made before the 23rd day of November, 1989 under subsection 53 (7) of the <i>Planning Act</i> with respect to a condition relating to a charge related to development shall continue and be disposed of under the <i>Planning Act</i> .	(2) Les appels interjetés avant le 23 novembre 1989 en vertu du paragraphe 53 (7) de la <i>Loi sur l'aménagement du territoire</i> à l'égard d'une condition ayant trait à une redevance à l'égard de travaux d'exploitation sont maintenus et il est statué sur ces appels en vertu de la <i>Loi sur l'aménagement du territoire</i> .	Maintien des appels
Conflicts	(3) If a decision of the Municipal Board respecting a matter mentioned under subsection (1) or (2) conflicts with a development charge by-law, the decision of the Board prevails to the extent of the conflict. 1989, c. 58, s. 46.	(3) S'il y a incompatibilité entre une décision de la Commission des affaires municipales à l'égard d'une question mentionnée au paragraphe (1) ou (2) et un règlement municipal prévoyant l'imposition de redevances d'exploitation, la décision de la Commission l'emporte dans la mesure où il y a incompatibilité. 1989, chap. 58, art. 46.	Incompatibilités
Agreements not affected	47. Except as stated herein, this Act does not affect an agreement made under section 51 or 53 of the <i>Planning Act</i> . 1989, c. 58, s. 47.	47 Sauf disposition contraire de la présente loi, cette dernière n'a aucune incidence sur les conventions conclues en vertu de l'article 51 ou 53 de la <i>Loi sur l'aménagement du territoire</i> . 1989, chap. 58, art. 47.	Aucune incidence sur les conventions
No right of petition	48. Despite section 95 of the <i>Ontario Municipal Board Act</i> , there is no right to file a petition under that section in respect of any order or decision of the Municipal Board made in respect of any matter appealed to the Board under this Act. 1989, c. 58, s. 48.	48 Malgré l'article 95 de la <i>Loi sur la Commission des affaires municipales de l'Ontario</i> , il n'existe aucun droit de déposer une pétition en vertu de cet article à l'égard d'une ordonnance ou d'une décision quelconque qu'a rendue la Commission des affaires municipales au sujet d'une question dont il a été interjeté appel devant la Commission en vertu de la présente loi. 1989, chap. 58, art. 48.	Aucun droit de pétition
Conflicts	49. In the event of conflict between this Act and any other general or special Act, this Act prevails. 1989, c. 58, s. 49.	49 S'il y a incompatibilité entre la présente loi et toute autre loi générale ou spéciale, la présente loi l'emporte. 1989, chap. 58, art. 49.	Incompatibilités

ONTARIO REGULATION 496/07

CESSATION OF COAL USE — ATIKOKAN, LAMBTON, NANTICOKE AND THUNDER BAY GENERATING STATIONS

Cessation of coal use at certain generating stations

1. (1) The owner and the operator of each of the following generating stations shall ensure that coal is not used to generate electricity at the generating station after December 31, 2014:

1. Atikokan Generating Station, located on Highway 622 in the Township of Atikokan.
2. Lambton Generating Station, located on St. Clair Parkway in the Township of St. Clair.
3. Nanticoke Generating Station, located on Regional Road 55 South in Haldimand County.
4. Thunder Bay Generating Station, located on 108th Avenue in the City of Thunder Bay. O. Reg. 496/07, s. 1 (1).

(2) Subsection (1) applies in respect of each generating station named in that subsection even if the generating station's name or ownership changes. O. Reg. 496/07, s. 1 (2).

2. Omitted (provides for coming into force of provisions of this Regulation).
O. Reg. 496/07, s. 2.

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998,
c. 15, Schedule B;

AND IN THE MATTER OF a motion by the Consumers Council of
Canada and Aubrey LeBlanc in relation to section 26.1 of the *Ontario
Energy Board Act, 1998* and Ontario Regulation 66/10

ONTARIO ENERGY BOARD

**WRITTEN ARGUMENT OF
THE INTERVENOR,
THE ATTORNEY GENERAL OF ONTARIO
(MOTION ON THE MERITS)**

**MINISTRY OF THE ATTORNEY
GENERAL**

Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario M7A 2S9 Fax: 416-326-4015

Robert E. Charney – LSUC #23652S
Tel: 416-326-4452
robert.charney@ontario.ca

Arif Virani – LSUC #44463H
Tel: 416-326-0131
arif.virani@ontario.ca

Robert Donato – LSUC #44544F
Tel: 416-326-4473
robert.donato@ontario.ca

Counsel for the Intervenor,
The Attorney General of Ontario