

Electricity Regulation

Contributing editors
Daniel Hagan and Kirsti Massie



2017

GETTING THE
DEAL THROUGH 

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Electricity Regulation 2017

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1 Policy and law

What is the government policy and legislative framework for the electricity sector?

Unlike most other states, the electricity markets in Canada are regulated primarily at the provincial (as opposed to federal) level. Consequently, the legal and policy framework in each province is different. The electricity sectors in a number of provinces are dominated by government-owned vertically integrated utilities, including British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, and Newfoundland. Alberta and Ontario both moved to competitive, open-access markets (at both the wholesale and retail level) in 2001. Ontario quickly reversed its move to a fully 'deregulated' market due to price volatility in the summer and autumn of 2001. As a result, Ontario has what is now referred to as a 'hybrid market' with a real-time spot price for power, but most new generation procured by way of long-term government-backed contracts.

The remainder of the responses will focus on the Ontario market.

2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

Under the Ontario Energy Board Act 1998 (OEB Act), all electricity generators, transmitters, distributors and retailers must be licensed by the Ontario Energy Board (OEB). The licence binds the generator, transmitter, distributor and retailer to a variety of regulatory Codes promulgated by the OEB (eg, Distribution System Code, Transmission System Code, Retail Settlement Code, Affiliate Relationships Code, etc) that contain a number of detailed regulatory requirements not set out in statute or regulation.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

In Ontario, electricity generation facilities may require a number of approvals and permits from multiple levels of government. The key approvals are granted by the provincial Ministry of Environment and Climate Change (MOECC) and the OEB, and include the following:

- Ontario's Environmental Assessment Act may apply to the construction of new generation facilities. The most significant new generation projects require a full environmental assessment (eg, hydro-electric facility that is 200MW or greater in capacity, energy from waste facilities that burn greater than 100 tonnes per day of municipal waste), while others may require a less onerous environmental screening (eg, gas-fired generators 5MW or greater, cogeneration plants 25MW or greater, etc).
- An Environmental Compliance Approval from the MOECC is required for any new generating plant with air or noise emissions or discharges to water.
- The OEB regulates the utility infrastructure connecting generating facilities to the electric grid or natural gas distribution system. A leave-to-construct order from the OEB is required for most electricity transmission lines connecting a generating facility to the

transmission grid, and for most gas distribution lines to supply gas to a generating facility.

4 Grid connection policies

What are the policies with respect to connection of generation to the transmission grid?

Under Ontario's Electricity Act 1998 (Electricity Act) transmitters and distributors are obligated to connect new generation facilities. The generators are responsible for connection costs, in order to keep existing customers harmless. Generators connecting to the transmission system, and those greater than 10MW connecting to a distribution system, must complete the Connection Assessment and Approval process administered by the Independent Electricity System Operator (IESO). A System Impact Assessment (SIA) is a study conducted by the IESO to assess the impact of the connection proposal on the integrated power system. The SIA is conducted with input from the affected transmitter and in consultation with the connection applicant. At the time of connection, a standard-form Connection Agreement is entered into by the generator and the applicable transmitter. The standard form Connection Agreement was developed by the OEB and forms part of the Transmission System Code issued by the OEB.

5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

The 2003 election of the Liberal Party government in Ontario marked the beginning of a policy to close the province's five coal-fired power plants, and bring on new renewable power generation. Initially, new renewable generation was brought online via requests for proposal (RFPs) and standard-offer programmes, with generators entering into 20-year guaranteed price contracts with the Ontario Power Authority (OPA). In April 2009, the Green Energy Act was passed, establishing a feed-in tariff (FIT) regime for new renewable generation. The GEA also sought to facilitate the approval of new large-scale wind and solar projects by consolidating a number of statutory approvals into a single Renewable Energy Approval (under the Environmental Protection Act). The government's policy goals have largely been met – the last of Ontario's coal-fired power plants was closed in 2014, and (by way of example) installed wind capacity in the province increased from 15MW in 2003 to over 4,300MW today. More recently, the large-scale FIT programme was concluded, and the government has reverted to procuring new renewable generation via RFP.

6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

In November 2015, Ontario released a Climate Change Strategy, which set greenhouse gas emission targets of 15 per cent (from 1990 emissions levels) by 2020, 37 per cent by 2030, and 80 per cent by 2050. Unlike other jurisdictions, which have opted for a carbon tax, the

Ontario government has opted to partner with the cap-and-trade system under the Western Climate Initiative, which is currently supported by California and Quebec.

In 2016, the Ontario Legislature released its five-year Climate Change Action Plan, together with its Climate Change Mitigation and Low-carbon Economy Act (Climate Change Act). The Climate Change Act comes into effect on 1 January 2017, and will require 'large final emitters' to meet their allocated annual emission caps through emissions reductions or the purchase of verified emission allowances (ie, reductions by others). Given that Ontario has largely decarbonised its electricity generation sector, the largest impact of the Climate Change Act will be felt in the industrial and transportation sectors. The Climate Change Act places the compliance obligation on upstream fuel suppliers (ie, natural gas distributors, propane and gasoline fuel providers, etc), increasing the costs of these fuels.

7 Storage

Does the regulatory framework support electricity storage including research and development of storage solutions?

Under the OEB Act, the Minister has the ability to issue Directives to the IESO, and has done so in respect of energy storage – directing the IESO to procure 50MW of energy storage by way of competitive RFP.

8 Government policy

Does government policy encourage or discourage development of new nuclear power plants? How?

Ontario has a long history with nuclear power, building three large nuclear generating stations in the 1970s and 1980s, which supplied 60 per cent of Ontario's electricity in 2015. The three facilities were constructed by the former Ontario Hydro (the provincially owned vertically-integrated utility which existed prior to deregulation in 2001). At the time of deregulation, all three plants were transferred to Ontario Power Generation Inc (OPG) one of the successor corporations to the former Ontario Hydro, vested with all of the former utility's generation assets. In 2001, one of the three nuclear plants (the Bruce Nuclear Generating Station) was leased by OPG to a private consortium comprising today of several entities including TransCanada Corporation. The issue of what to do about Ontario's now-ageing nuclear fleet has been extensively debated in recent years. At present, the Bruce Nuclear Plant and the Darlington Nuclear Plant are involved in extensive refurbishment plans. The Pickering Nuclear Facility is expected to continue operations through to 2024.

Regulation of electricity utilities – transmission

9 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

In the OEB Act, 'transmission lines' are defined as powerlines operating above 50kV. The authorisations required to construct transmission networks depend on the voltage and length of the transmission lines.

The Environmental Assessment Act sets out the following requirements for when an environmental assessment is required for transmission assets:

- transmission lines less than 115kV, and transmission lines greater than or equal to 115kV and 2km or less in length require no environmental assessment;
- transmission lines at 115kV and greater than 2km in length; or transmission lines between 115kV and 500kV and between 2km and 50km in length are subject to a screening-type class environmental assessment; and,
- transmission lines between 115kV and 500kV and 50km or greater in length; or transmission lines 500kV or more and greater than 2km in length require a full, individual environmental assessment.

In addition to the provincial environmental assessment process, transmission lines greater than 2km in length require a leave-to-construct from the OEB. A transmission licence issued by the OEB is also required in order to own and operate a transmission system in Ontario. The licence binds the licensed transmitter to key Codes

issued by the OEB (eg, the Transmission System Code, which sets out detailed rules regarding connection procedures and cost assessment). Connecting new transmission facilities to the existing transmission network also triggers the jurisdiction of the IESO, which will carry out a system impact assessment, aimed at understanding the reliability implications associated with connecting the new assets to the existing system.

Hydro One Networks Inc (the successor corporation of Ontario Hydro that was transferred Ontario Hydro's high-voltage transmission system) owns over 90 per cent of the province's transmission system.

10 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

Ontario's transmission system is open access. Under section 26 of the Electricity Act, a transmitter or distributor must provide generators, retailers, market participants and consumers with non-discriminatory access to its transmission or distribution systems in Ontario in accordance with its licence.

Connecting generators or new loads must contact the transmission system owner and the IESO, in order to determine the most appropriate connection point, and to have the IESO carry out a system impact assessment (SIA) in accordance with the IESO's Market Rules. The SIA will determine whether system upgrades to the existing system are required in order to accommodate the new connection. The new transmission customer must keep the transmission utility's ratepayers harmless, meaning that: (i) newly connecting generators must cover the full costs of connecting to the transmission system; and (ii) newly connecting load customers must cover any costs over and above revenues associated with the new customer's transmission charges over a specified time period (which varies depending upon type of customer). The costs noted in (ii) are recouped from connecting customers by way of an upfront capital contribution.

The rules regarding the rights and obligations of the transmitters and new transmission customers are set out in the OEB's TSC, which contain the two key standard-form agreements governing the relationship – a Connection Cost Recovery Agreement (during the development and construction of the connecting facilities), and a Connection Agreement (during operations).

11 Government transmission policy

Are there any government measures to encourage or otherwise require the expansion of the transmission grid?

The IESO is responsible for long-term system planning, pursuant to the terms of the Electricity Act. The IESO's Long-Term Energy Plan addresses areas of needed transmission system enhancement. In addition, under section 96.1 of the Ontario Energy Board Act 1998, the provincial Cabinet can make an order declaring that a new, expanded or reinforced transmission line is needed as a 'priority' project. In this way, the provincial Cabinet itself can direct that certain transmission projects be expedited on a variety of policy grounds. For instance, the province recently identified the connection of remote First Nation communities in northwestern Ontario as a priority project. Even if a transmission line is declared by Cabinet to be a priority project, OEB approval to build the line is still required. However, in these cases the OEB must accept that the project is needed (part of the legal test for approval).

Although Hydro One Networks owns well over 90 per cent of the provincial transmission system, the province and the OEB has shown interest in having other entities participate in the transmission sector. In March 2011, the Minister of Energy requested the OEB to create a process for selecting the most qualified and cost-effective transmission company to develop a 400km transmission line project that reinforced the connection between northeast and northwest Ontario. The OEB's designation process ultimately selected a partnership between NextEra, Enbridge and Borealis.

12 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

Ontario's five transmitters have their annual revenue requirement set by the OEB. These revenue requirements are then summed together, (along with the transmitters' load forecasts) in order to set a single set of uniform transmission rates that apply province-wide. In this way, the 'pancaking' of transmission charges is avoided, and the costs of transmission are socialised across provincial transmission customers (comprised of electricity distribution utilities and large industrial customers connected directly to the high-voltage transmission system).

The OEB must set rates that are 'just and reasonable', in accordance with their rate-setting jurisdiction under the Ontario Energy Board Act, 1998. To date, transmission rates have been set on a traditional cost-of-service methodology using a forward test year(s), although the OEB is encouraging transmitters to move to multi-year incentive rate-making methodologies, as mandated for the electricity distribution utilities.

There are four transmission charges in Ontario, the levying of which depends upon which assets a transmission customer uses. All customers pay the network transmission charge (to recover costs associated with the operation of the 'backbone' of the transmission system used by all customers). Customers utilising radial assets that benefit one or a small group of customers must also pay a line connection charge, and customers utilising the transmitters' transformer station (as opposed to self-owned transformers) must also pay a transformation charge. The transmitters' assets are categorised into these three asset pools, and the associated cost base of each asset pool underpins that charge. Exporters of power must pay an export transmission service charge.

13 Entities responsible for grid reliability

Which entities are responsible for the reliability of the transmission grid and what are their powers and responsibilities?

Compliance with reliability standards are enforceable in Ontario by the IESO, through its Market Rules. In 2007, the North American Electric Reliability Corporation (NERC) was tasked with developing and enforcing reliability standards in the United States. NERC and the Northeast Power Coordinating Council (NPCC) are both recognised as the reliability standards authority by the Ontario government. The IESO implements compliance monitoring and enforcement processes in Ontario for NERC reliability standards and the NPCC criteria. The IESO's Market Assessment and Compliance Division is responsible for reliability standards enforcement.

Regulation of electricity utilities – distribution

14 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

As noted above, a distribution system in Ontario's legislative framework is limited to electricity distribution assets that operate at 50kV or less. The regulatory authorisations required to construct distribution systems is less onerous than for transmission facilities – ie, no environmental assessment is required, and no leave-to-construct approval is required from the OEB.

A distribution licence issued by the OEB is required to own or operate a transmission system. The distribution licence binds the distributor to the myriad specific regulatory Codes issued by the OEB – the most important of which are the Distribution System Code, the Retail Settlement Code, the Standard Supply Service Code, and the Conservation and Demand Management Code.

15 Access to the distribution grid

Who is eligible to obtain access to the distribution network and what requirements must be met to obtain access?

As noted above, section 26 of the Electricity Act provides for non-discriminatory access for anyone seeking to connect to the distribution system. Every distributor will have its connection procedures set

out in its Conditions of Service, which are required to conform to the provisions of the OEB's Distribution System Code. These Conditions of Service are public documents, filed with the OEB. The process typically begins with the submission of a connection application, made to the local distribution company (LDC). As with connections to the transmission system described above, the principle of newly connecting customers keeping existing ratepayers harmless also applies to distribution system connections.

16 Government distribution network policy

Are there any governmental measures to encourage or otherwise require the expansion of the distribution network?

No. Distribution system expansion is done on an economic basis (ie, a newly connecting load customers must pay a capital contribution in the event that the distribution revenues generated over a certain time horizon do not cover the distributors' connection costs).

17 Rates and terms for distribution services

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

The OEB sets electricity distribution rates on a 'just and reasonable' standard, pursuant to the OEB's rate-setting jurisdiction under the Ontario Energy Board Act 1998. LDCs in Ontario file rate applications in accordance with Filing Requirements published by the OEB. There are essentially three rate-setting options available to LDCs: a five-year price cap incentive-ratemaking (IR) methodology; an annual IR index methodology; or a custom IR methodology. Most LDCs apply using the first of these three methodologies, which involves setting rates for the test year on a traditional cost-of-service basis, and then having resultant rates adjusted in years two through five via a formula that incorporates inflation, a productivity factor and a stretch factor.

Regulation of electricity utilities – sales of power

18 Approval to sell power

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

Ontario differentiates between selling into the wholesale and retail markets. Every OEB-issued generator licence authorises a generator to sell electricity into the IESO-administered market (ie, the wholesale market) or directly to another person other than a consumer. Every OEB-issued distribution licence authorises a distributor to sell electricity to end-use customers, in order to fulfil its obligations as 'default supplier' of power (ie, customers choosing not to purchase electricity from an electricity retailer) under section 29 of the Electricity Act.

Competitive electricity retailers selling to both large-volume and low-volume consumers must obtain an electricity retailer licence from the OEB. Selling to low-volume consumers (those consuming less than 150,000kWh annually) attracts more onerous regulatory requirements than does selling solely to large-volume consumers.

19 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

Yes. Commencing in 2005, the OEB established a Regulated Price Plan (RPP) in order to remove the volatility of electricity pricing, and reflect the amount paid to generators. The RPP sets tiered pricing for customers using both time-of-use and non-time-of-use meters. The price threshold (the amount of electricity that is charged at the lower price) is changed every six months for residential consumers, as follows: 1 May to 31 October = 600kWh per month; and November 1 to April 30 = 1,000kWh per month. Prices are also adjusted every six months, based on updated forecasts and any accumulated differences between the amount that consumers paid for electricity and the amount paid to generators in the previous period.

20 Rates for wholesale of power

Who determines the rates for sales of wholesale power and what standard does that entity apply?

The wholesale price of power (ie, the Hourly Ontario Energy Price (HOEP)) is determined by bids and offers submitted to the IESO. It is important to note that while an HOEP is produced, the 2001 price freeze to consumers and resultant movement away from a competitive market in Ontario has resulted in new generation being procured by the OPA (since merged with the IESO) under long-term contract. These generators still bid their power into the wholesale market, but are 'topped up' by the IESO pursuant to the terms of their contract. The cost of the contracted power (and other cost items, such as conservation initiatives) are captured and passed onto consumers in a global adjustment charge (GA). Thus, HOEP only accounts for a (relatively small) portion of the overall commodity cost to consumers – with the GA accounting for an increasingly large share.

21 Public service obligations

To what extent are electricity utilities that sell power subject to public service obligations?

The LDCs in Ontario play a major role in terms of conservation and demand management programme delivery. The overall provincial conservation policy and provincial targets are established by the Ministry of Energy (based on the advice of the OPA, now IESO). The Minister has used his directive powers under the Ontario Energy Board Act, 1998 to issue directives to: (i) the IESO, directing them to work with LDCs to establish province-wide conservation programmes for residential, commercial and industrial customers; and (ii) the OEB, directing them to put conditions in each distributor's licence mandating certain reductions. As a result, the IESO has the planning and reporting functions for province-wide conservation programmes, and provides LDCs with marketing, technical and training support for such programmes. The IESO also provides evaluation, measurement and verification of programme results. The LDCs are responsible for programme delivery, pursuant to the provincially established targets, and in accordance with conservation and demand management plans submitted to the OEB.

Regulatory authorities

22 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

The Ontario Ministry of Energy sets provincial policy for the electricity sector. The Ontario Ministry of Environment and Climate Change sets policy for climate change in the province. The IESO and the OEB also have a role to play in policy. With respect to the IESO, its responsibility for long-term system planning means that at a practical level it may work closely with government to determine provincial policy. At a minimum, the planning work of the IESO will play an important role in informing Ministerial policy. For more granular issues within its area of expertise, the OEB establishes policy – sometimes at the prompting or direction of the Minister of Energy, other times on its own.

23 Scope of authority

What is the scope of each regulator's authority?

The scope of the OEB's authority is set out primarily in the OEB Act, and to a lesser extent in the Electricity Act. It has broad jurisdiction in Ontario's electricity sector, including authority to set electricity rates, approve the construction of major electricity transmission lines, license all participants in the sector, and ensure compliance with licence conditions, the OEB's Codes and the terms of any decision or order.

The scope of the IESO is set out in the Electricity Act, and is fourfold:

- managing and ensuring the reliability of the high-voltage grid;
- entering into long-term contracts for the supply of electricity;
- establishing the market price for power (ie, HOEP); and
- carrying out long-term planning for the electricity sector.

As noted above, the IESO also plays an important role in the planning and design of the province-wide conservation programmes.

Both the OEB and IESO have compliance and enforcement functions.

24 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The precursor to the OEB (the Ontario Fuel Board) was established in 1954 for the purposes of regulating the natural gas sector in Ontario (ie, rates for sale and storage of gas, leave to construct gas pipelines, etc). The Ontario Energy Board Act 1960 created the OEB as a successor to the Ontario Fuel Board. In the mid-1970s, the legislation was amended, expanding the role of the OEB into the electricity – although at the time, its jurisdiction was limited to annual reviews of Ontario Hydro's rates. The mandate of the Board did not fully encompass the electricity sector until 1998, in anticipation of the move to a competitive wholesale and retail power market. At that time, the OEB's authority was expanded to include setting electricity distribution and transmission rates, licensing market participants, and approving large transmission projects. The OEB is an administrative tribunal, with its members appointed by provincial Cabinet. In recent years, the provincial government has sought to intervene more directly in the work of the OEB amending the OEB Act to give it directive-making powers as regards the OEB in a variety of substantive electricity policy areas (eg, conservation, licensing, etc).

25 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

Pursuant to section 33 of the OEB Act, orders of the OEB may be appealed (as of right) to the Ontario Divisional Court. An appeal may only be made upon a question of law or jurisdiction.

Acquisition and merger control – competition

26 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

The OEB has the statutory authority to review the sale or lease of (transmission or distribution) utility assets or a change in control of utility companies. All amalgamations by a transmitter or distributor are also reviewable by the OEB. An order granting leave to sell or lease utility assets, or to amalgamate, is required by the utility.

In addition, the OEB must be notified (and has discretion to review) any transactions between generators on the one hand and utilities on the other hand. Specifically, before a transmitter or distributor, or affiliate of a transmitter or distributor, acquires an interest in a generation facility in Ontario, constructs a generation facility in Ontario, or purchases shares of a corporation that owns a generation facility in Ontario, the OEB must be notified. Similarly, before a generator or affiliate of a generator acquires an interest in a transmission or distribution system in Ontario, constructs a transmission or distribution system in Ontario, or purchases shares of a corporation that owns a transmission or distribution system in Ontario, the OEB must be notified.

The above requirements are all set out in sections 80 through 86 of the OEB Act, and are referred to as the MAAD (mergers, acquisitions, amalgamations and divestitures) provisions.

27 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

The legal test on a MAAD application (see question 26) is a 'no harm' test. In other words, the applicants do not have to show that there is any benefit to the transaction, but must show that ratepayers will be no worse off after the transaction than they are at present. There is a large body of case law dealing with MAAD applications – since a provincial policy aimed at LDC consolidation has seen the number of LDCs drop from over 300 to approximately 75 today. Most transactions have attracted little scrutiny, but recent cases being brought forward have met with more interest, focusing largely on the longer term rate impacts associated with such transactions. Disposition of MAAD transactions typically takes a few months.

28 Prevention and prosecution of anticompetitive practices

Which authorities have the power to prevent or prosecute anticompetitive or manipulative practices in the electricity sector?

There are two entities that play a key role in the prevention or prosecution of anticompetitive or manipulate practices in the electricity sector in Ontario: the IESO's Market Assessment and Compliance Division (MACD), which plays the main role in monitoring anomalous market behaviour/conduct; and the Market Surveillance Panel within the OEB, which relies heavily on the monitoring work of MACD. If the anomalous conduct amounts to a breach of the Market Rules, the IESO can initiate its own process against the market participant. The Electricity Act 1998 provides the MSP with the authority to carry out investigations of anomalous market conduct, and make the results of any investigation public. The OEB can then take compliance action against the market participant based on the MSP investigation.

Recently, the IESO Market Rules were amended to include a General Conduct Rule (GCR). Up to that point, the Market Rules contained fairly prescriptive provisions detailing the precise type of prohibited conduct. The GCR provides the IESO with much broader authority to pursue conduct that it considers anticompetitive. Under the GCR, market participants are prohibited from 'directly or indirectly' engaging or attempting to engage in conduct, 'alone or with another person, that they know, or ought reasonably to know:

- exploits the IESO-administered markets, including by, without limitation, exploiting any gap or defect in the Market Rules;
- circumvents any of the Market Rules;
- manipulates any of the IESO-administered markets, including by, without limitation, manipulating the determination of a settlement amount;
- undermines through any means the ability of the IESO to carry out its powers, duties or functions under the Electricity Act 1998 or the Market Rules; or
- interferes with the determination of a market price or dispatch outcome by competitive market forces.

29 Determination of anticompetitive conduct

What substantive standards are applied to determine whether conduct is anticompetitive or manipulative?

As noted above, prior to the establishment of the GCR, the IESO's Market Rules contained fairly prescriptive provisions setting out types of prohibited conduct in the power market. For instance, the market power provision in the Market Rules set out a series of objective criteria which, if met, resulted in a situation being deemed 'market power'. The enactment of the GCR introduced a discretionary standard to the determination of prohibited conduct.

30 Preclusion and remedy of anticompetitive practices

What authority does the regulator (or regulators) have to preclude or remedy anticompetitive or manipulative practices?

Both the IESO and the OEB have the authority.

The IESO plays an enforcement role for breaches of the Market Rules, which enables the IESO to impose financial penalties and other sanctions (eg, issuance of letters of non-compliance, trading suspension orders, termination orders, disconnection orders, etc). For alleged breaches of the GCR, market participants have the option to have the OEB determine whether a breach has occurred under the GCR.

In addition, a breach of the Market Rules is also a breach of an OEB licence condition, which can lead to the issuance of a compliance order, the levying of a financial penalty, or revocation of a licence.

International

31 Acquisitions by foreign companies

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

The federal Investment Canada Act (ICA) governs the acquisition of control of a Canadian business by a non-Canadian investor. Review is generally limited to direct acquisitions of control of large Canadian businesses by non-Canadians. Generally, if an acquisition is reviewable, a non-Canadian investor must obtain approval prior to closing the transaction. In a limited number of cases, an investment may be subject to a national security review if it is considered potentially injurious to national security, even where review thresholds are not met. The Minister of Industry has authority for the review and approval of investments. The initial review period is up to 45 calendar days. This period may be extended by the responsible Minister for an additional 30 days. A further extension may occur with the consent of the non-Canadian investor. For an acquisition to secure approval under the ICA it must be of 'net benefit to Canada'. To demonstrate net benefit, it is usually necessary for the non-Canadian investor to give undertakings to the Canadian government. These undertakings, in relation to the acquired business, may include maintaining certain levels of employment, Canadian management and a Canadian head office and making certain capital expenditures, for a period of at least three years.

32 Authorisation to construct and operate interconnectors

What authorisations are required to construct and operate interconnectors?

A proponent of an international power line can elect to proceed under provincial law (see questions dealing with the construction and operation of international power lines) or alternatively proceed under federal law. Specifically, a proponent can elect under section 58.23 of the National Energy Board Act (NEB Act) to have the provisions of the NEB Act, and not provincial laws, apply in respect of the international power line. Proceeding under federal law requires the issuance of a certificate under section 58.16 of the NEB Act to construct and operate the Canadian portion of the project.

33 Interconnector access and cross-border electricity supply

What rules apply to access to interconnectors and to cross-border electricity supply, especially interconnection issues?

The export of electricity is a matter of federal jurisdiction. A person who seeks to export electricity to the United States must obtain either an export permit (or licence) from the National Energy Board (NEB). A permit application to the NEB must contain information about the exporter and US importer, the physical facilities over which the electricity will flow, any adverse effects resulting from the export, as well as estimates about the maximum quantity power to be exported (firm and interruptible). Scheduling the flow of power across the international power lines remains a provincial matter. In Ontario, interjurisdictional trading rules are part of the IESO's Market Rules.

Transactions between affiliates

34 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

The OEB's Affiliates Relationships Code (ARC) governs transactions between electric utilities and their affiliates. The main objectives of

the ARC provisions are twofold: protection of ratepayers (by requiring utilities to pay no more than fair market value for goods and services from an affiliate, and not to sell any goods or services to an affiliate for anything less than fair market value) and protection of competition (eg, prohibiting access to a utility's customer list by its affiliate, showing no preference in marketing materials for an affiliate, etc).

Electricity distribution and transmission utilities in Ontario are bound by the terms of the ARC via their OEB-issued licence.

35 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Any violation of the ARC is a breach of the utility's licence, and subject to the OEB's compliance and enforcement measures.

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