EnergyInsider - 2019 Year in Review

By David Stevens

As 2020 is now upon us, we look back at some of the interesting developments that took place over the past year in the energy sector, both in Ontario and across Canada. The initiatives announced by the Ontario government to reform the structure of the Ontario Energy Board and lower electricity costs for consumers drew the most reads on Energy Insider in 2019. Other widely-read topics included carbon pricing, pipeline disputes, energy storage, distributed energy resources and climate litigation. Below is a look back at the top Energy Insider posts of 2019.

1. Ontario Passes Legislation to Reform the Ontario Energy Board

On March 21, 2019, the Ontario government announced a series of plans aimed at reforming the structure of the Ontario Energy Board (OEB). Some of the proposed changes were implemented through proposed legislative amendments set out in Bill 87, while other changes were implemented through regulatory and policy updates. Bill 87 was passed by the Ontario government on May 9 and, among other things, amended the OEB’s governance structure and operations. These changes were “informed” by the recommendations in the Ontario Energy Board Modernization Review Panel Final Report, which are described in another Energy Insider post.

As of January 2020, most of the legislative changes to the OEB structure are yet to be proclaimed, and no announcement has been made about the new leadership for the OEB.

2. Changes to Ontario’s Electricity Pricing

On February 21, 2019, the OEB released the Staff Report to the Board on Rate Design for Commercial and Industrial Electricity Customers (the Staff Report). The Staff Report set out OEB staff’s recommendations for new rate designs for electricity commercial and industrial (C&I) rate classes. Among other things, the Staff Report included recommendations to: (i) establish a fixed distribution charge for commercial customers with demands under 10 kW whose use of the distribution system is like residential customers; (ii) implement a demand charge (rather than the current volumetric charge) for C&I customers with demands between 10kW and 50kW; and (iii) introduce a “capacity reserve charge” for customers with load displacement generation to replace stand-by charges and provide for recognition of the benefits of this generation on the system. Upon the change in OEB governance, this review process was put on hold.

Following the OEB Staff’s report, on March 28, 2019 the Ontario government announced plans to hold consultations to seek input from businesses about industrial electricity pricing and programs. This was done through Ontario’s online consultations directory and through in-person sector-specific consultation sessions across the province. The in-person sessions were held in all areas of Ontario, and targeted “key industries,” including automotive, forestry, mining, agriculture, steel, manufacturing and chemicals. On April 1, the Ontario government published a consultation notice for this process, confirming that it is looking for input on “electricity rate design, existing tax-based incentives, reducing system costs and regulatory and delivery costs.” The consultation process included a list of nine questions for respondents (and presumably participants in the in-person sessions) to address.

In the Ontario Government’s Ontario government’s 2019 Fall Economic Update (page 66), the Ontario Minister of Energy directed the Independent Electricity System Operator (IESO) to “review and report-back to [the Minister] on opportunities to improve billing and settlement processes as well as customer service practices for electricity market participants.” The IESO is expected to consult with stakeholders to ensure that the interests of “all relevant parties” are considered. The IESO’s report must be provided to the Minister by the end of February 2020.
As of January 2020, we have yet to see any specific electricity distribution pricing changes for Ontario’s C&I customers.

3. Carbon Pricing

Carbon emissions and the role of fossil fuel in Canada’s energy future was a hot topic in 2019! Across Canada, governments and courts weighed in on carbon pricing legislation. In Saskatchewan, the Court of Appeal ruled that the federal carbon pricing legislation is constitutional. On May 3, 2019, the Saskatchewan Court of Appeal released its decision on the reference with a split 3-2 outcome stating that climate change is a vital national issue and the federal government has the power to set GHG emission standards that the provinces must meet. The federal Minister of Environment and Climate Change said that the court’s conclusion, although not binding, is a win and allows the federal government to undertake significant action on carbon emissions while respecting Canada’s constitution.

On June 4, Bill 1, which repeals the Climate Leadership Act, received Royal Assent in Alberta. When introducing Bill 1, Premier Jason Kenney stated that repealing the provincial carbon tax “will lift a burden of $1.4 billion off the Alberta economy, will save families as much as $1,150 per year, will save small businesses on average $4,500 per year, and will, according to economists, lead to the creation of at least 6,000 new full-time jobs.” After Premier Kenney announced that his government will repeal the provincial carbon tax, the Government of Canada committed to imposing a federal carbon tax on Alberta, also known as the federal carbon pricing backstop, which came into effect in Alberta on January 1, 2020. The backstop applies to any jurisdiction that does not have a price on carbon. The federal government has already imposed the backstop on Ontario, New Brunswick, Manitoba and Saskatchewan. Premier Kenney announced that Alberta will challenge the constitutionality of the federal carbon tax, similar to those launched by Ontario and Saskatchewan.

Like in Saskatchewan, the Ontario Court of Appeal ruled that federal carbon pricing is constitutional. In a 4-1 decision, the court rejected Ontario’s claim that the federal carbon levy is outside the federal government’s jurisdiction. In their decision released on June 28, the Ontario Court of Appeal held that the Greenhouse Gas Pollution Pricing Act is within Parliament’s jurisdiction to legislate in relation to matters of “national concern” under the peace, order and good government clause of section 91 of the Constitution Act, 1867.

It can be expected that proceedings before the Supreme Court of Canada to review the Saskatchewan and Ontario appeal decisions and determine the constitutionality of the federal carbon levy will move ahead in 2020.

4. Pipeline Disputes

In late October 2018, the National Energy Board (NEB) issued a letter indicating that the NEB will consider a jurisdictional challenge over whether the NEB must approve the Coastal GasLink Pipeline (CGLP) that would serve the recently-confirmed LNG Canada project. On July 26, 2019, the NEB released its final decision and determined that the CGLP does not fall within federal jurisdiction. The NEB concluded that “the Project does not form a part of the NOVA Gas Transmission Ltd. System, and is not vital or integral to it, or any other federally regulated pipeline.”

The Trans Mountain pipeline has been a divisive issue in Canada long before the Liberal government decided to purchase it in 2018. However, since the government purchased it, there have been ongoing legal challenges to the government’s decision to approve the pipeline expansion. It is once again in the hands of the Federal Court of Appeal after the September 4, 2019 decision in Raincoast Conservation Foundation v. Canada (Attorney General) (Raincoast Conservation). In this decision, Stratas J.A. was asked to grant leave for 12 judicial review applications brought by eight First Nations, three ecological organizations and the City of Vancouver. For various reasons, all applications for judicial review challenged the recent Governor in Council’s decision to reapprove the Trans Mountain expansion project. Stratas J.A. granted leave to six of the applications to proceed to judicial review, but narrowed the issues for judicial review to whether the Crown adequately consulted Indigenous peoples before reapproving the expansion project. In the meantime, the Trans Mountain Corporation will continue planning and begin construction. In this regard, the project proponent has stated that “[t]he [judicial review] applications are challenging the decisions made by the Canada Energy Regulator and the Federal Government, but do not
in and of themselves negate the pre-existing approvals provided by those governmental authorities until and unless the court rules otherwise."

5. Energy Storage

One topic that continues to have growing prominence is the energy storage market. It has been suggested by Bloomberg NEF (BNEF) that the global energy storage market will grow to a cumulative 942GW/2,857GWh by 2040 and will attract $620 billion in investment over the next 22 years. BNEF predicts that the leading countries will be China, the U.S., India, Japan, Germany, France, Australia, South Korea and the U.K.

The regulatory landscape for energy storage in Canada has been relatively quiet. In May 2019, Energy Storage Canada (ESC) released their presentation titled “Maximizing Value and Efficiency for Ratepayers through Energy Storage.” The roadmap sets out "a coherent plan to reduce barriers and deliver greater ratepayer value for Ontario consumers and businesses at the transmission level, distribution level, and behind-the-meter in commercial, industrial and residential settings.” ESC outlined six roadmap actions to maximize the value of energy storage, as well as a timeline for when these actions should be completed in order to advance the energy storage market in Ontario.

6. Distributed Energy Resources

On March 15, 2019, the OEB announced that it was starting concurrent consultation processes to look at how the electricity sector in Ontario should respond to Distributed Energy Resources (DERs) and encourage utilities and regulated service providers to “embrace innovation” in their operations and customer service. The stated aims of the consultation were to drive lower costs, improve service and offer more consumer choice “by encouraging utilities and other service providers to embrace innovation,” and to “secure the benefits of sector transformation and mitigate any adverse consequences.”

On July 17, the OEB issued a letter explaining its “refreshed” approach to stakeholder engagement for its previously-announced consultation processes on Utility Remuneration and Responding to DERs. Among other things, the OEB’s updated approach was intended to “enhance the opportunity for stakeholder perspectives to inform subsequent steps in relation to these initiatives following the OEB’s transition to its new structure.”

On August 13, the OEB issued a letter launching a review of the requirements for licensed electricity distributors to connect distributed energy resources (DER Connections Review). The DER Connections Review is a companion initiative to the OEB’s ongoing Responding to DERS consultation.

The OEB has heard from stakeholders about what should be addressed in the Responding to DERs consultation. OEB staff will provide a report describing stakeholder perspectives and setting out a proposal outlining objectives, issues and guiding principles for the Responding to DERs consultation to proceed. However, before that report is issued, OEB Staff has convened an additional session (in February 2020) where they will outline and seek input on OEB Staff’s current thinking of the scope of the consultation.

7. Climate Change Litigation

Climate change litigation has come to Canada. In November 2018, an environmental group called ENVironment JEUnesse (ENJEU) applied to the court to authorize a class action against the Canadian government on behalf of Quebecers aged 35 and under. Like Urgenda, ENJEU claims that Canada’s GHG emissions targets are insufficient to avoid the impacts of climate change.

In June 2019, the Quebec Superior Court heard the petitioners’ motion for authorization to commence a class action to obtain a declaration that by adopting dangerous GHG emissions targets, the Canadian government is violating the class members’ fundamental rights and is not ensuring that the class members live in a safe climate, thereby shirking their duty to act against climate change. The class members were seeking $100 each, amounting to $340 million total - all of which would be placed into a fund for the implementation of anti-climate change measures.
In July 2019, the Quebec Superior Court dismissed the petitioners’ motion for authorization to institute a class action. The court held that the doctrine of justiciability was not an obstacle to the authorization of the class action, however, the court did take issue with the nature of the class proposed by the petitioners, namely the age limit of 35 years.

Thank you for being loyal followers of Energy Insider! We look forward to continue writing about all of the exciting developments in the energy sector in Ontario and beyond.

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