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Energy board rules \$53M hydro levy legal; Charge to cover costs of energy conservation programs justified

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Illustrations: The levy adds about \$4 per customer to hydro bills.

A levy of about \$4 per customer on hydro bills to cover the cost of conservation programs is legally justified, the Ontario Energy Board has ruled.

The board has rejected a constitutional challenge to the levy, which collected \$53.7 million across the province in 2009-2010.

The money was to be used to fund programs like home energy audits, or helping businesses use renewable power.

The Consumers Council of Canada had challenged the levy. The council argued that it was an indirect tax, because it was imposed on local hydro utilities and on the Independent Electricity System Operator, who then recovered the cost from customers.

Under Canada's constitution, only the federal government can impose indirect taxes.

The energy board sided with the province, which had argued that the levy is technically a regulatory charge, and not a tax.

Robert Warren, lawyer for the consumers' council, said he'll review the decision with his client before deciding whether to appeal to divisional court.

Although the amount of money involved per customer was relatively small, Warren said it involved an important constitutional principle.

"It was, I suppose, an old-fashioned insistence that if the government's going to do something, it should do it right," he said in an interview.

A second concern, he said, is that the province bypassed the Ontario Energy Board in imposing the levy.

The energy board is supposed to regulate hydro rates independently of government. But in this case, the government simply imposed the levy and assigned the energy board the role of accountant, Warren said.

"In the long run, none of us are well served by the government using regulatory agencies as rubber stamps," he said.

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