



**Canadian
Environmental Law
Association**
EQUITY. JUSTICE. HEALTH.



**ONTARIO
CLEAN AIR
ALLIANCE**



environmental
defence
INSPIRING CHANGE



**PEMBINA
institute**

GREENPEACE



February 24, 2016

**Re: Bill 135, *Energy Statute Law Amendment Act, 2015*
Standing Committee on General Government**

A. Overview

Thank you for the opportunity to provide these comments on Bill 135, *Energy Statute Law Amendment Act, 2015* to the Standing Committee on General Government on behalf of seven public interest organizations with a long-standing interest in sustainable and transparent energy planning.

Canadian Environmental Law Association (“CELA”) is an Ontario legal aid clinic founded in 1970 for the purpose of using and improving laws to protect public health and the environment. CELA uses existing laws to protect the environment and advocates for environmental law reforms where appropriate. One of our priorities is renewable energy and sustainable long-term energy planning.

Ontario Clean Air Alliance is an alliance of close to 100 groups working for a renewable Ontario. Our health, our environment and our economy depend on us building a low-carbon, high efficiency economy. Moving towards a renewable electricity grid will cement this province’s position as a global leader on climate change, improve air quality and make our province a great place to live, work and play.

The Pembina Institute advocates for strong, effective policies to support Canada’s clean energy transition. We provide expertise to industry and government leaders.

Environmental Defence has been working since 1984 to protect Canadians’ environment and human health. In Ontario, we work on clean water with a focus on Great Lakes protection, on toxics reduction and labelling, land-use planning and protecting Ontario’s Greenbelt, and on energy issues with an emphasis on mitigating climate change. Our vision is to create a world Canadians are proud to pass on to their children.

Canadian Environmental Law Association

T 416 960-2284 • F 416 960-9392 • 130 Spadina Avenue, Suite 301 Toronto, Ontario M5V 2L4 • cela.ca

TREC Renewable Energy Co-operative is a social enterprise that develops community-owned renewable energy projects, supports the Community Power, Aboriginal Power and Social Finance sectors and advocates for a 100% renewable energy future.

The Federation of Community Power Co-operatives (FCPC) is a province-wide umbrella organization for community power co-ops in Ontario that are developing grid-tied renewable energy projects. We exist to unite, represent and serve the community power co-op community across the province.

Greenpeace is an independent campaigning organization that uses non-violent creative confrontation to expose global environmental problems and to force solutions, which are essential to a green and peaceful future. Greenpeace's goal is to ensure the earth can nurture life in all its diversity.

Amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*

We do not support the proposed amendments to the long-term energy planning system. Bill 135 will significantly reduce public accountability and transparency by centralizing power for long-term energy planning with the Minister of Energy (the "Minister"), minimizing input from the Independent Electricity System Operator ("IESO"), and removing independent review of long-term energy plans by the Ontario Energy Board ("OEB").

Bill 135 significantly decreases opportunities for robust public participation in energy planning. Independent hearings are essential to ensure that the public can review all of the evidence relied on to create the Long-Term Energy Plans ("LTEP"), submit evidence, argument and interrogatories, and cross-examine witnesses.

Bill 135 should be amended to remove the inappropriate exemption of LTEPs and associated undertakings from *Environmental Assessment Act* review.

Amendments to the *Green Energy Act, 2009*

We support amendments to the *Green Energy Act, 2009* which increase reporting of "prescribed persons" on energy and water use, and conservation efforts. However, the scope and effectiveness of these amendments depend on the government of Ontario expeditiously introducing regulations to implement these provisions and a broad definition of "prescribed persons".

All information reported under the *Green Energy Act, 2009* regarding energy and water use, and conservation efforts, should be available to the public. We oppose the discretion provided to the Minister to determine which information should be disclosed and which information should be kept confidential pursuant to section 17 of the *Freedom of Information and Protection of Privacy Act*.

We support the amendments to the *Green Energy Act, 2009* which allow Cabinet to prescribe “water efficiency standards or requirements for appliances or products that consume energy”.¹

B. Amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act*

1) Bill 135 concentrates power for long-term energy planning with the Minister

The amendments to the *Electricity Act, 1998* in Bill 135 significantly undermine the accountability and transparency of long-term energy planning in Ontario. The Minister’s power to control long-term energy planning has been consolidated. The Minister is now responsible for creating LTEPs, Ministerial directives to the IESO and OEB regarding implementation of the LTEPs, and approval of IESO and OEB implementation plans.²

The independent IESO’s role has been significantly reduced. With respect to long-term energy planning, the IESO is now only responsible for Technical Reports and plans regarding its role in implementing the Minister’s LTEP.

Transparency and accountability for sound energy planning in Ontario is also severely undermined because Bill 135 removes the OEB’s power to review long-term energy plans. There is now no independent review of the over-arching long-term energy plan in Ontario.

(a) IESO

Technical Report

The IESO maintains authority to create Technical Reports on “the adequacy and reliability of electricity resources with respect to anticipated electricity supply, capacity, storage, reliability and demand”.³ It is not contemplated that the IESO would consider environmental impacts and environmental sustainability, or safety, in its Technical Reports. The IESO is not required to consult with the public on its Technical Report.

Bill 135 only requires the Minister to consider the IESO’s Technical Report in developing its LTEP and to post it on a publicly-accessible website. There is no guidance provided to address a situation where the Minister’s LTEP is inconsistent with the IESO’s Technical Report.⁴

¹ Bill 135, amendments to *Green Energy Act*, s 16(2)(d.1)

² Bill 135, amendments to the *Electricity Act, 1998*, ss 25.29, 25.30, 25.31(5) and (6)

³ Bill 135, amendments to the *Electricity Act, 1998*, s 25.29(3)

⁴ Bill 135, amendments to the *Electricity Act, 1998*, s 25.29(3)(a) and (b)

Long-Term Energy Plan

The IESO's power to develop an Integrated Power System Plan, which included mandatory consideration of conservation, energy efficiency and demand management strategies, safety, environmental protection and environmental sustainability, has been replaced by the Minister's LTEP process.⁵

The Minister's LTEP will now be the main long-term energy planning instrument. It will consider the following:

- 1- The cost-effectiveness of the energy supply and capacity, transmission and distribution;
- 2- The reliability of energy supply and capacity, transmission and distribution, including the effects of climate change;
- 3- The prioritization of measures related to the conservation of energy or the management of energy demand;
- 4- The use of cleaner energy sources and emerging technologies; and
- 5- Air emissions from the energy sector, including GHGs; and
- 6- Consultations with Aboriginal peoples and interested groups.⁶

The list of goals and objectives should be amended to include explicit consideration of the environmental impacts of different types of energy production and the consideration of renewable energy alternatives.

Implementation Plans

Once the LTEP is issued, the Minister also has authority to issue implementation directives to the IESO and the OEB setting out requirements respecting the implementation of the LTEP.⁷ Once the IESO and the OEB submit implementation plans to the Minister outlining the steps they will take to meet the requirements of the Ministerial directives, the Minister has authority to approve the implementation plans.⁸

⁵ Ont Reg 424/04 – Integrated Power System Plan, s 2(1)

⁶ Bill 135, amendments to the *Electricity Act*, s 25.29(1), (2)

⁷ Bill 135, amendments to the *Electricity Act*, s 25.30(1), (2)

⁸ Bill 135, amendments to the *Electricity Act*, s 25.31(1), (2), (5)

(b) OEB

The concentration of power with the Minister for long-term energy planning is augmented by Bill 135's removal of the OEB's power to review long-term energy plans. Despite concerns that the OEB did not give significant weight to environmental concerns⁹, the current *Electricity Act, 1998* scheme at least provided for an independent review of key long-term energy assumptions and plans. In the current system, the OEB was legislated to provide an independent assessment of the IESO's Integrated Power System Plan to ensure it "complies with any directions issued by the Minister and is economically prudent and cost effective".¹⁰ The OEB could approve the Integrated Power System Plan or refer it back to the IESO with comments for further consideration.¹¹

(c) Recommendations regarding the role of the Minister, the IESO and the OEB

We make the following recommendations:

Recommendation 1: The government of Ontario should remove amendments to the long-term energy planning regime which concentrate power for long-term energy planning with the Minister and reduce the power of the independent IESO and OEB.

Recommendation 2: Subsection 25.29(2) should be amended to include consideration of all environmental impacts of different types of energy production and the consideration of renewable energy alternatives.

Recommendation 3: The government of Ontario should amend Bill 135 to provide for a broad planning role for the IESO in developing long-term energy plans.

Recommendation 4: Bill 135 should require independent review of LTEPs by the OEB.

2) Bill 135's provision for public participation is insufficient

Long-term energy planning has far-reaching implications for Ontario communities. It is accordingly essential that the public be provided with meaningful opportunities to participate in long-term energy planning processes. An independent public hearing process is critical to ensuring that the public can fully participate in long-term energy planning and can challenge the underlying evidence and assumptions of the plan. The current consultation envisioned by Bill 135 on LTEPs is insufficient to ensure appropriate public input and falls far short of the current provisions for public input in the OEB review process.

⁹ Environmental Commissioner of Ontario, 2007. "Integrated Power System Plan: The Minister of Energy Proposes a Massive Overhaul", *Reconciling our Priorities, ECO Annual Report, 2006-07*. Toronto, ON : Environmental Commissioner of Ontario, pp 81-86.

¹⁰ *Electricity Act, 1998*, SO 1998, Ch 15, Sched A ("*Electricity Act*"), s 25.30(4)

¹¹ *Electricity Act*, s 25.30(5)

Bill 135 contemplates “one or more consultation meetings” or participation through electronic means with regards to the LTEP.¹² Environmental experts or stakeholders are not specifically listed as groups to be consulted on LTEPs.

The public’s access to background documents relied on by the Minister in the development of the LTEP is less extensive than the disclosure provided by the OEB’s review process. Subsection 25.29(5) provides that the Minister’s consultation on its LTEP must provide “any relevant background materials or other information”, but only when the Minister considers it “appropriate”.¹³ Subsection 25.29(7) also contemplates a lack of full disclosure during the consultation process by providing discretion to the Minister to disclose other information used in the development of the LTEP once it is issued, but only if the Minister determines that it “should be made publicly available”.¹⁴

In contrast, the OEB rules to review the IESO’s Integrated Power System Plan provide extensive procedural rights to intervenors. The OEB contemplates oral, electronic or written hearings.¹⁵ An intervenor at the OEB may request all written evidence, submit evidence, argument or interrogatories, and cross-examine witnesses.¹⁶ An intervenor is assured that it will have access to all key documents because a party must file all documents with the OEB that it seeks to rely on or it cannot rely on the documents as evidence or in cross-examination.¹⁷ The OEB may also summon a witness or require the production of a document.¹⁸

The only other provision regarding public participation in Bill 135 is subsection 25.32(7). It provides authority for the Minister to require the IESO to consult with aboriginal peoples or other interested groups on the planning, development or procurement of electricity supply, capacity, transmission systems or distribution systems, but those consultations are not mandatory and no further detail is provided. The Minister may also determine the method and timing of the consultation¹⁹ and direct the IESO to establish programs or funding to facilitate participation.²⁰

(a) Recommendations regarding public participation

We make the following recommendations:

Recommendation 5: Bill 135 should be amended to include the procedural rights previously provided to intervenors at OEB hearings in any consultation regarding the

¹² Bill 135, amendments to the *Electricity Act*, s 25.29 (6)

¹³ Bill 135, amendments to the *Electricity Act*, s 25.29 (5)

¹⁴ Bill 135, amendments to the *Electricity Act*, s 25.29(7)

¹⁵ Ontario Energy Board, *Rules of Practice and Procedure*, r 32.01

¹⁶ Ontario Energy Board, *Rules of Practice and Procedure*, r 22.02

¹⁷ Ontario Energy Board, *Rules of Practice and Procedure*, r 14

¹⁸ Ontario Energy Board, *Rules of Practice and Procedure*, r 34.01

¹⁹ Bill 135, amendments to the *Electricity Act*, r 25.32(7)

²⁰ Bill 135, amendments to the *Electricity Act*, r 25.32(8)

LTEP, including full disclosure of all evidence to be relied upon by the Minister and the ability to submit evidence, argument and interrogatories, and cross-examine witnesses.

Recommendation 6: Subsection 25.29(4) should be amended to specifically list public interest environmental organizations and environmental experts as stakeholders to be consulted on LTEPs.

3) Long-Term Energy Plans should be subject to review under the *Environmental Assessment Act*

LTEPs will have far-reaching and enduring environmental impacts and should be subject to review under the *EAA*. An *EAA* review of a LTEP would require appropriate consideration of alternatives to the proposed plan and the likely environmental effects of the proposal.²¹ The Ontario Hydro Demand Supply Plan was subject to review under the *Environmental Assessment Act* in the early 1990s. Public interest organizations were actively engaged in the review and challenged underlying assumptions about Ontario Hydro's demand forecasts. In our view, the review avoided costly over-builds premised on exaggerated demand forecasts. It is essential that similar over-builds are avoided in the future.

It was contrary to sound environmental decision-making to exempt Integrated Power System Plans and any related enterprise or activity from *EAA* review pursuant to Ontario Regulation 276/06.²² Bill 135 should be amended to remove the inappropriate exemption of Ministry LTEPs, IESO technical reports, Ministry implementation directives to the IESO and OEB, and IESO and OEB implementation plans from *EAA* review.²³

Environmental assessments of individual projects will not suffice to ensure that alternatives to the proposed plan or that the environmental effects of the overall framework for energy generation in Ontario are considered. Environmental assessments of individual projects are piecemeal and cumulative effects analyses are often superficial.²⁴

(a) Recommendation regarding the application of the *Environmental Assessment Act*

We recommend the following:

Recommendation 7: Section 25.32.1 should be removed. Bill 135 should state explicitly that LTEPs and related undertakings are subject to the *EAA*.

²¹ *Environmental Assessment Act*, RSO 1990, c E18 s 6.1(2)

²² Ont Reg 276/06 – Designation and Exemption of Integrated Power System Plan, s 2(2)

²³ Bill 135, amendments to the *Electricity Act*, s 25.32.1

²⁴ Canadian Environmental Law Association Application for Review, filed pursuant to Section 61 of the *Environmental Bill of Rights, 1993*, Re: *Environmental Assessment Act*, RSO 1990, cE18, dated December 27, 2013. <<http://www.cela.ca/sites/cela.ca/files/EBR-App-for-Review-of-EA-Act.pdf>>

C. Amendments to the *Green Energy Act*

We support the amendments to section 7 of the *Green Energy Act, 2009* which provide the public with more information from “prescribed persons” about “energy consumption, water use, ratings or other performance metrics in respect of energy consumption and water use”.²⁵

However, the effectiveness of section 7 will depend on the scope of the definition of “prescribed person” and the expeditious enactment of a regulation to implement this provision. The terms “ratings” and “other performance metrics” also require further elaboration. The public should be consulted about the regulations that implement the reporting requirements and define those terms.

As well, sections 7.2(1)(a) and 7.2(2) should be amended to remove the discretion provided to the Minister to determine which reported information should be made public and which should be deemed confidential pursuant to section 17 of the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*”).²⁶ The purported purpose of the reporting requirements is to inform the public about energy consumption and water use and allow the public to make decisions on that basis. The public has a right to know about the consumption and conservation efforts of industry. The reported information also does not align within the narrow exception to disclosure under section 17 of *FIPPA*, which includes third party information that could reasonably be expected to prejudice the competitive position of a third party, interfere with contractual negotiations, result in similar information no longer being supplied to the institution, or undue loss or gain to any person.

We note that although section 6 of the *Green Energy Act, 2009* does not require public agencies to report on water use and water conservation efforts, sections 36-40 of the *Water Opportunities Act, 2010* provide for these reports.²⁷ However, despite the *Water Opportunities Act, 2010* coming into force in 2010, no regulations have been promulgated to implement these reporting provisions. We strongly encourage the government of Ontario to avoid further delay in enacting regulations regarding reporting of water use and water conservation by public agencies under the *Water Opportunities Act, 2010*.

We support the amendments to the *Green Energy Act, 2009* which allow Cabinet to prescribe “water efficiency standards or requirements for appliances or products that consume energy”.²⁸

(a) Recommendations on amendments to *Green Energy Act, 2009*

We make the following recommendations:

²⁵ Bill 135, amendments to *Green Energy Act*, s 7(1)(a)

²⁶ Bill 135, amendments to *Green Energy Act*, s 7.2(1) and (2); *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, s 17

²⁷ SO 2010, c 19, Sched 1, ss 36-40

²⁸ Bill 135, amendments to *Green Energy Act*, s 16(2)(d.1)

Recommendation 8: The government of Ontario should ensure that it expeditiously enacts regulations under the *Green Energy Act, 2009* to define “prescribed persons” and implement the reporting regulations in section 7. The public should be consulted about these regulations.

Recommendation 9: The discretion of the Minister to determine which reported information to disclose and which information to deem confidential under section 17 of *FIPPA* should be removed. All reported information under sections 6 and 7 of the *Green Energy Act, 2009* should be available to the public.

Recommendation 10: The government of Ontario should expeditiously implement regulations under the *Water Opportunities Act* to implement the requirement that public agencies report on water use and water conservation efforts.

D. Summary of recommendations

In summary, we make the following recommendations regarding amendments to Bill 135:

Recommendation 1: The government of Ontario should remove amendments to the long-term energy planning regime which concentrate power for long-term energy planning with the Minister and reduce the power of the independent IESO and OEB.

Recommendation 2: Subsection 25.29(2) should be amended to include consideration of all environmental impacts of different types of energy production and the consideration of renewable energy alternatives.

Recommendation 3: The government of Ontario should amend Bill 135 to provide for a broad planning role for the IESO in developing long-term energy plans.

Recommendation 4: Bill 135 should require independent review of LTEPs by the OEB.

Recommendation 5: Bill 135 should be amended to include the procedural rights previously provided to intervenors at OEB hearings in any consultation regarding the LTEP, including full disclosure of all evidence to be relied upon by the Minister and the ability to submit evidence, argument and interrogatories, and cross-examine witnesses.

Recommendation 6: Subsection 25.29(4) should be amended to specifically list public interest environmental organizations and environmental experts as stakeholders to be consulted on LTEPs.

Recommendation 7: Section 25.32.1 should be removed. Bill 135 should state explicitly that LTEPs and related undertakings are subject to the *EAA*.

Recommendation 8: The government of Ontario should ensure that it expeditiously enacts regulations under the *Green Energy Act, 2009* to define “prescribed persons” and

implement the reporting regulations in section 7. The public should be consulted about these regulations.

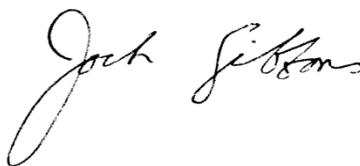
Recommendation 9: The discretion of the Minister to determine which reported information to disclose and which information to deem confidential under section 17 of *FIPPA* should be removed. All reported information under sections 6 and 7 of the *Green Energy Act, 2009* should be available to the public.

Recommendation 10: The government of Ontario should expeditiously implement regulations under the *Water Opportunities Act* to implement the requirement that public agencies report on water use and water conservation efforts.

Thank you for your consideration of this submission.



Jacqueline Wilson
Counsel
Canadian Environmental Law Association
416-960-2284 x 213
jacqueline@cela.ca



Jack Gibbons
Chair
Ontario Clean Air Alliance



Eli Angen
Regional Director, Ontario
The Pembina Institute



Tim Gray
Executive Director
Environmental Defence

A handwritten signature in black ink, appearing to be 'JL' with a flourish.

Judith Lipp
Executive Director
TREC Renewable Energy Co-operative
and
President
Federation of Community Power Co-
operatives

A handwritten signature in black ink, appearing to be 'SP Stensil' with a large circular flourish.

Shawn-Patrick Stensil
Senior Energy Analyst
Greenpeace Canada