



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

March 26, 2009

Mr. Mike Parkes
Cabinet Liaison & Coordinator
Ministry of Energy and Infrastructure
Regulatory Affairs Policy
Strategic Policy Branch
880 Bay Street, 6th Floor
Toronto, ON M7A 2C1

By email: Mike.Parkes@ontario.ca

Dear Mr. Parkes,

**Re: Proposal for Green Energy and Green Economy Act, 2009, Bill 150
EBR Registry Number 010-6017**

INTRODUCTION AND CONTEXT

The *Green Energy Act* provides a visionary path forward for energy supply for Ontario. Whether the vision is realized will be highly dependent on many details and implementation plans which are not yet developed and/or not yet available for public comment. The comments below will address the provisions provided in the proposed legislation, and a section at the end of these comments will provide some preliminary input as to content that should be contained in forthcoming regulations which would be required to implement the Act. However, CELA will make further comments as more details become available. It should also be noted at the outset, that CELA strongly advocates that Ontario move to a fully sustainable and renewable power future. Although this cannot be accomplished overnight, critical decisions are being made on an on-going basis which will either lead in that direction, or, on the contrary, will undermine that future.

In particular, CELA objects strenuously to the recent tendency to refer to nuclear power as “emissions free.” Nuclear power is not clean, not renewable, and not emissions free. It causes massive toxicity to environments where the uranium is mined and processed, leaves a devastating environmental health legacy to those communities, which decades later continues to impact subsequent generations. Canadian uranium mining contributes to nuclear proliferation and weapons risks globally.

The operation of nuclear plants in Canada results in routine emissions of tritium and other radionuclides to the environment, air, land and water of Ontario; and the air and drinking water standards presently applicable to those substances are unacceptable, resulting in far higher risks of cancer and other adverse health outcomes than we consider “acceptable” in the realm of chemical regulation. In addition there is risk of accident, which is not an unrealistic risk, and furthermore the risk of hostile action, also not unrealistic. Ontario has been continuously failing to meet even basic responsibilities of environmental assessment with respect to its own nuclear plants

(whereas Quebec, Alberta, New Brunswick and Saskatchewan all apply their own environmental assessment laws in addition to the federal laws).

As a result, the most toxic and risky form of energy generation ever invented by human-kind, nuclear power, is subject in this province to the very least amount of environmental oversight and regulation compared to all other power generation including hydropower, and renewable power. Ironically, those technologies face far greater regulatory burdens in this province than nuclear has ever been subjected to. The other major issue is that by investing new capital in nuclear generation, the province removes potential for conservation and renewable power to be fully pursued in the future. This has been evident to date in plans put forward by the Ontario Power Authority which have “capped” conservation and renewables, and in one plan, even explicitly planned to decrease those components if future demand did not materialize at the inflated levels which had been used as input assumptions to their long-term plan. The rationale was that the nuclear plants would be “sunk” costs which would have to be operated, and their only flexibility would come from the elements of conservation and renewable power.

CELA submits that the priority must absolutely be reversed henceforth, and for a truly sustainable future, the priority of procurement must be first conservation and demand management; secondly renewable power; thirdly natural gas as transition fuel. Coal and nuclear should both be phased out, and the approach to nuclear should be to replace each subsequent plant as it reaches end of life, with additional conservation and renewable power. CELA also submits that the potential for contribution from conservation and demand management, and renewable power, has barely begun to be explored, particularly in Ontario, and that advances in techniques, behaviours, and technologies are leap-frogging ahead.

It is critical that Ontario be in the ongoing vanguard of the opportunities for technological development and the know-how economy that true pursuit of a green economy will allow. This will only be the case if the developers, installers, finance community, and research community perceives Ontario as a viable conservation and renewable power-friendly province in both the near and the long term. Ontario is already playing catch up to many jurisdictions which have been far more progressive in pursuing conservation and renewable energy, providing research and market opportunities for developing technologies in this sector. However, with the *Green Energy* and *Green Economy Act*, Ontario is poised to change direction for the better, if done right.

In addition to the advances that have been experienced in other nations including Europe and Scandinavia, Ontario is now on a very different playing field in the North American economy than it was even a year ago. With the new administration in Washington, and with a very aggressive pursuit of conservation, renewable energy and a green economy by our US neighbours, and an investment as part of their economic stimulus packages in green technologies, that Canada could never match, Ontario now has to find ways to remain attractive and competitive in this area. In addition to better quality of life, environmental and human health sustainability, pursuit of a truly renewable and sustainable energy future for Ontario with a positive regulatory climate will make investment in Ontario attractive to a range of new economy partners including but not limited to the direct developers and suppliers of conservation and renewable energy technology.

We are truly at a watershed moment in our province’s development and the choices made now will be felt for the next hundred years in ways that choices of our predecessors regarding the energy and electricity system were felt for the last hundred years. In particular, with the massive tens of billions of dollars under consideration for investment in capital and development in the electricity sector alone, we must make the most viable and sustainable decisions for the long term. This cannot be done based on continuing to pursue toxic, dangerous, risky, and highly expensive coal and nuclear technologies. But it can be done. Ontario has the benefit of an extensive amount of hydro-electric power already and the potential for pursuit and installation of renewable in this province has barely begun to be tapped.

SPECIFIC COMMENTS

GREEN ENERGY ACT, 2009 (SCHEDULE A TO BILL 150)

PART 1 – INTERPRETATION AND GENERAL APPLICATION

The Act defines “renewable energy source” as meaning “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... **but only** if the energy source satisfies **criteria** that may be prescribed... for that source.” (emphasis added)

CELA submits that defining renewable energy must ensure that the definitions of biomass, biogas and biofuel are consistent with or better than the best international sustainability definitions for these energy sources. Among other things, they must be sustainable from the perspective of being carbon neutral or carbon positive in terms of reducing greenhouse gas emissions.

In terms of these forms of renewable energy, in particular, it will also be essential to ensure there is no long term depletion of soils and soil structure or nutrients, both in case of forest or agricultural soils, and no displacement of food crops; the regulatory definitions of the permitted forms of biomass, biogas and biofuel must be formulated so as to encourage sustainable methods only.

A very good process for public input into the development of these definitions must be followed as they may have major long term implications for forests, agricultural lands, and forestry and agriculture practices. In addition, in the case of the north and far north, the definitions and processes resulting must allow for consistency with the province’s Far North Planning initiative, and with protection of the boreal forest.

Definition of renewable hydro-power for the purpose of this Act should be limited to water power projects of 200 MW or less, and projects greater in size should remain under the existing environmental assessment, permit to take water, water power permit and other approval processes. In addition, where there is more than one water power project on the same water way, the projects should be considered in terms of their cumulative impacts.

PART II – DESIGNATED GOODS, SERVICES AND TECHNOLOGIES AND RENEWABLE ENERGY PROJECTS AND ENERGY CONSERVATION IN THE PUBLIC SECTOR (‘The Clothesline Clause’)

CELA has long advocated that the province should eliminate certain legal instruments that have operated to prevent the use of regular clotheslines. Although no current municipal by-laws precluded clotheslines, there have been examples in the past in the province. But the real problem was the proliferation of ‘restrictive covenants’ imposed in vast numbers in residential sub-division developments, preventing the owners of the home from putting up or using regular clotheslines. Sometimes collapsible umbrella style clothes racks were allowed, which are not necessarily as effective. The reason for their development was the 1950s and on view of what a yard was ‘supposed’ to look like, and a sense that use of clotheslines should be replaced by electric or natural gas indoor clothes dryers. When the government of Ontario enacted the section that provides that

“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”, and that

“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,”

CELA hailed the move. CELA strongly supports this section and the accompanying regulation that designated clotheslines as a technology under this section; in other words allowing clotheslines. Public and national media comments made to CELA following this decision of the government were among the most extensive we have received and expressed universal support for this law and regulation. Most commenters were surprised, and objected to any ability to restrict homeowners from the full use of clotheslines.

The law and regulations as so far enacted (prior to the re-enactment proposed under Bill 150) have dealt with single family residences and townhouse style dwellings. However, multi-story buildings, whether condominium tenure or residential tenancy tenure, have not yet been addressed by enacting regulations to designate clotheslines on those buildings as allowable, and declaring by-laws, restrictive covenants or agreements void at law. CELA calls on the provincial government to now take the additional step of adding multi-story buildings to the regulation, and allowing those residents to use clotheslines on their balconies or on affixed clothes hanging devices. In European countries, for example in France, Italy and Spain, clotheslines on multi-story buildings are extensively used; in fact are the rule rather than the exception. For residents of those countries it is normally unthinkable to rely on electric or gas clothes drying when they can be air dried. Even in historic districts, clothes hanging devices are provided on upper stories and do not detract from the picturesque streetscapes; nor do they represent any hazard.

Similarly the proposed Act provides for designation by regulation of certain renewable energy projects or energy sources in order to remove barriers, promote opportunities, and promote access to transmission systems and distribution systems for proponents of renewable energy projects is supported by CELA (section 4(1)). Again, the Bill proposes to render any restrictions imposed at law, by by-law, by agreement or by encumbrance that would otherwise prevent the renewable energy project or energy source as inoperative. CELA supports this mechanism in order to allow regulations to provide for certain types of renewable power and renewable sources to be encouraged, installed and operated in Ontario. A further proposed provision exempts requirements that are imposed by legislation or regulation. Accordingly, CELA would expect that the provisions of the Building Code Act (including the National Plumbing Code of Canada which is incorporated) and the Electrical Safety Code, for example, which provide requirements pertaining to health and safety, and property integrity remain in place. In particular there are anticipated to be installations of renewable energy projects or utilization of renewable energy sources at a household or residential scale, and CELA encourages the province to consider establishing qualification standards for installers of renewable energy projects to ensure that those persons are knowledgeable in the relevant Codes, and both qualified and required by terms of professional licences to abide by those Codes.

ENERGY CONSERVATION AND DEMAND MANAGEMENT PLANS

Bill 150 proposes to re-enact the authority to require public agencies to prepare energy conservation and demand management plans. It also provides a power to prescribe by regulation consumers to prepare energy conservation and demand management plans (section 5). CELA supports these provisions, and encourages their utilization across multiple sectors. Conservation and demand management should be pursued first and foremost as, in effect, a source of energy as opposed to assuming continued usage patterns or increasing usage patterns. In that respect, CELA recommends that the Feed In Tariffs approach be utilized to value conservation and demand management techniques which provide real energy usage savings and which prevent increased demand. CELA also recommends that priority be given to maximizing conservation and demand management in all sectors. Incentives such as an equivalent to Feed In Tariffs, prioritization of conservation actions ahead of supply (especially large centralized polluting supply such as coal and nuclear power), tax rebates, and accelerated replacement programs to install best available energy efficient technology should be empowered by the Act and provided for in the regulations and related programs, including funding programs. A report co-authored by CELA and the Pembina Institute, *Power for the Future (2004)*, found that much of the anticipated increase in energy demand in the province would be alleviated by policies and programs that provide for replacement of energy-using technology in industry, commercial, public, municipal and institutional sectors with the best presently available technology, even without waiting for future improvements in energy efficiency, which are occurring

continuously. However, that report found that it would be necessary to accelerate the rate of replacement with incentive programs and policies, in order to avoid un-necessary massive expenditure on new capital intensive energy generation technology.

CELA has separately submitted a joint letter together with Pollution Probe (attached to this submission as Appendix B) which outlines the benefits of Integrated Urban Energy System Planning. We recommend that the scope of energy planning activities encompassed by the Act be expanded to incorporate the following:

1. A new instrument: Community Integrated Energy Plan;
2. Provisions to ensure the energy and transportation planning are linked; and
3. Combined heat and power generation.

Further details are contained in the letter found in Appendix B.

PROCUREMENT BY PUBLIC AGENCIES

CELA notes that Bill 150 proposes that regulations may be enacted to require public agencies to consider energy conservation and energy efficiency in their acquisition of goods and services, and/or when making capital investments (section 7 (1) and (2)). CELA supports this provision and encourages the early adoption of further regulations outlining such procurement and capital investment requirements across all types of public agencies. For example, rules requiring energy conservation and energy efficiency in construction of new schools, post-secondary educational institutions, social housing, and hospitals, to name a few, and in acquiring goods and services would be some of the examples. This is particularly important in order to off-set contrary pressures to use potentially less expensive (in terms of initial outlay) materials, goods and services which would mean significant lost opportunities for energy conservation. Retro-fitting for energy conservation and energy efficiency is normally far more expensive; involves wasted materials and effort; and results in lost energy savings until the time of retrofit. At the same time, the province will have to be sure to allow for the up-front capital costs or acquisition costs in relevant funding formulae.

RENEWABLE ENERGY FACILITATION OFFICE

Bill 150 proposes to establish a Renewable Energy Facilitation Office (section 10). CELA supports the object of facilitating the development of renewable energy projects. However, CELA submits that in addition to working with proponents of renewable energy projects and other ministries, the Office should also be mandated to work with and assist the public in participating in early and on-going consultation with proponents. In addition, the Bill proposes to deem all records relating to renewable energy projects obtained by the Facilitator as confidential. This provision is too sweeping, and unnecessary. The protected business information should be narrowly restricted and all studies and assessments conducted to fulfill the requirements of the anticipated regulations pertaining to a Renewable Energy Approval should be made public. Furthermore, those documents should be provided both on internet based web-sites and in public places accessible in the vicinity of the relevant proposed project. While CELA is strongly supportive of greatly enhanced renewable energy projects, and of removal of barriers, it is essential that the public be given strong opportunities to participate in the discussions and development of renewable energy projects in their region. It is also very important for the credibility of the renewable energy development and approval process that there be a high degree of transparency and public input. CELA also advocates that resources be provided for public participation. At one time, Ontario had in place an Intervenor Funding Project Act for environmental assessment participation, and this approach which provided critical funding, for example for relevant experts, to members of the public under the supervision of the Environmental Assessment Board as it then was, was the key to much successful exploration, evaluation and resolution of public concerns regarding a variety of proposals. If the province desires to separate the assistance

provided to proponents from that provided to the public, then CELA advocates establishment of a funding program to provide resources for the retention of expert advice by members of the public, under supervision of the Environmental Review Tribunal, in order to allow for early exploration and resolutions of issues.

PART III – ENERGY EFFICIENCY AND EFFICIENT USE OF WATER (LOW FLOW TOILETS)

CELA notes that Bill 150 proposes to prescribe appliances and products which may be prohibited for sale, unless meeting specified efficiency standards, requirements or labels. This would, for example, allow for a prohibition of retail sale of toilets unless they are low-flow toilets meeting the prescribed efficiency standards. CELA is strongly supportive of this provision and encourages adoption of the relevant regulations expeditiously. In particular, CELA notes that the City of Toronto and other municipalities have studied and reported that one of the most significant uses of energy in a municipal context is the use of energy to pump water within the municipality. This has the combined effect of both increasing the amount of energy generation needed as well as increasing the amount of water infrastructure and water treatment needed to serve the population. Both the energy system and the water system suffer as a result. Mandating use of low flow toilets in new installation and in retrofits, and incenting retrofits, is one of the most major reductions in energy use that can be implemented in the municipal context. Current technologies have been greatly improved and some of the prior reticence to pursue such a measure is no longer merited. Many municipalities have demonstrated very significant energy and water savings and some have even been able to avoid massive capital expenditure on system expansion as a result of the savings from the efficiency efforts.

SCHEDULE B – ELECTRICITY ACT, 1998

Bill 150 proposes to amend the *Electricity Act, 1998*. A new definition is proposed for ‘smart grid,’ meaning “the advanced information exchange systems and equipment that... improve flexibility, reliability, efficiency and safety of the integrated power system and distribution systems, particularly to increase use of renewable energy sources and technology, expanding opportunities for demand response, price information and load control to customers, and accommodating use of emerging, innovative and energy-saving technologies” (section 1(4) and (5)).

CELA is strongly supportive of including a definition of a smart grid. CELA advocates a more distributed electrical grid across the province where in general, energy is used closer to where it is generated, massive waste from transmission losses is reduced, the system is less reliant on few highly centralized generation sources, the system is more resilient in case of shut down of some part of the system, and where controls and technologies can be implemented to shift demand, store electrical potential, and reduce use.

FEED-IN TARIFF PROGRAM

Bill 150 proposes a new authority for the Minister to direct the Ontario Power Authority to develop a feed-in tariff program to procure energy from renewable energy sources. The authority may include establishment of goals that include participation of aboriginal peoples or local communities in development and establishment of renewable energy projects. Goals may also be set for domestic content (section 7). The Bill also defines feed-in tariff program as including a procurement process and standard pricing, among other things, regarding of classes of energy generation facility, energy source, fuel type or generator capacity.

CELA supports the Feed-In Tariff Program proposed as a mechanism to encourage development of renewable energy. CELA advocates that the provincial goal should be to maximize the amount of renewable power that can

be developed across the province, eventually with the goal of entirely displacing the current conventional coal and nuclear facilities. Accordingly, as noted early, every amount of conservation that can be procured, incented or mandated, and every amount of renewable generation that can be procured, incented or mandated should be pursued toward a vision of long term sustainability for the province.

CELA submits that a pricing mechanism that prioritizes conservation over new coal and nuclear generation should be mandated, as discussed earlier in this submission.

MANDATORY CONNECTION TO TRANSMISSION OR DISTRIBUTION SYSTEMS

Bill 150 proposes to mandate transmitters or distributors to connect a renewable energy generation facilities to their transmission or generation system. Regulations remain to be developed which among other things would deal with “technical, economic and other requirements” in respect of the connection (section 8).

The Act also proposes to enable regulations to require reports as to the transmission or distribution systems’ ability to accommodate renewable energy generation; to provide for connection assessments; and to update them quarterly.

However, the Act also proposes that a transmitter or distributor shall provide priority connection access to its system for a renewable energy generation facility that meets regulated requirements. This is despite the report as to the ability to accommodate; in other words in case of a constrained facility it must provide priority access to a qualifying renewable energy facility. Requirements may be imposed as to the reliability of the electricity supply and directions may be given to persons to increase, decrease, maintain, or otherwise deal with electrical output.

LOCATIONS WHERE NO PROCUREMENT

Among the regulation making powers of Schedule B, Bill 150 provides that locations or classes of lands may be prescribed where OPA shall not provide for a procurement process or enter into a contract for energy (section 14(5)). CELA submits that this power should be used to specify areas of the Niagara Escarpment, Green Belt, Provincial Parks, Areas of Natural and Scientific Interest, and other locations on which no generation facilities may be located.

SCHEDULE D, ONTARIO ENERGY BOARD ACT, 1998

Bill 150 proposes three new objectives to the *Ontario Energy Board Act*. These are: to promote conservation of electricity; to facilitate implementation of a smart grid in Ontario; and to promote the use and generation of electricity from renewable energy sources (including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities) (section 1).

CELA is supportive of these three new objectives. These objectives provide for additional outcomes that the Ontario Energy Board must facilitate, and it is essential to achieving these goals that the Board be required to make its decisions consistently with these objectives. For a truly sustainable energy future, conservation must be maximized; renewable energy must be maximized; and the transmission and distribution grids must accommodate new renewable energy and better management of energy load. As the OEB is a central and key decision maker in the electricity system, the inclusion of these objectives is significant to their realization.

In addition, the Board is now directed, under the proposed Act, to promote energy conservation and energy efficiency for **all consumers**, in a manner consistent with the **policies of the Government** of Ontario (section 2)

(emphasis added). CELA is supportive of this provision, and will be continuing its advocacy in particular for access to conservation programs for low income residents of Ontario. The Ontario Energy Board has recently conducted a consultation regarding low income energy issues, including conservation and demand management, and issued a draft report thereon. CELA, along with the Low Income Energy Network, of which CELA is a steering member, will continue to participate and advocate for strong, well funded, broadly accessible conservation and demand management programs for low income consumers.

In particular, deep measures programs (taking action that makes a big difference such as building envelope improvement, insulation, energy efficient space and water heating, and energy efficient appliances) are critical for low income residents who otherwise lack the capital or control over their unit to implement such measures. Low income Ontario residents often find themselves in poorly insulated buildings, often with electrical heat, and with outmoded appliances in terms of energy efficiency. There are a number of issues that must continue to be resolved in this area. CELA and LIEN are very supportive of provisions in Bill 150 that will support low income residents' conservation and demand management programs and will continue to work at the Ontario Energy Board, with other partners, and with the Ontario government. There are a number of other issues beyond the scope of this legislation, such as rate affordability programs, that CELA and LIEN will also continue to advocate.

CONSERVATION PROGRAM ASSESSMENTS

Bill 150 provides that the Ontario Energy Board shall assess gas distributors and licensed electrical distributors, in respect of their consumers, the IESO, and other prescribed persons in respect of the Ministry of Energy and Infrastructure's conservation and demand management programs, and renewable energy programs (section 6). In other words, conservation, demand management and renewable energy programs will be part of the overall rates that consumers of natural gas and electricity pay. CELA is supportive of this approach in that conservation and renewable energy should be the priority mechanisms for reducing demand, reducing need for new generation, and developing new generation respectively. However, CELA and LIEN will continue to advocate in the future that rate assistance should be provided to low income consumers, and there are many possible options to do this as evidenced in other jurisdictions.

Bill 150 provides that these assessments are for specified special purposes laid out in the Bill. Firstly, "to fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels: natural gas, electricity, propane, oil, coal, and wood"; to fund fuel switching (normally done in order to switch to a more affordable and efficient fuel); to fund programs aimed at reducing 'peak' demand, (this is important as it reduces the amount of ongoing or new generation of energy supply that is required simply to be able to meet the peaks in energy demand as opposed to the usual demand); to fund research and development regarding conservation or efficient use of fuels; to fund conservation or renewable energy programs aimed at specific geographic, social, income or other sectors of Ontario. There is to be a special purpose fund maintained in the Public Accounts; the Special Purpose Conservation and Renewable Energy Conservation Fund.

CELA supports both the listed purposes and the mechanism of a special purpose account. A special purpose account is important for transparency and for tracking results and effectiveness of programs. It also means that funds assessed for these purposes are to be used for those purposes as is intended. In particular, CELA (as well as LIEN) are very supportive of the recognition in the purposes of the assessment that there are different needs in terms of support for conservation or renewable energy programs in certain geographic, social and income sectors, among others. For example, even within the realm of low income residents, there are many differences in impacts of energy use and accessibility in rural and urban areas, and in northern Ontario, for example. CELA and LIEN have advocated therefore that programs for low income consumers be available in all areas of the province, and across all fuels.

Bill 150 also provides for directives that may be set by the Minister and implemented by the Ontario Energy Board in its decisions, applicable to distributors and other licensees with respect to conservation targets, by way

of conservation and demand management programs to be offered in its service area. CELA submits, that among other things, directives be made with respect to low income conservation and demand management programs.

SCHEDULE E, CLEAN WATER ACT, 2006

Schedule E deals with the new 'renewable energy approval' that is introduced in Schedule G, and CELA's comments regarding the new approval are provided below.

SCHEDULE F, ENVIRONMENTAL BILL OF RIGHTS, 1993

Schedule F provides that the Environmental Commissioner of Ontario shall report to the legislature annually on the progress of activities and initiatives in Ontario to reduce use of or make more efficient use of electricity, natural gas, propane, oil, and transportation fuels (section 1).

CELA submits that reporting by the Environmental Commissioner is appropriate; it is important and necessary to report on progress made; and that the reporting be by an Officer of the legislature. CELA also submits that the applicability of the reporting on conservation and efficiency initiatives to a range of fuels and energy sources is also appropriate. It is important to assess the collective impact of energy use and efficiency, and strides made in reducing the impacts of energy use. CELA also supports that the first reporting period shall be for the period January 1, 2009 to December 31, 2009, even though Bill 150 is not yet enacted. That report, in part will provide a baseline to assess the incremental improvement going forward. In addition, the Environmental Commissioner will be able to build on the prior work of the Conservation Bureau under current legislation.

Similarly, the Environmental Commissioner is tasked with reporting annually on the progress of activities and initiatives to reduce emissions of greenhouse gases. The first report shall be submitted before the end of 2009 and this is reasonable as this first report can build on the work done by the Environmental Commissioner to date. The six greenhouse gases are appropriately named in Bill 150.

CELA also supports the provision that the Environmental Commissioner's annual report under section 58, and these two new reports, shall each be made separately. Each of these reports requires focussed attention by the legislature.

SCHEDULE G – ENVIRONMENTAL PROTECTION ACT

Schedule G provides for a new approach to approvals for renewable energy projects, as defined. CELA's comments regarding the definition of renewable energy projects are provided above under Schedule A.

A new Part V.0.1 for Renewable Energy is proposed to be established under the Environmental Protection Act. This part will govern the approvals of the defined renewable energy projects. It is CELA's understanding that this new renewable energy approval will provide for the Environmental Protection Act approval, and that renewable energy projects as defined are intended to be removed from the relevant regulation which requires them to be subject to provincial Environmental Assessment. Bill 150 also proposes to remove these projects from the application of the Planning Act; therefore the new Renewable Energy Approval would become the main vehicle for considering the approvals of these projects, whether they are to be granted approval, what standards apply, whether they meet the prescribed standards, and what terms and conditions are to be applied.

In this part, for the purposes of the renewable energy project, environment has a broader meaning than in the rest of the *Environmental Protection Act*. Rather, it has the same meaning as in the *Environmental Assessment Act*.

The definition of environment in that *Act* is as follows:

“environment” means,

- (a) air, land or water,
 - (b) plant and animal life, including human life,
 - (c) the social, economic and cultural conditions that influence the life of humans or a community,
 - (d) any building, structure, machine or other device or thing made by humans,
 - (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or
 - (f) any part or combination of the foregoing and the interrelationships between any two or more of them,
- in or of Ontario; (“environnement”)

This means that environment includes, among other things, not only the ‘natural’ environment, but also, for example, the social, economic and cultural conditions that influence the life of humans or a community environment; and includes human life and odour, heat, sound, vibration or radiation resulting from human activities, as well as interrelationships between aspects of the environment. One of the implications of this broader definition is that the power of the Director to impose terms and conditions on a renewable energy project is therefore broader and may include terms and conditions relating to natural environment, social environment, and economic environment. This is important as in other contexts the Director and the Environmental Review Tribunal has been precluded from including terms and conditions dealing for example with social environment. One example to illustrate the difference is inclusion of community trust provisions in certificates of approval, which have not been able to be included in the Director’s decisions or tribunal decisions when decisions are made under the Environmental Protection Act alone. However, under the Environmental Assessment Act, such terms have been able to be included because of the broader definition.

CELA supports the definition of the purpose in this Part, namely to provide for the protection and conservation of the environment (as more broadly defined, and not limited to the natural environment).

Certain permits and approvals are rendered not applicable to renewable energy projects (and essentially replaced by the renewable energy permit subject to regulations and standards which are yet to be promulgated). For example, a permit to drill a well; a permit to take water; and a sewage works approval are all replaced by the new approval. It will be essential that the existing requirements for well drilling, water taking, and sewage works be replicated in the regulations and standards applicable to the renewable energy permit approval. Similarly, the new renewable energy approval also replaces the section 9 certificate of approval under the *Environmental Protection Act* for equipment that discharges emissions to the natural environment; and waste management site or waste management system approvals under that Act, for renewable energy projects as defined. Again, it will be essential that the existing requirements which protect the environment under the *Environmental Protection Act* and its regulations today in respect of emissions to the natural environment; and in respect of waste management systems and waste management sites; be replicated in the regulations and standards applicable to the renewable energy permit approval.

Regulations under the Act may prescribe other approvals for the purposes of this section; that is to prescribe that the separate approval which may be required under current legislation is no longer required. Again, any existing regulatory requirements must be replicated in the renewable energy permit system in that case. For example, if requirements of the *Lakes and Rivers Improvement Act* were prescribed, the standards they prescribe which provide for protection of environment, human life, and other matters, must be replicated under the renewable energy permit approval.

Regulations are to be developed which outline the requirements for an application for a renewable energy approval. CELA provides some preliminary comments in terms of matters to be included in applicable regulations, with respect to each of the types of renewable energy projects at the end of these submissions. In essence, CELA submits, and it is CELA's understanding, that the intent is that requirements which would be applicable under present legislation for various approvals will be consolidated and required for renewable energy permits. They will be 'rolled together' into the renewable energy permit; and that permit should not be issued unless all of the applicable requirements are met, and subject to any terms and conditions that are to be imposed.

CELA supports the proposed Director's authority to require plans, specifications, engineers' reports or other information; and to carry out and report on any tests or experiments relating to the renewable energy project.

CELA also supports the Director's power to issue or refuse to issue the renewable energy approval, or to impose terms and conditions, as well as to alter terms and conditions after issuance or impose new terms or conditions, or suspend or revoke a renewable energy approval, all either on application or on the Director's own initiative.

CELA also supports the proposed provision that a renewable energy approval is subject to any terms and conditions prescribed by the regulations.

Bill 150 provides that a renewable energy approval shall not authorize a person to take water such that water is transferred between the Great Lakes – St. Lawrence River Basin, Nelson Basin and Hudson Bay Basin as defined.

A renewable energy approval shall also not authorize a person to take water such that water is transferred between any of the Great Lakes Basins contrary to the provisions of sections 34.4 to 34.11 of the *Ontario Water Resources Act* (not yet in force pending regulations which are currently under consultation). CELA agrees that this provision must be enacted so as to ensure consistency with the Great Lakes – St. Lawrence Sustainable Water Resources Agreement to which Ontario is a party.

Bill 150 provides that the Minister may issue policies in writing in respect of renewable energy approvals, and decisions made under the Act shall be consistent with any such policies. CELA supports this provision, which is similar to amendments made recently to require consistent decision making with the Provincial Policy Statement empowered under the *Planning Act*. However, CELA recommends that the natural heritage protection provisions contained in the Provincial Policy Statement be made immediately applicable to renewable energy approvals.

HEARINGS RE: RENEWABLE ENERGY APPROVAL

CELA supports the provision that hearings (appeals) be provided not only to proponents of renewable energy projects, but also to other residents of Ontario. CELA also supports that a hearing be made available to any resident of Ontario regardless of where the project is to be located. Furthermore, CELA supports the fact that no 'leave' test is required for those residents, in order to obtain a hearing.

On the other hand, there are two provisions in the proposed hearing section which CELA recommends amending. The first is the provision dealing with the grounds for a hearing. The section as proposed presently reads, "A person mentioned... may require a hearing... only on the grounds that engaging in the renewable energy project in accordance with the renewable energy approval will cause serious **and** irreversible harm to plant life, animal life, human health or safety or the natural environment." (Emphasis added).

CELA submits that if a project will cause serious harm, **or** irreversible harm, then a hearing should be held. Renewable energy projects are intended to be sustainable, 'green' and beneficial for the environment. If a project as designed will cause either serious or irreversible harm, then that should be subject to an appeal with the opportunity for reconsideration of the approval, and or addition of terms and conditions that will address those issues.

Accordingly, the word 'and' should be changed to the word 'or' to read 'serious or irreversible' in the proposed sections 142.1(3), 142.2(1)(a), and 145.2.1 (2).

Furthermore, since the Act provides that decisions are to be consistent with policies issued by the Minister under section 47.7, this too should be a ground of review, and a subject matter for the tribunal to consider, and the proposed section 145.2.1 should be amended accordingly, to so provide.

Secondly, the proposed Act provides that in a hearing, the onus of proof lies with the person requesting the hearing, to prove that the renewable energy project in accordance with the renewable energy approval will cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment. CELA submits that the word and must be changed to 'or' as submitted above.

More fundamentally, CELA submits that the onus must be on the proponent of the renewable energy approval, to prove that the project will not cause serious or irreversible harm to plant life, animal life, human health or safety or the natural environment. While the person requesting the hearing has an evidentiary onus, that is to bring some evidence that is credible as to whether and why the project as approved will cause serious or irreversible harm, they must not have the onus of proving that the project will cause serious and irreversible harm. This is because the person with all of the information about the project, access to the land on which the project is to take place, and to benefit from the project, is the proponent of the project.

Furthermore, it should be straightforward for the proponent to meet that onus if the project would not cause serious or irreversible harm, since the proponent by that stage will have done all studies and submitted all required information for the type of project, before having the project considered for a renewable energy approval. However, if there is something that indicates significant or irreversible harm, and that has not already been investigated, then the tribunal should be able to require the proponent to do so and demonstrate either that there will be no such harm, or to deal with the matter such that the harm will not occur. Should a proponent be unable to either prove that the harm would not occur nor respond to it in a meaningful way acceptable to the tribunal such that the harm would not occur, then the tribunal should not permit the project to proceed. Again, CELA submits that it is reasonable that an appeal by a resident other than the proponent should present some evidence as to the basis of the allegation that serious or irreversible harm would occur, and thus meet a reasonable evidentiary onus; but it is not reasonable that such a resident have the onus of proof.

Further submissions relevant to forthcoming regulations, assuming Bill 150 is passed with amendments, are provided in Appendix A below.

CELA trusts that these submissions have been of assistance and would be pleased to discuss any aspect of them with you or others at any time as this important legislation is considered.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa A. McClenaghan
Executive Director and Counsel



Richard Lindgren,
Senior Counsel

Cc

Hon. D. McGuinty, Premier of Ontario

Hon. G. Smitherman, Minister for Energy and Infrastructure, Ontario

Hon. J. Gerretsen, Minister for Environment, Ontario
Hon. D. Cansfield, Minister for Natural Resources, Ontario
Hon. L. Dombrowsky, Minister for Agriculture and Rural Affairs, Ontario
Mr. Gordon Miller, Environmental Commissioner of Ontario

CELA Publication No. 641

ISBN No. 978-1-926602-12-7

APPENDIX A:**CELA Submissions regarding Forthcoming Regulations:**

CELA made the following submissions at the government's Green Energy Act workshops held the week of March 23, 2009, and reiterates these points here in this submission.

Topic: Cross-technology Requirements:

CELA agrees that it is essential to have mandatory consultation requirements for First Nations and Métis peoples, local communities and interested parties; and regarding requirements re: cultural heritage. At a minimum notice should be provided to those who would have had notice under the *Planning Act*, and furthermore, notice should be provided electronically on a central registry when a project begins presubmission consultation.

CELA also makes the following points:

- Presubmission consultation is essential to a credible and successful process of locating sustainable energy projects.
- It is critical that full disclosure of the proposal, its studies, and any proposed mitigation regarding the environment and human health be provided to the public.
- The Act should provide for facilitation of issues prior to submission if necessary.
- It is essential that there be screening out of inappropriate proposals, prior to the submission of a "complete application", in order for the program to succeed, and to avoid the wasted resources of public and government responding to inappropriate proposals.
- Establishment of definition of "renewable" in each type of project is essential as noted earlier in this submission.
- A new tool to develop community energy plans should be provided and specific renewable projects should be considered in a context as to how they link to, or advance community energy planning, including transportation density, district energy, and utilize combined heat and power.
- An allowance or mechanism for other financing mechanisms such as local improvement charges should be provided.
- Application of building code, electrical code, plumbing code and other relevant codes regarding safety issues must be ensured. There may be a need for additional sections to these codes to deal with new safety issues.
- The new renewable energy approval must include the natural heritage standards from the Provincial Policy Statement.
- Species at risk protection must be ensured.

Topic: Wind Power Requirements

- There must be provision of reasonable, science based noise set-backs, depending on location, size and technology.
- There must be provision of reasonable, science based Electro-magnetic Field (EMF) setbacks, depending on location, size and technology.

- Specific provisions regarding which areas of the Niagara Escarpment, Oak Ridges Moraine, Areas of Natural and Scientific Interests (if any) will allow wind projects of which size and technology (eg protect important sensitive ecosystems); same re provincial parks and protected areas / conservation areas. For example, see the CONE policy on wind development on the Niagara Escarpment.
- Ongoing research must be committed regarding noise, EMF, health and ecosystem impacts to use best available science with continuous improvement in the science and technology and amendments to regulations in future accordingly.
- Migratory birds protection must be ensured, with delineated standards and areas permitted or not.
- For off-shore wind, it is essential to ensure proper erosion protection, fish protection, sediment control, migratory birds, and navigation safety.
- Species at risk & habitat protection must be ensured.
- Steep slope protection (non-removal of vegetation) must be ensured.

Topic: Solar Power Requirements

See the “cross-technology” list above.

- A threshold should be established for the application of the approval process and consultation (for example, they may not be applicable to individual residence roof top scale).
- Applicable safety codes (building, solar, plumbing codes) must be ensured applicable and enforceable as relevant.
- Species at Risk and habitat protection must be ensured.
- Steep slope protection (non-removal of vegetation) must be ensured.
- Provincial Policy Statement natural heritage protection must be ensured.

Topic: Water Power Requirements

- All requirements as presently provided in permit to take water and Lakes and Rivers Improvement Act water power permit requirements must be replicated.
- Definition of areas allowed or not vis-à-vis parks and conservation areas must be outlined.
- A threshold must be defined (for example, not applicable to large water projects which should be considered under individual environmental assessment as at present.)
- Provincial Policy Statement natural heritage protection must be ensured.
- Fisheries protection, dam safety, recreational waterways protection, sedimentation, erosion, thermal impacts, and navigation protection are critical issues to include in the approvals process.
- Cumulative impacts from projects on same waterway must be considered and undue impacts precluded.
- It is essential to ensure no transfers from one watershed to another outside of existing hydrological regimes.
- Invasive species protection; Species at Risk and habitat protection must be ensured.

- Consistency with Boreal protection and Far North land use planning must be ensured.

Topic: Bio-mass / Biogas

- It is essential to have definitions of sustainable bio-mass / biogas and biofuel.
- These inputs must be carbon neutral or carbon positive regarding Greenhouse Gas emissions (ie result in reduction of carbon emissions in their full lifecycle.)
- It is critical to ensure there will be no long term depletion of soils and soil structure / nutrients (forests or agricultural).
- Odour and emissions control are essential in this area.
- No food crops should be utilized, and it is essential to ensure no displacement of food crops for these fuels.
- Ensuring replacement planting is critical for sustainability of the resource.
- Species at risk and habitat protection must be ensured.
- Ensuring no invasive species.
- Air emissions controls are essential
- Avoiding pesticides impacts on waterways and water-courses; and use of preferred alternative controls (eg fire in grasslands) must be provided.
- Fire safety training re controlled burns for certain agricultural and forestry practices is essential, especially as these practices may be new in some areas of the province.
- Steep slope protection (non-removal of forest and indigenous vegetation) is essential.

APPENDIX B:**COPY OF POLLUTION PROBE & CELA LETTER**

March 25, 2009

Mike Parkes
Cabinet Liaison and Strategic Policy Coordinator
Ministry of Energy
Regulatory Affairs and Strategic Policy
Strategic Policy and Research Branch
880 Bay Street, 6th floor
Toronto, Ontario M7A 2C1

Dear Mr. Parkes,

RE: EBR Registry number 010-6017 Comment on Bill 150, as proposed, *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*

The comments and recommendations in this submission relate to opportunities for promoting integrated urban energy systems (an approach to urban design that is gaining momentum across Canada) via the Green Energy Act. These comments are submitted by **Canadian Environmental Law Association and Pollution Probe**.

The capacity of the Green Energy Act (GEA) to achieve two of its main purposes (that is, “fostering a culture of conservation by assisting homeowners, government, schools and industrial employers to **transition to lower and more efficient energy use**” and supporting renewable energy) can be significantly enhanced if the Act is adjusted to provide for comprehensive *integrated urban energy system* planning. Therefore, the Canadian Environmental Law Association and Pollution Probe recommend that the scope of energy planning activities encompassed by the Act be expanded to incorporate the following:

1. A new instrument: Community Integrated Energy Plan;
2. Provisions to ensure the energy and transportation planning are linked; and
3. Combined heat and power generation.

Incorporating provisions for these elements will help to ensure that the government’s goals are realized.

Recommendations

In general, we seek to draw the attention of the Ministry of Energy to the importance of integrated urban energy systems, and recommend that its principles be considered for inclusion in the GEA and other government initiatives related to energy, infrastructure and urban planning (descriptions of proposed principles are included on the next page).

Specifically, we offer the following recommendations to ensure that integrated urban energy systems are supported, and not constrained, by the GEA (indeed, both should contribute to their mutual success).

1. A New Instrument: *Community Integrated Energy Plan*

Several opportunities exist to introduce a new instrument to the GEA that provides for consideration of a *community integrated energy plan* in certain decisions authorized by the Act. For example, Schedule A.

sections 5 and 6 provide the Lieutenant Governor in Council power to direct public agencies and consumers to prepare energy conservation and demand management plans. If an integrated energy plan has been developed by a community and has been approved by municipal council, its provisions should be considered in the preparation of a public agency's or consumer's conservation plans, or otherwise consistent with such plans. Similarly, a council-approved community integrated energy plan could be considered by the Director (Schedule G, section 47.5, "Director's Powers") in the decision to issue a Renewable Energy Approval; that is, the applicant's proposal should be consistent with the community integrated energy plan.

2. Link to Transportation Planning

The QUEST Approach seeks integrated solutions to reducing energy use, duly recognizing the impact that land-use patterns and transportation activity has on overall energy demand. Moreover, use of electrically-powered mobility options, including light rail transit and private "plug-in" electric vehicles (power-assist bicycles, scooters and possibly in the near future, personal automobiles), is an electricity end use issue not addressed in the GEA. The proposed Act presents an opportunity to incorporate the Ministry of Transportation as an important partner in the energy conservation and demand management planning process. Schedule C sets forth amendments to the *Ministry of Energy Act* to align its objectives with the Act. It is recommended that similar amendments be considered, where applicable, to the *Ministry of Transportation Act*, such that transportation planning is appropriately represented. This could also link to existing provisions for the *Greater Toronto Transportation Authority Act*.

3. Combined Heat and Power

It is recommended that *High Efficiency Combined Heat and Power* be considered for addition to the definition section in the GEA (section 1(1)). Language in Schedule D, section 11 can likewise be added that articulates the minimum required efficiency factor. This is consistent with recommendation 3 in the submission of the *Green Energy Act Alliance* (first draft).

What is QUEST? Why is it important to the GEA?

Meeting long-term climate change objectives that involve greenhouse gas emission reductions of 60 per cent or more by 2050 will need a fundamental transformation of how energy is produced, delivered and used. To date, most federal and provincial policies have tended to focus on supply-side solutions, such as capping emissions from large industrial emitters, and substituting energy and power generation from fossil fuels with renewable energy options. While this is important, it overlooks the opportunity to greatly reduce future energy demand through a community planning approach that creates integrated urban energy systems. Recognizing this gap in our climate change mitigation and adaptation strategies, a network of citizens from the energy industry, environmental groups, governments, academia and consulting communities have gathered to articulate effective strategies and advance the movement we call **QUEST: Quality Urban Energy Systems of Tomorrow**. We believe an integrated, community-based approach is the best way to address energy end-use and reduce greenhouse gas emissions (www.questcanada.org).

The QUEST Mission: To foster integrated, community-based approaches which address energy end-use and reduce related greenhouse gas and air pollutant emissions.

The QUEST Vision: By 2050 every community in Canada is operating as an integrated energy system, and accordingly, all community development and redevelopment incorporates an integrated energy system.

The QUEST Approach consists of the following principles:

1. Improve efficiency – reduce the energy input required for a given level of service;

2. Optimize “exergy” – avoid using high-quality energy in low-quality applications;
3. Manage heat – capture all feasible thermal energy and use it, rather than exhaust it;
4. Reduce waste – use all available resources, such as landfill gas, gas pressure drops and municipal, agricultural, industrial and forestry wastes;
5. Use renewable resources – tap into local biomass, geothermal, solar and wind energy; and
6. Use grids strategically – optimize use of grid energy as a resource to optimize the overall system and ensure reliability.

The Building Blocks of this Approach include:

- **Integration of land-use, transportation, energy, water and waste systems planning.**
- An enabling platform of higher density, mixed use developments of energy efficient building.
- A backbone of smart district energy and/or utility grids, allowing best management of available energy.
- Distributed smaller scale, local energy systems.
- Using local renewable energy sources – solar, geothermal, wind and biomass.

There is significant alignment of the objectives of QUEST and the GEA (as well other Government of Ontario initiatives, such as the *Places to Grow Act* and the *Climate Change Action Plan*). However, there are parts of the proposed Act for which changes should be considered, such that the above-listed QUEST Building Blocks are given appropriate provision in legislation. We believe the recommendations proposed in this letter help address these gaps.

Thank you for the opportunity to submit these recommendations for your consideration.
Please contact us with further questions or requests for clarification.

Sincerely,



Bob Oliver, P.Eng.
Executive Director
Pollution Probe



Theresa A. McClenaghan
Executive Director and Counsel
Canadian Environmental Law Association