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DELIVERED VIA EMAIL

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Re: Ontario's Long-Term Energy Planning
ERO Posting 019-3007

Please accept this joint submission of the Canadian Environmental Law Association and the Low-Income Energy Network in response to ERO Posting 019-3007.

A. Background on Canadian Environmental Law Association and Low-Income Energy Network

The Canadian Environmental Law Association (“CELA”) is a non-profit, public interest organization established in 1970 for the purposes of using and improving existing laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens’ groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA is one of the founding members of the Low-Income Energy Network.

The Low-Income Energy Network (“LIEN”) was formed in March 2004 to raise awareness of the impact of rising energy prices on low-income consumers and to work with policy-makers and the utility sector on solutions to energy poverty. LIEN’s energy poverty strategy involves a province-wide, comprehensive approach to low-income energy conservation and assistance. It places the greatest emphasis and resources on long-term, environmentally sustainable measures to reduce energy consumption and costs for low-income households.

B. Energy Poverty

Energy poverty remains a significant equity issue in Ontario.

Low-income households pay a disproportionate amount of their monthly income on electricity, natural gas or other utility costs, and do not have sufficient income for other basic necessities. Inability to pay utilities is second only to inability to pay rent as a reason for homelessness.

It is unaffordable to pay more than 30% of total income on housing costs. Utility costs should not exceed 20% of shelter costs. Therefore, energy costs become unaffordable for low-income consumers if they exceed 6% of total household income.¹

When energy poverty is not addressed, high energy costs and low incomes are a painful combination. In the cold winter months, when energy bills can be higher than rent, affected households must make impossible choices between food, clothing, and keeping themselves warm. Some are forced to live in moderate to extreme discomfort. Health can be affected by the cold and by mold arising from inadequate insulation and ventilation. In the case of poor housing stock in some regions of the province, there are lung cancer risks due to high indoor radon levels. Higher summer temperatures, prolonged heat waves and more episodes of extreme heat can combine to deadly effect.²

C. Long-Term Energy Planning Framework

1. How can we promote transparency, accountability and effectiveness of energy planning and decision-making under a new planning framework?

The long-term energy planning framework should be reviewed every five years to reflect the speed of technological and environmental change.

In order to increase transparency and accountability, the long-term energy planning framework should follow international best practices regarding public participation:

- Public involvement must be supported by access to the full range of needed information, in accordance with the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention, Article 3);
- Each individual must have access to information concerning the environment as held by the public authority, in accordance with the Rio Declaration on Environment and Development, Principle 10;
- Opportunities for involvement must commence early enough in the decision-making and planning process so that options remain open and the decision authority can respond to the input;

¹ 20% x 30% = 6%

² See Scott, Adrienne J. In the Dark, An Exploration of the Human Rights Implications of Energy Poverty in Rural Ontario, *Research Paper submitted to the Faculty of Graduate and Postdoctoral Studies In partial fulfillment of the requirements For the LL.M. degree in Law, available at <https://cela.ca/in-the-dark-an-exploration-of-the-human-rights-implications-of-energy-poverty-in-rural-ontario/> (2016)* for a review of some of the literature on energy poverty, at pp 15 to 19.

- The regulator shall engage Indigenous Peoples in a fair, independent, open and transparent process, in accordance with United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, Article 27);
- Indigenous peoples shall have the right to participate in decision-making in matters which would affect their rights as well as to maintain and develop their own indigenous decision-making institutions (UNDRIP, Article 18);
- The importance of education, training, public awareness, public participation, public access to information and cooperation at all levels must be addressed, in accordance with the United Nations Framework on Climate Change, Preamble and Article 12.

Subsections 25.29(4) and 25.29(6) of the *Electricity Act, 1998*, SO 1998, c 15, Sch 2 (“*Electricity Act*”) should be amended to ensure that non-traditional actors are better consulted throughout the long-term energy planning process. The participation of Ontario communities, municipalities, First Nations, businesses, schools, low-income communities, and environmental non-profit organizations is essential if we are to achieve a low-carbon economy. These actors have not been well-represented in Ontario’s energy system in the past. To appropriately engage with non-traditional actors, public interest funding must be made available during every stage of the long-term energy planning process.

The disclosure of information to the public must also be improved. Subsection 24.29(3) of the *Electricity Act* should be amended to make it clear that the Independent Electricity Systems Operator’s (“IESO”) technical reports must outline all background data, study alternatives and compare them, and justify any new procurement against the benefits of conservation.

2. What overarching goals and objectives should be recognized in a renewed planning framework?

The current goals of the long-term energy planning system do not adequately account for energy poverty or environmental impact from the energy system. The goals in section 25.29(2) of the *Electricity Act* should be strengthened to include the following goals and objectives:

- 1- The elimination of energy poverty across Ontario,
- 2- Advance reconciliation with Indigenous peoples,
- 3- The energy system must meet the greenhouse gas reduction targets set by the Ontario government, and
- 4- The energy system must reduce its overall environmental and public health impact.

3. What respective roles should each of the Government, IESO, and the Ontario Energy Board hold in energy decision-making and long-term planning?

The provincial government should be responsible for long-term energy planning. However, there should be independent review of the plans.

There is significant value in quasi-judicial processes that allow public interest intervenors to test the evidence. Intervenor in Ontario Energy Board (“OEB”) proceedings may challenge the background assumptions for energy decisions, cross-examine witnesses, and participate in the interrogatories process.

The last long-term energy planning process was no substitute for a thorough review of Ontario’s energy plans in a hearing. Unlike in a quasi-judicial hearing, there was no funding for intervenors and no way for public interest groups to hire experts to review the plan. The underlying data was not disclosed and there was no way to properly test the evidence. No alternative plans were presented. Many key decisions had already been made, including on nuclear rebuilds and renewable procurement. At the stakeholder consultation sessions, participants could only focus on two topics and were given limited time to discuss the issues.

4. Are there gaps in the IESO and the OEB’s mandates and objectives that limit their ability to effectively lead long-term planning?

The mandates of the IESO and OEB are far too narrow.

The objects of the IESO in subsection 6(1) of the *Electricity Act* should be expanded to recognize its key role in electricity planning in Ontario, especially because it is responsible for the assumptions and models which underlie the system. There should be recognition of the need to eliminate energy poverty and protect and restore the environment as key goals.

Likewise, the purpose of the OEB in sections 1 and 2 of the *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B (“*OEB Act*”) should be amended to reflect environmental protection and restoration principles to broaden the scope of analysis. An overarching goal of OEB decision-making should be to eliminate energy poverty.

The purposes of the *OEB Act* should be amended to:

- 1- Explicitly promote environmental protection and restoration;
- 2- Explicitly seek to eliminate energy poverty;
- 3- Advance reconciliation with Indigenous peoples;
- 4- The energy system must promote and align with Ontario’s greenhouse gas reduction target;
- 5- Sections 1(1)(3) and 2(5) should more strongly promote conservation and renewable energy;
- 6- Section 2(3) should be removed because the goal to facilitate rational expansion of transmission and distribution systems of gas does not align with Ontario’s climate change goals. Different sources of gas have wide-ranging environmental impacts.

To support a broader mandate and to ensure that environmental concerns are at the forefront of OEB decision-making, the OEB should host joint hearings with members with expertise in environmental protection and restoration. There should be a focus on panel members with the following backgrounds: lived experience of poverty, environmental science, renewable energy, conservation, public health and safety, and Indigenous traditional knowledge.

Far more projects should be subject to the Ontario *Environmental Assessment Act*, RSO 1990, cE18 including major generation projects, initial construction, and rebuilds. Under the current legislative framework, energy planning decisions are not subject to an independent review. Without a thorough environmental assessment, Ontario's planning decisions contribute to the environmental and health risks associated with nuclear waste, radionuclides, and habitat loss for species at risk.

5. How often and in what form should government provide policy guidance and direction to facilitate effective long-term energy planning?

Government policy directives should be linked in the *Electricity Act* to the key goals of the system, which should include environmental protection and restoration and the elimination of energy poverty. Government policy directives should be limited and subject to public notice and comment. The long-term energy planning process should set the broad framework for energy planning and should be subject to independent scrutiny.

Low-income and marginalized communities bear a disproportionate burden of the negative impacts of climate change and other environmental degradation. All energy policy decisions must therefore be made considering the impacts on these communities. The framework must allow for clear government direction that the concerns and needs of low-income communities must be front and centre in all decision-making.

6. How do we ensure effective and meaningful Indigenous participation in energy sector decision-making?

Indigenous individuals and communities have traditionally been marginalized in energy system planning. Funding for indigenous participation in all stages of the long-term energy planning process must be provided.

Thank you for the opportunity to provide input on the long-term energy planning process in Ontario. We would welcome the opportunity to discuss these issues further.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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