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APPLICATION FOR REVIEW
Filed pursuant to Section 61 of the *Environmental Bill of Rights*
RE: ONTARIO REGULATION 276/06
DESIGNATION AND EXEMPTION OF INTEGRATED POWER SYSTEM PLAN

APPLICANT NUMBER ONE

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Declaration of Ontario Residency:

I, Michelle Swenarchuk, hereby certify that I am an Ontario resident.

June 19, 2006

DATE



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Declaration of Ontario Residency:

I, Richard D. Lindgren, hereby certify that I am an Ontario resident.

June 19, 2006

DATE



RICHARD D. LINDGREN

SUBJECT-MATTER OF REQUESTED REVIEW

The applicants request a review of an **existing** regulation, namely:

Ontario Regulation 276/06: Designation and Exemption of Integrated Power System Plan

This regulation was made under the *Environmental Assessment Act* (EA Act), which is prescribed for the purposes of Parts II and IV of the *Environmental Bill of Rights* (EBR): see sections 3, 6 and 7 of O.Reg.73/94.

REASONS FOR REQUESTED REVIEW

The applicants submit that O.Reg. 276/06 should be immediately reviewed and revoked on the grounds that:

1. The regulation was not subject to public notice and comment prior to its passage, and was therefore made in direct contravention of the mandatory duties under Part II of the EBR in relation to public participation;
2. The regulation's wholesale exemption of the IPSP (and all Crown enterprises and activities related to it) from the EA Act does not represent sound environmental planning and is contrary to the public interest, especially given the significant scale, duration, costs, and risks associated with the IPSP as proposed; and
3. The regulation is deficient because it fails to impose any terms and conditions upon the proponent to ensure that the IPSP:
 - (a) is developed in a manner that involves meaningful public participation; and
 - (b) adequately identifies, analyzes and mitigates the significant environmental, public health, and socio-economic impacts of the IPSP, particularly the nuclear component.

These three grounds are explained in more detail below.

(a) Background

In December 2005, the Ontario Power Authority ("OPA") released the *Supply Mix Advice Report* which recommended, among other things, that Ontario should spend billions to overhaul or replace its nuclear reactors to ensure that half of the province's energy supply is met by nuclear energy by 2025. The Minister of Energy subsequently claimed that there had been "significant consultation around the OPA report" prior to its release (see attached letter to CELA dated January 9, 2006). To the contrary, however, the applicants

contend that the OPA report was essentially drafted behind closed doors, and was not subjected to EA planning principles or meaningful public participation.

In any event, the OPA report was posted on the EBR Registry for a public comment period that expired at the end of February 2006. The Ontario government then broadly distributed a short brochure entitled *Our Energy, Our Future*, and convened a small number of open houses and meetings in select cities, in order to solicit public feedback on the OPA report. This abbreviated round of "consultation" was widely criticized by most participants as being completely inadequate for the purposes of commenting upon multi-billion dollar infrastructure proposals with significant environmental, public health and socio-economic implications (see attached joint letter to Premier McGuinty dated February 14, 2006).

On June 13, 2006, the Ontario government announced its long-awaited response to the OPA report. Among other things, the proposed provincial energy plan sets specific mega-watt (MW) objectives for nuclear and renewable sources, establishes MW targets for electricity demand reduction, and delays the closure of certain coal-fired plants. Statutory directives were issued by the Minister of Energy to the OPA pursuant to the *Electricity Act, 1998* to draft the IPSP in accordance with these plan parameters. The OPA was also directed to "consult" the public and to "consider" the environment when developing the IPSP (see O.Reg. 277/06), as discussed below. It is anticipated that upon completion, the IPSP will be reviewed by the Ontario Energy Board under the *Electricity Act, 1998*, rather than the Environmental Review Tribunal (ERT) under the EA Act.

Interestingly, when the Ontario government released its long-term energy proposals on June 13th, provincial officials failed to disclose the fact that on the previous day, O.Reg. 276/06 had been passed by Cabinet so as to wholly exempt the IPSP from the EA Act. This regulation was quietly posted on the Ontario government's e-laws website one day after the June 13th energy announcements were made. Thereafter, an "information notice" regarding O.Reg. 276/06 was posted on the EBR Registry three days after the regulation was passed by the Ontario Cabinet.

(b) Public Requests for EA Act Coverage of the IPSP

Upon the release of the OPA report in December 2005, the applicants and other stakeholders have consistently requested the Ontario government to ensure that the IPSP was developed under the auspices of the EA Act (see attached letters to the Environment Minister dated December 15, 2005, and to Premier McGuinty dated February 27, 2006).

In addition, a generic legal opinion (co-authored by one of the applicants herein) was provided in February 2006 to the Ontario government to explain why the IPSP was caught by the EA Act since it is a public sector plan or program that is intended to be carried out by or for Her Majesty the Queen in right of Ontario (see attached opinion dated February 27, 2006). Among other things, this opinion concluded that EA Act coverage of the IPSP was environmentally appropriate and legally required. The generic opinion further noted that there was clear precedent for EA Act coverage of the IPSP,

given that the provincial 1989 Demand-Supply Plan had been subject to the EA Act, including a public hearing before the EA Board (now the ERT).

In response to public requests for EA Act coverage of the IPSP, Premier McGuinty initially appeared to provide assurances that such coverage would occur. For example, Premier McGuinty announced in the Ontario Legislature that while the OPA report itself would not be subject to the EA Act, the specific proposal that emerges after consultation on the OPA report would be subject to the EA Act:

Premier McGuinty: I think what we need to do now, building on that advice, is work with Ontarians to come up with a specific proposal that would be worthy of sending off to an environmental assessment process. So I'm not going to take the advice we've just received... and send it off to an environmental assessment process. Let's talk to Ontarians, then develop a specific proposal and make that the subject of an environmental assessment (*Hansard*, Dec.15, 2006, emphasis added).

The applicants note that at no time in these remarks did the Premier raise any statutory or constitutional reasons why the EA Act did not apply to IPSP. Indeed, it is reasonable to interpret these remarks as reflecting an intention to ensure that the IPSP was subject to the EA Act. Accordingly, some stakeholders at the time commended the Premier for his apparent commitment to an EA process for the IPSP (see attached CELA media release dated December 16, 2006).

In January 2006, the Director of MOE's EA and Approvals Branch advised that the Ministry is "considering" the request made by stakeholders to subject the IPSP to the requirements of the EA Act (see attached letter to CELA dated January 5, 2006). In particular, the Director stated:

The Ministry is considering your request to make the OPA Integrated Power System Plan subject to the requirements of the *Environmental Assessment Act* (EAA) and to a Joint Board hearing of the Ontario Energy Board and Environmental Review Tribunal. Among several factors, the previous decision by the Government to subject the Ontario Hydro Demand/Supply Plan in 1989 to the requirements of the EAA and to a hearing process will be considered as part of our decision-making process.

Again, the applicants note that the Director's letter did not raise any statutory or constitutional reasons why the EA Act did not apply to the IPSP.

In June 2006, however, representatives of the Ontario government began to make the new (and unmeritorious) claim that the IPSP was never subject to EA at all, and that O.Reg. 276/06 was passed to merely "clarify" the province's position on the matter.

For example, the Environment Minister made the following argument in the Ontario Legislature:

Mr. Tabuns: You have a responsibility as Minister of the Environment. You can read the act. You can do what's right. When are you going to announce that there will be a full provincial environmental assessment of this plan?

Hon. Ms. Broten: If the member did read the act and he did take a look at the opinion, he would understand that broad government policy, abstract in nature, is not subject to the *Environmental Assessment Act*. What is subject is project-specific. Let's not bring an omnibus package that's abstract in nature and examine it... Broad government policy has never been the subject of the *Environmental Assessment Act*... The demand-supply plan that my friend is speaking about specifically looked at projects. It did not look at an omnibus package, it was project-specific wrapped in one (*Hansard*, June 14, 2006).

On the following day, the Environment Minister repeated these comments, and raised new claims about the status of OPA and the nature of O.Reg. 276/06:

Hon. Ms. Broten: [B]road government policy direction is not the appropriate subject matter of the *Environmental Assessment Act*. The IPSP will be a reflection of that broad policy direction. The IPSP is being developed by the OPA, and Ontario's *Environmental Assessment Act* does not designate the OPA as a public body...

[O.Reg. 276/06 is] an administrative regulation that is confirming what I have said and decided all along... The administrative regulation that has been put in place is to provide certainty and clarity so we can move forward in this province (*Hansard*, June 15, 2006).

Subsequent to these comments in the Ontario Legislature, the applicants received a letter from the Environment Minister, who again claimed that the IPSP was designated by O.Reg. 276/06 because it was not subject to the EA Act, and that it was simultaneously exempted from the EA Act in order to "reflect" the "legislative framework for electricity in Ontario" (see attached letter to CELA dated June 16, 2006). The Minister's letter further claims that Crown enterprises and activities related to the IPSP were exempted by O.Reg. 276/06 to "confirm" the ministry's position that "government policy making is not subject to the EAA."

In the applicants' view, the passage of the exempting regulation does not "reflect", "confirm" or "clarify" anything, nor does it substantiate the validity of the government's revisionist claim that the EA Act was never applicable to the IPSP. Contrary to the claims by the Environment Minister, the IPSP is more than "abstract policy" – it is intended to be a prescriptive, integrated provincial plan for managing and meeting Ontario's long-term energy needs, and thus is a "proposal, plan or program" within the meaning of the term "undertaking" under the EA Act. In addition, the applicants

respectfully submit that the Minister has misunderstood or misdescribed the 1989 Demand-Supply Plan, as that undertaking was clearly a provincial “plan” or “program”, and was not a detailed, site-specific examination of individual projects or locations, as suggested by the Minister.

For the purposes of this EBR Application for Review, it is unnecessary to respond in detail to the Minister’s unpersuasive argument that the IPSP is not subject to the EA Act because the OPA is not designated as a public body under the Act. The applicants simply note that under a functional analysis, the OPA’s institutional status under the *Electricity Act, 1998*, is essentially irrelevant to the question of the EA Act’s applicability to the IPSP, which, after all, is being developed for – and will ultimately be adopted by – Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy (not the OPA *per se*).

In summary, the applicants submit that the Ontario government’s position regarding the IPSP is unsupportable and premised upon a serious misinterpretation of the EA Act. In any event, this misinterpretation does not adequately excuse or explain the province’s abject failure to seek public comment on O.Reg.276/06 before it was passed, contrary to the EBR. Furthermore, aside from the vague propositions made in the Environment Minister’s letter and the *Hansard* debates, the Ontario government has not publicly disclosed its own legal analysis on the applicability of the EA Act to the IPSP. In short, although stakeholders have released the CELA opinion as part of this important debate, the Ontario government has not released any legal opinion that substantiates the Minister’s interpretation of the EA Act.

(c) Passage of O.Reg.276/06

The applicants do not dispute that legislative authority generally exists under the EA Act for the passage of exempting regulations. However, the fundamental issue raised by this EBR Application for Review is whether that authority was properly exercised in this case, and the applicants submit that it was not, as described below.

The EA Act and regulations thereunder are administered by the Minister of the Environment. Exemption regulations are made under the EA Act by the Lieutenant Governor in Council (see section 39(f) of the EA Act), but the Minister remains responsible for ensuring compliance with EBR requirements regarding public notice and comment for such regulations.

Pursuant to section 16 of the EBR and section 3 of O.Reg. 73/94, regulations under the EA Act are generally subject to the mandatory public notice and comment requirements under Part II of the EBR.

However, the Ontario government, as represented by the Minister of the Environment, did not post notice on the EBR Registry of its intention to pass the exempting regulation. Therefore, the applicants, other interested stakeholders, and the public at large have been

deprived of their statutory right to review and comment on this environmentally significant regulation before it was passed.

In the applicants' view, there are no persuasive grounds to justify the Ontario government's failure or refusal to comply with Part II of the EBR in this case. Clearly, the regulation is not merely financial or administrative in nature, and no "emergency" exists to excuse the Ministry's non-compliance with Part II of the EBR. Moreover, taking the IPSP (and all Crown enterprises and activities related to it) wholly out of the protective provisions and procedural safeguards under the EA Act is, without a doubt, an environmentally significant decision that clearly warranted public review and comment before it was made.

The applicants are also concerned about the apparent failure of the Ontario Cabinet to utilize its powers under section 39(f) of the EA Act to impose terms and conditions upon the exemption. In this regard, we note that where environmentally significant undertakings have been exempted in the past, terms and conditions were typically included in the exemption in order to impose substantive directions or detailed procedural obligations upon the proponent to ensure the undertaking is planned and implemented in an environmentally sound manner. This has been the practice both in relation to specific facilities and to large-scale provincial plans, programs or management initiatives (i.e. timber management on Crown lands, provincial park program, etc.).

The applicants note that since no regulatory impact statement accompanied O.Reg. 276/06, it is impossible to tell on the record whether the Ontario Cabinet considered the imposition of terms and conditions, or, if so, why they were rejected in this case. As discussed below, the "companion" regulation (O.Reg. 277/06) does not remedy the absence of conditions in O.Reg. 276/06.

In our view, the IPSP (and virtually everything related to it) should not have been wholly exempted from the EA Act, and Ontarians were entitled in law to have proper notice and comment opportunities before this decision was made. If such opportunities were provided, then interested parties could have made submissions not only on whether the exemption should be granted, but also on whether substantive or procedural conditions should be attached to the exemption if granted.

(d) The EBR Registry Notice

The applicants have reviewed the MOE's *ex post facto* "information notice" (EBR Registry No. XA06E006) that was posted on the EBR Registry three days after the regulation was passed by Cabinet.

The applicants strongly disagree with the Ministry's self-serving and erroneous claims in the EBR Registry notice that the regulation is merely "administrative" in nature, and that the Ministry was not required to post prior notice of this proposal on the EBR Registry for public review/comment purposes.

The applicants also remain puzzled by the Ministry's circular argument in the Registry notice that the exempting regulation was not even necessary, according to the Ministry's questionable interpretation of the EA Act. If the EA Act was inapplicable to the IPSP as claimed, then why was the regulation even passed in the first place?

In addition, the applicants note that the Ministry's position is completely undermined by the Ministry's own practice regarding the posting of proposed exemptions under the EA Act. In particular, a comprehensive search of the EBR Registry reveals that aside from O.Reg. 276/06, EA Act exemptions have never been posted as "information notices" on the EBR Registry.

More importantly, it appears that virtually all exemptions granted under the EA Act since the EBR came into effect were originally posted as proposals (with public comment periods usually ranging from 30 to 45 days) before final decisions were made regarding the exemptions. Appendix A to this Application for Review contains an illustrative list of proposed exemptions for various undertakings (i.e. municipal waste management planning, waste disposal facilities, provincial park development, energy facilities, electricity supply arrangements, rabies programs, Crown land/resource dispositions, etc.) that were subject to public notice and comment before exempting regulations (or declaration orders) were made under the EA Act.

In these circumstances, the applicants conclude that the Ministry's failure to post O.Reg. 276/06 for public review and comment is unprecedented, unjustified and unacceptable.

In summary, it is disturbing to see the Ministry persist in its misinterpretation of the EA Act, and then attempt to use this misinterpretation as the basis for rationalizing the MOE's non-compliance with the EBR when passing O.Reg. 276/06. Clearly, the unsupportable claims in the EBR Registry notice provide further reasons why O.Reg. 276/06 should be reviewed and revoked.

It should be further noted that on the date that the EBR Registry notice was posted, one of the applicants herein immediately telephoned the MOE contact person and requested an explanation of the claims within the notice. To date, however, this telephone call has not been returned by the MOE contact person.

(e) MOE Statement of Environmental Values

In determining whether the public interest warrants the requested review of O.Reg. 276/06, subsection 67(2)(a) of the EBR directs the Minister to consider the relevant Statement of Environmental Values (SEV).

In this case, the MOE's SEV clearly states that the Ministry's mandate "is to protect the quality of the natural environment so as to safeguard the ecosystem and human health". In carrying out this mandate, the SEV commits the MOE to a number of important environmental principles, such as the "ecosystem approach" and "precautionary principle."

In the energy context, the MOE's SEV specifically states that:

The Ministry will seek to ensure a safe, secure and reasonably priced supply of energy in an environmentally sustainable manner, and will place emphasis on improving energy efficiency. It will also promote energy and water conservation...

In addition, the MOE's SEV clearly guarantees public participation in environmental decision-making:

The Ministry is committed to public participation and will foster an open and consultative process in the implementation of the SEV.

Taken together, these SEV commitments represent a provincial promise to all Ontarians that the MOE will: (a) take all necessary steps to safeguard the environment and public health and safety (b) ensure environmentally sustainable and fiscally sound energy supply and demand strategies; and (c) involve the public in environmentally significant decision-making.

However, the applicants submit that the wholesale exemption of the IPSP from EA Act coverage – and the passage of O.Reg. 276/06 without any public notice and comment -- is completely inconsistent with these SEV commitments.

Accordingly, the applicants submit the requested review of O.Reg. 276/06 must be undertaken to ensure compliance with the MOE's SEV.

(f) Absence of Periodic Review

In determining whether the public interest warrants the requested review of O.Reg. 276/06, subsection 67(2)(c) of the EBR directs the Minister to consider whether "the matters sought to be reviewed are otherwise subject to periodic review".

At the present time, aside from using Part IV of the EBR, there is no other statutory mechanism for the formal public review of O.Reg. 276/06. It should be further noted that the regulation has no expiry date, deadlines, or terms and conditions, which, in effect, establishes an open-ended exemption that will remain intact until the Ontario Cabinet decides, in its discretion, to revoke it at some unknown date in the future.

Accordingly, the applicants submit that the requested review of O.Reg. 276/06 should be undertaken because there is no other formal mechanism in place to review or revise the exemption.

(g) Other Relevant Considerations

In determining whether the public interest warrants the requested review of O.Reg. 276/06, subsection 67(2)(g) of the EBR permits the Minister to take into account “any other matter that the Minister considers relevant.”

In the applicants’ view, the following additional considerations should be taken into account regarding the need to review and revoke O.Reg. 276/06.

First, the applicants are aware that the “companion” regulation to O.Reg. 276/06 uses the words “consult” and “environment” in the directions provided to the OPA for developing the IPSP (see O.Reg. 277/06 under the *Electricity Act, 1998*). It is clear, however, that the mere existence of these words does not transform the forthcoming OPA consultations into an EA-like exercise. This is particularly true since no details have yet been released on the nature, scope and extent of the consultations to be undertaken by the OPA when it is developing the IPSP. Indeed, given the profound inadequacy of the “consultation” that occurred before and after the release of the OPA advice report, the applicants have no confidence that the next round of consultation will be effective, efficient or equitable, or, more importantly, that it will be equivalent to what would have been available under the EA Act. Moreover, given that the Energy Minister, among other things, has already prescribed the precise percentages to be achieved by nuclear, renewables and conservation, it is questionable whether further consultation by OPA will lead to fundamental re-consideration or revision of Ontario’s perceived “optimum” supply mix.

Second, the anticipated shortcomings in the forthcoming OPA consultations will not be cured by having the IPSP reviewed and approved by the Ontario Energy Board. Simply put, the *Electricity Act, 1998* and the *Ontario Energy Board Act* are not the legal equivalent of the EA Act. While these other statutes focus on protecting consumer interests and ensuring the continued supply of electricity, they do not contain the EA Act’s environmental planning policies and procedures (i.e. assessing “need”; considering “alternatives to” and “alternative methods”; assessing direct, indirect and cumulative impacts over the short- and long-term; achieving the “betterment” of Ontarians by providing for the protection, conservation, and wise management of the biophysical, social, economic, cultural and built environments, etc.).

Third, the development of the IPSP by the OPA in an expedited and ill-defined process stands in stark contrast to the recent history of long-term energy supply planning in this province. In the late 1970’s, for example, Ontario established the Royal Commission on Electric Power Planning (also known as the Porter Commission), which held extensive public hearings (rather than open houses or public information centres), prepared various studies, and released interim reports on key electricity matters (including the ongoing absence of a solution for the long-term disposal of nuclear waste). Significantly, the Royal Commission’s final report in 1980 recommended against nuclear expansion, emphasized the importance of demand management, and highlighted the need to develop alternative energy sources. The Royal Commission also stressed the need for enhanced public participation in long-term energy planning initiatives.

Similarly, Ontario Hydro's 1989 Demand-Supply Plan was subject to the EA Act and referred by the province to the EA Board, as noted above. At the quasi-judicial hearing, stakeholders were granted party status, expert witnesses were examined and cross-examined, and the proponent's energy assumptions, predictions and conclusions were tested, all within the broad public interest parameters of the EA Act. Ultimately, however, the proponent withdrew the Demand-Supply Plan from the EA hearing, thereby saving Ontarians the billions of dollars that would have been needlessly spent (and the risks needlessly incurred) in developing the nuclear component of the proposed plan.

The Environment Minister's attached June 16, 2006 letter advises that "specific projects which result from the IPSP... will be subject to all applicable EA requirements." The applicants draw no comfort from this vague claim because meeting "applicable EA requirements" for electricity projects does not necessarily mean that individual EA's under the EA Act will be prepared. Instead, depending on the project type, electricity infrastructure intended to implement the IPSP will likely be subject to either: (a) environmental screening procedures under O.Reg.116/01; (b) Class EA procedures; or (c) narrow federal EA procedures.

More importantly, project-specific EA's will not address the larger policy questions concerning Ontario's electricity needs, nor would project-specific EA's require comprehensive analysis of alternative energy strategies for meeting provincial needs, or revisit provincial targets for various supply options. Similarly, project-specific EA's will not adequately address the overall public health risks posed by a provincial energy plan that calls for the continued use or expansion of nuclear reactors in Ontario (see attached joint letter to the Premier dated June 15, 2006).

(h) Presumption Against Reviewing Recent Decisions

Subsection 68(1) of the EBR provides a general presumption against reviewing prescribed regulatory decisions made within the past five years. However, this presumption specifically provides that it is only applicable where the impugned decision was made in a manner that is "consistent with the intent and purpose of Part II" of the EBR.

In this case, there was a fundamental failure to comply with Part II of the EBR, as the MOE did not provide public notice and comment opportunities on the regulation, and otherwise failed to live up to its SEV commitments to public participation.

Accordingly, the applicants submit that the subsection 68(1) presumption is not applicable in this case. In short, the presumption cannot be used or relied by the MOE as a "shield" or statutory bar to the requested review of O.Reg. 276/06.

EVIDENCE SUPPORTING THE REQUESTED REVIEW

The documentary evidence supporting the requested review of O.Reg. 276/06 is attached hereto as follows:

1. O.Reg. 276/06 and 277/06;
2. EBR Registry No. XA06E0006;
3. Correspondence to and from provincial officials regarding the IPSP and EA Act coverage;
4. CELA's generic legal opinion regarding EA Act coverage of the IPSP;
5. Provincial announcements and media releases regarding the IPSP; and
6. Such further or other evidence as the applicants may advise.

APPENDIX A: EXAMPLES OF EBR POSTINGS FOR PROPOSED EXEMPTIONS UNDER THE EA ACT

Exemption Regulations:

- 1) Proposed regulations designating Plasco Energy Group's (Plasco) proposal subject to the requirements of the Environmental Assessment Act (EAA), and exempting the demonstration project from the EAA and from the hearing requirements of section 30 and 32 of the Environmental Protection Act (EPA). Posted as a regulation with a 45 day comment period. <http://www.ene.gov.on.ca/envregistry/026845er.htm>
- 2) Exemption from Environmental Assessment Act - District Energy Project at Windsor Casino. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005421er.htm>
- 3) Lake Gibson Small Hydro Generating Station Approval, Exemption request under the Environmental Assessment Act (EA Act). Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005427er.htm>
- 4) Township of Edwardsburgh Waste Disposal Site Interim Expansion - Request for Exemption under the Environmental Assessment Act (EA Act). Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005401er.htm>
- 5) Township of Chappleau Landfill Site, Interim Expansion - Exemption Request under the Environmental Assessment Act (EA Act). Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005408er.htm>
- 6) Seneca College at York University - Exemption request under the Environmental Assessment Act. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005425er.htm>
- 7) City of Toronto Western Beaches Storage Tunnel Exemption request under the Environmental Assessment Act. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005453er.htm>
- 8) Environmental assessment requirements for electricity sector projects in the new competitive electricity market - proposed regulation and guideline. Posted as a regulation with a 32 day comment period. <http://www.ene.gov.on.ca/envregistry/012935er.htm>

Declaration Orders for Exemptions

- 1) Exemption Order for waste Management Planning By Municipalities, Was posted as a regulation under type of notice (not Information) with a 45 day comment period. <http://www.ene.gov.on.ca/envregistry/005450er.htm>

- 2) City of Brockville, Amendments to Exemption Order BROCC-3 (Order in Council #3382/92); Declaration Request under the Environmental Assessment Act (EA Act). Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/010451er.htm>
- 3) Town of Kincardine, Valentine Landfill Site Interim Expansion - Declaration Order under the Environmental Assessment Act for exemption. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005500er.htm>
- 4) Ministry of Natural Resources: Construction of the Canadian Ecology Centre in Samuel de Champlain Provincial Park; Declaration Request under the Environmental Assessment Act for exemption. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/009716er.htm>
- 5) Ministry of Natural Resources, Northern Development and Mines, Health, and Agriculture, Food and Rural Affairs' Exemption Order for the Wildlife Rabies Control Program under the Environmental Assessment Act, MNR-62. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/005409er.htm>
- 6) Order to declare that the disposition of Crown resources and activities related to the administration, enforcement and carrying out of the Mining Act, by the Ministry of Northern Development and Mines, are not subject to the Environmental Assessment Act. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/020314er.htm>
- 7) Order to declare that the provision of between 200 MW and 400 MW of short term, temporary electricity capacity to meet peak demand periods, as arranged by the Ontario Electricity Financial Corporation, be not subject to the Environmental Assessment Act. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/020437er.htm>
- 8) Ontario Parks, Ministry of Natural Resources (MNR); Campground development in Inverhuron Provincial Park; Declaration Order request under the Environmental Assessment Act (EAA) for exemption. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/016390er.htm>
- 9) Ministry of Natural Resources (MNR), Disposition of Crown Land Cottage Lots; Declaration Request under the Environmental Assessment Act for exemption. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/008677er.htm>
- 10) Ministry of Natural Resources: Construction of Visitor Centres for the following provincial parks: Killbear, French River, Killarney and Lake Superior; Declaration Order request for exemption under the Environmental Assessment Act. Posted as a

regulation with a 30 day comment period.

<http://www.ene.gov.on.ca/envregistry/014956er.htm>

- 11) Township of Alice & Fraser, Landfill Site Interim Expansion - Declaration Order Request for exemption under the Environmental Assessment Act. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/010807er.htm>
- 12) Lambton County; Amendments to Exemption Order LAMB-CT-1 (Order in Council #1547/92); Declaration Request under the Environmental Assessment Act (EA Act). The Minister, with the concurrence of Cabinet, approved Order-in-Council 284/99 on February 24, 1999 declaring that the amendment to O.R. 291/92 with respect to the removal of the daily rate on the amount of waste that could be deposited at the landfill site was not subject to the requirements of the Environmental Assessment Act. A copy of the approved Order is available by contacting the Environmental Assessment and Approvals Branch EBR Coordinator identified in this notice. Posted as a regulation with a 30 day comment period:
<http://www.ene.gov.on.ca/envregistry/010228er.htm>
- 13) Declaration Order for the Toronto Waterfront Revitalization Corporations's (TWRC) proposed Toronto Waterfront Parks. Posted as a regulation with a 30 day comment period <http://www.ene.gov.on.ca/envregistry/025291er.htm>
- 14) Declaration Order for the Toronto Transit Commission's (TTC) Union Station Second Platform and Concourse Improvements Project. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/023214er.htm>
- 15) The Declaration Order was approved on June 14, 2000. The purpose of the Declaration Order is to exempt the proposed clean-up of the former Mid-Canada Radar site from the requirements of the Environmental Assessment Act. Posted as a regulation with a 30 day comment period.
<http://www.ene.gov.on.ca/envregistry/013112er.htm>
- 16) Town of Georgina Landfill (Interim Expansion) - Exemption Request under the Environmental Assessment Act (EA Act). Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005407er.htm>
- 17) Regional Municipality of Sudbury - Nickel Centre Landfill and interim Expansion - Application for an E.A.A. Exemption. Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/005463er.htm>
- 18) The Ontario Realty Corporation (ORC) on behalf of the Ministry of Community and Social Services (MCSS); Observation and Detention Home for Phase 1 Young Offenders in the City of Sault Ste. Marie; Declaration Order request under the Environmental Assessment Act (EAA). Posted as a regulation with a 30 day comment period. <http://www.ene.gov.on.ca/envregistry/014255er.htm>

Environmental Assessment Act
Loi sur les évaluations environnementales

ONTARIO REGULATION 276/06

No Amendments

DESIGNATION AND EXEMPTION OF INTEGRATED POWER SYSTEM PLAN

Notice of Currency: * This document is up to date.

*This notice is usually current to within two business days of accessing this document. For more current amendment information, see the Table of Regulations - Legislative History Overview.

This Regulation is made in English only.

Definition

1. (1) In this Regulation,

“integrated power system plan” means any integrated power system plan developed by the Ontario Power Authority under Part II.2 of the *Electricity Act, 1998*. O. Reg. 276/06, s. 1 (1).

(2) For greater certainty, an integrated power system plan includes each version of an integrated power system plan developed by the Ontario Power Authority, whether or not required by the Minister of Energy, and whether or not it is approved by the Ontario Energy Board or is referred by the Ontario Energy Board back to the Ontario Power Authority. O. Reg. 276/06, s. 1 (2).

Designation and exemption from Part II of the Act — integrated power system plan

2. (1) Every integrated power system plan is defined as a major commercial or business enterprise or activity and is designated as an undertaking to which the Act applies. O. Reg. 276/06, s. 2 (1).

(2) The undertakings that are designated under subsection (1) are exempt from Part II of the Act. O. Reg. 276/06, s. 2 (2).

Exemption from Part II of the Act — Crown undertakings

3. (1) Any enterprise or activity related to an integrated power system plan, or any proposal, plan or program in respect of such enterprise or activity, carried out by or on behalf of Her Majesty in right of Ontario is exempt from Part II of the Act. O. Reg. 276/06, s. 3 (1).

(2) Despite subsection 2 (2) and subsection (1) of this section, an enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity, that is included in an integrated power system plan and that is designated under another regulation made under the Act as an undertaking or class of undertakings to which the Act applies is not exempt from Part II of the Act. O. Reg. 276/06, s. 3 (2).

(3) Where an enterprise or activity, or a proposal, plan or program in respect of an

enterprise or activity, that is included in an integrated power system plan is exempt from Part II of the Act pursuant to another regulation or order made under the Act, the other regulation or order applies to the enterprise or activity, or proposal, plan or program in respect of the enterprise or activity, and subsection 2 (2) and subsection (1) of this section do not apply to it. O. Reg. 276/06, s. 3 (3).

(4) Where an enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity, that is included in an integrated power system plan is subject to an approval under Part II or II.1 of the Act, the approval applies to the enterprise or activity, or proposal, plan or program in respect of the enterprise or activity, and subsection 2 (2) and subsection (1) of this section do not apply to it. O. Reg. 276/06, s. 3 (4).

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ONTARIO REGULATION 277/06

made under the

ELECTRICITY ACT, 1998

Made: June 12, 2006

Filed: June 12, 2006

Published on e-Laws: June 14, 2006

Printed in *The Ontario Gazette*: July 1, 2006

Amending O. Reg. 424/04

(Integrated Power System Plan)

Note: Ontario Regulation 424/04 has not previously been amended.

1. Section 2 of Ontario Regulation 424/04 is revoked and the following substituted:**Development of integrated power system plan**

2. (1) In developing an integrated power system plan under subsection 25.30 (1) of the Act, the OPA shall follow directives that have been issued by the Minister under subsection 25.30 (2) of the Act and shall do the following:

1. Consult with consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry in order to ensure that their priorities and views are considered in the development of the plan.
2. Identify and develop innovative strategies to accelerate the implementation of conservation, energy efficiency and demand management measures.
3. Identify opportunities to use natural gas in high efficiency and high value applications in electricity generation.
4. Identify and develop innovative strategies to encourage and facilitate competitive market-based responses and options for meeting overall system needs.
5. Identify measures that will reduce reliance on procurement under section 25.32 of the Act.
6. Identify factors that it must consider in determining that it is advisable to enter into procurement contracts under subsection 25.32 (1) of the Act.
7. Ensure that safety, environmental protection and environmental sustainability are considered in developing the plan.
8. Ensure that for each electricity project recommended in the plan that meets the criteria set out in subsection (2), the plan contains a sound rationale including,
 - i. an analysis of the impact on the environment of the electricity project, and
 - ii. an analysis of the impact on the environment of a reasonable

range of alternatives to the electricity project.

(2) For the purposes of paragraph 8 of subsection (1), the following are the criteria:

1. An environmental assessment of the electricity project under Part II of the *Environmental Assessment Act* must be required.

2. The electricity project, based on the recommended date for completion of the project in the plan, will in the opinion of the OPA require that an application for approval for an undertaking be made under the *Environmental Assessment Act* within five years after the approval of the plan by the Board.

(3) In this section,

“electricity project” means a project that includes one or more of a transmission line, generation facility, transformer station or distribution station;

“environment” means air, land, water, plant life and animal life, including human life and

“environmental” has a corresponding meaning.

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EBR Registry Number: XA06E0006**Type of Notice:** Information**Ministry:** Environment**Status of Notice:** Information**Date Information Notice Posted:** 2006/06/15

INFORMATION NOTICE© Queen's Printer for Ontario, 2006

Title :

Environmental Assessment Act (EAA) Designation and Exemption of Integrated Power System Plan (IPSP)

General Reason for Notice:

This notice is for your information. The Environmental Bill of Rights does not require this notice to be placed on the Environmental Registry, however, section 6 of the Act does allow the Environmental Registry to be used to share information about the environment with the public.

Further Specific Explanation:

The Minister of Environment, with the approval of the Lieutenant Governor in Council has made a regulation that designates the IPSP (which means any integrated power system plan developed by the Ontario Power Authority under Part II.2 of the Electricity Act, 1998), as an undertaking to which the EAA applies. The regulation also exempts this undertaking from Part II of the EAA and undertakings of the Crown related to the IPSP.

Short Description:

The regulation has the effect of designating the IPSP subject to the EAA, and then exempting it from the requirement to undertake an individual environmental assessment in accordance with Part II of the EAA and activities of the Crown related to the IPSP. Given that the IPSP is not an undertaking that is subject to the EAA a designation is required in order to exempt it. The regulation confirms and reflects the legislative framework under the Electricity Act, 1998, with respect to the OPA and the IPSP, and confirms the government's long standing position that government policy planning as reflected in the Directive is not an undertaking that is subject to the EAA. In this respect, the regulation is administrative in nature. The projects which result from the IPSP will be subject to all applicable environmental assessment processes.

Contact Person:

Blair Rohaly, Project Manager
Strategic Policy Branch
135 St. Clair Ave. West, 11th floor

FROM : LINDGREN

PHONE NO. : 6133851952

Jun. 19 2006 12:09PM P9

Toronto, Ontario, M4V 1P5

PHONE: (416) 212-4083 FAX: (416) 314-2976

Additional material in support of this notice is available by clicking the following hyperlink(s):

http://www.e-laws.gov.on.ca/DBILaws/Rcgs/English/060276_e.htm



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



December 15, 2005

The Hon.D.Cansfield
Minister of Energy
900 Bay Street, 4th Floor
Hearst Block Toronto, Ontario
M7A 2E1

By Regular Mail and By Fax: (416) 327-6754

The Hon. L.C. Broten
Minister of Environment
12th Floor, 135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5

By Regular Mail and By Fax: (416) 314-7337

Re: Ontario Power Authority Supply Mix Advice

Dear Ministers Cansfield and Broten,

A major investment by the province in nuclear energy and other forms of electricity supply figures prominently in the "supply mix advice" provided to the government by the Ontario Power Authority on December 9, 2005. It is vitally important that the need for, and environmental and economic risks associated with these options, be fully analyzed in a rigorous and open manner, before final decisions, carrying implications potentially extending over generations, are made.

In this context, we note that the former Minister of Energy publicly committed to an "open and public debate" on the future role of nuclear power in Ontario. Consistent with that commitment we request that the government commit to designating the integrated system plan to be developed by the OPA as an undertaking for the purposes of the *Environmental Assessment Act*, to be subject to a joint board hearing of the Ontario Energy Board and Environmental Review Tribunal. We believe that this would be the most efficient and effective way of fulfilling the government's commitment to an "open and public debate."



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



As you will recall, former Premier Peterson designated the Demand Supply Plan developed by Ontario Hydro, which was in many ways similar in scope and direction to the OPA's recommended direction, as an undertaking for the purposes of the *Environmental Assessment Act* in 1989. The designation permitted a detailed public examination of the plan before the then Environmental Assessment Board.

In the meantime, we recommend that, consistent with its desire to establish a 'conservation culture' in Ontario, the government proceed as rapidly as possible on the 'no regrets' options of improving Ontario's energy efficiency and productivity and the rapid expansion of low-impact renewable energy supplies.

We would be pleased to respond to any questions that you, your staff or your officials may have regarding our views on this matter.

Yours sincerely,

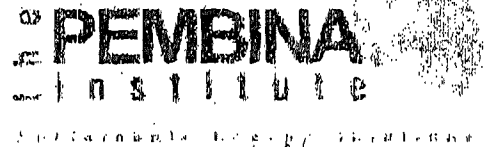
Theresa McClenaghan
Counsel
Canadian Environmental Law Association
Telephone: 416-960-2284 (office)

Mark S. Winfield, Ph.D.
Director, Environmental Governance
The Pembina Institute
Tel: 416-978-5656

Cc: The Hon. D. McGuinty, Premier of Ontario
John Yakabuski, MPP, Energy Critic for the Official Opposition by Fax: 416-325-2196
Howard Hampton, MPP, Leader and Energy Critic for the New Democratic Party by Fax: 416-325-8222
Gord Miller, Environmental Commissioner of Ontario by Fax: 416-325-3370



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



MEDIA RELEASE

ENVIRONMENTALISTS APPLAUD MCGUINITY COMMITMENT TO ENVIRONMENTAL ASSESSMENT

December 16, 2005

Toronto. The Canadian Environmental Law Association and the Pembina Institute today applauded Premier McGuinty's commitment to a full provincial Environmental Assessment of the integrated supply plan for Ontario's electricity system.

Responding to questions during Question Period yesterday, Premier McGuinty stated that the province will engage in a "full, open and public" consultation with Ontarians regarding the supply mix advice given to the province by the Ontario Power Authority last week, and that the specific proposal for Ontario's electricity system eventually to be developed by the Power Authority will be "the subject of an environmental assessment." The Premier stated that additional details on further consultations are to be provided by the Minister of Energy "in the new year."

"We are very pleased that the Premier has confirmed that the Ontario public will have a real say on the questions of Ontario's electricity future", stated Theresa McClenaghan, Counsel with the Canadian Environmental Law Association. "We are concerned that the Ontario Power Authority's advice was prepared with very little time or opportunity for the public to engage in this question of huge importance to our province's future economy, health and environment."

"We welcome the Premier's commitment that after consulting with Ontarians, the Integrated Supply Mix Plan for Ontario's future electricity supply will go to a full provincial Environmental Assessment", said Dr. Mark Winfield, Director of the Pembina Institute's Environmental Governance Program. "The specific plan must be tested in an open, transparent forum that allows for public participation, calling and cross examination of evidence, and an understanding of risks, costs and benefits of various options. Designating the plan for review under the Environmental Assessment Act, as the government of former Premier David Peterson did with Ontario Hydro's proposed demand supply plan in 1989, is the most effective and efficient means of achieving these goals."

-30-

For more information, contact:

Mark Winfield, Director
Environmental Governance
The Pembina Institute
Tel: 416-978-5656
Cell: 416-434-8130

Theresa McClenaghan, Counsel
Canadian Environmental Law Association
Tel: 416-960-2284 Ext. 218
Cell: 519-755-7579

Ministry
of the
Environment

Office of the Minister

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Fax (416) 314-6748

Ministère
de
l'Environnement

Bureau du ministre

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Tél (416) 314-6790
Téléc (416) 314-6748

RECEIVED JAN 10 2006



ENV1283MC-2005-5551
ENV1283MC-2005-5613

January 5, 2006

Ms. Theresa McClenaghan
Counsel
Canadian Environmental Law Association
130 Spadina Avenue, Suite 301
Toronto ON M5V 2J4

Mr. Mark Winfield
Director, Environmental Governance
The Pembina Institute
124 O'Connor Street, Suite 601
Ottawa ON K1P 5M9

Dear Ms. McClenaghan and Mr. Winfield:

Thank you for your letters dated December 15, 2005, regarding the Ontario Power Authority (OPA) Supply Mix Advice Report, released December 9, 2005, and the Integrated Power System Plan to be developed by the OPA in the coming months. I am pleased to respond on behalf of the Minister of the Environment.

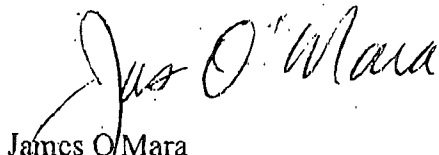
The Ministry is considering your request to make the OPA Integrated Power System Plan subject to the requirements of the *Environmental Assessment Act* (EAA) and to a Joint Board hearing of the Ontario Energy Board and Environmental Review Tribunal. Among several factors, the previous decision by the Government to subject the Ontario Hydro Demand/Supply Plan in 1989 to the requirements of the EAA and to a hearing process will be considered as part of our decision-making process.

Ms. McClenaghan and Mr. Winfield
Page 2

As the ministry responsible for the Environmental Registry posting of the OPA Supply Mix Advice Report (Posting No. PO05E0001), the Ministry of Energy shall be able to respond to your request regarding an extension to the public comment period. We appreciate that your request was made on behalf of the Canadian Environmental Law Association, the Pembina Institute, as well as representatives of the Sierra Club of Canada, Citizens Environmental Alliance, Northwatch and the Provincial Council of Women.

Should you have any questions relating to environmental assessment matters associated with the OPA Supply Mix Advice Report or Integrated Power System Plan, please contact Samantha Kassal, Project Officer of this Branch, who is available to assist you. She may be contacted by telephone at 416-314-8214, or email at samantha.kassal@cne.gov.on.ca.

Yours sincerely,



James O'Mara
Director

Environmental Assessment & Approvals Branch

c: Mr. Dan McDermott, Ontario Chapter, Sierra Club of Canada
Mr. Derek Coronada, Citizens Environmental Alliance
Mr. Brennain Lloyd, Northwatch
Ms. Milica Kovacevich, Provincial Council of Women
Hon. D. Cansfield, Minister of Energy

RECEIVED JAN 12 2006

Minister of Energy

Hearst Block, 4th Floor
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6715
Fax: 416-327-6754

Ministre de l'Énergie

Édifice Hearst, 4e étage
900, rue Bay
Toronto ON M7A 2E1
Tél.: 416-327-6715
Téléc.: 416-327-6754



Ontario

JAN - 9 2006

Ms Theresa McClenaghan
Counsel
Canadian Environmental Law Association
301-130 Spadina Avenue
Toronto, Ontario
M5V 2L4

Mr. Mark S. Winfield
Director, Environmental Governance
The Pembina Institute
c/o Centre for the Environment
Innis College
University of Toronto
2 Sussex Avenue
Toronto, Ontario
M5S 1J5

Dear Ms McClenaghan and Mr. Winfield:

Thank you for your letter to the Honourable Laurel Broten, Minister of the Environment, and myself regarding the recent report by the Ontario Power Authority (OPA).

I am sure you are aware that there has already been significant consultation around the OPA report. The first round of public consultations was held by the OPA earlier this summer and throughout the fall. We are currently in the second round of public consultations. The report is posted for comment on the Environmental Bill of Rights website for 60 days. It is also posted on the Ministry of Energy and OPA websites.

In the first round of public consultations, the OPA advertised in more than 40 newspapers across the province for submissions from the public, and 175 submissions were received. The OPA also invited special interest and expert groups to meet to present their views, and 25 groups responded. A total of 60 senior power industry and special interest people were randomly selected for an extensive telephone interview. In addition, Decima Research interviewed 800 Ontario residents in an online poll for their views and values relating to Ontario electricity matters.

.../cont'd

-2-

The Premier has recently indicated that there will be a third round of consultations in the new year. I am confident that these three rounds of consultation will offer extensive opportunity for interested parties to express their views on the issues raised by the OPA report.

I would be pleased to meet with you at any time to discuss your concerns.

Once again, thank you for taking the time to write. Please accept my best wishes.

Sincerely,



Donna Cansfield
Minister

c: The Honourable Dalton McGuinty, Premier
The Honourable Laurel Broten, Minister of the Environment
John Yakabuski, MPP, Energy Critic for the Official Opposition
Howard Hampton, MPP, Leader and Energy Critic for the New Democratic Party
Gord Miller, Environmental Commissioner of Ontario



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

VIA FACSIMILE and Regular Mail

February 14, 2006

Premier D. McGuinty
Legislative Building Rm 281
Queen's Park
Toronto, ON M7A 1A1
416-325-3745

Minister D. Cansfield
Minister of Energy
900 Bay Street, 4th Floor
Hearst Block
Toronto, Ontario
M7A 2E1
416-325-5316

Re: Power Supply Mix Public Consultations

Dear Premier McGuinty and Minister Cansfield:

As you know, the undersigned organizations, along with many others have been extremely concerned that there be an opportunity for meaningful, thorough and thoughtful consultations with the people of Ontario regarding our future electricity supply mix. After Premier McGuinty in December 2005 promised further consultation with the people of Ontario and a full environmental assessment of the resulting supply mix plan, we applauded.

However, today, we write to provide our formal complaint about the public supply mix consultation as it has been announced and carried out so far at the four public input sessions held yesterday. The overwhelming concern that people have is that this consultation process as it has been conducted is SO bad that it can only indicate an unwillingness to truly consult and listen to the people of Ontario. Adjectives used by those attending the four meetings last evening have included "appalling", "the worst public consultation I have ever experienced", "badly handled and inflammatory", and "disgraceful".

We would appreciate your prompt response to our complaint and would like your commitment to rectify the abysmal consultation process as we set out below.

130 SPADINA AVE • SUITE 301 • TORONTO • ON • M5V 2L4
TEL: 416/960-2284 • FAX: 416/960-9392 • www.cela.ca

Letter from CELA – page 2

- **Complaint No. 1**

The public consultation is being held in four cities at a time, making it impossible for you or others to attend those being held simultaneously to hear the input being provided across the province.

Requested Response No. 1: An additional consultation process, modelled after the Walkerton Inquiry should be announced, which could be used as part of the process for developing the terms of reference for the environmental assessment of the supply mix plan for the province.

- **Complaint No. 2**

The input is not transparent. There is no cable or television broadcasting of the input sessions, nor any transcripts which would allow people to read or hear what others are saying, and add to or respond to the input as would be appropriate.

- **Complaint No. 3**

Some of the input is being mis-recorded and most of it is not being recorded at all. There are specific examples at some of the meetings whereby the statement made by the member of the public was seriously re-stated by those recording points made so as to lose the meaning of the statement.

Requested Response No. 2: If recordings of the meetings were made, please provide transcripts on the Ministry of Energy web page. If they were not, please provide such summaries and records of the input as you are in the process of preparing, and post that to the Ministry of Energy web page. Finally, please arrange to have the remaining meetings recorded, broadcast to cable or television and transcribed and transcripts posted to the Ministry of Energy website for the benefit of the people of Ontario.

- **Complaint No. 4**

The meetings in each city are only two hours long and most were cut short before people could have a chance to provide input.

Requested Response No. 3: See request No. 1 above. In the meantime, please add further cities to your consultation schedule across the province, with much longer times allocated for input.

- **Complaint No. 5**

Despite many queries from many of us, there was no advance information provided as to the format of the meetings. Nevertheless it appeared that there was a format that the facilitators had been instructed to follow, with a specific order of topics and time limits. No member of the public was aware of this ahead of time, with the result that in many of the meetings, people were cut off from speaking to the issues that they had attended to address.

Requested Response No. 4: See request No. 1 above. Furthermore, for the remaining meetings, please instruct your facilitators to disregard the topic lists and just to allow members of the public to provide their input on the topics they came to speak about as they reach the microphones.

130 SPADINA AVE • SUITE 301 • TORONTO • ON • M5V 2L4
TEL: 416/960-2284 • FAX: 416/960-9392 • www.cela.ca

Letter from CELA -- page 3

• Complaint No. 6

There is no context for this input. Who is assessing the input and on what basis? Will that process be transparent? Where is the opportunity to test the information being provided to you?

Requested Response No. 5: Please advise as to who is assessing the input, on what basis, how transparency will be assured and how the information will be able to be tested by interested members of the public.

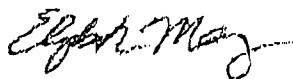
• Complaint No. 7

The video used to introduce the meetings at each city contains errors and serious biases, including biases against renewable energy and conservation. This video should be immediately withdrawn from use at the remaining meetings and instead, representatives from the Ontario Power Authority or Ministry of Energy should attend to introduce the report and take questions on it from the audience.

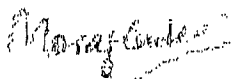
Requested Response No. 7: Please publicly withdraw the video and instruct the facilitators for the remaining meetings not to show the video that was used last evening.

The signatories below each attended one of the meetings on February 14, 2006 and would be able to provide more information and detail should you require same. We thank you for your attention, and look forward to your immediate response. Please contact us by telephone or email, fax or mail correspondence to us as set out below.

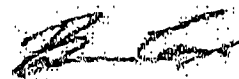
Yours truly,



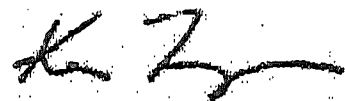
Sierra Club of Canada
Elizabeth May



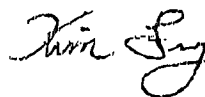
David Suzuki Foundation
Morag Carter



Greenpeace
Bruce Cox



Canadian Environmental Law Association
Ken Traynor



Toronto Environmental Alliance
Kim Fry



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

February 27, 2006

The Honourable Dalton McGuinty
Premier of Ontario
Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A1

Coordinator, Energy Economics
Office of Energy Supply and Competition
880 Bay Street, 3rd Floor
Toronto, ON M7A 2C1

Dear Premier McGuinty:

**Re: Ontario Power Authority *Supply Mix Advice Report*, December 2005 and
Integrated Power System Plan - Supply Mix EBR# PO05E0001**

We write to provide the comments of the Canadian Environmental Law Association on the Ontario Power Authority's December, 2005 *Supply Mix Advice Report* (EBR # PO05E0001).

The Canadian Environmental Law Association ("CELA") is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. CELA is funded as a legal aid clinic and represents individuals and citizen groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to litigation, CELA also undertakes law reform activities, public education and community organizing.

PART I - OVERVIEW

The Problem:

Electricity supply for Ontario must change. Coal plants will be phased out by 2009 to clear the air. Nuclear plants have a short life-span. They won't work beyond the decade of 2010-2020. Some could last a bit longer but only by spending billions of dollars.

Neither coal nor nuclear can provide for Ontario's long-term electricity needs. Pollution from coal adds to climate change. It produces smog, acid rain and adds toxic mercury to the food

Letter from CELA – page 2

chain. Nuclear power is expensive and unreliable. No solution exists for its radioactive waste. It produces routine radioactive emissions and poses catastrophic risks.

Ontario's electricity system is centralized and fragile with 75% of supply from five coal plants and three nuclear stations. Such a system wastes electricity during long-distance transmission and is vulnerable to sabotage.

The Opportunity:

A smooth transition is possible. As coal and nuclear technologies are phased out, they can be replaced with a stable mix of alternatives.

First and foremost are big improvements in efficiency and conservation. The good news is that per capita electricity consumption can be decreased without any loss of comfort or lifestyle changes. It's been done in California and can be done in Ontario.

Second, we can choose green electricity options that are cheaper, cleaner, safer and more reliable than coal or nuclear. Electricity supply can come from high efficiency gas generation (combined heat and power plants), renewable energy and inter-provincial connections. In the process, we create a more decentralized green electricity generation and transmission system. A decentralized system is more reliable, reducing the risk of major blackouts.

Third, green energy will enhance Ontario's competitiveness and create jobs. In Germany, the renewable energy sector alone has expanded to 130,000 jobs following implementation of a nuclear phase-out plan. Improvements to the electricity productivity of the Ontario economy are both an economic and environmental necessity. Without the ability to rely on local energy sources, Ontario's long-term economic health depends upon maximizing the potential for renewable energy sources.

The Transition to a Green Electricity Future

A Commitment to Coal and Nuclear Phase-out

- Ontario has promised to shut down all five coal stations by 2009. So far, so good.
- A similar phase-out schedule for nuclear will provide much-needed security to the public and private sector to invest confidently in a green electricity future.
- Of the 20 large nuclear power reactors in Ontario, five have been mothballed since 1997. Don't throw good money after bad. Shut them down permanently. Add the cost of their decommissioning to the already massive debt created by this toxic technology.
- The remaining 15 reactors should be shut down after 25 years of operation, or earlier if any large expenditures are required. Nuclear phase-out thus occurs between 2008 and 2018.
- No new nuclear construction. At double the cost of a high efficiency gas plant and disastrously poor performance, a new nuclear plant is a colossal waste of money.

Big Increases in Efficiency

Ontario has committed to a 5% electricity demand reduction by 2007 and sought demand-side management in the bidding process for new electricity supplies. These are minimal starting points. *A reduction of at least 20% in electricity use by 2010 is possible. This should be Ontario's electricity demand reduction target.*

Letter from CELA – page 3

A 20% reduction in demand can be achieved via measures like:

- Incentive programs for load reductions in the residential and commercial sectors in cooperation with federal programs.
- Public education programs on fuel switching, efficiency and conservation.
- A "public benefits charge" of 0.3 cents per kWh. This would equal \$2.20 per month for a typical household. This would raise \$440 million per year to fund efficiency initiatives.
- Fuel switching to eliminate the inefficient use of electricity for space and water heating.
- Improvements in energy standards for buildings, appliances and other electric devices. E.g., the Energy Star standard should be the minimum for appliances.
- A transparent public planning process for efficiency initiatives through a restructured Ontario Energy Board.
- Real-time electricity meters so that consumers can evaluate their consumption more accurately.

Promote Renewable Energy

- Ontario intends to achieve 5% of electricity supply from renewables by 2007. Far higher targets are necessary and attainable.
- Election promises included more realistic but still modest targets of 10% renewables by 2010 and at least 20% by 2020.
- Learn from Europe where the wind industry has grown 35% over five years. Europe will have 75000 megawatts of wind capacity by 2010 -- enough for 34 million households.
- Compare costs of renewables to nuclear.
- For example, \$3 billion could restart three mothballed nuclear reactors (barring cost overruns, which are typical). \$3 billion could instead build 3000 megawatts of wind turbines that would reliably generate about 8 million megawatt hours of electricity per year (and not produce highly toxic radioactive waste). The three reactors, operating at the average 40% performance of Ontario reactors (in 2003) would generate about 5 million megawatt hours.
- Base renewable energy percentages on energy not capacity. For example, wind is intermittent and wind turbines typically function at about 30% capacity factor.
- Eligible renewable energy technologies should be based on the EcoLogo definition.
- Provincial policies are necessary to encourage net metering in order to mobilize an enormous potential from small renewable systems.

Promote Community Power

- Government policy must encourage diversification of the pool of power producers.
- Power producers can include co-operatives, municipal utilities and district energy companies as well as investor-owned companies.
- Ontario Power generation should invest only in new, low environmental-impact plants and efficiency programs.
- Learn from Europe. Community power has been a significant factor in the success of renewable energy in Europe. In Denmark, 85% of wind capacity is locally owned and 35% in Germany.

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High Efficiency Gas Generation

- Gas-fired electricity generation is a key transition fuel. It will assist with Ontario's transition to a sustainable system. Efficiency improvements and lower environmental and financial costs are possible with the use of Combined Cycle Gas Turbines in Combined Heat and Power (CHP) applications.

Commitment to Environmental Assessment

- All decisions about Ontario's electricity supply mix must be subject to a full environmental assessment review and public hearing process.

What Ontarians are Saying:

- 93% say energy conservation is important to them.
- 84% say Ontarians need to do a better job of conserving energy
- Over 93% say that both new homes and renovations should meet the highest energy efficiency standards available
- 89% strongly support requirements that new homes carry an energy efficiency rating similar to those found on new appliances.
- When asked to rank electricity options, Ontarians rank coal and nuclear at the bottom of their priority list, while they most favour creating renewable energy, followed by encouraging conservation and cogeneration.¹

Part II - PUBLIC CONSULTATION

The Supply Mix Advice Report was prepared by the Ontario Power Authority with very little public consultation and input. Thereafter, Premier, you committed to additional public consultation, which we welcomed. However, the public consultation thereafter announced and carried out by the Ministry of Energy has been highly inadequate as we set out in correspondence to you of February 15, 2006. The consensus among those who attended the consultations and have contacted us is that it was the most poorly designed and conducted public consultation exercise most have ever seen.

Despite that fact, and despite the short notice and in some cases poor weather, we noted that hundreds of people adjusted their schedules to attend the consultations. They were almost uniformly extremely well informed, with excellent input and advice to provide to your government. This demonstrates the wealth of information and input that could be accessed with a more thorough, transparent and participatory consultation process.

We urge you to extend and continue the consultation process with the people of Ontario, and to defer any decisions or directives to the Ontario Power Authority on the Supply Mix for Ontario until you have had an opportunity to do so.

¹ oriolepoll Research, January, 2006. Survey prepared for the Conservation Council of Ontario.

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In that respect, we encourage you to set up a proper consultation process that allows for input in a variety of formats, public and expert, allows transparency and review of the input provided, and allows responses to same.

As this submission is being prepared, the provincial government has announced that it is distributing a brochure to every household in Ontario to solicit Ontarians' views about Ontario's future electricity supply.

CELA has reviewed this brochure as posted to the Ministry of Energy web site on February 20, 2006. Unfortunately, the brochure is also biased and inaccurate and the presentation of the information and questions for the public will prejudice the answers that the province obtains. This is not a legitimate consultation. In particular, the brochure:

- Under-estimates the potential for conservation initiatives
- Mis-states the contribution of wind and renewables for energy production
- Mis-represents the cost of nuclear power and the environmental impacts of nuclear power

We urge the provincial government to immediately commence a proper consultation process, modelled after the Walkerton Inquiry, with fair opportunity for evaluation of the options, access to testing of the information, transparency of process and opportunity for responses to submissions made.

Recommendation 1: We urge the provincial government to immediately commence a proper consultation process, modelled after the Walkerton Inquiry, with fair opportunity for evaluation of the options, access to testing of the information, transparency of process and opportunity for responses to submissions made.

PART III - ENVIRONMENTAL ASSESSMENT

Once the Ontario Power Authority develops the Integrated Power System Plan, it must be subjected to an Environmental Assessment under the Ontario Environmental Assessment Act. You have previously committed to ensuring that this plan is given a full environmental assessment, for which we commend you, and we look forward to participating, along with other Ontarians in that process. We have previously stated that we would encourage you to combine a hearing under the Environmental Assessment Act with the hearing envisaged by the Electricity Act before a combined panel of the Ontario Energy Board and the Environmental Review Tribunal. The OEB hearing will not be an environmental assessment and would not allow for an evaluation of the environmental impacts of the preferred plan or the alternative methods or alternatives to the plan that the OPA ultimately develops. It is critical, for a plan of this magnitude, with such significant repercussions for the economy and ecology of Ontario, that the supply plan and alternatives are thoroughly evaluated based on the impacts to the environment in Ontario as defined in the *Environmental Assessment Act*.

The Ontario *Environmental Assessment Act* (R.S.O. 1990, c. E.18) (hereinafter the *Act*) applies not only to projects, which would limit its reach to physical structures, but also to enterprises,

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activities, programs, proposals, and plans.² Section 3 of the *Act* addresses applicability and states that:

This Act applies to,

- (a) enterprises or activities or proposals, plans or programs in respect of enterprises or activities by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities;
- (b) major commercial or business enterprises or activities or proposals, plans or programs in respect of major commercial or business enterprises or activities of a person or persons, other than a person referred to in clause (a), designated by the regulations;
- (c) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity of a person or persons, other than a person or persons referred to in clause (a), if an agreement is entered into under section 3.0.1 in respect of the enterprise, activity, proposal, plan or program.

In addition, the definition for “undertakings” provided in section 1(1) of the *Act* is identical to the wording of section 3.

Recommendation 2: The provincial government must ensure the full application of the *Environmental Assessment Act* to the Integrated Power System Plan and should appoint a combined hearing panel composed of the Environmental Review Tribunal and the Ontario Energy Board once the IPSP is completed.

PART IV – TERMS OF REFERENCE

We enclose as Schedule A, suggested Terms of Reference for evaluation of the future electricity Supply Mix for Ontario, as provided to you with prior correspondence from us and others on January 25, 2006.

PART V - ERRONEOUS ASSUMPTIONS IN ONTARIO POWER AUTHORITY REPORT

As others have pointed out in more detail, the Ontario Power Authority report contains serious erroneous assumptions and premises in reaching its conclusion that a major reliance on nuclear power including new nuclear plants is recommended.³ CELA has reviewed the Ontario Power Authority report in detail and concurs that that report:

- Over-estimated Ontario’s rate of electricity growth for the future
- Under-estimated Ontario’s potential for renewable energy

² David Estrin and John Swaigen, *Environment on Trial: A Guide to Ontario Environmental Law and Policy*, 3rd ed. (Toronto: Emond Montgomery, 1993) at 194.

³ Gibbons, J., “Meeting Ontario’s Electricity Needs: A Critical Review of the Ontario Power Authority’s Supply Mix Advice Report”, Ontario Clean Air Alliance, January 26, 2006.

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- Under-estimated Ontario's potential for efficiency and electricity productivity improvements
- Under-estimated the potential for biomass and natural gas-fired combined heat and power plants
- Over-estimated future natural gas prices
- Under-estimated the economic costs of nuclear power
- Under-estimated or ignored the accident, terrorism and radioactive waste risks and legacies of nuclear power
- Over-estimated the reliability of nuclear power
- Under-estimated the reliability and capacity of renewable power, and
- Mis-weighted the environmental impacts of the various forms of power generation.

The Ontario Power Authority report must not be used by the Ontario government to make the critical power supply decisions that are under consideration.

Rather, the Ontario government should direct the Ontario Power Authority to initiate a new process to obtain information, including adequate public consultation, and submit a new report as to the recommended supply mix for the Province.

PART VI - ERRONEOUS ENVIRONMENTAL ANALYSIS IN THE ONTARIO POWER AUTHORITY REPORT

The Supply Mix advice by the Ontario Power Authority was based in part on a "life cycle environmental analysis" that biased the results in favour of nuclear power. This part of the analysis was carried out by SENES: Specialists in Energy, Nuclear and Environmental Services. It is based largely on a "weighting system" that arbitrarily weights one type of environmental impact, greenhouse gases, as twenty times more significant than another type of environmental impact, for example, radioactivity. This is the kind of analysis one would set up if one wanted nuclear power to appear more environmentally benign than it is.

The report completely failed to capture all of the significant environmental and health impacts and risks that nuclear power presents.

- The design of the study explicitly excluded severe accident risks.
- The study discounted the intractable problem of highly radioactive used fuel that will remain toxic and dangerous for a million years.
- It left out ground water impacts which are one of the major environmental risks of uranium mining.
- The report left out transportation for all sectors but transport of toxic radioactive used fuel is of huge import.
- The report authors decided not to include human health and safety as a separate factor on the basis that it would be captured in air quality impacts. But for the nuclear power life cycle, major health and safety impacts occur in uranium mining, milling, mine tailings, radioactive emissions to air and water of routine nuclear power plant operations, as well as in used fuel handling, storage, and transportation over the million year time frame of that spent fuel.
- Accident risks are left out because of their calculated low probability according to the nuclear engineers but in no other form of electricity generation except nuclear power would a severe accident leave much of the population of southern Ontario looking for another place to live.

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- The assessment of waste impacts in the study is on the basis of the weight of the used fuel and other wastes; NOT on its toxicity! Furthermore, the Decommissioning study looked only at waste volumes, and not at health and safety issues.

PART VII - EFFICIENCY AND CONSERVATION

In *Power for the Future*,⁴ CELA and the Pembina Institute found, based on the Canadian Integrated Modeling System, with the assistance of the Energy and Materials Group at Simon Fraser University, that Ontario's electricity demand could be reduced by 40% against business-as-usual projections by 2020. This calculation was based on currently available energy efficient technologies and practices, fuel switching and increased industrial and commercial co-generation. Summer peak electricity grid demand could be reduced by nearly 50%.

To accomplish these efficiencies would require a societal expenditure across all sectors of 18 billion dollars over 15 years. However, over 95% of this amount would be recovered by energy consumers through cost savings.

Our report found that three types of technological and behavioural changes would account for these savings:

1. The adoption of the most energy efficient technologies instead of conventional products in all sectors⁵;
2. The expansion of cogeneration in the industrial and commercial / institutional sectors as energy consumers take advantage of the efficiencies offered by combined heat and power, and generating power through cogeneration and micro-turbines instead of buying from the grid, and
3. A shift from electricity to natural gas for heating in the residential and commercial / institutional sectors.

In order to expedite these changes, financial incentives to reduce the capital cost of energy efficient or non-electric technologies, and innovate financing that would allow purchasing decisions more on a life-cycle cost rather than a first-cost basis should be developed by the provincial government.

These recommendations are far more cost effective with a much more sustainable electricity system as a result compared to the Ontario Power Authority Report and its recommendation to spend \$85 billion dollars on Ontario's electricity system over essentially the same time frame, with almost none of that recoverable by consumers in efficiencies, but rather added to consumers' and tax payers' bills.

⁴ Winfield, M., McClenaghan, T., et al, *Power for the Future: Towards a Sustainable Electricity System for Ontario*, Pembina Institute for Appropriate Development, Canadian Environmental Law Association, 2004

⁵ The CIMS model estimates the future energy demand by simulating the addition and replacement of energy using "stock" – industrial process equipment, electric motors, commercial lighting equipment, residential appliances, etc. The addition of new stock is linked to forecasts of macroeconomic parameters. Stock replacement is determined by the life of the piece of equipment or its availability.

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Although in the Pembina/CELA report, Ontario's new power recipe showed that demand reductions could amount to 73,500 Gwh, (12,340 MW reductions for peak demand), the Ontario Power Authority Report assumes a meagre 1810 MW by 2025. Furthermore, if conservation is better than the very low projections used by the OPA in the future, the OPA recommends scaling back on renewable power!

Big Increases in Efficiency

Ontario has committed to a 5% electricity demand reduction by 2007 and sought demand-side management in the bidding process for new electricity supplies. These are minimal starting points. *A reduction of at least 20% in electricity use by 2010 is possible. This should be Ontario's electricity demand reduction target.*

- A 20% reduction in demand can be achieved via measures like:
- Incentive programs for load reductions in the residential and commercial sectors in cooperation with federal programs.
- Public education programs on fuel switching, efficiency and conservation.
- A "public benefits charge" of 0.3 cents per kWh. This would equal \$2.20 per month for a typical household. This would raise \$440 million per year to fund efficiency initiatives.
- Fuel switching to eliminate the inefficient use of electricity for space and water heating.
- Improvements in energy standards for buildings, appliances and other electric devices. E.g., the Energy Star standard should be the minimum for appliances.
- A transparent public planning process for efficiency initiatives through a restructured Ontario Energy Board.
- Real-time electricity meters so that consumers can evaluate their consumption more accurately

Recommendation 3: A reduction of at least 20% in electricity use by 2010 is possible. This should be Ontario's electricity demand reduction target. By 2020, Ontario's electricity demand should be reduced by 40% against business-as-usual projections.

PART VIII - RENEWABLE ENERGY SOURCES

In Power for the Future, CELA and Pembina assessed the available sources of renewable energy and their potential for Ontario. Since then, David Suzuki Foundation carried out a more detailed assessment of the available renewable energy sources in Ontario. In comparison, the Ontario Power Authority has under-estimated the potential for renewable energy sources in Ontario, and has also mis-characterized the maturity, reliability and capacity of these energy technologies.

	PEMBINA / CELA, 2004	DAVID SUZUKI FOUNDATION, 2005	ONTARIO POWER AUTHORITY SUPPLY MIX ADVICE DEC. 2005
DEMAND REDUCTIONS	12000 MW		1810 – 4300 MW

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DEMAND REDUCTIONS	2000 MW		
SOLAR ROOFS	750 MW	1263 MW to grid plus thousands of hot water systems, pool heaters, passive heating, air ventilation	40 MW solar-powered generation
EXISTING HYDRO	6300 MW		
EXISTING PEAKING GAS & REPLACED OIL	3000 MW		5000 MW
WIND POWER	3000 MW	8000 MW by 2012	6700 MW by 2025
BIOMASS	375 MW	2450 MW	500 MW
NEW COMBINED CYCLE NATURAL GAS	3800 MW		1500 MW - 7500 MW
NEW HYDRO	1200 MW	1000 MW low impact	2850 MW by 2025 plus 1250 hydro imports
GEOHERMAL	not estimated		125,000 systems 2010; 341,000 systems 2020
NUCLEAR	0 MW		12,900-15,900 MW
COAL GASIFICATION	0 MW		250 MW
COAL-FIRED	0 MW		keep on standby

More recent sources show greater potential estimates for most of the renewable power sources than those we very conservatively relied on in the Power for the Future Report. Nevertheless, we demonstrated that meeting Ontario's future electricity supply needs after the coal phase-out and after the end of life of the current nuclear plants is highly achievable even with conservative renewables estimates. The more recent renewables estimates give even greater confidence to this conclusion, and further erode the Ontario Power Authority recommendations to continue large-scale reliance on nuclear power.

The Ontario Wind Energy Association estimates that Ontario could produce 40,000 MW of wind energy. Solar hot water heating could be installed in 70% of the province's homes, in addition to installation of photo-voltaic cells for electricity generation. Geothermal energy hasn't even begun to be explored despite its huge potential.

It is essential that Ontario institute a Standard Offer Contract on attractive terms for renewable energy, at the earliest opportunity. The Province of Ontario must provide for conditions that will attract robust sustainable, low impact renewable energy technologies. Ontario should set a goal to be a world leader in renewable energy technology.

Promote Renewable Energy

- Ontario intends to achieve 5% of electricity supply from renewables by 2007. Far higher targets are necessary and attainable.

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- Election promises included more realistic but still modest targets of 10% renewables by 2010 and at least 20% by 2020.
- Ontario must learn from Europe where the wind industry has grown 35% over five years. Europe will have 75000 megawatts of wind capacity by 2010 -- enough for 34 million households.
- Compare costs of renewables to nuclear.
- For example, \$3 billion could restart three mothballed nuclear reactors (barring cost overruns, which are typical). \$3 billion could instead build 3000 megawatts of wind turbines that would reliably generate about 8 million megawatt hours of electricity per year (and not produce highly toxic radioactive waste). The three reactors, operating at the average 40% performance of Ontario reactors (in 2003) would generate about 5 million megawatt hours.
- Base renewable energy percentages on energy not capacity. For example, wind is intermittent and wind turbines typically function at about 30% capacity factor.
- Eligible renewable energy technologies should be based on the EcoLogo definition.
- Provincial policies are necessary to encourage net metering in order to mobilize an enormous potential from small renewable systems.

Promote Community Power

- Government policy must encourage diversification of the pool of power producers.
- Power producers can include co-operatives, municipal utilities and district energy companies as well as investor-owned companies.
- Ontario Power generation should invest only in new, low environmental-impact plants and efficiency programs.
- Learn from Europe. Community power has been a significant factor in the success of renewable energy in Europe. In Denmark, 85% of wind capacity is locally owned and 35% in Germany.

Recommendation 4: It is essential that Ontario institute a Standard Offer Contract on attractive terms for renewable energy, at the earliest opportunity. The Province of Ontario must provide for conditions that will attract robust sustainable, low impact renewable energy technologies. Ontario should set a goal to be a world leader in renewable energy technology.

PART IX - NUCLEAR POWER

Ontarians are still paying off the 38 billion dollars in "stranded debt" that the former Ontario Hydro accumulated, primarily from its nuclear power investments. Now the Ontario Power Authority envisages another 45 billion dollar nuclear investment. As the Ontario Clean Air Alliance has graphically illustrated, the provincial government has overseen or committed to a ratio of \$73 dollars expenditures for new supply versus every 1\$ for electricity conservation and efficiency between 2004 and the present date.⁶ Twelve billion dollars in new supply

⁶ Ontario Clean Air Alliance, Air Quality Issues Fact Sheet #16 "Electricity Expenditure", www.cleaalliance.org

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commitments have been made in the past two years; of which 5.27 billion dollars have been for Bruce and Pickering Nuclear Generating Stations refurbishment / restart projects. Nuclear power generation is not sustainable nor renewable. Uranium mining in Saskatchewan is leaving a highly toxic legacy to the natural environment and surrounding First Nations communities and watersheds. High level radioactive waste from used uranium fuel will leave us a legacy of highly toxic waste that will require centuries of governance structures to safeguard. Nuclear power presents environmental and health threats even from routine operations. For example, routine water emissions such as tritium impact drinking water sources for Great Lakes communities nearby. Nuclear power also presents enormous security risks, such as risk of terrorist attacks on plants, waste facilities or diversion of high level waste.

Cost and Reliability

- Nuclear power is enormously costly - for example Darlington was 500% over budget and the Ontario Power Authority report proposes 45 billion dollars for up to 12 new nuclear plants. However, even that cost estimate is likely far too low given the experience with the actual costs of building nuclear power in Ontario. If the Darlington costs of twenty years ago were applied today, regardless of inflation and increased materials and labour costs, the proposed nuclear new build costs would amount to almost 60 billion dollars.
- Nuclear power reliability is poor - instead of a reliable 30 or 40 years of operation, major problems develop after around 12 years
- Nuclear power requires major public subsidies and special rules to operate such as the Nuclear Liability Act with its \$75 million cap on liability from a nuclear accident!

Potential for Accidents

- The wrong kind of accident would be irreversibly catastrophic to Ontario and is not unthinkable - consider Chernobyl in 1986, Three Mile Island in 1979, Windscale in 1957, SL-1 in 1961, NRX at Chalk River in 1952, Fermi in 1966, Lucens in Switzerland in 1969
- In addition to these have been many other lesser known accidents and incidents in every decade since the 1950's in every type of nuclear power plant - heavy water reactors, gas-cooled reactors, pressurized water reactors, boiling water reactors and fast breeding reactors
- At least 9 accidents world wide have led to deaths from exposure to ionizing radiation.

What about the Waste?

- By the end of 2004, there were 1.9 million used fuel bundles in Canada, or 45,000 metric tonnes of nuclear fuel waste and this number continues to climb with continued production of nuclear fuel waste from on-going nuclear power plant operation
- The Nuclear Waste Management Organization has acknowledged that radioactive waste fuel will remain toxic for a million years.
- Nuclear Waste Management Organization (NWMO) estimates the cost of managing this waste to be 24.4 billion dollars.

Implications

- The challenges and questions around governance arrangements, financing arrangements, and technological arrangements to provide for a 100,000 year legacy of radioactive toxic high level nuclear fuel waste from our current generations' decisions to meet our current wasteful and fleeting energy demands with nuclear power production dictate one answer: we must phase out nuclear power production in Canada.

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Phase-Out Nuclear along with Coal

- Ontario has promised to shut down all five coal stations by 2009. So far, so good.
- A similar phase-out schedule for nuclear will provide much-needed security to the public and private sector to invest confidently in a green electricity future.
- Of the 20 large nuclear power reactors in Ontario, five have been mothballed since 1997. Don't throw good money after bad. Shut them down permanently. Add the cost of their decommissioning to the already massive debt created by this toxic technology.
- The remaining 15 reactors should be shut down after 25 years of operation, or earlier if any large expenditures are required. Nuclear phase-out thus occurs between 2008 and 2018.
- No new nuclear construction. At double the cost of a high efficiency gas plant and disastrously poor performance, a new nuclear plant is a colossal waste of money.

RECOMMENDATION 5: No further Nuclear Generating Stations should be retro-fitted or re-furbished in Ontario. Once each of the plants reaches the end of its current life or requires large expenditures, it should be permanently shut down. No new nuclear plants should be built in the province.

PART X - CONCLUSION:

The Canadian Environmental Law Association urges the provincial government to reject the biased Ontario Power Authority advice based on an analysis that was guaranteed to give nuclear as the predominant answer.

CELA urges the provincial government to provide for the open and public debate on nuclear power that it promised, in a transparent and democratic forum, with opportunity for true participation by the Ontario public.

The OPA report was not developed in an open, transparent and participatory manner. Giving very little time for submissions in the middle of the summer; not allowing the public to see the submissions that it was considering until the end of its process; not allowing any forum for debate, questioning and response, nor any testing of evidence and assumptions do not amount to an open, democratic process. The OPA's Supply Mix Advice should be rejected and the Ontario government should start over with a real evaluation of Ontario's electricity options.

PART XI - SUMMARY OF RECOMMENDATIONS:

Recommendation 1: We urge the provincial government to immediately commence a proper consultation process, modelled after the Walkerton Inquiry, with fair opportunity for evaluation of the options, access to testing of the information, transparency of process and opportunity for responses to submissions made.

Recommendation 2: The provincial government must ensure the full application of the *Environmental Assessment Act* to the Integrated Power System Plan and should appoint a

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combined hearing panel composed of the Environmental Review Tribunal and the Ontario Energy Board once the IPSP is completed.

Recommendation 3: A reduction of at least 20% in electricity use by 2010 is possible. This should be Ontario's electricity demand reduction target. By 2020, Ontario's electricity demand should be reduced by 40% against business-as-usual projections.

Recommendation 4: It is essential that Ontario institute a Standard Offer Contract on attractive terms for renewable energy, at the earliest opportunity. The Province of Ontario must provide for conditions that will attract robust sustainable, low impact renewable energy technologies. Ontario should set a goal to be a world leader in renewable energy technology.

Recommendation 5: No further Nuclear Generating Stations should be retro-fitted or re-furbished in Ontario. Once each of the plants reaches the end of its current life or requires large expenditures, it should be permanently shut down. No new nuclear plants should be built in the province.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



per

Theresa A. McClenaghan, Counsel

Kathleen Cooper, Senior Researcher

Paul Muldoon, Executive Director and Counsel

Richard Lindgren, Counsel

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Jun. 19 2006 12:22PM P33

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Schedule A

SUGGESTED TERMS OF REFERENCE FOR A PUBLIC CONVERSATION / INQUIRY ON THE FUTURE ELECTRICITY SUPPLY MIX FOR ONTARIO

January 25, 2006

OVER-ARCHING QUESTIONS

- What are the public's priorities among competing supply mix options?
- What are the public's concerns with particular options?

HOW MUCH ELECTRICITY WILL WE NEED?

- What impact on the need for generation will arise from the use of recent electricity consumption data rather than assuming electricity consumption will grow twice as fast as recent experience? What impact would arise from assuming that electricity consumption will grow at a slower rate?

COMPARING ACCIDENT RISKS OF GENERATING OPTIONS

- What are other estimates of nuclear accident risks and societal costs for Ontario?
- What are other estimates of accidents risks from other forms of electricity generation and how do they compare?

COMPARING COSTS OF GENERATING OPTIONS

- What are appropriate costs of capital for comparing generation options?
- Should a social cost of capital (i.e. a cost for capital that reflects the true cost to society of the capital) be calculated for the supply mix decision as is traditionally done for public decisions?
- What are the available gas price forecasts and what is the impact of assuming forecasts other than the highest price forecasts for the available options?

COMPARING ENVIRONMENTAL IMPACTS OF GENERATING OPTIONS

- What are appropriate weighting criteria for comparing environmental impacts of various supply options?

COMPARING IMPACTS ON SMALL BUSINESS OF GENERATING OPTIONS

- What is the impact on emerging industries of the competing portfolios? For example, what is the impact on the emerging renewables industry of a small allocation in the supply mix?
- Early commitment to nuclear power through the portfolios as outlined by OPA effectively caps or limits investment in and proportion of renewables and conservation. What alternatives exist to avoid this effect?

COMPARING RELIABILITY OF GENERATING OPTIONS

- The OPA portfolios assume an 85% availability for nuclear plants; what is the actual experience for CANDU's for all years, including those where the plants were shut down for major repairs and refurbishments?
- How do the plans change for alternative costs of capital, performance and capital cost estimates when nuclear factors are based on historic performance are applied?

COMPARING THE ENVIRONMENTAL AND SOCIETAL COSTS OF SUPPLY AND DEMAND OPTIONS

- What are the full range of so-called "external" costs (i.e. those environmental and social costs not normally included in standard financial statements) for the main supply and demand options?

COMPARING HEALTH IMPACTS AND COSTS OF GENERATING OPTIONS

- What are the potential health effects and impacts of catastrophic accidents arising from the various supply technologies assumed in the portfolios?
- What are the health effects arising from routine operations from the various supply technologies assumed in the portfolios?

COMPARING SECURITY ISSUES OF GENERATING OPTIONS

- What is the risk to the public and to a secure electricity supply arising from threat of terrorism or other attacks from the various supply options?
- What is the risk to the economy of significant reliance on a large amount of any one of the electricity supply technologies should the technology or fuel become unavailable or too risky?

COMPARING IMPACTS ON LOW INCOME CONSUMERS OF GENERATING OPTIONS

- What impact on the portfolios does fuel switching (i.e. programs that switch end uses including heating and water heating from electricity to alternative fuels and technologies) provide?
- What alternatives are available for low income families to reduce electricity consumption, switch to other fuels and has OPA dealt with this question adequately?

IMPACT OF DECENTRALIZED APPROACHES ON SUPPLY MIX OPTIONS

- Should dispersed and decentralized community-based and smaller scale generation be given preference due to lower transmission costs and impacts, greater reliability and reduction in system losses? What are these decentralized generation and conservation options? What is the potential for these options?

WEIGHTING TO PROVEN TECHNOLOGIES IN SUPPLY MIX ADVICE

- To what extent should the supply plan be based on untested technologies or on currently available technologies?

LIABILITY FROM WASTE GENERATION AND PLANT DECOMMISSIONING

- What potential liability would arise in the portfolios, above and beyond the current estimates for nuclear waste management and nuclear power plant decommissioning?

LESSONS FROM OTHER JURISDICTIONS

- What have the best and most aggressive strategies and programs achieved in other jurisdictions for particular end-use efficiencies and for renewables?

COMPARING IMPACTS ON CONSERVATION AND RENEWABLES DEVELOPMENT OF GENERATING MIX OPTIONS

- Ontario Power Authority found a much larger technical potential for conservation and renewables than it used in its supply scenarios, based on a concern that conservation and renewables will not emerge sufficiently. What policy choices does government have that would create greater assurance that conservation and renewables would emerge as a major proportion of Ontario's electricity supply?
- What is the potential for electricity use reduction from government appliance and building standards?
- What is the cost of delaying commitments to nuclear power? If time is allowed for aggressive commitment to renewables and conservation, and commitment to nuclear is delayed by various numbers of years, what is the impact? What would be available as alternatives for supply and at what cost in the event that another permanent supply then needed to be developed?
- If an aggressive commitment to renewables and conservation was successful, what would be the savings to Ontario compared to a commitment to new nuclear power?

IMPACTS OF LARGE SCALE ELECTRICITY IMPORTS

- What are the environmental impacts, such as those associated with transmission facilities, from large-scale electricity imports?



David
Suzuki
Foundation

GREENPEACE.CA



Pembina Institute
for Appropriate Development

News Release -- Wednesday March 1, 2006

Environmental Groups Release Legal Opinion... **Electricity Plan Requires Provincial Environmental Assessment**

Toronto: A provincial environmental assessment will be required for the long-term electricity plan being developed by the Ontario Power Authority (OPA), according to a legal opinion released today by the David Suzuki Foundation, Greenpeace Canada, and the Pembina Institute. The opinion was prepared by legal counsel with the Canadian Environmental Law Association.

"The legal opinion makes it clear that the Ontario Power Authority's electricity plan requires a provincial environmental assessment. An assessment will provide a badly needed opportunity for a rigorous public examination of the flawed assumptions behind the Power Authority's December 2005 recommendations," said Dr. Mark Winfield, Director of the Pembina Institute's Environmental Governance Program.

The OPA's draft 20-year plan has been widely criticized for underestimating renewable energy and conservation potential, while over-estimating growth in electricity demand in order to rationalize new nuclear power plants. Nuclear power has been condemned because of safety and environmental problems as well as high cost and poor performance. The government has limited public consultation to a 77-day comment period under the Environmental Bill of Rights (including winter holidays), three days of public meetings in February 2006, and distribution of a 12-page promotional leaflet to Ontario households last week.

"So far we've had a bad electricity plan and a bad consultation process. To make the case for a sustainable electricity system, we need real public consultation not public relations. There's a legal obligation to hold a full environmental assessment on this controversial nuclear power plan" said Dave Martin, Energy Coordinator for Greenpeace Canada.

"A variety of recent reports have shown that renewable energy sources and efficiency can provide Ontarians with better and more reliable options than nuclear energy" said Dale Marshall, policy analyst with the David Suzuki Foundation.

In January, environmental groups proposed a 4-6 month Walkerton-style inquiry to debate and test the assumptions of the OPA's draft plan. The report of the inquiry would guide the government's final directives to the OPA. Once the plan is finalized by the OPA, it would be subject to a provincial environmental assessment, as required by Ontario's Environmental Assessment Act. However, the provincial government is expected to issue directives to the OPA in mid-March. The Electricity Act, the legislation that created the OPA, only requires a review of the plan by the Ontario Energy Board (OEB). The OEB review would focus on economics, and not environmental or social issues. An environmental assessment of the plan

would allow a discussion of the province's electricity needs and alternative energy strategies that would not be addressed by the OEB or in project-specific assessments.

The legal opinion is available on the website of the Canadian Environmental Law Association at www.cela.ca.

For more information, please contact:

Dale Marshall, David Suzuki Foundation, cell: 613-302-9913

Dave Martin, Greenpeace Canada, cell: 416-627-5004

Mark Winfield, The Pembina Institute, Tel: 416-978-5656, cell 416-434-8130

Richard Lindgren, Canadian Environmental Law Association (h) 613-385-1686

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Jun-19-2006 10:10

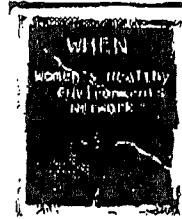
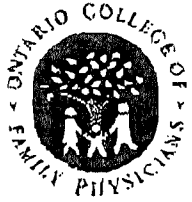
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June 15 2006

The Honorable Dalton McGuinty, Premier
Rm. 281 Main Legislative Building
Toronto ON M7A 1A4

Dear Premier McGuinty:

Re: Response to Ontario Power Authority Proposal

As health professionals, we are concerned by the government's decision to expand the use of nuclear reactors in Ontario because adequate measures are not in place to protect the public from catastrophic events, to monitor air and water levels of radioactive by-products, or to protect people from chronic exposure to these by-products.

Although we are pleased with the government's position to phase out all coal-fired power plants by 2009 to protect health and the environment from toxic emissions, the hazards to health from nuclear plants are such that we cannot endorse their usage. Others share our concerns.

The International Agency for Research on Cancer (IARC) lists a number of radioactive by-products as carcinogenic to animals, and to children who have been exposed to these radionuclides which were released accidentally by the nuclear power industry¹.

The U.S. National Academies of Science released a July 29, 2005 report on the health effects of ionizing radiation: The Biological Effects of Ionizing Radiation (BEIR) VII, which confirmed that there is no safe level of exposure to radiation, and that even low levels can cause cancer².

There are regular emissions of radioisotopes from nuclear power plants into air and water. The CANDU reactor emits carbon-14 and tritium, as well as other radioisotopes in minute amounts. Tritium is a radioactive isotope of hydrogen that combines readily with oxygen to form radioactive water. It binds easily with organic molecules including DNA. Tritium occurs in nature at extremely low levels; human activity has substantially increased the levels in our biosphere. This is a concern as it has a half-life of approximately 12.5 years, and the frequent, small amounts released in water accumulate in living organisms. Although about 90% of tritium that enters the body is quickly eliminated, 10% remains where it can cause health, mutagenic, teratogenic and transmutational effects³.

Gordon Edwards, Ph.D., under contract to the Canadian Environmental Advisory Council, has discussed multiple health effects related to nuclear power in his report "Health and Environmental Issues Linked to the Nuclear Fuel Chain"⁴.

Jun-19-2006 10:11 From:CELA

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The Medical Officer of Health of the City of Toronto, Dr. David McKeown, also expressed concern in his letter to you dated February 3, 2006:

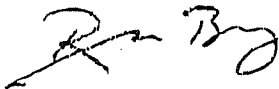
"The risks of radioactive waste continue for thousands of years after the fuel has been used to generate electricity and the waste requires management over this time period. The use of nuclear power creates risks that must be managed for many generations to come. This energy source therefore does not adhere to the key principle of sustainable development. In contrast, CDM (energy conservation and demand management) and renewable energy do not carry these risks and impacts."

Along with the intractable problem of solid nuclear waste and what to do with it, there are the non-quantifiable risks of catastrophic accidents or nuclear terrorism.

While we recognize that no form of energy production is without consequences that can be challenging, the spectre of serious health risks for generations to come makes nuclear power a most unpalatable solution.

We urge you to take these health concerns seriously, do appropriate research, institute much higher levels of conservation, efficiencies and renewable sources of energy, and place a moratorium on any additional development of nuclear power production in Ontario as soon as possible.

Yours truly,



Riina Bray, B.A.Sc. M.Sc. MD, CCFP, MHSc
Chair, Environmental Health Committee

Cc: The Honorable Dwight Duncan, Minister of Energy
Canadian Association of Physicians for the Environment
Canadian Environmental Law Association
Women's Healthy Environment Network
International Institute of Concern for Public Health
Canadian Partnership for Children's Health and Environment

REFERENCES:

1. International Agency for Research on Cancer: <http://monographs.iarc.fr/htdocs/indexes/vol78Index.html>
2. Biological Effects of ionizing Radiation (BEIR) VII report:
<http://www.nuclearactive.org/news/070606.html>
3. Tritium, Properties, Metabolism, Dosimetry: http://www.cerrie.org/committees_papers/Paper_9-01.doc
4. Health and Environmental Issues Linked to the Nuclear Fuel Chain: http://www.ccnr.org/ceac_B.html

Jun-16-2006 15:34

From-CELA

06/16/2006 14:50

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T-187 P.001/002 F-337

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of the
Environment

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**JUN 16 2006**

Ms. Michelle Swenarchuk
Executive Director and Counsel
Canadian Environmental Law Association
130 Spadina Avenue, Suite 301
Toronto ON M5V 2L4

Dear Ms. Swenarchuk

Thank you for your letter of December 15, 2005 in which you requested that the Integrated Power Supply Plan (IPSP) be made subject to the requirements of the *Environmental Assessment Act* (EAA) and your subsequent letter of February 28, 2006, enclosing a legal memorandum, prepared by the Canadian Environmental Law Association.

Since your letters, Cabinet has made a regulation that confirms that the IPSP is not subject to the EAA. The regulation designates and exempts the IPSP from the EAA. The IPSP was designated because it is not subject to the EAA. The *Electricity Act, 1998* specifically states that the Ontario Power Authority (the Authority) is not a Crown agent for any purpose therefore the activities of the Authority are not subject to the EAA. The exemption of the IPSP reflects the legislative framework for electricity in Ontario. The regulation also exempts government activities in relation to the IPSP from the EAA. This confirms the ministry's long standing position that government policy making is not subject to the EAA.

Specific projects which result from the IPSP, however, will be subject to all applicable EA requirements.

For your information, a copy of the regulation can be found through a link on the Environmental Bill of Rights Registry www.ene.gov.on.ca/envregistry/028017ex.htm and is also available on the Government of Ontario website for legislation and regulations (www.e-laws@gov.on.ca).



FROM : LINDGREN

PHONE NO. : 6133851952

Jun. 19 2006 12:27PM P42

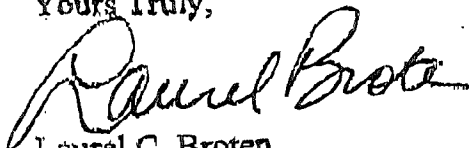
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Thank you for bringing your concern to my attention.

Yours Truly,



Laurel C. Broten
Minister of the Environment

c. Ms. Morag Carter
Director, Climate Change Program
David Suzuki Foundation
Suite 219, 2211 West 4th Avenue
Vancouver BC V6K 4S2



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

MEMORANDUM

To: Mark Winfield, Pembina Institute
David Martin, Greenpeace Canada
Jose Etcheverry, David Suzuki Foundation
From: Paul Muldoon, Theresa McClenaghan, Richard Lindgren
Date: February 27, 2006
Re: Applicability of Ontario's *Environmental Assessment Act* to Ontario's Integrated Power System Plan

EXECUTIVE SUMMARY

The forthcoming Integrated Power System Plan (IPSP) is a public sector "plan" to which Ontario's *Environmental Assessment Act* (EA Act) applies. The application of the EA Act is mandatory since there are no declaration orders or regulations which exempt the IPSP from EA Act coverage. While special EA approval and exemption provisions are currently in place for certain individual electricity projects (see Ontario Regulation 116/01 and Ontario Regulation 334), these provisions do not alter, affect or preclude the EA Act's applicability to the provincial IPSP. In short, there is no constitutional or statutory reason for the IPSP to be developed outside of the EA Act.

PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) has been requested to provide a legal opinion on the applicability of Ontario's EA Act to the forthcoming IPSP, which is expected to be released in 2006 pursuant to Ontario's *Electricity Act, 1998*. The specific legal issue is whether and to what extent the EA Act applies to the IPSP to be developed by the Ontario Power Authority (OPA) on the behest of the Government of Ontario.

Accordingly, CELA has prepared the following summary of why and how the EA Act applies to public sector "plans" and "programs" in Ontario, with specific consideration of the EA Act's applicability to the IPSP.

PART II - RATIONALE FOR EA ACT COVERAGE OF "PLANS" AND "PROGRAMS"

In recognition of the need for ecological and socio-economic considerations to be incorporated early in environmental planning processes, strategic level EA procedures have been developed by various jurisdictions across Canada and other countries. "Strategic EA," or the EA of plans, policies and programs, is mandatory in some jurisdictions and discretionary in others. In Ontario, strategic EA is mandatory since the legislative framework requires EA of "enterprises, activities, programs, proposals, and plans," as described below.

The widespread acceptance that EA improves the quality of decisions about proposed undertakings has led to the development and practice of strategic environmental assessment (SEA), or the environmental assessment of policies, plans and programs. This is a result of the broadly held view that project-level EA may be too limited, and may occur too late in the planning process, to ensure that all alternatives and impacts relevant to sustainability goals are adequately considered.¹ Some of the societal and environmental benefits of strategic level EA are that it:

- facilitates consultation between authorities on, and enhances public involvement in, evaluation of environmental aspects of policy, plan and program formulation;
- encourages consideration of alternatives often ignored or not feasible in project-level EA;
- allows more effective analysis of cumulative effects of both large and small projects;
- encourages and facilitates the consideration of synergistic effects;
- allows more effective consideration of ancillary or secondary effects and activities; and
- facilitates consideration of long range and delayed impacts.²

The 1980 World Conservation Strategy was the first to highlight the need to integrate environmental considerations early in development planning stages. This concept then became an accepted part of World Bank policy in 1987, which stated that environmental issues must be addressed as part of overall economic policy rather than project by project.³ Since that time, many jurisdictions around the world have integrated strategic level EA into their existing processes. For example, the United States requires EA for "legislation and other major Federal actions significantly affecting the quality of the human environment."⁴ Further, the U.S. Council on Environmental Quality has interpreted "major Federal actions" to include policies, plans, programs, rules and regulations.⁵

In his text, Wood explains the EA process using a tiered structure to show the evolution of a development from the early planning phases to project implementation. He states that:

Generally, there exists a tiered forward planning process which starts with the formulation of a policy at the upper level, is followed by a plan at the second

¹ Christopher Wood, *Environmental Impact Assessment: A Comparative Review* (Essex, England: Addison Wesley Longman, 1995) at 268.

² Wood, *supra* note 1 at 268.

³ Wood, *supra* note 1 at 267.

⁴ *National Environment Protection Act of 1969*, 42 U.S.C. § 4332.

⁵ Barry Sadler et al., "Environmental assessment in a changing world: evaluating practice to improve performance (final report)." *International Study of the Effectiveness of Environmental Assessment* (1996). Hull, Quebec, Canadian Environmental Assessment Agency and International Association for Impact Assessment.

stage, and by a programme at the end. A policy thus may be considered as the inspiration and guidance for action, a plan as a set of coordinated and timed objectives for implementing the policy, and a programme as a set of projects in a particular area.⁶

Wood then adopts an example in the general category of transportation to illustrate the process and the level of EA applicable at each stage. The example is reproduced below:⁷

Area	Policies (SEA)	Plans (SEA)	Programs (SEA)	Projects (EA)
Transportation	Transport Policy	Long-term national roads plan	Five-Year road building program	Construction of motorway section

In summary, applying EA principles to largescale or overarching governmental plans (i.e. before individual, site-specific projects are undertaken to implement the overall plan) makes considerable sense from environmental, social, cultural and economic perspectives.

PART III – LEGAL BASIS FOR EA ACT COVERAGE OF “PLANS” AND “PROGRAMS”

(a) Overview of the EA Act

In essence, Ontario's EA Act establishes an information-gathering and decision-making process that is intended to be open, participatory, and comprehensive (i.e. addressing broad matters such as resource conservation, pollution control, land use planning, public health and safety, economic considerations, etc.).

The purpose of the EA Act is defined in section 2 as “the betterment of the people of Ontario” by providing for the “protection, conservation and wise management” of the environment.

“Environment” is broadly defined in section 1 of the EA Act as:

- (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

⁶ Wood, *supra* note 1 at 266.

⁷ Wood, *supra* note 1 at 267.

- (f) any part or combination of the foregoing and the interrelationships between any two or more of them.

In general terms, Ontario's EA Act applies to "undertakings" (see below) proposed by public sector proponents, unless such undertakings have been exempted from the Act by way of "declaration orders" or regulations. The EA Act does not apply to private sector undertakings, unless such undertakings have been designated by regulation as undertakings to which the Act applies. It is also possible for proponents to voluntarily agree to the application of the EA Act.

Where an undertaking is subject to the EA Act and requires the preparation of an individual EA, the proponent is responsible for preparing the necessary EA documentation in consultation with interested persons. At the present time, Ontario's individual EA process consists of four main steps:

- preparation and approval of "Terms of Reference" to direct the content and conduct of the EA process for the proposed undertaking;
- preparation and submission of the EA, consisting of the studies, reports and research prescribed by the Terms of Reference;
- government and public review of the EA submitted by the proponent; and
- Ministerial decision on the proposed undertaking (i.e. approve, reject, refer to mediation, or refer to the Environmental Review Tribunal for a public hearing and decision).

(b) Which Proponents and Undertakings are Subject to the EA Act?

"Proponent" is defined under section 1 of the EA Act as:

the person who,

- (a) carries out or proposes to carry out an undertaking; or
- (b) is the owner or person having charge, management or control of an undertaking.

"Person" is defined under section 1 of the EA Act as including "a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of the *Crown Agency Act*, [or] a public body". "Public body" is further defined as "a body other than a municipality that is defined as a public body by the regulations".

"Undertaking" is defined under section 1 of the EA Act as:

- (a) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies, or by a municipality or municipalities;

- (b) a major commercial or business enterprise or activity or a proposal, plan or program in respect of a major commercial or or business enterprise of a person or persons, other than a person or persons referred to in clause (a), that is designated by the regulations; or
- (c) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity of a person or persons, other than a person or persons referred to in clause (a), if an agreement is entered into under section 3.0.1 in respect of the enterprise, activity, proposal, plan or program.

The foregoing definitions of “undertaking” are essentially repeated in section 3 of the EA Act, which, in effect, specifies that the Act applies to:

- public sector undertakings proposed by or on behalf of the provincial Crown, by public bodies, or by municipalities;
- private sector undertakings that are designated by regulation; and
- undertakings by proponents who consent in writing to the application of the EA Act.

Despite the potentially broad scope of the foregoing provisions, it should be noted that countless public sector proponents and undertakings have been exempted by “declaration orders” (section 3.2) or by regulation (section 39(f)).

Nevertheless, if a public sector undertaking is not exempted by order or regulation, then the proponent must apply under the EA Act to the Minister of the Environment for approval to proceed. This application consists of the Terms of Reference and the EA documentation prepared in accordance with the Terms of Reference (section 5). Proponents are under a mandatory legal duty to consult with “interested persons” when preparing the Terms of Reference and EA documentation (section 5.1).

The wording of section 3 of the EA Act is mandatory in nature, and requires compliance by proponents of non-exempted undertakings, regardless of whether the undertaking is a “plan” or a site-specific project. This mandatory language is in contrast to some other EA processes in Canada, which instead make strategic level EA discretionary. For example, British Columbia’s *Environmental Assessment Act* states that the Minister *may* order an assessment of any “policy, enactment, plan, practice or procedure of the government”, but does not automatically require strategic EA.⁸ Ontario’s decision to make EA mandatory (not discretionary) for plans, programs and proposals emphasizes the province’s strong commitment to the proper consideration of all environmental impacts at the earliest planning stages.

⁸ SBC 2002, c. 43, s. 49.

(b) Declaration Orders to Exempt Undertakings from the EA Act

As noted above, the Minister of the Environment may declare that a “proponent, a class of proponents, an undertaking, or a class of undertakings” is exempt from the requirements of the EA Act, pursuant to section 3.2(1)(a) of the Act.

In order to declare an exemption, the Minister requires the approval of the Lieutenant Governor in Council (section 3.2(1)), and it must be “in the public interest to do so, having regard to the purpose of this Act and weighing it against the injury, damage or interference that might be caused to any person or property by the application of this Act to the undertaking” (section 3.2(1)).

If a declaration order is not made to exempt a public sector undertaking caught by the EA Act, then the proponent is prohibited from carrying out the undertaking unless and until approval to proceed is received by the proponent from the Minister and/or Environmental Review Tribunal: see section 5(3) of the EA Act. Moreover, no other person, agency or entity can issue legal authorizations needed to carry out the undertaking unless and until the proponent receives approval to proceed under the EA Act: see section 12.2(2) of the Act.

To date, no declaration orders (or regulations) have been issued under the EA Act to exempt the IPSP from EA Act coverage.

(c) The IPSP is a Public Sector “Plan” under the EA Act

Having regard for the above-noted definition of “undertaking”, the IPSP can clearly be characterized as a public sector “plan” for the purposes of the EA Act. After consultation with Ontarians, the provincial government (as represented by the Minister of Energy) will set overall energy policy direction (i.e. statutory directives to the OPA), and the IPSP will be prepared for (and ultimately adopted by) the provincial government. Once approved, the IPSP will, in turn, result in the development and implementation of specific provincial programs and projects related to energy conservation targets, siting and operation of renewable energy sources, and achievement of an appropriate energy supply mix.⁹

The Ontario government’s description of the forthcoming IPSP in the *Environmental Bill of Rights* Registry states:

It has been many years since a comprehensive, long-term plan for electricity has been prepared for the Province of Ontario. The Minister of Energy has requested that the Ontario Power Authority (OPA) begin the process of developing a proposed Integrated Power System Plan. Section 25.30 (2) of the *Electricity Act, 1998* allows the Minister of Energy to issue directives setting out the goals to be achieved during the period covered by the plan. The directives may include goals related to:

⁹ These are some of the areas in which the Plan is to develop recommendations, as stated in the Ontario government’s *Environmental Bill of Rights* Registry posting of the OPA Supply Mix Advice Report, available online at <http://www.ene.gov.on.ca/envregistry/026852ep.htm>.

- a) the production of electricity from particular combinations of energy sources and generation technologies;
- b) increases in generation capacity from alternative energy sources, renewable energy sources or other energy sources;
- c) the phasing out of coal-fired generation facilities; and
- d) the development and implementation of conservation measures, programs and targets on a system-wide basis or in particular service areas.

The OPA must follow any directives issued by the Minister in preparing its integrated power system plan.¹⁰

An important legal precedent for applying the EA Act to provincial energy planning initiatives occurred in 1989, when Ontario Hydro developed a long-term, comprehensive electricity plan known as the Demand/Supply Plan (DSP). The DSP was subject to the EA Act, and the Ontario government of the day referred the matter for a public hearing before the Environmental Assessment Board [now the Environmental Review Tribunal]. This EA hearing ended in 1993 when the proponent decided to withdraw the DSP.

In the years since the DSP was withdrawn, there have been significant changes in how individual electricity projects are subject to EA requirements in Ontario. In essence, individual public and private projects within the electricity sector are now generally subject to (or exempted from) requirements prescribed under Ontario Regulation 116/01 (see also section 15 of Ontario Regulation 334). However, none of these project-level changes serve as an exemption of broad provincial electricity supply plans from EA Act coverage. Moreover, nothing has changed Ontario's basic constitutional authority over its own institutions, natural resources or interests, including its exclusive jurisdiction over the "development, conservation and management of sites and facilities in the province for the generation and production of electrical energy" (section 92A of the Constitution).

Therefore, there is no constitutional or statutory constraint on the province's ability to ensure that the IPSP is subject to the EA Act.

(d) Public Hearings under the EA Act

Where caught by section 3 of the EA Act, the proponent must prepare an EA in accordance with the approved Terms of Reference and submit it to the Ministry of the Environment. Subject to the requirements of the Terms of Reference, an EA will typically describe: the purpose of the undertaking; a description of and the rationale for the undertaking; "alternatives to" the undertaking; and "alternative methods" of carrying out the undertaking. In addition, the EA will describe the environment that will be affected, or might reasonably be expected to be affected, by the undertaking and the alternatives, and will identify and evaluate the potential environmental impacts. The EA will also describe the actions that are necessary, or that may be

¹⁰ EBR posting, *ibid*.

necessary, to prevent, change, mitigate or remedy the effects, and must evaluate the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking, and the alternatives to the undertaking (see section 6.1(2) of the EA Act).

The proponent must involve the public in the preparation of the EA, and must give public notice once the EA has been submitted to the Ministry of the Environment. During this Government Review stage, any person may comment in writing on the undertaking or the EA. After the Ministry of the Environment completes its Review, the public must again be notified, and any person may comment in writing on the EA, Government Review or undertaking. During this final stage, any person may request the Minister of the Environment to refer the matter (i.e. the IPSP EA) to the Environmental Review Tribunal for hearing and decision.

Where a person has requested that the Minister refer the matter to the Tribunal for public hearing and decision, the Minister is obliged to do so under the EA Act, unless, in her absolute discretion, she considers that the hearing request is frivolous or vexatious, that a hearing is unnecessary, or that a hearing may cause undue delay (see section 9.3(2)).

In addition, the Minister may, on her own initiative, refer an application to the Environmental Review Tribunal, and may give directions or impose such conditions on the referral as the Minister of Environment considers appropriate. The Minister may also refer part of a decision to the Tribunal (see sections 9.1 and 9.2).

Regardless of whether the final decision is made by the Minister or the Tribunal, the decision to approve or reject the proponent's application must consider the purpose of the Act, the approved Terms of Reference, the EA, the Government Review, public comments, and if applicable, any mediation report (see sections 9(2), 9.1(3), and 9.2(5)).

The Minister is also empowered to refer the application to a tribunal other than the Environmental Review Tribunal if she considers it appropriate in the circumstances (section 11). Similarly, the Tribunal itself may refer to another tribunal or entity a matter that relates to an application (section 11(7)).

If the matter has been referred to a Tribunal, the Minister of the Environment may review the Tribunal's decision, and may (with the approval of the Lieutenant Governor in Council) order a variation of the decision, or may order a substitution of the Minister's decision for the Tribunal's decision (section 11.2).

PART IV -- CONCLUSIONS

The forthcoming IPSP is a public sector "plan" to which Ontario's EA Act applies. The application of the EA Act is mandatory since there are no declaration orders or regulations which exempt the IPSP from EA Act coverage. While special EA approval and exemption provisions are currently in place for certain individual electricity projects (see Ontario Regulation 116/01 and Ontario Regulation 334), these provisions do not alter, affect or preclude the EA Act's applicability to the provincial IPSP. In short, there is no constitutional or statutory reason for the IPSP to be developed outside of the EA Act.

Among other things, this means that the IPSP proponent will be required to consult the public in drafting the Terms of Reference for the IPSP EA, and in preparing the EA documentation prescribed by the approved Terms of Reference. Once the IPSP EA has been completed and submitted to the Minister of the Environment, the public will have the right to review the EA and to comment in writing. Once the Government Review of the IPSP EA is complete, the public will have the right to review and comment upon the published Review, and to request that the matter be referred, in whole or in part, to the Environmental Review Tribunal for a public hearing and decision. If a request for a hearing has been made, the Minister of the Environment must refer the application to the Environmental Review Tribunal, unless she determines that the hearing request is frivolous or vexatious, that a hearing is unnecessary, or that a hearing may cause undue delay.

We would be pleased to provide further information or assistance with respect to any of the matters outlined herein.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION per

Paul Muldoon, Executive Director and Counsel

Theresa McClenaghan, Counsel

Richard Lindgren, Counsel



Ontario Power Authority

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Power System Planning

The Integrated Power System Plan

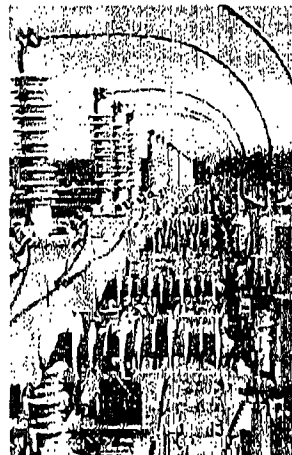
The integrated power system plan (IPSP) will be Ontario's first comprehensive, long-term electricity system plan since the late 1980s.

The plan will be approved by the Ontario Energy Board (OEB) and updated every three years.

As an "integrated" plan, the IPSP will examine all possible solutions for meeting Ontario's power requirements, including:

- Conservation and demand management
- New generation, including renewable and conventional resources
- Transmission enhancements and imports

The plan to be developed is within the framework of the Government's goals and policies for the electricity sector, and in response to specific directives issued by the Minister of Energy. The Ontario Power Authority is embracing the integrated approach and will recommend the most technically efficient and cost-effective combination of solutions.



Hydro One - Used with permission

On each three year cycle, the IPSP will set out the programs and facilities required over the next five years, the preparatory work required for the subsequent five years, and broad directions for the remaining ten years. The IPSP represents a comprehensive approach to electricity sector planning in Ontario, intended to deliver timely solutions and to reflect the new industry structure in the province.

IPSP Background

The OPA is mandated to develop the IPSP as set out in the Electricity Act, 1998 (as amended by the Electricity Restructuring Act, 2004) and Ontario Regulation 424/04, and any amendments to it. The legislation defines the objectives of OPA and sets out the requirements of the IPSP.

IPSP Participant Funding Information

Information is available to assist prospective participants in the OPA's IPSP stakeholder engagement process including: eligibility guidelines, application forms and downloadable cost claim forms.

IPSP Project Documents

More information about relevant Ontario legislation, regulations and Minister's directive.

IPSP Work Plan, Schedule, Dates

Learn more about the key elements of the OPA's work plan for the development of the IPSP and the latest schedule of key dates as they develop.

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Ministry
of **Energy**location: /Home / News Releases**News Release** *13 June, 2006***McGuinty Government Delivers A Balanced Plan For Ontario's Electricity Future***Securing Reliability For Ontario's Long-Term Electricity Supply*

QUEEN'S PARK — Energy Minister Dwight Duncan directed the Ontario Power Authority (OPA) today to proceed with its recommended 20-year electricity supply mix plan, with some revisions.

The plan achieves a healthy balance by moving away from coal in favour of new nuclear power and renewable energy. The government has set targets that will double energy efficiency through conservation and double the amount of energy from renewables by 2025.

The government has directed Ontario Power Generation (OPG) to undertake feasibility studies for refurbishing units at the Pickering and Darlington sites. OPG has also been directed to begin the work needed for an environmental assessment for the construction of new units at an existing nuclear facility. Nuclear is expected to continue to be the single-largest source for Ontario's electricity in 2025.

The government has accepted the advice of the Independent Electricity System Operator in their June 9 report that indicates a need for 2,500 – 3,000 megawatts of additional capacity to maintain system reliability. Therefore, further delays will be necessary in the government's plan to replace coal-fired generation completely with cleaner sources of energy.

The government is referring the question of how to best replace coal in the earliest practical time frame to the OPA. The OPA is also being asked to recommend options for cost-effective measures to reduce air emissions from coal-fired generation.

The government will continue with the plan announced in its 2006 Budget to establish a bio-energy research facility associated with the Atikokan station.

The government has also accepted the advice of the OPA that natural gas should only be used to meet peak demand in high-efficiency applications and to meet local reliability need when no alternative is available.

Since the government received the OPA recommendations in December 2005, it has consulted extensively with the public, stakeholders, the electricity industry, the IESO and the OPA itself.

The government is acting on the advice of the OPA, the agency that studies Ontario's long-term energy needs and is responsible for carrying out the government's electricity plan.

"We are taking action to secure the electricity supply Ontarians need today and have set a balanced plan for meeting growing demand in the years ahead," Duncan said. Other features of the government's plan include:

- Planning to ensure adequate baseload electricity supply while limiting the future use of nuclear power to today's installed capacity level of 14,000 megawatts.
- Directing OPG to begin a federal approvals process, including an environmental assessment, for new units at an existing facility. Although the government prefers to use Canadian companies and technology, its first obligation is to the people of Ontario. Decisions will be made based on the best technology offered at the best price to Ontario ratepayers.
- Directing OPG to begin a feasibility study on refurbishing its existing nuclear facilities that will include a review of the economic, technological and environmental aspects of refurbishment. As part of this initiative, OPG will begin an environmental assessment on the refurbishment of the four existing units at Pickering B.
- Doubling the amount of electricity drawn from renewable sources, bringing the total to 15,700 megawatts by 2025.
- Doubling the conservation efforts suggested in the OPA's report, to reduce electricity demand by 6,300 megawatts by 2025.
- Expanding the transmission capacity from Bruce County and surrounding area to facilitate the transmission of electricity from several new wind farms and the Bruce facility to Ontario homes and businesses.

"We remain committed to replacing coal-fired generation in Ontario," Duncan said. "We have made significant progress in reducing greenhouse gas emissions and ensuring cleaner air to improve the standard of living and quality of life for all Ontarians."

In setting out a balanced plan for ensuring Ontario's energy needs now and into the future, the government considered the advice of the OPA, and was guided by a number of core principles:

- Ensuring reliability of energy in Ontario over the long term
- Ensuring stable energy prices for Ontarians
- Supporting Ontario businesses and creating a climate for future investment
- Increasing the use of green, renewable energy
- Integrating greater energy efficiency through conservation into Ontario's long-term energy planning
- A commitment to replacing coal-fired generation

The government is confident the directive to the OPA meets both the core principles and the long-term energy requirements of the province to enhance the standard of living and the quality of life for all Ontarians. The directive is the basis of the Integrated Power System Plan. This 20-year plan, revised every three years, will be submitted to the independent Ontario Energy Board for review and approval.

"We are building a new energy future for Ontario," Duncan said. "Our vision is of an Ontario with a safe, clean, reliable and affordable supply of electricity that will power our communities, our businesses and our homes. It is a balanced approach to power the continued growth and prosperity of our province."

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