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SUBMISSIONS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION

TO

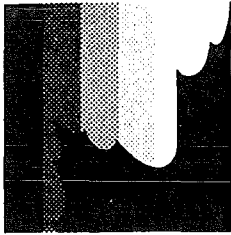
THE ONTARIO SELECT COMMITTEE ON ENERGY

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STEVEN SHRYBMAN  
April, 1986

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SHRYBMAN, STEVEN.  
CELA BRIEF NO.141; Subm... RN3966f



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The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization established in 1970 and committed to the use of law and legal institutions to further the principles of wise environmental management, resource conservation and public participation in the regulatory process. A large portion of our activities involves the representation of individuals and groups who would not otherwise have access to legal counsel. For this work, we are funded by the Ontario Legal Aid Plan pursuant to the Clinical Funding Regulations. We have in that capacity acted for individuals and groups concerned with energy-related matters including several pertaining to Ontario Hydro affairs.

In the course of these endeavours, we have had an opportunity to consider a variety of the environmental, economic and social implications of this utility's activities. We have come to regard the energy system planning, design and implementation process as one being of major importance for the people of Ontario.

## EXECUTIVE SUMMARY

### RECOMMENDATIONS

#### II. ENERGY AND ACCOUNTABILITY

##### 1. Energy Policy and Planning

We believe that the development of an energy policy for the Province of Ontario must respect the principles of accountability that have been described. We recommend therefore the enactment of an Energy Policy and Planning Act that would delineate the procedures appropriate to the development of energy plans and forecasts for the province and various energy sectors. In broad outline, the elements of such a planning process would include the following:

- (i) The development of a provincial energy plan that provides a comprehensive assessment of environmental, social and economic effects. The planning process is one that should be guided by the requirements of the Environmental Assessment Act for reasons that we will discuss in Part III, following.
- (ii) The development and promulgation of an official energy demand forecast for each energy sector that will be adopted by the Ontario Energy Board with respect to any review or approval functions that it may exercise. The Ministry should solicit the views of all interested parties during the course of generating its forecast.
- (iii) This provincial energy plan should specifically provide strong policy support for the development of efficiency, conservation and demand options. As has

(ii)

been adopted by other jurisdictions, the plan should direct those engaged in sectoral planning to give priority to, in descending order, conservation, efficiency, demand, and only then supply options.

- (iv) The plan and forecasts thus developed should be referred for public hearing to the Ontario Energy Board which would consequently make its recommendations to Cabinet.

## 2. The Ontario Energy Board

We believe that a much expanded role is appropriate to the Ontario Energy Board which would become the major facilitator of public participation in the energy planning process.

Accordingly, we recommend that the Ontario Energy Board Act be amended to:

- (i) Provide the Board, aided by the participation of member(s) of the Environmental Assessment Board, with the responsibility of reviewing and making recommendations to Cabinet with respect to provincial energy plans and forecasts to be developed by the Ministry of Energy (see Energy Policy and Planning, above);
- (ii) Expand the authority of the Board to include decision-making responsibility with respect to matters concerning Hydro affairs currently accorded by the Power Corporation Act to Cabinet. Where desirable, an appeal to Cabinet should be specifically provided for (see the Power Corporation Act, above);
- (iii) Provide the Board with rate-setting authority which should include retail as well as wholesale rates;

(iii)

- (iv) Expand the mandate of the Ontario Energy Board to accord approval authority to be exercised in conjunction with members of the Environmental Assessment Board, with respect to new facilities and projects;
- (v) To provide authority to oversee and regulate the affairs of local and regional utilities (see PCA above);
- (vi) To allow the Board the authority to consider and offer preliminary approval for any proposed export, import or inter-provincial transfer of electrical power and the authority to ensure that full advantage is taken of opportunities that may exist in this regard.
- (vii) Establish a public appointments procedure that would, inter alia, provide for the publication of all nominees and for review and ratification by a standing committee on appointments;
- (viii) Provide the Board with express authority to provide funding and assess costs preceding, during and at the conclusion of any matter with the purpose of facilitating informed and meaningful public participation.

### 3. Ontario Energy Conservation Corporation

It is our recommendation therefore that an Ontario Energy Conservation Corporation be established with a broad mandate to plan and implement energy conservation and efficiency measures and programmes.



### III. ENERGY AND THE ENVIRONMENT

#### The Environmental Assessment Act and Systems Planning

As many have noted, we have at present a unique opportunity to apply to the electrical system planning process the lessons that we have learned during the last decade. We believe that the planning principles and approach engendering by the Environmental Assessment Act, and the procedures developed by the Ministry of the Environment for its application, will be extremely helpful in avoiding many of the errors that have been made in the past.

We recommend therefore that the Ontario Energy Board be added to the list of those regulatory functions consolidated pursuant to the provisions of the Consolidated Hearings Act.

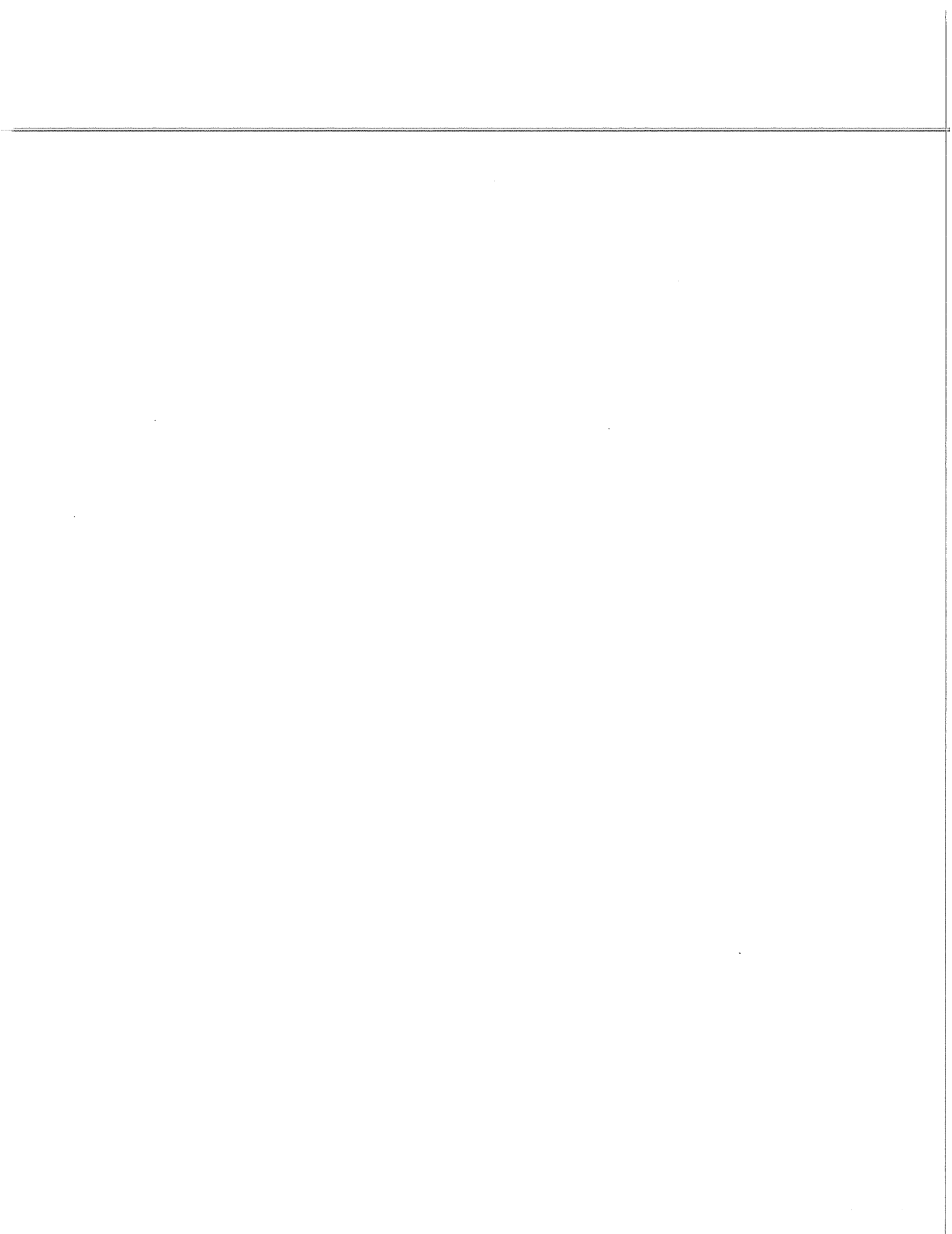
We also recommend that the Environmental Assessment Act and the procedures it prescribes be adopted as the essential methodological tool for evaluating energy and electric system planning options.

### IV. ENERGY AND SOCIAL JUSTICE

#### (ARE THERE REALLY NO LOSERS)

- (i) An energy tax credit be established by the provincial government to defray some of the portion of energy costs borne by low-income Ontario residents;
- (ii) That energy assistance programmes be designed in such a fashion as to allow full access by all Ontario residents regardless of income. Such a system should include direct grants and specific amendments to rent control legislation to encourage conservation improvements in the rental market;

(iii) All of the costs associated with facility construction and siting as well as with associated activities must be fully identified as required by the environmental assessment process and rationally and equitably allocated. This will mean broadening the ambit of compensatory mechanisms, like the Expropriations Act, to include costs hitherto unrecognized.



## I. INTRODUCTION

Thank you for this opportunity to address this Committee. We have approached the task of preparing this brief with considerable anticipation recognizing this Committee's rather unique opportunity to influence the course of electrical energy policy and planning in this province free from many of the constraints that have previously inhibited efforts at reform. It seems clear that this Committee's response to the issues before it will have significant and far-reaching implications for the economic, social and environmental future of this province.

In undertaking a review of Hydro's recently completed demand supply option study (DSOS), we believe this Committee has been correct to identify the importance of addressing the context within which system planning decisions will be made. What is to be Hydro's relationship to government and the regulatory institutions that might oversee or direct its affairs? As participants in the consultation process that Hydro has convened with respect to the DSOS, we have been particularly impressed with the absence of any clearly delineated policy or regulatory framework that might guide the choices before us.

In our view, the task of addressing the system planning decisions raised by the DSOS can only be undertaken when the political and regulatory decision-making framework is clearly defined. It is precisely these issues with respect to which this Committee's predecessors gave long and careful deliberation.

Reviewing this Committee's report of its first session, we were struck by the marked similarity of the issues before you, with those that have been the subject of earlier inquiries and reviews concerning Hydro affairs. Yet, with respect to many of these same issues, a broad consensus for reform has existed in this province for several years. Here, we refer to deliberations of

this Committee's earlier incarnation, the Royal Commission on Electric Power Planning (RCEPP), various administrative tribunals and Task Force Hydro (TFH). It is not infrequently the criticism of Select Committees and Royal Commissions that they are initiated more to defer or diffuse politically controversial issues than to devise effective solutions to them. It may be possible then for this Committee to revive the reputation of those past inquiries by giving effect to the solutions with respect to which there has, for some considerable time, been general agreement among all those nominated to study the problem.

For that reason, we have, in preparing this brief, begun by reiterating the key recommendations of these earlier reviews. We have not in our submissions attempted to debate again issues that have been so thoroughly canvassed. Rather, we take the lack of effective implementation of these reforms to be the major difficulty. Accordingly, our submissions attempt to identify mechanisms that would actually carry forward into practice many of the reforms about which there appears to be considerable consensus.

In doing so, we believe that we are able to address many of the key issues that this Committee has identified. We begin by recounting the recent history of reviewing Hydro affairs.

## A. BACKGROUND

During the early 1970s, public demands for a voice in energy planning matters became increasingly insistent. General recognition grew that a rapidly growing hydro system made the primarily private system planning process outmoded. During 1971, the Committee on Government Productivity established Task Force Hydro (TFH) which was given the following terms of reference:

"To recommend realistic, practical and innovative ways in which the operations of Ontario Hydro can be made more efficient, more effective and more responsive to the changing requirements of the Province of Ontario".

The recommendations of the Committee contributed to the establishment of the Provincial Ministry of Energy, the promulgation of the Power Corporations Act and amendment to the Ontario Energy Board Act that allowed for the review of proposed hydro rate changes.

During the early 70s, Hydro's planned and rapid expansion of Ontario's electrical system began to manifest some troubling economic and environmental implications. Proposals that would dramatically escalate hydro rates and its capital requirements prompted, in March of 1975, the establishment of the Royal Commission on Electric Power Planning (RCEPP). The Commission, to be headed by Dr. Arthur Porter, was to inquire into the planning of Ontario's electrical power needs for the period 1983/1993. The Commission would, in the following five years, carry out a comprehensive review of virtually every aspect of the electrical power system and the planning principles appropriate to its design and development. The several dozen recommendations brought forward by RCEPP addressed virtually every aspect of power system planning, design and implementation. In May 1981, the Ministry of Energy published a 116-page report responding to each of the Commission's recommendations.

Perceiving a need for yet a more expeditious review of the immediate effects of proposed substantial rate increases, the Legislative Assembly established a Select Committee to investigate, inter alia, proposed bulk power rate increases in excess of 25% for 1976. Under the Chairmanship of Donald C. MacDonald, the Committee soon found that a meaningful review of Hydro's rates and its \$30 billion capital expansion programme required a much more comprehensive investigation of the utility and its relationship with government. Consequently, the Committee's mandate was expanded and a final report released in June of 1976 which dealt with a broad variety of matters including Hydro's accountability, its system planning concepts, the role of conservation and rate reform.

We believe that the recommendations of the Task Force Hydro, RCEPP and the MacDonald Select Committee (MSC) offer an extremely valuable resource that deserves the fullest consideration by this Committee. An assessment of the success, or failure, of efforts to implement those recommendations should lessen the risk of repeating them. An understanding of the reasons that have been offered for declining or ignoring other recommendations, should also be helpful in devising strategies to ensure that effective action is now taken to implement many of the reforms identified long ago as being necessary and that are by now long overdue.

#### B. COMMON THEMES

A review of the reports and recommendations of Task Force Hydro, the MacDonald Select Committee and RCEPP reveals several common themes. In this portion of our brief, we highlight three matters of particular significance and about which there is general consensus. The recommendations that we offer below were developed largely to give substance to the three major areas of reform that have been identified by these inquiries. For that reason, we thought it appropriate to introduce our brief by recounting them.

## 1. The Need for Effective Government Control and Direction

The need for Ontario to develop and clearly articulate government policy with respect to Ontario Hydro has been a major theme of every public review that has been undertaken of Hydro affairs. There is little that is more telling of the absence of explicit policy direction to Ontario Hydro than this Committee's expression of concern regarding this issue:

"This highlights a serious concern that the Committee has about Ontario Hydro's planning process and about the delineation of operating and policy-making responsibilities between Ontario Hydro and the Government. The Committee does not feel that existing practice allows for adequate public participation in the determination of policy variables in Ontario Hydro's planning process. Faced with significant surplus capacity, a surplus that will last for many years if Darlington comes on stream, Ontario Hydro has had little incentive to promote efficiency and conservation or to give adequate consideration to alternative sources of supply of electrical energy."

which is essentially identical to that offered by this Committee's predecessors. The similarity is striking and worth noting.

In 1980, RCEPP described the shortcoming of the present system:

- It does not provide for the development of a general policy on energy;
- Historically, government intervention in Hydro's planning processes has been essentially after the fact." (at p.173)

Dr. Porter went on to describe the problem in the following manner:

"The responsibility for general policy on energy is clearly in the hands of government, and in particular the Minister of Energy. Although ... the Ministry of Energy is undertaking impressive and rewarding programmes in the field of energy conservation, its credibility and respect of ~~long-term energy policy formulation is much less evident.~~



This is not surprising in view of the fact that the Ministry has neither the resources, nor the staff, nor the time to undertake extensive future studies, not the least because of its heavy commitment to day-to-day questions and short-term problems. Furthermore, ... the Ministry's business must be conducted in private and its performance, although subject to scrutiny and criticism in the legislature, is not subject to direct public scrutiny. The result is that energy policies have been somewhat fragmented, predicated on a short-term basis, and ad hoc." (at p.170)

In 1976, and in a similar vein, the MacDonal Select Committee had identified:

"An urgent need ... to set new objectives for Hydro's planning. The Committee has concluded that it will be necessary for the government to provide firm policy directions to Ontario Hydro on an ongoing basis. Clear ongoing policy direction has not been given to Hydro in the past." (at p.II-13)

And then offered the following recommendation:

"The Ontario government develop and clearly articulate government policy toward Ontario Hydro."  
(Recommendation II-1)

Apparently, the recommendations of Task Force Hydro that a "comprehensive and coordinated energy policy be established as a matter of high priority" had not been adequately carried forward.

## 2. The Need for Greater Regulatory Control of Ontario Hydro

The absence of effective regulatory institutions to oversee Hydro's activities has also been a matter extensively commented on by all those who have reviewed Hydro affairs. Again, a very broad consensus exists in favour of greatly strengthening regulatory control. In the words of Dr. Porter:

"Existing ministries, institutions, boards and committees do not provide an open, independent, comprehensive review process involving the public, nor can they act in an advisory capacity to the Minister of Energy on the future development of the electric power system ... (neither do

they) possess adequate technical expertise to undertake these analyses." (at p.173)

RCEPP went on to recommend that:

"The status of the existing Ontario Energy Board should be enhanced through expanded membership, representing a broad range of interests and disciplines ... it should be an authoritative and independent body" (Recommendation 12.6)

Again, the problem is one that had been clearly identified and described in a similar fashion by the MacDonald Select Committee several years earlier. The Committee's answer was to advocate a new direction that:

"Will change Hydro's relationship to the public. Hydro will no longer be concerned only with "good public utility practices", but will give greater consideration to the overall needs of the province. The new direction will also cause substantial changes in Hydro's internal processes. The planning process, for example, will change from a sequence of relatively independent steps to an iterative, highly interactive process". (at p.III-49 and 50)

To ensure adequate follow-up, the Committee recommended:

"The Ontario government accept the thrust of the Committee's report as government policy and instruct Hydro to begin immediately to implement the Committee's recommendations. The Ministry Energy coordinate the government policy and monitor Hydro's implementation on an ongoing basis. The Ontario government appoint a Select Committee of the legislature to whom Hydro will report on a periodic basis on its new system expansion plan and its implementation on the Committee's recommendation commencing in the spring of 1977." (Recommendation III-29)

Apparently, the recommendations of Task Force Hydro that had led, inter alia, to the establishment of the Ontario Energy Board had not been sufficient to affect the regulatory control of Ontario Hydro that had, even a decade and a half ago, been identified as an important reform area.

### 3. The Need to Reorient Planning Philosophy to Give Greater Priority and Emphasis to Efficiency, Conservation and Demand Measures

The two public inquiries to be convened since the oil crisis of 1973 both gave strong and unequivocal support to a fundamental reorientation of Hydro's traditional emphasis upon supply expansion. A substantial proportion of the Royal Commission's recommendations specifically address this matter, its first recommendation provides:

"Through the development of demand scenarios based on end-use data, future planning philosophy should be reoriented to emphasize demand management increasingly rather than maintain the focus on supply expansion, as is traditional." (Recommendation 3.1)

Over two dozen other suggested reforms address: the need to establish the analytical resources necessary to the task (end-use data); the programmes necessary to encourage implementation of efficiency measures, and; various rate reforms designed to encourage efficient energy use.

Again, the Commission's recommendations are virtually ad idem with those of the MacDonald Select Committee that:

"Ontario Hydro change its planning process to emphasis meeting Ontario's electrical energy needs after implementation of conservation and load management programmes, with the minimum amount of new generation that is consistent with sound planning." (Recommendation III-22)

In the Committee's case, the majority of its 40 recommendations dealt with conservation and efficiency measures and set out various facets of the aggressive efficiency campaign that should, as the Committee argued, be the major priority of future energy strategies. Among the reforms identified was the need to:

- (i) Promulgate insulation and efficiency standards for buildings, equipment and appliances;

- (ii) Provide research funds for the development of energy-saving technologies;
- (iii) Provide loans, grants and other subsidies to ensure the employment of cost-effective efficiency measures and;
- (iv) Utilize pricing policies to encourage, load management and peak demand reduction objectives.<sup>5</sup>

(Recommendation III-3,4, 5 and 6)

The case for conservation and efficiency measures so thoroughly explored by the McDonald Select Committee and RCEPP is, in our view, overwhelming. It unfortunately stands in stark contrast to the efforts that have been made in Ontario to realize these goals. We strongly believe that our collective failure to vigorously pursue the abundant opportunities that demand strategies offer is primarily the result of the absence of an appropriate institution to pursue and achieve them. We will, in Part II of this brief, recommend the establishment of an Ontario Energy Conservation Corporation that might single-mindedly pursue conservation and efficiency measures.

## II. ENERGY AND ACCOUNTABILITY

### A. Basic Principles

The legislative instruments and institutions that govern the affairs of Ontario Hydro were fashioned during an era when electrical system planning was undertaken almost exclusively by utility experts. Technical requirements determined the nature of supply facilities, and social and environmental impacts were virtually ignored. We have slowly, during the last decade and a half recognized the major public policy dimensions of matters relating to the size, scale and character of the electric power system. What had traditionally been regarded as a "technical delivery decision", such as the generation mix of the power system, is now recognized as having major implications for the Province's economic and social life.

Unfortunately, the institutions that determine the course of Ontario Hydro's affairs have not in either design or mandate been accommodated to this new perception of the planning process. As our review of the existing regulatory matrix will show, very little has transpired to remove from the exclusive prerogative of Ontario Hydro, a host of matters of vital public concern. As all who have reviewed Hydro affairs have noted, the problem is one of a lack of accountability.

In our view, the notion of accountability is the single most important test of both, existing decision-making processes, as well as of proposals for reform. An accountable electric power system is one that is responsive and responsible to the people of Ontario. It is fundamental to the notion of accountability that ultimate control or authority rest with those to whom the account is being rendered. Ontario Hydro is not accountable to an institution or agency whose advice or direction it may choose to disregard. For example, while Ontario Hydro may be required to submit a proposal to increase its rates to the Ontario Energy

Board, it is not accountable to the Board (or to anyone else in this instance) for the rates that it decides to set.

When applied to the planning, design and operation of a system as large, diverse and complex as Ontario Hydro's, the notion of accountability is multi-faceted. The particular mechanism of accountability to be adopted must vary with the nature of the institution or constituency to which Ontario Hydro is to be responsible. Thus, Hydro must, with respect to different matters, account to either the Legislature, various regulatory institutions, its customers or the public at large. Whatever the particular configuration however, there are certain essential elements that must in all cases be present. We describe them under the following four sub-headings.

1. Policy, implementation and regulatory functions should each be exercised by separate institutions

An accountable organizational structure should separate responsibility for policy formulation and planning, from programme delivery and implementation. As described by Task Force Hydro, Ontario Hydro should, as a delivery agency, be independent of political control in operational matters while functioning within the "overall policy of the provincial government". We agree. The supporting rationale for such a dichotomy is, we believe, three-fold.

To begin with, such an arrangement recognizes the very distinct and different natures of the two endeavours. The institutions necessary to develop provincial energy policy, on the one hand, and deliver electrical energy on the other are, by character, expertise and structure quite different. Secondly, provincial energy policy must address a variety of matters several of which, including the role of other energy suppliers, are clearly beyond any conceivable mandate for Ontario Hydro. Thirdly, a variety of functions of the electrical utility should be utterly free from any political intervention.

For those matters with respect to which political control is inappropriate or that are, in detail and complexity, beyond the resources of Cabinet or the Legislature, other regulatory mechanisms are required. Thus, the environmental assessment of proposed facilities or the safety and design of nuclear reactors are illustrative of matters that require regulation that should be exercised free from political influence. On the other hand, a system for energy policy and planning must be accountable to the political process. It is important therefore to match the regulatory mechanism to the particular character of the matter with respect to which accountability is needed.

As we will see, Ontario Hydro is free to exercise decision-making authority with respect to a variety of matters virtually free from any regulatory control whatsoever. For the reasons noted, self-regulation is no regulation at all.

2. The authority and responsibility of Ontario Hydro and those who will regulate its affairs should be clearly and precisely defined by legislation

Ontario Hydro is, like all other corporations, a creature of its constitutional instrument. As a Crown corporation that instrument is an Act of the Ontario Legislature, the Power Corporations Act. The utility has no authority or power that is not set out by the provisions of the Act. Neither has it any responsibility or duty that is not similarly defined. Even the definitional section of the Act makes this clear:

Section 1(n): If a power is conferred to a duty is imposed on the corporation or the board, the power may be exercised and the duty shall be performed from time to time as occasion requires.

If the MSC and RCEPP can be faulted, it may be for failing to recognize more fully the need to provide explicit direction to Ontario Hydro by amending its incorporating document, the Power Corporation Act. Thus, it is not surprising that a number of

Royal Commission recommendations, subsequently accepted by government, have failed to become manifest. Often the difficulty can be attributed to a failure to provide legislative direction to those responsible for carrying out the task. The same is true for the regulatory institutions that are purely creatures of the statutes that have called them into being.

In a society committed to the rule of law, it is vital that the rules by which its citizens and institutions are to govern themselves be clearly and unambiguously defined. They cannot ebb and flow with the particular inclination of public officials or the political views of the day. While a number of energy policy matters must be left to the judgment of elected officials, the need to develop policy should not, and neither should a myriad of other matters necessary to a responsible and accountable energy delivery system.

3. Regulatory institutions must have sufficient resources if they are to effectively carry out their respective mandates

Anyone who has been even peripherally involved with energy planning and policy matters is quickly impressed by the bewildering complexity of many of the matters at issue. From load forecasting to systems reliability, an understanding of Hydro affairs requires an immense array of highly specialized expertise. The very disproportionate resources of Ontario Hydro on the one hand, and those seeking to influence or regulate its affairs on the other, has lead many to describe Hydro as having a virtual monopoly on technical information relating to the planning and operation of the Province's electrical power system.

Not only must government, regulators and the public have access to pertinent information, but each must as well have the tools and skills necessary to analyze and assess that data. The imbalance of resources that has traditionally characterized this



domain has also created a mystique of authority that has repeatedly daunted those who must weigh competing and very divergent views offered by Ontario Hydro and its critics respectively.

It will be no progress at all to bolster existing regulatory controls in theory alone. Clear legislative language must be complemented by the human and informational resources necessary to bring theory to practice.

#### 4. Public participation is an essential component of an accountable regulatory system

Virtually every major actor in the electrical energy system is a public body or institution. Each should therefore be accountable to its respective constituency, be it the residents of a local municipality or the people of Ontario. The notion of public participation as we use it does not however refer to the roles of the Ministry of Energy nor to the functions of local utility commissions, but rather to the activities and involvement of individuals and groups unassociated with government or major private corporations.

Much has been written concerning the utility of public participation in the energy policy and planning process. The RCEPP consideration of this issue, is to be found in chapter 12 of its final report, and offers an excellent analysis of the rationale for, and benefits to be derived from broadening the scope of meaningful public involvement in the regulatory process. In its report, the Commission characterized energy problems as increasingly "problems of decision-making rather than technology and systems operations". The Commission concluded, that the diverse social, economic, environmental and ethical dimensions of energy issues necessitated a pluralistic approach to energy policy formulation and implementation.

The Commission went on to discuss three basic concepts and principles that informed its views as to the role of public participation. The first concerned the risks, both to human health and social institutions, that arise in the energy area. The determination of acceptable risks was, in the Commission's view, essentially a "value judgment that should be made by politicians, social scientists, the general public and lawyers, as well as by scientists and engineers". The second addressed the problems associated with the virtual monopoly on technical information enjoyed by Ontario Hydro and government. In consequence, the debate between Hydro and its critics was, in the Commission's view, undemocratic and a disservice to both sides. The result of this was as the Commission noted, a tendency of "policy makers... to ignore criticisms coming from the public which they deemed to be uninformed, and there will be a tendency for the public to reject policies and decisions that they cannot verify".

Thirdly, the Commission described the utility of public participation as providing decision-makers with the benefit of diverse points of view. A properly functioning regulatory system must, the Commission argued, be capable of responding quickly to emergency situations, and as well as capable of correctly anticipating predictable events. Public participation would then add significantly to the responsiveness and resilience of the system.

The Commission went on to characterize public participation as a crucial aspect of the decision-making framework and offered several recommendations upon the matter including:

Recommendation 12.1 - "Ontario Hydro should be encouraged to continue and, where necessary, to expand its public participation programme to ensure that the public is fully involved. Ontario Hydro should adopt joint planning processes whereby real decision-making authority is shared with, and in some cases left to the initiative of, citizen representatives."

Recommendation 12.2 - "Ontario Hydro should ensure that the participants in the utilities participation programme have access to independent expertise whether the expertise is supportive of or opposed to Ontario Hydro's planning concepts."

Recommendation 12.10 - "The principle of funding of public interest groups from the public purse should be adopted in connection with energy and environmental hearings in the future. Only in this way will it be possible for disparate views to be aired adequately in public hearings."

Public participation is clearly a two-way street. From informal consultation sessions to the participatory rights offered before a variety of administrative tribunals, public discussion and debate provides an invaluable opportunity to provide information to the community at large and to local and special interest groups. Where the public is given a meaningful opportunity to influence the decision-making process, public participation can also become an important mechanism of accountability. We are simply no longer content as a society to entrust problematic social, economic and technical matters to the private deliberations of experts and public officials. Experience shows that nothing is so likely to provoke scepticism and mistrust as a decision-making process closed to public view and participation.

Going the other way on this two-way street is also a vital flow of information and criticism. Participatory processes are often regarded by regulators and others as a nuisance that must be endured to allay the concerns of an uninformed public. This view is unfortunate and fails to recognize the enormous contribution that public involvement has made to the quality of a diverse array of regulatory processes.

The area of energy system planning and control offers an excellent illustration. Few would debate the value of the contribution made in this domain by a variety of public interest groups and individuals motivated by a desire to promote resource conservation, protect public health and the environment and

foster democratic and accountable regulatory processes. Many of the major issues being considered by this Committee originated with this constituency and can be traced directly to the soft energy path concept of a sustainable, non-nuclear energy system linked to democratic and decentralist ideals.

Soft energy path analysis introduced new analytical techniques that challenged conventional notions concerning load forecasting and energy quality. It suggested a new policy direction that would emphasize conservation and renewable energy technology. Finally, it expressed a philosophy that viewed energy in the service of humankind in sustainable balance with the environment.

In many instances, the introduction of these concepts has significantly influenced the judgment of those associated with energy policy and planning matters in this province. Many of the recommendations of the MSC and RCEPP directly reflect the submissions of public interest groups and spokespersons who have appeared before them. Even where decision-makers have preferred more traditional views, few would deny the invaluable contribution to the debate made by those who challenge the conventions.

While the soft energy path has been used to illustrate the value of public participation as a planning tool, examples could as readily be found in the areas of pollution control, waste management and other matters. A survey of the members of various commissions and administrative tribunals would we believe, clearly affirm the substantial improvements to proposals that often result from putting them to the test of public scrutiny and criticism. On occasion, the opportunity for public comment has revealed critical flaws that has resulted in approval being denied. It is important here to remind those who complain about the time and expense associated with public participation about the cost of circumventing public hearing processes. On occasion, ~~this has resulted in public reaction that has stymied development~~

imposing even greater delays, on others it has resulted in the approval of projects that were ill-conceived and unneeded. It is appropriate to consider what an environmental assessment and public hearing with respect to Darlington GS might have provided had the project not been exempted from the requirements of the Act in 1977.

Finally in this regard, it is essential to return to the third test of accountability that we have advocated being the need to provide all parties with adequate resources. While the government's response to RCEPP recommendations noted above indicated acceptance of the first two and the need for further study regarding the third, none have yet been implemented. In our view, this failing is one of major proportion. Without the provision of adequate resources, public consultation and hearing processes become cynical exercises that deny and frustrate informed participation. It is trite to note that a public hearing before a joint hearing board involves very substantial costs. For Ontario Hydro, the costs are in the millions of dollars. For the government who must pay the expenses associated with the tribunal, government officials and lawyers who participate in the proceedings, the costs are in the several hundred thousands of dollars. Citizens and local public interest groups, on the other hand, are to finance the costs of their participation from their own pockets and from holding fundraising events in the community. Often described as "bake sale justice", the public hearing process becomes an enormously expensive public relations gesture that inevitably backfires. The public and local groups which participate in these hearings come to regard them as lacking good faith rather than being bona fide attempts to involve those who will be affected by the results of the decision-making process.

Before leaving this subject, we must register our serious concern with a comment offered by Tom Campbell to this Committee.

~~Specifically, we refer to Mr. Campbell's belief that "increasing~~

electrical intensity of our economy can benefit the province". As a participant in the public consultation process that Hydro is carrying out with respect to the DSOS, we were fully given reason to understand that it was precisely the purpose of the exercise to iterate the various options for addressing issues such as the level of electrical intensity consistent with the province's interests. Yet, Mr. Campbell's comments strongly suggest that he, as Hydro's most senior official, has already made up his mind on this point. The impression left is extremely unfortunate.

With these concepts in mind then, we consider some of the salient characteristics of the present system.

## B. THE CURRENT SYSTEM

In this section, we will examine the basic characteristics and the existing system to determine the extent to which it meets the basic requirements of accountability that we have advocated. We restrict our consideration to the Ontario Energy Board, the Power Corporations Act and the National Energy Board. We will deal with the Environmental Assessment Act in Part III of this brief.

### 1. The Ontario Energy Board Act

The Ontario Energy Board Act establishes the Ontario Energy Board (OEB) and accords to it various regulatory functions. Among these are the authority to fix gas rates, allocate gas or oil markets and approve pipelines. Extensive public hearing requirements attend most Board functions. With respect to Ontario Hydro, the authority of the OEB is very limited and may be found in s. 37 of the Act. Section 37(2) requires review by the OEB of any change proposed by Hydro in its bulk rates. Section 37(4) allows the Minister of Energy the authority to refer to the Board other rate-related matters. In either case, the Board exercises no decision-making authority and simply reports to the Minister upon its deliberations.

As we will argue, the Ontario Energy Board should be regarded as the appropriate institution to review and regulate a variety of energy-related matters. We describe the major features of this expanded mandate in Part III of this brief.

## 2. The Power Corporations Act (PCA)

This statutory instrument establishes Ontario Hydro as a Crown corporation and sets out the authority and responsibility of the Corporation and its Board of Directors. Although the Ontario Energy Board Act, the Environmental Assessment Act and other provincial and federal statutes have some influence upon the corporation's activities, the PCA may be regarded as the contract that this province has with the utility spelling out the rights, duties and obligations of the arrangement.

Two major centres of decision-making authority are established by the Act. The first resides with the Lieutenant Governor in Council (LGIC or Cabinet). Among the responsibilities accorded to the Cabinet are the powers to:

Section 23 - approve all Hydro projects, including acquisitions of land, water rights, works and other property; construction (except minor repairs to existing structures); expropriation; lease or operation of power works owned by others, etc.

Section 47 - borrow money and loan it to Hydro.

Section 51 - approve all Hydro borrowing by issue of securities.

Section 53 - guarantee the securities issued by Hydro.

Section 54 - guarantee the performance by Hydro of any obligations related to a share acquisition.

Section 55 - approve all bank and other temporary loans and may guarantee their repayment.

Section 59(2) - approve the manufacture of machinery and equipment related to the provision of power when Hydro does its own manufacturing.

Section 59(4) - approve research and development related to power.

Section 60 - approve the form of contracts for supply of power from Ontario Hydro to municipal utilities.

Section 69 - approve all contracts for the sale of power other than to municipalities or the rural power district.

It is important to note that with respect to each of these powers, no other regulatory authority exists. In our submission, the allocation of these decision-making powers to Cabinet fails to match regulatory function with an institution suited by character and resources to the task. The Cabinet is an executive institution suited to broad policy determinations not the detailed affairs of a large electric utility. Where it is desirable to maintain, for political reasons, the possibility of intervention by Cabinet, then an appeal to Cabinet from a regulatory decision should be provided. The qualified and independent judgment that must be exercised with respect to matters, so clearly of major importance to the people of Ontario, is simply not provided for in the existing arrangement.

We will recommend therefore in the following section that the OEB Act be amended to expand the authority of the Board to include decision-making authority with respect to the above-noted matters.

The second executive mechanism established by the PCA is Hydro's Board of Directors. Control and direction of the corporation's affairs are accorded to the Board pursuant to sections 4 and 5 of the Act. These activities include the powers to approve:

1. The policies for the allocation of the cost of power and rate structures for both wholesale and retail sectors;
2. The annual operating and capital budgets of the corporation;



3. The long-range strategic corporate plans;
4. Specific major capital expenditures and contracts;
5. Terms and conditions which are to apply to contracts between the Hydro Corporation and the distribution utilities.

While Hydro's Board must exercise this authority for the purposes of accountability within the corporation, it is utterly unacceptable that the Board act as a final arbiter with respect to issues so clearly matters of public policy. The present arrangement provides no mechanism of accountability whatsoever with respect to several major decision-making functions. We will in the following section address this problem by recommending the enactment of an Energy Policy and Planning Act and the exercise of regulatory and review functions by the OEB.

In addition, Ontario Hydro itself has been given substantial regulatory authority with respect to the affairs of local public utilities including the authority to:

1. Adjudicate disputes concerning power charges levied by a municipality, company or person receiving power from Ontario Hydro (s. 92);
2. Approve debentures or loans intended to be issued by a municipality to extend its power system (s. 94);
3. Set rates and charges for supplying power from a municipality whether generated by the municipality or purchased from Ontario Hydro (s. 95);
4. Require municipal commissions to maintain liability insurance for specified amounts (s. 97);
5. Appoint, in certain circumstances, one member to a three member utility commission (s. 107).

With respect to these regulatory functions, Ontario Hydro is accountable to no one, neither is there an appeal or other review available to anyone dissatisfied with its decisions. To vest in Hydro regulatory control over the affairs of local utilities is

to offend the basic notions of accountability set out above. Local utilities should be democratically accountable to the people they serve. To the degree that regulatory control is necessary, we believe that it is more appropriately exercised by the Ontario Energy Board. (see "Ontario Energy Board" below)

### 3. The National Energy Board

While the National Energy Board provides limited regulatory control in the area of energy import/export, it does not of course account to the provincial Minister. Neither is there any provincial regulatory control with respect to inter-provincial transfers of electric power. Accordingly, we will recommend in the following section that the authority of the OEB be extended to include, regulatory authority with respect to Hydro affairs preliminary to any NEB application.

### C. REFORMS

In this portion of our brief, we will describe in greater detail the reassignment we have advocated of various regulatory functions to institutions better suited to the tasks involved and more accountable to the people of Ontario. In addition to the extensive re-allocation of authority currently delineated by relevant legislation, we believe that significant additions to existing legislative regimes are necessary if the planning, design and implementation of the electrical energy system in Ontario is to be given a new direction. The institutions with which we are concerned were created during an era when the imperatives of the electrical system were fundamentally different than they are today. The reforms and reorientation of approach strongly endorsed by the MacDonald Select Committee and the Royal Commission have most often not been reflected in regulatory reform of the institutions that have grown increasingly outmoded. We believe that this failure accounts, more than does any other

factor, for the apparent unresponsiveness of the system to these new policy directions.

In advocating the reforms that follow, we have in all cases been guided by the major areas of reform that have been clearly identified and discussed in Part I of this brief, being:

1. The need for greater public policy direction of the electrical power system;
2. The need to establish adequate regulatory control of the power system, and;
3. The need to reorient system planning values in favour of conservation and demand options.

#### 1. Energy Policy and Planning

We have noted in the introductory section to our brief the broad consensus that exists with respect to the failure of government to provide adequate policy direction to Ontario Hydro. Indeed, it is a rather sad commentary to note the response of government to the recommendations of the MacDonalld Select Committee and the RCEPP. In 1979, the Ministry of Energy unveiled its much awaited "Energy Security for the 80's".

The policy, which set out a 15 year strategy, called for a \$30 billion investment in new energy projects, half of this sum to be allocated for renewable energy resources. The only portion of those funds to have been actually committed however, is \$12.5 billion for nuclear power. As to the need for greater policy direction for Ontario Hydro, it is only necessary to note the fact that Hydro's present planning process is taking place in a virtual policy vacuum. Rather than providing the impetus and ~~direction for Hydro's demand supply option study, government~~ involvement is to occur only after the review and assessment

process has been concluded. It is lamentable that even at this late date, the role of government, at least in the incipient stages of the electrical system planning process, appears to be at the instance and invitation of Ontario Hydro.

We believe that the development of an energy policy for the Province of Ontario must respect the principles of accountability that have been described. We recommend therefore the enactment of an Energy Policy and Planning Act that would delineate the procedures appropriate to the development of energy plans and forecasts for the province and various energy sectors. In broad outline, the elements of such a planning process would include the following:

- (i) The development of a provincial energy plan that provides a comprehensive assessment of environmental, social and economic effects. The planning process is one that should be guided by the requirements of the Environmental Assessment Act for reasons that we will discuss in Part III, following.
- (ii) The development and promulgation of an official energy demand forecast for each energy sector that will be adopted by the Ontario Energy Board with respect to any review or approval functions that it may exercise. The Ministry should solicit the views of all interested parties during the course of generating its forecast.
- (iii) This provincial energy plan should specifically provide strong policy support for the development of efficiency, conservation and demand options. As has been adopted by other jurisdictions, the plan should direct those engaged in sectoral planning to give priority to, in descending order, conservation, efficiency, demand, and only then supply options.
- (iv) The plan and forecasts thus developed should be referred for public hearing to the Ontario Energy Board which would consequently make its recommendations to Cabinet.

We have not endeavoured to describe in any detail the precise character of the reforms that would mandate this policy development process. In the recommendations that follow, we will, however, delineate several characteristics of the electrical energy planning process which are in essence guided by the same principles that we recommend as appropriate to virtually every facet of the planning exercise. We will explore in some

detail the expanded functions of the Ontario Energy Board and the resources and procedures necessary to its new tasks.

## 2. The Ontario Energy Board

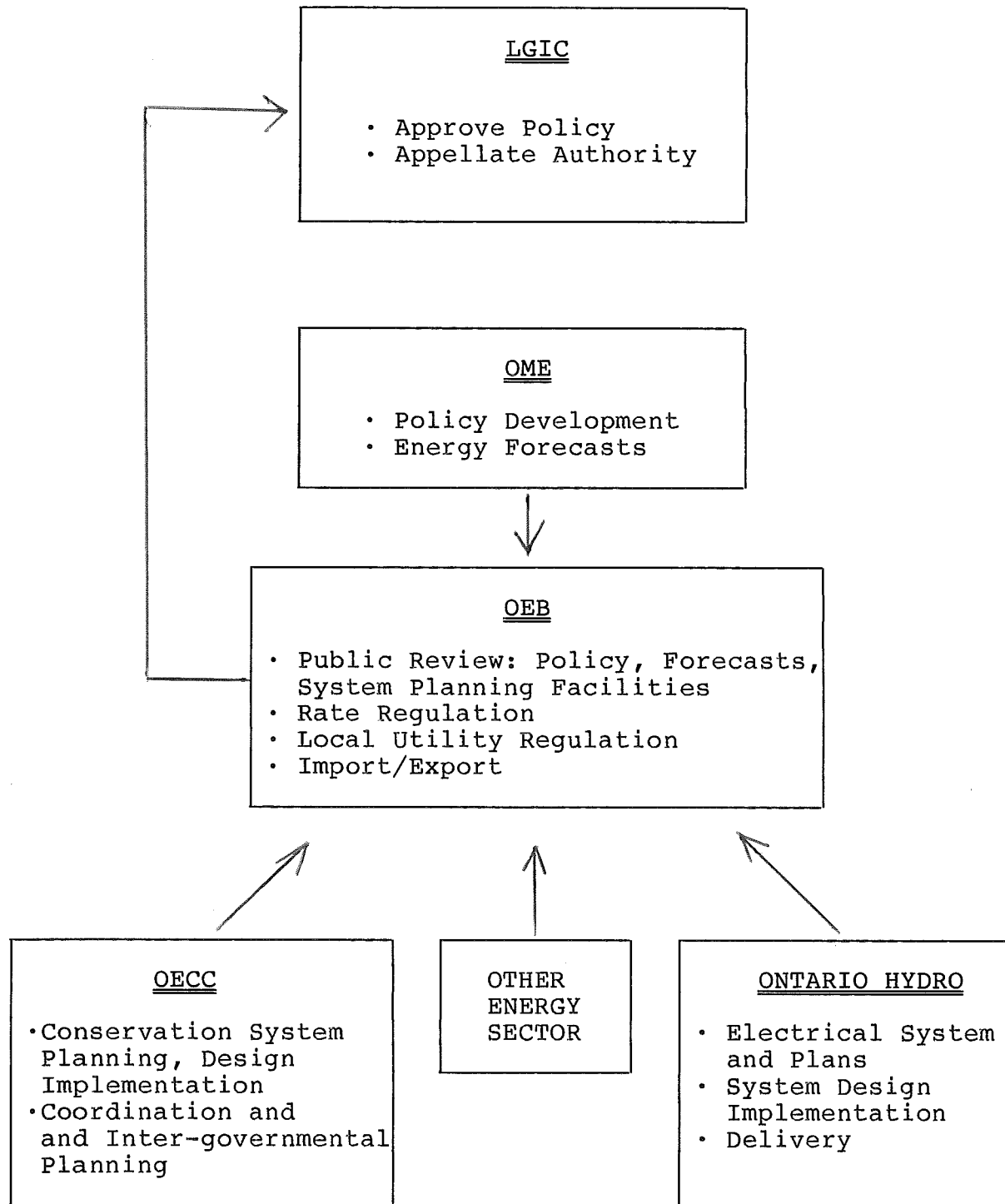
We have in the preceding analysis suggested a substantial expansion of the mandate, and authority of the Ontario Energy Board. In doing so, we have again attempted to simply give substance to the recommendations of those who have considered the role of the OEB in considerable detail.

In considering the jurisdiction and mandate of the Board, RCEPP recommended a substantial expansion of the Board's functions including, as we have already adopted, the authority to review energy policy in general.

We have also found a recent report published by the Economic Council of Canada and titled "Connections, An Energy Strategy for the Future" (1985) to be very helpful in this regard. As recommended by the Council, institutions such as the Ontario Energy Board should be given the following broad powers:

- To regulate rate levels and structures;
- To review and make recommendations with respect to investment decisions;
- To determine capacity reserve margins and other reliability criteria;
- To assess and implement load control techniques;
- To regulate the supply and prices to be paid non-utility producers;
- To consider out-of-province sources of supply and ensure their adequate consideration.

The Council went on to recommend that such agencies be mandated to ~~"within the framework of provincial government policies ...~~



give due consideration to the economically efficient use of resources in supply of, and demand for, electricity".

We believe that an even more expansive role is appropriate to the Ontario Energy Board which would become the major facilitator of public participation in the energy planning process.

Accordingly, we recommend that the Ontario Energy Board Act be amended to:

- (i) Provide the Board, aided by the participation of member(s) of the Environmental Assessment Board, with the responsibility of reviewing and making recommendations to Cabinet with respect to provincial energy plans and forecasts to be developed by the Ministry of Energy (see Energy Policy and Planning, above);
- (ii) Expand the authority of the Board to include decision-making responsibility with respect to matters concerning Hydro affairs currently accorded by the Power Corporation Act to Cabinet. Where desirable, an appeal to Cabinet should be specifically provided for (see the Power Corporation Act, above);
- (iii) Provide the Board with rate-setting authority which should include retail as well as wholesale rates;
- (iv) Expand the mandate of the Ontario Energy Board to accord approval authority to be exercised in conjunction with members of the Environmental Assessment Board, with respect to new facilities and projects;
- (v) To provide authority to oversee and regulate the affairs of local and regional utilities (see PCA above);

- (vi) To allow the Board the authority to consider and offer preliminary approval for any proposed export, import or inter-provincial transfer of electrical power and the authority to ensure that full advantage is taken of opportunities that may exist in this regard.

In advocating an expanded role for the Ontario Energy Board, we do so in order to make the important regulatory functions more responsive to the needs and interests of all Ontarians. It is absolutely essential then that all stakeholders be given an equal opportunity to participate in this regulatory process. It would be folly to replace one monolithic and unresponsive institution with another. In this regard, we believe that the first two reforms to the Ontario Energy Board Act should respectively address the qualifications and manner of appointing Board members, and the accessibility of the Board's processes to those who have traditionally been excluded from them. The first will, at a minimum require the public review and potential veto of Board nominees. Procedures that might be adopted here are briefly described under the heading "The Ontario Energy Conservation Commission", below. The second will require providing the resources to stakeholders who would otherwise be unable to participate in the process. Recent judicial pronouncements make it very clear that unambiguous legislative language is necessary to accomplish this latter objective. (see recent decisions of the Divisional Court Re Ontario Energy Board and Hamilton-Wentworth vs. Save the Valley Committee Inc.)

We also recommend therefore that the Ontario Energy Board Act also be amended to:

- (vii) Establish a public appointments procedure that would, inter alia, provide for the publication of all nominees and for review and ratification by a standing committee on appointments;



- (viii) Provide the Board with express authority to provide funding and assess costs preceding, during and at the conclusion of any matter with the purpose of facilitating informed and meaningful public participation.

### 3. The Ontario Energy Conservation Corporation (OECC)

#### RCEPP Recommendation 3.1

"Through the development of demand scenarios based on end use data, future planning philosophy should be re-oriented to emphasize demand management increasingly rather than maintain the focus on supply expansion, as is traditional."

#### MacDonald Select Committee Recommendations III-14 and III-22

"III-14 Ontario Hydro, the Ontario government and the Ontario Energy Board consider the effective and efficient use of electric energy an issue of equal importance to the continuance of a reliable and adequate supply. Further, that Ontario Hydro's specific conservation targets be accepted as a government commitment and be included in all system expansion planning."

"III-22 Ontario Hydro change its planning process to emphasize meeting Ontario's electrical energy needs after implementation of conservation and load management programs, with the minimum amount of new generation that is consistent with sound planning."

There are, we suppose, any number of ways to argue the good sense of efficiency and conservation, many of which have been put to this Committee by those with considerably more expertise in this area than we enjoy. However, we have in the course of our endeavours had the opportunity to introduce evidence before decision-making tribunals on the subject of conservation. In our experience, one of the most evocative and graphic depictions of the options available to us was developed by Mr. Charles Ficner of the Federal Department of Energy, Mines and Resources. In a report to the international conference on New Energy Conservation

Technologies and Their Commercialization convened in Berlin in 1981, Mr. Ficner offered the following consideration of the costs associated with residential electric heating in newly built homes. We have spoken to Mr. Ficner, who advises that subsequent study has borne out the validity of the following comparison.

We reproduce this chart in the hope that this one picture will be worth a thousand words.

Figure 3

COST-EFFECTIVENESS OF HOUSING DESIGNS



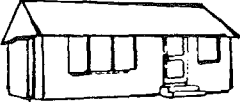

	SELLING PRICE (\$)	ANNUAL HEATING COST (\$)		
		INTEREST ON INCREMENTAL COST (15%)	PURCHASED ENERGY	TOTAL
<b>A CONVENTIONAL</b>				
	80,000	—	800	800
<b>B SUPER-ENERGY EFFICIENT</b>				
	83,000	450	100	550

Figure 4

TOTAL NATIONAL CAPITAL INVESTMENT  
FOR RESIDENTIAL ELECTRIC SPACE HEATING  
(\$ per House)

	SELLING PRICE	INCREMENTAL CONSTRUCTION COST	INSTALLED HEATING PLANT (kW)	DIVERSIFIED DEMAND	UTILITY INVESTMENT	TOTAL
<b>A CONVENTIONAL</b>						
	80,000	—	25kW	6kW	12,000	12,000
<b>B SUPER ENERGY EFFICIENT</b>						
	83,000	3,000	4kW	1kW	2,000	5,000

The following portion of our submissions sets out the rationale for establishing a "conservation utility" as a distinct corporate entity and for removing from Ontario Hydro its current functions in this regard. We begin by making the case that Ontario Hydro is not the appropriate mechanism for pursuing conservation and efficiency objectives. We go on to discuss the benefits of establishing a corporation specifically suited to this task and finally set out several of the salient characteristics of this new legislative regime.

(a) Ontario Hydro is not the Vehicle to Plan, nor Implement Energy Conservation and Demand Management Programmes

In our view, Ontario Hydro is neither by structure nor perspective an appropriate institution to plan nor implement an energy conservation and efficiency programme. We support this contention upon the following grounds:

1. Ontario Hydro is large, highly centralized and qualified by corporate structure and expertise to plan and implement capital-intensive mega energy projects. The overwhelming majority of conservation and energy efficiency measures are small, decentralized and technologically simple. Even in the industrial sector, the implementation of efficiency measures is several orders of magnitude removed from even smaller supply options.
2. Ontario Hydro's existing construction commitments have put its short-term objectives at odds with conservation and energy efficiency. This has led many to conclude that Ontario Hydro cannot, for the time being, afford conservation. The Corporation's need to generate adequate revenues to finance an admittedly over-built system creates a strong corporate disincentive to encourage conservation. The proof of this pudding is Ontario Hydro's aggressive advertising campaign

encouraging increased use of electricity for residential space heating, arguably the most inefficient application of electrical energy.

3. While we regard the case for conservation and energy efficiency to be overwhelming, we concede that the potential contribution of such measures is a matter upon which reasonable minds may diverge. In this regard, no one has been more reluctant to recognize the potential benefits of these and other demand measures than has Ontario Hydro. In the public debate that has proceeded before the Select Committee and the Royal Commission, and even before this Committee, Hydro has consistently adopted a position that has framed one extreme. A programme of energy efficiency and conservation clearly deserves a great deal more enthusiasm than Hydro can lend it.
  
4. We have, over recent years, allowed Hydro an ample opportunity to develop and implement an aggressive conservation programme. In 1981, the PCA was amended to expressly allow Hydro this authority and the Residential Energy Audit programme (REAP) soon emerged. Ostensibly modelled after the Tennessee Valley Authority's highly successful interest free loan plan for residential insulation, Hydro's version has been, at best, disappointing. (see Paul MacKay, The Electric Empire)

It is our recommendation therefore that an Ontario Energy Conservation Corporation be established with a broad mandate to plan and implement energy conservation and efficiency measures and programmes.

In addition to avoiding or overcoming the problems noted above, such an energy utility would offer the following unique advantages:

1. The delivery of conservation and efficiency programmes and technology is disaggregated and well-suited to institutions that are already in direct contact with energy consumers. The overwhelming majority of electrical energy consumers purchase power from local utilities. Local public utility commissions may also lend to the delivery system a particular sensitivity to local conditions that should significantly augment the efficacy of particular programmes. The skills and institutional resources necessary to this task are more in keeping with the scale and sophistication of the local utilities than they are with Ontario Hydro. It is also important here to note the direct accountability of local utility commissions to the constituencies they serve.
2. A programme of energy conservation and efficiency should not be restricted to electrical energy consumption but should address other sources of energy services.
3. Experience elsewhere confirms the utility of establishing mechanisms that can singlemindedly pursue conservation strategies and that are specifically designed and suited to that task.
4. Effective conservation strategies transcend and frequently cross existing jurisdictional boundaries, and will often involve three levels of government and several departments and agencies within each. The need to develop co-ordinated and concerted programmes is as apparent as the absence of any institutional mechanism

to effect that consolidation. For example, energy efficient building standards belong in our provincial building codes along with the other standards that we impose upon new construction. The development and promulgation of such standards is clearly beyond Hydro's mandate but would nevertheless greatly benefit from specialized expertise in this area. To create in virtually every government ministry or department an energy conservation branch would be both impractical and inefficient.

We foresee an inevitable tension between the corporate objectives of insuring adequate and reliable electrical supply on the one hand, and conservation and demand reduction measures on the other. Given the overwhelming significance of these issues to all Ontario residents, it is vital that the debate be a public one among protagonists that each have the resources to thoroughly assess the costs and benefits of their respective strategies.

The following briefly outlines the salient characteristics of this proposed "conservation utility" that is intended to meet the deficiencies of existing policy, planning and implementation mechanisms, in this area.

In this regard, we believe that a great deal can be learned from legislative initiatives that have taken place in the United States. This being said, we are cognizant of the very significant differences in the circumstances of this province when compared with its American counterparts. In our view however, innovative American developments are informative as are the successes and failures of these new approaches.

We understand that this Committee has had the benefit of hearing from several witnesses who have been directly involved with the ~~evolution of regulatory regimes in the United States.~~ We will not therefore attempt to review this experience or describe in

any detail the innovative energy legislation enacted by several states. We have, however, drawn upon two such initiatives in developing several of the proposals for reform that are set out below. These are the Pacific Northwest Electrical Power Planning and Conservation Act (NWPPA) and the Warren Alquist State Energy Resources Conservation and Development Act of California (ERCDA). We have done so because each of these Acts gives very direct legislative expression to many of the reforms suggested by the Select Committee and the Royal Commission.

**(b) The Ontario Energy Conservation Corporation Act  
(or the Least-Cost Energy Services Act)**

**I. Purpose**

It is the dual purpose of this Act to promote energy conservation and to insure the efficiency, economy and environmental viability of energy uses in the Province of Ontario. It is the further purpose of this Act to employ a range of measures to reduce wasteful, uneconomic and unnecessary uses of energy in order to prudently conserve resources and ensure environmental and land-use goals.

**II. Definitions**

"Conservation" means any reduction in energy consumption as a result of increases in the efficiency of energy use, production or distribution.

"Cost-Effective" means a measure or resource that is forecast to be reliable, timely, and able to provide energy services at an estimated incremental system cost no greater than the least-cost similarly reliable and available alternative measure or resource.

"Cost" is here intended to include the assessment of all economic, environmental and social costs from a broad societal perspective.

**III. The Corporation**

The Act shall provide for the appointment of an Ontario Energy Conservation Corporation (OECC). Nominees to the Corporation shall respectively have backgrounds and experience in the following fields: engineering, environmental protection, economics, natural resources



management, administrative law and one member shall be from the public at large.

No member shall, during the two years prior to his or her appointment, have been employed by an electrical utility or a firm contracting with an electrical utility.

All nominations to the Corporation shall be published in the Ontario Gazette prior to being referred to a legislative committee for confirmation. A majority of committee members may veto any nomination.

The Corporation may retain counsel and has standing to participate in proceedings before the Ontario Energy Board and in other matters relating to energy policy and planning.

#### IV. Planning/Forecasts

The Corporation shall establish a comprehensive end-use database for the province that will provide the basis for demand scenarios for planning purposes.

Within two years of being established, the Corporation shall prepare a provincial conservation plan that will, inter alia:

- (i) delineate specific goals with regard to energy conservation and efficiency;
- (ii) analyze and assess the implications associated with various energy rates and rate structures upon energy consumption;
- (iii) describe the policies and programmes that will be adopted to achieve stated objectives, assigning priorities to each;
- (iv) assess the environmental impacts associated with any proposed programme as required by the Environmental Assessment Act;
- (v) estimate capital and operating requirements for stated programmes; and
- (vi) project the potential impacts such measures and programmes could have upon provincial energy consumption over 5, 10 and 20 year horizons.

In developing its plan, the Corporation shall provide a full opportunity for public review and comment, distributing a draft plan to all stake-holders and subsequently convening a public hearing. A final energy conservation plan will be adopted by the Corporation within 36 months of being established, and forwarded to the Ontario Energy Board for review and approval.

The Corporation shall undertake a comprehensive review and assessment of its programmes and policies every five years and revise its energy conservation plan accordingly. The procedures delineated above will again be followed with respect to public participation and comment.

#### V. Standards/Practices

The Commission shall make recommendations by way of draft regulations to responsible ministries with respect to the following matters:

- (i) heating, insulation and building standards (Recommendation 10.2 of RCEPP and Recommendations II-3, II-6 and II-10 of the Select Committee);
- (ii) performance standards with respect to appliances (RCEPP Recommendation 10.3);
- (iii) efficiency standards for industrial processing equipment (RCEPP Recommendation 10.1);
- (iv) performance and efficiency standards appropriate to the transportation sector.

The Corporation shall also assess for the purposes of making recommendations to the Ontario Energy Board, the impacts of bulk metering, other delivery practices, rate structures and rates, load management, billing credits, energy surcharges and buy-back rates.

The Corporation shall also act as liaison with the federal government to encourage adoption and reinstatement of some federal conservation and efficiency programmes.

## VI. Programmes

### A. Energy surveys/audits

The Corporation shall develop in co-operation with municipal and regional electrical utilities, programmes that will encourage use of energy surveys and audits, the purpose of which will be to:

- (i) identify the nature and extent of energy uses by the building or facility;
- (ii) determine appropriate energy conservation maintenance procedures; and
- (iii) indicate the needs for energy conservation measures, equipment and devices.

### B. Loans/subsidies

Appropriate financial incentives which may include forgivable loans, shall be made available to encourage investment in energy conservation in the residential, commercial and industrial sectors (Recommendations of the Select Committee III-4, III-9, III-11 and RCEPP Recommendation 10.4, also see ERCDA s. 5.2 which provides detailed procedures for setting the manner in which, and the conditions for granting financial assistance).

### C. Research and development

Grants, loans and other financial incentives shall be made available by the Corporation to promote research and development of energy-saving technology (SC III-8 and RCEPP Recommendation 4.1 through 4.6).

## VII. Information/Resources

(The following provisions are intended to address a problem that has recently been described by the Economic Council of Canada as a major impediment to the implementation of least-cost energy options.)

The Corporation shall gather and act as a repository for information and data concerning energy efficiency and conservation planning, methods, implementation techniques and technologies. It shall also establish ~~data resource processing techniques and programmes~~ appropriate to its mandate and make these accessible to the public at large.

The Corporation shall develop and carry out a variety of appropriate information programmes and services designed to provide up-to-date and accessible information to decision-makers, local utilities, investors and consumers. The Commission would also have the authority to carry out advertising campaigns designed to heighten general public awareness of conservation and efficiency options.

One final point regarding the OECC should be made. While we have not had an opportunity of delineating in any detail the precise funding mechanisms appropriate to its affairs, some general comments should be noted. The first is that the OECC must have the same access to capital and the other benefits available to Ontario Hydro. The second is that Ontario Hydro's and local utility's billing systems be utilized whenever possible to recover loans advanced for conservation or efficiency measures. Finally, some funding from general revenue will be necessary to establish the OECC and to finance activities presently being carried out by the Ministry of Energy.

### III. ENERGY AND THE ENVIRONMENT

The Environmental Assessment Act of Ontario (EAA) has often been described as among the most comprehensive of its kind in the world. Since its proclamation in 1976, the EAA has unfortunately had only limited application to Hydro matters. We strongly believe the Act provides an excellent planning tool for assessing and choosing among various electrical system demand and supply options. To date it has only been utilized for the purposes of electrical transmission siting endeavours and certain routine Hydro activities.

The general scheme of the Act sets out a procedure to be followed by a proponent of an undertaking which, by definition, includes both physical projects, plans and programmes. For that reason, in our view, the Act applies to the present planning process that Ontario Hydro is in the process of carrying out. We believe that the planning methodology the Act prescribes is vital to a thorough and comprehensive assessment of all of the costs and benefits associated with system planning options. It should therefore play a central role as the planning process proceeds.

The essential features and requirements of the Act are as follows:

#### The Environment: A Holistic Definition

To begin with, the Act defined "environment" holistically to include:

- (i) air, land or water,
- (ii) plant and animal life, including man,
- (iii) the social, economic and cultural conditions that influence the life of man or a community,
- (vi) any building, structure, machine or other device or thing made by man,

- (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or
- (vi) any part or combination of the foregoing and the interrelationships between any two or more of them.

In our view, this expansive definition of the environment is particularly useful to electrical system planning because of the conflicting nature of claims on the environment and the rationale offered in support of them. The Act provides an important tool that can "integrate the development of energy policies with social and environmental policies associated with energy" (RCEPP p. 171). To illustrate, the Act provides a methodological tool to answer the following questions: Which system planning option will create more employment? Which will minimize the release of contaminants to the environment? Which is more amenable to democratic control and accountable institutions? Which will most reliably meet the energy service needs of Ontario's citizens? Which will create the greatest demand upon the provincial economy?

The other important benefit offered by an inclusive definition of environment, is the clear direction provided by the Act to avoid the externalization of costs associated with a proposed project. Much of the debate concerning the direction of Ontario Hydro's activities has centred upon the accounting practices that are used to quantify the costs associated with the option being put forward. Too often that assessment has been a narrow technical and economic one that has failed to account for a host of "externalities" that are nevertheless costs or benefits of the various options.

#### Assessing Environmental Impacts

The substantial requirements of the environmental assessment process are set out by s. 5(3) of the Act, as follows:

- (3) An environmental assessment submitted to the Minister pursuant to subsection (1) shall consist of,
- (a) a description of the purpose of the undertaking;
  - (b) a description of and a statement of the rationale for,
    - (i) the undertaking,
    - (ii) the alternative methods of carrying out the undertaking, and
    - (iii) the alternatives to the undertaking;
  - (c) a description of,
    - (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
    - (ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and
    - (iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,
 by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and
  - (d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking. R.S.O. 1980, c. 140, s. 5.

While the term "need" is not used in this provision, the underlying principle of the Act is that it is not sufficient that a project simply meet the proponent's stated purpose. Rather, by requiring a comparative assessment of alternatives to the project, a proponent must weigh the advantages of meeting its purpose with those of not doing so. Need for the project is thus established when benefits outweigh costs and when the balance favours the proponent's preferred alternative. In this manner, the Act requires that an account of environmental impacts be taken at the same time and in precisely the same manner that

technical and financial considerations have traditionally been assessed.

### Review and Public Hearing

The third major facet of the environmental assessment process that should be noted, is the review and public hearing requirements set out by the Act. Section 7 requires the Minister to circulate for review any assessment that he or she receives, allowing other government ministries and agencies to articulate any concerns or comments they may have with respect to the undertaking. The Minister must subsequently publish and give notice of the environmental assessment and the Ministry's review to appropriate parties. Any person may consequently request of the Minister that a hearing be convened before the Environmental Assessment Board with respect to the adequacy of the environmental assessment and approval of the project. Section 29 of the Act allows the Minister, with the consent of Cabinet, the authority to exempt an undertaking from any or all of the requirements of the Act. Finally, it should be noted that the Act applies only to an undertaking of a public, rather than a private character, unless the latter is specifically designated by the Minister.

In practice, few projects proceed to a hearing before the Environmental Assessment Board. Those that do would in any event have been the subject of public hearings before the Ontario Municipal Board with respect to planning or expropriation matters or before the Environmental Assessment Board with respect to approvals under the Environmental Protection Act. For that reason, environmental assessment hearings now inevitably proceed before a joint hearing board comprised of OMB and EAB members.<sup>10</sup> While the Minister's authority to exempt has been utilized most often with respect to small projects of nominal environmental effect, the notable exception is Darlington GS.



## The Environmental Assessment Act and Ontario Hydro

While the Environmental Assessment Act was intended as a statute of general application, it is clear that its potential for dealing with the review of major Ontario Hydro undertakings was clearly in the minds of those who drafted it. Indeed, the controversy surrounding several Ontario Hydro undertakings may have been the most important motivation for the enactment of this innovative and important environmental legislation. It is rather unfortunate then that nearly ten years after its proclamation, the utility of the Act and the environmental assessment process it prescribes, has yet to be fully tested with respect to Ontario Hydro's activities.

While the Act has, with some limitations, been applied to two major transmission system expansion projects, it is clear that its application to these undertakings occurred much too late in the planning process to be fully effective. A consideration of the manner in which these projects were assessed, highlights the need to apply the Act at an early enough stage in the planning process to be meaningful. As many may be aware, Hydro developed its plans to substantially expand its 500 KV transmission system in eastern, central and southwestern Ontario during the mid-1970s. The systems plans then developed entailed the further centralization of generation resources and ever larger facilities that would then be linked to each other and with major load centres by a province-wide (indeed, continent-wide) grid of high-voltage transmission lines.

While the requirements of the Environmental Assessment Act applied to the transmission line projects, they did not apply to the system planning process or to the establishment of generation facilities that provided the rationale for building the transmission lines in the first place. Thus, while Hydro had to assess alternatives to its undertakings in southwestern and central Ontario, the existence of Bruce G.S. made the issue

rather academic. The environmental assessment carried out by Hydro of these projects respectively offers only a perfunctory consideration of alternatives to its proposal. Clearly, its decisions in this regard were motivated almost exclusively by technical and economic considerations that long preceded any consideration of the environmental effects of its project.

For those affected by the transmission lines however, the issue of need was often, and understandably, paramount. Having been denied an opportunity to effectively participate in the systems planning decisions that provided the essential justification for transmission expansion, farmers in southwestern Ontario belatedly queried the need for all eight Bruce generation units in the context of a hearing that occurred far too late in the day for the issue to be considered seriously. The tension between the community's desire for effective involvement in the planning process and the limited opportunity provided with respect to the siting of transmission lines has often made the latter exercise enormously frustrating for all concerned. The major difficulties encountered by Hydro in siting the first line from Bruce have not been eased by an approvals process that provided, in effect, no further or greater opportunity for the community to participate in that aspect of a decision-making process with which it was most concerned.

#### The Environmental Assessment Act and Systems Planning

As many have noted, we have at present a unique opportunity to apply to the electrical system planning process the lessons that we have learned during the last decade. We believe that the planning principles and approach engendering by the Environmental Assessment Act, and the procedures developed by the Ministry of the Environment for its application, will be extremely helpful in avoiding many of the errors that have been made in the past. As we have noted, the definition of undertaking clearly contemplates energy planning activities of the Ontario government as well as

the electrical system planning activities of Ontario Hydro. We have, for the first time, an opportunity to truly test the efficacy of a legislative regime designed specifically to require a rational, comprehensive assessment of all of the options before us. It is essential that we not let it slip by.

In its final report, the RCEPP considered at some length and strongly endorsed the utility of the environmental assessment process as essential to the electrical system planning endeavour. In doing so however, the Commission doubted the capacity of the Environmental Assessment Board as then constituted to fulfill its mandate with respect to long range planning and major energy policy issues. The problem identified by the Commission was one of staff resources and analytical capabilities.

Several changes have been made to the Board since that time and its expertise has steadily grown. However, we share the Commission's concern in this regard because of the unique and complex characteristics of the energy system planning endeavour. It is readily apparent that an informed and independent appraisal of system planning options require a diverse array of highly sophisticated scientific, economic and social disciplines. As we have advocated, it is essential to an accountable decision-making process that adequate resources be made available to those institutions that are to exercise review and regulatory functions. It will be no mean feat to ensure that both the Ontario Energy Board and the Ministry of Energy have sufficient resources in this regard. It seems inappropriate then to suggest that the Environmental Assessment Board be similarly equipped. Rather, a pooling or sharing of resources appears to be a much more appropriate arrangement. For this reason, we believe that a joint regulatory process be adopted to consolidate the skills and resources of the Environmental Assessment Board and the Ontario Energy Board with respect to energy system planning undertakings.

Thus, while the Environmental Assessment Act would provide the methodology, the resources of the Ministries of the Environment and Energy, the Environmental Assessment and Ontario Energy Boards would all be brought to bear with respect to review, public hearing and approval functions. We recommend therefore that the Ontario Energy Board be added to the list of those regulatory functions consolidated pursuant to the provisions of the Consolidated Hearings Act.

We also recommend that the Environmental Assessment Act and the procedures it prescribes be adopted as the essential methodological tool for evaluating energy and electric system planning options.

IV. ENERGY AND SOCIAL JUSTICE  
(ARE THERE REALLY NO LOSERS)

INTRODUCTION

No one would disagree with the notion that, the planning and implementation of energy and electrical systems be both democratic and equitable. As we will discuss however, several characteristics of the present system stray rather far from these ideals. We have in Part I of this brief attempted to address one of the fundamental inequities of the existing system the very limited opportunity for public involvement in the planning and regulatory process. In particular, we have highlighted the need for funding to assist those who would not otherwise have access to the resources that are fundamental to informed and effective participation. In this part of our brief, we will consider other aspects of the planning, design and implementation of our power system.

Perhaps it is appropriate to begin here by noting Ontario Hydro's commitment to what is described as the "no losers test" that it has adopted as a sorting criteria in the demand supply option study. As we understand it, the "no losers test" simply posits the equitable distribution of costs associated with any addition to or modification of the present electrical system. The notion is raised by Hydro to highlight a potentially inequitable result of strategic conservation should hydro rates rise in consequence of such measures and be disproportionately borne by those who have not made conservation improvements. It is unfortunate, however, that Ontario Hydro has not similarly expressed in the DSOS the same concern about the equity of other aspects of the current electrical system. It is our purpose here to examine the manner in which the costs of the present system are distributed and, in doing so, we will consider social and environmental, as well as economic systems costs.

## A. Socio-Economic Impacts

### 1. Basic Needs Unmet

Dramatic escalation of energy prices since 1973 have made heating, transportation and lighting service needs an increasingly scarce commodity in our society. The years 1973 through 1980 witnessed a fifteen-fold increase in the price of a barrel of crude oil with the result that heating fuel bills doubled within the span of two or three years and did so on more than one occasion. Although we are recently enjoying a hiatus, our continuing dependence upon non-renewable and ever-dwindling energy supplies, ensures that the spiral of escalating prices will soon continue its ascent.

The effect upon poor people is immediate by way of rent and transportation cost increases and less indirect by way of contribution to costs of all necessary commodities and by way of negative impact upon the economic well-being of society.

Studies in the United States have revealed that poor people have, during the last decade, had to dedicate an increasing share of limited income to home energy needs. These investigations have revealed that poor people spend 21% of annual income on home energy needs, a percentage which is four times that spent by the average homeowner. The gap is growing, and regulatory, pricing and taxing decisions have been anything but redistributive in their effect. There are losers, and those suffering the most are those with the fewest resources to begin with.

### 2. Impact Upon Spending Priorities

Recent trends in favour of capital intensive, high technology energy mega-projects have, to an ever-increasing degree, robbed capital from endeavours that have traditionally helped the poor, eg. housing, jobs and education. In Ontario, calls for increased spending on social services have often been met with the response

that resources are limited. Indeed cutbacks in social service spending, education and health care have been increasingly the order of the day. Our ability to finance programmes that serve or benefit the poor is clearly and directly affected by our public support for and guarantee of Ontario Hydro's debts which represents more than 50% of the province's total debt load.

In our view, this province's spending priorities have been co-opted by a commitment to increasingly capital intensive energy mega-projects that guarantee future increases in energy costs and a continuing expropriation of poor people's options. Again, the effect of Hydro's capital needs are not equitably distributed across our society.

### 3. Rates

Another inequity of the present system that has been highlighted by others is the regressive characteristics of the existing rate structure. Not only does a declining block rate structure encourage consumption, but as well imposes the highest electricity rates upon those who consume the least electricity. Simply stated, those least able to afford electricity subsidize the costs of the largest energy consumers.

An equitable rate structure would, like an equitable tax system, levy proportionately smaller charges upon those least able to pay. A regressive rate structure imposes equal charges again all users regardless of income or their particular ability to participate. A super-regressive rate structure assesses the highest charges against those who can least afford them. Hydro's rate structure is super-regressive.

#### B. Unresponsiveness of Energy Programmes to Needs of the Poor

In many respects, the energy-related problems experienced by poor people are shared with the middle class. Indeed, impacts upon

the middle class were so severe during the 70s that governments did respond with various programmes, such as COSP and REAP. However, virtually all of these programmes discriminate against the poor by presupposing that all in society have equal resources to spend on conservation and energy efficiency measures. With respect to the poor tenant, it is clear that the programmes had no impact. Owners of residential, multi-unit buildings were able to pass increased heating costs directly through to tenants by way of annual rent increases. Should a landlord be inclined to invest in conservation measures, this type of capital expenditure would have been amortized over a number of years. This created a significant disincentive to effect energy conservation or efficiency measures and thereby reduce a tenant's rental costs.

Thus, quite apart from the potential effects upon rates, traditionally conservation programmes have simply been unavailable to the poor and have been of little benefit to them. The answer here is not however, as Hydro implies, to remove the programmes altogether, but rather to design them in a fashion that makes them available to all residents of Ontario regardless of income.

### C. Environmental Impacts

We are all familiar with several of the more notorious environmental impacts associated with our electrical system, such as acid rain and the problems related to high-level waste disposal. Less apparent are other consequences of the current system that, nevertheless, have very serious and inequitable impacts upon certain, and usually poorer, segments of Ontario's population. Thus, the impacts associated with hydro-electric development and the flooding that often attends it, are usually borne by rural or remote communities. For Native people, the dislocation that can result may profoundly disrupt traditional lifestyles and the economic structure of local communities. While the most famous examples here have occurred outside of



Ontario, involving James Bay and Churchill and Nelson Rivers hydro-electric projects, similar impacts have occurred in Ontario. If present decisions lead to expanding generation capacity, future projects will no doubt have similar results.

Uranium mining in northern Ontario has also had disastrous impacts upon indigenous communities without the resources necessary to protect themselves from those impacts. Thus, for the residents of the Serpent Indian River Band, the results of mining activities in Elliot Lake have been enormous in terms of the radioactive contamination of the Serpent River and the devastation of a large portion of the reserve in consequence of mine-related industry.

The siting of transmission lines also has serious consequences for the unlucky, primarily rural resident whose property is expropriated as a result of the project. Many of the costs associated with such projects are simply externalized. This means that they are not borne by Ontario Hydro consumers generally, but rather by those who by circumstance find themselves in the path of development.

The distribution of impacts associated with coal generation are also revealing. Recent studies have demonstrated the disproportionate impacts of air pollution upon lower income communities. While we are not aware of any investigation of the impacts associated with Ontario Hydro's generation stations in particular, the relationship of low income and air pollution effects has been demonstrated for Ontario. Sulphur dioxide is, of course, one of the major pollutants of concern, as is lead, both of which are products of Ontario Hydro's coal generation. Another interesting discovery, of the work that has been carried out in this regard, is the fact that improvements in air quality disproportionately benefit those with greatest exposure.

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It is also interesting to note again that those most exposed to the negative impacts of the electrical system here are those least responsible for creating the problem in the first place. American studies have revealed that those families with incomes in excess of \$16,000.00 a year (1981) consume twice as much electricity and natural gas as those families with incomes below that income figure. Again, the character and configuration of the present system creates real winners and losers with the losers invariably being lower income Ontario residents.

### CONCLUSION

We have attempted to demonstrate in this part of our brief, the various facets of the electrical system that unfairly distribute the costs of the system and levy disproportionate charges against those least able to afford them. We began this part by noting Hydro's "no losers test" for strategic conservation. We invite Hydro to demonstrate the same concern for the very real and current inequities of the system that it has established and administers. It would be unconscionable, in our view, to decline conservation initiatives because of the potential regressive effects they may have while leaving in place an energy system that imposes far greater inequities. The solution, we believe, is apparent and requires an approach to electrical system planning, design and implementation that:

1. Fully iterates all of the costs of the system and its alternatives, and;
2. Establishes mitigative and compensatory devices to ensure an equitable distribution of those costs, that cannot otherwise be avoided.

Therefore, we recommend that:

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1. An energy tax credit be established by the provincial government to defray some of the portion of energy costs borne by low-income Ontario residents;
2. That energy assistance programmes be designed in such a fashion as to allow full access by all Ontario residents regardless of income. Such a system should include direct grants and specific amendments to rent control legislation to encourage conservation improvements in the rental market;
3. All of the costs associated with facility construction and siting as well as with associated activities must be fully identified as required by the environmental assessment process and rationally and equitably allocated. This will mean broadening the ambit of compensatory mechanisms, like the Expropriations Act, to include costs hitherto unrecognized.