



The Council of Canadians response to Bill 150, Green Energy and Green Economy Act, 2009

March 26, 2009

The Council of Canadians welcomes the opportunity to comment on Bill 150, Green Energy and Green Economy Act. We are encouraged by the government's recognition of the urgent need to act on the climate, environment and growing economic crises, and the opportunities a green energy economy present to do so.

Key observations of this submission include:

- The need for trade rules to be a consideration for planning influencing the electricity sector
- The extent that trade rules can limit regulatory options for ensuring green, secure and accessible electricity for the benefits of Ontarians
- There are opportunities to minimize the constraints of trade rules while meeting objectives for building a green energy economy with secure supplies for Ontarians including interprovincial power agreements, public and community power and investments in energy conservation and improved energy efficiency

Founded in 1985, the Council of Canadians is Canada's largest citizens' organization, with members and volunteer chapters across the country. We work to protect Canadian independence by promoting progressive policies on fair trade, clean water, energy security, public health care, and other issues of social and economic concern to Canadians. On energy security, our organization calls for strong policy in the form of a Canadian Energy Strategy guided by the principles of energy security and ecological sustainability. This includes policies that provide security of energy supplies, guarantees access to energy reserves in times of need, establishes strong policies that protect our environment and plans for a just transition to a post-carbon economy with more energy conservation, efficient use and generation from renewable sources. There are a number of compelling aspects of the Green Energy Act (GEA) in this regard. In recognizing the need for a Canadian Energy Strategy, we have also identified how free trade agreements such as NAFTA and the free market model stand in the way of such objectives. Our experience here is relevant to the Ontario context.

There are compelling reasons why trade should be a consideration in moving forward with the GEA and electricity planning.¹ In the past, international trade rules and US electricity sector regulations (Federal Regulation and Oversight of Energy, FERC) had little relevance to planning because Ontario's electricity sector was in public hands. Market-oriented policies introduced by the Harris government has led to more private investment in Ontario's electricity sector and increased cross-border trade with the US. This has given these rules new relevance. The extent to which the GEA moves forward with a market-

oriented model for the electricity sector determines how much influence these rules can have on limiting regulatory options to ensure green, secure and accessible electricity for the *benefit of Ontarians*.

NAFTA and US electricity sector regulations give private investors significant rights. In particular: NAFTA and FERC rules prevent export taxes or other measures affecting exports to US markets; NAFTA's proportional sharing rules prevents export restrictions even in times of supply shortages; and NAFTA's investment rules (chapter 11) allow US investors to sue Canada in secret trade tribunals over almost any state measure that impacts predicted profits. This imposes significant constraints on public policy and regulatory options that may affect trade with the US, or the activity of foreign investors in Ontario's energy market.

Where power generation is in private hands and subject to no procurement relationship with the Province or Ontario Power Authority, generators are free to enter into contracts for supply of energy or attributes to US buyers. Already, a majority of Ontario's exports to the US are conducted by private entities, many of whom are foreign corporations.² Higher electricity prices in the US means that exports are an attractive option for private owners and traders in Ontario. With greater exports, Ontarians will be forced to compete with US markets driving electricity costs higher with potential social consequences, and regulatory options for price stability will be limited by trade rules.³

With a growing willingness to pay a premium for clean power in US markets, exports of renewable energy generation or its attributes are particularly attractive, which can undercut provincial renewable use objectives. Ironically, with greater deregulation of the electricity sector Ontario may be faced with importing coal power to make up domestic shortfalls.⁴ This does not suggest that Ontario should not engage in energy trade with the US, rather it identifies the risks of such trade in a further deregulated, market oriented electricity sector.

The GEA clearly intends to foster more renewable energy generation in the province and is proposing Advanced Renewable Tariffs as a key policy tool. Procurement contracts with the government provide some protection from the risks of trade rules (NAFTA's investment rules, chapter 11, being a notable exception) but it should be recognized that when contracts with the private sector end, power generation remains in private hands meaning the risks identified apply.⁵

There are options that can minimize the constraints of NAFTA and FERC rules which can also help develop a green energy economy with secure, accessible supplies of electricity for Ontarians.

Interprovincial power agreements are virtually unencumbered by constraints imposed by trade rules.⁶ Ontario can benefit from the low emission hydroelectric power of neighboring provinces helping to meet renewable use targets. These agreements are also a cost effective alternative to more nuclear generation (which has proven extremely costly to taxpayers and poses unacceptable risks to people and the environment) but if the Ontario government does not act quickly, these resources will be sold to US markets. In particular, there are significant economic and ecological benefits for both Ontario and Quebec in increasing electricity flows between the provinces. These benefits can be met without any additional hydro-electric projects in Quebec and take advantage of the province's electricity demands peaking at different seasonal times and synergies between wind power and natural gas generation and

hydro electric sources. Interprovincial power agreements should be considered under or in addition to the Green Energy Act as a viable, cost-effective opportunity to meet renewable use targets.

Public and community power also minimizes the constraints of trade rules in helping to maintain public ownership of generation and transmission and should play a leading role in creating a green energy economy.⁷ Municipalities and/or local electricity utilities, individuals, First Nations and community oriented non-profit co-operatives offer opportunities for public and community ownership and control. While the GEA will help remove barriers to renewable generation in this regard, investments ensuring expansion here will help ensure sustainable and reliable energy supply for the benefit of Ontarians. This includes preserving space for regulatory measures ensuring secure supplies, fair prices and meeting renewable use targets. There are many other additional benefits of this model including the ability to reinvest economic rents in the interests of social, economic and environmental objectives and accountability to local communities. Ensuring that projects move forward in a manner that includes and engages community members should be a priority of the GEA. Comments of the Premier regarding 'NIMBYism' (not in my back yard)⁸ in regards to wind projects raise questions about the extent to which streamlined approval processes under the GEA may weaken opportunities for community engagement in the decision-making process.

While the GEA outlines in broad strokes an emphasis on efficiency, it should be underscored that the area of improved conservation and increased energy efficiency is worthy of significant investment and prioritization. After all, the cleanest energy is the energy we don't have to use. The Ontario Clean Air Alliance report that, to date, for every dollar the Ontario Power Authority spent on conservation, sixty dollars has been directed towards new electricity generation capacity.⁹ More public education aimed at a number of sectors creating greater demand side management and conservation practices can play an important role improving energy conservation. Investments in energy efficiency measures such as retrofit programmes – from weatherization measures and replacing fixtures and appliances to increased use of combined heat and power systems which generate both heat and electricity – is essential. This can create green jobs in retrofitting sectors as diverse as the public and residential sector to industrial and manufacturing sectors (here, combined heat and power systems can play an important role). Programmes for retrofitting low-income and public housing should be a priority.¹⁰

Supporting made-in-Ontario clean energy technology innovations (both in the renewable energy sector and energy efficiency) through procurement contracts deploying the technologies in the public sector (examples include government buildings schools and hospitals) is another action area that meets ecological objectives and supports local jobs.

In conclusion, the Council of Canadians thanks the Ontario government for this opportunity to present our views on the Green Energy Act and considerations for electricity planning in Ontario. We will continue to work diligently advocating for energy policies based on the principles of energy security and ecological sustainability in line with our demand for a Canadian Energy Strategy. The Ontario's actions in the coming months provide opportunities for policy that will help move to more sustainable energy production and consumption. We encourage your government to take seriously the risks and opportunities we have identified in planning for green, secure and accessible electricity for Ontarians.

¹ For a fuller analysis of why trade rules and US electricity sector regulations should be a consideration in electricity sector planning, please refer to three reports prepared by energy and trade experts prepared as evidence presented by the Council of Canadians to the Ontario Energy Board. Scott Sinclair et al, *Evidence of the Council of Canadians before the Ontario Energy Board*, filed August 1, 2008, available at:

<http://canadians.org/energy/documents/OEBEvidence-CoC.pdf>

² John Calvert and Marjorie Griffin Cohen, *The Impacts of International Trade Law and US Regulation on the Integrated Power System Plan*, Evidence of the Council of Canadians before the Ontario Energy Board, filed August 1, 2008, p. 16. Available at: <http://canadians.org/energy/documents/OEBEvidence-CoC.pdf>

³ *Ibid.*, p. 5-39.

⁴ *Ibid.*, p. 5-39.

⁵ *Ibid.*, p. 39-40.

⁶ For more information about the benefits of enhanced interprovincial power supply in Ontario: Mel Kliman, *Enhancing Interprovincial Power Supply in Ontario*, Evidence of the Council of Canadians before the Ontario Energy Board, filed August 1, 2008, Available at: <http://canadians.org/energy/documents/OEBEvidence-CoC.pdf>

⁷ John Calvert and Marjorie Griffin Cohen, *The Impacts of International Trade Law and US Regulation on the Integrated Power System Plan*, Evidence of the Council of Canadians before the Ontario Energy Board, filed August 1, 2008, p. 39-40.

⁸ Rob Ferguson, *McGuinty vows to stop wind-farm NIMBYism*, The Toronto Star, February 11, 2009, <http://www.thestar.com/News/Ontario/article/585591>

⁹ Jack Gibbons, *Key reforms will power Ontario's Green Energy Act*, The Observer, March 23, 2009, <http://www.theobserver.ca/ArticleDisplay.aspx?e=1490514>