



CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU
DROIT ET DE LA POLITIQUE
DE L'ENVIRONNEMENT

130 Spadina Avenue Suite 305
Toronto, Ontario M5V 2L4

Tel: (416)923-3529
Fax: (416)923-5949
www.cielap.org
cielap@cielap.org

April 22, 2009

Trevor Day
Clerk
Standing Committee on General Government
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Submitted by email to trevor_day@ontla.ola.org

Dear Mr. Day:

Re: Bill 150, *Green Energy and Green Economy Act, 2009*

I am writing on behalf of the Canadian Institute for Environmental Law and Policy (CIELAP) to provide comments on Bill 150, *Green Energy and Green Economy Act, 2009* (GEGEA) to the Standing Committee on General Government. CIELAP was founded in 1970, with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability.

CIELAP commends the Ontario Government for its foresight and leadership in introducing the GEGEA. The proposed Act promises to address a broad range of concerns and challenges, and move Ontario forward towards a green economy. CIELAP supports many elements of the proposed legislation, including: the proposed feed-in tariff program; the capacity for conservation targets for Ontario's municipal electric utilities; introduction of a smart grid; energy conservation and demand management plans; provisions that promote energy and water efficiency; encouragement of renewable energy projects; the right to connect to the electricity grid for renewable energy; new reporting duties for the Environmental Commissioner of Ontario; and the promotion of small power projects.

In addition to our broad support in principle for the proposed Act and for many of its provisions, CIELAP also has a number of recommendations in relation to several specific aspects of Bill 150.

Preservation of prime agricultural land

As noted above, the GEGEA would create a feed-in tariff that would guarantee specific rates for energy generated from renewable sources. The Ontario Power Authority (OPA) is currently proposing the feed-in tariff prices that would be provided to independent electricity generators for various forms of renewable energy fed into the grid. The highest rates proposed would apply to rooftop solar PV (ranging from 53.9 to 80.2¢/kWh) but a very attractive rate of 44.3¢/kWh is also proposed for ground mounted solar PV, still much greater than the next highest rate of 19¢/kWh for offshore wind power.

There are very real concerns that this type of pricing scheme will encourage the installation of ground mounted solar PV facilities on prime agricultural land in Ontario, taking significant land out of agricultural production. Ontario agricultural communities, such as East Hawkesbury, are already confronting plans for solar energy projects on prime agricultural land. The Ontario Federation of Agriculture has expressed opposition to locating solar panels on Class 1, 2, 3 or 4 agricultural lands.

It is longstanding provincial policy to protect our most productive agricultural lands. This goal has been expressed in various policy and legal instruments such as the Greenbelt Act. While the development of renewable energy sources is an important policy objective for the Province, it is crucial that it not compromise other important policy objectives, such as preserving Ontario's agricultural lands.

The proposed GEGEA, in s. 14 of Schedule B, would make amendments to give the Lieutenant Governor in Council regulation-making authority under the *Electricity Act, 1998* to: governing renewable energy generation facilities including the location of the facilities; and prescribing locations or land, or classes of locations or land, where the OPA shall not provide for a procurement process or enter into a contract for energy from a prescribed renewable energy generation facility or a prescribed class of renewable energy generation facility.

CIELAP recommends that an explicit prohibition be added to the Act that would ensure that solar PV panels could not be located on Class 1, 2, 3 and 4 agricultural lands. In the alternative, CIELAP would recommend that a regulation be made prohibiting solar PV panels from being located on these prime agricultural lands under the new regulation-making powers proposed for the *Electricity Act*.

In addition, CIELAP endorses recommendations by the Canadian Environmental Law Association (CELA) to the Ministry of Energy and Infrastructure, dated March 26, 2009, that definitions and processes for methods of renewable energy in Schedule A of the GEGEA, including biogas and biomass, should be clearly based on strong sustainability principles and processes so as to not inadvertently create new problems for agriculture in Ontario.

Renewable Energy Facilitation Office

The proposed *Green Energy Act* (GEA), introduced in Schedule A, would establish a Renewable Energy Facilitation Office to facilitate the development of renewable energy projects by working with, assisting, and providing information to renewable energy project proponents relating to approval processes and procedures, and possible requirements that the federal government may impose. A Renewable Energy Facilitator will supervise this new office.

Under the GEA, the Renewable Energy Facilitator would be required to keep all records related to renewable energy projects that he or she obtains confidential. This confidentiality requirement is far too broad and would compromise public transparency and opportunities for public participation. CIELAP recommends that information about renewable energy projects generally be made easily accessible to the public to enable meaningful public input, and that protection for confidential business information be applied narrowly and only where necessary.

Streamlined approval process

Amendments to the *Environmental Protection Act* in Schedule G would allow renewable energy projects that meet regulatory requirements to go through a streamlined approvals process with service guarantees. This would eliminate the need for such projects to obtain certain existing approvals or permits currently in place.

CIELAP understands the need for a coordinated, efficient approvals regime in order to facilitate the introduction of renewable energy projects, but recommends that the Government include requirements to ensure that the approval process is transparent and responsive to public comments. CIELAP also endorses CELA's recommendations of March 26, 2009 that existing requirements applicable under environmental legislation for various approvals (such as well drilling, water taking, sewage works, emissions to the environment and waste management) be consolidated and required for renewable energy permits, and that permits not be issued if all of these requirements are met, and subject to any terms and conditions that are to be imposed

Hearings on renewable energy projects

Under the GEGEA, the right to appeal a renewable energy project would be available to both proponents of a project and other residents of Ontario. CIELAP strongly supports this provision making the right of appeal equally available to proponents and Ontario residents.

However, anyone who applies for a hearing relating to an approval for a renewable energy project would be required to show that the project will cause serious **and** irreversible harm to plant life, animal life, human health or safety, or the natural environment. This is a very difficult test that may be nearly impossible to meet.

CIELAP endorses CELA's recommendation of March 26, 2009 that if a project will cause serious harm, **or** irreversible harm, then a hearing should be held, and that the wording of the Act be changed to reflect this. In addition, CIELAP supports CELA's recommendation that it should also be a ground of review of decisions are inconsistent with policies issued by the Minister under s. 47.7, and that the onus to prove that the project will not cause serious or irreversible harm to plant life, animal life, human health or safety or the natural environment must be on the proponent of a renewable energy project.

Thank you for the opportunity to comment on the *Green Energy and Green Economy Act, 2009*. Please contact me or Maureen Carter-Whitney, CIELAP's Research Director, if you wish to discuss any of these comments further.

Yours sincerely,



Anne Mitchell
Executive Director

cc. Hon. George Smitherman, Minister of Energy and Infrastructure