



March 26, 2009

Hon. George Smitherman
Minister of Energy & Infrastructure, and Deputy Premier
Hearst Block
4th Floor
900 Bay St
Toronto ON M7A2E1

**RE: Ontario Professional Planners Institute Submission
Bill 150 - Green Energy and Green Economy Act, 2009**

Dear Minister:

The Ontario Professional Planners Institute (OPPI) is pleased to provide comments on the proposed Bill 150 -Green Energy and Green Economy Act, 2009.

Established in 1986, OPPI is the recognized voice of the Province's planning profession and provides vision and leadership on planning issues. Government, private industry, agencies and academic institutions employ these 2,700 practicing planners where they help create healthy communities in the Province of Ontario.

The interpretive materials that accompany Bill 150 are very limited in scope and detail. These do not fully explain what the legislative provisions are intended to achieve. A more fulsome explanation for this important legislation is required. OPPI recommends that detailed explanatory information be produced to assist the public in its review as the Bill proceeds to enactment.

OPPI supports the implementation of a smart grid and the harnessing of green energy sources through the development of a new regulatory and pricing regime that support new facilities and projects. In particular, we believe that this could be beneficial in rural and northern communities, especially if provisions are included within the Province's Northern Growth Plan. OPPI believes, however, that the proposed amendments to the Planning Act will not have the desired effect of timely approvals or provide for good planning.

Green energy facilities and projects vary in size, characteristics and policy/regulatory concerns. No one approvals process will adequately address public policy issues each technology raises. OPPI believes this will become apparent as policies and regulations are drafted.

The proposed approvals process will also, in our opinion, have side effects severely impacting the municipal sector's ability to undertake their Planning Act responsibilities and municipal operations (e.g. emergency service response, mud tracking, encroachment agreements, road closures etc.). The proposed project approvals system will also take many years to implement, thereby reducing the immediate economic activity our economy needs presently and the efficiencies a "smart grid" will produce.

In the following sections, we make recommendations on how to address these matters.

Generation Facility and Renewable Energy Project Approvals:

OPPI believes that municipalities are best suited to plan for healthy communities because councils can better balance the various competing community needs and policies. If different Provincial policy and approvals priorities are required, these can be addressed through policies such as the Provincial Policy Statement 2005 (PPS 2005) and Provincial Plans. The groundwork is already in place. Applicable Provincial policy includes the following policies:

"The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development. As part of Ontario's policy led planning system, the Provincial Policy Statement sets the policy foundation for regulating the development and use of land. It also supports the provincial goal to enhance the quality of life for the citizens of Ontario" (page 1, Part 1: Preamble).

"A policy led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The Provincial Policy Statement supports a comprehensive, integrated and long term approach to planning, and recognized linkages among policy fields.

"The Provincial policy Statement is more than a set of individual policies. It is intended to be read in its entirety and the relevant policies are to be applied to each situation. A decision maker should read all of the relevant policies as if they are specifically cross-references with each other. While specific policies sometimes refer to other policies for ease of use, these cross references do not take away

from the need to read the Provincial Policy Statement as a whole” (pages 1 and 2, Part 3, How to Read the Provincial Policy Statement).

Subsection 1.8 provides specific policy on Energy and Air Quality:

“Planning authorities shall support energy efficiency and improved air quality through land use and development patterns which:

- a) Promote compact form and a structure of nodes and corridors;*
- b) Promote the use of public transit and other alternative transportation modes in and between residential, employment (including commercial, industrial and institutional uses) and other areas where these exist or are to be developed;*
- c) Focus major employment, commercial and other travel-intensive land uses on sites which are well served by public transit where this exists or is to be developed, or designing these to facilitate the establishment of public transit in the future;*
- d) Improve the mix of employment and housing uses to shorten commute journeys and decrease transportation congestion; and*
- e) Promote design and orientation which maximizes the use of alternative or renewable energy, such as solar and wind energy, and the mitigating effects of vegetation.*

Increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs, and the use of renewable energy systems and alternative energy systems, where feasible.

Alternative energy systems and renewable energy systems shall be permitted in settlement areas, rural areas and prime agricultural areas in accordance with Provincial and Federal requirements. In rural areas and prime agricultural areas, these systems should be designed and constructed to minimize impacts on agricultural operations” (page 14, Energy and Air Quality).

Municipal decisions must be consistent with the PPS 2005. The resources and lands are prescribed and regulated for use in a manner that addresses and balances Provincial priorities with community needs.

By removing green energy project and facilities from the authority of municipal planning instruments, a bifurcated land use planning system is created where the Ministry of the Environment and municipalities will make planning decisions on the same projects. The wording in Schedule K (Planning Act) of Bill 150 does not allow us to interpret whether or how a renewable energy approval would need to address the requirements of the PPS 2005.

The portfolio of green energy sources is broad with varied characteristics, land use compatibility issues and regulatory requirements, depending on the project size, potential adverse effects and site requirements. Municipalities are gaining experience with sources such as wind and solar power and energy from waste facilities. Where disputes have occurred, many have been referred to and heard by the Ontario Municipal Board. Many projects have been approved.

Many municipalities are providing for these projects in their official plans and zoning bylaws. While some projects have been subject to approval delays, these are not entirely attributable to the Planning Act process or the screening process under the Environmental Assessment Act. These decisions involve a learning process whereby communities, Councils and stakeholders review and absorb large volumes of technical material within tight timeframes.

It would be preferable if the standards now promised as part of the renewable energy approval process had been introduced as Provincial policy and guidelines in anticipation of these proposals, so that municipalities would have been able to use them under the Planning Act. It is not appropriate to take the decision role entirely outside the hands of municipalities based on the difficulties encountered with the first wave of green energy projects and facilities.

In the section addressing Long Term Economic Prosperity (PPS 2005), the following Provincial policy applies to these adverse effects when these policies are developed:

Long-term economic prosperity should be supported by: Planning so major facilities (such as airports, transportation/transit/rapid infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities) and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour noise and other contaminants, and minimize risk to public health and safety."

When projects with potential adverse effects are approved, municipalities need to buffer and/or separate sensitive uses to prevent adverse effects. Additional municipal planning controls may be required within buffer areas to protect sensitive uses. Wind farm environmental assessments, for example, require potential noise impacts to be considered within an influence area of up to 2 km. Within that potential area, turbines will be sited so as to not expose sensitive uses such as residences and schools to unacceptable noise levels.

Required setbacks can vary depending on the turbine design and the number of turbines affecting a sensitive use. Municipalities may decide to protect vacant lots of record where a landowner is entitled to develop a residential use in the future, or to reserve a buffer around a community so as not to compromise its future expansion as is provided for by the Provincial Policy Statement.

In the proposed approvals, the Ministry of the Environment Director will approve the wind farm. Background materials released in support of Bill 150 refer to “standardized setback requirements” for wind farms. Municipalities will need to amend planning instruments to ensure sensitive uses are not developed within the buffer areas and exposed to unacceptable noise levels.

Furthermore, municipalities will not have the ability to use zoning and site plan control conditions to address adverse effects where sensitive uses abut new Ministry – approved facilities. These issues will evolve over time as projects grow or change in character, with corresponding changes in potential adverse effects. Where coordinated and effective decisions don’t occur, investor insecurity may result. Who will invest in projects with potential adverse effects when a sensitive use may be approved within a buffer zone?

In the current approvals regime, the use of site plan approval and site plan agreements under the Planning Act has proved a very effective means of confirming the details of wind farm proposals. These not only enable agreement on final design and setbacks but also provide a framework for the municipality to ensure appropriate treatment of matters such as road access, drainage, and proximity to property boundaries and natural heritage features.

Renewable energy projects in urban areas are more likely to involve combustion of renewable energy sources. Bill 150 also raises the prospect of combustion of waste products. Failure to consider ambient air quality and use setbacks to protect air quality in these circumstances can prejudice the ability of municipalities to fully utilize their urban areas and to meet intensification targets, as required by the Provincial Policy Statement and, in the Greater Golden Horseshoe, the Growth Plan. Controls under the Planning Act, on the other hand, can be more closely matched to individual circumstances. For example, an Official Plan can include a policy to require air quality studies in support of development applications so that appropriate controls on land use and building height can be applied.

As it stands, the proposed legislation may adversely impact approved planning instruments through the approvals of facilities that may prevent planned development from occurring. Resource planning (e.g., natural heritage and aggregate resource planning and urban designations) mandated by the PPS 2005 may be impacted by these decisions.

OPPI believes the proposed streamlined approvals will not have the desired effect and may create more problems. We recommend a strengthened renewable energy facilitation office with powers to promote the coordination of facilities and project approvals during municipal planning review and before the Ontario Municipal Board and Environmental Review Tribunal, if approvals are appealed.

The facilitation office could identify areas of high renewable energy resource opportunities they prefer to have developed on a priority basis. They could also help expedite projects that have municipal and local stakeholder support.

Duplication and The Provincial Growth Plan:

The Provincial Growth Plan requires municipalities implement the following policies.

“Municipalities will develop and implement official plan policies and other strategies in support of the following conservation policies:

b) Energy conservation including:

I. Energy conservation for municipally owned facilities

II. Identification of opportunities for alternative energy generation and distribution

III. Energy demand management to reduce energy consumption

IV. Land use patterns and urban design standards that encourage and support energy efficient buildings and opportunities for cogeneration” page 32, Provincial Growth Plan).

Bill 150 requires public agencies (municipalities) to prepare energy conservation and demand management plans. However, there is already a policy framework in place that requires municipalities to address energy conservation and renewable energy sources in municipal planning instruments. OPPI believes it may be simpler to either include this requirement within the conformity effort required by the Provincial Growth Plan, if possible, or use both the conformity effort and the provisions of the new legislation in a complementary fashion.

Outside the Growth Plan, the PPS 2005 requires comparable, if less detailed requirements than those set out in Bill 150. OPPI believes these provisions should be expanded to include the provisions sought by the new legislation. Schedule K (Planning Act), Section 3 of Bill 150 refers to policy statements and provincial plans, but we are uncertain as to whether and how they will be allowed to play a role in the renewable energy approval process.

Land use and transportation planning is an important element in the successful implementation of Bill 150. OPPI believes it is important that the provisions of the proposed energy conservation and demand management plans be incorporated within municipal planning instruments and be applied to more than municipally-owned facilities.

Renewable Energy Facilities and Projects as Accessory Uses:

Smart grids enable energy generation projects of all sizes to be connected into the grid and to contribute energy to the larger system. Municipalities are addressing planning approvals of smaller generators (wind turbines) as accessory uses. The smart grid will generate more small generators as accessory uses. Indeed, if the effort is successful, smaller units will play a significant role.

Using wind turbines as an example, the current regulatory regime includes the requirement of an environmental screening process for wind farms producing over 2 MW. Approvals under the Environmental Protection Act are required for larger farms and units of 1 MW and larger. Smaller units do not require Ministry approvals even though units of 10 kW or less can be noisy, and located in closer proximity to sensitive uses. These land use compatibility issues will need to be addressed through appropriate design and mitigation. Many municipalities are addressing these requirements in their planning instruments.

OPPI does not believe the Ministry of the Environment can process and address the number and range of renewable energy accessory uses applications that will result when the smart grid innovations are in place. Municipalities are best equipped to deal with such matters along with their other zoning, minor variance and permitting activities.

Municipal Infrastructure Use and Costs and Generating Projects:

Large-scale renewable energy projects may require municipal infrastructure approvals and renovation in order to address construction and maintenance requirements. Furthermore, municipal rights of way may be needed for transmission infrastructure with associated costs and maintenance implications. Municipal agreements on financing, design, operation and maintenance may be required to implement projects and facilities.

With respect to municipal generating plants and, possibly infrastructure on municipal rights of way or land, no public work can be undertaken that does not conform to an approved official plan (Section 24, 1 of the Planning Act). These may have to be addressed within municipal official plans irrespective of Bill 150.

By-laws are the basic tools municipalities use to record decisions, including land transactions and use of municipal rights-of way that may be required to allow renewable energy projects to proceed.

Qualified Persons and Planning Decisions:

Ministry of the Environment approvals require qualified persons (usually engineers or professional geoscientists) to prepare applications, reports and supporting documentation. Ministry Directors will review these applications when renewable energy facilities and projects require approval under Ministry regulations.

Bill 150 amends the Environmental Protection Act and confers on Ministry Directors the responsibility to make municipal planning decisions in addition to their normal work. Directors may or may not be qualified to undertake municipal planning and most likely won't have the benefit of years of experience in municipalities.

OPPI recommends this matter be reconsidered and that a strengthened renewable energy facilitation office with powers to promote renewable energy facilities and projects at the municipal level during the review of planning applications and before the Ontario Municipal Board and Environmental Review Tribunal if approvals are appealed be instituted in place of this arrangement.

The Role of the Environmental Commissioner:

The Annual Report produced by the Environmental Commissioner has become an excellent third party annual public report on Provincial environmental performance. OPPI prefers the Environmental Commissioner not become engaged in the implementation of Bill 150 in order to maintain the independence of the office.

In the Special Report to the Legislative Assembly dated December 10 2008, the Office of the Environmental Commissioner reviewed progress in addressing climate change. The importance of compact growth and public transit initiatives was discussed including the implementation of Metrolinx's Regional Transportation Plan.

OPPI recommends the relationship between implementation of the Growth Plan, Metrolinx's Regional Transportation Plan and this legislation's proposed energy and conservation and demand management plans be fully developed and considered. Municipal transportation and land use planning and Provincial transportation and project planning should also be addressed in this legislation.

The Role of Ministry Statements on Environmental Values:

The effect of proposed amendments to the Environmental Protection Act will be to restrict the Environmental Review Tribunal from considering the Ministry of the Environment's Statement of Environmental Values (SEV) when assessing the Director's decision. OPPI believes Provincial Ministry requirements under the Environmental Bill of Rights needs to be met in the most complete manner possible including the application of the Ministry of the Environment's SEV in any decisions Ministry Directors make.

Conclusion

OPPI appreciates the importance of this legislation. The implementation of renewable energy and the smart grid are important to the public interest. OPPI members have a strong base of expertise and are able to offer insights to assist the provincial government in ensuring that the purposes of Bill 150 are achieved in the most effective way. The Institute would be pleased to be involved in any consultation efforts designed to develop and refine these proposals towards their final form.

We would welcome the opportunity to discuss our comments with you. For further information or to schedule a meeting, please contact Loretta Ryan, MCIP, RPP, Manager, Policy and Communications at 416-483-1873, ex. 226.

Yours truly,

A handwritten signature in black ink that reads "Wayne Caldwell". The signature is written in a cursive style with a period at the end.

Wayne Caldwell, MCIP, RPP
President
Ontario Professional Planners Institute

Copy:

George McKibbon, MCIP, RPP, Chair, Policy Development Committee, OPPI
Loretta Ryan, MCIP, RPP, Manager, Policy & Communications, OPPI