March 23, 2009

Mike Parkes  
Cabinet Liaison and Strategic Coordinator  
Ministry of Energy  
Regulatory Affairs and Strategic Policy  
Strategic Policy and Research Branch  
880 Bay Street, 6th Floor  
Toronto, ON M7A 2C1

Dear Mr. Parkes:

RE: Comments on Bill 150, the Proposed Green Energy Act  
EBR Registry Number 010-6017

The Niagara Escarpment Commission (NEC) considered the above noted Bill at its meeting of March 19, 2009, and is pleased to provide the following comments for the Province’s consideration. The NEC is charged with administering the Province’s Niagara Escarpment Plan and the UNESCO World Biosphere Reserve associated with this internationally recognized natural landscape. The NEC resolution on the proposed Green Energy Act (GEA) reads:

That the Commission comment to the Environmental Registry and the Minister of Natural Resources and Minister of Energy as follows:

1. The Commission supports the direction and intent of the proposed GEA which would see the Province as a leader in green technologies which would foster a greener economy, a culture of conservation and lower energy use.
2. The Escarpment is the core of the Greenbelt and an “iconic” landscape, with much of its policy under the Niagara Escarpment Plan based on the protection of the natural and visual environment and maintenance of the Escarpment’s natural features and landscapes, which are unparalleled elsewhere in Southern Ontario. The policies on green energy development should reflect the special nature of this part of the Province. It is therefore recommended that the Niagara Escarpment Development Permit System be maintained and not be set aside by possible GEA Regulations, and that the Niagara Escarpment Plan and the Niagara Escarpment Commission remain the body responsible for balancing the development needs of the Province with the goal of preserving the Niagara Escarpment for future generations, which is a Provincial objective. The Niagara Escarpment only constitutes 0.2% of Ontario and the impact of the Niagara Escarpment Plan’s Permit System on the processing time of Ontario’s green energy projects (overall) would be negligible.

3. The Niagara Escarpment Planning and Development Act has checks and balances related to decision making and appeal rights. Ultimately, appeals are dealt with by the special hearing officers appointed by the Minister under the Act who are familiar with the policies and context of the Niagara Escarpment Plan. Depending on the nature of the hearing officers’ recommendation, the decision is either final (where the NEC decision is deemed correct) or is passed on to the Minister of Natural Resources for final decision, if the hearing officers do not agree with the NEC. The appeal process under the Niagara Escarpment Planning and Development Act is very efficient and it is not a part of the traditional land use appeal processes in the Province (e.g., the Ontario Municipal Board).

4. Given the dual importance that is placed by the Province on both green energy and the protection of the Niagara Escarpment, should changes to the existing Niagara Escarpment Permit System be contemplated, the Commission suggests, in the area of Niagara Escarpment Development Control in the Niagara Escarpment Plan, that all green energy projects be decided upon by the Minister of Natural Resources where there is an appeal of a Development Permit decision respecting such a project. The advantages are that the Commission, through its Development Permit process, can fully review the project and if there is an appeal, the Minister can then have the benefit of all submissions and the hearing officers’ report on the effects of the project on the policies of the Niagara Escarpment Plan before making a decision. The Minister responsible for the Niagara Escarpment Program would then be the one who balances the public interest in approving, modifying or rejecting the proposal.

5. The change to the definition of “utility” in and of itself is not detrimental to the Niagara Escarpment Plan and Program unless it results in applications for major large scale green energy projects which would undermine the environmental and visual objectives of the Provincial Plan which have made the Escarpment an UNESCO World Biosphere Reserve.
A copy of the Staff Report reviewed by the NEC at its meeting is attached as background.

Should there be any questions please contact Ken Whitbread, Manager of the NEC at (905) 877-4026 or by email at ken.whitbread@ontrio.ca

Yours truly,

Don Scott
Chair

c. Mike Eckersley, MNR
March 19, 2009

STAFF REPORT

Re: GREEN ENERGY ACT, 2009

BACKGROUND:

On February 22, 2009 the Ontario government announced that "Ontario is proposing sweeping new legislation", under proposed Bill150, the Green Energy Act (GEA). If passed, the GEA would "help the government ensure Ontario’s green economic future by: building a stronger, greener economy with new investment, creating well-paying green jobs and more economic growth for Ontario – a projected 50,000 jobs in the first three years; better protecting our environment, combating climate change and creating a healthier future for generations to come...". It also notes that the proposed GEA is "a bold series of coordinated actions with two equally important thrusts:

1. making it easier to bring renewable energy projects to life, [bold added], and
2. fostering a culture of conservation by assisting homeowners, government, schools and industrial employers to transition to lower energy use."

Excerpts of the GEA are attached. The full GEA is available on the Environmental Registry (www.ebr.gov.on.ca, # 010-6017). A 30 day EBR comment period on the Act ends March 26, 2009.

GENERAL OVERVIEW:

The proposed GEA is a very positive legislative initiative which will encourage and foster green energy projects and conservation within the Province. Lower energy use will assist in protecting the environment and aid in combating climate change. The Province will assume a proactive leadership role in developing the green economy and associated technology. The NEC should support the positive direction set by the GEA.

EFFECT ON THE NIAGARA ESCARPMENT PLAN:

The GEA, if passed in its present form, would change the definition of Utility in the Niagara Escarpment Plan. The existing definition would be revoked and the following substituted (new wording is bolded):

Utility - a water supply; a storm or sanitary sewage system; gas or oil pipeline; the generation, transmission and distribution of electrical power, including renewable energy projects as defined in the Green Energy Act, 2009, commercial or otherwise, and all associated infrastructure; the generation, transmission and distribution of steam or hot
water; telegraph and telephone lines and other cabled service; a public transportation system; licensed broadcasting receiving and transmitting facilities; or any other similar works or systems necessary to the public interest, but does not include:

- the establishment of a new waste disposal site;
- any expansion or alteration to an existing disposal site from what has been approved under the applicable legislation (including any expansion in area or height of a landfill site or any change in the type of waste material being disposed);
- incineration facilities (including energy from waste facilities); or
- large-scale packer and/or recycling plants or similar uses.

Additionally, the overview included with the announcement of the GEA notes that the Act will contain regulations which will “provide certainty and clarity in the approvals process for renewable energy projects and will establish a one stop streamlined approvals process [underline added], providing service guarantees for renewable energy projects that meet regulatory requirements”. Section 4 of the GEA will provide for regulations to remove the restrictions of other laws or regulations that could otherwise restrict designated green energy projects.

The regulations are not yet available but there is nothing specific in the GEA that would suggest that the NEC’s authority to require Development Permits for green energy projects like commercial wind farms, would be set aside. The "one-stop approvals process" may be referring to a revised Environmental Assessment process.

The NEP permits utilities in all designations, but in the Escarpment Natural Area requires that they be deemed essential. The Development Criteria apply to the assessment of all utilities. These environmental and visual landscape tests remain unaffected under the GEA although the context of how these apply may be altered given the direction of the GEA to promote/facilitate green energy projects.

DEFINITIONS IN GEA

The definition for a renewable energy project in the GEA is very broad and is proposed to be:

“the construction, installation, use, operation or retiring of a renewable energy generation facility.”

Other definitions prescribe the meaning of generation facility, renewable energy generation facility, renewable energy sources and renewable energy technologies in the context of the GEA. These too are very broad and may be scoped or modified by regulation.

A renewable energy source includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and other energy sources that are renewed by natural processes.
EFFECT ON THE PLANNING ACT

The Planning Act (PA) is proposed to be amended by exempting renewable energy generation facilities and projects from zoning by-laws and interim control by-laws, and to provide a new exception from the subdivision and part-lot control restrictions of the PA for leases up to 40 years for the purposes of renewable energy facilities and projects. It is unclear what the proposed amendment to the PA will have upon the policies in approved official plans that currently restrict or prohibit green energy projects.

In the NEP, the effect of this may be that green energy could be located in areas of the NEP which are subject to zoning like Escarpment Recreation Areas, Minor Urban Centres and Urban Areas. An example of where this would come into play would be atop the Escarpment in the Town of The Blue Mountains – an area where the Commission opposed a large scale wind farm proposal a number of years ago. Because of this and public opposition the project never proceeded.

OTHER ACTS

The GEA names a number of other Acts (like the Conservation Authorities Act, Environmental Protection Act, Clean Water Act, etc.) where the land use control provisions will defer to the GEA and its future regulations.

COMMENT:

The GEA may have significant implications for the NEP. The range of green energy projects could include those that are highly visible like wind and solar farms or environmentally complex like water power projects (e.g., dams on fisheries, rivers or streams).

With respect to wind power, in 2004 the Commission adopted a Wind Power Policy Paper which established that:

The Commission supports the concept of wind power generation in appropriate locations in the province. The area of the Niagara Escarpment Plan should not, however, be the focus of large-scale industrial-type wind power development. The emphasis must be on protecting the natural environment, unique ecological areas, maintaining and enhancing the open landscape character and preserving the natural scenery in the Escarpment corridor over the long-term, consistent with the purpose of the Niagara Escarpment Planning and Development Act.

and

The Niagara Escarpment Plan was established "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such development occurs as is compatible with that natural environment." A key objective is to "maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery". As such, large scale industrial-type wind power developments should not be permitted in the Niagara Escarpment Plan.
The Policy also noted that:

The Niagara Escarpment Commission should review wind power proposals in areas adjacent to the Niagara Escarpment Plan boundaries where the physical presence of the structures and the motion of the blades may have a visual impact on prominent Escarpment features and landscapes, and provide comments based on the effects the facility(s) may have on the Escarpment landscape character and natural scenery.

The NEC went on to establish what was, in effect, a moratorium on commercial wind farms because of the inherent incompatibility with the tenets of NEP. The NEC was however prepared to continue to accept small scale accessory household and farm wind energy structures, which would continue to be assessed on a case by case basis, the majority of which have been approved. In response to the policy and specifically the moratorium, a number of municipalities within and/or adjacent to the boundaries of the NEP have prepared policies on wind power over the past few years which respect the NE policy. In addition, some have also provided a 1 km buffer zone around the NEP boundaries which either excluded commercial wind towers or increased the visual and other assessment standards.

A Utility is a permitted use in the Escarpment Natural Area, provided it is considered "essential"; and is permitted in the Escarpment Protection Area, and in the Escarpment Rural Area designations in the Niagara Escarpment Plan. Permitted uses in Urban, Minor Urban and Escarpment Recreation Area designations are generally those permitted in the Official Plan and Zoning By-law (which are approved and not in conflict with the NEP).

However, by changing the definition of utility in the NEP, the GEA will establish that wind power would be explicitly included as a permitted use throughout the NEP. As such the NEC moratorium will be non-applicable once the GEA is approved. The NEC ability to achieve the purpose and objectives of the Niagara Escarpment Planning and Development Act (NEPDA) flow from the:

**Purpose**

*Provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.*

**Objective 4**

*To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery.*

The Designations in the NEP are based, in some areas, entirely on the outstanding visual environment associated with the Escarpment (e.g., Bruce Shoreline, Beaver Valley, Blue Mountains, Grey Highlands, Dufferin Highlands, Caledon Mountain, Milton Outlier, Mount Nemo, Dundas Valley, Hamilton Mountain, Niagara Shorthills). These are all areas where green energy projects like wind farms would be attracted because of their elevation, proximity to infrastructure and close urban markets.
Commercial wind towers, by virtue of their enormous size, height and requirement for open spaces with minimal wind flow obstructions, have not been found to be generally compatible with the purpose and objectives of the NEPDA, the NEP or the NEP Development Criteria. Despite the facilities becoming a permitted use under the GEA, it will remain extremely difficult for such a use to comply with and be supported by the various NEP policies, and therefore be compatible with the NEP. This could equally apply to other major green energy projects which could be attracted to the Escarpment such as solar farms, water power dams, biofuels plants and energy generating stations. Associated with some of these could be major infrastructure like roads, hydro towers or lines and pipelines.

The NEP has been widely applauded for its balancing of development opportunities, with the protection of the scenic and natural values of the Escarpment and land in its vicinity. In 1990 the area of the NEP was designated as a World Biosphere Reserve by UNESCO in recognition of the international significance of both the Escarpment landform, and of the NEP which is in place to protect the Escarpment. The NEP constitutes only 0.2% of Ontario and by virtue of its location near the Greater Golden Horseshoe is recognized as an “iconic” cultural feature in this landscape. It has been protected by legislation since 1975. The perceived need to focus major new large scale green energy projects on the NEP is therefore questionable given its special status and limited planning area. The NEP was renewed and strengthened by the Provincial Cabinet in 2005. The environmental and visual values of the NEP were confirmed and the NEP said to be working extremely well.

The impression or direction suggested in the news releases and the GEA itself gives little or no acknowledgement to policies related to visual protection and aesthetic considerations. While this may not be a critical factor for areas outside the NEP, it is one of the cornerstones of the Escarpment legislation and purposes of the NEP. Policies requiring compatibility with the Escarpment’s natural environment and scenery have always been a part of the NEP. It therefore will likely be extremely difficult for the NEP to accommodate certain large scale green energy projects (like commercial wind farms) and maintain the planning integrity of the NEP. The NEP is different than almost any other planning document in the world and therefore its uniqueness should be accounted for in how the GEA is implemented.

CONCLUSION

The GEA is posted on the EBR for comment until March 26, 2009. Although the GEA has many positive aspects to promote and foster green energy, the NEC should consider making a written submission to the Environmental Registry, copied to the Minister of Natural Resources.

RECOMMENDATION

The Commission should comment to the Environmental Registry and the Minister(s) as follows:

1. The Commission supports the direction and intent of the proposed GEA which would see the Province as a leader in green technologies which would foster a greener economy, a culture of conservation and lower energy use.
2. The change to the definition of “utility” in and of itself is not detrimental to the Niagara Escarpment Plan and Program unless it results in applications for major large scale green energy projects which would undermine the environmental and visual objectives of the Provincial Plan which have made the Escarpment an UNESCO World Biosphere Reserve.

3. The Escarpment is an “iconic” landscape with much of its policy under the Niagara Escarpment Plan based on protection of the visual environment and aesthetic compatibility with natural features and landscapes unparalleled elsewhere in Southern Ontario. The policies on green energy development should reflect the special nature of this part of the Province. It is therefore recommended that the Niagara Escarpment Development Permit System not be set aside by possible GEA Regulations and the Niagara Escarpment Commission remain the body responsible for balancing the development needs of the Province with the goal to preserve the Niagara Escarpment for future generations (which is also an overarching Provincial objective). The Niagara Escarpment only constitutes 0.2% of Ontario and the impact of the Niagara Escarpment Plan’s Permit System on the processing time of Ontario’s green energy projects (overall) would be negligible.

4. The **Niagara Escarpment Planning and Development Act** has checks and balances related to decision making and appeal rights. Ultimately appeals are dealt with by the special hearing officers appointed under the Act who are familiar with the policies and context of the Niagara Escarpment Plan. Depending on the nature of the hearing officers’ recommendation the decision is either final (where the NEC decision is deemed correct) or passed on to the Minister of Natural Resources for the Minister’s review (if the hearing officers’ do not agree with the NEC) for the final decision. The appeal process under the **Niagara Escarpment Planning and Development Act** is very efficient since it is not part of the traditional land use appeal processes in the Province (e.g., the Ontario Municipal Board).

5. Given the dual importance that is placed by the Province on both green energy and the protection of the Niagara Escarpment, the Commission suggests, in the area of Development Control in the Niagara Escarpment Plan, that all green energy projects be decided upon by the Minister of Natural Resources where there is an appeal of a Development Permit decision respecting such a project. The advantages are that the Commission through its Development Permit process can fully review the project and if there is an appeal the Minister can then have the benefit of all submissions and the hearing officers’ report on the effects of the project on the policies of the Niagara Escarpment Plan before making a decision. The Minister responsible for the Niagara Escarpment Program would then be the one who balances the public interest in approving, modifying or rejecting the proposal.

Prepared by: Lynne Richardson
Senior Planner

Approved by: Ken Whitbread
Manager