

**Standing Committee on Social Policy**  
**August 26, 2004**  
**Bill 100, *Electricity Restructuring Act, 2004***

Presentation by  
The Association of Power Producers of Ontario (APPrO)



**APPrO**

ASSOCIATION OF  
POWER PRODUCERS  
OF ONTARIO

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David Butters, President

(Check against delivery)

Good morning – my name is Dave Butters. I'm the president of APPrO, the Association of Power Producers of Ontario. We appreciate the opportunity to appear before the Committee.

With me are three of my Board members -- Linda Bertoldi, Colin Coolican, and Sam Mantenuto.

Linda is Chair of Borden Ladner Gervais' National Electricity Markets Group. Linda has a distinguished legal career advising clients on all aspects of electric power project development including natural gas, wind, hydro electric, biomass and cogeneration.

Colin is President of Regional Power Inc., a subsidiary of Manufacturer's Life Company. Prior to joining Regional Power, Colin was Executive Vice President with Conwest Exploration Company Ltd. He has significant experiences in corporate and securities law as well as finance.

Sam is Chief Operating Officer of Northland Power. He joined Northland Power in 1998 after 17 years with Ontario Hydro, responsible for power plant operations and he most recently lead business development, gas and electricity marketing and engineering. He was also a member of the Ontario government's NUG Advisory committee.

This morning we'd like to:

1. Briefly tell you a bit about APPrO;
2. Discuss what generators need in order to invest in new supply in Ontario;  
and
3. Then make some recommendations about Bill 100.

We've distributed copies of our speaking notes for your consideration.

APPrO is the collective voice of generators in Ontario: a non-profit organization representing more than 100 companies involved in the generation of electricity in Ontario. APPrO members produce power from co-generation, hydro-electric, gas, coal, nuclear, wind energy, waste wood and other sources. Our members currently produce over 95% of the electricity made in Ontario, and include both investor and publicly owned generators.

APPrO's mission is "To promote the interests of electricity generators within a truly open and competitive power industry in Ontario."

Our objective is a sustainable electricity sector that

- Results in a reliable, affordable and secure electricity supply in Ontario
- Supports private sector investment and appropriate allocation of risk;
- Provides a healthy and equitable business environment;
- Supports all forms of generation technologies;
- Promotes the increasing use of renewable energy generation; and
- Leads to lower environmental impacts from all electrical generation technologies.

Let's put this into context.

This Bill now before the Committee is one of the most important pieces of legislation this government will tackle in its mandate. Electricity is the very life blood of Ontario's economy. There's no getting around it: without an adequate, reliable and affordable supply of electricity the prosperity and quality of life we enjoy in this province would not be possible.

While Ontario currently has about 30,500 megawatts of generation capacity, between now and 2020 -- factoring in the growth of our economy -- approximately 25,000 megawatts of electricity capacity is due for retirement or

refurbishment. That's a huge turn over in capital stock – something like 80% of our current generating capacity.

The need for investment in new production, transmission and distribution infrastructure in Canada over the next 30 years is estimated by the International Energy Agency (or IEA) to be in the range of \$1.7 trillion US. Furthermore, the IEA projects that more than half of energy production investments will be needed to replace existing and future capacity.

In Ontario the estimate is that an investment of \$25 to \$40 billion will be required to keep the lights on over the next 15 years. It would be a statement of the glaringly obvious to say that this is a huge amount of money to ask taxpayers to ante up at the same time we are struggling with a large deficit and debt in Ontario, and under enormous pressure to invest in healthcare, education and other critical infrastructure.

Mobilizing the very large amounts of capital required to ensure Ontario's energy future will require policy coherence, regulatory co-ordination and efficiency, and an attractive fiscal regime.

Ontario's ability to draw an appropriate share of North American energy investment rests in the conditions perceived by investors that differentiate it from opportunities in other parts of Canada, the U.S. or even Mexico.

So the stakes are high when we look at moving ahead with a plan to fix the electricity system in this province and create an attractive investment climate to overcome our supply/demand imbalance.

However, our future success is not guaranteed. As the Minister noted before this Committee on August 9, if we don't act quickly and prudently, we will find ourselves in very serious trouble.

So what is required to ensure long-term supply adequacy in Ontario?

Fundamentally, the overall policy framework for the energy industry needs to be clear, stable, and sensitive to the competition for investor capital: Ontario needs an energy framework that reconfirms its commitment to a rules-based, competitive approach to energy investment and supply. If our policy and regulatory processes are clear, efficient and effective, these and many other attractive features will ensure we are a destination of choice for energy investment.

All investors in generation (private and public) recognize that their investments are for the long term. A stable energy framework is necessary in order that plant capital costs and financing can be spread over a long period.

Uncertainty makes it difficult to predict industry structure or market models, and this deters long term, large-scale capital investment.

Given the long lead times required to bring new capacity on-line, we need to stabilize our energy policy in order to provide a more certain foundation for the sector over the long-term, and to attract new investment to Ontario. A period of regulatory and legislative stability will demonstrate that Ontario is a solid jurisdiction in which to invest.

This means:

1. Re-establishing a viable investment climate;
  2. Incenting reliable and economically efficient supply;
  3. Ensuring generators are afforded the opportunity to earn a fair rate of return on their investment;
  4. Ensuring that the Government's role is appropriately-defined and stable;
- and,

5. Addressing market power issues in the restructured sector.

Investors need to see:

1. A stable political dynamic, with no undue political interference;
2. Allocation of resources to government owned parties based on a rational and transparent application of long term policy;
3. A stable independent regulatory environment with a commitment to regulation that aims to coordinate and, where possible, harmonize regulatory requirements among departments and agencies within governments and jurisdictions without undue regulatory or economic burden;
4. Certainty in energy and environmental policy;
5. Creditworthy power purchasers who are willing to enter into long term contracts, predictable pricing over the long term, the ability to hedge risk, willing financiers and finally, a level playing field for all participants.

For example, we need to deal with existing generators who in good faith made reasonable investments in Ontario and have suffered from the unexpected changes in public policy. This isn't part of the Bill, but it's an absolute precondition for investor confidence in Ontario. The government has made some important steps in this direction – it needs to continue to work to resolve the problems of the so-called “orphan generators”. Fixing this will show that the Ontario government is committed to the maintenance of a stable investment climate.

But I want to be clear that generators are not asking to be free of risk.

What we are asking for is that risk be assigned where it can best be managed. Unmanageable risk simply prohibits investment.

Where private investors can do the best job is on project development; construction (time and cost); operation performance and operating cost; environmental performance. Where the buyer can best assume risk is on elements that are currently within its control such as market regulation changes; environmental regulation changes, and other elements such as credit / payment risk, and fuel price risk.

Of course, it's not just about what's good for supply. Loads also need to be able to manage their costs as a necessity for their selection of Ontario as an investment location.

At the same time, we also recognize the importance – as do all parties – of demand side management and energy conservation as key components of meeting Ontario's environmental objectives and future energy demands. But these programs must have commercial and market discipline to ensure their long-term viability and must be financed in a way that does not compromise Ontario's fiscal and economic health.

Furthermore, we need to factor in all costs and savings when evaluating various options. We need to ensure a level playing field between transmission, generation and other options. We should encourage co-generation and we should allow LDCs/LSEs to make the case for capacity in their areas to solve problems, and if justified allow the cost of capacity to be included in customer rates similar to transmission.

So how does Bill 100 stack up against these factors?

Overall, we applaud Bill 100. APPrO members were part Ontario's Electricity Conservation and Supply Task Force, and this Bill and the government's underlying policy approach reflect many of the task force's recommendations to achieve a balanced energy supply from a variety of technologies.

But it's also fair to say that we and others need to see the whole picture. As has been pointed out already at these hearings, Bill 100 amends the existing statute – but until all the regulations are out, and we can understand clearly what the government is really doing and where this sector is really heading, it's difficult to know how the government intends to fit all of the pieces of this puzzle together. In that regard it would be helpful to us and indeed the industry as a whole that the government commit to a process of developing regulations in an open and transparent manner which will allow for meaningful input and debate and in which all of the stakeholders are able to see the comments of all of the other stakeholders on the proposed regulations.

One point we have made, and others are also making is on the principle of competition.

We believe that fostering competition is an important principle for the good of Ontario consumers. While this is not included in the Bill's statement of purpose it is an important point, and if the government's intention is to use competition as a tool to achieve its objectives, then perhaps it should be reconsidered.

The Government's end state model also needs to be understood. While APPrO appreciates that in the short term there is a need for the OPA and the enhanced role of the OEB, these efforts will result in large organizations and a large regulatory burden. The Government needs not only to address the immediate needs but also the end state destination as well as provide a road map for the journey that will transition to that end point. An evolutionary policy is fine – as long as we have a sense of the end place.

In addition to our general recommendations on Bill 100, the following specific recommendations are of importance to APPrO.

- Creditworthiness of OPA.
  - The issuer rating obtained by the OPA is a good first step but the conditions attached with that rating need to be addressed.
- Appointment of independent directors should not be “at pleasure”.
  - IESO and OPA board selections should follow a public process and should not as indicated in Bill 100 be “at pleasure”. It is important that these Boards be apolitical and having directors with fixed terms is more reflective of good corporate governance. Expertise and knowledge of the sector should be specific criteria.
- Role of the OEB should be clarified further.
  - While we want an independent regulator APPrO does not want unnecessary duplication. There should be a clear description of what role the OEB will play in regulating the OPA in regards to the approval of proposed expenditures and recovery of costs.
- Additional objects of the IESO and OPA.
  - The ability to prescribe additional objects of the IESO and OPA through regulation is of great concern. A change in the role of the IESO and OPA should only be done by change to the Act.
- OPA Recovery of Costs.
  - There should be additional clarity provided as to how the OPA will recover its costs.
- OEB and Non-discriminatory Access.
  - This object has been removed from the OEB. While the IESO continues to have this role, participants in the marketplace may need the assistance of the OEB from time to time in ensuring that the IESO fulfills this role.
- Market Power.
  - While the Government has commenced the consultation process on “Price Regulation of OPG Nuclear and Baseload Hydroelectric Plants”, APPrO would want to ensure that the Regulation is no less detailed than the current Market Power Mitigation Agreement and that

something more binding and detailed than a Shareholder Public Declaration be used for performance for OPG's non-regulated assets.

- OPA Procurement Process.
  - This process needs to be fully transparent.

Minister Duncan said that “The recent turmoil in our electricity market has shaken investor confidence. We must send a clear and unambiguous message that Ontario is a good place to invest, and that politics will not impair the private sector's ability to earn a fair return on their investment. If we can achieve this, then Ontario's electricity sector will become a place in which private sector resources can invest, and earn a fair return.”

We agree. We all want to see a healthy, competitive and environmentally-friendly power industry develop in Ontario in as efficient and timely a fashion as possible. APPRO members want to build cost-effective new generation supply for Ontario.

But, if we want to mobilize the very large amounts of capital required to ensure Ontario's energy future we will require policy coherence, regulatory co-ordination and efficiency, and an attractive fiscal regime.

With this Bill and with the current RFPs for renewable and clean power the government has taken initial steps to ensure that this will be the case – we now have to get on with making this work in the best interests of all Ontarians.

Thank you.