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of Ontario



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**Official Report  
of Debates  
(Hansard)**

G-9

**Journal  
des débats  
(Hansard)**

G-9

**Standing Committee on  
General Government**

Fixing the Hydro Mess Act, 2019

1<sup>st</sup> Session  
42<sup>nd</sup> Parliament  
Monday 15 April 2019

**Comité permanent des  
affaires gouvernementales**

Loi de 2019 pour réparer  
le gâchis dans le secteur  
de l'électricité

1<sup>re</sup> session  
42<sup>e</sup> législature  
Lundi 15 avril 2019

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Chair: Dave Smith  
Clerk: Julia Douglas

Président : Dave Smith  
Greffière : Julia Douglas

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 15 April 2019

Lundi 15 avril 2019

*The committee met at 0900 in committee room 1.*

**FIXING THE HYDRO MESS ACT, 2019  
LOI DE 2019 POUR RÉPARER LE GÂCHIS  
DANS LE SECTEUR DE L'ÉLECTRICITÉ**

Consideration of the following bill:

Bill 87, An Act to amend various statutes related to energy / Projet de loi 87, Loi modifiant diverses lois en ce qui concerne l'énergie.

**The Chair (Mr. Dave Smith):** Good morning. We're here to meet on the public hearings on Bill 87, An Act to amend various statutes related to energy.

Pursuant to the order of the House dated April 10, 2019, each witness will receive up to six minutes for their presentation, followed by 14 minutes of questions from the committee: six minutes allocated to the government side, six minutes allocated to the official opposition and two minutes for the independent member.

We will rotate the questions. The first questions will start with the government side, the second presenter will start with the opposition and the third presenter will start with the independent, if the independent is here.

Are there any questions before we begin? Okay.

MR. GEORGE VEGH

**The Chair (Mr. Dave Smith):** Our first scheduled presenter is Mr. George Vegh. If you could come up to the table. Please, introduce yourself. You'll have six minutes from the time you start to speak.

**Mr. George Vegh:** Thank you, Mr. Chair. Should I begin?

**The Chair (Mr. Dave Smith):** Yes. Just introduce yourself for Hansard, please.

**Mr. George Vegh:** Thank you. My name is George Vegh. I provided a copy of my biography, so you should have that in front of you.

Just by way of introduction, I practise energy and regulatory law at McCarthy Tétrault, and I teach in the area of energy and regulatory governance at the Munk School of Global Affairs and Public Policy. I've taught this at the University of Toronto law school, Osgoode Hall Law School and the University of Calgary law school.

While regulatory governance, according to my teenage daughter, is the most boring and dry area of consideration in the world, it's something I happen to find quite

interesting. Bill 87 deals with regulatory governance, so I do appreciate the opportunity to speak to the committee today.

What I'd like to address in my opening statement is an overall analysis of the bill in short form. I'd say that this bill does have some considerable improvements with respect to regulatory governance, and I'll address those. But it also has some serious limitations, and I'll address those as well.

First, with respect to the improvements, I think there are some points in here that I commend the government for addressing. First—and this is all by reference to the criteria of transparency and independent decision-making—fact-based decision-making. With respect to the financing of the Fair Hydro Plan: I think having greater transparency around that is a huge benefit and corrects a problem that was a very serious one under the current method of funding.

There are also some benefits here with respect to greater acknowledgement of independence of the regulatory side of the new structure of the organization. As you know, there's a new board of directors and the regulatory commissioners, and the independence of the regulatory commission is enshrined in the legislation, which I think is very important. Also, there's a protection for the members of the regulatory commission side with respect to job protection so that they can only be removed for cause. I think that's a very positive thing as well.

Now for some of the limitations: The first is, Bill 87 creates an office of the CEO, which is understandable. You would have a CEO to address the operational effectiveness of the board, which is one of the major concerns leading to the legislation, so that's a good idea. The concern is that the CEO is given incredible powers. The CEO, instead of just dealing with operational effectiveness, also has the power to unilaterally set rules that are binding on the entire sector.

I'm not aware of any other public utility regulatory or even economic regulator where that kind of power is given to one individual. It's almost like the creation of an energy czar, to have the power to make rules, and it's almost an unconstrained rule-making power. It's quite unusual. It wasn't addressed in the Dicerri report. It's something I found quite surprising in reviewing the legislation, and I don't believe I'm alone in that. You'll hear some more of that today.

I think that's an issue that should be addressed, and I think it's actually subject to a pretty straightforward fix. In

most jurisdictions—certainly in all US jurisdictions as well as at the federal level—there’s usually a requirement to go through some sort of cost-benefit analysis when making rules. So to have that requirement here could be very positive, both for the energy sector and perhaps set a pattern which I think would be very helpful, to have a requirement that if there are to be regulations or rules put in place, a requirement that the benefits of the rule outweigh the cost of the rule I think should be binding on the CEO and can provide an example, I think, to the rest of the sector.

Finally, there’s one thing that should be addressed as well. I see this more as a missed opportunity. It has to do with the OEB’s oversight over electricity procurement. Ontario is an outlier in North America. It’s the only jurisdiction in North America where the public utility regulator does not have oversight over procurement. We’ve seen what has happened in the past. The Auditor General has pointed to the problems with this, and anyone who pays electricity bills should be aware of the problems with this. Our costs of procurement have really spun out of control. I think there’s a direct relation to the lack of regulatory oversight in Ontario on procurement. We’ve seen that in the past. What this legislation does is it doubles down on that point. In the past, there was no oversight over the procurement of electricity supply.

**The Chair (Mr. Dave Smith):** One minute left.

**Mr. George Vegh:** Thank you.

This extends that to ensure that there’s no oversight over the procurement of transmission.

I’ll just take my last few seconds to read what the bill says about this. It says, with respect to transmission procurement, that “the board shall accept ... and not inquire into the basis of ... amounts payable” for this, including “prices and costs provided for by the procurement contract, and any costs associated with the procurement contract.”

To shield transmission procurements from regulatory oversight—in my view, it’s so hard to identify how customers benefit at all from doing that. In fact, it seems to be doubling down on the root causes of the problem that this sector has had over the last decade.

Thank you, and I look forward to your questions.

**The Chair (Mr. Dave Smith):** Thank you very much for that. Ms. Hogarth.

**Ms. Christine Hogarth:** Thank you, Mr. Vegh, for being here today. It’s great to have you talking about this legislation.

Our government is taking bold steps to try to fix our hydro mess. I think that’s why this legislation has such a great title. We heard, when were knocking on doors, about the hydro mess and how do we clean it up, how do we lower energy costs, and how do we make it more efficient and transparent. It’s about fixing the system.

You used a couple of words, with improvements. You talked about transparency. I think you said “the benefits,” and you liked the independence of this new board—so just some questions along that. The OEB modernization review panel undertook an extensive consultation with

Ontario’s energy sector before making public recommendations. I’m looking for your professional opinion on this. Do you believe that this will restore stakeholder and public confidence—as a regulator?

**Mr. George Vegh:** I think to some extent it will, because it addresses operational effectiveness at the OEB level. That was the real concern. With respect to costs, though, I frankly don’t see anything in this legislation that’s going to do much to control costs. As I said, the big cost driver, and the big costs coming out of control, has been unregulated procurement. This does nothing to address that issue. There’s no oversight over procurement coming from this, and that has been the big driver of costs.

If you look at the OEB generally, as I said, there are needs for operational improvements. But with respect to cost control, areas under its jurisdiction have been subject to cost control. Distribution revenues have gone up at a rate lower than inflation over the last, I don’t know, five or six years. Procurement costs had been out of control, and that’s totally kept out of OEB review here.

**Ms. Christine Hogarth:** I just wanted to really talk about both the board and independence of the board, because you had mentioned about the independence. To enhance the independence of the regulator, our government has made the changes that the OEB commissioners would not be appointed by government—in the past, they’ve always been appointed—going forward in the new structure. Can you tell us again, in your opinion, about the importance of an independent energy regulator?

**Mr. George Vegh:** Thank you. I note that provision as well. I think that the appointment from the board of directors is a step in the right direction. I will say that it’s kind of interesting, because this reform is going on at the same time as the reform at the federal level of the National Energy Board, the Canadian energy regulator. There’s the same sort of protection of independence. As I say, I commend that. This is an advancement.

But I do have the concern that a regulator now is the chief executive officer of the board, who is given massive regulatory power. There’s no protection of independence with respect to the rule-making power of the CEO. So it’s one step forward, I think, with the OEB commissioner, and it’s one step backwards with respect to the creation of the CEO with this unconstrained rule-making power.

**0910**

**Ms. Christine Hogarth:** Our government is, though, trying to increase the accountability of the OEB to deliver its mandate. The new board will report to the minister. Were you aware that that’s part of it, that they will report to the minister?

**Mr. George Vegh:** Yes.

**Ms. Christine Hogarth:** And do you think the OEB will be more efficient when it is held to its deadlines?

**Mr. George Vegh:** I think imposing deadlines is very important. I think that’s a very positive measure in the bill.

**Ms. Christine Hogarth:** I don’t have any further questions.

**Mr. Paul Calandra:** How much time is there?

**The Chair (Mr. Dave Smith):** You have two and a half minutes, Mr. Calandra.

**Mr. Paul Calandra:** You talked briefly also about the disentangling of the fair hydro scheme, for lack of a better word. Just out of curiosity, when this was put together, the original scheme, had you made any comments about how that scheme was put together?

**Mr. George Vegh:** I forget if I expressed these publicly, and I might have, but my concern there was that it seemed to be designed to just hide the costs from consumers. That was a major concern with how that was carried out. A restatement of the IESO's financial statements, I thought, was pretty extreme. I think, as I said, this fixes that issue.

**Mr. Paul Calandra:** Yes, and I agree with you that it seems to fix this going forward. On that basis, you'd agree that at least what we've done here is we've taken the next step to disentangle, for lack of a better word, the scheme that was put in place, as you said, in essence to hide the cost.

You also talked a little bit about interference. I think I read in testimony you'd given before to a committee with respect to the feed-in tariffs of the green energy—you were very, very critical of how the previous government had put together the feed-in tariff program, which seems to correlate specifically to what then came forward as the Fair Hydro Plan. Am I correct on that?

**Mr. George Vegh:** Yes, I think that's right. I had some serious concerns on how that was structured.

**The Chair (Mr. Dave Smith):** Thirty seconds.

**Mr. Paul Calandra:** And much of that type of structure—I think you had said in previous testimony the goal was to try to copy Germany, but they didn't do it at all. It seemed to create a system which, in essence, has cost us billions of dollars, which has then led to us having to disentangle the mess. Am I correct on that?

**Mr. George Vegh:** Yes, that's right. What I would emphasize is that the challenge there was, again, the lack of regulatory oversight over procurement. This was something just thought up by people with no real review for costs and benefits, and we saw the consequences of that.

**Mr. Paul Calandra:** Thank you, Mr. Vegh. I appreciate it.

**The Chair (Mr. Dave Smith):** Thank you very much. We've come to the end of those questions. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Chair.

Good morning.

**Mr. George Vegh:** Good morning.

**Mr. Peter Tabuns:** Thank you for being here.

Because you seemed to have to squeeze a fair amount into those last 30 seconds, were there any other things that you wanted to say, part of your prepared remarks, before I go to my questions?

**Mr. George Vegh:** No, I think I got my points out, and I may follow up in writing so there's a more detailed description of what I'm addressing. But thank you for the opportunity.

**Mr. Peter Tabuns:** Not a problem at all.

The parliamentary assistant just asked you about the green energy program and the lack of regulatory oversight of the program. What you've said here is that there is a further reduction in the ability of the OEB to oversee procurement. Did I understand you correctly?

**Mr. George Vegh:** Well, it's an extension, because in the past the problem was with respect to supply procurement—generation, conservation—but it's now extended to transmission as well.

**Mr. Peter Tabuns:** So, in fact, the problems that were cited by the parliamentary assistant wouldn't be corrected here. In fact, we would extend those problems. Is that a correct understanding?

**Mr. George Vegh:** Yes, I think that's fair. That's a concern, that there is no attention paid to this issue, which is a root cause of what has been a regulatory failure, in my view, in our province.

**Mr. Peter Tabuns:** And the lack of ability for the OEB to review transmission decisions: Can you give us a sense of the kind of risk that places the province in?

**Mr. George Vegh:** It means that all of the costs are going to be passed on to customers with no oversight into what those costs were, whether they were prudently incurred. It will be like our supply procurements have been, again, and we would be continuing as the only North American jurisdiction without regulatory oversight over procurement costs.

**Mr. Peter Tabuns:** And as I understand it right now, only about 35% of generation is covered by the OEB, regulated by the OEB. With this extension of the lack of oversight, how much of transmission is now going to be excluded from regulation?

**Mr. George Vegh:** It's hard to say because it would only apply to new transmission procurements. Current transmission costs are regulated by the OEB, so it's really with respect to the new ones and we don't have any yet, so no costs have been realized yet.

**Mr. Peter Tabuns:** Okay.

You raise this other point about the almost unconstrained power of the CEO, effectively making that person an energy czar. Do you see risk in this?

**Mr. George Vegh:** Oh, yes. I think the whole point of regulatory oversight is to have some checks and balances. As I said, I can't think of an example in other jurisdictions where an individual office has been given this power. So if you consider rule-making and other regulatory bodies we have, like the Ontario Securities Commission, it's the commission that makes the rules and there's oversight and there are various requirements that I can address more in writing as to constraints on that power. Even the current OEB rule-making is made by the board itself, so there's a bit of a check and balance, because it's a larger group. Again, that is a unique and new model given in this legislation, and I think that's a concern, yes.

**Mr. Peter Tabuns:** Is there any value that you can see to having this concentration of power in the hands of the CEO?

**Mr. George Vegh:** I think that if there were constraints on that, a requirement to conduct a cost-benefit analysis, a

meaningful one, then I could see it being better than what we have today, because right now, as I said, the board exercises that power but very little constraints. It has some inertia, which prevents it from going—which is also about sort of compromise positions. But if you were to make a slight change to this legislation and impose the requirement to conduct and follow a cost-benefit analysis for new rules by the CEO, I think this would be an improvement to the status quo.

**Mr. Peter Tabuns:** And the exact process—if, in fact, we're able to improve this legislation, what would you advise us to do in terms of the structure for new rules and regulations? You suggest a cost-benefit analysis. Who would you suggest prepare it and how, in turn, would it be reviewed and analyzed?

**Mr. George Vegh:** A cost-benefit analysis is pretty standard. It's required—it has been a feature of American regulation since Ronald Reagan and has survived different iterations through Obama and others. The analysis, I think, would be carried out by the CEO, and a statutory requirement adhered to to not pass a rule unless it can be demonstrated that the benefits of the rule outweigh the costs of the rule. I think it's a pretty simple legislative fix and a pretty simple administrative fix. This is done by the Treasury Board of Canada, as well. This is pretty mainstream regulation.

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Peter Tabuns:** Okay. The independence of the commission—the CEO reports to the minister. My recollection is that that's standard. Do you think that in any way hinders the independence of the commission?

**Mr. George Vegh:** You always have to balance independence with accountability. I think it's important that the regulator be accountable to the government. That kind of executive-type responsibility and accountability seems appropriate to me.

**Mr. Peter Tabuns:** Do you have any fear that we might be in a situation where the minister would dictate policy to the CEO?

**Mr. George Vegh:** The powers with respect to directions from the minister are still in the legislation. Again, if you go to—

**The Chair (Mr. Dave Smith):** I'm sorry. We've come to the end of the six minutes.

**Mr. George Vegh:** Perhaps I could provide that in writing. Thank you, committee.

**The Chair (Mr. Dave Smith):** And seeing that Mr. Schreiner is not here, we will skip the independent opportunity to speak.

Thank you very much for your presentation. We greatly appreciate that.

#### VULNERABLE ENERGY CONSUMERS COALITION

**The Chair (Mr. Dave Smith):** Our next presenter is the Vulnerable Energy Consumers Coalition, if you could come to the table. Please introduce yourselves. You'll have six minutes.

**Mr. John Lawford:** Good morning, Mr. Chair and honourable members. My name is John Lawford and I am counsel to the Vulnerable Energy Consumers Coalition, or VECC. With me today is Mark Garner, OEB consultant, who does much of the technical work for VECC.

VECC is an unincorporated coalition of two major Ontario organizations, the Ontario Society of Senior Citizens' Organizations, or OSSCO, and the Federation of Metro Tenants' Associations, or FMTA.

**0920**

VECC represents the interests of residential customers in matters of energy regulation. We do so because we know the benefits of a process that embraces advocacy because it leads to better outcomes for consumers, namely lower energy rates.

We focus our comments on schedule 2 of Bill 87, which seeks to improve governance of the Ontario Energy Board, or OEB. Schedule 2's changes create an administrative layer to the OEB to separate adjudication by OEB members, who are now renamed "commissioners," from the financial and management aspects of running the board. These changes can be positive for efficiency; however, we wish to caution against negative effects upon the adjudicative operation of the OEB and, in particular, the intervenor standing and costs awards procedures, which we see as key to good decisions.

Our first point is that the new chief executive officer position is neither a member of the board of directors nor a commissioner, and yet the CEO will:

—firstly, recommend to the board of directors who will be commissioners, under new section 4.3(1);

—secondly, recommend to the board of directors who will be the chief commissioner, under new section 4.3(3);

—make OEB rules, under new section 44(1) and, I can add, new section 70.1; and

—finally, perform any other duties that are assigned to the chief executive officer under this act or any other act.

VECC is concerned that these CEO powers, and in particular the rule-making powers, risk serious lack of coordination with decisions of the commissioners of the OEB, and more importantly, may indirectly but powerfully affect its adjudications.

Secondly, clause 5 of the bill creates an adjudication committee of the new administrative board of directors that is empowered to "require the chief commissioner to provide to it such information it specifies, in the time and manner it specifies, respecting the efficiency, timeliness and dependability of the hearing and determination of matters over which the board has jurisdiction," which is new section 4.1(16). Although the adjudication committee is subject to a non-interference clause in 4.1(18), this non-interference clause can be read, as presently worded, to limiting the adjudicative committee's influence on OEB proceedings to "a matter" that is actively being considered. That is, the adjudicative committee could, it appears, make decisions affecting the efficiency, timeliness and dependability of proceedings in general, and possibly to reduce public interest intervention, interventions such as what VECC and other public interest groups provide.

In our experience, energy distributors seek to characterize public interest interventions as costly, wasteful or inefficient. However, the presence of public interest intervenors and the costs awards regime that funds them: (1) saves consumers far more than it costs utilities; (2) increases the fairness of the proceedings by providing consumer interests with professional representation, in the very same way as the utilities use subscriber payments for their own representation; and, (3) provides the OEB with a wider perspective which assists the board in making better decisions. Please see appendix 1 to these remarks for an estimate of costs savings for ratepayers from interventions like VECC's in recent OEB regulatory proceedings.

As a result, VECC proposes that this committee recommend amendment of the bill:

—firstly, by removing the words “on the recommendation of the chief executive officer” from new subsections 4.3(1) and 4.3(3)—that’s regarding the appointment of the OEB commissioners and the chief commissioner;

—secondly, by adding the words “subject to the approval of the board” to new subsection 44(1), and 70.1—and by “board” there, I mean the adjudicative commissioners rather than the board of directors; and

—finally, by adding the words “including board determinations of public interest intervention and costs eligibility” after the words “the hearing or determination of a matter” to new subsection 4.1(18). That’s to remove the possibility of interference by the adjudicative committee with the proven public intervention costs award process.

Those are our remarks, and we look forward to your questions. Thank you.

**The Chair (Mr. Dave Smith):** Thank you very much. You still have 60 seconds left if there is anything else you want to add.

**Mr. Mark Garner:** My name is Mark Garner. All I would add is I’ve worked with the board for about 15 years and I’ve worked in front of the board about 10 years. I would agree with Mr. Vegh’s remarks with respect to the CEO. I think it is unprecedented. I don’t think we’ve ever seen anything that gives that much authority to a single body inside the regulator, and I think that needs to be addressed.

I think the committee might also understand that there are rules and codes promulgated under the act, but the board also promulgates many policies that are not rules and codes, and they affect, deeply, the adjudicative process of the board. So you have this odd event that may happen where adjudicators are putting out what you could maybe call non-binding policy, and then you have a CEO putting out binding rules and codes. The act doesn’t seem to understand that difference that occurs inside the board. That would be my other comment.

**The Chair (Mr. Dave Smith):** Thank you very much. Mr. Tabuns?

**Mr. Peter Tabuns:** Gentlemen, thanks very much for being here this morning.

You express a real concern that intervenors may be blocked, or their ability to recover costs may be blocked,

and thus the effectiveness of intervention will be substantially reduced. Can you enlarge upon that a bit? I think this is a really important point for energy consumers in Ontario.

**Mr. John Lawford:** I tie it back—thank you for the question—to the wording that actually is throughout the act but that I quoted to you about the efficiency, timeliness and dependability of the board’s determinations. It seems new that the administrative level would take such a hard interest in that.

We understand the government’s point of view that there had been trouble in recent times with the Ontario Energy Board being slow and with certain of their requirements being unnecessary and there being a number of high-level policies which are, I believe, difficult for everyone to deal with. So there is an accountability level which is appropriate. However, there is a blurry line: Where does that end and interference in adjudication begin? One of the edge areas, we believe, might be trying to characterize public interest intervention as “non-efficient,” whereas we believe it’s efficient for consumers to lower rates and for the board to make better decisions.

**Mr. Peter Tabuns:** My understanding, actually, has been that a lot of what’s been problematic with the OEB has been a shortage of adjudicators—not enough hearing times. Is that consistent with your analysis?

**Mr. Mark Garner:** Yes. I would definitely say recently, especially. There has also been a movement to part-time board members. The difficulty of being a board member, at least in my estimation, is that it does take a certain amount of intimate knowledge that you gain by experience of doing it. In my opinion, full-time board members gain that over the period of their appointments, and it’s more efficient. It’s not that part-time members aren’t good and aren’t needed, but the balance seems to have shifted quite a bit, and I think that has made it difficult for the board.

**Mr. Peter Tabuns:** So is it fair to say that public intervention is being unnecessarily blamed for the length of time that these hearings take when, in fact, if we had adequate boards or adequate panels appointed, we’d have far less difficulty with things being slow?

**Mr. John Lawford:** I think I’ll start and then let Mr. Garner finish. I believe that often, especially on the electricity side, interventions are always resented and blamed for slowness, but that they produce rate reductions, and that’s why.

Do you want to add anything?

**Mr. Mark Garner:** Well, I would say this: The bill does attempt, and I think rightfully so, to put some measures in place to help put better timelines in front of the board, to give them that. I think that should be acknowledged as a positive aspect of the bill. I think where we see criticism a lot, quite frankly, is utilities, because of the burdensome costs of regulation, and they see us as one of those burdens of regulation.

**Mr. Peter Tabuns:** You have, in this appendix 1, set out the cost of intervention, the period costs for EDA, and then the total savings from application of the changes

wrought by intervention. Can you tell us how that was calculated?

**Mr. Mark Garner:** Certainly. It's only a sample, and it's a sample from a number of years ago. First of all, I'd caution you to not read too much into—it may look like London Hydro, for instance, has given up more than everybody else, but it is also demonstrating that London Hydro is a larger utility than everybody else in this graph.

All we're trying to indicate is—we tend to be criticized for the costs we incur into the system, but the utilities also pay through their rates or recover through the rates the cost of their lobbyist, which is the EDA. They pay that every year, and we appear about every four or five years in front of these. We're simply trying to show that our costs are not much different, really, than their costs—are actually much lower than their costs—and we're trying to demonstrate the adjudicative process does have very big benefits.

**0930**

What you see in this graph, by the way, are only proceedings under the board that were done by settlement with just the intervenors. This is a process by which the board allows a settlement to happen with the intervenors and the applicant. We negotiate, and then we bring what we agreed to to the board. They review it and, if they are happy with it, they will approve it and put it into rates. These are samples of negotiated settlements where we have not had an adjudicative hearing; this is one of the settlement processes. The board put those in place, one, for timeliness. They are quick. They do tend to quickly bring the parties together and give the board that kind of to and fro that you get between parties when you have regulation.

**Mr. Peter Tabuns:** So the savings that you show here are a result of an agreement between the intervenors, yourselves in particular, and the proponents of the rate increase—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Peter Tabuns:** —showing how much less rates would have been because you were actually able to reduce it in those hearings. Is that correct?

**Mr. Mark Garner:** That's correct. The only thing I would say is we're not showing rates here; we're showing what's called a "revenue requirement," which is the amount of revenue required by the utility and how much it's being changed. The rates go through a process to make up the rates and that would make a different number.

**Mr. Peter Tabuns:** This question was raised by Mr. Vegh. This unprecedented concentration of power in the hands of the CEO—what risk do you see here?

**Mr. John Lawford:** There are a number of subtle ways the CEO, as mentioned, could affect who gets the chief commissioner job. The chief commissioner, as well, has a lot of power within the board, rather than the board members now. So that's an indirect effect on what they can do. The rule-making power, as he mentioned, is really key because that sets pan-industry guidelines, which previously were done by the sitting members of the board.

**The Chair (Mr. Dave Smith):** Thank you very much. Mr. Schreiner, you've got two minutes.

**Mr. Mike Schreiner:** Thank you, Mr. Chair. I just want to follow up on the line of questioning related to the concentration of power in the CEO. If you could, expand a little bit more on what your concerns are with that and what the implications on rate decisions could be.

**Mr. John Lawford:** I guess the concern is—although we understand that there are concerns around improving what I would call functional efficiency or administrative efficiency of the board—that the bill seems to go too far in taking away a lot of quasi-administrative matters, which are very tightly tied to adjudication, away from the members so the actual sitting commissioners now only adjudicate cases. It's hard to say exactly where adjudication ends and control begins. You have now a lot of power in this new chief executive officer—and we've outlined what that's like—and there is also a chief commissioner. The actual members are quite sidelined, so it's a new focusing, creating a power structure which wasn't in the board before. That has the risk that the matters which are characterized as "efficiency" may take on a life of their own. As mentioned, there's reporting to the minister, and there can be a flow back perhaps from there. We've seen this as well in the CRTC, where the head of the CRTC now exercises a lot of power in terms of selecting who sits on panels.

**The Chair (Mr. Dave Smith):** Thirty seconds.

**Mr. John Lawford:** That has weakened their independence.

**Mr. Mike Schreiner:** We've seen the concerns people have around CRTC regulation, particularly in telecommunications companies. Do you share the same concerns now around energy board decisions in Ontario?

**Mr. John Lawford:** Well, time will tell. It's hard to say. There's a potential here, but if it's kept mostly to timeliness and other more administrative matters like that, and away from cost structures, it will stay away from adjudication and be all right.

**The Chair (Mr. Dave Smith):** Thank you very much. That's all the time we have. Ms. Kusendova?

**Ms. Natalia Kusendova:** Good morning, Mr. Lawford and Mr. Garner. Thank you so much for being here and thank you for your insightful deputation and for providing some insights as to Bill 87, Fixing the Hydro Mess Act. Thank you for representing vulnerable citizens, especially seniors, and being their voice.

Our government respects seniors and hard-working Ontario families. We demonstrate that respect by ensuring that they get to keep more money in their pockets. We've done that through the introduction of various bills, but this bill, Bill 87, is also speaking to that, ensuring that vulnerable Ontarians and seniors in our province do keep more money in their pocket to be able to afford to pay their hydro bills and to be able to provide food for their families, and so we are focused on keeping electricity affordable and improving transparency. We're also focused on reducing costs by centralizing and refocusing conservation programs and building a modern, efficient and effective OEB, which you made some reference to, in schedule 2 of this bill.

Our approach will ensure that we keep the conservation programs for the most vulnerable, while saving up to \$442 million for the ratepayer. We still have the home assistance program, for example, which provides free home energy assessments and installations of electricity-saving measures for income-eligible customers. Do you agree that this program will benefit lower-income individuals such as the ones your organization speaks to?

**Mr. John Lawford:** Yes, that particular program and others like it do benefit. It's a matter of getting the word out to folks, and I think that's been done pretty well by the board lately. We're happy that program is continuing.

**Ms. Natalia Kusendova:** And do you think that the savings of \$442 million for Ontario ratepayers are significant?

**Mr. John Lawford:** Certainly they're significant, and the ones we're speaking about in rate hearings, as well.

**Ms. Natalia Kusendova:** Thank you. Are you aware that we're also supporting the targeted energy conservation programs for on-reserve First Nations communities? These specialized conservation initiatives directly benefit vulnerable people in remote communities. Do you agree that these programs are important to protect?

**Mr. John Lawford:** Absolutely.

**Ms. Natalia Kusendova:** Would you like to provide further comment?

**Mr. Mark Garner:** Absolutely. We see those communities come in front of the board from time to time, and they have issues about reliability and they have issues about costs and being able to pay. These are very important programs.

As Mr. Lawford said, the biggest difficulty is getting the word out and getting the people we want to get into those programs.

**Ms. Natalia Kusendova:** Great. These are two critical components of our conservation program, and we're ensuring that these programs are sustainable by centralizing delivery at the IESO. We're also eliminating the duplication that exists in the current system to make every dollar count.

Do you agree that we should be looking to avoid duplication, so that every dollar of conservation makes it to the low-income and vulnerable individuals who need it the most?

**Mr. Mark Garner:** I'm not an expert in the DSM aspect of things, but as I understand it, the shift is moving away from the utilities for these programs into the IESO. I think there's nothing wrong with that, and maybe a lot of good with it. It takes a lot of expertise to do these programs, and the concentration of that expertise is not a bad thing. Perhaps it's a good thing, but again, I'm an expert in the conservation parts of the program.

**Ms. Natalia Kusendova:** Thank you. I'll now pass it on to my colleague.

**The Chair (Mr. Dave Smith):** Mr. Calandra.

**Mr. Paul Calandra:** How much time?

**The Chair (Mr. Dave Smith):** Two and a half minutes.

**Mr. Paul Calandra:** Okay. You would agree, then, that separating adjudication from management as such is a good idea?

**Mr. John Lawford:** I believe the panel's report recommended that. At the time that we appeared before the panel, we said there could be some positive effects to that, because the board itself has had some slowness, as we pointed out.

**Mr. Paul Calandra:** As you mentioned, part of the slowness—you would agree that either for yourself or for industry, there is timeliness, and a certain level of understanding of what the process would be would be a good idea, regardless of whether your submissions result in savings for ratepayers or not. Would you agree with me on that?

**Mr. John Lawford:** Yes.

**Mr. Paul Calandra:** In your opinion, does this bill at least begin to address that?

**Mr. John Lawford:** It does—

**Mr. Paul Calandra:** Okay—

**Mr. John Lawford:** It does address it in its particular way. You wanted to add something?

**Mr. Paul Calandra:** No. What recommendations had you given on green energy? Because I know your vulnerable energy consumers—I can't think of any more disastrous a program than the feed-in tariffs for vulnerable energy consumers. I'm wondering what advice you had given under the previous government in the creation of that program or since then to be critical of—to make sure we don't do that again.

**Mr. Mark Garner:** Thank you. Again, on the procurement end, that's not the area that we deal with a lot. But I have been in this a long time; I couldn't reiterate more than Mr. Vegh's comments. I think the procurement issue has caused a massive problem, and transparency has become a problem.

The way I put it from our end of the business is that part of government policy was the installation of smart meters, which allowed time-of-use rates and that, but then after that there has tended to be a lack of transparency in what the rates were that people were having. And so you kind of had two policies that were banging against each other, one trying to get at transparency and the other one kind of hiding transparency, and that's difficult for consumers to react to, whether you like the response of consumers or not. Do you know what I mean?

0940

**Mr. Paul Calandra:** And with respect to the powers of the CEO—

**The Chair (Mr. Dave Smith):** I'm sorry, Mr. Calandra. We've run out of time.

**Mr. Paul Calandra:** Oh, sorry. Okay. Thank you.

**The Chair (Mr. Dave Smith):** Thank you very much for your presentation.

**Mr. John Lawford:** Thank you so much.

**Mr. Mark Garner:** Thank you.

#### CONSUMERS COUNCIL OF CANADA

**The Chair (Mr. Dave Smith):** Our next group is the Consumers Council of Canada. If you could come up to the table, please. Please introduce yourselves. You'll have six minutes for your presentation.

**Ms. Julie Girvan:** Thank you very much. My name is Julie Girvan and I act as a consultant to the Consumers Council of Canada. I normally manage their interventions before the Ontario Energy Board, so I'm very familiar with the board. I really appreciate the opportunity today to address the committee.

We will be speaking to the proposed legislative changes to the Ontario Energy Board. We see these as positive changes.

The council is a national, non-profit, voluntary organization based in Toronto and formed in 1994. It has represented residential consumers as an intervenor in all major proceedings since 2005. The council has also been regularly involved in OEB stakeholder consultations, working processes and working groups.

We are supportive in large measure of the proposed changes to the OEB, as set out in the legislation, as we believe they are meant to bring greater independence, accountability and governance to the board. We support the fact that the bill is recognizing the importance of an adjudicative model for regulating the natural gas and electricity distribution and transmission monopolies in Ontario, rather than relying more on administrative consultation processes that can preclude transparent decision-making. The adjudicative model allows for the interests of the utilities and other stakeholders, particularly the ratepayer groups, on an equal footing.

We believe it's important for the new OEB leadership to include experienced adjudicators who understand the mandate of the OEB and the need to protect the interests of energy consumers in Ontario.

We support and highlight the need for continued funded access to the OEB processes by grassroots consumers. We believe the current regulatory process can be made more efficient, while maintaining a robust intervenor funding model. At the end of the day, it's the consumers, not the utilities, who pay for the cost of interventions. This has been an effective model for many years and should not be considered a cost to the process, but rather a benefit. We've seen that with the analysis provided by the previous presenters.

The OEB is an important institution with an important role in protecting Ontario energy consumers, and we hope the changes arising out of the legislation will bring greater protection.

We do recognize the issue that was raised earlier by Mr. Vegh and by the Vulnerable Energy Consumers Coalition about the separation between policy, rate-making and adjudication, and how that can be problematic. The way that I see as a solution to that, in part, is to ensure the rule-making decisions of the board made, potentially, by the CEO are done through a public process and a transparent process and allows equal access by all parties to that process, so that the decisions can certainly be public, and the reasoning behind those decisions can be made public.

I'm here to answer your questions. Thank you.

**The Chair (Mr. Dave Smith):** Thank you. You still have three minutes, if you want to say anything else.

**Ms. Julie Girvan:** No, we think these are positive steps. One of the issues, I think, that you were concerned

about, that people have been talking about, is the timeliness of OEB decisions. That's really been a problem, sometimes, just of personality, just the board taking a long time to get out decisions. I don't think it's been a function of a process that includes stakeholders to be a part of that process. I think the legislation recognizes that. Going forward, I think there will be metrics that will ensure timely decisions, which are good for both utilities and the consumers, at the end of the day.

Thank you.

**The Chair (Mr. Dave Smith):** Thank you.

Mr. Schreiner, we'll start with you. You have two minutes.

**Mr. Mike Schreiner:** Thank you so much for being here and thank you for your advocacy on behalf of consumers. Obviously, we need to get electricity rates under control and more consumer-friendly. I think an important part of that is ensuring that we have intervenor status for the public so the public interest is first and foremost.

Do you have some recommendations to address some of the concerns that you've discussed—and the previous presenter—about how we can enhance the access for intervenor status?

**Ms. Julie Girvan:** Sure. I think the process has been working; it's been working for many years. There's a broad set of intervenors that represent stakeholders at the energy board. I think that diverse group has resulted in robust decisions for the board. I think the concern is—and we've heard some expressions from others—that outsiders, and the utilities in particular, are critical of the costs of interventions. But as the previous presenters pointed out, the costs really are insignificant relative to the benefits that a publicly funded process does bring to the board.

I think that the energy board has to be transparent. I think it has to make its processes both on the policy and the rate-making sides accessible to groups, particularly consumers. I think that's important, to maintain that and continue that going forward.

**Mr. Mike Schreiner:** Do you think having more adjudicators would help to facilitate the timeliness while still allowing public information—

**Ms. Julie Girvan:** Sure. I think the problem currently at the board—

**The Chair (Mr. Dave Smith):** Thirty seconds.

**Ms. Julie Girvan:** —is that there aren't that many adjudicators there at the moment, and some of them are part-time. I think, as I said earlier, it's very important for the board to retain good adjudicators with experience and make sure that they have enough so that timely decisions can get out. I think that's important. We need to staff up the board with good, experienced adjudicators, and I think that would be a positive step.

**Mr. Mike Schreiner:** Great. Thank you.

**The Chair (Mr. Dave Smith):** Thank you very much. Ms. Wai.

**Mrs. Daisy Wai:** Thank you, Ms. Girvan, for coming this morning and speaking to this bill. I'm happy that you find this positive and you see that we are working towards the right direction. In fact, this bill is really for us to make

sure that we increase transparency and accountability, as well as for affordability to Ontarians.

Can you elaborate on your organization's perspective on this proposal in terms of accountability and how we are moving towards achieving the recommendation by the Auditor General?

**Ms. Julie Girvan:** Sure. I think one important aspect of the bill is the fact that the adjudication is a separate part of the board, and I think there are some provisions in the bill that ensure that the other members and the CEO can't interfere with the public hearing processes. I think that's really important. I just think public hearings are important. It's a balanced way to deal with issues. I think a lot of important issues should be addressed through the adjudicative model. I guess what I'm saying is, we're very supportive of continuing with that model, and we think that as long as consumers and other stakeholders have access to that process, and balanced access, in the same way that the utilities do.

**Mrs. Daisy Wai:** Thank you very much. You also mentioned about us being on top of the cost control as well. But with the CEO and everybody responding back to the minister, do you think that will also already help in this area as well?

**Ms. Julie Girvan:** I'm not sure what you mean about cost control. But to me, it looks like a positive structure. I guess we'll see when it happens, and an important aspect of how the board will run in the future is the individuals who will be placed in those positions and the responsibilities they have. To the extent that you bring in individuals who respect both the role of utilities in the province and the role of consumers, I think it will be important, and I think they likely can do a good job.

**Mrs. Daisy Wai:** Thank you.

**The Chair (Mr. Dave Smith):** Ms. Kusendova.

**Ms. Natalia Kusendova:** Thank you for coming in today to speak to Bill 87. You made some interesting remarks about how, going forward, there will be metrics, and you spoke of the importance of the intervenor status for the public and the importance of a transparent and accessible public process, and also about the importance for the board to maintain good and experienced adjudicators.

With our government moving to the central program delivery by the Independent Electricity System Operator, as opposed to a local distribution company delivery model, this would also reduce the cost of program oversight, administration and delivery, and end up in \$150 million in bonus payments to the local distribution company that do nothing to help conservation. As an advocate for consumer rights, do you support this initiative?

**Ms. Julie Girvan:** Yes, I do, and the council has in the past been an advocate of a more centralized approach to conservation. I realize that for the past six years the budget for conservation was \$2.4 billion. The only oversight of that was the board of directors of the Independent Electricity System Operator. We see now that it's very, very important to have oversight of that.

The other thing with respect to conservation is that we need to focus on programs that are cost-effective and not

just programs that aren't cost-effective. I think we've seen a lot of that with some of the current programs in place.

I do agree with a more centralized approach. I think maybe the OEB could have a role in that, in terms of overseeing some of the costs of the conservation programs going forward.

**Ms. Natalia Kusendova:** Yes. You will notice that with our government everything we do is keeping our taxpayers in mind and making sure that every dollar is stretched to the maximum, so that they get value for what they pay into the system.

With that, our government is introducing regulatory amendments to keep electricity customer bills stable. Increases to the average residential electricity bill would be held to the rate of inflation, starting May 1, 2019. These actions are part of the government's plan to increase transparency and accountability, as we've mentioned, in the electricity system while working to make life more affordable for Ontarians. Is this something that would find support within your organization?

**Ms. Julie Girvan:** Well, I think the issue is really that at the end of the day consumers should pay for the cost of delivering electricity and using electricity. I'm not sure the inflationary increase is going to do that, and it may hide some costs, so we have some concerns about that.

**Ms. Natalia Kusendova:** Mr. Calandra, did you want to—

**Mr. Paul Calandra:** How much time left?

**The Chair (Mr. Dave Smith):** About a minute.

**Mr. Paul Calandra:** It seems that we're getting a lot of similar responses from individuals who seem to be appreciative of the fact that there's intervenor status, but also wary of the fact that it has cost a lot—the duplication in the system. Ultimately, I guess, we're on the same page on that and you would agree with the previous presenters that one of the priorities is to find a way to minimize the costs, not only to intervenors but ultimately to ratepayers, because of the massive amounts of duplication that were in the system before?

**Ms. Julie Girvan:** I agree with that, yes. I think efficiency's really important. I think you have to balance making sure that the OEB processes are transparent, they're open, that stakeholders are there on an even footing, but I believe there's lots of efficiencies that can be found in the system, definitely.

**Mr. Paul Calandra:** And you're aware that part of the legislation is that the commission has to report back to the board with respect to how they're doing on that.

**The Chair (Mr. Dave Smith):** Thank you.

**Ms. Julie Girvan:** Yes, that's really important. I think—

**The Chair (Mr. Dave Smith):** Thank you. I'm sorry; we don't have time.

**Ms. Julie Girvan:** Thank you.

**The Chair (Mr. Dave Smith):** Mr. Tabuns.

**Mr. Peter Tabuns:** Ms. Girvan, thank you very much for being here this morning.

**Ms. Julie Girvan:** You're welcome.

**Mr. Peter Tabuns:** I was interested in your recommendation that the rule-making process become a public

process, and you're suggesting that in hearings where intervenors can come and speak about changes to—

**Ms. Julie Girvan:** Well, not necessarily hearings, but even today, some of the rule-making that the board establishes, rules and codes—there is a consultation process that surrounds that. I think it's important, though, that that consultation process is open, transparent and balanced, so that all parties have access to that process. But that is, from my perspective, a good way to deal with rule-making and code-making. You can see the justification for the decisions at the end of the day.

**Mr. Peter Tabuns:** Right. And given that that won't be the case in the future, as I understand it, do you find that a less accountable process?

**Ms. Julie Girvan:** Well, it may be the case. I think it's possible for that to be the case. I'm not clear how, under the proposed legislation, the rule-making and code-making are going to happen, but I think there are ways that the board, in the context of the legislation, can make that more transparent.

**Mr. Peter Tabuns:** Okay. I have no further questions. Thank you.

**The Chair (Mr. Dave Smith):** Ms. Bell?

Thank you very much for your presentation, then.

**Ms. Julie Girvan:** Thank you.

**The Chair (Mr. Dave Smith):** We're done a little bit early. We will be at recess, then, until 2 p.m. today. Thank you.

*The committee recessed from 0953 to 1400.*

**The Chair (Mr. Dave Smith):** Welcome back, everyone. It is 2 o'clock, so we will start again. We're here this afternoon to have the public hearings on Bill 87, An Act to amend various statutes related to energy. As we did this morning, we'll switch back and forth between each of the parties for questioning. This afternoon, we'll start with the government side. You'll ask the first round of questions on the first group that comes up.

#### ASSOCIATION OF POWER PRODUCERS OF ONTARIO

**The Chair (Mr. Dave Smith):** Could I have the Association of Power Producers please come up to the table? Please introduce yourself. You have six minutes for your presentation.

**Mr. Dave Butters:** Thank you, Mr. Chair. Hopefully Hansard can hear me; I'm a little scratchy. I've got a cold, so hopefully you can bear with me.

Members of committee, thanks. My name is Dave Butters. I see friends around the table. I am the president and CEO of the Association of Power Producers of Ontario, better known as APPrO.

Before we get started, I wanted to say a little bit about what APPrO is and what we do. We're a trade association representing Ontario's large-scale commercial electricity generators and other companies involved in the supply of energy-related services. APPrO is the largest organization of its type in Canada. We were established in 1986 as the Independent Power Producers' Society of Ontario and

became APPrO in 2003. Our members provide more than 90% of Ontario's electricity from virtually all technologies, including nuclear power, hydroelectric, natural gas, wind, solar and biomass. Our mission is to achieve an economically and environmentally sustainable electricity sector in Ontario that balances the business interests of electricity generators, customers and the provincial economy.

Our advocacy work is primarily focused on commercial, regulatory and policy issues affecting electricity supply in Ontario, including electricity market rules, the market renewal project, power procurement processes, the regulation of natural gas, climate change compliance, and a bunch of other issues—many of them, as you can imagine.

We're a founding member of the Ontario Electricity Stakeholders Alliance, which supports an energy policy framework that is transparent, maximizes competition and is committed to smart, well-informed system planning decisions that result in best value to consumers, together with independent sector oversight, with an appropriately governed and resourced Ontario Energy Board. This would use best practices in adjudication to ensure Ontario's regulatory system remains responsive to the changes in the economic, social and technical conditions surrounding the electricity system.

APPrO welcomes the separation of the adjudicative and administrative functions at the Ontario Energy Board as proposed by Bill 87. We believe that this separation will improve the operations of the Ontario Energy Board in both areas.

The government has also spoken to the need to reduce reporting requirements and regulatory burden on stakeholders, in particular regulated entities. APPrO strongly supports this goal and looks forward to learning more about the details of the initiatives to achieve this going forward. Annual reporting by the OEB on its effort to reduce regulatory burdens, and therefore costs, will support this.

On the other hand, the proposed rule- and code-making power in Bill 87 appears to impose minimal governance and transparency around the CEO's rule- and code-making function. I'm sure others may have already spoken to this point today, but we would like to reiterate this. The rule- and code-making power of the CEO would be improved if Bill 87 required three binding requirements:

- (1) disclosure of materials considered in the making of the rules;
- (2) a consideration of alternatives considered in making the rule and the reasons for not proposing the alternatives; and
- (3) a determination that the benefits of the proposed rule outweigh the costs of the proposed rule—for instance, a cost-benefit analysis, or CBA.

For example, in 2007, the federal government established a CBA regime which requires regulators to “demonstrate not only that the benefits ... outweigh the costs, but also that they have structured the regulatory program so that the excess of benefits over costs is maximized.”

Finally, Bill 87 misses an opportunity, we think, to improve further electricity sector regulation by providing for the OEB to better regulate the Independent Electricity System Operator, or IESO. APPRO recommended this to the Dicerri panel and in other forums. Such regulation would follow the pattern of every other ISO and RTO in North America; that is, that the terms and conditions of services be reviewed on the basis of a just and reasonable standard by an independent regulator. For example, in the US, it's FERC; in Alberta, it would be the Alberta Utilities Commission; and in Ontario, it would be the OEB, or the Ontario Energy Regulator, as I guess we'll call it.

I have to admit this may seem a little esoteric, but there is no reason for Ontario to stand outside of this model as the IESO moves ahead with its market renewal process. After all, a sector that depends so much on regulation and rules should have the best governance structure we can design.

I look forward to your questions. Those are my comments.

**The Chair (Mr. Dave Smith):** Thank you very much. We'll start with the government side. Mr. Kanapathi.

**Mr. Logan Kanapathi:** Thank you, Dave, for that presentation. Thanks for being here.

Can you elaborate on previous challenges your member companies have faced with the OEB and what your association's opinion is now on how this will be mitigated if Bill 87 were to become law?

**Mr. Dave Butters:** To be fair, we've not had any significant problems with the board itself. I would say that the adjudicative processes can take much longer than one would expect they would—certainly not as long as has happened with the National Energy Board. But what has happened occasionally is that by the time you've reached a decision—in some cases, it has been a year—the commercial issues that surrounded it have passed by and, therefore, we're kind of playing catch-up.

So I think one of the important aspects of Bill 87 is with a governance board in place and setting out timelines for adjudicative process. This should help. They're expensive processes to go through and time-consuming. I'm sure you've heard that from others. To the extent that we can compress those and make them more efficient, that would be a service to not just those who are applying or applicants to the board but to customers, as well.

**Mr. Logan Kanapathi:** Thank you.

**The Chair (Mr. Dave Smith):** Mr. Calandra.

**Mr. Paul Calandra:** So in principle, you're supportive of the separation of the functions. I wonder if, in part of the bill—it goes without saying that, ultimately, the board is responsible to the minister and to Parliament. I think we would all agree on that.

I wonder—inside the act itself, it does talk about a memorandum of understanding every three years—if some of your concerns would not be captured in that, with respect to the CEO powers and responsibilities.

**Mr. Dave Butters:** I think the answer to that is, potentially, yes. I think we wanted to make the point that somehow or other, that CEO power should be constrained,

or whatever word you want to use, and that is one way that it could be done, for sure.

**Mr. Paul Calandra:** Okay. Colleagues, does anybody have a question?

**The Chair (Mr. Dave Smith):** Mr. Kramp.

**Mr. Daryl Kramp:** I'm taking a look at your determination when you're talking about the cost-benefit analysis. It's sort of interesting. Of course, you're talking about that the CEO should have that duty to impose that. Should not the board already undertake a cost-benefit analysis as part of the responsibilities of the board before it even becomes a CEO mandate?

**Mr. Dave Butters:** That's a good question. I'm not an expert in cost-benefit analysis, but I would think that that should be probably a direction from the board and undertaken by the CEO and management of the regulator.

**Mr. Daryl Kramp:** Okay. Thanks. That's it.

**The Chair (Mr. Dave Smith):** Ms. Hogarth.

**Ms. Christine Hogarth:** Thank you very much for being here. You have quite the history in this field, so we certainly appreciate your point of view. Just some of the questions that we've heard and we've been discussing earlier today—why do you think it's important to separate the OEB's management administration and adjudication responsibilities?

**Mr. Dave Butters:** Thank you for the question.

Let me give you an example from my own life. I'm the president and CEO of the Association of Power Producers of Ontario. I'm also a director of the board. Our bylaws stipulate that the meeting will be run by the chair; in the absence of the chair, it will be the vice-chair; and in absence of both of those people, it's going to be someone that the board chooses. Over the years, that has frequently been me.

It's very difficult to be the CEO and the chair at the same time, to take one hat off and put another one on. You're trying to provide direction to yourself, essentially, but your job as the chair is to make sure the meetings go well, to move them along, to close off the discussion or debate and arrive at a decision, and that is not always the same thing. It's very different from being the CEO. So there's that aspect, which is just a practical one. I think the other one is more what I would call governance theory. We're seeing more and more organizations moving away from executive chairs and to governance situations where there is a clear delineation between the job of the board, which is to direct, and that of management, to manage.

1410

**The Chair (Mr. Dave Smith):** One minute.

**Ms. Christine Hogarth:** Great. Thank you very much for that answer.

**The Chair (Mr. Dave Smith):** Mr. Kramp.

**Mr. Daryl Kramp:** Any of your member companies? They've obviously had some challenges in the past; we always do with the OEB. With Bill 87, can you offer an assessment on how some of the challenges you may have had in the past may be mitigated in the future if Bill 87 is adopted?

**Mr. Dave Butters:** Only one generator in Ontario is regulated per se, and that's Ontario Power Generation.

OPG is a member of APPrO. One of the challenges that OPG has is that the board's regulatory function is primarily focused on electricity distribution companies and gas distribution companies. One thing that one could hope is that a very focused CEO with a clear mandate could perhaps ensure that the board has a better developed array of expertise to deal with the issues of generation.

**The Chair (Mr. Dave Smith):** Thank you. Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Butters, good to see you. Thanks for coming here this afternoon.

**Mr. Dave Butters:** Likewise.

**Mr. Peter Tabuns:** The presentation you made was pretty straightforward. It's consistent in a number of your comments with what Mr. George Vegh had to say earlier, as well as the Vulnerable Energy Consumers Coalition.

The first point is—what can I say—the scope and scale of powers that are resting with the CEO. Certainly, Mr. Vegh thought this was an unprecedented concentration of power. It set the stage, in his words, for an energy czar. You've noted it. What are your concerns about the concentration of power and the lack of transparency with the role of the CEO?

**Mr. Dave Butters:** First, thank you for the question. Mr. Vegh is an eminent regulatory lawyer and an expert, and I can't presume to be nearly as thoughtful or expert as he is. But those are the rules, and rules and codes in the electricity sector are really important. They actually drive the way companies perform, whether they're distribution companies, transmission companies or generators.

As I said earlier in my remarks, we believe very strongly in transparency, openness and stakeholding, and that seemed to be a bit of a vague area. So because rules and codes are really, really important—think of them as kinds of regulations, in a sense—we wanted to see more rigour and transparency around the ability of the CEO to make those. It just seemed to us that that was something that was missing in the act.

Now, as Mr. Calandra has said, that could potentially be addressed by a memorandum between the government and the board, and that's one way of dealing with it.

**Mr. Peter Tabuns:** Although, I'll note it's my opinion that it's always better to have the law set things out, given—what can I say—the to-and-fro of governments over time. If one is trying to prevent arbitrary or non-transparent action, it's probably better to put it in the law itself rather than hope for a government to address it later. But that's not a question to you; it's a statement by me.

The binding requirements that you suggest around rule- and code-making power: Again, that was something that previous deputants today have spoken about, the need for a transparent rule-making process. You've set out some pretty reasonable amendments here to the act itself.

It was suggested that there should be a process that's fairly transparent about this—not only a question of disclosure of materials and disclosure of what the options were that were under consideration, but also having the commission or the board itself debate these, so that it wasn't just simply something that happened within the CEO's office and then an edict is issued, but actually a process of debate.

Currently, as I understand, the commissioners debate changes in rules and regulations. Is that correct?

**Mr. Dave Butters:** Sorry, say that again?

**Mr. Peter Tabuns:** The OEB commissioners—the board of the Ontario Energy Board—actually debate rules and regulations within the board itself?

**Mr. Dave Butters:** I believe so, yes.

**Mr. Peter Tabuns:** What do you see as the risk in not having a more transparent and open process for setting codes and rules?

**Mr. Dave Butters:** As I noted earlier, these codes and rules underlie the way in which regulated entities perform their business in the Ontario electricity sector. They also connect and impact unregulated businesses. Generators that are not regulated have to abide by the transmission system code, for instance. So if there are going to be changes, because they have an impact across the sector, you want to make sure that they are openly discussed and debated before they are put into place. I think it's a simple matter of practicality and transparency. We've pushed very hard, as APPrO, for more transparency and also, as I said, more cost-benefit analysis. We need to look at the business case, and if the benefits outweigh the costs, then we should move forward. If they don't, then we should not.

**Mr. Peter Tabuns:** Thank you.

You note here the suggestion that the IESO should be regulated by the OEB. It's not currently regulated, which has led to some intriguing outcomes over time. Do you want to speak to the advantage of that regulation and how that's been manifested in other jurisdictions?

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Dave Butters:** The OEB is regulated to some extent. It provides a business plan which is approved by the minister and then goes to the board for discussion. But it doesn't allow stakeholders, market participants, to really get into the substance and pith of that. The only time you go to the board, really, is on an exceptional basis. If we're going to move forward with market renewal and our system is going to look a little bit more like our US cousins and Alberta, in our view, we should look very carefully at improving the governance structure so that the IESO would have to submit kind of a tariff, if you will, an annual tariff, along with its business plan, which would allow it to be tested and examined by market participants.

**Mr. Peter Tabuns:** It would allow the market participants a chance to question evidence, question those who were proposing this.

**Mr. Dave Butters:** I'm not sure we have to have a massive hearing, but what would happen, for instance, in Alberta—

**The Chair (Mr. Dave Smith):** Thank you. I'm sorry, but we've run out of time for that one.

**Mr. Dave Butters:** Okay.

**The Chair (Mr. Dave Smith):** Mr. Schreiner.

**Mr. Mike Schreiner:** Thank you, Mr. Butters. I appreciate you being here today.

I was going to ask about that as well. I only have two minutes, so I'll give you a little bit of time to elaborate on

that and then I'd like to ask you a couple of other questions, if that's okay.

**Mr. Dave Butters:** Sure. You want me to elaborate?

**Mr. Mike Schreiner:** On the IESO, yes.

**Mr. Dave Butters:** For example, in Alberta, the Alberta capacity market rules and regulations—the government directed that those be submitted to the Alberta Utilities Commission. The Alberta Utilities Commission is in the process right now of looking at those. It's a very time-sensitive, six-month process. Everybody gets their shot at that. Then the board will make a decision on whether these are the right rules, the wrong rules; do they need to change? But that, we think, is just good governance.

**Mr. Mike Schreiner:** You're not the first person to raise concerns about concentration of power in the CEO, and I'm just curious if you think that would potentially undermine transparency in the regulatory process.

**Mr. Dave Butters:** I'm not sure it would. We have a good process, with a good staff and a lot of experienced people who know how to get at these answers. We're just saying, really, let's make sure that it's in the legislation and make it clear. Or, as I said, it could be a memorandum, it could be the direction from the board, but it ought to be made clear and not just left kind of loose, as it currently is.

**Mr. Mike Schreiner:** And do you have any concerns about how that would affect power producers, potentially?

**Mr. Dave Butters:** Well, you could envision a situation where a rule or a code that impacts the business operations of a generator is changed without notice, without due process, and would have a significant material impact on their business. We'd like to avoid that.

**Mr. Mike Schreiner:** Gotcha. Okay. Thank you for your time.

**Mr. Dave Butters:** Thank you.

**The Chair (Mr. Dave Smith):** Thank you very much. That ends the time we have for that presentation.

#### MR. EDGARDO SEPULVEDA

**The Chair (Mr. Dave Smith):** Next we have Edgardo Sepulveda. If you'd like to come up to the table, please, and introduce yourself for Hansard, and you have six minutes.

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**Mr. Edgardo Sepulveda:** Thank you, Chair. Good afternoon, everyone. My name is Edgardo Sepulveda. Thank you for allowing me to participate in this process. I'm an economist by training and have been a regulatory consultant for more than 20 years, largely in international telecommunications, with a recent focus on Ontario's electricity sector.

My presentation is based on my past research and analysis. If you wish to refer to it later, I have distributed an article that I prepared last year and there are several links to some more research and detailed analysis.

I will use my time to focus on three things in relation to schedule 3 of Bill 87, which replaces off-book borrowing from the future rate bases under the Fair Hydro Plan with public borrowing from the tax base.

First, how did we get to a situation where we're the only jurisdiction in North America where government directly subsidizes electricity prices? I want to repeat that again: How did we get to a situation where we're the only jurisdiction in North America where government directly subsidizes electricity prices? Well, starting in 2005, previous governments implemented a policy of regulation-exempt, long-term contracts to procure new private sector generation capacity. The critical design flaw here is that as policy—again, as deliberate policy—Liberal governments excluded contracts from regulatory review and oversight, and the contracts policy was often poorly executed. Many contracts were inflexible and lopsided with the public bearing most of the risks.

With no oversight, the ministry often ignored expert advice and the result was excess capacity and inflated costs, which gets us to the second point: the solutions on offer.

When the prices became a political liability, the previous government chose to borrow via the Fair Hydro Plan rather than reviewing the contracts. But if that was the worst possible solution, the current proposal to continue with government borrowing is almost as bad.

According to last week's budget, the government will take on about \$3 billion a year to pay inflated prices to power generators and provide subsidies via the continuation subsidies on retail prices that will benefit high-income families most. This is not efficient, and it's not equitable fiscal policy, nor is it good electricity sector policy because it does not address the legacy of excess capacity or inflated costs.

So we come to the third point: What to do?

The cancellation of preconstruction contracts last summer was a start, but that accounted for less than 1% of future generation. You can find another per cent or so from conservation, distribution or transmission. But if you want to make a real dent in the annual subsidy or achieve the election promise of a further 12% cut on which the campaign last year was run on, you have to look at legacy generation contracts.

Reviewing those contracts would not be an easy or fast process and is subject to legal risk, but this government knows that. Last summer, it enacted legislation shielding it from additional claims from cancelling the White Pines project.

As a first step, the government should direct the OEB or a government committee or another entity to undertake a comprehensive review of legacy contracts to evaluate which have provided or will provide fair and reasonable prices and to make recommendations on how to deal with those that have not, including via renegotiation or a new framework.

Last month, the select committee released the cabinet memo that showed the previous government had considered, but rejected renegotiation.

But could another government, a new government, free from association with past policy mistakes, reconsider this option? If the current government can establish a select committee to look at how the previous government tried

to cover up past policy mistakes, why can't it also look at how power generators benefited from those mistakes?

But actual face-to-face renegotiation is only practical for a few contracts and, more importantly, lacks transparency. Better to create a general rules-based approach. Process and time-tested rules are our best guarantee of fair and reasonable rates. It also happens to be our best defence against litigation from unhappy power generators.

My own proposal for such an approach would be to transition those contracts that have not or will not provide fair and reasonable prices to a new rules-based regime that would reduce prices—

**The Chair (Mr. Dave Smith):** Thank you. I'm sorry, we've come to the end of your six minutes.

**Mr. Edgardo Sepulveda:** Oh, I thought I wasn't at six minutes. I'm timing it; I've got five and a half.

**The Chair (Mr. Dave Smith):** I'm at 6:14 right now.

**Mr. Edgardo Sepulveda:** Okay.

**The Chair (Mr. Dave Smith):** Thank you. Mr. Tabuns?

**Mr. Peter Tabuns:** Mr. Sepulveda, would you complete your comments? And then I have questions.

**Mr. Edgardo Sepulveda:** Thank you—that would reduce prices by applying a regulated rate of return. This is not rocket science. It is how here in Ontario the OEB sets rates for transmission, distribution and OPG generation and is the standard way that regulators around the world set rates.

Thank you.

**Mr. Peter Tabuns:** Thank you very much for your presentation. I appreciate the thought that has gone into it.

First question: You note here that setting up a general rules-based approach would allow the province to defend itself against litigation from unhappy power generators. What extra defence would be given by following that course of action?

**Mr. Edgardo Sepulveda:** Let's assume the worst-case scenario, which is that in spite of the government enacting legislation, as it did last year, to protect itself from additional compensation, if anyone were to be unhappy and would try to challenge even that legislation elsewhere, whether it be in international fora, a tribunal or arbitrator would look at the manner in which the province acted to try to get to a reasonable solution. The way in which arbitrators look at that is, what process did the government undertake to try to reach a mutually beneficial solution? And also what process? Was it transparent or was it done in the backrooms? And also, what principles were applied? Was it arbitrary, to try to just slash and burn and reduce the contracts, or did they actually try to come up with rates that were reasonable and fair?

I think what we see is that when there are decisions against countries that do such renegotiations, it's usually based on process, because it was done improperly, it was done in secrecy or it was done with a specific rationale of reducing rates, rather than applying a fair rules-based approach that most arbitrators are not going to have a problem with because that's what would have applied under normal circumstances anyway.

**Mr. Peter Tabuns:** Thank you. One question: You're suggesting a rules-based regime that would reduce prices by applying a regulated rate of return. Do you have knowledge you can share with us about the rate of return that private generators are currently earning on their assets?

**Mr. Edgardo Sepulveda:** No, and that's one of the problems with the policy, where there is no monetary mechanism established by the previous government as to what was actually going to be happening, right?

We're talking about perhaps \$9 billion or \$10 billion in contracts, and the government has no view as to the financial performance of those contracts. What should have happened from the beginning is that you should have established the contracts and then had a whole process to monitor the contracts and see how they're doing and whether they've worked or not worked. Then we have lessons learned, right?

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Right now, I am hypothesizing that there are certain contracts that are not providing good value for money, and some that may. But we don't know that. We can see from secondary market transactions where people are selling some assets, for example—you can get a sense, in the same way that you can get a sense that Highway 407 was probably undersold, but that's only secondary. There's no direct government entity responsible for the monitoring of the financial performance of those \$9 billion or \$10 billion worth of contracts.

**Mr. Peter Tabuns:** When you're talking about assets with technologies across the board—because we have private nuclear, we have private gas and we have private renewable—you're not talking about any one category; you're talking about all privately held. Is that correct?

**Mr. Edgardo Sepulveda:** Correct.

**Mr. Peter Tabuns:** Are you aware—well, you may not be aware of a jurisdiction where this has happened, because, as you noted, this is the only jurisdiction where we have massive borrowing to reduce the price of electricity. Have you seen in other industries this approach which has driven down the rate of return as a way of dealing with high-cost provision of services?

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Edgardo Sepulveda:** There was a specific instance in Spain that got themselves into a similar situation with respect to certain contracts that were being ultimately publicly subsidized. The government went through a process of reviewing those contracts and enacting legislation, moving towards a regime that looked a lot like rate-of-return. So it has been done around the world; this is not the first time it has happened.

**Mr. Peter Tabuns:** Was that recently, within the last decade or two?

**Mr. Edgardo Sepulveda:** Yes. That was probably maybe five or six years ago. I can provide more information on that.

**Mr. Peter Tabuns:** If you could provide that to the committee, we would appreciate it. It's a very useful train of thought that you've put us on with this.

Did you have any comments on the Ontario Energy Board portion of the bill?

**Mr. Edgardo Sepulveda:** No.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Dave Smith):** I am sorry. We've run out of time.

Mr. Schreiner.

**Mr. Mike Schreiner:** Thank you for being here today; I really appreciate it. I just want to thank you for reminding us that the previous government's Fair Hydro Plan is leading to \$3 billion a year on borrowing, as the only jurisdiction in North America to directly subsidize electricity costs. I'm curious, in your opinion, if you think we should just cancel the Fair Hydro Plan or restructure it in some way.

**Mr. Edgardo Sepulveda:** I think we have to understand in more detail what is driving those inflated costs. As I suggested, the first part that I'm proposing is fact-finding. In the same way that the Select Committee on Financial Transparency went through a fact-finding process, on which there were recommendations—that's my first proposal, because right now those contracts are confidential. If one was to ask IESO or the Ministry of Energy, "Oh, can I see that contract? Because I don't think it's a fair contract," they would say, "Sorry. It's confidential." Outside scrutiny is not possible; it has to be done internally. So the first process is, "Where are we?" In order to have evidence-based policy, one has to have evidence, so the first thing one has to do is have access to those contracts, have a process of analysis of the contracts and determine which ones are okay and which ones are not okay, and then, based on that, provide recommendations for the ones that are not okay.

My own sense, my own hypothesis, having looked at the numbers over the last two or three years, is that we could find about a billion dollars' worth of efficiencies in those existing contracts, but again, that's a hypothesis.

**The Chair (Mr. Dave Smith):** Thank you very much. Mr. Calandra?

**Mr. Paul Calandra:** Thank you very much. I appreciate your presentation. In the article, you are very, very hard on the previous government—the FIT program, fair hydro and the whole works. I'm assuming you're energy-agnostic; you have no particular type of energy that you're more in favour of. It's more what is best for the consumer and so on?

**Mr. Edgardo Sepulveda:** Correct, yes.

**Mr. Paul Calandra:** If cancelling contracts meant it would be more expensive, if the costs and the penalties associated would be more expensive than continuing with the current program, what would be your advice with respect to going forward? Just to be clear, I'm not suggesting that it is, but for—

**Mr. Edgardo Sepulveda:** Right. Yes, of course. No, it would not be worth going forward.

**Mr. Paul Calandra:** Okay.

**Mr. Edgardo Sepulveda:** And part of that is, there are the whole lessons learned from around the world of jurisdictions that have done this, as to how to protect

yourself from making sure that that's the case, that in fact any process moving forward is cost beneficial.

**Mr. Paul Calandra:** Yes. You see, part of the dilemma that we have is that when we brought in the green energy cancellation earlier on, the opposition, in speech after speech, was extraordinarily upset that we provided protection against being sued in that instance.

I look forward to some of the amendments that they might bring forward to see if they would talk further about the fair hydro and the contracts, and if they are now supportive of the similar type of protections that they rejected in the Green Energy Act.

You said in the article—and it is a good article. It really highlights part of the problem we have. What you're talking about going forward is fair and open contracting, and regulated, so somehow doing a mix. You're not against public participation in the market as long as it's fair and responsible to the taxpayer. Am I correct on that?

**Mr. Edgardo Sepulveda:** Correct.

**Mr. Paul Calandra:** And that the problem we've had over the last 15 years is not the generation itself. I don't think anybody would blame the alternative energy sector or the nuclear sector, but the policy as it was developed by the previous government. Am I correct on that?

**Mr. Edgardo Sepulveda:** Inasmuch as that policy, as I talk about it—the design flaw from my perspective—and I'm a regulatory economist—is that the contracts were regulation-exempt. There was no backstopping. There was no monitoring to make sure that they were good value for money. They were decisions made by the ministry often overriding expert advice, as we see.

**Mr. Paul Calandra:** Yes.

**Mr. Edgardo Sepulveda:** As it was in the case in the Fair Hydro Plan, as laid out in the select committee. So the problem was, there was this process of contracts that could have worked in theory, but in practice, given the motivations and given the lack of expert advice that was actually taken on by the ministry, we get left with excess capacity. Because if things are so attractive, of course a private sector generator—you're going to have more and more and more. So it was a duty of the ministry to actually make sure they didn't over procure.

**Mr. Paul Calandra:** Yes.

**Mr. Edgardo Sepulveda:** Right now, we have 10%, 15% overcapacity, and we're having to pay for that, and we're paying higher prices.

**Mr. Paul Calandra:** We've done a lot of work on this. Have you ever seen a scheme as was concocted by the previous Liberal government to keep the costs hidden? Has any other jurisdiction concocted such an elaborate scheme, recognizing that all the parties around this table were against the scheme and now we're trying to deal with the consequences of what was—

**Mr. Edgardo Sepulveda:** Yes. The scheme was not invented in Ontario. This is going back to—as I lay out in the process, it was done in the context of California about 20 years ago; right? It's being done in New York, and it's being done in Florida. So the idea of what I call—

**Mr. Paul Calandra:** Can I stop you just for one second? This kind of concerns me because we kept

hearing, when green energy was being brought forward by the Liberals and others who supported that sector, that we were learning from other jurisdictions. So I'm concerned that we learned the wrong lessons from California. If what you're saying is true, then we learned nothing except how to scam taxpayers.

**Mr. Edgardo Sepulveda:** Put it this way: Those were what they call rate obligation bonds that were more limited—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Edgardo Sepulveda:**—and that, in Ontario, were orders of magnitude larger and were spread across the entire sector. That's kind of the background.

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My writing is that the idea of borrowing is a bad idea. The worst idea was to borrow through these rate obligation bonds through the Fair Hydro Trust. A second-worst idea is to borrow from the tax base, as is being proposed now in Bill 87.

**Mr. Paul Calandra:** Is it a good idea to start to unravel it? The first step that we're doing is unravelling it. Would you agree it's at least a good first step?

**Mr. Edgardo Sepulveda:** If it is one of a series of good steps, yes.

**The Chair (Mr. Dave Smith):** Mr. Kramp.

**Mr. Daryl Kramp:** Quick question: Often, the contracts were a disaster, but going forward—we can't go backward. Some of the suggestions you have made going forward, I really, really like, quite frankly—

**The Chair (Mr. Dave Smith):** I'm sorry, Mr. Kramp, we've run out of time.

Thank you very much for your presentation.

**Mr. Edgardo Sepulveda:** Thank you, Chair.

#### ASSOCIATION OF MAJOR POWER CONSUMERS IN ONTARIO

**The Chair (Mr. Dave Smith):** Next up, we have the Association of Major Power Consumers in Ontario. Please come to the table and introduce yourselves. You have six minutes.

**Mr. Colin Anderson:** Thank you. My name is Colin Anderson. I'm the president of the Association of Major Power Consumers in Ontario. With me today is Mr. Doug Yates. He is the chairman of AMPCO's board.

Members of the committee, first, I'd like to express my appreciation on behalf of the board of directors and the members of AMPCO for this opportunity to address you. I want to start by giving a small amount of background on AMPCO. We are the voice of industrial power users in the province, and our members represent Ontario's industrial base: mining, pulp and paper, petrochemical, automotive, steelmaking and many others with operations across the province. AMPCO's members are major power consumers, using over 15 terawatt hours of electricity annually, which was about 11% of all the power consumed in the province last year. A reliable, sustainable and affordable energy supply is critical to the success of their businesses, which is why AMPCO has an interest in this matter.

AMPCO supports Bill 87. The legislation moves in the right direction on items such as CDM, governance and the Fair Hydro Plan, but there is still additional work to be done. AMPCO applauds the efforts so far and looks forward to working with government on the next steps.

There are several components to the proposed legislation and I'd like to provide some commentary on the major pieces in which AMPCO has a direct interest.

First, with respect to the affordability and transparency measures: AMPCO applauds the modifications to the global adjustment refinancing structure/Fair Hydro Plan. AMPCO agrees that these costs are more appropriately reflected on the province's books than on the backs of ratepayers.

AMPCO also supports increased stability and transparency on electricity bills. This sector is complicated. Consistency and clarity always make life just a little bit easier for customers.

AMPCO strongly supports the government's announcement of an industrial rate consultation. This government continues to demonstrate that it understands the business need for competitive electricity pricing and has committed to ensuring that Ontario industry has the tools that it needs to compete for business, attract necessary capital and maintain and create jobs for Ontarians. AMPCO looks forward to actively participating in that consultation process.

Second, with respect to conservation: To be clear, AMPCO supports the need for conservation in the electricity sector, but we also support the need for affordability. Given the current situation in Ontario, with large Class A rates increasing almost 25% over the last five years and small and medium Class B rates increasing by over 40% in the same period, affordability must be considered the paramount concern. AMPCO supports the changes made to the structure of Ontario's conservation programs because those changes appropriately position affordability as the most urgent concern for the sector.

Finally, with respect to the Ontario Energy Board and regulatory reform: AMPCO supports the governance changes being pursued as part of Bill 87. The separation of operational and adjudicative functions will bring additional clarity to the board, its operations and its decision-making.

While the government's desire to cut red tape and improve regulatory efficiency is commendable, AMPCO does wish to issue one caution: Some stakeholders have vilified the public hearing process and have advanced arguments as to why it should be streamlined by excluding intervenor groups. Costs associated with preparing and managing rate applications have been cited as evidence that the process is broken. This is quite simply incorrect.

While it's true that regulated entities pay cost awards to intervenors, those same entities have included a forecast of those costs in their revenue requirements. This means that ultimately it's customers who are paying for the public hearing process, not utilities—the same customers who benefit from intervenor inclusion within adjudicative proceedings. Those customers want the intervenors present. I have asked my members that very question.

AMPCO doesn't argue that there's room for improvement in the regulatory process—no question. However, regulatory efficiency must never be used as a justification for exclusion of customer interests from proceedings that directly impact electricity rates.

Bill 87 advances this government's objective of restoring competitive electricity rates to the province. I say "advances," but I don't say "concludes." It's important to stress that Bill 87 does not in and of itself conclude the process of reducing electricity costs for customers. It addresses a number of factors that have conspired in the past to increase prices, but there's more to be done. If we truly want to move to a cut model instead of a subsidy model, then we must tackle the root of the problem that prevents us from achieving competitive prices, and that root is the global adjustment itself.

At almost \$1 billion a month, GA charges are out of control.

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Colin Anderson:** The current global adjustment amount must be re-evaluated and, where possible, steps must be taken to reduce its overall size. This approach will not only facilitate lower industrial prices; it will lower electricity commodity costs for all customer classes. This, in concert with the government's industrial rate consultation, will maximize the opportunities to create a competitive business environment that will be conducive to improving economic development opportunities for Ontario, resulting in increased investment and employment in the province.

So AMPCO applauds Bill 87, but we also look forward to an additional, sustained focus on electricity pricing issues with the goal of making the province open for business and safeguarding the jobs of Ontarians.

I'm happy to take any questions you might have.

**The Chair (Mr. Dave Smith):** Thank you very much. We'll start with Mr. Schreiner.

**Mr. Mike Schreiner:** Thank you for being here today. I appreciate it.

You're not the first person to raise concerns about the intervenor status. Some people have suggested that the delay isn't so much from intervenor status, but it's actually lack of adjudicators for a timely process. Would you like to comment further on what you think may be causing delays in the whole intervenor process and how we could fix that?

**Mr. Colin Anderson:** I'd be happy to.

I wouldn't refer to it as the "intervenor process." The intervenors are merely a participant in the adjudicative process.

I think there's lots of room for improvement. Certain of the applications are massive. There's no question about that. We're taking, in the example of Ontario Power Generation, a five-year rate term, a revenue requirement of somewhere in the ballpark of \$24 billion. That can't be done with a couple of sheets of paper. It needs to have a sufficient amount of evidence filed and tested so that the board can determine that the rates are just and reasonable.

Having said that, there's still room for improvement in the process. You do need a certain amount of materials.

You do need a certain amount of time. The amount of materials that are filed—it's almost physically impossible to get through it in the timelines that are prescribed by the board.

**The Chair (Mr. Dave Smith):** Thirty seconds.

**Mr. Colin Anderson:** Having said that, there are processes that you can put in place either around the issues determination portion, the confidential filings portion—there's a number of things that you could do that would still result in efficiencies that would not exclude customer participation in the process. Any time you've got a result coming out that is going to tell a customer how much they have to pay for something, they should have some room at the table and some voice in the process.

**Mr. Mike Schreiner:** I agree.

**The Chair (Mr. Dave Smith):** Ms. Kusendova.

**Ms. Natalia Kusendova:** Thank you so much for being here, and thank you for a very insightful deputation.

You spoke about the need of affordability and transparency in our system and also about stability within our electrical system. This is what Bill 87 is all about—fixing the hydro mess left by the previous government.

You also mentioned that conservation and affordability are not mutually exclusive—and this is what our government is committed to going forward.

You also spoke about red tape and making sure that Ontario is competitive. We know that with the US market just across the border we need to make sure that we remain competitive so our businesses can thrive and our employers can remain in the province of Ontario.

How do you think electricity prices affect your members' bottom line? And is it fair to say that a more effective electricity pricing system will encourage your members to invest and create more jobs in our province of Ontario?

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**Mr. Colin Anderson:** Wow, I could speak to that one for a while. Let me take that one step at a time. Certainly the competitiveness piece is something that AMPCO has been talking about for quite some time. Many of the members of AMPCO are energy-intensive and trade-exposed, and they have a large portion of their input costs directly related to electricity. So when their electricity pricing in Ontario is different than their competitors either somewhere else in North America or somewhere else globally, it puts them at a competitive disadvantage. Unfortunately, we're not talking about pennies; we're talking about a large differential between what we pay here and what others pay elsewhere.

Certainly, as I said in my submission, one of the key elements that needs to be addressed, in our mind, is the global adjustment amounts right now. I guess the way that I framed it to a number of my members is that much of the discussion that's taking place in the industry today is about how to allocate who pays what portion. Unfortunately, at \$1 billion a month, you can allocate that whatever way you want and it's going to end up with high rates. So in my mind, we have to take steps to try to reduce that amount going forward, because that is, ultimately, what is driving the uncompetitive pricing that many of my members are facing right now.

**Ms. Natalia Kusendova:** Those are some very important points, and so it's great to have stakeholders like yourself participate in this process. That's why we're also committed to ongoing consultation. As you mentioned, the industrial rate consultation is something that your organization is looking forward to participating in, to ensure the competitiveness of our prices and also to make sure that we attract capital and investment in Ontario.

Why is this industrial consultation process so important to your members? Do you agree with our government's approach to the engagement process that is laid out in Bill 87?

**Mr. Colin Anderson:** It's very important to my members. Again, it gets back to the issue of competitiveness, but you also referenced the inability of many of my members to attract capital, to attract investment to their organizations. Part of the reason for that is, quite simply, high electricity pricing. If you look at two facilities, even within the same company, if one of them is paying twice what the other is for certain of their inputs—in this case, it's electricity—it's difficult to convince that board of directors to invest in the more expensive of the two jurisdictions. The rough part about that is that once that starts, it's a bit of a vicious cycle, because when you go to invest in the next round of capital, you look to see where the most effective and efficient equipment is, and it's where you put your last round of capital. So it's a bit of a self-fulfilling prophecy.

In terms of our pricing regime today, Ontario, in terms of industrial electricity pricing, is a little bit of a one-trick pony. We have a program called the industrial conservation initiative, which is an excellent program. Unfortunately, it's only excellent for those that can actually adapt their operations to take advantage of it. What we believe is that Ontario needs some other portfolios that will marry up the interests of energy and economic development.

This has been done in other jurisdictions. For example, in Quebec, there is a rate class called tarif L, and that's for large industrial users. It has a significant capital attraction portion to it. It's a capacity and energy charge, but it also has a capital attraction piece. Or, for example, in New York, there is a program called ReCharge New York. Both of them are on the—if you google them, they'll come right up. ReCharge New York, again, is a bucket of power that is available at a cut rate depending on the scale of the proponents' organization: how many jobs they could maintain or create; how electricity-intensive they are; who they compete against—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Colin Anderson:** —and how competitive they are. So there's definitely a linkage, and there needs to be a linkage, between energy and economic development, and Ontario needs to address that within the context of this round of consultations.

I think you asked if—forgive me, I don't remember the second part of your question. It had to do with the consultation process. We will absolutely be very happy to participate. Not just AMPCO, but many of my member companies will be participating individually, since I know

you're doing them on a sector-by-sector basis. Almost all of those sectors are represented within my association. So we do appreciate that.

**The Chair (Mr. Dave Smith):** Ms. Wai.

**Mrs. Daisy Wai:** I just have a very quick question. We know that you see that we are on the right direction about affordability, transparency and all of that, and you also mentioned about red tape. I just want you to let us know: Have we done enough, or what else do you want to see done so that we're moving towards a direction—

**The Chair (Mr. Dave Smith):** I'm sorry, we've run out of time. You can't answer that one; I'm sorry.

**Mr. Colin Anderson:** Okay.

**The Chair (Mr. Dave Smith):** Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Anderson, Mr. Yates, thanks for coming here today. Thanks for the presentation.

Mr. Anderson, have intervenors had an impact on rates when they've appeared at OEB hearings? Have they been able to, in effect, push for and get a better deal for consumers when they have spoken out?

**Mr. Colin Anderson:** The answer to that, Mr. Tabuns, is absolutely yes, and I'll give you some examples.

**Mr. Peter Tabuns:** Please.

**Mr. Colin Anderson:** The chair of the OEB puts out a preamble to their annual report each year. For the last few years, she has had an indication that the board has been responsible for reducing revenue requirements that were requested by 37%. If you summed up all of the applications that came before the board during that period, the amount of money, essentially—they got 37% less than what they were looking for. Largely, that's due to the efforts of the intervenor community in concert with the board staff, who act as a public advocate in the hearing process.

I think one of the things that's most compelling for me on this one: (1) The funding comes through the revenue requirement, so it's funded by the customer; and (2) the amount that we're talking about is very small compared to the disallowances. I'll give you one particular example on this one—and I'm going to pick on OPG not for any reason except that I know their applications a little better than some of the others. In their most recent five-year application, the amount of disallowances that resulted at the end of that hearing process was somewhere around a billion dollars. The total costs associated with the interventions of all of the intervenor groups combined was about \$1.2 million.

Well, I'm not sure about you, but I would invest \$1.2 million to save myself a billion dollars every day of the week, if I could.

**Mr. Peter Tabuns:** It's a great rate of return.

**Mr. Colin Anderson:** Fantastic.

**Mr. Peter Tabuns:** That's useful background. AMPCO has been a regular intervenor. Is that correct?

**Mr. Colin Anderson:** We are a regular intervenor and—certainly the board would be able to tell me better—I like to think that we do so on a very strategic basis. We don't apply to every single application. We apply to the major ones that cut across the entire province, because all

of my members get impacted by that. Then if we have an LDC application where one of my members is within the service area, we ask them: “Do you want us to be there?” If they say yes, then we’re there, for specific issues only. If they say no, we’re not there.

**Mr. Peter Tabuns:** Right.

**Mr. Colin Anderson:** We don’t go up there every day of the week and we don’t participate in every application the board has. I do so when my members want me to.

**Mr. Peter Tabuns:** Okay. The impact if, in fact, intervenors were excluded or had their roles substantially constrained—what do you think that would mean in terms of rates and the operation of the OEB?

**Mr. Colin Anderson:** That’s a good question. On the first part, on the rates piece, the only thing it could possibly do, in my mind, is create upward pressure on rates. You would save yourself “this much” in terms of intervenor funding, but you would cost yourself “this much” in terms of potential disallowances to the applicant.

This is not a commentary that board staff aren’t up to the task; absolutely not. They do great work, but there is only so many of them. As we’ve already talked about, the volume of materials associated with some of these applications is unbelievable. It’s binder after binder after binder—if you’re old-school enough to still print them—and you can’t possibly remember everything that you’ve read. For one or two individuals to go through it is very difficult.

When you have more intervenors—and the intervenors themselves do gang together their efforts. It’s not like they all do the same thing and ask the same questions—at least, ideally, that’s not how it’s supposed to be. I can tell you first-hand, my regulatory individual deals with the other intervenors, and they try to divide and conquer. They don’t repeat to the best of their ability.

In terms of rates, it would absolutely provide upward pressure. In terms of—I’m sorry, Peter, the last—

**Mr. Peter Tabuns:** The impact on the process as a whole.

**Mr. Colin Anderson:** Would the time taken be less? Yes, it probably would be less because there would be less informed people in the room who would, quite frankly, know how to kick the tires. But you’re gaining that expedience at the cost of higher rates, because there’s just no way that one person is going to find all the things that need to be addressed within the context of a rate application. I don’t think it’s value for money, as we’ve talked about in terms of the numbers that I cited.

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**Mr. Peter Tabuns:** Yes. You ran out of time earlier on a question; you were talking about steps that could be taken to increase the flow—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Peter Tabuns:** —the speed of the process without undermining its quality. Could you speak to that?

**Mr. Colin Anderson:** Sure. A couple of things, just off the top of my head: The first is the issues’ determination process at the board. They craft something called an “issues list” and they have a whole infrastructure around

determining whether or not the issues are appropriate or not.

The board indicated, a few years back, that it was going to revamp that process such that only ones that were determined to be primary issues would go to oral hearing; the rest would be dealt with by written submissions. That’s a big change, because the big deal about these applications is the oral hearing. The amount of money and the amount of time it takes to prep witnesses, to get yourselves ready and to prep for cross-examination is considerable. If you can push something from oral into written submissions, it makes a huge difference in terms of how much time and money is spent on it.

You can make that determination earlier and you can save yourself a lot of time and money. Honestly, I think that would be one way where they could put this into a bit smaller box—

**The Chair (Mr. Dave Smith):** Thank you.

**Mr. Peter Tabuns:** Thank you very much.

**Mr. Colin Anderson:** Thank you.

**The Chair (Mr. Dave Smith):** We’ve come to the end of this presentation.

#### IAMGOLD CORP.

**The Chair (Mr. Dave Smith):** Next up we have Iamgold. Please introduce yourself. You have six minutes.

**Mr. Stephen Crozier:** Thank you, Mr. Chairman. If I may, I can start?

**The Chair (Mr. Dave Smith):** Yes.

**Mr. Stephen Crozier:** My name is Stephen Crozier, vice-president of corporate affairs with Iamgold. My responsibilities at Iamgold include government relations, stakeholder engagement and, as well, environment—part of our sustainability function.

For those who may not be familiar with us, Iamgold is a Toronto-headquartered gold-mining company. We have operations in a few different countries. Outside of Canada: Suriname; Burkina Faso, in land-locked West Africa; an underground mine in Quebec; and a large undeveloped gold project here in Ontario that we’re very excited about, our Côté Gold Project north of Sudbury and southwest of Timmins near a small town called Gogama.

It’s really that project that has given us a particular perspective on the energy file here in Ontario, and it’s with respect to that project that we wanted to come and make some submissions to this committee.

The Côté Gold Project is a large, undeveloped gold project. Once developed, it has an estimated operating life of about 16 years on its base case, and potentially a further three to seven years with additional resources that we’re in the process of proving up.

During construction, it would be a project that would be expected to generate about 1,000 to 1,200 full-time jobs, and, during full-time operations, somewhere between 300 and 400 full-time jobs—so a meaningful development for that particular sector of the province.

The project—currently, we have a 70% interest, and we have a partner, Sumatoma mining and metals, a Japanese

conglomerate with a long history. It's a bit humbling. Iamgold was founded in the mid-1990s; I think Sumatoma was founded about 460 years ago. So their perspective is admirably long-term, and they like this project.

One of the issues that we have faced and they have faced with respect to the project's viability is around some of the conditions that are needed to really make a large low-grade deposit economic. Power is a critical enabler or disabler, depending on the terms that you'll have to deal with as an operator. So we've been looking at power as a means to potentially unlock value in the project, but otherwise as a risk that needs to be contained.

In terms of the power file, the Ontario jurisdiction is a very complex, large jurisdiction, and there have been a number of efforts and programs put in place to address competitiveness, both for the province as a whole but for industry in particular. As a mining company, we would benefit from the class A northern designation and potentially qualify for NIER, which is not something that every sector can claim as sector-specific support. There are also other programs of general application which we are watching closely in terms of whether we could take advantage of them, such as ICI, which Colin Anderson before me was mentioning.

I think one of the lenses that we see lacking in terms of energy policy within the province is, there is not currently a sufficient amount of long-term economic development in forming energy policy in the province. While we would look at NIER—the Northern Industrial Electricity Rate Program—as an excellent program, as a potential new entrant into the market, that's not necessarily an impactful program for a would-be investor, and the reason for that is that the NIER program is not structured in a way that prospective investors can securely access it or confirm their access prior to being in operation. You effectively have to make an investment decision and then hope that when you in fact enter operations, an application to join NIER, first, will be met positively because NIER is a cap program, and that there will be sufficient allocation net of other applicants or participants in the then current NIER program.

That's a challenge when we're talking about large-scale, capital-intensive investments that have to deliver returns on a decade-old timeline. To the extent that the province is interested in growing its way out of some of the challenges that are currently being faced, finding a way to reliably and predictably fold in—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Stephen Crozier:**—long-term economic planning into energy policy is really an important priority that urgently requires attention.

Certainly I would share the priority or emphasize that we share the importance of reducing red tape and improving regulatory certainty. That is a modest step on what must ultimately be a longer-term objective of better incorporating long-term economic planning in energy policy and regulation in the province.

**The Chair (Mr. Dave Smith):** Thank you.

**Mr. Stephen Crozier:** Thank you.

**The Chair (Mr. Dave Smith):** Mr. Kramp.

**Mr. Daryl Kramp:** Thank you and welcome. Interesting, Gogama. Good luck on your project there. I'm a little bit personally interested in that I was a mining brat. My father was a mining contractor, born in Kirkland—the entire ring from Noranda/Rouyn all the way up to Timmins, into Hearst and that; Kirkland Lake born. In that area, obviously you have some serious challenges now, and of course everything between red tape to bureaucratic regulatory control has been extremely difficult. You have a wonderful record. I've read on the company. You're very, very environmentally sound, positive and moving forward.

I have sort of three or four just simple questions I would like you to answer, if you would. Obviously you're capital intensive and energy dependent. My first question: Then why is a stable electricity price so dependent, other than reasons such as those?

**Mr. Stephen Crozier:** Again, and Colin Anderson mentioned this in his submission, I think there's a difference to be made between a stable price and a predictable pricing environment. We don't need the same price, sort of a fixed price, if you will, for planning around large investments, but a good understanding as to the main risk drivers so that there is pricing stability which should and ideally would include policy stability.

So if we are going to plan around leveraging a program like ICI, knowing that it will remain in place for some period of time beyond a five-year or a 10-year planning horizon really is critical for our understanding as to how to manage price risk, because the cost, the percentage input where we are essentially mining a deposit and it's essentially like large, low-grade deposits, so we have to move—it's one gram per tonne. So we have to move one tonne of material to get one gram of gold out of the ground, and that's for the ore. That's the good stuff. We also have to move a lot of non-gold-bearing material out of the way, and a typical strip ratio can range anywhere from 2-to-1 to 4-to-1 or higher for large open-pit mines. That means you're moving somewhere between, like, three and five tonnes of material, and for the material that you do bring in, you've got hundreds of thousands of tonnes that you have to chew through with energy-intensive equipment in order to extract that one gram.

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**Mr. Daryl Kramp:** Just a question—I know I only have some limited time. Obviously you have some great plans moving forward. With these changes, would you be more likely to consider expansion in Ontario?

**Mr. Stephen Crozier:** I do think that with a little bit more certainty around, in our particular case, knowing that we could rely on ICI and that there is not going to be a move to, say, eliminate that program in the case of NIER. Knowing that we would be able to access it actually would make a meaningful difference for the project. Right now the project is on hold and we're looking for a window to bring it back, partly because the market is nervous about the risk whether that project will be profitable. The price of electricity is one of those key risks.

**Mr. Daryl Kramp:** If we were able to bring some certainty to that, that would certainly give you a little bit more solace for your investors and certainly your board of directors.

**Mr. Stephen Crozier:** Absolutely, yes.

**Mr. Daryl Kramp:** Bill 87 specifically: You would be familiar with some of the aspects of it. What is important to you and your company and your operation specifically with Bill 87?

**Mr. Stephen Crozier:** We generally support the streamlining in Bill 87, but the direct impact on our operation will be set more at an industrial pricing policy level. We of course have to deal with the OEB in order to interconnect to the grid. I would echo the sentiment that there's work that could be done at the level of the OEB, in terms of helping them better hit realistic service standards.

I think we're generally supportive. Certain of the issues that I think we dealt with won't be addressed by this bill, but we are absolutely supportive of its general—

**Mr. Daryl Kramp:** Unfortunately, in many, many cases, the OEB has been notoriously tardy in delaying key decisions. Moving forward, you have to have some predictability in order to be able to ensure that you have some long-term connectivity. Time of course is money all the way through. You can't tie up capital. Capital would then have no return on investment.

Moving forward with this, with Bill 87, the changes to the regulatory approval process, let alone the regulatory responsibilities, do you see that as being an advantage?

**Mr. Stephen Crozier:** I do see it as an advantage, although I do think that there's more work to be done than will be accomplished in this bill alone. There's quite a ways to go. I would echo Mr. Anderson's point that the ICI program is a great program. Part of the reason it's a great program—

**The Chair (Mr. Dave Smith):** One minute.

**Mr. Stephen Crozier:** —is because the amount of the global adjustment has exploded in the past decade. That is what needs to be addressed in terms of competitiveness.

But there are other areas as well. It will require a sustained effort in a number of different areas in order to really turn the tide, to make energy policy a competitive advantage in this province. We're moving in a good direction and we're nowhere close to being there yet.

**Mr. Daryl Kramp:** Thank you.

**The Chair (Mr. Dave Smith):** Ms. Hogarth?

**Ms. Christine Hogarth:** Thank you very much for being here.

**The Chair (Mr. Dave Smith):** You have 30 seconds.

**Ms. Christine Hogarth:** I lived in Sudbury for numerous years. The mining industry was so important. When I was working for the mayor we met with a lot of mining companies. And I have been to Gogama, so I know where that actually is.

You have business operations on three continents, so you have a choice where to spend your money and where

you should. We've talked about predictability and how important that is. These jobs make such a difference in these northern communities—

**The Chair (Mr. Dave Smith):** I'm sorry, Ms. Hogarth; we've run out of time.

**Ms. Christine Hogarth:** Okay.

**The Chair (Mr. Dave Smith):** Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you for your presentation today. I have no questions, nor do my colleagues. Thank you.

**The Chair (Mr. Dave Smith):** Mr. Schreiner?

**Mr. Mike Schreiner:** Thanks for being here today. I really appreciate it. My one question is, do you, as a potential major consumer, have concerns about the possibility of constraints on intervenor status and what that might mean for your ability to advocate for consumers of electricity like yourself?

**Mr. Stephen Crozier:** I think the short answer, at least from our perspective, is that system integrity is best served with a well-functioning intervenor mechanism. I do think that helps reduce some of the rate pressure, where some of the rate increases are perhaps not as justified as the applicant may be initially positioning.

In terms of industrial rate-setting, some of the programs that we are able to access are not as subject, I think, to fluctuation based on the intervenor mechanism. I don't see that as necessarily directly impacting us, although from the perspective of overall system integrity and just general participation on the part of impacted ratepayers, we would be supportive of an effective intervenor mechanism.

**Mr. Mike Schreiner:** I don't want to put words in your mouth, but maybe a balanced system that looks at, how do we have a timely way forward to reduce regulatory costs while at the same time ensuring that companies like yours can intervene in the process and have a voice?

**The Chair (Mr. Dave Smith):** Thirty seconds.

**Mr. Stephen Crozier:** That's right. I think we spend less time intervening. Those that do intervene—I think we spend less time in those fora. But I think having it is absolutely critical to improving overall system effectiveness.

**Mr. Mike Schreiner:** Thank you.

**The Chair (Mr. Dave Smith):** Thank you, Mr. Crozier. That concludes the time we have for this. I'd like to thank all of the presenters who came today.

This is the end of our oral presentations. I have a couple of reminders, though. The deadline to send a written submission to the Clerk of the Committee is 6 p.m. on Wednesday, April 17. The deadline to file amendments to the bill with the Clerk of the Committee is 6 p.m. on Tuesday, April 23. Amendments must be filed in hard copy.

Since this concludes our oral presentations, the committee will adjourn until 9 a.m. on Monday, April 29, when we will meet for clause-by-clause consideration. Thank you.

*The committee adjourned at 1516.*





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