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Monday 24 June 2002

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Lundi 24 juin 2002

Standing committee on general government

Reliable Energy and
Consumer Protection Act, 2002

Comité permanent des affaires gouvernementales

Loi de 2002 sur la fiabilité
de l'énergie et la protection
des consommateurs

Chair: Steve Gilchrist
Clerk: Anne Stokes

Président : Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 24 June 2002

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Lundi 24 juin 2002

The committee met at 1542 in room 151.

RELIABLE ENERGY AND CONSUMER PROTECTION ACT, 2002

LOI DE 2002 SUR LA FIABILITÉ DE L'ÉNERGIE ET LA PROTECTION DES CONSOMMATEURS

Consideration of Bill 58, An Act to amend certain statutes in relation to the energy sector / Projet de loi 58, Loi modifiant certaines lois en ce qui concerne le secteur de l'énergie.

The Vice-Chair (Mr Norm Miller): I call this meeting to order. The committee will begin clause-by-clause consideration of Bill 58, An Act to amend certain statutes in relation to the energy sector.

Are there any comments, questions or amendments and, if so, to which sections? We'll begin with sections 1 through 5. Any discussion?

Mr Michael Bryant (St Paul's): Mr Chair, we can deal with discussion now or we can deal with it during the amendments. I think it might make more sense to deal with it through the amendments, so I'll defer until we get there.

The Vice-Chair: Very good. I will now put the question. Shall sections 1—

Mr Bryant: Sorry, Mr Chair. I'm confused here. Do we not deal with the amendments and then deal with the question?

The Vice-Chair: There are no amendments to sections 1 through 5. So we'll deal with sections 1 through 5.

Mr Bryant: I'm looking here at schedule A—

The Vice-Chair: Sorry, Schedule A, sections 1 through 5.

Mr Bryant: I've moved amendments to section 1.

The Vice-Chair: Sections 1 through 5, which is not schedule A, have no amendments.

Mr Bryant: Sorry, have patience with me here, Mr Chair.

The Vice-Chair: Take you time.

Mr Bryant: I promise it'll pay off. I've got it. OK.

The Vice-Chair: I'll now put the question.

Ms Marilyn Churley (Toronto-Danforth): I wanted to ask for a recorded vote. Is it too late for that now?

The Vice-Chair: Recorded vote.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Bryant, Churley, Colle.

The Vice-Chair: Carried.

Schedule A, section 1: Liberal motion 1.

Mr Bryant: I move that clause 1(f.1) of the Electricity Act, 1998, as set out in section 1 of the schedule A to the bill, be struck out.

This really gets to the heart of the bill. We have two serious concerns. Dalton McGuinty and the Ontario Liberals are opposed to the privatization of the Ontario electricity highway. There is also a democratic concern here, and that's why the bill's been dubbed the blank-cheque bill. I think that in the public marketplace of ideas, on the basis that we should not give the discretion to the executive to make this decision, rather this decision must be put to the Legislature and put to a vote so that Ontarians know one way or the other what the future of Ontario Hydro is. Right now we do not know what it is. One day the sale of it was on the table, one day it was off the table; one day the court said it was illegal, and then the government decided to appeal it at the same time as amending it. The Minister of Enterprise and former deputy leader of the government, Mr Flaherty, said the IPO is on the table; Mr Stockwell, the energy minister, said then that it was off the table. It's gone back and forth. I think Ontarians deserve to know what the position of the government is before we put it to the Legislature. In fact, we don't get that with the Hydro One blank-cheque bill, thus the amendment.

Ms Churley: I would ask for a recorded vote, when we vote, and speak in support of this amendment. This does get to the crux of the whole matter. It removes the section that allows privatization and that gets to the very crux of the matter. It's something that the New Democrats have been opposing, and indeed that over 70% of Ontarians oppose. This bill should be dealing with consumer protection and some of the other matters that have been raised as concerns for Ontarians. I believe a poll shows that 87% or so of Ontarians at least want an election before any bill is passed that opens up and allows privatization of Hydro One, which this section

would allow. The New Democratic Party vehemently opposes this section and supports the Liberal amendment.

The Vice-Chair: I will now put the question on Liberal motion 1.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Shall section 1 carry?

Mr Bryant: Recorded vote.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Bryant, Churley, Colle.

The Vice-Chair: I declare the section carried.

Shall section 2 of schedule A carry? I declare the section carried.

Liberal motion 2.

Mr Bryant: I move that subsection 13(3.1) of the Electricity Act, 1998, as set out in section 3 of schedule A, be struck out.

Mr Steve Gilchrist (Scarborough East): On a point of order, Chair: Mr Bryant, you actually have to read all the words in there, so after "schedule A"—

Mr Bryant: I'll just repeat it. I move that subsection 13(3.1) of the Electricity Act, 1998, as set out in section 3 of schedule A to the bill, be struck out.

The Vice-Chair: Discussion?

Mr Bryant: Basically, this particular provision deals in part with a complaint that I guess I should raise at this time, which is from our Information and Privacy Commissioner. An officer of the Legislature has blown the whistle on the government and said, in fact, that the trade secrets and private sector competition issues that might arise in dealing with the electricity competition market are already addressed in the existing Freedom of Information and Protection of Privacy Act. Those protections are there. If the government is bringing forth a consumer protection bill, then why is it including in that bill a provision that in fact doesn't help consumers in any way, shape or form, but rather shields consumers from getting information that, interestingly, they rightfully had access to under the government's own bill, the Electricity Act, 1998? Let's be clear: either the privacy commissioner is right today and this provision should not stand, or the government has been wrong since 1998, when it had a provision in place that permitted what the government now wishes to change.

1550

Second, and I guess I should say this now, the Information and Privacy Commissioner, Anne Cavoukian, was consulted extensively with respect to the Electricity Act, 1998. She expressed a number of concerns at that time. I think it is extraordinary that this government would not consult with the Information and Privacy Commissioner, would not have invited her to appear before this committee and would not have worked with her as closely as they clearly worked with other stakeholders in making amendments to address information and privacy issues. The government did not do that.

I called on it last week and I call on it again. The government should not be proceeding in this fashion. It should in fact be extending the committee hearings to hear from the Information and Privacy Commissioner and should be addressing the issues she addressed in her letter to the committee of last week, so that we can get this right. Clearly the government is making changes to its own bill because they felt they didn't get it right before, and because we're rushed in this process. We're not addressing these important issues that were raised in question period and not addressed during question period, and they must be addressed by this committee, thus the amendment.

Ms Churley: I support this amendment. What it does is remove the section preventing the market surveillance panel's activity from being under freedom of information. After receiving such a compelling letter from the Information and Privacy Commissioner and her expression of such strong concerns about these information rights being taken away from Ontarians, particularly after we see at first hand what happened in California and with Enron and the kinds of manipulation and downright scams that took place there and the potential for that to happen, as we've seen now all across the US as markets have opened up, it is very real.

Now that we have the letter from the privacy commissioner, I am offended that we're actually going ahead and proceeding under a time allocation motion, with these amendments coming to us just this morning and not having time to be able to analyze them completely, as it were, but at the same time having to deal with this without a good discussion and an ability to bring in the privacy commissioner so we can have a discussion about the implications of her concerns.

Finally, I find that the government uses the advice from the privacy commissioner at their convenience. I recall when my Bill 77 was before this committee, the adoption disclosure bill which I'm still trying to get passed and which over 99% of legislators support, I did speak to the privacy commissioner as a courtesy, and I really did want her information and her analysis of the bill. She expressed, in my view, some mild concern about that bill compared to the concerns she's expressed around Bill 58. The government conveniently used some mild concerns expressed about that bill to avoid supporting it. Now we have before us a letter from the privacy commissioner expressing grave concerns about this particular

aspect of this bill, and we find the government is choosing to ignore her concerns in this case. I think they are very serious concerns. I would urge the government members to take her concerns seriously and support this amendment.

Mr Gilchrist: I would just put on the record that I certainly respect the views of the members opposite. We believe the information collected by the market surveillance panel, which largely relates to law enforcement issues, falls into the same category as information that would be collected by a police force in a similar matter. We're quite comfortable that the position taken by the privacy commissioner is not supportable in this section. Furthermore, it's my understanding that she had made those representations before and had the explanation given to her as to why the bill was constructed in the fashion it is.

The Vice-Chair: I will now put the question on Liberal motion number 2.

Ms Churley: Recorded vote.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Shall section 3 of schedule A carry? I declare the section carried.

Section 4: Liberal motion number 3.

Mr Gilchrist: I believe that is out of order.

Mr Bryant: Why don't we do this? Why don't I read it? Can I read it?

Mr Gilchrist: Mr Bryant, could I just say that what you normally do is speak to the section instead of speaking to an amendment. It has the same effect. I'm just helping out with the process.

Mr Bryant: OK. Why don't I read it and if you object, then we can go through it?

The Vice-Chair: OK. Go ahead and read it.

Mr Bryant: The Liberal Party recommends that the committee vote against section 4 of schedule A to the bill.

It is a recommendation to the committee; it is not a motion. I'll seek guidance from the clerk and the Vice-Chair as to whether it's in order.

The Vice-Chair: I declare it is not in order.

Mr Bryant: Shall we speak to the issue now?

The Vice-Chair: Speak to the section.

Mr Bryant: OK, I'll speak to the section. The purpose of this recommendation, which has been ruled out of order by the Vice-Chair, is simply to repeat the specific concerns and to table before the committee the amendments that were recommended by the Information and Privacy Commissioner.

I'm not going to repeat everything I said before, other than to say that I think this is an unusual way to proceed, in that the Privacy Commissioner has written a letter to the committee, as formal a submission as she could provide under the circumstances. I understand that the energy minister has responded to the submission of the Information and Privacy Commissioner in scrums, in question period and in this committee.

But would it not be more appropriate for the government to bring the Privacy Commissioner before this committee, have Dr Cavoukian make her arguments and then have the government respond, instead of just the blanket refutation by the Minister of Energy that we're hearing in the House and in this committee today? I find this to be a very unusual way to deal with a submission from an officer of the Legislature.

Mr Gilchrist: Mr Bryant, I might share your surprise at the process Ms Cavoukian followed, because she's certainly no stranger to the legislative process. She has appeared before our committee on numerous occasions on a variety of bills and has in fact commented, not just on government bills, but on private members' bills.

I have to assume, given the timing of Ms Cavoukian's letter, that she was aware that the committee was holding these hearings. If she was aware of that, it would have to follow that she was aware of her right to appear before the committee. I can state that in every stop we made across the province, we had vacant positions. There would have been no problem for Ms Cavoukian to find the time to come before us. And I can tell you that if members opposite had asked us to waive the 10-minute limit in recognition of her special status, I certainly would have supported that.

But she chose not to avail herself of the opportunity presented to all 12 million Ontarians. So it would seem, in that light, our only response could be to pursue the course we've set out. I'm sure there will be correspondence back to Ms Cavoukian outlining the rationale for this bill.

Ms Churley: We can't have unanimous consent, I presume, if something is ruled out of order. Can I ask for unanimous consent that this be considered to be in order, given the circumstances? I'm just addressing myself to the Chair. I'm asking for unanimous consent for this section to be removed.

The Vice-Chair: You can ask for unanimous consent.

Ms Churley: I ask for unanimous consent to have this section removed from the bill.

The Vice-Chair: Is there unanimous consent?

Mr Gilchrist: No.

1600

Ms Churley: OK. Let me speak to that. I appreciate the comments made by Mr Gilchrist, but I think "them's fightin' words" when it comes to the Privacy Commissioner. For whatever reasons, she did not appear before the committee—I don't know if she was invited to appear before the committee—and did not let her views be known until near the end.

But let's recall that this bill has been time-allocated and rushed through, and it's a very important bill. It has

partially to do with the privatization of Hydro, which everybody opposes. She did get her views known to the committee on Friday. And given that we just got those views then, I think it's incumbent on us as a committee to take those views seriously. If we're not removing this section, we should have some kind of opportunity to explore her comments in more detail. Once this bill is passed, it's legislation, and not to have some kind of serious consideration of her grave concerns, I think, is a miscarriage of justice when we're passing a bill that could have—and again I remind people of what happened in California and with Enron and the implications of what could happen to consumers in this province. I think we're making a very serious error here today by passing this bill, as is, without having further consideration of the privacy commissioner's views. Mark my words: it's going to come back to haunt the government members.

Mr Gilchrist: Perhaps I could just correct the record, Ms Churley. We received that letter before we left Toronto. So it couldn't have been Friday; it was no later than—

Ms Churley: I just said the wrong day. Sorry.

Mr Gilchrist: That's OK. In the interest of accuracy, it was certainly no later than Thursday that the clerk received it and transmitted it.

Ms Churley: Of course you're right. We were travelling together on Friday, and I got my days wrong. It would have been Thursday. Thank you for correcting the record.

The Vice-Chair: Any further discussion?

I will now put the question on section 4, schedule A.

Ms Churley: Recorded.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Bryant, Churley, Colle.

The Vice-Chair: The section carries.

Section 5: there are no amendments. Any comments on section 5?

I will now put the question.

Shall section 5 of schedule A carry? Section 5 of schedule A carries.

Liberal motion 4.

Mr Bryant: I move that subsection 37(17) of the Electricity Act, 1998, as set out in section 6 of schedule A to the bill, be struck out.

The Vice-Chair: Discussion?

Mr Bryant: Again, I don't want to repeat myself: the same issue, the same problem. I guess I would just say, in response to the parliamentary assistant's comments before, that I find it passing strange that the government would not have directly consulted with the privacy commissioner in the circumstances. She had much to say with respect to the 1998 bill. She made a number of recommendations and, according to her letter, was consulted at length and provided objections at the time.

I understand the government's answer is that she could have asked to appear before the committee. So too could the government have invited her. But putting that aside, is the government saying it never consulted with the privacy commissioner on this issue, when she already spoke to this very bill and had privacy concerns at the time? To me, it would be the equivalent of putting together legislation affecting privacy in the health care system, where we know the privacy commissioner is going to have something to say on it and there has to be a certain amount of consultation before, during or after introduction of the bill. Again, I find that while it may be strictly within the letter of the time allocation motion and permissible, that doesn't mean the government should not have consulted her. I find it strange that they are proceeding in this way.

Ms Churley: I speak in support of this amendment. Again, for the record, what this amendment does is remove from the bill another section that prevents FOI from applying, the same concerns I raised in the previous amendment that government members just voted down. That's what the section does, and that's what the government members once again will be voting against, a section that in my view protects the interests of the ratepayers of Ontario.

Mr Gilchrist: I appreciate the question Mr Bryant has posed here. Our previous conversation related to Ms Cavoukian's appearance before the committee. I certainly want to let you and the other members of the committee know that she was in fact consulted prior to the drafting of the bill, and in fact the IMO made a number of changes—

Mr Bryant: On this bill?

Mr Gilchrist: —on this bill—to the process that's recommended in this bill to accommodate her concerns.

The Vice-Chair: I will now put the question on Liberal motion number 4.

Mr Bryant: Recorded vote.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Mr Bryant: I move that section 37.3 of the Electricity Act, 1998, as set out in section 6 of schedule A to the bill, be amended by adding the following subsection:

"Same

"(1.1) The Freedom of Information and Protection of Privacy Act applies with respect to the information and material described in subsection (1), and the panel is an institution for the purposes of that act.

"Same

"(1.2) The disclosure of information and material described in subsection (1) is governed by the Freedom of Information and Protection of Privacy Act and that act prevails over subsection (1)."

The Vice-Chair: Discussion?

Mr Bryant: I would raise another issue, because I don't want to repeat. The purpose of this is again to address the concerns raised by the Information and Privacy Commissioner. My question would be, if these amendments are necessary—and I assume they are or else the government would not have brought these amendments to the Electricity Act, 1998—at what point did the government become aware of the fact that there needed to be some kind of protections that they allegedly say they need for companies participating in the electricity competition marketplace? And if that's the case, then have we been operating under some anarchy since May 1 when the electricity competition marketplace opened? Again, I repeat, either the privacy commissioner is right and these amendments being brought by the government are wrong, or else the government was wrong to bring in the laws that it did in 1998 and has created the unsustainable position that it now feels it has to fix.

Ms Churley: I've got the letter in front of me. I just want to put on the record some of the concerns raised by the privacy commissioner. She says, "In my view, there is a strong public interest in ensuring that the deregulation of the electricity market in Ontario is open and transparent. In California, deregulation was accompanied by rolling blackouts, skyrocketing electricity rates for consumers, and allegations that large power companies were deliberately withholding electricity in order to induce a supply crisis that would spike up rates. The California experience would seem to shift the balance in favour of greater transparency in the deregulation process in Ontario, not less."

She goes on go say, "However, the proposed amendments in sections 3, 4, and 6 of schedule A of Bill 58 would seriously restrict the public's right to access certain information about the newly deregulated electricity market and the conduct of key market participants. In my view, none of the information gathered by the IMO and its market surveillance panel should enjoy a 'blanket' exemption from disclosure that cannot be reviewed by my office."

That's just a section of the letter. Again, I want to point out how serious these concerns are, given what we know and the information that's been raised time and time again by my leader, Howard Hampton, in the House over the last several months and indeed by people all over North America and the western world when it comes to the kinds of things that have been happening under deregulation.

The commissioner makes it very clear that we should be moving to better and more transparency. She is pointing out that this bill is taking us further down the road in the opposite direction. I just wanted that for the record, so people understand how important this amendment is vis-à-vis the concerns expressed by the privacy commissioner.

1610

Mr Gilchrist: If we're putting things on the record, then I would invite the members opposite to look at the equivalent independent electricity system operators in other jurisdictions across North America: Pennsylvania, California, New York, Texas, Alberta and throughout New England. While every one of those jurisdictions has access to information and privacy laws, their independent system operators are not covered.

I would also challenge you to look at the amount of information that our IMO is publishing. A quick look at their Web sites would tell you there is a glaring difference between the availability of information here in Ontario and what is provided across North America.

The IMO has certain general confidentiality provisions of course. It has published a complete information catalogue showing what will be public, what's confidential and what will become public after some delay. That catalogue was extensively stakeholdered, including consumer reps, with considerable opportunity for public comment.

A lot more commercial information is being put into the public realm than probably in any other jurisdiction we have considered. The process already provides for release of more commercial information than many companies wanted, but it was accepted as an appropriate balance of interests. Without confidence, that information classified as confidential can be protected. Market participants would want to retain all the potential protections available to them under section 17 of the Freedom of Information and Protection of Privacy Act.

If market participants are sure the catalogue will be respected, the result will be faster and broader disclosure, because they have certainty as to what will and won't be released.

Here's the crux of the issue: the IMO and MOEE staff tried to get assurances from the Information and Privacy Commissioner. The IPC would not give any assurance as to whether they agreed or disagreed with the classification. With the greatest respect to Ms Cavoukian, the government cannot afford to stand still. In the absence of any kind of sign-off, we have considered the options, we have looked at other jurisdictions and we've moved forward with legislation that we think strikes a fair balance between access to appropriate commercial information while still respecting confidentiality on those matters that in any other context in the marketplace you and I would not have access to in discussions of private corporations.

The Vice-Chair: I will now put the question on Liberal motion number 5.

Mr Bryant: Recorded vote.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Shall section 6, schedule A, carry? I declare section 6, schedule A, carried.

Government motion number 6.

Mr Gilchrist: I move that section 42.1 of the Electricity Act, 1998, as set out in section 7 of schedule A to the bill, be amended by striking out "in favour of a transmitter or distributor for the purpose of transmission or distribution" and substituting "in favour of a generator, transmitter or distributor for the purpose of generation, transmission or distribution."

Quite simply, this amendment provides that easements that were inherited by OPG from the former Ontario Hydro continue to remain valid. The overwhelming majority of these easements provide access to waterways simply for maintenance purposes.

Ms Churley: May I just ask a technical question? Why would a generator be included in that? I obviously understand when it comes to transmission and distribution, but I'm not sure how the generator would fit in here.

Mr Gilchrist: It's my understanding, Ms Churley, that would include easements that the power plants might have out into Lake Ontario for access: the inlet and outlet of their cooling system, the water flows, that sort of thing. Obviously, there are those connections right from the power plant to the grid. A portion of that may be owned by OPG before it actually transfers to Hydro One.

The Vice-Chair: I will now put the question on government motion number 6.

Mr Bryant: Is there discussion on this point?

The Vice-Chair: Yes.

Mr Bryant: I'm going to get my blanket discussions out, or my blanket concerns, I guess. I understand this is a technical amendment and we're not going to oppose it, but by my quick count there are more than 40 government amendments to this bill. I think that means there are people in the Ministry of Energy who have been working very hard over the last few days to try and clean this bill up; to find the mistakes, root them out and fix them. If there is any testament as to why we ought not to rush this bill through, why we ought to have more hearings, more time, more debate and not a guillotine motion, it is this.

By the government's own admission, a bill they introduced, which obviously wasn't passed, has got technical errors in it. Not only is the government fixing something they drafted and passed in 1998, now they're fixing something they introduced just a few legislative days ago—maybe it was weeks ago. I think it speaks to why we ought not to rush this. I ask, have we learned nothing?

Mr Justice Gans found that the government did not have the ability to dispose of Hydro One shares or assets through an IPO. The issue that's before us now is whether or not to give the Legislature that power. At the very least, I think the government probably wishes in hindsight that they had given themselves that power in 1998. I know they are taking the position in the courts that they have always had it. Be that as it may, mistakes are made by governments and mistakes are made in legislation. This has got to go down as a mistake by the government, if only because the matter has gone to a hearing and received a rather extraordinary result which has put us here today.

This many amendments means that we are rushing. Kudos to the ministry staff for being able to do this in record speed, but shame on the government for forcing us into this position, where we have to ram through these technical amendments under a guillotine motion. I just would repeat here our fervent submission to continue the hearings, to continue debate and to give this Legislature, and not the executive, the last word on a matter of such importance to Ontarians.

Mr Gilchrist: I guess we'll just have to remain having different perspectives on life in general, Mr Bryant. I look at the number of amendments and see in that the fact that, whether it was in the hearings or direct intervention by interested parties from across Ontario since the bill was tabled, we have listened, we have respected the input we've heard and we have reflected it with appropriate amendments that hopefully will find favour on both sides of this committee, and we'll move forward to having the best possible bill emerge from this committee.

Ms Churley: It's not possible to have the best possible bill, given that the government will not accept any of the opposition amendments which would make it the best possible bill.

I just want to say that, because we got these technical amendments so late in the day and we're debating them now, I may be voting against some of those technical amendments simply because I haven't had the time to look at the full implications. They may well be needed and they may be amendments that, if I had the time to study them further, I might support. But if I'm not sure of the implications, then I may be voting against them simply because I haven't had the time to look at the implications.

The Vice-Chair: I will now put the question on government motion number 6.

All those in favour? All those opposed? I declare the motion carried.

Shall section 7 of schedule A, as amended, carry? Carried.

Shall section 8 of schedule A carry? Carried.

Section 9: government motion number 7.

Mr Gilchrist: I move that section 9 of schedule A to the bill be amended by adding the following clause after clause 46(2)(c) of the Electricity Act, 1998:

"(c.1) a subsidiary of Ontario Power Generation Inc that is authorized to generate electricity."

It simply adds a subsidiary of Ontario Power Generation to the list of entities to whom unregistered right may be transferred.

The Vice-Chair: I will now put the question.

Shall government motion number 7 carry? Carried.

Shall section 9 of schedule A, as amended, carry? Carried.

Liberal motion number 8.

Mr Bryant: I move that subsection 49(1) of the Electricity Act, 1998, as set out in section 10 of schedule A to the bill, be struck out and the following substituted:

"Shares in Hydro One Inc

"49(1) The minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Hydro One Inc."

The Vice-Chair: Discussion?

Mr Bryant: This is an issue that was addressed directly in the decision of Mr Justice Gans. I agree with the ruling of Mr Justice Gans, the government will be shocked to hear. The matter is before the court. I think it is highly unusual that this specific issue, ruled upon by the Ontario Superior Court, would be before a committee of this Legislature. I don't know how many times I've heard the government say it cannot even look at an issue because the matter is before the courts.

1620

Mr Mike Colle (Eglinton-Lawrence): Ipperwash.

Mr Bryant: Ipperwash certainly jumps to mind. Yet now we have something that is in fact before the Ontario Court of Appeal and we are not waiting to get direction from the Ontario Court of Appeal, nor are we going to wait to see what the final outcome would be, because it could, and very well will, be appealed to the Supreme Court of Canada. Whether it is given leave or not is another issue. But we have the matter before the Court of Appeal, the government has sent its lawyers in there to make the argument, and yet we are ruling on it here in a legislative committee.

I believe there's a dialogue between the courts and the Legislature. Ultimately, the people can get the last word in most cases under our Constitution. Certainly under section 33 of our constitution, anything ruled under the charter can eventually be—the views of a Legislature can be substituted, but the less radical alternative is that Legislatures wait to hear from the courts and then respond. They may overrule the courts. They may adjust their position. That's why Attorney General David Young, for example, said of a private member's bill that I introduced on contingency fees, "Let's wait to hear from the Ontario Court of Appeal." I agree with him. I wouldn't want the bill to go to debate and be voted upon until that's completed. But he said that with respect to that bill and he said something else with respect to this bill. While I'm not suggesting that it's out of order, I would say that this is extraordinary. What I'm trying to do is ensure that, in fact, we hear from the courts and then only at that time does the Legislature respond, rather than engaging in this exercise where we're before the courts and before the Legislature at the same time.

The Vice-Chair: Further discussion? I will now put the question on Liberal motion number 8.

Mr Bryant: Recorded vote.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Liberal motion number 9.

Mr Bryant: I move that subsections 50(1) to (3) of the Electricity Act, 1998, as set out in section 10 of schedule A to the bill, be struck out and the following substituted:

"Corporations to hold shares

"50(1) The Lieutenant Governor in Council may cause corporations to be incorporated under the Business Corporations Act for the purpose of acquiring and holding shares in Hydro One Inc.

"Same

"(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the executive council designated by the Lieutenant Governor in Council."

The Vice-Chair: Discussion?

Mr Bryant: Again, this comes down to the heart of the matter before the court and the heart of the matter before the Legislature: can and ought Hydro One to be privatized? We say no; the government says yes. This amendment seeks to address that very issue.

Ms Churley: I have a concern, and perhaps I can get an answer to this question. I agree with the premise of the amendment, but it seems to me the wording suggests that you want it public but you want it to operate like a private sector company, because of the incorporation under the OBCA. My concern with the way it's worded is that this private sector wannabe perspective is partly what led to the high executive salaries and some of the things that happened already with the kind of private sector wannabe entity that's in place now. Given that, that's my reading of the amendment. Although I support the premise, I'm concerned about the wording and that implication and would vote against it.

Mr Bryant: The legislative drafting seeks to incorporate the premise that in fact the government of Ontario ought not to have the power to dispose of the securities, and that's the purpose of it. If there is some language in it that the third party wishes to amend, I would be open to a friendly amendment. But clearly the point here is to address the word "dispose" in the existing legislation. Again, we are opposed to that. I know the government is trying to get that power, and that's the heart of the bill. That's the purpose of the provision; that's the purpose of the amendment. Enough said.

The Vice-Chair: I will now put the question on Liberal motion number 9.

Mr Bryant: Recorded vote.

Ayes

Bryant, Colle.

Nays

Churley, Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Liberal motion number 10.

Mr Bryant: I move that sections 50.1 and 50.2 of the Electricity Act, 1998, as set out in section 10 of schedule A of the bill, be struck out.

The Vice-Chair: Discussion?

Mr Bryant: Section 50.1 is a section that would enable the creation of an income trust or other arrangement. There are a number of options that are on or off the table at any one time, depending on whether or not there's a by-election in Ontario. The income trust option was blurted out by the energy minister after he shut down the first round of consultations. He came out in the afternoon and he said out of nowhere, "We're looking at an income trust," when the government had been talking about an IPO all along. It was the first crack in the government's ongoing position with respect to the IPO. Again, we want to keep it public. The purpose of this provision is to permit that it stay public and stay controlled by the public, and that's the purpose of the amendment.

Ms Churley: I support this amendment. As had been pointed out at the public hearings time and time again, the public are not out there discussing the merits of a 99-year lease or a trust or any other kind of option, except to keep Hydro One and, indeed, all of Hydro—the generation of our electricity as well—in public hands. That is what people are saying. They're not discussing, not caring about these other options. They made it clear to the government that they want to keep Hydro in public hands, so this should be struck. I support the amendment to support the huge majority of Ontarians who just say no to privatization in any form.

The Vice-Chair: I will now put the question on Liberal motion number 10.

Ms Churley: Recorded vote.

Ayes

Bryant, Churley, Colle.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Shall section 10 of schedule A carry? Carried.

Shall sections 11 through 22 carry? Carried.

Government motion number 11.

Mr Gilchrist: I move that section 114.1 of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by adding the following definition:

"'effective date' means the date on which section 23 of schedule A to the Reliable Energy and Consumer Protection Act, 2002 comes into force;"

This amendment simply pertains to having a later proclamation date. The amendment provides a definition of the effective date, namely, the date that section 23 is to come into effect.

The Vice-Chair: Discussion? I will now put the question.

Shall government motion number 11 carry? Carried.

Government motion number 12.

Mr Gilchrist: I move that subsection 114.2(1) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "May 29, 2002" wherever it appears and substituting "the effective date".

The Vice-Chair: Discussion?

Mr Gilchrist: Same as the last one.

The Vice-Chair: I will now put the question. Shall government motion 12 carry? Carried.

Government motion number 13.

Mr Gilchrist: I move that subsection 114.4(2) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "any lease, licence, agreement or other arrangement affecting corridor land" and substituting "any lease or agreement entered into or licence obtained before the effective date that affects corridor land or any easement or right created before the effective date with respect to corridor land".

The Vice-Chair: Discussion?

Mr Gilchrist: It simply deletes "other arrangement" and adds "or any easement."

1630

The Vice-Chair: I will now put the question.

All those in favour of government motion number 13? Carried.

Government motion number 14.

Mr Gilchrist: I move that subsections 114.5(1) and (2) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Statutory right to use corridor land

"114.5 (1) The person or entity from whom corridor land is transferred by section 114.2 has a right to use the land to operate a transmission system or distribution system.

"Duty to maintain

"(2) The person or entity who has the right created by subsection (1) has a duty to maintain the corridor land at his, her or its own expense, including repairing or replacing buildings, equipment and structures on the land that are used by the person or entity, or used with his, her or its permission, if a prudent person would repair or replace them.

"Same

"(2.1) The Chair of Management Board may direct the person or entity who has the right created by subsection (1) to engage in such additional activities to maintain the corridor land at his, her or its own expense as the Chair of Management Board considers appropriate.

"Exception

"(2.2) The person or entity who has the right created by subsection (1) is not required to maintain corridor land that is being used for a purpose other than the operation of a transmission system or distribution system, unless it

is being used for that purpose with the permission of the person or entity."

The Vice-Chair: Discussion?

Mr Gilchrist: It provides the statutory right to operate a distribution system, in addition to a transmission system, and provides that it's Hydro One's responsibility to maintain the corridor land, including buildings, structures and equipment, consistent with its use of the land.

Ms Churley: I'm speaking in support of this amendment, although ultimately I will not be supporting the bill. Obviously, the majority of members here are Tories and the bill is likely to pass, but I think this is a good amendment. I'm happy to say that the government listened to Jack Layton, Howard Hampton and myself, who were out there shortly after the prospectus came out. We saw this threat and held a couple of news conferences and the issue got in the media and the government paid attention and, indeed, put forward amendments. This is a win for the people of Ontario.

Mr Gilchrist: May I just suggest, Ms Churley, that you were preaching to the choir. But that's OK. There's a wide tailgate and you're welcome on it.

Mr Bryant: I would just like to congratulate MPP Mario Sergio for having a private member's bill that was brought before the Legislature, received the support of the Legislature and has now been incorporated by the government. This is a great victory for Dalton McGuinty, Mario Sergio and Ontario Liberals.

Mr Gilchrist: You're trapped now. Remember that the next time you say we don't listen. But that's OK.

The Vice-Chair: I will now put the question on government motion 14.

All those in favour? Opposed? Carried.

Government motion number 15.

Mr Gilchrist: I move that subsection 114.5(4) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by striking out "an interest in real property" and substituting "an easement".

The purpose of the amendment is to clarify the nature of the statutory right as that of an easement, the rights and obligations of which are better understood by the marketplace and the legal community.

Ms Churley: Is that just correcting what I perceive to be a fairly serious drafting error here?

Mr Gilchrist: No, the representations we got were that the use of the term "easement" was just something that laypersons would be more familiar with, but that both are interchangeable.

Ms Churley: I see.

The Vice-Chair: I will now put the question.

Those in favour of government motion number 15? Opposed? Carried.

Government motion number 16.

Mr Gilchrist: I move that subsection 114.5(7) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "transmission system".

The Vice-Chair: Discussion?

Mr Gilchrist: This section now provides for the payment of incremental costs of Hydro One related to the operation of a distribution system, as may be prescribed by regulation.

Ms Churley: I support this, but it seems to me that in this one the government forgot that these corridors would be used for distribution as well as transmission, and this is correcting that rather large oversight.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 16? Opposed? Carried.

Government motion number 17.

Mr Gilchrist: I move that subsection 114.6(1) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be struck out and the following substituted:

"Primacy of use for transmission or distribution system

"114.6(1) A person or entity who owns corridor land shall not use it in such a way that the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the land is reduced."

This clearly is an amendment to reflect the primacy of the use of the lands for transmission or distribution.

The Vice-Chair: Further discussion? I will now put the question.

All those in favour? Opposed? Carried.

Government motion number 18.

Mr Gilchrist: I move that subsection 114.6(2) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "to expand a transmission system".

The Vice-Chair: Discussion?

Mr Gilchrist: Similarly, the purpose of the amendment is to allow for the expansion of a distribution system, as currently provided with respect to transmission systems.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 18? Opposed? Carried.

Government motion number 19.

Mr Gilchrist: I move that subsection 114.6(3) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "expansion of the transmission system".

The Vice-Chair: Discussion?

Mr Gilchrist: Same rationale.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 19? Opposed? It's carried.

Government motion number 20.

Mr Gilchrist: Again, I move that subsection 114.6(4) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "expansion of the transmission system". Same thing.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 20? Opposed? Carried.

Government motion number 21.

Mr Gilchrist: At the risk of repeating myself, I move that subsection 114.6(5) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "expansion of the transmission system".

The Vice-Chair: I will now put the question.

All those in favour? Opposed? Carried.

Government motion number 22.

Mr Gilchrist: I'm sure it will come as a great shock to everyone that I move that subsection 114.6(6) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be amended by adding "or distribution system" after "expansion of the transmission system".

The Vice-Chair: I will now put the question.

All those in favour? Opposed? Carried.

Government motion number 23.

Mr Gilchrist: And now for something completely different, I move that subsection 114.6(7) of the Electricity Act, 1998, as set out in section 23 of schedule A of the bill, be struck out and the following substituted:

"Status of agreement

"(7) An agreement described in subsection (6) may be registered on title in the applicable land titles office or registry office and, when it is registered, it is binding on all persons and entities."

The purpose of this amendment is to provide a legal basis for the registration of any agreements.

Ms Churley: Sorry, is this schedule A, section 23, subsection 114.6(7) that you just read?

Mr Gilchrist: That's correct, yes.

Ms Churley: OK. If I understand this—it's technical, but my reading of it is that the agreements referred to give no power to the municipalities over uses that could be important to them. Is that correct?

Mr Gilchrist: I'm sorry, could you say that again?

Ms Churley: My reading of it is—and again, it's a very quick analysis of what I think it says—that the agreements referred to in section 6 give no power to the municipalities over uses that are important to them. See, it says, "An agreement described in subsection (6) may be registered on title"—I'm sorry; I'm just trying to understand "binding on all persons". I guess what I'm saying is if my understanding is correct, I'm voting against it. To be on the safe side, for the record, I will be voting against it, unless you can clarify that.

Mr Gilchrist: Perhaps this one is a little tougher to glean right from the amendment itself, but this again simply talks about the primacy of distribution and transmission. No one is suggesting there aren't other things the land can be put to. It gives a legal basis for the registering of the agreements that were spoken to earlier, and those are the agreements that ultimately, if you go back near the start of 114.6, talk about how the board may authorize a person or entity who has a statutory right to use corridor lands to expand a transmission system on the land and may make such orders. So, as it has been explained to me, this amendment simply clarifies that it's a mechanism to make sure you have a legal basis for registering those agreements.

1640

Ms Churley: But still the municipalities would—it doesn't take away their rights.

Mr Gilchrist: It doesn't take away, it doesn't—

Ms Churley: Is that correct?

Interjection.

Mr Gilchrist: Allow me to say for the record: it doesn't take away any rights.

Ms Churley: All right. Thank you.

The Vice-Chair: I will now put the question.

Shall government motion number 23 carry? Carried.

Government motion number 24.

Mr Gilchrist: I move that subsection 114.8(2) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Restriction

"(2) The Chair of Management Board shall not give a direction under this section that would have the effect of reducing the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the corridor land."

Again, this just speaks to the privacy of distribution.

The Vice-Chair: I'll put the question.

All those in favour of government motion number 24? Opposed? Carried.

Government motion number 25.

Mr Gilchrist: I move that subsection 114.8(6) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Effect of non-compliance

"(6) A person or entity who fails to comply with this section shall remove the building, structure or equipment when given notice to do so by the Chair of Management Board and shall do so at his, her or its own expense."

The Vice-Chair: Discussion?

Mr Gilchrist: It simply clarifies that, if requested by MBS, if there is a structure that's impeding the ability to comply with the primary use of those lands, it must be removed.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 25? Opposed? Carried.

Government motion number 26.

Mr Gilchrist: I move that subsection 114.9(2) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Restriction

"(2) The Chair of Management Board shall not give a direction under this section that would have the effect of reducing the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the corridor land."

The Vice-Chair: Discussion?

Mr Gilchrist: That's fairly obvious. Again, it won't do anything to stand in the way of the primary use of those lands.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 27.

Mr Gilchrist: I move that subsection 114.9(5) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Effect of non-compliance

"(5) A person or entity who fails to comply with this section shall remove the building, structure or equipment when given notice to do so by the Chair of Management Board and shall do so at his, her or its own expense."

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 28.

Mr Gilchrist: I move that part IX.l of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by adding the following section after section 114.9:

"Cessation of use for transmission system, etc.

"114.9.1(1) This section applies if a person or entity who has the statutory right to use corridor land decides that the land is not needed for the purposes of a transmission system or distribution system.

"Duty to notify

"(2) The person or entity who has the statutory right to use the land shall give written notice to the Chair of Management Board that it is not needed for the purposes of a transmission system or distribution system.

"Same

"(3) The notice must contain such information as may be prescribed by regulation and must be given in a manner authorized by regulation.

"Transfer of statutory right

"(4) The Chair of Management Board may require the person or entity to transfer to Her Majesty in right of Ontario the statutory right to use the land described in the written notice.

"Payment for transfer

"(5) No amount is payable for the transfer of the statutory right required under subsection (4).

"Taxes, etc.

"(6) The Land Transfer Tax Act and such other statutes or provisions of statutes or regulations as may be prescribed do not apply with respect to a transfer required under subsection (4)."

The Vice-Chair: Discussion?

Mr Gilchrist: This section will require Hydro One to notify the Chair of Management Board that corridor land is no longer required for a particular transmission or distribution system. The Chair of Management Board can then require Hydro One to convey the statutory right of such land to the Chair of Management Board, and no payment shall be required for such a conveyance.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 28? Carried.

Government motion number 29.

Mr Gilchrist: I move that subsection 114.10(1) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "shall give written notice" and substituting "shall give prior written notice".

The effect of the amendment is that Hydro One is to provide the Chair of Management Board with prior written notice of a disposition by Hydro One of any of its interests in the statutory rights.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 30.

Mr Gilchrist: I move that subsections 114.12(2) and (3) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"Restriction re encumbrances

"(2) The Chair of Management Board shall not make a transfer under subsection (1) if the corridor land is subject to encumbrances created with the consent of Her Majesty in right of Ontario that are greater than those to which it was subject on the effective date, unless the person or entity who has the statutory right to use the land consents to the transfer.

"Restriction re condition of land

"(3) The Chair of Management Board shall not make a transfer under subsection (1) if the condition of the corridor land has been significantly changed since the effective date with the consent of Her Majesty in right of Ontario, unless the person or entity who has the statutory right to use the land consents to the transfer."

The Vice-Chair: Discussion?

Mr Gilchrist: The Chair of Management Board cannot return any of the corridor land to Hydro One if the crown in right of Ontario has consented to it, as opposed to the current wording, which is "has knowledge of" greater encumbrances to or significant changes in the condition of the land.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 31.

Mr Gilchrist: I move that subsection 114.12(4) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "May 29, 2002" and substituting "the effective date".

The Vice-Chair: I will now put the question on government motion number 31.

All those in favour? Carried.

Government motion number 32.

Mr Gilchrist: I move that subsection 114.12(6) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "May 29, 2002" and substituting "the effective date".

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 33.

Mr Gilchrist: I move that subsection 114.13(1) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by adding at the end "and shall do so within the time specified by the Chair of Management Board".

The Vice-Chair: Discussion?

Mr Gilchrist: The effect of the amendment is that Hydro One is to provide any information within the time specified by the Chair of Management Board.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 34.

Mr Gilchrist: I move that section 114.14 of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by adding the following subsection:

"Exception

"(2) Subsection (1) does not authorize Her Majesty in right of Ontario to deal with corridor land contrary to section 114.6."

The Vice-Chair: Discussion?

Mr Gilchrist: The purpose of this amendment is to provide clarification that the use of corridor land by Her Majesty the Queen cannot abrogate the primacy of use of the corridor land set out earlier in section 114.6, where it talked about distribution and transmission.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 35.

Mr Gilchrist: I move that clause 114.15(1)(b) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "May 29, 2002" and substituting "the effective date".

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Government motion number 36.

Mr Gilchrist: I move that clause 114.15(2)(b) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by striking out "May 29, 2002" and substituting "the effective date".

The Vice-Chair: I will now put the question.

All those in favour of government motion number 36? Carried.

Government motion number 37.

Mr Gilchrist: I move that clause 114.15(3)(b) of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be struck out and the following substituted:

"(b) that are a direct or indirect result of an act or omission by,

"(i) the person or entity,

"(ii) an employee or agent of the person or entity,

"(iii) a person or entity who previously held the statutory right to use the land, or

"(iv) another person or entity who was invited or permitted to use the land by the person or entity who holds, or held, the statutory right to use it."

The Vice-Chair: Discussion?

Mr Gilchrist: The indemnity of Hydro One shall now include liability for the acts or omissions of persons or entities who previously held the statutory right to use the land, as well as for persons or entities who are invited or permitted to use the land in the future.

The Vice-Chair: I will now put the question on government motion number 37.

All those in favour? Carried.

Government motion number 38.

Mr Gilchrist: I move that part IX.1 of the Electricity Act, 1998, as set out in section 23 of schedule A to the bill, be amended by adding the following section after section 114.15:

"Delegation of powers and duties

"114.15.1(1) The Chair of Management Board may delegate his or her powers and duties under any of the following provisions to any person or entity, subject to such conditions as the Chair of Management Board may impose:

"1. Subsection 114.5(2.1).

"2. Subsection 114.8(1) or (6) or both.

"3. Subsection 114.9(1) or (5) or both.

"4. Subsection 114.12(1).

"5. Section 114.13.

"Assignment of powers and duties

"(2) The Chair of Management Board may assign his or her powers and duties under any of the provisions listed in subsection (1) to any person or entity, subject to such conditions as the Chair of Management Board may impose.

"Effect

"(3) Despite the Executive Council Act, an agreement that is signed by a person or entity authorized to do so by a delegation or an assignment made under this section has the same effect as if the agreement had been signed by the Chair of Management Board."

1650

The Vice-Chair: Discussion?

Mr Gilchrist: The purpose of this section is to provide the authority of the Chair of Management Board to delegate and assign the listed powers of the section. Furthermore, any agreement signed has the same power and effect as if signed by the Chair of Management Board.

The Vice-Chair: I will now put the question.

All those in favour of government motion number 38? Carried.

Ms Churley: I oppose it.

The Vice-Chair: Opposed? Carried.

Government motion number 39.

Mr Gilchrist: I move that subsection 114.16(1) of the Electricity Act, 1998, as set out in section 23 of Schedule A to the Bill, be amended by adding the following clauses:

"(0.a) prescribing one or more statutes, provisions of statutes or regulations for the purposes of subsection 114.5(3), 114.9.1(6) or 114.12(7);

"(a.1) prescribing the information to be included in a notice given under section 114.9.1(3) and prescribing the manner in which the notice must be given;"

The Vice-Chair: Discussion?

Mr Gilchrist: The purpose of the amendment is to provide regulation-making powers inadvertently admitted from Bill 58 in relation to the new proposed section 114.9.1.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Shall section 23 of schedule A, as amended, carry? Carried.

Shall sections 24 through 30 carry? Carried.

NDP motion number 40.

Ms Churley: I move that subsection 31(2) of schedule A to the bill be struck out and that subsection 31(4) of schedule A to the bill be struck out and the following substituted:

"Same

"(4) Sections 1 to 10 and section 30 do not come into force unless they are reaffirmed by an act of the Legislature that receives royal assent after the next general election (as defined in section 1 of the Elections Act).

The Vice-Chair: Discussion?

Ms Churley: Let me say the NDP is vehemently opposed to privatization, and we have made that quite clear. But given that the government is hell-bent on moving forward—was that unparliamentary?—or seems to be moving forward with privatization, at the very least we should acknowledge the fact that a very credible poll says that, I think, up to 87% of Ontarians do not believe the government has the mandate to move ahead with privatization unless at least going to an election.

So the purpose of this amendment is to at least have something in this bill that reflects the views of the general public who, I know, are opposed to privatization. We know at least 70% and counting—I'm sure it's much higher than that now—are opposed to the privatization of both Hydro One and the generation of our electricity. But because 87% say there should be an election at least and that the government has no mandate to privatize in any way, shape or form at this point, that's why this amendment is here. I just want to make it clear that I am opposed to privatization and the NDP is opposed to the privatization of our electricity. But this would at least make sure the government has to go to the people first before moving forward.

Mr Bryant: We support this motion. Dalton McGuinty and the Ontario Liberals oppose the privatization of Hydro One, the electricity transmission highway. I just want to make it clear: this motion speaks to the issue of democracy and the issue of whether or not the government has a mandate to sell Hydro One. The latest statement from a minister of this government, as of the June 3, 1999, election, was from Minister Wilson, who made it very clear that the privatization of electricity transmission was not going to happen. That made sense because the electricity reform project that was embarked upon in the 1990s and resulted in the select committee recommendations of all three parties was dealing with generation, with making electricity. It was not dealing with transmitting electricity.

As I've said before, to me, for the government to do this would be like, in the middle of a health care debate on what to do with hospitals, the government announced it wasgoing to privatize ambulances. One has got nothing to do with the other or, at the very least, there is no mandate to privatize the ambulances or, in this case, the transmission system.

There was no mandate. There was no discussion. In December last year there was a cabinet meeting, and a decision was made at that time. That was the first we heard that there was going to be privatization of Hydro One. Now what we're doing is not only defying the absence of a mandate by permitting that, but even worse, in my view, we are in fact fettering the discretion and the ability of the Legislature, of members of provincial Parliament, to have a say. If the government is going to take the position that it has a mandate, let it put it to the Legislature and say, "We want to do X with Hydro One"—income trust, strategic sale, IPO or whatever that may be. It's not doing that. It is giving itself the discretion through an order in council to do that, and that's wrong.

We support this motion. I agree with what was just said. The government has got to get a mandate from the people before it disposes of Hydro One in any way, shape or form, other than keeping it public.

Ms Churley: Just to follow up, the New Democratic Party does not distinguish between Hydro One and generation. We did not support the outcome of the royal commission. We made that clear from day one. Although this particular bill is dealing with Hydro One, I just want to make it clear that, overall, the New Democratic Party does not distinguish between the two. We do not believe it's in the interests of Ontarians to privatize either the transmission or generation side.

I think this is an appropriate time to say why. We've stated it many times in the Legislature, but reasons keep piling up as to why we believe all parties—the Liberals and Tories—should support our position on generation as well. Certainly we're not saying, "Stay with the status quo." We do acknowledge that some changes need to be made, and we have a plan to make those changes happen and, indeed, bring power onto the grid.

But some of the most compelling arguments against the privatization on both sides are from Consumer Reports, which is a very well known consumer magazine in North America. They recently did a report on electricity deregulation. I'm quoting from their report: "Broken promises, deceptive marketing and dreadful service have become accepted business practices in an increasingly Wild West marketplace." That particular Consumers Reports went on to contradict the many claims by this government, and those who have an interest in getting involved in the market, that it doesn't cause cheaper power but in fact leads to higher rates and less environmental protection. There is no compelling argument whatsoever that the privatization of both transmission and generation is in the interests of Ontarians, and we are opposed to the privatization of both.

Mr Bryant: Can I just speak to that? I'll make it short. I respect the interpretation of the position of the New Democratic Party circa 2002. But in 1997, the position of the New Democratic Party was articulated by Floyd Laughren, who was a representative on the select committee that dealt with electricity reform. He said very clearly, in response to a comment made by the Hon-

ourable Donald Macdonald, that he, on behalf of his party, had no quarrel, given the circumstances with the reform that was necessary, to permit competition in electricity. He clearly said that. I've spoken to that in the Legislature before, and we don't need to go up and down that path again. It was the position of all three parties that in fact we had to move forward with competition to make more electricity in Ontario.

1700

Secondly, there was, I think, a fairly clear statement of support for reform to permit competition in the final dissenting submission of the NDP. But that said, that was then and this is now. In fact, Ms Churley has articulated the position of the third party very clearly. I just wanted to respond to her rebuttal of my response, and hopefully it will be the last, but it may not be, in terms of the discussion on this particular provision.

Ms Churley: Nice try, Mr Chair. I see the Tory members are sitting back and really enjoying this spat, but I would say to the Liberal member that his interpretation of the remarks by Mr Laughren, who was then a member of the New Democratic Party, is somewhat misconstrued and interpreted to the advantage of his particular take on this. But let's go ahead and vote on the amendment before us.

The Vice-Chair: I will now put the question.

Ms Churley: Recorded, please.

Ayes

Bryant, Churley.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Government motion 41.

Mr Gilchrist: I move that subsection 31(3) of schedule A to the bill be amended by adding at the beginning "Section 23 and".

The Vice-Chair: Discussion?

Mr Gilchrist: The purpose of the amendment is to provide for a later proclamation date of section 23.

The Vice-Chair: I will now put the question.

All those in favour? Carried.

Shall section 31 of schedule A, as amended, carry? Carried.

Shall schedule A, as amended, carry? Carried.

We're now on schedule B. Shall sections 1 through 7 of schedule B carry? Carried.

Government motion 42.

Mr Gilchrist: I move that section 8 of schedule B to the bill be amended by striking out "subsection" and substituting "subsections" in the third line and by adding the following subsection after subsection 78(5.1) of the Ontario Energy Board Act, 1998:

"Same, statutory right to use corridor land

"(5.2) Despite subsection (5), in approving or fixing just and reasonable rates for a transmitter who has a statutory right to use corridor land (as defined in section 114.1 of the Electricity Act, 1998), the board shall apply a method or technique prescribed by regulation for the treatment of the statutory right."

The Vice-Chair: Discussion?

Mr Gilchrist: It just says the OEB will have the ability to prescribe a regulation for the treatment of the corridor lands. It's necessary to ensure that revenues which Hydro One is entitled to recover through its rates are not reduced due to a reduction in asset value resulting from any change in ownership.

The Vice-Chair: I'll now put the question on government motion 42.

All those in favour? Carried.

Shall section 8 of schedule B, as amended, carry? That's carried.

Shall section 9 of schedule B carry? Carried.

Government motion 43.

Mr Gilchrist: I move that subsection 10(7) of schedule B to the bill be amended by striking out "clause" in the second line and substituting "clauses" and by adding the following clause after clause 88(1)(h) of the Ontario Energy Board Act, 1998:

"(i) prescribing, for the purposes of subsection 78(5.2), methods and techniques for the treatment of the statutory right to use corridor land."

The Vice-Chair: Discussion?

Mr Gilchrist: Again, it's simply regulation-making powers given to the OEB.

The Vice-Chair: I will now put the question on government motion 43.

All those in favour? Carried.

NDP motion 44.

Ms Churley: I move that section 10 of schedule B to the bill be amended by adding the following subsection:

"(8) Subsection 88(1) of the act is amended by adding the following clause:

"(i) establishing and governing a renewable portfolio standard that requires electricity generators to produce the prescribed proportion of electricity from renewable resources (as defined by regulation), and providing that the prescribed proportion must not be less than 20% by January 1, 2020;"

The Vice-Chair: Discussion?

Ms Churley: Yes. Although the government claims that by privatizing Hydro and our electricity there will be the opportunity for more renewable energy to come on the grid, in fact environmental groups have told us the opposite. We have seen the opposite. They brag about a windmill and some fiddling around the edges having happened, which I acknowledge has happened, although energy efficiency conservation programs that the NDP brought in have been cancelled and we're further behind. As the bill now stands, there's nothing in it to make sure we do have this renewal portfolio inserted to ensure that it actually happens. I remind the committee of the alternative fuel report, which is a very good report with a

lot of fine recommendations. I sat on that committee, as did some of the members of the government side, and I believe it's incumbent upon all of us, if we do support the recommendations of this, to support this amendment.

Mr Bryant: I support the amendment, although I confess that the particular number of 20% by January 1, 2020—I'm going to support the amendment because I support the concept and setting a goal for a renewable portfolio standard. I'm not sure whether or not the number is perfectly accurate, but in any event that's the nature of what happens when we have to debate motions with a very short timeline, and that's no fault of the New Democratic Party. I would support it because this is an amendment to the original Electricity Act, 1998 that we in fact put forward in 1998. It was put forward by Sean Conway at the time and defeated by the government. I don't know what the government's going to do with this motion now, but we will support this motion. Enough said.

Ms Churley: I just wanted to clarify the number—and it's a good question. It's always difficult to determine timelines and numbers. What we tried to do here was make it as reasonable as possible. Obviously if we could accelerate it, that would be good. But so there's more of a chance that all members of the committee would see it as a reasonable amendment, something that is achievable and could be done—if others want to amend it to make the timeline even tighter, I would certainly support that. But I was hoping that this is reasonable enough that all members of the committee could support it.

Mr Gilchrist: I must say to Ms Churley that I was a little disappointed when I saw this appear in the packet here today. I don't want to turn this into a lecture, but as the person who was the author of the recommendation that was ultimately endorsed by the select committee on alternative fuel sources, let me just say that my disappointment arises from the fact that my original proposal had in fact, as you will recall, prepared a schedule that started literally next year and set an increasing percentage going forward to culminate at 33%.

You will also recall—and I say this for the benefit of Mr Bryant and I say it very sincerely to you—that the considered opinion expressed by yourself and the three Liberal members was that they were not comfortable picking a number out of the air. Ultimately the committee decided upon a process where stakeholders in the industry and the ministries and environmental groups would be invited to prepare a proposal with the timelines that they thought were appropriate.

I obviously support the concept of renewable portfolio standard as strongly as anyone else in this Legislature. I would remind you, though, that we have challenged the ministries and the government to reply to the entire report within 120 days of its tabling. I believe that is the appropriate time to reflect on the entire packet of recommendations. I don't think we should be picking one out in isolation and trying to tack it on here.

I strongly suspect you weren't being mischievous. I suspect—and I'm saying this sincerely to you, Marilyn—that this is a sincere initiative you've undertaken, but I say, with all due respect, that it would make far more sense that we deal with the whole report as a report and, quite frankly, deal with the final position taken by yourself and all other members of the committee when we approved that report, that a process that included environmental groups and letting them tell us what the percentages should be was the one that we ultimately adopted.

I'm not prepared, for the sake of any expediency here today, to change that position. I want to see what the government's response is, and then I will form an opinion of whether or not they have been true to the spirit of the alternative fuels committee report.

1710

Ms Churley: I appreciate the fact that Mr Gilchrist was going out of his way to not lecture me; however, I believe there was some element of that in his choice of words. I want to say two things about that. We all agreed to compromise in certain areas so we could sign off on this report. There are some elements in the report that I don't fully support, as there are, I'm sure, with you. But in the spirit of compromise—and overall, it's a good report—we all signed off on it.

But I want to make it really clear that my agreeing to represent the New Democratic Party on that committee and signing off on that report in no way—and I make this very clear—compromises my ability as the environment critic and somebody who cares deeply about these issues to now be restricted from taking any opportunity that I can, as I've always done before the alternative fuels committee was set up and will continue to do.

I find it a very difficult premise to accept that because we all signed off on the recommendations in this committee report, I don't have the right to use the opportunities that come before me to further an environmental agenda, which is partly why I'm a legislator. That's my passion; that's what I do. And this is certainly an opportunity here that I have to seize. We have a bill before us which unfortunately leaves out that component, which is very important.

I just want to make it clear to the member that it's indeed not being mischievous; it's indeed a sincere effort to try to get this committee to agree that this is an opportunity we can seize here to take something that needs to be done and insert it into this bill so we can move forward more quickly than we might. We don't know when the government's going to respond, and how many successive governments it's going to take to get some of those up and running—you have to admit, some of the timelines are pretty tough; some are simpler than others.

This is a key component if we want to get alternative green energy on the grid. If we don't start doing this quickly, then it's not going to happen for a very long time, in my view.

I just don't want the member to think that because I signed off on that report I'm not going to be seizing opportunities to further the agenda of getting green

power on the grid. That's what this amendment's all about. I hope, therefore, that you will support it.

Mr Gilchrist: I certainly would never suggest trampling on the rights of any of my colleagues on either side of the Legislature. I would simply offer for your consideration that two of our 141 recommendations have already been adopted in the June 17 budget, 10 days after the bill was tabled, which I think represented some very adroit rewriting of the budget by the finance minister in a very short timeline. But I would also remind you that if you're suggesting that somehow there was compromise, we compromised away from my position on behalf of the government, of 33%. So I'm intrigued that you've picked a lower number than what was on the table already.

Having said that, we've got our respective positions on the table, although I will just say as a final comment, I can assure you that I will be just as keen an observer of the response time taken by the ministries. As you know, the committee exercised its ability to demand a 120-day response to the report, and I'm sure that the ministries will respect that.

The Vice-Chair: I will now put the question on NDP motion number 44.

Ms Churley: Recorded, please.

Ayes

Bryant, Churley.

Nays

Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

NDP motion number 45.

Ms Churley: I move that section 10 of schedule B to the bill be amended by adding the following subsection:

"(9) Subsection 88(1) of the act is amended by adding the following clause:

"(j) establishing and governing a system benefits charge and providing for the purposes to which the revenue from the charge can be put, in accordance with the following specifications:

"1. The regulation may authorize a system benefits charge of not more than 0.3 cents per kilowatt hour to be imposed on all electricity rates.

"2. The revenue from the charge must be paid to a corporation to be established by the regulation, to be known as the Conservation Corporation of Ontario.

"3. The Conservation Corporation of Ontario is permitted to use the revenue to fund incentives for electricity conservation by individuals and by businesses.

"4. The board of directors of the Conservation Corporation of Ontario must be composed of experts in energy conservation who are independent from the crown.

"5. The Conservation Corporation of Ontario must be a crown agency."

The Vice-Chair: Discussion?

Mr Gilchrist: On a point of order, Chair: I hate to do this to Ms Churley, but in two different ways my submission is that this amendment is out of order, first off because it seeks to impose a new charge, fee or tax. It is in violation of the Taxpayer Protection Act.

Interjection.

Mr Gilchrist: No. The amendment would be in order if you had included a line that sought to amend the Taxpayer Protection Act to incorporate. But that is the lesser of the two ways in which it's problematic.

The important one and, I would submit to the Chair and to the clerk, the insurmountable one, is that under standing order 56 there is a requirement that any revenue measure presented that imposes a tax or any other fee, or the spending of any revenue, must be introduced by a minister of the crown through a message from the Lieutenant Governor.

Since this motion seeks to impose directly a new fee of 0.3 cents per kilowatt hour on all electricity rates and furthermore directs where the revenue must proceed, it's therefore out of order pertinent to standing order 56.

The Vice-Chair: Thank you. I'll get legal counsel to speak to that matter.

Ms Laura Hopkins: The amendment is a change to regulation-making power that would authorize the crown to make a regulation creating this charge. A recent ruling of the Speaker would suggest that that's not a money bill provision, and so it's not inappropriate for a person who's not a minister of the crown to propose it as an amendment. So my advice to the committee is that this isn't a money bill motion.

Mr Gilchrist: I guess I would say in response that it is not my reading of this that she is introducing the ability to set a regulation, which was the issue presented to the Speaker; it's that the content of the regulation is that it be designed in such a way as to specify where money comes from and where it goes to. So I don't know whether that ruling is comparable or appropriate.

Having said that, I'm at the discretion of the Chair.

The Vice-Chair: Any further comment?

Ms Hopkins: No.

The Vice-Chair: OK. I declare it in order.

Ms Churley: I appreciate your comments and why you might think that, because I myself, when I was writing this amendment, did check and was told that it was in order because it is through regulation.

The purpose of this is the same reasons I gave for my previous amendment. I'm using this bill as an opportunity to take—although, again, it's not word for word—a recommendation, something that I feel very strongly about. This bill gives us an opportunity to get something happening right away on the system benefits charge, which is, as you would have heard, Mr Gilchrist, from the alternative power providers, very frustrating for them, and until we have a system benefits charge, it's very difficult to proceed.

Again, I understand that it's not word for word, corresponding to the recommendations in the report; however, I'm happy—because this is my preferred

option—to change the wording word for word directly from the report, if that would suit the members better.

1720

Mr Bryant: I just have a question. I think we're all assuming that everybody understands the benefits of a system benefits charge. Maybe you could just talk about that for a bit and why you're putting the number at 0.3 cents and maybe talk a little bit more about the purpose of the provision. You're creating a crown corporation, I take it, with this amendment?

Ms Churley: Yes.

Mr Bryant: Fire away.

Ms Churley: When we did the public hearings on alternative fuels, we had many recommendations about some of the policy changes and financial incentives that needed to be put in place in order for alternative fuels to come on the grid. On page 14 of the report—I'm just trying to find for you the specific recommendation and describe to you why I changed the number here, but I can't at the moment. Just a second.

Mr Gilchrist: Perhaps I could help, Ms Churley. Mr Bryant, is your question just about the philosophy of a system benefits charge? Basically it is a proviso that there is funding in place to create incentives for consumers and businesses to implement green power. So recognizing that right now, particularly in this country, we have few or no indigenous manufacturers of wind turbines, solar arrays or biomass collection facilities, the government, through its utility, would create a fund that would then be allocated, perhaps directly to a consumer, perhaps to lower the rate you pay for green power or as a direct subsidy to a manufacturer to encourage them to set up shop in Ontario to make wind turbines, for example. Basically, it's a fund that everyone is contributing a little bit to that in aggregate would create a lot of money.

Mr Bryant: Just another short question: do I take it the government's concern with this provision is more with the order and less with the concept of the system benefits charge and the creation of a Conservation Corp of Ontario?

Mr Gilchrist: It's very much—again, for your benefit, because I wouldn't expect you to have committed to memory the 141 recommendations—

Mr Bryant: I haven't memorized them yet.

Mr Gilchrist: In the report, we have suggested that something called the Ontario Energy Research Institute be created and funded and it would stand at arm's length. We didn't call it the Conservation Corp of Ontario, but it would have the same effect. It would be responsible for the development of all programs such as the one we're talking about in this amendment.

More to the point, though, I should say—and this was one where I would be prepared to use the word "compromise," and Ms Churley did the compromising; we had proposed 0.1 cent, and she had proposed 0.3 cents. When it was pointed out that this would equal a $520-million increase to the electricity bill of the folks in the province of Ontario, the committee, by consensus, recognized that 0.1 cent was probably a more appropriate level to seek feedback from the government on. So that is what's in the report—0.1 cent.

I will be opposing this motion for a specific and simple reason: if you had $520 million today, it is highly unlikely you would be able to find enough willing takers today to spend it all. The industry is not mature enough. It couldn't deliver enough wind turbines or solar arrays to spend all that money. So as something longer term, perhaps it's an appropriate course of action for the government to follow. In the short term, I think a far more modest charge would reflect the ability of industry to actually deliver the goods.

Ms Churley: Thank you. I was trying to find the actual recommendation. It was right before my eyes and I couldn't see it. When we were discussing this, it's true that we didn't agree on the number. I could change the wording if you would agree, then, to exactly the recommendation in the book, 0.1 cents per kilowatt hour, if you'd be willing to support that.

Mr Gilchrist: My more substantive concern is—and again, as the author of that specific recommendation I obviously support the concept, as did every other member around the table. We went forward. I'm challenged, though, by the fact that that one in particular is tied to a number of other initiatives; namely, the creation of an entity, the power of that entity, the fact that it's at arm's length and will have separate funding so that it will be able to stand alone to develop these sorts of programs and the fact that it will also complement an initiative that you were keen to see, namely, consumer education for conservation, which we all agreed with.

So even more, perhaps, than the previous amendment we debated, I have great difficulty with this one going forward on its own. I think it's too intrinsically tied to a number of other amendments. I'm quite prepared to put on the record that I agree with a systems benefit charge, I agree with conservation measures, I agree with incentives to promote green power—strongly. I don't believe that the methodology of this stand-alone amendment moves us forward, and I would simply repeat that within the 120 days, 19 of which have already elapsed, we will have an opportunity to reflect on the whole basket of initiatives. I think that would be the appropriate time, Marilyn, to offer criticisms if the government didn't go far enough, or kudos if it did.

Mr Bryant: I would just like to say I find myself reluctantly agreeing with Mr Gilchrist on this one, and it is primarily about the details. I think we all agree on the concept, but with respect to the particular number provided, it sounds like 0.3 cents would be divergent from the recommendations of the committee. I, of course, support those recommendations and support what New Democrats are trying to do here, but I just can't support the particular wording of this amendment.

Ms Churley: I appreciate that, but this bill once again gives us an opportunity to move forward on something that isn't new. It came up before the alternative fuels committee as a piece of the whole pie. But this particular

piece has been kicking around for a very long time, and no action has been taken.

I just want to point out that it sounds like a lot of money, but when you break it down—and again, I didn't have time to prepare properly for this committee and bring the numbers with me, but it's broken down to a very, very small increase on people's rates. It sounds like a lot of money when you put it out there in the millions of dollars—and this coming from a government that's about to privatize and people's rates are going to go through the roof, at the same time as the environment, our air quality, is going to get worse, sounds a bit disingenuous.

I just want to add again for the record that the externalities of the cost to burning coal and other fossil fuels, which we don't take into account when we're talking about the cost of our electricity and the health costs, all of those things, is indeed an upside-down situation. We are actually in a situation now where it costs more to bring on green power, which costs us less as a society, but because of the kind of traditional system we have, where we burn fossil fuels, those externalities aren't taken into account. So I agree that if you're not well versed in this issue, it sounds like a complex issue, but this particular piece is not all that complex in terms of what we need to do to move forward to be able to bring that green energy on.

I appreciate the fact that we don't have the time on this particular bill, which is primarily about protecting the environment, but this is an opportunity to move forward on a very important piece that we're losing here by not supporting it.

The Vice-Chair: I'll put the question on NDP motion 45.

Ms Churley: Recorded vote, please.

Ayes

Churley.

Nays

Bryant, Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: I declare the motion lost.

Shall section 10 of schedule B, as amended, carry? Carried.

Government motion 46, and it's section 11.

1730

Mr Gilchrist: I move that section 88.1 of the Ontario Energy Board Act, 1998, as set out in section 11 of schedule B to the bill, be amended by adding the following definition:

"'contract' means an agreement between a consumer and a retailer of electricity for the provision of electricity or an agreement between a consumer and a gas marketer for the provision of gas."

The Vice-Chair: Discussion?

Mr Gilchrist: It provides a definition of the term "contract."

The Vice-Chair: I will now put the question.

All those in favour of government motion 46? Carried.

Government motion 47.

Mr Gilchrist: I move that subsection 88.8(1) of the Ontario Energy Board Act, 1998, as set out in section 11 of schedule B to the bill, be struck out and the following substituted:

"Voluntary compliance

"(1) Any person against whom the director proposes to make an order to comply under section 88.5 or against whom the director has made an order under section 88.6 or 88.13 may enter into a written assurance of voluntary compliance undertaking,

"(a) to not engage in the specified unfair practice after the date in the assurance in respect of a proposed order under section 88.5 or an order under section 88.6; or

"(b) to not make the false, misleading or deceptive statements after the date of assurance in respect of an order under section 88.13."

The Vice-Chair: Discussion?

Mr Gilchrist: The existing section allows a person, either a gas marketer or electricity retailer, to enter into a written assurance of voluntary compliance undertaking to not engage in the unfair practice that was the subject of a proposed order, or an order for immediate compliance. This amendment allows the marketer-retailer to enter into a written assurance of voluntary compliance undertaking to not make the false, misleading or deceptive statements that are the subject of an order to cease, retract and/or correct them, as ordered by the director of licensing.

The Vice-Chair: Discussion?

Ms Churley: I'm going to oppose this amendment, because this seems to allow for voluntary agreements with the market instead of the enforcement that the NDP would be calling for. Correct me if I'm wrong, Mr Gilchrist, but that's what it does. So I oppose it.

The Vice-Chair: I will now put the question.

Ms Churley: Recorded, please.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Churley, Bryant.

The Vice-Chair: I declare the motion carried.

NDP motion 48.

Ms Churley: I move that part V.1 of the Ontario Energy Board Act, 1998, as set out in section 11 of schedule B to the bill, be amended by adding the following section after section 88.8:

"Transition: cancellation of certain contracts

"88.8.1(1) This section applies with respect to a consumer,

"(a) who has signed a contract with a retailer of electricity on or after January 1, 1999 and before the day on which the Reliable Energy and Consumer Protection Act, 2002 receives royal assent for the supply of electricity; and

"(b) who uses less than the amount of electricity prescribed by regulation for the purposes of this section.

"Same

"(2) The contract described in clause (1)(a) is cancelled 60 days after the Reliable Energy and Consumer Protection Act, 2002 receives royal assent unless the consumer reaffirms it in writing before the 60-day period expires.

"Regulations

"(3) The Lieutenant Governor in Council may make regulations prescribing an amount of electricity for the purposes of subsection (1)."

The Vice-Chair: Discussion?

Ms Churley: This makes the bill retroactive. When the door-to-door salesmen first went out there, people had absolutely no way of comparing apples to apples. That has been pointed out regularly and I think we would all agree with that. Don Dewees, a very knowledgeable person who is an economist, helped put together the market rules. He's quoted as saying that last fall, when somebody came to his door, he couldn't make a reasonable decision based on what he was told at the door and the lack of information out there then.

There are up to a million people who signed contracts previously. Not all of those door-to-door salespeople were bad apples, but we know that there were a lot of con artists out there who misled people. But even for the honest players, the information that was available to give people at the door was not adequate for people to make reasonable decisions, so they're stuck.

Again, Howard Hampton has raised this in the House on many occasions. We appreciate the fact that the government is finally coming forward with a consumer protection amendment to this bill, but it doesn't deal with all of those people—many, many thousands, up to a million people—who have been either deliberately scammed and ripped off or, because the information wasn't available to them at the door, signed contracts that weren't reasonable. They're now stuck with those. Something needs to be done to help those people.

I understand the government's concern about doing such a thing retroactively, particularly to those honest players out there. But we have to think of the consumers and the ratepayers first, and the fact that they signed deals without all the facts before them. There's nothing in place to protect them after the fact.

The Vice-Chair: I will now put the question on NDP motion number 48.

All those in favour? Opposed? Defeated.

Ms Churley: I meant to ask for a recorded vote on that. Could I have unanimous consent, please?

The Vice-Chair: Certainly. A recorded vote on NDP motion number 48.

Ayes

Bryant, Churley.

Nays

Dunlop, Gilchrist, Gill, McDonald.

The Vice-Chair: The motion is defeated.

Government motion number 49.

Mr Gilchrist: I move that section 88.9 of the Ontario Energy Board Act, 1998, as set out in section 11 of schedule B to the bill, be struck out and the following substituted:

"Written copy of contract

"(1) If a retailer of electricity or gas marketer enters into a contract with a consumer, the retailer of electricity or gas marketer shall deliver a written copy of the contract to the consumer within the time prescribed by regulation.

"Contract ceases to have effect

"(2) If a gas marketer or retailer of electricity fails to deliver a written copy of the contract in accordance with subsection (1), the contract ceases to have effect.

"Need to reaffirm contract

"(3) If a contract has been delivered to a consumer in accordance with subsection (1), the contract ceases to have effect unless it is reaffirmed by the consumer in accordance with this section before the 31st day following the day on which the written copy of the contract is delivered to the consumer.

"Consumer to take steps to reaffirm

"(4) A consumer may only reaffirm a contract following the 14th day after a written copy of the contract is delivered to the consumer in accordance with subsection (1) and may only do so by taking such steps as are prescribed by regulation.

"Effect of reaffirmation

"(5) A consumer who has reaffirmed a contract in accordance with subsection (4) may not give notice under subsection (6) to not reaffirm the contract.

"Contract not reaffirmed

"(6) The consumer may give notice to not reaffirm the contract in accordance with the regulations at any time before the 31st day following the day on which the written copy of the contract is delivered to the consumer.

"Application of subss (1) to (6)

"(7) Subsections (1), (2), (3), (4), (5) and (6) apply with respect to contracts entered into on or after the day on which this section comes into force.

"Renewal or extension of contract

"(8) A contract with a consumer may be renewed or extended only in accordance with the regulations.

"Application of subs (8)

"(9) Subsection (8) applies to the renewal or extension of any contract that would, if not renewed or extended, expire after subsection (8) comes into force.

"Contract ceases to have effect

"(10) A contract ceases to have effect on a day prescribed by regulation or determined in accordance with the regulations,

"(a) if the contract is not delivered to the consumer in accordance with subsection (1);

"(b) if the contract is delivered and the consumer does not reaffirm the contract in accordance with subsection (4); or

"(c) if the contract is delivered and the consumer gives notice not to reaffirm the contract in accordance with subsection (6).

"No cause of action

"(11) No cause of action against the consumer arises as a result of a contract ceasing to have effect under this section.

"Return of prepayment

"(12) Within 15 days after a contract ceases to have effect pursuant to this section, the retailer of electricity or gas marketer shall refund to the consumer any amount paid under the contract before the day the contract ceased to have effect in respect of electricity or gas that was to be sold on or after that day.

"Consequence of contract ceasing to have effect

"(13) If a contract respecting gas ceases to have effect under this section, the consumer has no further obligations as of the day prescribed by regulation or determined in accordance with the regulations under that contract or any agreement entered into by the gas marketer as agent or broker for the consumer for the provision of gas.

"Same

"(14) If a contract respecting electricity ceases to have effect under this section, the consumer has no further obligations as of the day prescribed by regulation or determined in accordance with the regulations under that contract or any agreement entered into by the retailer of electricity as agent or broker for the consumer for the provision of electricity.

"No cause of action

"(15) No cause of action against the consumer arises as a result of the operation of subsection (13) or (14)."

The Vice-Chair: Discussion?

1740

Mr Gilchrist: We did indeed listen. We have in fact heard the stories of inappropriate sales behaviour that has taken place in a limited fashion across this province. The member opposite talked about the hundreds of thousands of contracts that have been signed, and there's no doubt that a small percentage of those have given rise to complaints that have been registered with the Ontario Energy Board. It has to be stated that over and above what we are proposing to add as a consumer bill of rights, there are already existing consumer protections and, more to the point, extraordinary powers given to the Ontario Energy Board to pursue those who would perpetrate inappropriate sales behaviour and activities.

To date, we know that there have been two retailers fined for their practices. I would note for the record that in one case they sold their company. In the other case they have discontinued all door-to-door and telephone sales practices and will rely solely on written correspondence that will allow consumers time in a calm and measured way, and in the privacy of their own home, to take time to research the issue and come to an informed conclusion before executing any contract.

What this bill does, of course, is quite unprecedented. Unlike when you signed up for cable TV, your telephone, your newspaper subscription or even when you took a mortgage on your house, and you were not required to re-execute the contract.,we are suggesting, in response to the unfortunate situation of a few bad apples spoiling it for everyone else, that consumers will be required to reassert their interest in moving away from their local utility. They will have to do it in a positive way. This is not a negative option. I think you will see elsewhere that it's our intention to make the process as easy as possible for the consumer and the retailer in terms of transmitting that confirmation.

At the heart of this amendment is the belief that certainly now in a new marketplace there have been demonstrations of inappropriate sales behaviour. The government is not happy with that. We will not tolerate that. We will set a high standard. I challenge any member to find any other sales contract that is subjected to such extraordinary consumer protection. It is in that spirit that we are proposing the amendment I have just read.

Ms Churley: To understand this, you can't change your mind after reaffirming the contract even if it's still within the 31 days? Within that 31-day period you can't change your mind?

Mr Gilchrist: Are you asking about once you have said yes a second time?

Ms Churley: Yes. I thought there were 31 days—"before the 31st day following the day on which the written copy"—after reaffirming. Within that 31 days in the contract, I would think you would still be able to change your mind.

Mr Gilchrist: I guess if you were at all in doubt, you should wait till the last possible minute to retransmit your approval. You have to draw the line somewhere. In fairness to the companies, the moment they have your reaffirmed contract, they will go out and forward-buy electricity on your behalf. At some point it has to be stated that consumers have responsibilities as well as rights.

Ms Churley: I understand. I wanted to ask that question. I hear what you're saying, but I disagree with you. So I will oppose that.

Mr Bryant: Just a question to the government. The way this amendment was presented—and correct me if I'm wrong—was as if it was brought in to provide greater consumer protection. I'm talking about this government motion. In fact, it seems to me that this government motion is responding to the concerns raised by the retailers who came in and provided submissions to this committee; in effect, appeasing their concerns with respect to consumer responsibilities. In that sense it seems to me that it's a withdrawal of the government from consumer protection, not a motion that in fact will increase consumer protection. But I'll let Mr Gilchrist respond.

Mr Gilchrist: I would say, having had the opportunity these last few days in committee to hear the positions expressed by retailers, I don't think this amendment in any way appeased the concerns they raised. I'll be very honest with you: the next amendment does facilitate the transmission of your information back and forth to take advantage of modern technology. If you want to consider that some kind of sop, I submit to you it cuts both ways. I don't believe you will find that retailers see this amendment as having been authored by their interventions.

The Vice-Chair: I will now put the question on government motion 49.

Ms Churley: A recorded vote.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Bryant, Churley.

The Vice-Chair: Carried.

Government motion 50.

Mr Gilchrist: I move that subsection 88.11(2) of the Ontario Energy Board Act, 1998, as set out in section 11 of schedule B to the bill, be struck out and the following substituted:

"Means of delivery

"(2) The notice of cancellation may be given to a gas marketer or retailer of electricity by any means that provides evidence of the date on which the consumer delivered or sent the notice including personal service, registered mail, courier or fax."

The Vice-Chair: Discussion?

Mr Gilchrist: I think it's self-explanatory.

The Vice-Chair: I will put the question on government motion 50.

All those in favour? Carried.

Government motion 51.

Mr Gilchrist: I move that subsections 88.11(4) to (6) of the Ontario Energy Board Act, 1998, as set out in section ll of schedule B to the bill, be struck out and the following substituted:

"Effect of cancellation

"(4) If a contract respecting gas is cancelled pursuant to this part, the cancellation takes effect on a day prescribed by regulation or determined in accordance with the regulations, and the consumer has no further obligations as of that day under that contract or under any agreement entered into by the gas marketer as agent or broker for the consumer for the provision of gas.

"Retailer to ensure reading of consumer's meter

"(5) If a consumer gives notice of cancellation under subsection (2) with respect to a contract for the provision of electricity, the retailer of electricity shall promptly notify the distributor that the contract has been cancelled and the distributor shall read the consumer's electricity meter within the period prescribed by regulation.

"Retailer responsible for additional costs

"(6) The retailer of electricity is responsible for the payment to the distributor of any additional costs that are incurred by the distributor to ensure compliance with subsection (5).

"Same

"(7) If a contract respecting electricity is cancelled pursuant to this part, the cancellation takes effect on a day prescribed by regulation or determined in accordance with the regulations, and the consumer has no further obligations as of that day under that contract or under any agreement entered into by the retailer of electricity as agent or broker for the consumer for the provision of electricity.

"Same

"(8) No cause of action against the consumer arises as a result of the cancellation of a contract under this part or as a result of the operation of subsection (4) or (7).

"Return of prepayment

"(9) Within 15 days after a cancellation takes effect under this section, the retailer of electricity or gas marketer shall refund to the consumer any amount paid under the contract before the day the cancellation took effcct in respect of electricity or gas that was to be sold on or after that day."

The Vice-Chair: Discussion?

Mr Gilchrist: This agreement makes some pretty simple changes. The word "contract" is changed to a more general term, "agreement", and subsections (5) and (6) provide that when a consumer gives notice to cancel the contract due to a contract not having the required information, the next reading of the meter, which effectively terminates the supply of electricity on the contract, will not be unduly delayed.

The Vice-Chair: I will now put the question.

All those in favour of government motion 51? Carried.

Shall section 11 of schedule B, as amended, carry? Carried.

Shall sections 12 through 17 carry? Carried.

Government motion 52, on section 18.

Mr Gilchrist: I move that clauses 127(1)(j.6) and (j.7) of the Ontario Energy Board Act, 1998, as set out in section 18 of schedule B to the bill, be struck out and the following substituted:

"(j.6) governing the reaffirming or not reaffirming of contracts under Part V.1;

"(j.7) for the purposes of Part V.1, prescribing the day or the method of determining the day,

"(i) on which a contract ceases to have effect,

"(ii) on which a consumer has no further obligations if a contract ceases to have effect,

"(iii) on which the cancellation of a contract takes effect;

"(j.8) governing the time within which a copy of a contract is to be delivered under section 88.9;

"(j.9) governing the period in which a distributor is to read a consumer's electricity meter under subsection 88.11(5);

"(j.10) governing the renewal or extension of contracts under Part V.1;"

Simply, the amendment makes changes to the regulation-making powers given to the Lieutenant Governor in Council under the act.

The Vice-Chair: I will now put the question.

All those in favour of government motion 52? Carried.

Shall section 18 of schedule B, as amended, carry? Carried.

Shall section 19 of schedule B carry? Carried.

Shall schedule B, as amended, carry? Carried.

Shall sections 1 through 5 of schedule C carry? Carried.

Government motion 53.

Mr Gilchrist: I move that section 6 of schedule C to the bill be amended by adding "Subject to subsection (2)" at the beginning.

That simply reflects the later proclamation date.

The Vice-Chair: I will now put the question.

Shall government motion 53 carry? Carried.

Government motion 54.

Mr Gilchrist: I move that section 6 of schedule C to the bill be amended by adding the following subsection:

"Same

"(2) Subsection 1(1) comes into force on a day to be named by proclamation of the Lieutenant Governor."

The Vice-Chair: Discussion? I will now put the question.

Shall government motion 54 carry? Carried.

Shall section 6 of schedule C, as amended, carry? Carried.

Shall section C, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 58, as amended, carry?

Ms Churley: A recorded vote.

Ayes

Dunlop, Gilchrist, Gill, McDonald.

Nays

Bryant, Churley.

The Vice-Chair: Carried.

Shall I report the bill, as amended, to the House? Agreed.

That being all the business for the day, I declare this meeting adjourned.

The committee adjourned at 1751.

CONTENTS

Monday 24 June 2002

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Vice-Chair / Vice-Président
Mr Norm Miller (Parry Sound-Muskoka PC)

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Mr Raminder Gill (Bramalea-Gore-Malton-Springdale PC)

Also taking part / Autres participants et participantes

Clerk / Greffière
Ms Anne Stokes

Staff /Personnel
Ms Laura Hopkins, legislative counsel