

October 18, 2013

Hon. Kathleen Wynne, Premier of Ontario
Legislative Bldg, Room 281, Queen's Park
111 Wellesley Street West
Toronto, ON M7A 1A1

Delivered via e-mail

Dear Premier Wynne:

Re: Canada and European Union Comprehensive Economic & Trade Agreement (CETA)

The Canadian Environmental Law Association (“CELA”) writes to express our utmost concerns about the agreement in principle on the Canada and European Union Comprehensive Economic & Trade Agreement (“CETA”) to which Ontario will be required to give its assent.

We understand that the Agreement operates with a negative option, i.e. those items that are expressly “reserved” are not included in the scope of the Agreement. In other words, everything else that is not mentioned is included.

In a letter to former Premier McGuinty dated January 11, 2012, we expressed serious concerns that Ontario’s reservations were inadequate to provide sufficient protection for drinking water, sewage and waste water treatment, waste management and public transportation from drastically liberalizing provisions, secured by investor dispute settlement mechanisms. We are very concerned that CETA could lead to the potential privatization of essential public services and compromise Canadian governments’ willingness to impose environmental, health and safety costs on providing those services to the public. We have also written a letter to Minister Bradley and Minister Chiarelli on June 8, 2013 with respect to this matter and copies of both letters are attached.

We ask that in the event essential public services are not excluded from the application of the CETA, you deny Ontario’s consent to the Agreement.

We thank you for your attention and would be pleased to meet with you and your staff to discuss this matter further.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa McClenaghan
Executive Director & Counsel



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

January 11, 2012

Hon. Dalton McGuinty, Premier of Ontario
Legislative Bldg, Room 281, Queen's Park
Toronto, Ontario, M7A-1A1

Via e-mail

Dear Premier McGuinty,

Re: Ontario's services offer for the Canada and European-Union Comprehensive Economic & Trade Agreement (CETA)

As Canada is set to conclude its negotiations with the European Union on its most comprehensive trade agreement to date, binding both Ontario and its municipalities, the Canadian Environmental Law Association (CELA) would like to bring your attention to the serious potential for negative environmental implications arising from Ontario's recent services offer.

Canada and its Provinces released their service offers -that is, lists of services they want excluded from the ambit of CETA- to the European Commission negotiators on October 12, 2011. These offers were leaked to Canadian Civil society shortly thereafter.

Ontario's offer did not include the following essential public services:

- drinking water,
- sewage and waste water treatment,
- waste management, and
- public transportation.

CELA not only urges Ontario to include these in its services offers going forward on CETA, but also, that these negotiations be open and transparent and subject to public scrutiny.

Services offers under CETA

Under CETA, services are subject to its drastically liberalizing provisions secured with investor-state dispute settlement mechanism, unless they are included in an exemption list. The Canadian negotiators have provided two lists, specifying that:

- Annex I reservations apply to "*any existing* non-conforming measures that are maintained by the national or sub-national (provincial or municipal) levels of government"; while,



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- the items listed in Annex II apply to “any measures that *are maintained or to be adopted* by the national or sub-national levels of government with respect to sectors, subsectors or activities.” [emphasis added]

Ontario Hydro One and its subsidiaries have been listed in Annex I to protect the Ontario monopoly from CETA ‘market access’ provisions. CELA supports the listing of Hydro One and its subsidiaries, as it helps to ensure accessibility and affordability of electricity in Ontario; however, it does not protect any future measures taken by Hydro-One or its subsidiaries. As such, Ontario should consider listing Hydro One to Annex II instead of Annex I.

In Annex II, CELA supports Ontario’s listing of renewable energy systems, so as to ensure the “right to adopt or maintain any measure relating to investment in or provision of services in renewable energy and renewable energy systems, including the production of wind and solar power.” This reservation from CETA provisions regarding national treatment, performance requirements, market access, and senior management and board of directors’ provisions will help protect Ontario’s efforts to support the renewable energy industry in Ontario, specifically under the *Green Energy Act*.

CELA is extremely concerned about the major environmental risks posed by the potential privatization under CETA of essential public services, and urges Ontario to include the following services under Annex II of its services offer:

- drinking water,
- sewage and waste water treatment,
- waste management, and
- public transportation.

Risks of subjecting essential public services to CETA’s provisions

Drinking water, sewage and waste water treatment are critical services that are essential to the protection of human health and the environment. To provide this protection, these services require high sanitation, environmental and health standards. Democratically elected governments are best placed to provide the necessary transparency and accountability to ensure high standards and universal access. This was well established in our 2001 report prepared for the Inquiry on public versus private ownership established during the Walkerton Inquiry, available at: http://s.cela.ca/files/uploads/public_private_paper.pdf.

Claims that water privatization tend to benefit the environment are refuted by many real-world examples.¹ Experiments with privatization of water and sanitation services have been shown to

¹ For further examples and analysis of the negative effects of privatization of public water, see: ‘Public Water for Sale: How Canada will Privatize our Public Water System’ (December 2010) Canadian Council of Canadians and



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lead to rate hikes and cut-offs to lower income households, poor environmental stewardship, and decreased transparency and accountability. Many of these issues were exemplified in Hamilton, Ontario, where privatization of water and waste-water treatment resulted in re-municipalization after millions of raw liters of sewage were spilled into the Hamilton harbour, for which the company evaded liability for years.

Liberalizing essential public services, like water, wastewater, public transportation, and sewage treatment would also limit Ontario's ability to leverage these industries for green jobs, a policy enacted in both the *Green Energy Act* and *Water Opportunities Act*.

Furthermore, under CETA, any access that foreign corporations and investors would gain to Ontario public services would empower them with legal rights enforceable in international tribunals; tribunals with a history of favouring commercial rights over environmental, health, or other social rights.

Our governments oversee our public services in the public interest and these need to be retained in public ownership and control, a principle which your government to this point supported. We urge you not to deviate from this position in respect of CETA.

The decision of whether to provide EU investors with rights to our essential public services is up to the provinces. CELA urges you to reconsider Ontario's recent services offer by expanding it to include the essential services listed above in Annex II.

Sincerely,

Theresa McClenaghan
Executive Director and Counsel
Canadian Environmental Law Association
theresa@cela.ca
(416) 960-2284, ext.219

CC: Hon. Brad Duguid, Minister of Economic Development and Innovation,
Hon. James J. Bradley, Minister of the Environment, and
Hon. Kathleen Wynne, Minister of Municipal Affairs and Housing.

the Canadian Union of Public Employees, available at: <http://canadians.org/trade/documents/CETA/water-report-1210.pdf>



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- For further information about the potential environmental impacts of CETA, see our report at: <http://www.cela.ca/publications/report-environmental-impact-canadian-european-union-comprehensive-economic-and-trade-ag>
- For further information about the potential for water privatization under CETA, see the following report at: <http://canadians.org/trade/documents/CETA/water-report-1210.pdf>
- For an in-depth analysis of public versus private water ownership in Ontario, see our report at: http://s.cela.ca/files/uploads/public_private_paper.pdf



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Association
EQUITY. JUSTICE. HEALTH.

July 8, 2013

Minister Robert Chiarelli
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario M7A 2E1

Re: Canada and European Union Comprehensive Economic & Trade Agreement (CETA)

Dear Minister Chiarelli:

The Canadian Environmental Law Association writes to express our utmost concern about an imminent decision that Ontario will have to make. This decision concerns the Canada and European Comprehensive Economic and Trade Agreement under discussion between Canada and the EU. If and when the Canadian government concludes a draft agreement, Ontario will be asked to indicate its assent to the provisions of the Agreement.

We want to draw to your attention that there are provisions in the draft Agreement that could relate directly to the provision of provincial local electricity services. The scope of application of the CETA in Ontario is to be determined by Ontario. We understand that the Agreement operates with a “negative option” – those items that are expressly “reserved” by Ontario are not included in the scope of the Agreement. Everything else that isn’t mentioned is included.

We expressed our concern to your government in a letter to Premier McGuinty dated January 11, 2012 (attached) that Ontario’s reservations were insufficient to protect public provision of water and wastewater services. We have written a separate letter at this time to Minister Bradley with respect to the necessity of a reservation for municipal water and wastewater services.

We follow up with this letter to urge you in the strongest possible terms to ensure that provision of local and provincial electricity services are “reserved” and therefore excluded from the services and investment provisions of the Agreement and that the procurement of electricity and related goods and services by provincial and municipal energy utilities are fully excluded from the procurement obligations of the Agreement.

In previous versions of the draft CETA, Ontario’s reservation included listing of Ontario Hydro One under “Annex I” as “existing non-conforming measures”. CELA recommended in our January 2012 letter to the Premier that Ontario Hydro One should actually be listed under Annex II, as “measures to be maintained or to be adopted” so as to provide flexibility for future measures. We also urge you to strongly defend Ontario’s proposed Annex II reservation for “renewable energy systems”, which the latest draft we have seen indicates is “under review.”

Canadian Environmental Law Association

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However, we are dismayed to find that the latest version of the CETA, presumably based on conveyance of Ontario's revised position, Ontario's offer under the government procurement chapter has now included Ontario Power Generation (OPG) and Ontario Hydro One in the CETA subject to narrow conditions for procurements relating to construction or maintenance of nuclear power facilities. We are strongly concerned that covering procurement by OPG and Hydro One will undermine the province's ability to maximize local economic development benefits from renewable energy and undercut policies to support local participation and community support for renewable energy projects. We ask that you work with your cabinet colleagues and the Premier to instruct Ontario's negotiating team to ensure local and provincial electricity systems be fully excluded from the Agreement. Furthermore, we ask that in the event that this full exclusion is not contained in the proposed CETA once negotiated, that you deny Ontario's consent to the Agreement.

In addition, the coverage Ontario offers in CETA for energy utilities/agencies will restrict how the province responds to the decision in the WTO Green Energy Act case and any reforms to related policy in the coming year, if OPG is covered by CETA as seems to be proposed, and because, as recently announced by the Ministry, it will be allowed to bid on certain Green Energy Act projects.

We thank you for your attention. We would be very pleased to meet with you, your staff and your officials to discuss this matter further.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa McClenaghan
Executive Director and Counsel

c. Premier Kathleen Wynne

Encl.



**Canadian
Environmental Law
Association**
EQUITY. JUSTICE. HEALTH.

July 8, 2013

Minister James Bradley
Minister of the Environment
77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON
M7A 2T5

Re: Canada and European Union Comprehensive Economic & Trade Agreement (CETA)

Dear Minister Bradley:

The Canadian Environmental Law Association write to express our utmost concern about an imminent decision that Ontario will have to make. This decision concerns the Canada and European Comprehensive Economic and Trade Agreement under discussion between Canada and the EU. If and when the Canadian government concludes a draft agreement, Ontario will be asked to indicate its assent to the provisions of the Agreement.

We want to draw to your attention that there are provisions in the draft Agreement that relate directly to the provision of municipal water and waste water services. The scope of application of the CETA in Ontario is to be determined by Ontario. We understand that the Agreement operates with a “negative option” – those items that are expressly “reserved” are not included in the scope of the Agreement. Everything else that isn’t mentioned is included.

We expressed our concern to your government in a letter to Premier McGuinty dated January 11, 2012 (attached) that Ontario’s reservations were insufficient to protect public provision of water and wastewater services. We follow up with this letter to urge you in the strongest possible terms to ensure that provision of municipal water and wastewater services are “reserved” and therefore excluded from application under the Agreement. Ownership and governance of municipal water and wastewater services must be retained in the public domain in Ontario. This was one of the important lessons of the Walkerton Inquiry.

Your government has previously recognized the importance of this matter, when for example, in the *Water Opportunities Act*, 2010, you introduced and passed an amendment to that Bill that provided :

Purposes

1. (1) The purposes of this Act are,
 - (a) to foster innovative water, wastewater and stormwater technologies, services and practices in the private and public sectors;
 - (b) to create opportunities for economic development and clean-technology jobs in Ontario; and

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- (c) to conserve and sustain water resources for present and future generations.
2010, c. 19, Sched. 1, s. 1 (1).

Same

- (2) For greater certainty, the purposes of this Act do not include the privatization of publicly owned water, wastewater and stormwater services. 2010, c. 19, Sched. 1, s. 1 (2).

This issue was also discussed during the Walkerton Inquiry. Mr. Justice O'Connor stated:

“Given that municipal responsibility and accountability flow from municipal ownership, I see no advantage for safety reasons to turning over ownership of municipal water systems to either the provincial government or to the private sector. Changes in the ownership regime for water systems would raise a number of significant issues in relation to the recommendations in this report. I have premised many recommendations on continued municipal ownership of water systems.

In not recommending the sale of municipal water systems to the private sector, my conclusion is based on several considerations: the essentially local character of water services; the natural-monopoly characteristics of the water industry; the importance of maintaining accountability to local residents; and the historical role of municipalities in this field.” (at Walkerton Inquiry Report, Vol. 2, p. 523)

Justice O'Connor also stated:

“What impact does the introduction of private actors into a water system have on water quality? To begin, government is responsible for ensuring public health and safety. This means that public regulation of private actors whose conduct could put individual or community safety at risk is a primary function of government. Even in cases in which the regulatory function is devolved, for example, to an industry association, the ultimate accountability of public officials for the protection of health and safety remains. Water is a particularly sensitive resource, in view of its necessity to life, the absence of any alternatives, the wide range of uses to which it is put, and the risk of contaminated water harming large groups of people in short periods of time.” (at 524)

In terms of municipalities contracting for services, Justice O'Connor stated that municipal contracts with external operating agencies must be made public. He specifically stated they should not be kept secret on “grounds of commercial privacy”. The reasons include the important municipal accountability for public safety as quoted above. (See page 527-8)

In view of these considerations, CELA is very surprised that your government has not so far “reserved” water and wastewater systems from the proposed provisions of the CETA. While your government has rightly been interested in pursuing “innovation” opportunities and supporting our already strong water treatment sector, as noted, you did recognize that this did not extend to privatizing municipal water systems in the amendment to the *Water Opportunities Act* cited above.

We ask that you work with your cabinet colleagues and the Premier to instruct Ontario's negotiating team to ensure that a reservation for municipal water and waste-water systems be included in Ontario's position forthwith. Furthermore, we ask that in the event that this reservation is not contained in the proposed CETA once negotiated, that you deny Ontario's consent to the Agreement.

We thank you for your attention. We would be very pleased to meet with you, your staff and your officials to discuss this matter further.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Theresa McClenaghan', written over a faint, illegible printed name.

Theresa McClenaghan
Executive Director and Counsel

c. Premier Kathleen Wynne

Encl.