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**When Holding Hands is No Longer Enough:
The Lust of Energy Reregulation in Ontario, 1995-2003**
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In *The Politics of Development*, H.V. Nelles' enduringly edifying history of the evolution of Ontario's formative forestry, mining, and electricity policies, he keenly notes how the emergence of electricity in Ontario at the outset of the 1900s, or more precisely, of "the Hydro" in 1906, evoked a mass, emotional, and almost lustful reaction from Ontarians.¹ The emotivity of Hydro, both as a form of power and as a powerful entity itself, manifest from its inimitable ability to fuse rationalism and romanticism. By reducing dependency on foreign energy (e.g. American and British coal), by obliterating the smog, smoke, and soot produced by obsolete, coal-fuelled boilers, and by reviving the province's languishing economy, Hydro promised to resolve "the paradox of ugliness that had blighted nineteenth century industrialism" in Ontario: it promised prosperity and progress, as well as elegance and gallantry.² Indeed, Hydro purported to level the playing fields of competition for Ontario with its economic rivals, to eradicate drudgery, and to foment an era of modernity and civility. For factory owners and workers, bankers and labourers, and families and "hives" of industrialists, the reprieve from grimy inefficiency that the proliferation of cheap, clean hydro-electricity offered to them was highly coveted, though confounding, and therefore consumed their thoughts.³ As Nelles avows, the exploits of Hydro's engineers, who fought "valiantly against the furious waters" and who proved victorious over the invisible, "terrifying" forces of hydro-electricity to ensure Ontario's "eminence... on the throne of the Electric Empire," enraptured the press, public, and politicians.⁴ The efficacy of the concept of public power, the coupling of state, societal, and industrial interests working together to correct

the province's power problems (i.e. its electricity deficiency and, consequently, its lack of economic competitiveness), proved pivotal in the rapid development of the province and in its ensuing prosperity and thus helps to explain the affinity for, or the "sensual appeal" of, to use Nelles' term, the old Hydro for many Ontarians.⁵ In the genteel Edwardian language of the early 1900s, though, the salacious state-societal-industrial relationship that conceived Hydro may have been more aptly described as "holding hands."

For the Tory government of Sir James Whitney that founded Hydro, as well as for ensuing Ontario governments, holding hands was definitely enough. The concept of publicly-owned power proved unique to Ontario and the abundant, affordable electricity that Hydro provided was integral to the province's rising hegemony. However, for the former Tory governments of Mike Harris and Ernie Eves, when Hydro began to struggle in the 1990s, holding hands was no longer enough. Indeed, for the "common sense" Tories, Hydro did not elicit "practical and poetic instincts," it had "faltered," it had an "unsatisfactory" business record, and it was all because it was a monopoly and had not been "subject to the discipline of the marketplace."⁶ The Harris-Eves Tories proposed to "restore the vitality and financial integrity of Ontario's publicly-owned electricity system" by taking the relationship to the next level: privatizing, liberalizing, and, what was probably the most enduring of its reforms, reregulating.⁷ It is the intent of this essay to determine why holding hands was no longer enough, to try to elucidate why the Tories of the 1990s were willing to rescind the principle of public power that the Tories of the 1900s had founded.

Flirting with the thought of reregulating energy from the outset of its tenure, in 1997 the Tory government finally presented its plan for the transformation of Ontario's

electricity industry. Entitled *Direction for Change: Charting a Course for Competitive Electricity and Jobs in Ontario*, the document was a blueprint that laid out legislative changes that purported to reduce electricity costs through restructuring. The Tory government's White Paper proposed that competition would prompt lower prices because nearby "provinces and states are restructuring their electricity sectors and are expecting lower prices."⁸ Ontario, it insisted, "needs to keep pace to preserve its industrial competitiveness."⁹ The Tories' ensuing 1998 Energy Competition Act embodied its earlier ideas in legislative form. Within months they were "unbundling" the former Ontario Hydro and within three years Ontario's electricity industry was open to competition. Most Ontarians, still protective of the principle of public power, denounced the Conservatives for permitting rival firms the chance to fight for their affections as consumers. As prices peaked and criticisms piled up, the Tories relented in 2002 and capped prices. Yet, the criticisms could not be abated. The experiment in electricity competition in Ontario had lasted only six months and now the Tories were being blamed for botching it.¹⁰ In the ensuing election in 2003, the Tory government was promptly ousted.

Though torrid, the Tories' program of energy reregulation, this paper posits, proved too hasty, too haughty, and too fraught with ambiguity to sway Ontarians. Too fervid in its efforts to divorce itself of the former Ontario Hydro and its \$38 billion debt, the Tories' energy reregulating initiatives lacked the tact of the previous NDP government's furtive privatization attempts or the wile of the presiding Liberal government's. The Tories awkwardly tried to go too far, too fast and most Ontarians

were ostensibly too nervous. But were they wrong, though? Is the Tories' notion of energy reregulation wrong for Ontario?

This paper attempts to build from the work of G.B. Doern and Monica Gattinger on energy regulatory governance in their peerless study entitled *Power Shift* by arguing that, though the prevailing governance paradigm is transforming into A) one of fewer regulations, but more rules and B) is pro-competition, but is also pro-managed competition, it is not without its problems. Possibly the biggest problems that emerged in Ontario following electricity restructuring was not only inadequate electricity supply it was inadequate investment in new electricity generation. Liberalization effectively removed the obligation to provide electricity (i.e. to ensure service) that the monopoly was mandated to fulfill. Now, businesses are expected to fulfill that role. However, the business proposition itself is often proving not as attractive as was once thought. This failure or inability of the market to foment new investment was one of the reasons, it is argued, that the Tories were eventually forced to promulgate a paradoxical program advocating privatization while simultaneously reasserting statism in Ontario's energy sector (e.g. a renewed and more salient role for the Ontario Energy Board). The Tories termed this initiative "reregulation."

Building on the theories outlined in *Power Shift* and in the prevailing literature on energy reregulation in Ontario, as well as utilizing interviews with former Ministers of Energy during the Harris and Eves governments and with the current Vice Chair of the Ontario Energy Board, this paper explores how the aberrant period of electricity restructuring in the province has provoked a return to, though a realignment of, the historic statist tendencies so critical to that sector. Essentially, the shift is allowing

history to repeat itself. As deficiencies in the market have manifest that have prevented the promotion of competition, private firms and the provincial government have thought nothing of again using the capacities of the state and working together to advance their mutual interests. The first part of this paper focuses on the general theories of energy reregulation in Ontario, while the second part embarks on an analysis of the Harris-Eves Tories' failures with electricity reform. The final part of the paper reflects on the modified reforms subsequently put forth by the Liberals under Premier Dalton McGuinty.

Building a Theoretical Framework

Reinvoking Nelles' *The Politics of Development* offers a historic framework to begin building an analysis of the presiding energy paradigm in Ontario. In it, Nelles notes that the pertinaciousness of statism in Ontario, that is, the proclivity of successive provincial governments to want to intervene or interfere in the development of the province's vast natural resources, occurred not only because most governments sought to derive some substantial revenues from it in the form of Crown royalties, but because business found it useful.¹¹ In fact, they often insisted on it, as the history of public ownership of the province's electricity system has demonstrated. While the provinces' proprietary experience with publicly-owned electricity may have deviated from the norm or from its experiences with other industries like logging or mining, it did so primarily because the financial and technological intricacies of the electricity industry (e.g. huge economies of scale, high infrastructure costs, vacillating demand, inability to store it) dissuaded the lauded "privateers" from making more of an impact. Initially, the

privateers were "not adequate to the task," to use H.A. Innis' stinging terminology, and industry turned to the state to fulfill its needs for inexpensive, plentiful power and to enhance its competitiveness.¹²

As an apparent natural monopoly and as a strategic staple integral to the province's industrial development, even business proved quite keen to advocate public power. Electricity proved "too precious" as a currency of industrialism to be left to chance or to the whims of entrepreneurs who could not provide power "on time and at reasonable rates;" therefore, the state was championed to fulfill this critical function.¹³ Indeed, as Nelles attests, Hydro was "run by businessmen, for businessmen, in what was always referred to as a 'businesslike' manner."¹⁴ The "strongest and most persistent demand for public ownership," Nelles affirms, "came from businessmen."¹⁵ From the outset, public power was intended as a venture in "state capitalism" whereby the state's abilities would prop up business' inabilities¹⁶ It is thus very intriguing how innovations in electricity generating technology and ensuing revisions to the economies of scale underwriting the industry have compromised the principle of public power in recent years. Further, it is interesting how the incessant cries for a free market in electricity in the 1990s did not become whimpering laments when imperfections in the free market made electricity competition a widely derided concept. Curiously, the proponents of competition were quite content to turn to the state to try to level the playing field to promote their interests and rescue their neoliberal project despite the monopolistic advantages endemic to the energy industry and regardless of the associated risk of this transformation for the public. Possibly, how or why governments would even allow this "power shift" to occur is more pertinent.

The Power Shift

In *Power Shift*, Doern and Gattinger argue that the transformation of power, as in the generation of power through energy and the inertial dynamics of political power through the "ascendancy and decline of institutions and interests," as well as the diverging ideas and ideals underlying decision-making, are critical considerations in any analysis of the changes fomenting the new regulatory governance of energy.¹⁷ They explain that energy regulatory governance in Canada in the twenty-first century has changed in four crucial ways. First, beginning in the 1980s, those governing energy regulation have been fixated on the notion of fewer regulations, though more rules, which has transformed it from a clear, uncomplicated, centralized system of a few regulators overseeing the activities of a small number of very large energy players to one in which authority is decentralized, complicated, and unclear and power is diffused among many regulators overseeing the affairs of many large and diverse energy firms.¹⁸ Second, they note that though energy regulatory governance is going in a pro-competition direction. As Doern and Gattinger argue, though, it is wrong to think of electricity like other commodities and not as an essential one that ought to involve "managed competition rather than competition per se."¹⁹ They posit a "world of workable competition," not only because of the persistence of monopolistic aspects of Crown electricity corporations, but because existing regulatory institutions and authorities, as well as new investors, have to work together in imperfect market environments and with imperfect governments and policies.²⁰ The "perfectly competitive world," they insist, "is an illusion."²¹ Indeed, though the new energy regulatory system promulgates competition,

it is still not a regulatory realm that can easily be encompassed by conventional notions of full competition. Rather, it is more accurately seen as a system of ordered or managed competition. Nor does it evoke a clear separation between the role of the state and the role of markets or conventional notions of selling products and services.²²

Third, as a result of the work of NGOs and the unfortunate reality that more than mere exhortations are needed to induce compliance, environmentally specific energy regulations varying from command and control regulations to incentive-based regulations have been "stacked" to ensure their effectiveness rather than replaced outright.²³ Finally, fourth, the new form of energy regulatory governance involves "regimes of regulators" working in "opaque institutions" and detrimentally impacts perceptions of political accountability for the public.²⁴

According to Doern and Gattinger, these transformations in regulatory authority in the field of energy were influenced by five factors: 1) novel energy technologies (e.g. combined cycle gas turbines, or CCGTs, upset the historic economies of scale once enjoyed only by large, vertically-integrated electricity utilities); 2) the ideologies of governments and industrialists espousing a minimal role for the state in the market (e.g. the faith of the "common sense" Conservatives that only competition can increase efficiency); 3) globalization and the concomitant proliferation of a neoliberal agenda (e.g. profound regulatory reforms in the US and the UK offer examples for other jurisdictions to try to replicate); 4) intergovernmental and inter-regional politics (e.g. divergent federal and provincial interests in NAFTA and the GATS and the pursuit of energy integration with the US²⁵); and 5) the emergence of a sustainable development paradigm that simultaneously promotes conservation and competition policies.²⁶ With respect to the factors influencing the current electricity restructuring in Ontario, the salience of ideas

and the reorientation of ideologies are tough to ignore. However, given the timing of Ontario's transformations (e.g. growing Ontario Hydro debt, delayed nuclear reactor repairs, the ENRON imbroglio, the California fiasco, the increased incidence of blackouts and brownouts, as well as unexpected price spikes), it is argued that practical and pragmatic problems of security and surety of supply proved pivotal for the Tories in opting for the path of reregulation and a partial retreat to the state.

Reregulation: The Tory Government Shifts Gears

The notion of reregulating energy gained global notoriety in the late 1990s as a way of reasserting regulatory state authority to help bridge the gap for those jurisdictions in the midst of transformation who were having trouble going from a monopoly system based on the precepts of public power to one based on competition in an ostensibly open market. As the onslaught of the neoliberal agenda intoned the virtues of unfettered markets, deregulation, and the rapid privatization of previously invulnerable state assets, the competitive environment revealed serious perils: the volatility of prices and the unwillingness of private firms and entrepreneurs to invest in new generation to resolve the problem of scarce supply. Simply, by repudiating the monopolies governments also removed the obligation to provide an essential service. Governments could not coerce investment. In Ontario, for example, the existence of the remaining vestiges of the old vertically-integrated monopoly (e.g. Ontario Power Generation and Hydro One), the enormous capital costs, as well as unstable global energy prices and government policies, made the prospect of investing a rather risky or possibly unprofitable proposition. What

new investment is attracted, as Marjorie Griffin Cohen has warned, is usually huddled around "dirty energy" generation such as gas and coal because they obviously provide the least expensive entry points for private firms to compete as compared, for instance, with the cost of financing "mega" energy projects such as building nuclear reactors or hydro dams.²⁷ Thus, to ensure some price stability and, also, to ensure a safe, satisfactory mix within its energy portfolio, the government augmented its regulatory role.

The Tories in Ontario, it is contended, were wary of this potentiality from the outset of their liberalization attempt. As early as 1997, stalwart Tory MPPs such as John Baird were adamant that the Conservative Party was pursuing energy "reregulation" not "deregulation."²⁸ By the launch of the open, competitive market for electricity in 2002, the Tories' reregulation doctrine was well inculcated. Indeed, as the following evidence from the legislative debate of 19 June 2001 demonstrates, though Jim Wilson was without doubt one of the most affable and refined of the "common sense" Tories' five different Ministers of Energy from 1995 to 2003, he was apt to snap at opponents who misunderstood their reregulation message:

Gilles Bisson (Timmins-James Bay MPP, NDP): My question is to the Minister of Energy about his job-killing policy of hydro deregulation... I am being told that energy industry analysts are telling them that after the opening of the market, after your deregulation policies take effect next summer, they're expecting that peak power costs will more than double by the summer of 2002... My question, Minister, is simply this: when are you going to stop this job-killing policy of deregulating Ontario Hydro and privatizing the same?

Honourable Jim Wilson (Minister of Energy): It's not been the experience in most other jurisdictions. Some 40 jurisdictions in the world that have undergone deregulation -- in our case, it's reregulation. Electricity never was [really] regulated in the province of Ontario, so it's not deregulation here, it's reregulation. It's introducing competition, it's trying to get rid of a \$38 billion debt legacy that's dragging down our economy and costing us unnecessary interest charges on our electricity bills every month. It's all about trying to get rid of the sins of the past and moving forward.²⁹

Even after a failed bid to privatize Hydro One and the precarious opening of Ontario's competitive electricity market on 1 May 2002, at a meeting of the Institute of Public Administration of Canada on 29 May 2002, an advisor to the Tory government, Reg Watson, was assured enough to reiterate to a room of the most influential, hardest-hitting figures in the province's electricity industry (e.g. Bryne Purchase, Deputy Minister of Energy; Floyd Laughren, Chair of the Ontario Energy Board; Ron Daniels, Chair of the Electricity Market Design Committee) that the Conservative Party's electricity restructuring strategy was guided by the precepts of reregulation. "This is not a deregulation' of the industry," Watson stated, "but rather 'reregulation,' with clearer corporate mandates, checks and balances, and accountabilities, both financially and socially."³⁰

As jurisdictions outside of Ontario furiously grappled with their own reform difficulties and were made aware of the often vicious deficiencies of the free market in its pursuit of economic efficiency in electricity (e.g. volatility of prices and a lack of supply security), the International Energy Agency (IEA) decided it ought to wade into the debate and reassure its membership that the goal of liberalization was still a worthwhile one. In 2002, in the wake of the ENRON scandal and the California electricity crisis, the IEA reasserted the strategic character of electricity (i.e. that it was "not just another commodity") and the need for government intervention to achieve the overall objective of electricity liberalization and thus affirmed that "the process is more appropriately dubbed reregulation than deregulation."³¹ As Robert Priddle, the Executive Director of the IEA maintains,

[g]overnments play a key role in ensuring the adequate performance of the new electricity markets. Our analysis suggests that, for reforms to work effectively, a

new, solid and workable regulatory framework is required, especially for the transition. Although the ultimate objective is a self-sustaining, competitive market, deregulation has proved to be a misnomer for the liberalization process. Well-designed reregulation is necessary.³²

In 2003, the IEA reported in its review of the energy policies of its membership states that the pace of electricity liberalization in Ontario had "slowed" as the Tory government had opted to reregulate "its recently deregulated market" thus "reversing the market reforms" it initiated in 2002.³³ Obviously, the form of energy regulatory governance that the Tories chose to practice was reregulation. In doing so, they sought to ensure some government intervention in the electricity system to fight a conflicting battle of promoting surety and security of existing supply while simultaneously trying to lure investment in new supply and advocating the supposed superiority of free markets. It was a tough job and the Tories had a tough time doing it. Though the notion of reregulation itself proffers many benefits as an expedient hybrid approach to electricity restructuring, many factors conspired against the Conservative Party and the timing of their efforts. With the chastened Tories looking on from the opposition benches, McGuinty's Grits quickly picked up the previous Tories' reregulation policy tool and, with a nod to the need to balance the progressive and populist elements underpinning electricity in the province with the need to instigate financial and infrastructural reforms, the Liberals got to work restoring stability in Ontario's electricity system. The next part of the paper explores the factors provoking the emergence of energy reregulation as a government tactic.

Rapid Reregulation and (R)Evolution in Ontario's Electricity Sector

When the Harris Tories were elected in 1995, they offered no clear indication of their intent to fundamentally transform Ontario's electricity industry. While it ought to be noted that their infamous manifesto, the *Common Sense Revolution* (CSR), as an electoral platform, did allude to their desire to reform the former Ontario Hydro as a way of "removing barriers to growth," the CSR document was exceedingly ambiguous in its explanation about how it would do that.³⁴ The CSR simply stated that the Tories promised to freeze electricity rates for five years if elected to foment "stability" and that this "may mean more changes at Hydro, including some moves towards privatization of non-nuclear assets."³⁵ Given that the Tories would soon go on to privatize the Bruce nuclear facility to British Energy and drag Ontario into one of the most profound transformations of its electricity system since the initial inception of Ontario Hydro in 1906, the reticence of the CSR itself is quite disconcerting. Nonetheless, it is argued that the Tories had only vague notions of the extensiveness of the old Ontario Hydro's troubles when they first took office. For most of the Tories, their ideological proclivity to privatization undoubtedly influenced their views. However, once they were truly informed of the troubles at Ontario Hydro and were confronted with the job of fixing them, their neoconservative predilections were seriously tested. Faced with the very practical problem of salvaging an old, faltering institution that had a long legacy and hardy populist roots, the Tories were outwardly obdurate, but within their ranks, the problem proved overwhelming. The ensuing reregulation strategy they espoused was

prone to frustrated polemics, pragmatic tactics, and basic equations of political calculus.

As former Energy Minister Jim Wilson recalls,

I'm not sure anybody, really, prior to 1995, had any clear idea what we should do with Hydro. Certainly, by the time I got the portfolio, the idea was in place that we should divide the company up, we should be honest about the debt, we should move towards privatization... and figure out some way to have even a quasi market so we'd have private sector investment because there was no way we were going to repeat the mistakes of the NDP [of] guaranteeing the price of power whether or not we needed it.³⁶

Among the Tories there was an abiding feeling that they could "pull this thing off," that they could dismantle the public system and build a private system to replace it, however, uncertainty, dissension, and increasing disunity within the Conservative Party, which was concealed from the public, severely restricted the capacities of their Energy Ministers to fulfill their objective. As Wilson avows,

it was never clear to me what Mike Harris' intentions were, really. I was going down one path and I'd get approvals every once and a while from the Premier and cabinet. They seemed to be buying into where we were headed. But, I never really knew whether or not Mike's heart was really in it and, certainly, I never knew where Ernie stood on it. As Finance Minister he was very cooperative, but this was not a high priority for him [when he was Premier], so I was kind of left out there, as I think John Baird was.³⁷

Beyond a nebulous sense that this rebuilding was "doable" among most Tory MPPs, bolstered by an inchoate ideological belief in and understanding of the tenets of theoretical neoconservatism, the practical implications of the province's emerging power problem, as well as a fear that the ticking Hydro bomb would blow up on their watch, prompted them to act quickly. They had a hunch that the "old way was not working" and that "Ontario Hydro was a monster unto itself" whose financial woes were dragging down the government's budgets through untenable debts.³⁸ As Ronald Daniels and Michael Trebilcock contend in *Ontario Hydro at the Millennium: Has Monopoly's*

Moment Passed?, the power problem that manifest in Ontario in the early 1990s that prompted the Tories to begin rethinking the monopolistic position of the former Ontario Hydro was a function of the following factors: Ontario Hydro had amassed a debt of about \$32 billion as of 1995 (i.e. it grew to roughly \$38 billion by the time the Tories were defeated in 2003); over-expansion; over-estimation of demand; over-supply; cost-overruns of nuclear reactor construction (e.g. Darlington); poor performance of Ontario's nuclear reactor facilities; economic recession which reduced demand from industrial and commercial customers primarily and thus reduced Ontario Hydro revenues; dramatic rate hikes during the recession which infuriated customers (e.g. 8.6% in 1991, 11.8% in 1992, and 7.9% in 1993); in 1993, a 24% reduction of its workforce and a net loss of \$3.6 billion; an anachronistic regulatory structure with diffuse and fragmented authority; and, at the beginning of the 1990s at least, low prices for substitute sources of energy, like oil and gas, and the emergence of innovative generating technology, like CCGTs, which raised the possibility of implementing inexpensive alternatives or rivals to comparatively expensive publicly-owned power.³⁹

The practical and political imperative to reform the former Ontario Hydro, therefore, was enormous. The ambitious agenda that the Tories devised, however, belied the profound intricacies of the institution or the intimate, often odd, attachment that Ontarians had with it. In late 1995, only months after forming the government, the Tories established the Advisory Committee on Competition in Ontario's Electricity System, the Macdonald Commission, to investigate the power problem. In 1996, it presented its report. Entitled *A Framework for Competition*, the Macdonald Commission report urged the government to allow for full competition in electricity "as soon as practicably

possible" to reduce prices.⁴⁰ Critically, it advised that Ontario Hydro's monopoly ought to be wholly eliminated.⁴¹ With this document in hand and the opinions of the industry's foremost experts confirming its thoughts on restructuring and its suspicions of Ontario Hydro's intrinsic deficiencies, the Tories quickly put together a legislative plan for change. In late 1997, the government released their White Paper entitled *Direction for Change* outlining the exigencies for reform which were embodied, less than twelve months later, in the 1998 Electricity Competition Act and in the ensuing "unbundling" of the former Ontario Hydro into, primarily, Ontario Power Generation, Hydro One, and the Independent Electricity System Operator.⁴²

While the rapid pace of this transformation agenda is itself enthralling, what is even more intriguing is how and why the Tories were hurrying and proceeding with restructuring oblivious to, or in spite of, public derision. While the Tories were purporting vast privatizations to improve efficiency and intoning the need for Ontario Hydro to toughen up and face the discipline of the free market, public opinion had shifted and people's affinity for the institution was again growing. Ontario Hydro worked hard to rekindle the fires of affection. Possibly callously, but the ice storm of 1998, for example, proved a tremendous PR coup for Ontario Hydro. Tales of fearless and indefatigable Ontario Hydro workers restoring light and warmth to the grateful and effusive people of one of Canada's most populated regions juxtaposed against a backdrop of winter ice, snow, and slush and images of frozen hands mending twisted transmission towers or warming up over cups of hot coffee in family-owned diners, or pitching in, afterwards, planting trees to replace those damaged during the ice storm, were likely as well organized as the actual emergency repair work.⁴³ Further, it reinforced perceptions

at a critical time that Ontario Hydro was more than a mere corporation and that electricity was more than a mere commodity. Conversely, continuous coverage of the ENRON scandal and of the California electricity crisis likely did little to calm Ontarians who were already wary of the open market and the motives of investors. As former Energy Minister John Baird contends, the Conservatives' reregulation agenda was damaged by "the collapse of the energy market with ENRON [because] the access to capital for merchant generators collapsed with it."⁴⁴ According to Baird, the "situation in California [had] huge consequences" for the Conservative government which they "didn't respond to as strongly" as they should have.⁴⁵ Indeed, as Wilson avows, the Tory government "played the PR side of things pretty badly."⁴⁶ "What I regret the most," he intimates, "is that we didn't communicate better with the public."⁴⁷ Further, he contends that "the media at Queen's Park had their own ideas about Ontario Hydro" and Ontarians never knew "what the problems were behind closed doors... nobody knew how bad Ontario Hydro really was."⁴⁸ Similarly, Baird states that

we didn't perhaps explain to people what the problem was so they didn't know what the solution was all about. People just flick the switch and they expect the electricity to go on and they don't want the bill to be too high. That's the only time they think about it. I think perhaps we could have explained the problem more.⁴⁹

Yet, despite this, the Tories refused to flinch. The fight was on and, though they were unsure how they would win, the Conservatives were convinced they would prevail. The Tories would not win the fight, though, by appealing to the emotional sensitivities of the people, as Ontario Hydro could. Rather, they had to appeal to their economic sensibilities and to Ontarians' enduring desire for pre-eminence, efficiency, and financial success⁵⁰

Reregulation in a Cold, Competitive Climate

As the Vice Chair of the Ontario Energy Board (OEB), Jan Carr, explains, one of the most intriguing elements of the government's 1998 Electricity Competition Act, given the legacy of Ontario Hydro, was that

the Act required that every entity that was involved in the electricity industry become a corporation under the Ontario Business Corporations Act which basically meant that it behaved like a business. Electricity would no longer be delivered as a public service, no longer be delivered by a department of the city, no longer be delivered by a commission, or a committee, or a co-operative, or whatever. It was a corporation. Period.⁵¹

This change in corporate structure, Carr contends, is quite significant because it forced publicly-owned entities, like Ontario Power Generation or Hydro One, who were previously exempt from taxes to begin paying taxes, or payments in lieu of taxes (i.e. the PILS system) to ensure "everyone was on the so-called level playing field financially."⁵² "The point being here," Carr continues, is that "as a policy matter, it became irrelevant, from a financial point of view, whether [an electricity utility] was privately-owned or publicly-owned because the cost of capital, the cost of taxes, the financial cost of operating the entity, was the same."⁵³ To further support his point, Carr states that

the point being here, again, that [regarding] the billions of dollars that need to be invested... the government of the day decided in the Act that they were no longer necessarily going to do that all on the public purse. It opened up the opportunity for private capital to compete on a level playing field with public capital. And, that's probably one of the most significant changes that has been made to the structure of the electricity industry in this province in a century.⁵⁴

The eventual opening of the competitive electricity system in Ontario on 1 May 2002 was likely not the gratifying victory that the Tories thought it would be. Wilson notes that prior to the opening of the market, the Conservative Party was under fire from

all possible opponents, as well as from old allies.⁵⁵ They endured attacks, understandably, from the general public, the press, the opposition parties, advocacy groups, and businesses bemoaning that they were not going further, faster. However, once rates rocketed in the open market, thoughts of efficiency and huge profits turned to volatility and state intervention. On 11 November 2002, after a mere six months, the Tories "pulled the plug" on competition and introduced a retroactive price cap (i.e. 4.3 cents per kilowatt hour) which was a costly move, both politically and financially, as the government was now obliged to finance the difference between the capped price and the market price which cost the province hundreds of millions of dollars.⁵⁶ "We were floundering trying to fix it," Wilson concedes, "all the advice we were getting was to keep going. We trusted the private sector would do its part."⁵⁷ But, as Wilson avows, "greedy" investors engaging in "gaming in the market" proved detrimental:

there may have been a little gaming in the market among [stakeholders]... they're more co-operative now, they've learned their lessons, you'll see a more honest response now... everyone was new and everyone was trying each other out.⁵⁸

While rate volatility was definitely one of the most overt problems manifest when the market opened to competition in 2002, the inability of the market to attract new investment in generation eventually emerged as a more prominent issue, particularly after the 14 August 2003 blackout. Still reeling from the SARS crisis, the Tories under Eves were thrust into one more emergency when a failure at an Ohio power plant caused the integrated CAN-AM energy grid to go down. Obviously, not the fault of the Tories, but the blackout made salient the need to mollify those market flaws that were inhibiting new investment to boost supply. Indeed, as the Vice Chair of the OEB admits, "the biggest single problem that Ontario's electricity sector has at the moment... is inadequate levels of

investment in new generation."⁵⁹ The newly reregulated electricity system, Carr contends, "removes the obligation to serve," once the responsibility of the former monopoly, and thus society must rely "on the attractiveness of the business proposition itself in order to attract investment [as] there's no law or any way of forcing investment."⁶⁰ According to Carr, firms are opting not to invest in new generating facilities in Ontario because of the risk involved, for example, political risk (e.g. governments and energy policies change, global strife), financial risk (e.g. rising global energy prices), and the dominance of a government-owned generator in the existing marketplace (e.g. OPG).⁶¹

It is this risk that the Tory government's reregulation strategy sought to attenuate by reasserting a role for the state in planning, pursuing investors, and providing financial guarantees for firms that do decide to invest. Substantial statism also attenuates risk by assuring that the province has a diverse energy portfolio. This helps to promote surety and security of electricity supply and helps to protect against devastating price shocks resulting from fluctuations in global energy prices. Private investment in generation tends to be drawn to the "dirty fuel" sector (e.g. gas, coal) rather than the comparative "clean fuel" sector (e.g. hydro, wind) because it is the most expedient way in which to gain access to the lucrative electricity generating game (e.g. it is cheaper and quicker to install a CCGT power plant than it is to build a nuclear reactor). While the notion of risk in an essential service sector is an adjustment in this post-monopoly period, what may be more disturbing is the OEB's equanimity when bandying this term about and their belief that risk is simply an inexorable and unavoidable reality of any electricity system. As the Vice Chair of the OEB explains, "someone is always at risk" the task is to find a "balance

between the investor being at risk and the public being at risk... you can't get rid of the risk, all you can do is allocate it in a fair fashion."⁶²

Obviously, most Ontarians were more wary of the risk of the Tories retaining power than they were of the prospect of prolonged risk in their power sector. On 2 October 2003, the Conservatives were ousted from office and the Liberals were elected on a promise of more reregulation, albeit with amendments to the way in which it would be done. "I think the McGuinty government is on the right track now," Wilson admits.⁶³ As the former Minister of Energy divulges,

[p]eople are saying [McGuinty] is just following Wilson's plan. I don't see him doing much different. He's going down the same road. He's realized that there isn't ever really going to be a free market without rules... Government is forced to get involved because people can't handle the price shocks... There will always be a role for government because its an essential commodity and you can't store it [thus] its hard to have a real market. You're always going to need government intervention in the market. It'll always be a heavily regulated industry... there is no free market in electricity.⁶⁴

Indeed, the lingering notion of reregulation is evident in the McGuinty government's 2004 Electricity Restructuring Act which established the Ontario Power Authority (OPA) on 9 December 2004. The objectives of the OPA are to ensure stable and predictable power prices (i.e. though with the goal of gradually aligning rates with the "true cost" of generating electricity) and to procure new investment through price guarantees and engendering public-private partnerships.⁶⁵

Conclusion

Energy reregulation has proven very portentous in Ontario. On the one hand, it instigated the transformation of an institution that was increasingly inefficient and

definitely faltering. On the other hand, however, it instigated a loss of obligation, it ushered in a period that repelled investment, and augmented risk in the electricity system in its attempt to realign the historic state-societal-industrial partnership in the electricity sector. In their often haughty and hasty efforts to reregulate, the Tory governments of Harris and Eves may have gone too far, too fast. Not only were Ontarians wary of the transformations, so too were investors who were expected to fill the hole left by the former Ontario Hydro, but they failed to do so. The business proposition did not seem so lucrative, nor did the prospects of competition, when the electricity market initially opened. The inability of the market to foment new investment was the fundamental reason why the notion of reregulation remained integral to the Tories' reform efforts. Though, for a time, holding hands was not enough for the Tories, they are now willing to concede that government intervention in the industry is needed given the high cost, high risk character of electricity and its significance as an essential commodity for the economy and society. Once the Tories were ousted, a retooled version of reregulation remained in use by the Liberals to try to fix not only the flaws of the initial Tory agenda, but those of the market that were inhibiting new investment and the urgent diversification of the province's energy portfolio (e.g. the Liberals' 2004 Electricity Restructuring Act reflects this modified, hybridized approach). Reregulation, further, is a policy tool that is relatively mindful of the province's history with electricity and its unique esteem in public opinion. As Carr intimates, "there's something fundamental in the Ontario psyche about electricity."⁶⁶

As the tenets of reregulation emerge as the prevailing paradigm in energy regulatory governance in Ontario, and as new investment partners emerges, the problem

now becomes one of how much risk are Ontarians willing to assume as commodity consumers in this partnership. Despite the efforts of governments, regulators, and investors, it is this risk above all that may prove the most difficult to mollify. In analyzing the "power shift" in energy regulatory governance in Ontario, therefore, what is particularly intriguing is the thought that it might not be so much of a formative shift as it is a realignment of the historic state-societal-industrial nexus in Ontario, albeit one with a lot more risk built into it. While the lust for energy reregulation in Ontario is abiding, holding hands is likely still a sensible and prudent option to satiate diverging state, societal, and industrial interests. Indeed, as Carr contends, "it is rather strange how politics and electricity have become such close bedfellows in Ontario."⁶⁷ Sometimes, holding hands is enough.

Notes

¹ H.V. Nelles, *The Politics of Development: Forests, Mines, and Hydro-Electric Power in Ontario, 1849-1941* (Toronto: Macmillan, 1974), 217-221; For intriguing, often lively, histories of "the Hydro" from its inception as the Hydro-Electric Power Commission in 1906, to its "rebranding" as Ontario Hydro in 1974, to its "unbundling" in 1999 and its ensuing emergence as Ontario Power Generation, Hydro One (as of 2000), and the Independent Electricity System Operator (as of 2004), refer to the following: Hydro-Electric Power Commission of Ontario, *Ontario Hydro News: Golden Jubilee Special Edition* (Toronto: Hydro-Electric Power Commission of Ontario, 1956), Merrill Denison, *The People's Power: The History of Ontario Hydro* (Toronto: McClelland and Stewart, 1960), Howard Hampton, *Public Power: The Fight for Publicly Owned Electricity* (Toronto: Insomniac Press, 2003), or Jamie Swift and Keith Stewart, *Hydro: The Decline and Fall of Ontario's Electric Empire* (Toronto: Between the Lines, 2004).

² *Ibid*, 217

³ The history of Hydro can be traced to 11 February 1902 when E.W.B. Snider, a prominent farm implement manufacturer and a former provincial politician, at a meeting of the Waterloo Board of Trade, proposed that the towns and industries of that region ought to come together "as a Hive... joining hands and with a united effort" to fight for public power to protect and promote their distinct economic interests. Nelles, 237

⁴ *Ibid*, 217, 220; "The Electric Empire," *The Globe*, Saturday, 5 August 1905, 1; Frederic Nicholls, "Niagara's Power: Past, Present, and Prospective," *The Empire Club of Canada Speeches, 1904-1905*, J. Castell Hopkins, Ed. (Toronto: The Empire Club of Canada, 1906), 139-165

⁵ Nelles, 221

⁶ *Ibid*, 217; Ontario, *Direction for Change: Charting a Course for Competitive Electricity in Ontario* (Toronto: Ministry of Energy, Science, and Technology, 1997), vii, 1, 5

⁷ As T.G. Weyman-Jones tersely notes, privatization is "not synonymous" with liberalization or deregulation. Privatization is defined as "the sale to the general public of shares (equity) in at least 50 percent of the assets and earning power of previously nationalized or state-owned public corporations." Liberalization means allowing private companies to compete for the contracts previously restricted to publicly-owned corporations whereas deregulation means the removal or loosening of government restrictions on the "pricing, output, and investment decisions" of both public and private corporations. The crucial notion of "reregulation" will be elaborated later in the essay. Thomas G. Weyman-Jones, "Regulating the Privatized Electricity Utilities in the UK," *The Political Economy of Privatization*, Thomas Clarke and Christos Pitelis, Eds. (London, UK: Routledge, 1993), 94; Ontario, 27

⁸ Ontario, vii

⁹ *Ibid*, vii

¹⁰ Joshua Greenberg's highly anticipated article in the *Canadian Journal of Communication*, for example, intends to look at the shift in how "a government policy program that once appeared to be a *fait accompli* could so quickly become an abysmal failure, as both a policy initiative and an exercise in political communication." Joshua L. Greenberg, "This News May Come as a Shock: The Politics and Press Coverage of

Electricity Restructuring in Ontario, 1995-2002," *Canadian Journal of Communication*, 30:2 (2005).

¹¹ Nelles, ix

¹² Harold A. Innis, *Problems of Staple Production in Canada* (Toronto: Ryerson Press, 1933), 81

¹³ Nelles, 492

¹⁴ *Ibid*, 490

¹⁵ *Ibid*, 493

¹⁶ *Ibid*, 494

¹⁷ G. Bruce Doern and Monica Gattinger, *Power Switch: Energy Regulatory Governance in the Twenty-First Century* (Toronto: University of Toronto Press, 2004), 3, 13

¹⁸ *Ibid*, 4-5

¹⁹ In Chapter Five of *Power Shift*, in their analysis of Ontario and the regulatory role of the Ontario Energy Board, Doern and Gattinger evoke a lovely, lasting image of the abiding transformation when they write: "If power switches and competition were analogous to traffic lights, the new regime could be cast as living in a yellow-light district of managed competition rather than a green-light district. The new regime is one intended to ensure *managed* competition in a networked *essential service* political-economic context." *Ibid*, 5-6, 131-132

²⁰ *Ibid*, 6

²¹ *Ibid*, 6

²² *Ibid*, 40

²³ *Ibid*, 6-7

²⁴ *Ibid*, 7

²⁵ For example, refer to Marjorie Griffin Cohen, "International Forces Driving Electricity Deregulation in the Semi-Periphery: The Case of Canada," *Governing Under Stress: Middle Powers and the Challenge of Globalization*, Marjorie Griffin Cohen and Stephen Clarkson, Eds. (London, UK: Zed Books, 2004), 175-176

²⁶ Doern and Gattinger, 8, 46-49

²⁷ Marjorie Griffin Cohen, "From Public Good to Private Exploitation: GATS and the Restructuring of Canadian Electrical Utilities," *Canadian American Public Policy*, 48 (December 2001), 6; Marjorie Griffin Cohen, *Public Power and the Political Economy of Electricity Competition: The Case of BC Hydro* (Vancouver: Canadian Centre for Policy Alternatives, 2002), 19

²⁸ Ontario Hansard, "Debates of the Legislative Assembly of Ontario: 3 June 1997, URL: <http://hansardindex.ontla.on.ca/hansardeissue/36-1/1198.htm> (website visited on 5 May 2005)

²⁹ Ontario Hansard, "Debates of the Legislative Assembly of Ontario: 19 June 2001," URL: <http://hansardindex.ontla.on.ca/hansardeissue/37-2/1032a.ht> (website visited on 5 May 2005)

³⁰ Reg Watson quoted in Murray Lister, "Governing Energy: Ontario Electricity Governance Before and After," Institute of Public Administration of Canada, URL: <http://ipac.ca/toronto/20020529.htm> (website visited on 5 May 2005)

³¹ Robert Priddle, *Security of Supply in Liberalized Electricity Markets* (Paris, France: International Energy Agency, 2002), 7

³² Robert Priddle quoted in Carlos Ocana and Aurelie Hariton, *Security of Supply in Electricity Markets: Evidence and Policy Issues* (Paris, France: International Energy Agency, 2002), 3

³³ International Energy Agency, *Energy Policies of IEA Countries: 2003 Review* (Paris, France: International Energy Agency, 2003), 15, 69

³⁴ Ontario PC Party, *The Common Sense Revolution* (Toronto: The Progressive Conservative Party of Ontario, 1995), 14

³⁵ *Ibid*, 14-15

³⁶ Jim Wilson was the Minister of Energy for the Tory government from 10 October 1997 to 14 April 2002. Jim Wilson (Simcoe-Grey MPP, Conservative), interview by author, tape recording, Collingwood, Ontario, 22 October 2004

³⁷ *Ibid*

³⁸ Jim Wilson interview

³⁹ According to the 1994-1995 Public Accounts of Ontario, the precise figure for Ontario Hydro's debt as of 31 March 1995 was \$31.561 billion. Ontario, "Public Accounts of Ontario, 1994-1995," URL: http://www.gov.on.ca/FIN/english/pacct/1995/95_fse.htm (website visited on 5 May 2005); Ronald J. Daniels and Michael J. Trebilcock, "The Future of Ontario Hydro: A Review of Structural and Regulatory Options," *Ontario Hydro at the Millennium: Has Monopoly's Moment Passed?*, Ronald J. Daniels, Ed. (Montreal and Kingston: McGill-Queen's University Press, 1996), 4-8

⁴⁰ Advisory Committee on Competition in Ontario's Electricity System, *A Framework for Competition* (Toronto: Ministry of Environment and Energy, 1996), iii, viii

⁴¹ *Ibid*, iv, v

⁴² I opted to use the latest names of these entities for simplicity (e.g. Hydro One rather than Ontario Hydro Services Co.). Please refer to note #1 for further clarification.

⁴³ Ontario Hydro, "Hydro Helps Replace Trees Damaged During January Ice Storm," *Hydro Monthly*, 35:4 (May 1998), 1-2

⁴⁴ John Baird was the Minister of Energy for the Tory government from 22 August 2002 to 22 October 2002. John Baird (Nepean-Carleton MPP, Conservative), interview by author, tape recording, Toronto, Ontario, 21 October 2004

⁴⁵ *Ibid*

⁴⁶ Jim Wilson interview

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ Baird interview

⁵⁰ The Ontario political culture, Sid Noel states, is defined by five key norms: 1) the imperative pursuit of economic success; 2) the assumption of pre-eminence; 3) the requirement of managerial efficiency in government; 4) the expectation of reciprocity in political relationships; and 5) the balancing of interests. Sid Noel, "The Ontario Political Culture: An Interpretation," *The Government and Politics of Ontario*, Fifth Edition, Graham White, Ed. (Toronto: University of Toronto Press, 1997), 53

⁵¹ Jan Carr (Vice Chair, Ontario Energy Board), interview by author, tape recording, Toronto, Ontario, 13 August 2004

⁵² *Ibid*

⁵³ *Ibid*

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- ⁵⁴ Ibid
- ⁵⁵ Jim Wilson interview
- ⁵⁶ Swift and Stewart, 182-183
- ⁵⁷ Jim Wilson interview
- ⁵⁸ Ibid
- ⁵⁹ Jan Carr interview
- ⁶⁰ Ibid
- ⁶¹ Ibid
- ⁶² Ibid
- ⁶³ Jim Wilson interview
- ⁶⁴ Ibid
- ⁶⁵ Ontario Energy Board, "The Electricity Restructuring Act, 2004," URL:
http://www.oeb.gov.on.ca/html/en/consumerinformation/leg_bill100.htm (website visited
on 5 May 2005)
- ⁶⁶ Jan Carr interview
- ⁶⁷ Ibid

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