

# ONTARIO'S GREEN ENERGY AND GREEN ECONOMY ACT: WHY A WELL-INTENTIONED LAW IS MIRED IN CONTROVERSY AND OPPOSED BY RURAL COMMUNITIES

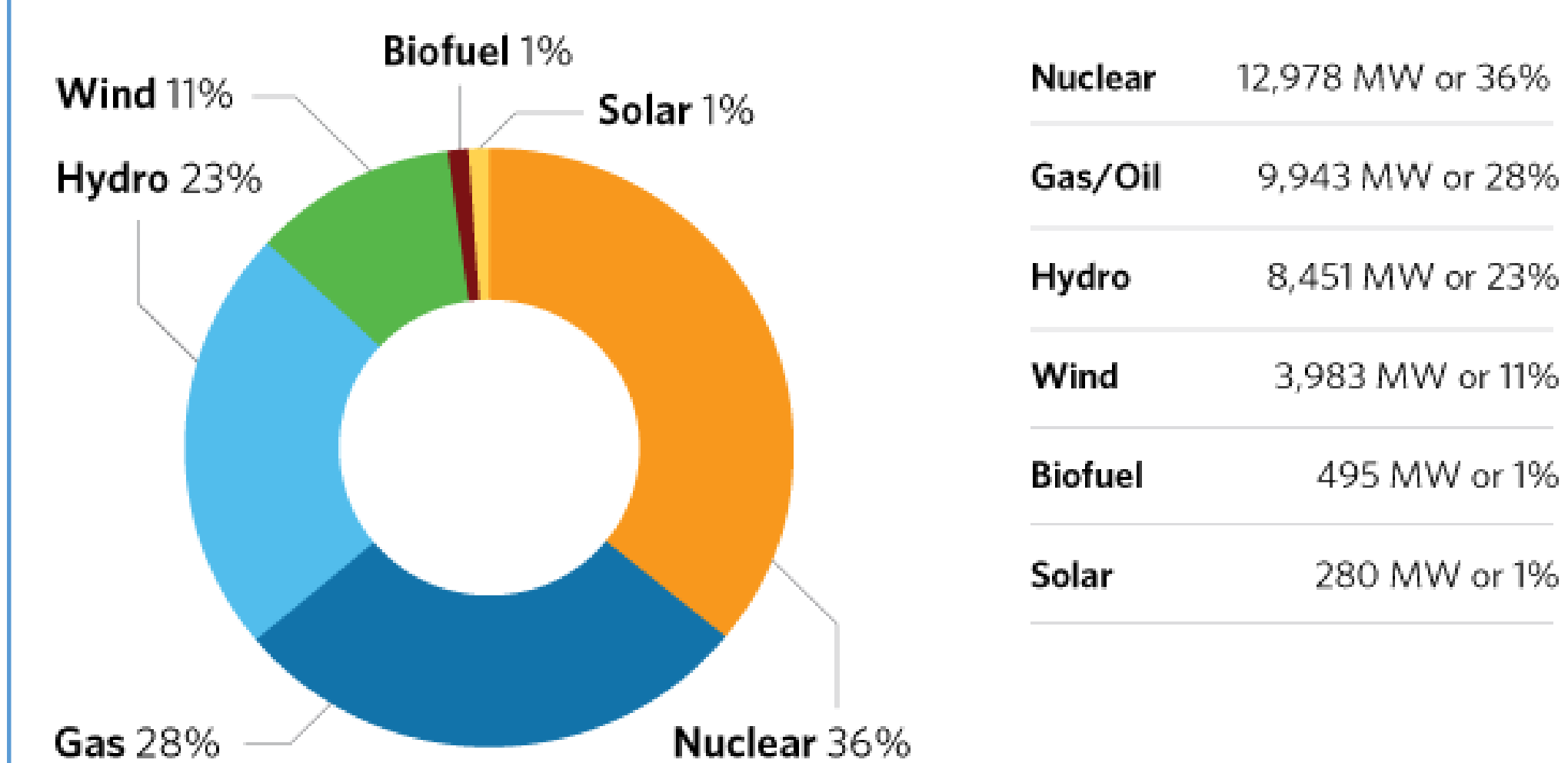
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## INTRODUCTION

Climate change demands strong action by governments to help move away from high-emitting industrial sources of greenhouse gases and into renewable energy. In Canada, Ontario's *Green Energy and Green Economy Act* ("GEGEA") ushered in a new era of energy policy, aiming to increase renewable energy production, encourage energy conservation, and boost the economy by creating green jobs. Undoubtedly, the legislation was an initial success in terms of procurement playing a role in the elimination of coal-fired electricity and providing important action on climate change.

However, the development and implementation of the GEGEA has demonstrated that procedural fairness is just as important as the outcome. The process was marked by a lack of consultation with key stakeholders and few attempts to account for the concerns of those most directly affected by renewable energy projects.



Ontario's current installed electricity capacity (March 2017; Source IESO)

## RESEARCH OBJECTIVES

- To analyze the legal and policy framework underlying the GEGEA, its key provisions and procedures, and the motivations behind those rural people who have resisted and protested the approval of Renewable Energy (RE) projects near their communities
- To summarize the issues that had arisen in legal proceedings and the remedies sought by appellants at the Ontario Environmental Review Tribunal (ERT) and in the courts



Local residents protesting the Arnow (ON) Wind Farm

## STUDY BACKGROUND

For decades Ontario has taken the "hard energy path" which relies on centralized, large scale electricity generation (e.g. coal, gas & nuclear). Renewable energy (RE) by nature is decentralized, small-scale, and distributed. However, a deeper analysis reveals that the process behind RE development is more of a hybrid soft-hard energy path, with the balance (still) tipped in favour of multinational companies. Less than one percent of wind energy capacity in Ontario is community-owned and the practical realities of policy dictate that corporations benefit the most from the GEGEA. This creates a dynamic where power and profits remain centralized and larger-scale renewable energy projects are more common than small-scale ones.



Wind turbines near Port Burwell, Ontario (Erie Shores Wind Farm)

## METHODS

### Research Design

Using a qualitative approach, the research is comprised of:

- a critical analysis of RE legal and policy frameworks in Ontario, Canada.
- a contemporary review of legal proceedings in the province

### List of legal proceedings highlighted:

- Prince Edward County Field Naturalists v. Ostrander Point
- Constitutional challenges (Bovaird, Dixon, Platinum Produce, Wrightman and Fata)



Threats to the habitat of the Blanding's turtles (above) have been at the center of an Environmental Review Tribunal at Ostrander Point, ON (Source: Toronto Star)

## MAJOR FINDINGS

### 1) The Nature of the GEGEA

- Legal and policy framework currently favours large companies with capital to navigate approvals and ERT appeals
- Appeal provisions expressly designed to effectively prevent successful appeals and limit full hearings,
- Streamlined approvals seen as undemocratic and likely amplifying perceptions of hazards for those living closest to wind turbines
- Legislation effectively obliterated role of municipalities in RE approvals as per Premier McGuinty's anti-NIMBYism direction in 2009/2010
- Palpable frustration because of sense that urban communities are imposing their pro-RE values on rural communities.

### 2) Not just NIMBYism

- Legal proceedings show complexity of disputes and wide range of concerns raised including impacts on aesthetics and views and impacts on community solidarity
- Farmers and rural residents accepting funds to allow siting of turbines and large solar projects on fields are criticized
- Mental anguish about sense of powerlessness has prompted considerable distress manifested by sleep problems, increased stress levels, mental health, etc.
- Concerns about land value impacts not addressed
- Residents turning to novel tactics such as invoking the Charter of Rights because they perceive lack of justice

### 3) Social, Political and Health Impacts

- Health concerns likely tied with the process of RE development
- Large sums of money being raised by volunteers through bake sales, raffles and other activities
- Political impacts: Ontario Liberals only retained one semi-rural seat (in Peterborough City/County)



The Yorkshire Valley Barn Solar Project (Source: Generation Solar)

## DISCUSSION

A process that breeds strong feelings of disempowerment and marginalization is an injustice that warrants serious consideration. Ontario must change course and begin to genuinely engage with communities and rural land owners playing host to RE projects. The absence of this will threaten the long term success of environmental and climate goals. Community ownership and intervenor and participant funding to engage in approvals would help. Ontario can look to other jurisdictions including Nova Scotia, Canada for guidance. Recent work by Walker & Baxter (2017) has shown that purposeful community-based development may lead to better outcomes and higher levels of local support in rural areas.

## CONCLUSION & RECOMMENDATIONS

Based on the findings, change is needed to improve the ways in which RE is being developed in Ontario. We recommend that government should:

- Conduct an inquiry into the GEGEA and approval process which involves engagement and consultation
- Establish a fairness commissioner to address ongoing conflicts
- Research and consider amendments to the Planning Act to allow municipalities to establish round table processes which would help in an advisory capacity
- Require proponents of large projects to provide intervenor and participant funding

## REFERENCES

- McRobert, D., Tennent-Riddell, J., & Walker, C. (2016). Ontario's Green Economy and Green Energy Act: Why a Well-Intentioned Law is Mired in Controversy and Opposed by Rural Communities. *Renewable Energy Law and Policy: RELP*, 7(2), 91.
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