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NEW ELECTRICITY: GENERATION, PRICING, WHEELING & REGULATION

Introduction – J. Michael Robinson, Q.C.[†]

I am Michael Robinson. First, I would like to take care of a few housekeeping items. I was going to do something really useful, probably the only useful thing I have ever done as a member of the advisory board, and that is try to take Henry's bell away from him. We did that once a few years ago, but he managed to get it back. I made some inquiries; Henry's physician told me that he had to have his bell back because he was risking serious injury to his hands from all his loud clapping he has done for the last few years. I am afraid we will have to live with the bell.

I can give you a bit of news about why the Institute is so important. Frank Loy's sympathy statement about the friendly bombing of the Canadian troops¹ was obviously heard in Washington, because, apparently somebody in the White House told Mr. Bush that he should probably say something; *The Plain Dealer* reported he did indeed say something yesterday.² Notwithstanding that, I will note for the people who were here for the presentation by the press last night that, the day after the friendly bombing, neither *The Wall Street Journal* nor *The New York Times* had one single item about it in the paper – which shows you that Canada, as usual, does not make enough noise to be heard in New York.

As the last-minute substitute presider for this session, I have the luxury of not having had the chance to review the presentations of the speakers beforehand; that is a luxury because I can ask a bunch of hard questions in this introduction and hope that they will answer them in their presentations. However, if they do not, I will not be *too* hard on them. For David Manning, he may tell us in his presentation how California made such a hash out of its privatization or partial privatization of electricity generation and what David Drinkwater's client should be doing to avoid doing the same thing in Ontario. We are going to a private, fully competitive system on the first of May³ – ten

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¹ See Frank Loy, *On a Collision Course? Two Potential Environmental Conflicts Between the U.S. and Canada*, 28 CAN.-U.S. L.J. 11, 11 (2002).

² See Editorial, *A Tragically Misplaced Bomb*, PLAIN DEALER (Cleveland, OH), Apr. 19, 2002, at B8, available at 2002 WL 6365191.

³ See Martin Mittelstaedt, *Electricity Switch Costly for Many*, GLOBE & MAIL, Feb. 1,

days from now – so David Manning may be able to tell David Drinkwater how Ontario can avoid screwing it up like California did. For David Drinkwater, I want him to answer the question that has been asked in at all Canadian papers: are electricity prices going to go up or down on the first of May? Nobody really knows the answer, but everybody would like to think they know. The Greens are all screaming that they are going to go up,⁴ and Ontario Power Generation is wisely not saying anything; maybe David will tell us what will happen.

I do not think you will hear about subsidies. Where is Simon Potter? Did he make it this morning? Our Canadian counsel for Quebec on Lumber IV⁵ and many other lumber cases, Simon Potter, might be interested in trying to answer this question: why has the U.S. not gone after the Canadian public utilities, who export vast quantities of electricity to the U.S. and enjoy significant, probably counter-available advantages like tax concessions, being able to borrow on the government's credit, *etcetera*? The U.S. chooses to go after softwood lumber industry, but nobody seems to have gone after electricity – Quebec Hydro, BC Hydro, or Manitoba Hydro. Now Ontario Hydro is going to be added to the list.

Now in Canada, we have several sacred cows, in addition to the Queen. She is a charming lady and we all love her. There is hockey, too, and I gather there are still some Canadian teams in the Stanley Cup playoffs. There is this thing called Canadian culture but we do not know exactly what that is. Another one of our sacred cows – a really important one – is getting electric power from public utilities at cost. We are going to lose that one in Ontario, because it is not going to come from a public utility anymore; it is going to come from competitors supplying power to us starting May 1.

So I will now move on to introduce our speakers. David Manning is going to go first because the U.S. is more of a deregulated environment than the Canadian one, and David Drinkwater will follow up. David Manning is a closet Canadian. We are supposed to have U.S.-Canadian balance here, but Manning came from Alberta, where he took his undergraduate degree and his law degree. He is also not a real person; he is a lawyer. He even got called to the New York bar, but for quite a while now he has been a real person because he has been in the real business of supplying energy in the U.S., to U.S. consumers, through KeySpan, where he is now a senior vice president. I just discovered a bit more about KeySpan; it is one of the true convergent energy producers. It gets energy, particularly gas, out of the Gulf of Mexico,

2002, at A8.

⁴ See *id.*

⁵ That is, the fourth Canada-U.S. Lumber Trade dispute. For more information, see *Canada-U.S. Lumber Trade Disputes*, at <http://www.for.gov.bc.ca/HET/Softwood/disputes.htm#Introduction> (last visited July 6, 2002).

but also gets a significant amount from Canada. It generates about 6,000 MW of its own electricity, which it supplies in New York, and it burns its own gas to do it.⁶ This business has grown quite large, so David really can speak authoritatively, not just as a lawyer, on what has been happening in the U.S. within the less-regulated or deregulated regime. Before he went to KeySpan, he was president of the Canadian Association of Petroleum Producers – we just heard their story at the last session – and was actually inside the government as Deputy Minister of Energy in Alberta in the mid-1990s. Before then, he was senior international trade counsel for the Government of Alberta, based in New York.

David Drinkwater, whom I have known for years as a very prominent securities lawyer based in Toronto and also in London, where he worked on some of the first truly major international securities issues – the privatizations by Mrs. Thatcher in England. He then decided that he had enough of this big law firm nonsense and went into industry, where he was first at Bell Canada as Special Advisor to the Chairman and CEO at that large Canadian sacred cow. He then became Group Vice President of Law and General Counsel for Bell. David has recently moved on to a very challenging position at Ontario Power Generation (OPG), which is one of three subsidiaries of Ontario Hydro, which is being split up. It is the one that actually generates power. There is a bit of mistake in the printed biography here; it says that he oversees non-nuclear matters but David actually said that, notwithstanding trying to hide from that nasty part of OPG's business, he got stuck with having to negotiate a very interesting yet difficult contract whereby Ontario has leased one of its major nuclear facilities to a big British operator to try to recoup some of the large stranded debt that Ontario has from having built nuclear reactors over the years.

Without further ado, I think we should let David Manning start. I will get out of his way.

⁶ See *KeySpan Energy: Fast Facts*, at http://www.keyspanenergy.com/about/fast_facts.cfm (last visited July 6, 2002).

