

January 8, 2014

Honourable Kathleen Wynne
Premier of Ontario and Member of Provincial Parliament, Don Valley West
Minister of Intergovernmental Affairs and Minister of Agriculture and Food
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Dear Premier Wynne:

Re: Proposed Hydro-electric Generating Station at the Bala Falls

It appears you have recently made or been provided with several **invalid justifications** for the proposed hydro-electric generating station at the **Bala Falls**. For example:

"In the past there has been power generation at the Bala Falls."

Premier Kathleen Wynne, December 2, 2013

"It is commonly recognized that swimming, wading or other water-based activities below a water control structure such as the Bala North dam are not advisable recreational practices."

Anne Collins, MNR, October 22, 2013

"... Although such activities are not prohibited, people recreating in this area do so at their own risk."

"... the proponent ... addressed ... safety ... requirements."

"... concerns associated with the proposed operation were mitigated to the satisfaction of MNR."

Steve Taylor, MNR, December 16, 2013

Summary

The generating station previously there was **tiny**; compared to that proposed, it was as much smaller **as a garden shed is to a five-bedroom house**. And the flow was tiny; the speed of pleasant summer breeze compared to a tornado.

The **proponent, MNR, and MoE have not**:

- **Had a competent authority** assess the danger as the proposed generating station would be **required** to start operation at about noon most days of August, **just when people would be within a few feet of the treacherously turbulent water** (and adding to the danger, this would be directed towards the in-water recreational area at the base of the Bala north falls). This unpredictability would work against people's good judgement to determine when in-water recreation would be safe.
- **Contacted the volunteer fire department** and other emergency responders to determine what rescue equipment, budget, and training would be required.

Finally, the proposed generating station **would illegally obstruct the portage**, whereas the generating station previously on the site did not.

Detail

“There used to be a generating station there” – true, but ...

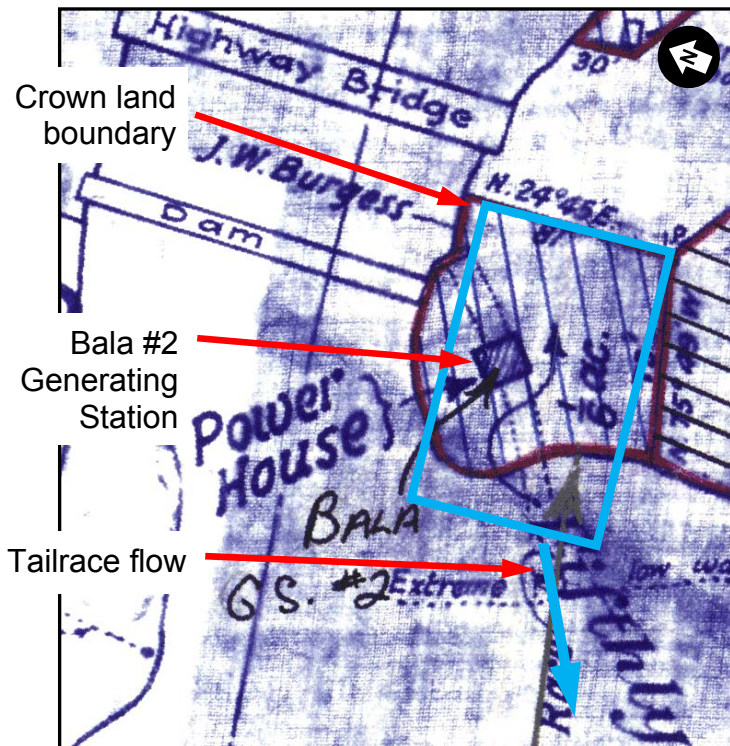
What is more important is the generating station that was there 50 to 90 years ago was **tiny**, it had a capacity of only 298 kW. The proposed generating station would have a capacity of 4,300 kW, which is over **14 times** that. So there would be 14 times the flow of water through the proposed station. Examples to illustrate such a huge increase are:

- A 10 km/h wind is a pleasant breeze. But 14 times that is 140 km/h and is technically rated as a hurricane and **tornado** – unquestionably a risk to life and property.
- It is safe to walk children or push a baby stroller in a parking lot within a few feet of passing cars, which would be travelling at 8 km/h or so. But 14 times that speed is 112 km/h, well **above the speed limit for all Ontario highways**. Obviously it would not be safe so close to cars travelling at such speeds.

That is, the proposed generating station’s capacity would be so much greater than for the station that used to be there, that **public safety concerns need to, but have not been addressed by a competent authority**.

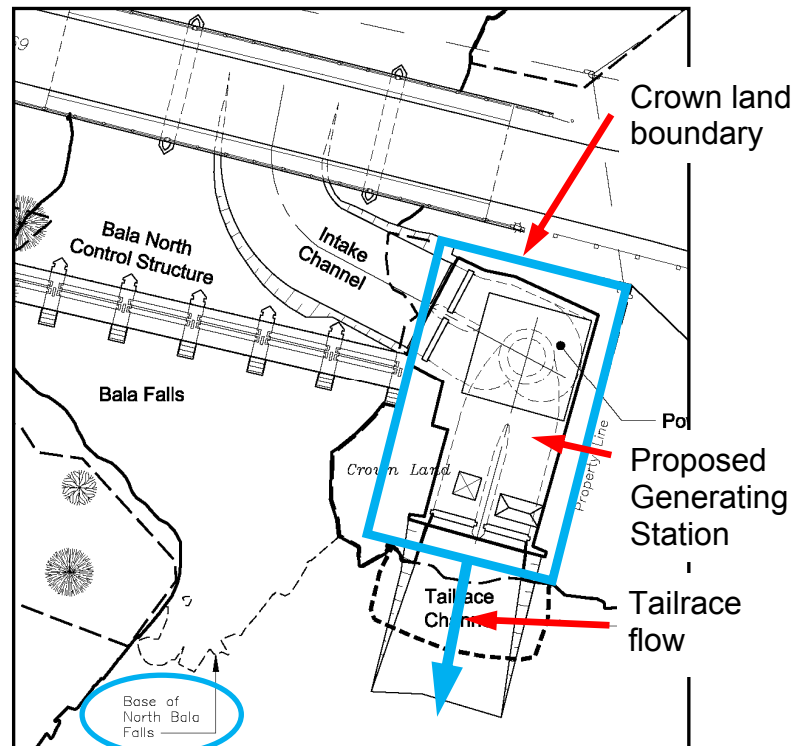
Physical Size

As another example of how the generating station previously on the Crown land does not justify the proposed project, the figures below show their relative size.



Part of 1929 Hydro-Electric Power Commission map. Shows this generating station:

- Was angled away from base of Bala north falls.
- Occupied only a tiny fraction of Crown land, leaving more than enough room for portaging.



Part of Figure 2.1 from proponent’s 2012 Environmental Screening Report Addendum. Shows proposed generating station would:

- Direct the treacherously turbulent water towards the in-water recreational area.
- Occupy 16 times the land, obstructing the portage.

The station previously there had a footprint of 16' x 16', the size of a two-car garage. But the proposed generating station would be over 100' long and have an area over 4,200 ft².

That is, the proposed generating station would have a footprint more than 16 times that of the station previously there. To illustrate, this is the same difference between the footprint of a **five-bedroom house (1,320 ft²)** compared to a **typical backyard garden shed (80 ft²)**.

Another major difference and additional danger is the water exiting the previous generating station was directed **away** from the in-water recreational area, but the water from the proposed generating station would be directed **towards this area**.

Emergency Response

The proponent has not consulted the local **volunteer fire department** or part-time OPP detachment to determine the budget and training needed to provide emergency response services.

In-water Recreation Will Continue – beside this death-trap

The photograph below shows a typical use of the very popular and long-time in-water recreational area at the base of the north Bala Falls.

As is clear, with the good judgement and supervision shown, **it is safe because the flow is predictable** – as the only way for the flow on such days to change quickly is by MNR removing dam stop-logs, which their staff do only with a clear view of this area.

This in-water recreation is what is **unique to Bala** and why thousands of people visit the Bala Falls every summer. These visitors provide **crucial support to the area's economy** by also visiting the nearby shops and restaurants.



Indeed people are responsible for their own individual judgement of whether in-water recreation is safe, and they accept this responsibility for naturally-occurring risks. But the proposed generating station would be just a few feet from this area, and its unpredictable operation and treacherously turbulent water **would begin – at about noon, most days in August – without warning** or local or remote monitoring.

Many visitors to the area have first languages other than English so warning signs would not be effective.

The MNR's and proponent's response to this pending disaster is that these people in the photograph should not be there. There is no historical or logical justification for this wilful ignorance of this major problem. **The reality of the site and situation must be addressed.**

The Traditional and Historic Portage

Obstructing the Portage is Illegal; as the land was disposed of

The Judicial Review decision of August 22, 2013 noted that Public Lands Act s. 65(4) applies only to “*public lands over which a portage has existed or exists have been heretofore or are hereafter sold or otherwise disposed of ...*” and determined this would not apply as the Crown land would be leased to the proponent.

However, as documented in a letter I sent to the Minister of the Environment on October 15, 2012, this Crown land was granted to Thomas Burgess on February 24, 1874. As title passed from the Crown on this date, it is clear that this Crown land **was indeed disposed of** on this date, and so s. 65(4) of the Public Lands Act **would apply**. If the Public Lands Act was to not apply to land subsequently un-patented, it could and would have been so worded.

Furthermore, the title for this land was again transferred, so it was again disposed of:

- On April 26, 1929 when it was transferred from the Bala Electric Light and Power Company to the Hydro-Electric Power Commission of Ontario.
- On January 4, 2011 when it was transferred from Infrastructure Ontario and the Minister of Infrastructure to the Minister of Natural Resources.

Clearly, the land **has been disposed of more than once**, so s. 65(4) of the Public Lands Act does apply.

Obstructing the Portage is Illegal; even when there's no Portaging

In addition to said October 15, 2012 letter showing not only the existence of the Portage, but that this Portage was in use prior to this land disposition:

- The MNR showed this Portage in Figure 1 of their March 2011 *Bala Falls Dams Public Safety Measures Plan*.
- The MoE confirmed this Portage exists on page 6 of their March 25, 2011 *Bala Falls Decision Letter* to me.
- The proponent confirmed this Portage exists in Section 2.2.5.10 of their 2009 Environmental Screening Report.

Therefore it is clear the Portage is accepted as existing, and that the **Public Lands Act prohibits it from being obstructed.**

In May 2013 the MNR issued a Notice prohibiting public use of the Crown land. This is not justification for a private developer to permanently obstruct this Portage. For example:

- The Public Lands Act does not allow obstructing a portage and a **portage exists even when it is not actually being used as a portage**, just as a road is still a road when there are no cars travelling on it.
- There are reasons to maintain a portage even while it is not actually being used as a portage. For example, portages are part of our cultural heritage, and should not be obstructed so future generations can understand and know the traditional and historic importance and value of portages.
- Just as the MNR unilaterally and with poor justification decided to declare the Crown land restricted from public use, they could reverse this decision in the future, so a permanent obstruction of this traditional Portage should not be allowed.

In summary:

The proponent has not “done their homework”, and **competent authorities have not been consulted** to ensure public safety risks are acceptable. And the proposed project would illegally obstruct a traditional portage. That is, this proposed project is not ready for approval or to proceed:

- 1) That there was a tiny generating station with a safe and tiny flow in a safe direction is **no justification** for the proposed structure over 16 times the size which would direct treacherously turbulent water towards the very popular in-water recreational area.
- 2) The proponent has **not contacted the volunteer fire department to determine** the budget, staff, training, or rescue equipment required for emergency responders.
- 3) The required cycling operation of the proposed generating station would create unpredictable and dangerous new water flows. Visitors, many whose first language is not English, would not know about this, and **their good judgement about natural risks would lead to tragedy** as the station’s operation would **start at any time** without warning, and **especially at about noon during the summer**.
- 4) Compared to the generating station that used to be on the site, the proposed generating station would:
 - a) **Be as much larger as a five-bedroom house is larger than a garden shed.**
 - b) Have a flow greater as a tornado is compared to a summer breeze.
- 5) The proponent, MoE, and MNR **do not have the expertise to assess the new risks to the long-time, allowed, and very popular in-water recreation**, which is the **vital anchor to the area’s economy**. Nor has a competent organization assessed these new risks. Nor can the proponent prohibit swimming in the area – so **the proponent could not ensure public safety** even though they are required to.
- 6) The Public Lands Act Section 65(4) **does apply, as the Crown land was disposed of**; firstly when the patent was granted to Thomas Burgess in 1874, and twice more since then.

- 7) Though the MNR has prohibited public access to this Crown land, this does not allow a private developer to contravene the Public Lands Act by obstructing the Portage. A road is still a road when it is not being used, and **a portage is still a portage while people are not portaging on it**, so the Portage cannot be obstructed even when people are not actually portaging.

We would be pleased to provide additional written evidence further justifying the above.

Please reply with what actions you will take to ensure the safety of vacationing families, as the MNR's assurances were provided without competent assessment.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Shnier".

Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: The Honourable David Oraziotti, Minister of Natural Resources, DOraziotti.mpp@liberal.ola.org
Her Worship Alice Murphy, Mayor, Township of Muskoka Lakes, AMurphy@muskokalakes.ca
Anne Collins, MNR, Anne.Collins@ontario.ca