

April 8, 2015

The Honourable Bill Mauro
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Dear Minister Mauro:

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

Summary

Over the past months I have sent your Ministry staff several letters detailing serious concerns of contract administration, public safety, and consultation. Your Ministry's replies do not respond to the issues identified nor answer the questions asked.

The proponent was awarded this opportunity in 2005 through a proposal they submitted as part of a competitive process. The proponent subsequently received environmental approval for their 2012 plans. However, the proponent has **changed their plans from what was proposed to the point of being fraudulent**; the building would be so much taller as to be a different project, the construction would risk flooding Lake Muskoka and damaging the Bala north dam, the proposed station would be larger and be too dangerous to the in-water recreational activities known to be important to the area – and the proponent would not meet their environmental commitments.

The changes the proponent has made would result in a project which would be too dangerous to the public and too big for the site.

The public interest requires that the Ministry of Natural Resources require the proponent to meet their proposal commitments. If the proponent will not, then the MNR must cancel the project, and as it would be the proponent's choice to renege on their commitments, the proponent would have no claim for costs, as the MNR's well-written Request for Proposals specified.

Detail

- 1) We detailed concerns in letters dated January 28, 2015 and March 11, 2015 to Anne Collins, but the Ministry's responses do not answer the questions asked. Please

respond with how your Ministry will ensure the following commitments and issues are addressed.

a) Building height

Due to clearly stated requirements from the MNR, the proponent committed in 2005, 2007, and 2012 that the roof of their building would not be higher than the level of Muskoka Road 169. The proponent stated their building would be more discreet than the 16' x 16' generating station that used to be at the site.

- But the proponent would **completely fill the 70' x 100' Crown land site with concrete, and the huge building would rise more than 20' above the road**, completely blocking the view down the Moon River for passers-by.

This is not about “aesthetics” and surface finishes, this is about the proponent not meeting a major building size and land use commitment and the MNR’s requirement that the project be sensitive to the site and area.

b) Flooding Lake Muskoka

The proponent’s construction plans would have an unacceptably-high risk of flooding Lake Muskoka. Their analysis appears incomplete, the emergency plans not feasible, and the resulting environmental impact has not been approved.

c) Risk to the Bala north dam

The proponent’s construction plans require both structural modifications to, and excavation 45' deep and within inches of, the Bala north dam. The proponent has no assets, no operations, no income, and no employees. If they cause damage to the dam, they could declare bankruptcy and abandon the site.

The public interest must be protected by the MNR requiring the proponent provide a Letter of Credit ensuring funds available to repair any construction damage. This would ensure that the proponent’s priority is aligned with the public interest rather than rushing to meet the extremely ambitious schedule.

Note that to protect their Muskoka Road 169 bridge over the Bala north channel, the District Municipality of Muskoka has **required the proponent to provide a \$2,000,000 Letter of Credit, and the proponent has agreed to this.**

d) Dangers to the public

We note that the boat docks adjacent to the tailrace of the Bracebridge Falls generating station are protected by a 110'-long concrete breakwater, and also that nobody swims in the area. Yet the proposed Bala project would have:

- Over **3½ times the flow**.
- **Nothing** to protect boats approaching the Town Docks or the three private docks which would be even closer to this flow.
- Much worse than that, the proposed Bala station would **automatically start at noon** on many summer days, just when families would be swimming and wading **just a few feet from this treacherously turbulent water**.

It would be unprecedented and extremely dangerous to have in-water recreation this close to a generating station this large.

As the proponent’s proposal stated they would “*not generally diminish the public’s enjoyment of the area for swimming, boating ...*”, the proponent clearly has made an obligation to better consider the area’s needs.

This “proponent-driven process” is out of control and these dangers need to be addressed now.

e) Viewing platform only if they can cut down over 100 trees

The proponent committed in both their proposal and Addendum that there would be a roof-top viewing platform.

They also committed in their:

- Proposal that they would provide *“tree plantings, improved maintenance of public green spaces and the addition of floral gardens, walking trails and rest areas furnished with benches and waste receptacles”*.
- Addendum that they would not impact the Township’s heritage-designated Portage Landing land to the south of the proposed construction site.

However the proponent now says:

- They would only provide a rooftop viewing platform **if they can cut down over 100 trees** on the Township’s Portage Landing land, and they would pile this land 15’-high with blasted rocks and drive construction trucks through it for two years.
- They would not provide **any** tree plantings or anything else on the Crown land site, as they would **fill it with their concrete building to within inches of all four property boundaries**.

This is extortion, disreputable, disrespectful, bullying – and unacceptable. This a private developer gone rogue. The MNRF must control this process by requiring the proponent to honour their proposal and Addendum commitments.

f) Impacts on wildlife

The proponent’s Environmental Screening/Review report confirmed compliance with wildlife and breeding requirements, such as starting in-water work after July 15, not impacting forest habitat from May 24 to July 31, and not clearing vegetation from mid-May through Mid-August.

- However, the proponent has already asked for permission to **renege on the first restriction**, and their schedule shows they intend to start work in early June which would result in **non-compliance with the second two restrictions**.

The MNRF has a responsibility for wildlife and forestry and the proponent should be required to honour their commitments.

g) Environmental approval

In addition to the above concerns, as noted in the attached letter April 8, 2015 to Minister of the Environment and Climate Change Murray, **the proponent plans construction work for which they do not have environmental approval**.

h) Consultation

- As part of this site being considered for release, Section 2.1.2.2 of your Ministry’s *Waterpower Site Release and Development Review*, procedure PL 4.10.05, issued November 10, 2004 required consultation *“with Potentially Affected Local Aboriginal communities on all potential sites for release”*. This has not happened.
- On August 8, 2013, the Bala Portage lands and other nearby Crown land parcels were de-patented. Such a change impacted the area First Nation’s rights and so should have included consultation.

The Crown’s own actions require that consultation be initiated.

Reading the MNR's 2005 RFP, it is clear that the MNR's intent in releasing this site was **more than just having a generating station built**, it was required that for this site that the proposed development be sensitive to the area's history, businesses, tourists, and recreational needs. The Ministry required a competitive process for this site release, and this requires that proponent's honour the commitments they made.

- 2) We request that your Ministry include the following conditions with any approvals, permits, and leases provided to the proponent:
 - a) The roof of their building be below the level of Muskoka Road 169.
 - b) The construction sequence allow both:
 - The continuous water flow down the Bala north falls, as is required by the Muskoka River Water Management Plan.
 - A peak flow of at least 80 m³/s through the Bala north channel, even during the months of June through March, as historical data shows this is required to ensure Lake Muskoka would not be flooded due to a high flow event.
 - c) A Letter of Credit be provided to the MNRF to cover the cost of repairs to the Bala north dam, should the proponent's construction damage it or its foundation.
 - d) The proponent engage the boating and recreational community to determine how to address the need for both safe marine navigation in the Moon River and continued in-water recreation at the base of the Bala north falls.
 - e) The proponent:
 - Provide the rooftop viewing platform, as they committed.
 - Not cut down over 100 trees and use the Township's Portage Landing site for construction staging.
 - Honour the wildlife breeding timing restrictions they agreed to.
 - f) The proponent's proposed work either complies with their 2012 Addendum environmental approval, or they utilize the Addendum Provisions as specified in the *Guide to Environmental Assessment Requirements for Electricity Projects*.
- 3) We note that the MNR's 2005 Request for Proposals was very well-written, requiring that proponents keep their commitments. For example Section 4.3.3 states that the MNR:

“reserves the right to rescind any contract awarded to a proponent in the event that the Ministry determines that the proponent made a misrepresentation or provided any inaccurate, misleading or incomplete information in its proposal or during contract negotiations.”

And Section 4.6 (ii) states:

“... neither party shall have the right to make claims against the other with respect to the award of a contract, failure to award a contract or failure to honour a proposal;”

We also note that a June 24, 2008 letter from Andy Heerschap, MNR District Manager, Parry Sound District, to the Township of Muskoka Lakes, states that:

“Swift River Energy was chosen as the Applicant of Record based on the merits of the RFP document submitted.”

And

"I can assure you that MNR will continue to work with Swift River Energy to help ensure they meet their EA and public consultation requirements, and meet their commitments to the public as identified in their North Bala dam proposal released on July 5, 2005."

If the proponent will not honour their 2005 proposal, the MNR's obligations are clear; the proponent's proposed project must be stopped. And the proponent would have no right to claim costs as it was the **proponent's choice** to renege on their commitments.

Conclusion

In response to well-founded requirements by the MNRF, the proponent made proposal and environmental commitments. Please respond with the conditions the MNRF will require for any work performed by the proponent to ensure these important commitments be honoured, as is in the public interest.

Thank you.

Sincerely,

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

Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: The Honourable Kathleen Wynne, Premier of Ontario, KWynne.mpp.co@liberal.ola.org

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