

April 17, 2015

The Honourable Glen R. Murray
Minister of the Environment and Climate Change
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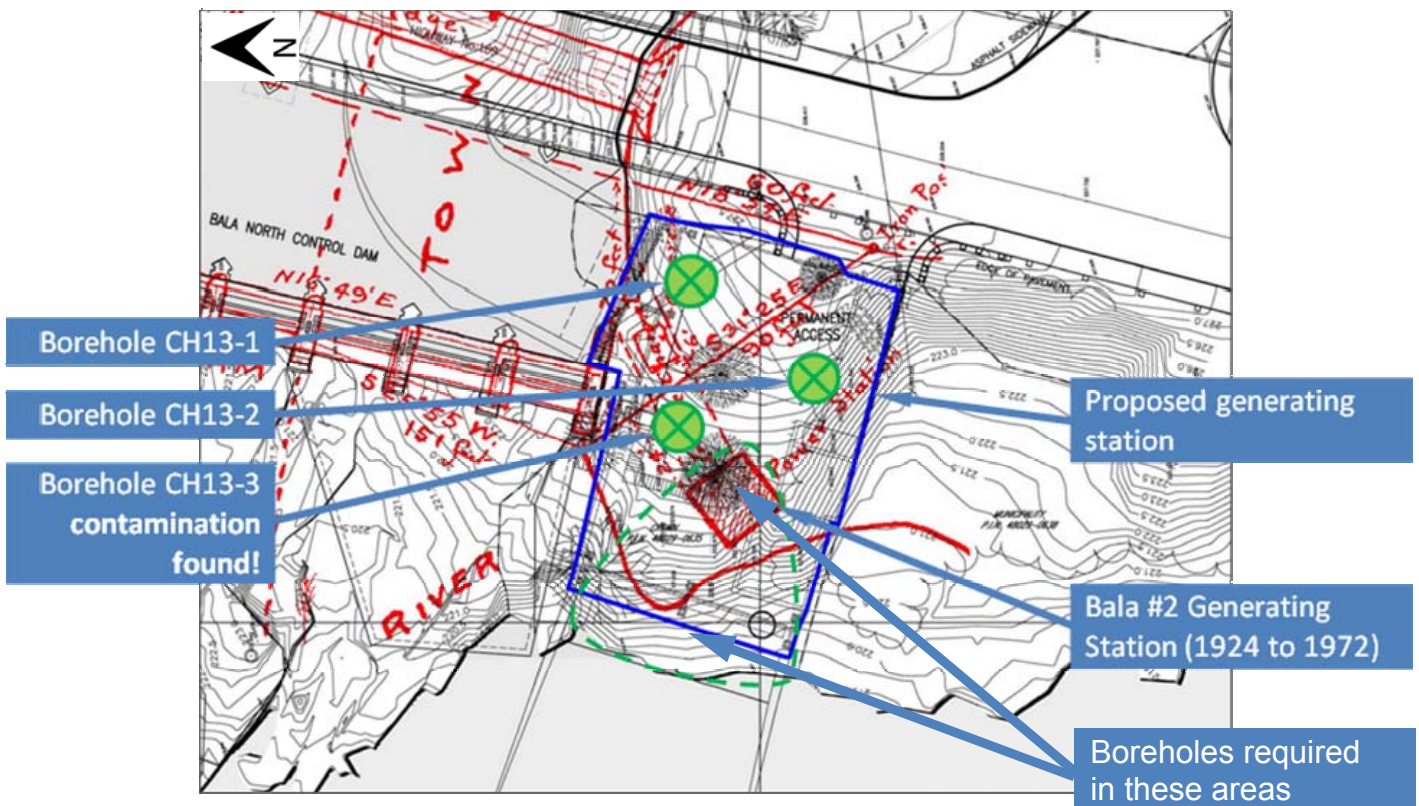
Dear Minister Murray:

**Re: Proposed Hydro-electric Generating Station at the Bala Falls
Part II Order Request**

I well understand that Swift River Energy Limited's proposed hydro-electric generating station at the Bala falls received approval from your Ministry for their 2009 Environmental Screening/Review Report and 2012 Addendum – as your Ministry frequently states.

- 1) As I have detailed in numerous letters (January 8, 2015, March 10, 2015, and April 8, 2015) sent to your Ministry, the proponent has made major and environmentally-significant changes to the plans for which they received these environmental approvals. I continue to await a response, or even an acknowledgement to these letters.
- 2) In addition, a new environmental issue has come to our attention, as follows.

In November 2013, the proponent received an *Environmental Site Assessment* report, which presented findings of exploratory boreholes they had drilled in June and July 2013 at the proposed Crown land construction site, the locations of these boreholes is shown in the figure below.



One of the reasons for this work was to determine whether there were any contaminants as a result of the Bala #2 generating station which was built at that site in 1924, operated until 1957, and demolished in 1972. It is not known what equipment or contaminants may have been left and buried there at that time.

- a) This report noted that elevated concentrations of Zinc were found in the groundwater, and that re-testing was recommended. We do not believe this re-testing has occurred.
 - b) The bigger concern is that that as shown in the marked-up drawing below, these boreholes were all drilled upstream of the previous location of the Bala #2 generating station, so there may be more significant hazardous wastes, which would be released by the proposed excavation. This would be a major concern as:
 - The location is directly adjacent to the Moon River.
 - The proponent plans only simple settling tanks to treat the water pumped from this excavation.
- 3) I am therefore **requesting a Part II Order** as the proponent has made the following environmentally-significant changes to the work previously described and approved:
- a) To require the proponent to provide further study of the potential contaminants on the proposed construction site, and provide a plan on how construction would therefore safely proceed:
 - Over a year ago the proponent's Environmental Site Assessment found contamination in the groundwater at the proposed construction site. Re-testing was recommended, yet has apparently not been completed.
 - The proponent has not made any construction provisions to deal with this contamination. In fact, they are planning on dumping the excavated rock on adjacent shore lands, so runoff and leachate would directly enter the Moon River.
 - The proponent plans to use traditional sediment settling tanks to handle the water from the bottom of their proposed excavation of this contaminated site. They would pump from these settling tanks directly into the Moon River, with no provision to deal with the elevated Zinc concentration.
 - The contamination found was in the groundwater, yet the report noted the three exploratory boreholes were drilled upstream of the potential source of contaminants, which is an abandoned industrial facility which was demolished in 1972 with no records of the disposition of materials. The proponent must be required to drill and test additional boreholes, at and downstream of where the Bala #2 generating station was, as shown by the area surrounded by the dashed green line in the figure above.
 - b) To determine the impact of starting work, both in-water and forest clearing, earlier than committed to in their 2009 Environmental Screening/Review Report (see Sections 5.2.7.1, 5.2.7.2, 5.2.7.10, and Table 5.4).
 - c) To determine the impact of the upstream cofferdam destroying three times the 840 m² of aquatic habitat stated in Section 5.2.1.1 of their 2012 Addendum.
 - d) To determine the environmental impact of the temporary downstream access ramp they would build across the base of the Bala north falls (apparently a gravel construction road, directly adjacent to the Moon River), as this was not described in either their 2009 ESR/R or 2012 Addendum.

- e) To determine the environmental impact of the silt curtain they propose downstream of the above access ramp, as this silt curtain would infringe on the Type 1 Walleye habitat downstream of the Bala north falls, and was not described in either their 2009 ESR/R or 2012 Addendum.
- f) To determine the environmental impact of the proposed upstream cofferdam blocking entire north channel for approximately ten months, as this was not described in either their 2009 ESR/R or 2012 Addendum.
 - Would this result in stagnation of the fish habitat at the base of the Bala north falls.
 - Would there be other impacts of the cofferdams and elimination of flow in this area.
- g) To require that the proposed construction comply with the Muskoka River Water Management Plan.
 - As the MRWMP requires a continuous flow of at least 1 m³/s down the Bala north falls, either the construction method must change or there must be an amendment to the MRWMP before construction could commence.
- h) To determine the environmental impact of quickly removing the upstream cofferdam, as is the proponent's plan to deal with high flow events while their proposed upstream cofferdam is in place, from June through March.
 - Historical data shows the high flow events during the months of June through March would require the Bala north channel be able to carry up to 80 m³/s to avoid flooding Lake Muskoka. Given the various stages of construction, for example, after excavation of the proposed intake but before their proposed interim cofferdam is in place, how could the upstream cofferdam be removed while still controlling flow.
 - Quickly removing a rock-fill cofferdam during a high-flow would likely result in tons of sand being washed into the Moon River. The environmental impact of this needs to be assessed.
- i) To determine the environmental impacts of the changes the proponent would make to their building, including:
 - Figure 2.1 of the proponent's 2012 Addendum shows the footprint of their proposed building, and Section 2.1 committed that this would be the "*largest building size required*" and "*this size may indeed be reduced following detailed design prior to construction*".
 - However, more recent information from the proponent shows they have actually increased the footprint of their proposed building to be 48% larger still. This does not comply with their environmental approval.
 - pdf page 29 of the proponent's 2012 Addendum showed that the roof of their building would be 30' above the Moon River (the same as the height of Muskoka Road 169), and this would be for their taller design with a vertical turbine, as they note in Sections 4.6.1, 6.2.2, and 6.2.3.
 - However, the proponent has recently stated the roof of their building would be 6.2 m (over 20') above Muskoka Road 169, which would be over 49' above the Moon River. This would have significant socio-economic impacts as tourism is the major driver of the area's economy and passers-by stop and stay a while when they see the view down the Moon River. And they would not stop if all they see is a two-storey building blocking the view.

- Sections 4.6, 6.2.2, 6.2.4, 6.3, and 7., and Table 6.1 note there would be a rooftop viewing platform.
 - However, the proponent has recently stated this would only be provided if they could cut down over 100 trees on the Township's Portage Landing land, which is designated under Part IV of the Ontario Heritage Act. This is an environmentally-significant change to their 2012 Addendum.
 - In fact, in Section 4.6.1 of the proponent's 2012 Addendum the proponent committed that they would not impact the Township's Portage Landing site.
 - The environmental impact of cutting down over 100 trees and filling the area with blasted rocks needs to be assessed as this was not described in their 2012 Addendum.
- j) To require the proponent to convene the Public Advisory Committee they described in Section 4.6.1 of their 2012 Addendum.
- To date, the proponent has only convened a "Community Based Design Committee" whose members, meetings, and Agenda is secret. The minutes for only a single meeting have been posted. There is nothing "public" about this, so the proponent has not met this commitment.
- 4) I am requesting a Part II Order for the following reasons:
- a) As further study is required since the previous study in the proponent's 2009 Environmental Screening/Review Report and 2012 Addendum does not include all the work the proponent currently plans.
- b) As the proponent is being secretive about their proposed changes.
- All of the above information about these proposed changes had to be learned through Freedom of Information requests or from people that attended meetings not open to the public.
 - The proponent has not made any of the above information on their proposed changes available on their web site.
 - Section 5.1 of the Environmental Assessment Act specifies the Obligation to Consult: "*When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with such persons as may be interested.*" Clearly this has not occurred for the proponent's proposed changes as the public has not even been informed of these proposed changes.
- Environmental impacts must be communicated to the public, not kept secret. The proponent should be required to conduct a proper environmental assessment as would result from a Part II Order.
- c) Section A.6.1 of the *Guide to Environmental Assessment Requirements for Electricity Projects* clearly requires that the "*The project must be implemented in the manner described in the Screening Report or Environmental Review Report, and the proponent must fulfill any conditions that the Director or Minister apply in a decision not to elevate a project.*" However, I note the following statements in the Minister of the Environment's January 23, 2013 decision letter to me:
- "*Any lands that are not currently owned by the Crown will not be used for construction purposes, as confirmed by Swift River Energy Limited in the Environmental Screening Report Addendum.*"
 - The proponent has requested to use the following Township lands for construction purposes; the Precambrian Shield parking lot, the south half of

the Don's Bakery parking lot, and the heritage-designated Portage Landing land directly south of the proposed construction site. That is, the proponent now intends to use lands not currently owned by the Crown for construction purposes, so the proponent is not implementing the project in the manner described. Therefore a Part II Order is justified.

- *"The Ministry of Tourism, Culture and Sport confirmed that the areas proposed to be used for construction purposes of the Project do not currently have any protected cultural or historical designations."*
 - This is no longer the case, as the Township's Portage Landing is designated under Part IV of the Ontario Heritage Act, further justifying a Part II Order.
- *"Transport Canada has concluded that impacts on the upstream or downstream municipal docks are not anticipated".*
 - Transport Canada did not assess the marine navigation impacts at the downstream municipal docks. Transport Canada made no reference to actual water velocities at the downstream municipal docks in their September 18, 2012 letter.
- *"The Ministry of Natural Resources also confirmed that the North and South Bala dam will remain in operation while the cofferdam is in place".*
 - This is not the proponent's current plan, as the proponent's upstream cofferdam would extend fully across the Bala north channel, therefore completely blocking the flow through the Bala north dam for ten months during their proposed construction.
- *"The Director's decision also detailed that the Ministry of Natural Resources confirm that there are several other locations which can be used as a portage route".*
 - These alternate routes either trespass over private property or require canoeing in the Mill Stream, which has a water velocity so fast that the local YMCA summer camp will not use it and Transport Canada has not assessed this.

The proponent's current construction plans would not *"implement the project in the manner described in the completed Screening or Environmental Review Report"*. The proponent therefore does not have environmental approval for their planned work.

We therefore request a Part II Order, and that the Ministry of Natural Resources and Forestry be requested to not provide any further approvals to this proponent, and suspend any previous approvals provided until; the environmental impacts of the proponent's current plans are made known to the public, the public have the opportunity to provide comments, the work would comply with the *Muskoka River Water Management Plan*, and the environmental impacts have been assessed.

Thank you.

Sincerely,



Mitchell Shnier, on behalf of SaveTheBalaFalls.com

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