

June 30, 2016

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Ministry of the Environment and Climate Change
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Dear Mr. Nizamuddin:

**Re: EBR registry number: 012-7735
Stormwater Management for
Proposed Hydro-electric Generating Station at the Bala Falls**

The proponent for the proposed hydro-electric generating station at the Bala falls has requested an *Environmental Compliance Approval* (ECA) for stormwater management and handling of the water which would be pumped from their excavation during the proposed construction. We have the following comments.

Summary

1) **Coffer dam lowering plan** is not described in, and **would contravene this ECA.**

As noted in 3) below, without environmental approval, the proponent changed their plans to block all flow in the Bala north channel during their proposed construction, and this creates a new risk of flooding Lake Muskoka. In an attempt to mitigate this risk, the MNR specified a coffer dam lowering plan which the proponent would need to quickly implement upon the MNR issuing a Flood Watch.

However the proponent has not assessed or mitigated, or communicated to the public the many negative environmental impacts of this coffer dam lowering plan. The proponent has also **attempted to deceive the MOECC by not including this plan in this application for ECA.**

The **coffer dam lowering plan is also not allowed by the proponent's 2013 environmental approval**, as it would wash into the Moon River untreated water from the construction site, along with the coffer dam material, and fine particulate matter.

2) Proponent plans **Settling Tanks on land not to be used for such purposes.**

The proponent has made **conflicting commitments**, as they have:

- a) Stated to the MOECC that they would locate Settling Tanks and the pipes to them in Margaret Burgess Park (the Crown land north of the Bala north falls).
- b) Negotiated with the Township of Muskoka Lakes and informed the public and the Bala United Church (which is to the north of Margaret Burgess Park) that **they would not utilize Margaret Burgess Park for construction purposes.**

- 3) Plans to **block all flow in Bala north channel, without environmental assessment** or approval.

For their 2013 environmental approval the proponent committed there would be continuous flow through the Bala north channel throughout the proposed construction.

However, without environmental approval or informing the public, the proponent's application for this ECA shows they would block all flow through the Bala north channel for the months June through February.

This would have a negative impact on the fish habitat there and **creates a significant risk of flooding Lake Muskoka**. This change is therefore environmentally-significant, but the negative environmental impacts have not been assessed or mitigated.

We therefore request that the MOECC require the proponent to:

- 1) Follow the Addendum Provisions in the *Guide to Environmental Assessment Requirements for Electricity Projects*, and **submit an Addendum** so that:
 - a) All Ministries and the public are provided with the same and correct information.
 - b) The environmentally-significant changes they have made after their 2013 environmental approval have been assessed and mitigated, including:
 - Blocking all flow in the Bala north channel.
 - Their coffer dam lowering plan.
- 2) **Submit a complete ECA application, which discloses all construction plans (including the coffer dam lowering plan)**, so that the:
 - a) MOECC can assess all of the proposed works for this ECA.
 - b) Public will have adequate information so that meaningful comments can be provided on this application for ECA.

Detail

Below are our comments for the proponent's plans to pump and treat the water from the excavation for the proposed hydro-electric generating station at the Bala falls:

- 1) We understand that a basic requirement of the Ministry of the Environment and Climate Change's *Environmental Compliance Approval (ECA)* for the proposed works is that water from the proposed excavations and construction site **must be transferred to Settling Tanks** for treatment and testing **before entering the Moon River or Lake Muskoka**.

However, the proponent **has not disclosed to the MOECC** the significant risk that the construction plans would not meet this requirement, as follows:

- a) The proponent's 2009 Environmental Screening/Review report and their 2012 Addendum to it (which received final environmental approval on January 23, 2013) stated that their upstream coffer dam would not fully block the Bala north channel, but would leave significant unobstructed flow through the Bala north channel during all stages of their proposed construction.

- b) However, the proponent subsequently changed their construction plans:
- As detailed in the attached June 10, 2016 letter (copy is at <http://savethebalafalls.com/wp-content/uploads/2016/06/BalaProponent'sEnvironmentally-significantChanges20160610a.pdf>), this change was made without any environmental assessment or approval.
 - As shown in the proponent's application for ECA, the proponent's upstream coffer dam would:
 - Block all flow through the Bala north channel.
 - Be in place for nine months, June through February.
- c) As detailed at <http://savethebalafalls.com/?p=4869>, this change would create more than a 20% probability of flooding Lake Muskoka.
- d) In an attempt to mitigate this flooding risk, as part of their April 17, 2015 *Phase 1A Temporary Works, Plans and Specifications Approval*, under the *Lakes and Rivers Improvement Act*, the Ministry of Natural Resources and Forestry (MNR) specified a coffer dam lowering plan, which requires that the proponent quickly lower their upstream coffer dam upon 24 hours notice of a Flood Watch.

This lowering would result in:

- The entire proposed construction site being flooded.
- All excavations being scoured by the flow.
- All water and materials from the proposed construction site being washed into the Moon River without treatment or testing.

In summary, the proponent made environmentally-significant changes to their construction plans after their final environmental approval by Minister Bradley in 2013. As a result, **the proponent would not be able to meet the requirements of their requested ECA, or of their environmental approval.**

- 2) To facilitate their proposed construction, for several years the proponent has been requesting to lease three parcels of land from the Township of Muskoka Lakes. At a special Council meeting on January 26, 2016, Township Council voted to pass a by-law authorizing the Mayor and Clerk execute this lease.
- a) As detailed in point 10) of Schedule "B" of this by-law (a copy is at <https://muskokalakes.civicweb.net/document/84699/Special%20Council%20-%2026%20Jan%202016.pdf?handle=B04A9E81F3824F7BB8DD8BB88EBC5047#page=5>), a key **commitment made by the proponent to the; Township, public, and Bala United Church, is that they would not: "use Margaret Burgess Park (the 'Park') for construction purposes or alter it in any way. Current public access to the Park shall be maintained."**
- b) However, the August 6, 2015 drawing submitted to the MOECC for this ECA shows **the proponent would locate three large Settling Tanks in Margaret Burgess Park**, these would be:
- Approximately 48'-long and 8'-wide – each as large as a full-size transport truck trailer.
 - At the north-west corner of Margaret Burgess Park, directly adjacent to the Bala United Church.
- c) In addition, I understand the MOECC requires that the proponent also locate a large settling pond in Margaret Burgess Park (to be used for contingency and overflow).

- d) In addition, the August 6, 2015 drawing (which also has a P. Eng. stamp dated April 7, 2016) submitted to the MOECC for this ECA shows a mud mat, a temporary gravel truck route, and the pipes to and from the Settling Tanks would be located in both Margaret Burgess Park and the Township's Portage Landing.

That is, the proponent's application for ECA shows they would use **both** the Township land **and** Margaret Burgess Park for construction purposes, which is contrary to their commitments made to the:

- Township (the drawing dates span the lease negotiations with the Township, showing bad faith negotiations by the proponent).
- The public and members of the Bala United Church (through the proponent's newspaper advertisements, flyers, and web site).

So that the **MOECC is not complicit in this deception** of the Township, public, and Bala United Church, the proponent should be **required to provide a complete application** for this ECA, and that this be made available to the public for comment so this conflicting information may be resolved by all stakeholders.

- 3) A requirement of the proponent's obligations for their *Phase 1A Temporary Works, Plans and Specifications Approval*, under the *Lakes and Rivers Improvement Act* (issued April 17, 2015) is that upon the MNR issuing a Flood Watch, **all sluices of the Bala north dam must be unobstructed** (to ensure no reduction in flow capacity).
- a) However the August 6, 2015 drawing submitted to the MOECC for this ECA shows the base of the **proponent's construction crane would obstruct the flows through sluices** five and six (at the south end of the Bala north dam).
- b) These examples show that the proponent is:
- Withholding information from selected Ministries.
 - Providing conflicting commitments to different Ministries.

The root cause of all these problems is that without approval and subsequent to receiving their 2013 environmental approval the proponent has made environmentally-significant changes to their plans, and they are now **attempting to hide the resulting problems and negative environmental impacts**.

We therefore request that the MOECC **require the proponent to provide an Addendum** as specified in the Addendum Provisions of the *Guide to Environmental Assessment Requirements for Electricity Projects*. This would ensure that the same and complete information is provided to all Ministries and stakeholders.

- 4) The proponent shows the large diameter hose and pipe from their pumps to the Settling Tanks would be routed over:
- a) Both the Bala north falls and the Bala south channel.
- The proponent should be required to detail **how leaks would be detected, contained, and monitored, as these would be directly to the Moon River**.
- b) Land owned by the District Municipality of Muskoka. We are not aware of any agreement to permit such use of this land.
- The proponent should be required to **show they have permission from all land owners for their plans**, so that we can know the plans we're commenting on could actually be implemented.

This is significant as the proponent's *Environmental Site Assessment* shows the level of Zinc in the groundwater is above the MOECC's guidelines. Therefore, such **untreated water must not be permitted to directly enter the Moon River** or leak onto other's property.

- 5) As there is more than a 20% probability that the proponent would need to implement the coffer dam lowering plan specified and required by the MNR, this should be considered **part of the planned construction** and not an unexpected emergency measure.

The coffer dam lowering plan requires that the top 9' of a 105'-width of the rock-fill coffer dam be quickly removed, and this would likely be during a multi-day rain storm. Concerns include the following:

- The proponent should show where they would store this large quantity of material, as it would need to be nearby to be done quickly (and they would not have access to one of the nearby Township parking lots during the summer).
- The remainder of the coffer dam would be washed into the Moon River, including geotextiles, and plastic membranes.
- Also washed into the Moon River would be fine particulate matter and gravel from the temporary road over the bed of the Bala north channel, which would have lubricating and hydraulic oils and other deleterious substances from the months of heavy construction vehicle traffic over it.

That is, implementing this plan would have environmentally-significant impacts. The proponent should therefore be required to detail each step of the coffer dam lowering plan, as follows:

- a) As part of their planned activities for this ECA application.
- b) Showing how each step would meet the obligations of their environmental approvals, for example that (for more detail, see the June 10, 2016 letter):
 - *"Water from excavations will be directed to a settling pond prior to discharge into a watercourse."*
 - *"cofferdam material should be removed from the riverbed"*.
 - *"No material is to be discarded within the watercourse"*.
 - *"All fill placed in the water shall be free of fines capable of being suspended and transported outside of the work area"*.

Conclusion

The proponent for the proposed hydro-electric generating station has:

- Withheld critical information from, and provided conflicting information to, and would renege on commitments they have made to; the MNR, the MOECC, the public, and to the Bala United Church.
- Made unapproved and environmentally-significant changes to their construction plans, which would create unaddressed and unmitigated negative environmental impacts.
- Submitted plans to the MOECC for this ECA which would not meet the commitments they have made for their 2013 environmental approval.

We therefore request that the MOECC require the proponent to:

- 1) Provide the correct and the same information to the; MOECC and MNR, by **requiring the proponent to provide an Addendum**, as specified in the *Guide to Environmental Assessment Requirements for Electricity Projects*, This would include:
 - a) A scale drawing showing the quantity, size, and location of all Settling Tanks, Settling Ponds, and the routing for the piping to these.
 - b) Methods to detect, contain, and monitor leaks from the pipes, as these would be run directly over both the Bala north falls and the Bala south channel.
 - c) The environmental impacts of their plan to block all flow through the Bala north channel.
 - d) Each step of their coffer dam lowering plan.
- 2) Submit a **complete application** for this ECA, as the information:
 - a) Available on the Environmental Registry web site is inadequate for the public to provide meaningful comments.
 - b) Available through meeting with the MOECC Approvals branch:
 - Conflicts with that provided to the MNR.
 - Does not meet the proponent's commitments for their 2013 environmental approval (as the proponent did not inform the MOECC of the coffer dam lowering plan), and therefore does not include all the work the proponent would undertake.

This EBR posting therefore does not meet the requirements stated in Section 6 of the Environmental Bill of Rights as adequate information has not been provided for these proposed works.

We therefore request that if and when the above Addendum is approved by the MOECC, the proponent is then required to submit a **complete application** for this ECA application, including:

- a) All stages of their construction plans, including the coffer dam lowering plan.
- b) The quantity, size, and location of all Settling Tanks, Settling Ponds, and the routing and leak containment/detection for the piping to these.

This will enable the public to provide meaningful comments during the public comment period, as is the intent of Environmental Bill of Rights.

I look forward to your response to our requests.

Sincerely,



Mitchell Shnier, P. Eng., on behalf of SaveTheBalaFalls.com

Cc: The Honourable Glen Murray, Minister of the Environment and Climate Change, GMurray.mpp@liberal.ola.org
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