



Fogler, Rubinoff LLP Barristers & Solicitors
95 Wellington Street West
Suite 1200, Toronto-Dominion Centre
Toronto, ON M5J 2Z9
Tel: 416.864.9700 Fax: 416.941.8852
www.foglers.com

April 18, 2011

VIA EMAIL & BY PERSONAL DELIVERY

Reply To: Rodney V. Northey
Direct Dial: 416.941.8880
E-mail: rnorthey@foglers.com
Our File No. 111299

The Honourable John Wilkinson,
Minister of the Environment
Ferguson Block, 11th Floor
77 Wellesley Street West
Toronto ON M7A 2T5

Dear Minister Wilkinson:

**Re: Request for Ministerial Review under the EAA of the Director's March 25, 2011
Decision to Deny an Individual EA for the North Bala Small Hydro Project**

We are writing on behalf of our client, the Township of Muskoka Lakes (the "Township"), regarding the legally-deficient Environmental Screening Process conducted for the North Bala Hydro Project ("Project") under the *Environmental Assessment Act* ("EAA").

In this Project, Swift River Energy Limited ("SREL") has proposed that two public dams that control water levels and flooding in the Township – the Crown-owned North and South Bala Dams – be repurposed and privatized to generate electricity. The entirety of this Project, including new construction, is located on public lands.

The Township writes to you out of serious public concern. The Township boundaries include 80 lakes and thousands of boathouses and docks. In the summer, the Township grows from a permanent population of approximately 6,700 residents, to 32,000 residents. The operation of these dams affects more than 9,000 boathouse properties on upstream and downstream shorelines, significant ecological features, and the highest quality fisheries.

Based on its review of this Project, the Township concludes that this Project fails to provide any clear overall public benefit. Instead, the Project is a potential minefield of unassessed risks. The Environmental Screening Process triggered by SREL is required to assess the full range of environmental, social, and economic effects. However, the legal requirements of the Environmental Screening Process have not been met; nor are the studies conducted to date adequate to assess this Project's wide-ranging effects. Just recently, after the completion of the Environmental Screening Process, SREL reached agreement with Ontario Power Generation ("OPG") – owner of two downstream hydro facilities - to change further the operation of the dams, yet the impacts of these changes on water levels have not been assessed.

The Township asks you to ensure that the fundamental deficiencies in the SREL Environmental Screening Process are fixed. The Director of the Environmental Assessment and Approvals Branch (the "Director") has not done so. Instead, she denied a request for individual environmental assessment ("EA") from the Township and 104 others, and endorsed the unassessed deal with OPG. The Township requests your review of her decision. The Township and all residents depend on the proper functioning of these dams. In this proposed setting, no



one can afford to let this Project proceed any further until the legal requirements of the EAA are met and the appropriate studies conducted.

1.0 EXECUTIVE SUMMARY

On November 27, 2009, the Township requested an individual EA to address the serious deficiencies of the Project Environmental Screening Report ("ESR") conducted by SREL under EAA Regulation 116/01. On March 25, 2011, the Director denied the Township's request. The Township's initial request and the Director's response are attached to this letter for your review. The Township requests that you review this decision by the Director.

In making this request the Township is guided by the purpose of the EAA set out in s. 2 of the Act: "The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment." The EAA defines the "environment" broadly to encompass the biophysical environment, built environment, and social, cultural, and economic factors that affect the life of a community. The betterment of the people of Ontario and conservation and wise management of the environment have not been considered in the assessment of this Project.

The Project will be located exclusively on public lands owned by the Ontario Crown, the District Municipality of Muskoka (the "District"), and the Township. Further, the Project involves private use of the Crown-owned North and South Bala Dams to generate electricity. Presently, these dams serve other purposes, including flood protection and protection of the biophysical, built, social and economic environment upstream and downstream of Muskoka Lake.

An Environmental Screening Process was conducted for the Project rather than an individual EA. However, O.Reg.116/01 provides that for an undertaking, like the Project, to be exempt from an individual EA, it must comply with the Environmental Screening Process set out in Part B of the Guide to Environmental Assessment Requirements for Electricity Projects (the "Guide").

The SREL Environmental Screening Process fails to meet the Part B requirements of the Guide. One such failing is the absence of an assessment of the overall environmental advantages and disadvantages of the Project. This requirement is central to fulfilling the purpose of the EAA. Pursuant to O.Reg.116/01, any failure to comply with the Guide is also a failure to comply with the Regulation's terms of exemption from the legal requirement to conduct an individual EA. On this basis, the Township respectfully submits that legally there are only two options to address the failure of the Project to meet the requirements of Part B of the Guide:

- (1) you may require that, pursuant to the terms of O.Reg.116/01, an individual EA be conducted; or
- (2) you may order that the Project cannot proceed until the requirements of Part B of the Guide are met, which also includes the power to specify all outstanding studies or other work that must be conducted to meet these requirements.

This EAA regime provides no discretion to allow this Project to proceed without meeting the requirements of the Guide. Of the two options available to you, the Township submits that an individual EA is warranted as this Project has the potential to cause significant harm to the environment, and the proponent has not conducted the appropriate studies necessary to assess this potential for harm. To the contrary, after completing its approach to the required



Environmental Screening Process, the proponent made an agreement with a third party, OPG, to substantially alter its stated plans for operating the North and South Bala dams. This means that SREL's current planned operations have not been assessed.

2.0 ORGANIZATION OF THE TOWNSHIP'S REQUEST FOR MINISTERIAL REVIEW

The balance of the Township's request for Ministerial review of the Director's decision to not order an individual EA has the following parts:

Section 3.0: addresses the failure of the Project to meet the legal requirements for an Environmental Screening Process under O.Reg. 116/01 Part B of the Guide. As a result of this failure, the Project cannot proceed until (1) an individual EA is conducted, or (2) the proponent rectifies this failure through additional studies and resubmits an ESR that meets the requirements of the Guide.

Section 4.0: addresses the criteria in the Guide for Ministerial review of the Director's decision to refuse an elevation request. The Guide makes provision for requests to elevate a project from an Environmental Screening Process to an individual EA where the requirements of Part B of the Guide have otherwise been met. Although the requirements of the Guide have not been met by the proponent, the present letter addresses these criteria to demonstrate why, of the two available options, an individual EA is warranted.

3.0 FAILURE OF SREL TO COMPLY WITH PART B OF THE GUIDE

The Project has not met the requirements of the Environmental Screening Process under Part B of the Guide. The legal requirements for an (ESR), which is a mandatory component of the Environmental Screening Process, are set out at page 32 of the Guide.

Three of these requirements have not been met, as detailed below:

Requirement 1: "a review of the overall environmental advantages and disadvantages of the project, to include discussion of any benefits that may offset negative environmental effects."

Failure to Meet Requirement 1: The Project ESR does not contain an assessment of the overall environmental advantages and disadvantages of the Project.

This failure means that the SREL Environmental Screening Process fails to address one of the Guide's express requirements. Further, the requirement to review the overall environmental advantages and disadvantages of the Project is essential to evaluating whether the Project meets the purpose of the EAA and advances the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management of the environment. This Project raises serious issues on "betterment" since it seeks to prioritize private use of public assets. Instead of addressing such issues, the ESR does not demonstrate a clear overall benefit to the public. Instead, the Project raises a large number of unassessed risks.

We have reviewed the Project ESR in its entirety and concluded that the failure to meet this legal requirement was not a small oversight. To the contrary, this oversight highlights other serious problems: SREL has not evaluated the overall environmental advantages and disadvantages of the Project because it has not conducted the necessary studies to properly carry out this evaluation.

Requirement 2: "a description of how environmental effects or issues may be addressed through other required approvals." We note that this requirement is separate from the requirement listed on page 32 of the Guide to provide a "description of any other required approvals and permits".

Failure to Meet Requirement 2: The Project ESR at page 11-1 sets out a list of required approvals for the Project. However, the ESR fails to set out how environmental effects or issues may be addressed through these approvals.

Requirement 3: "a description of the local environment and conditions."

Failure to Meet Requirement 3: The ESR notes that there are 14 species protected under the *Endangered Species Act* ("ESA") whose range coincides with the project area". Where it applies, the ESA trumps virtually all other competing interests. Further, these ESA trumps apply to not only endangered species, but also their existing habitat and any additional habitat identified for their recovery. However, despite the importance of the ESA regime, and the numerous species protected under it that exist within the study area identified by SREL, the SREL ESR lacks a description of the wildlife present at the Project site. Further, it provides no evidence of any wildlife surveys of the site or study area. Instead of documenting any field work or expert analysis, the ESR simply speculates (in s.2.1.9) on which species may be present on the project site (as opposed to the larger zone of site impacts) and then also speculates that the project site is "unlikely" to contain "critical habitat for any of these species" (s.2.1.13). Speculation as to the local environment is not a substitute for the requirement to describe the local environment.

3.1 Legal Implications of the Failure to Meet the Guide Requirements

The Project is legally required to comply with Part B of the Guide in order to be exempt from an individual EA. The Project is a generation facility with a nameplate capacity of 4.3 megawatts using water power as its primary source of power. As such, it is designated under O.Reg.116/01, section 4 as an undertaking to which the EAA applies:

4. (1) The planning, designing, establishing, constructing, operating, changing, expanding or retiring of any of the following things is defined as a major commercial or business enterprise or activity and is designated as an undertaking to which the Act applies:

(4) An undertaking that is designated under this section as an undertaking to which the Act applies is exempt from Part II of the Act if the undertaking is carried out in accordance with the Environmental Screening Process.

2. A generation facility that has a name plate capacity of less than 200 megawatts and that uses water power as its primary power source.

Subsection 4(4) of the Regulation provides that an undertaking carried out in accordance with the Environmental Screening Process (defined in the Regulation as Part B of the Guide) is exempt from the requirement of an individual EA under Part II of the EAA.

If an undertaking is not carried out in accordance with Part B of Guide, the EAA requires that an individual EA be conducted. This is explained further in the Guide:

The Environmental Screening Process contained in Part B of this Guide is referenced in the Electricity Projects Regulation and is given the force of law under the Environmental Assessment Act and that Regulation. Proponents relying on the screening exemption Guide to EA Requirements for Electricity Projects outlined in section 4 of the Electricity Projects Regulation are legally required to meet the requirements of the Environmental Screening Process. (Guide, p. 1-2)

As the requirements of Part B of the Guide have not been met, the Project is subject to the requirements of Part II of the EAA, including the requirement to conduct an individual EA and obtain approval for the individual EA. Until these Part II requirements are met, the Project cannot legally proceed, as provided by s. 5(3) of the EAA:

5 (3) No person shall proceed with an undertaking unless the Minister gives his or her approval to proceed under section 9 or the Tribunal gives its approval under section.

Due to the failure by SREL to meet the requirements of Part B of the Guide, SREL is in breach of O.Reg.116/01. Therefore, there is no Ministerial discretion to allow this Project to proceed. Legally there are only two available options:

- (1) you may require that, pursuant to the terms of O.Reg.116/01, an individual EA must be conducted; or
- (2) you may order that the Project cannot proceed until the requirements of Part B of the Guide are met, which also includes the power to specify all outstanding studies or other work that must be conducted in order to meet these requirements.

In the following s.4.0, we demonstrate that ordering an individual EA is the better option. However, if instead of immediately requiring individual EA, you choose to order that the Project cannot proceed until the requirements of Part B of the Guide are met, the Township submits that serious deficiencies in the ESR studies described below prevent SREL from addressing the three missing requirements until it has carried out:

1. appropriate field work and studies on endangered species;
2. an assessment of how additional required approvals will address one or more anticipated Project effects; and
3. an evaluation of the overall advantages and disadvantages to the environment of this Project, with additional study of the effects of the Project to provide the proper basis for this evaluation, including further study of the Project's effects on the Muskoka River watershed, heritage, and local economy.

4.0 REASONS FOR ELEVATING THE PROJECT

Beyond the topic of proponent non-compliance which we have addressed above, the Guide sets out several requirements for any person seeking to have you elevate a project from an Environmental Screening Process to an individual EA. The Guide requires that a request for Ministerial Review of a Director's decision to deny an individual EA address the following issues:

1. the basis of the request;
2. the specific nature of the environmental concerns on which the request is based;
3. how the Director's decision fails to address the requester's environmental concern(s);
4. a description of any additional information that the Director did not consider in making his/her decision; and
5. any other matters considered relevant by the requesting party.

This section is organized to address each of these Guide requirements.

4.1 BASIS OF THE REQUEST

As set out above, the principal basis for the Township's letter is to advise you of SREL's non-compliance with the Guide and EAA Regulation 116/01.

Two additional bases for the present letter are as follows:

1. there has not been sufficient study of the potential effects of the Project; and
2. there is the potential for significant negative effects to the environment from this Project which have not been addressed in the October 2009 ESR for the Project.

4.1.1 INSUFFICIENT STUDY

SREL has conducted insufficient study to evaluate the effects of the Project in four key areas:

1. effects on the Muskoka River watershed upstream and downstream of the Project;
2. effects on endangered species;
3. effects on cultural heritage; and
4. effects on the local economy.

SREL's failure to conduct the required analysis of overall environmental advantages and disadvantages of the Project appears to be due to the failure to conduct the level of study necessary to evaluate the effects of the Project.

This lack of appropriate study is particularly troubling in light of SREL's corporate and financial status. We note that SREL is a new company with no track record and no other Projects. Further, according to the figures provided by SREL's November 2010 Economic Impact Study

("Economic Impact Study") regarding Project finances, the Project has a small operating budget. There does not appear to be a reserve in place to address the rectification or mitigation of unexpected environmental effects. Overall, the Township believes that all financial issues must be fully addressed up front – before any Project approval under the EAA. There are too many examples of poorly-studied projects getting approval and triggering future public costs.

4.1.2 INSUFFICIENT STUDY OF EFFECTS TO THE MUSKOKA RIVER WATERSHED

The Township believes that there are six key deficiencies in the Project ESR respecting effects on the Muskoka River Watershed:

- (1) unassessed effects of the proposed post-ESR alteration of the Project;
- (2) no information on current flows from Lake Muskoka over the North and South Bala Falls;
- (3) no information on water taking;
- (4) no assessment of effects of reduced flows;
- (5) no assessment of effects of the proposed Best Management Zone ("BMZ"); and
- (6) no assessment of how the Project will be operated or coordinate with other dams in the MRWMP.

All of these effects require further study.

(1) Unassessed effects of the proposed post-ESR alteration of the Project:

In the October 2009 ESR, SREL provides that the Project will operate the North and South Bala dams in a run-of-river manner. The key feature of a run-of-river dam operation is that there is no water storage. This feature guides all SREL discussion of effects in the ESR.

However, OPG which operates two downstream water power facilities, Ragged Rapids G.S. and Big Eddy G.S., objected to this approach. So serious was this issue to OPG that it formally requested that the Project be elevated to an individual EA. Further, as set out in the OPG November 27, 2009 elevation request (attached), the primary arguments supporting the OPG request were: first, its view that the ESR contained insufficient information to determine effects and, second, its concern with the Project being operated as a run-of-river operation:

The basis for this Elevation Request is that the Proponent has failed to inform the OPG of the detailed impacts of the operating regime of the Proposed Undertaking on OPG's existing facilities, such that OPG can determine the operating, economic and other impacts of the Proposed Undertaking on OPG. (p.1)

Operating as a run-of-the-river facility within the Muskoka River Water Management Plan (MRWMP) represents a significant amount of day-to-day flexibility that could have a negative impact on OPG's facilities. OPG has particular concerns in this regard as it has not been given any specifics of how the Proposed undertaking will be operated. (p.2)



The OPG request further supports the Township's view that proper studies have not been conducted, particularly studies as to how the Project will be operated and coordinated with other dams under the MRWMP (issue 6, addressed below). The appropriate studies would have assessed all reasonable options and permitted public scrutiny and discussion of such options.

Instead, after the completion of the ESR, and after the Township's elevation request, SREL simply agreed, without study, to alter its proposed run-of-river regime to some other regime acceptable to OPG. The substance of this deal is contained in a December 15, 2010 letter between these two parties. It is attached to the Director's March 25, 2011 letter to SREL, notifying SREL of her denial of the public's 105 elevation requests. The Director made the terms of this deal a condition of approval. The Director's March 25, 2011 letter to SREL is attached for your review.

The first two terms of the deal with OPG appear to indicate that the Project will continue to be a run-of-river facility without storage. On the other hand, the first term of this agreement anticipates that at some point in the future SREL will seek to alter this mode of operation so that electricity generation may be "optimized".

However, despite the two preliminary terms suggesting run-of-river status, the third term of the agreement requires the SREL Project to store water until inflow at the Project exceeds the minimum operating capability of OPG's downstream Ragged Rapid GS:

When Inflow at the Proposed Undertaking is less than 26cms (the minimum operating capability of Ragged Rapid GS) the Proposed Undertaking shall be cycled such that its operating discharge is 26 cms or more.

In short, the agreement proposes to change the operation of the North and South Bala dams from a run-of-river regime to a regime similar to a daily peaking regime, with a trigger of 26 m³/s during low flow periods.

SREL had commented on this issue in an email to OPG dated July 9, 2010 (attached). At the time, OPG was seeking a lower trigger of 20 m³/s than the current 26 m³/s. SREL stated that operating the Project in this manner would be inconsistent with a run-of-river operation and potentially contrary to the MRWMP:

With respect to item 3, this item appears to be contrary to item 1 i.e. I believe you are asking that we discharge more than the available inflow during low flow period. It is SREL's fear that this condition could cause SREL's facility to violate the WMP with respect to lake levels on Lake Muskoka.

Nevertheless, SREL ultimately agreed to alter the Project from the run-of-river operation. This agreement is inconsistent with what SREL proposed in the ESR. Notably, the ESR specifically rejects a trigger-based regime (with a peaking trigger of 96 m³/s) at p. 9-6 based on consultation with the Ministry of Natural Resources ("MNR"):

MNR was concerned that any daily peaking operation would result in larger water level fluctuations in Go Home Lake and Bala Reach than the residents at these two locations had come to know and expect, as well as increase the operational demands at Go Home Lake Dam (MNR). (ESR, p. 9-6)

Thus, we now have a Project that proposes to go forward on the basis of an operating regime that its ESR expressly rejected, and did not even assess. It should also be clear that the operation of the Bala dams in this manner will have repercussions both upstream and downstream of the dams. Direct effects on water flows will have related effects on water levels, flooding, and water quality.

Put simply, there is no legal basis under the EAA to allow this Project to proceed under the new scenario demanded by the recent agreement between SREL and OPG. More study is required.

(2) No information on current flows from Lake Muskoka over the North and South Bala Falls:

The extent of these flows and their monthly variability is critical to the viability of the Project and to determining effects on the Muskoka River watershed. However, as supported by OPG's elevation request, the SREL ESR fails to provide sufficient precise information.

The ESR only contains information on flows downstream from the Falls from years prior to the implementation of the MRWMP. Yet the MRWMP altered the way the watershed is managed, including flows over dams. This clearly means that pre-MRWMP data is of limited use. Up to date information on actual flows over the Falls is required to evaluate effects of the Project (particularly the planned cycling/peaking regime) and the viability of the Project. This information is presently lacking.

The importance of accurate flow data has only increased now that SREL plans to operate the dam on a trigger-based cycling regime, rather than a run-of-river regime.

(3) No information on water taking:

The Project, as set out in page 11-1 of the ESR, must obtain a Permit to Take Water under the *Ontario Water Resources Act* ("OWRA"). To obtain this permit, the Project must provide data as to its anticipated daily water takings. Accurate data for daily water takings is required to evaluate effects from the Project. However, no data as to daily water takings has been provided. Further study is required to quantify the Project water takings.

(4) No assessment of effects of reduced flows:

According to the MRWMP, certain prescribed minimum flows are required to protect water quality, fish habitat, and aesthetics.

The ESR states that SREL will be maintaining the minimum flows required in the MRWMP. It therefore also advises that there is no need to assess the impacts of reduced flows on aesthetics, aquatic habitat, and water quality (ESR, s.6.2.4.1).

There are two significant problems with this approach.

Problem (1): SREL will not be maintaining the mandated minimum flows

Elsewhere in its ESR, SREL provides information which demonstrates that it does not plan on operating the North and South Dams in a manner that maintains the current MRWMP mandated



minimum flows over the North and South Falls. SREL references s. 12.3.2 of the MRWMP, which states:

"Minimum Daily Flow***: 6 m³/s summer target (inclusive of 4 m³ from Burgess)"

There are two very important aspects to this statement:

- (1) This figure provides a summer target only, and does not apply year-round. Nevertheless, by contrast, SREL proposes a year-round target of 1 m³/s per dam.
- (2) There are three asterisks besides the word "Flow". These asterisks indicate a further notation on this issue. On the following page, the MRWMP states:

Presently, the Bala dams are operated by MNR according to the operating strategy described in Section 5 and 11 (page 5-36, Table 5.2, Section 11.4.3).

In other words, the actual operational flows for the Bala Dams are set out in other sections from this Plan. In particular, Table 5.2 provides, under the heading "Water Quality", the MRWMP requirements for the Bala North and South Dams for minimum flows as follows:

[m]inimum outflow of 3.0 m³/s from each dam is to be maintained by leakage or log removal to maintain downstream water quality. [Emphasis added]

Further, SREL is aware of this discrepancy. In a letter from SREL to MNR, dated September 16, 2008 (attached), SREL indicates that it is aware that the minimum levels of flows through leakage are higher than 1 m³/s per dam and in the range of 2-3 m³/s per dam.

Thus, the Project will clearly involve reducing the minimum flows at both dams. As the Project will be reducing minimum flows, further studies regarding effects on aesthetics, aquatic habitat, and water quality are required.

Problem (2): SREL's failure to assess impacts of other losses of flow

The second serious error with SREL's statements is that, even if the minimum flows were to be maintained, overall flows over the Falls would be reduced. It should be evident that the minimum flows represent the bottom range of flows over the Falls, not the top end or even average of the range. The ESR does not provide data as to how much flow over the Falls will be lost on a daily or seasonal basis. Nor does it assess the effects of this loss of flow. It simply provides the vague statement that there will be a "[l]ong-term change to the community character as the flow over the falls is reduced" (Table B1).

The environmental effects of this second type of reduced flow also demands assessment. To date, however, it does not appear that SREL has done the work necessary to even determine how much the flows over the Falls will be reduced, let alone the downstream and upstream implications of this operational change.

(5) No assessment of effects of the proposed Best Management Zone (BMZ):

SREL proposes to alter the MRWMP for the benefit of the Project by introducing a BMZ. The ESR contains no study or analysis of the effects of the proposed BMZ on the Muskoka River watershed.

(6) No assessment of how the Project will be operated or coordinated with other dams in the MRWMP:

As the OPG stated in its elevation requests, the ESR does not contain sufficient information on how the Project will operate the dams to determine impacts on the Muskoka River watershed.

The Township observes that another requirement of the MRWMP is coordination with Baysville, Port Sydney, and Port Carling dams upstream, and Go Home Lake dam downstream (Table 5.2) of the Bala Falls dams. There has been no study to determine how the altered flow regimes for the North and South Bala Falls may be coordinated with these dams, or if it is even possible to do so.

4.1.3 INSUFFICIENT STUDY OF EFFECTS ON ENDANGERED SPECIES

As set out in section 3.0 above, the ESR states that there are 14 species protected under the ESA that could potentially be present on the Project site. However, SREL failed to conduct any wildlife surveys on the site. Instead of conducting the appropriate surveys, SREL simply speculated that the project site is "unlikely" to contain "critical habitat for any of these species" (s.2.1.13). As a result, the effects of the Project on these species are unknown.

4.1.4 INSUFFICIENT STUDY OF EFFECTS ON HERITAGE

Heritage is a key area of provincial and local interest. The Province has passed the *Heritage Act* and included heritage policies in the Provincial Policy Statement, 2005 ("PPS") to protect heritage buildings, heritage districts, and cultural heritage landscapes. With respect to the Provincial Policy on heritage, the PPS states:

2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

SREL conducted a Heritage Impact Assessment, located at Appendix C8 of the ESR. It contains three significant errors:

- (1) it incorrectly asserts that power generation is part of the current cultural heritage landscape in Bala Falls;
- (2) it contains no assessment of the effects on a key building of heritage significance that will be negatively effected by the Project; and
- (3) it provides no assessment of the success of its proposed mitigation on anticipated adverse cultural heritage landscape effects.

(1) Power generation is not a part of the current cultural heritage landscape:

The SREL Heritage Impact Assessment states:

The area of the Bala Falls extending from the park on the south shore of the Muskoka River to the park on the north side is a distinct cultural heritage landscape of water management, power generation, tourism, and transportation.

It is true that the Bala Falls area is a distinct cultural heritage landscape; however, power generation is not part of this landscape; nor has it been associated with the area for approximately 50 years. The term "cultural heritage landscape" is defined in the PPS as follows:

Cultural heritage landscape:

means a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, railways and industrial complexes of cultural heritage value.

It is clear from this definition, that a heritage feature must actually be part of the landscape in order to be a defining feature of it.

(2) No assessment of the effects on a key building of heritage significance

The Heritage Impact Assessment identifies the heritage significance of Purk's Place/Hurling's Boat Livery ("PPBH&M"), a boat rental and ice cream parlour near the proposed site that was built in 1907. It is one of only two remaining buildings on Bala Island. Although the Heritage Impact Assessment does not discuss impacts on PPBH&M elsewhere in the ESR it states that:

The operation of the Project will have a long-term impact to PPBH&M and traditional use and access to the waterway due to high velocities during operation and safety boom locations. As discussed in Section 5.3.8 PPBH&M will no longer be available for use by the public including customers of PPBH&M (ESR, p. 6-30).

Thus, in short, SREL predicts that PPBH&M will no longer be able to use its dock or rent boats, which have been heritage features of Bala Falls since 1907.

However, the SREL ESR does not address these heritage effects. Nor does it address the related effects on the Bala Falls cultural heritage landscape.

(3) There is no assessment of net effects on the cultural heritage landscape

As the Heritage Impact Assessment mistakenly assumes that power generation is part of the Bala Falls cultural heritage landscape, it does not discuss the Project's impacts on the landscape in any depth. It does, however, note that the Project's "intake will have a pronounced change on the visual character of the land". It also states the "powerhouse could detract from the cultural heritage of the community and the visual character of the Falls".

The assessment suggests potential ways to mitigate these impacts, but does not evaluate them. It should also be noted that: (a) this mitigation is premised on the incorrect assumption that

power generation is part of the Bala Falls cultural heritage landscape, and (b) SREL has not committed to carrying out the proposed mitigation.

In addition, the net effects of the Project on the character of the cultural heritage landscape after mitigation were not evaluated, meaning that the impact of the Project post-mitigation remains unknown.

4.1.5 INSUFFICIENT STUDY OF EFFECTS ON LOCAL ECONOMY

SREL did not conduct an economic impact study as part of its original ESR. However, on August 24, 2010, the Director requested that a study be conducted. The Township retained a peer reviewer to examine this study. Based on this peer review, the Township concludes that the SREL Economic Impact Study, completed in November 2010 by C4SE, is wholly inadequate.

The study is fundamentally deficient in four ways:

- (1) inadequate study methods;
- (2) failure to assess the negative impacts on the local economy and net effects;
- (3) unsubstantiated conclusions; and
- (4) lack of impartiality by the consultants retained to conduct the study.

These deficiencies undermine the usefulness of the study.

(1) Inadequate Study Methods

The Economic Impact Study notes that the primary study method used to determine the effects of the Project was a survey forwarded to local businesses:

To quantify the expected economic impacts of the construction and operational phases of the project by the Bala Community we carried out a detailed survey of the business in Ward A of the Township of Muskoka Lakes.

The Economic Impact Study notes that the response rate to the survey was low (less than 40%), and the consultant states that it was "disappointed" with the response rate in light of the considerable local opposition to the Project. The study assumes that the reason the response rate was low is because businesses are mostly in favour of the Project:

In view of the apparent considerable local opposition to the project – and in view of the significant effort that went into identifying businesses, obtaining their email addresses, mailing out paper surveys to those without internet access, and sending email and radio broadcast reminders to those that had not responded – C4SE is very disappointed that the response rate to the survey was less than 40 percent. One reasonable interpretation of the low response rate is that opponents to the project Bala business owners are in the minority.

The assumption that those businesses that did not respond to the survey are in favour of the project is (a) without any evidentiary support; (b) contrary to the observation by the study that

there was considerable local opposition; and (c) contrary to the results of the survey, in which 60-75% of businesses expected negative impacts from the Project.

It is also important to note that the Economic Impact Study dismissed the results of its own survey, again without evidentiary support. The response by most participants in the survey that the Project would negatively affect their businesses was attributed to "a significant misunderstanding among many with respect to their perception of the project." However, no evidence was presented that the respondents to the survey misunderstood the Project.

The Township retained Watson & Associates Economists Ltd. ("Watson & Associates") to conduct a peer review of the SREL Economic Impact Study ("Peer Review"). Watson & Associates completed its Peer Review on April 1, 2011 – after the Director had rendered a decision on the elevation requests. A copy of the Peer Review is attached to this letter.

The Peer Review found that the reason for the poor response rate was the survey techniques used:

In our opinion, it suggests that the use of an on-line survey was not effective in either achieving a high participation rate or in explaining the characteristics of the project to the community.

The Peer Review recommends the use of a telephone survey both to improve participation rate and obtain more useful information. Pages 5-7 and 15-16 of the Peer Review detail a number of important questions that the SREL survey should have asked in order to understand the effects of the Project.

Additional key findings from the Peer Review as to deficiencies in study methods include:

1. the report does not provide a full picture of the businesses in Bala;
2. the report does not provide a meaningful description of the economy of Bala;
3. the report fails to accurately represent the importance of Bala to the economy of Muskoka Lakes;
4. [a] number of potential sources were not used to prepare an economic profile of Bala;
5. failure to conduct a local tourism survey despite the importance of tourism to the local economy;
6. [t]he model used to estimate impacts on the District of Muskoka and the Province is not designed to measure the effects of an engineering project. This raises questions about the accuracy of the conclusions drawn". As noted at page 11 of the Peer Review, the model used could result in an overestimate of the benefits of the Project to the local economy;
7. municipal tax revenues were forecast, but municipal expenditures required to service the Project were not;

8. the report does not address the potential for reduced tourism due to the decrease in water flow over the Falls;
9. displacement of business, such as PPBH&M, and the secondary effects on the local economy were not addressed; and
10. economic benefits were forecast, but losses were not, meaning that net effects could not be established.

(2) Failure to Assess Net Effects

Due to the deficiencies noted above, the Economic Impact Study did not assess the negative economic impacts of the Project on the local economy, nor did it assess net effects – the very purpose for which the study was required:

In the absence of information regarding the number of people employed in Bala, and in the absence of information regarding the number of cottages, cottagers and tourists in Bala, we are unable to quantify the size of the Bala Community economy in either employment or dollar terms. That means in turn, we are unable to quantify the negative impacts of the construction phase of the project in economic activity in Bala. (p.3)

...

While the project could have a negative impact in businesses in close proximity to the falls serving visitors the impacts cannot be quantified. (p.4)

Despite the inability to evaluate negative effects during either the construction or operational phases of the Project due to the lack of appropriate study, the Economic Impact Study assumes that the Project will have a positive economic effect:

Our report demonstrates that this project's economic impact will be positive over the construction phase and over the operational phase province-wide.

The Township Peer Review found that there is no basis for this assumption:

In conclusion, it is our opinion that the economic impact assessment prepared by C4SE, as set out in their November 2010 report, does not adequately identify and assess the potential economic effects of the project. For this reason the report cannot be used as a basis for concluding that the project will have a positive effect on Bala, the Township of Muskoka or the District of Muskoka. It is our recommendation that the economic impact analysis be revised to address the concerns identified in this peer review in order to produce a comprehensive assessment of the economic impacts.

(3) Unsubstantiated Conclusions

The Economic Impact Study has made a number of unsubstantiated assumptions and conclusions that run contrary to the evidence. For instance, the study assumed that:

1. those businesses that did not respond to the SREL survey were in favour of the Project;

2. those businesses that expressed concerns regarding the Project (60-75% of respondents) based those concerns on misinformation; and
3. the Project will have a positive effect on the local economy, even though SREL failed to gather the information necessary to quantify negative impacts or assess net effects.

These assumptions undermine the conclusions of the Economic Impact Study by assuming the very matters that the study was required to assess.

(4) Lack of impartiality by the consultants retained to conduct the study

It is noteworthy that the forgoing assumptions all strongly favour the Project without an evidentiary basis for doing so. Furthermore, the Economic Impact Study contains a high degree of rhetoric. For instance, on page 33 of the Economic Impact Study, it states:

"the environmental and economic benefits of the project cannot be challenged."

Such statements are worrisome. C4SE does not have expertise in assessing environmental effects, and should not have made any statement as to environmental effects. With respect to economic benefits – due to deficiencies in its data gathering – C4SE has, by its own admission, been unable to assess negative impacts from the Project.

These statements by SREL's consultant go far beyond the evidence and, in all cases, appear slanted to cast the Project in a favourable light. These statements thus raise serious questions as to the independence and impartiality of the study.

4.2 SPECIFIC NATURE OF THE ENVIRONMENTAL CONCERNS ON WHICH THE REQUEST IS BASED

The Project risks causing significant negative effects on the environment. The Township highlights five such effects:

1. effects on the Muskoka River watershed upstream and downstream of the Project;
2. effects on endangered species;
3. effects on cultural heritage;
4. effects on the local economy; and
5. effects on shoreline accessibility.

4.2.1 Effects on the Muskoka River Watershed

The Township is concerned about the effects of the Project on the Muskoka River watershed both upstream and downstream from the Falls. The North and South Bala Falls are part of a complex coordinated network of 42 water control structures throughout the watershed. These 42 structures direct water levels and flows in the watershed (MRWMP p. 2-1).

These structures also sustain the natural, built, and social environment of the watershed:

The Muskoka River supports a wide range of aquatic and wildlife ecosystems, and numerous human uses, including water power generation, swimming, canoeing, boating, angling, hunting and trapping, and tourism operations (MRWMP, p. 2-1).

According to the MRWMP, the North and South Bala Dams are of central importance to the watershed:

MNR's Bala North and Bala South dams are located at the main outlets of Lake Muskoka – the largest lake in the watershed. They control water levels on Lake Muskoka up to the Port Carling dam to the north and Bracebridge Falls (on the North Muskoka River to the east. Water from the entire Muskoka watershed up to this point drains through these dams. Outflow from these dams enters the Bala Reach of the Moon River. The dam controls an area of 4683 km² and the surface area of the lake of 120 km². (MRWMP p. 5-36)

Elsewhere, the MRWMP advises that the operation of the Bala North and South dams impact flood control both upstream and downstream of the Falls, the navigation locks of Port Carling, recreational uses of the watershed, water quality, fisheries, and wildlife (MRWMP Table 5.2).

Based on data gathered by the Township from MNR (2000), Ministry of the Environment (2000) ("Ministry") and the District (2009 and 2010), there are over 9,000 boathouses and docks on Lakes Rosseau, Muskoka, Joseph, and Joseph River combined. Nearly 6,000 of these are on Lake Muskoka alone, and will be directly impacted by any changes to water levels resulting from this Project.

In addition, within the immediate vicinity of the Falls there are:

- a. Type 1 & 2 fish habitat (highest possible designation);
- b. sports fishing locations;
- c. the docks of PPBH&M, a popular location for scuba diving at Diver's Point;
- d. the Bala town docks; and
- e. in-water recreation activities such swimming, boating, and canoeing; notably, the Bala Bay Regatta, which has been held since 1910, held 52 events in 2007 alone (ESR, 2-47).

Initially, based on merely cursory consideration of some of these effects, the ESR rejected any future operation of the Bala dams using a trigger-based peaking approach.

Now however, through its recent deal with OPG, SREL proposes to reverse course and carry out what was previously unacceptable to it.

Since none of these effects have received appropriate study, the Township concludes that the potential for high negative effects to these aspects of the existing environment has not been addressed.

4.2.2 Effects on Endangered Species

As set out in the ESR, there are 14 species protected under the ESA whose ranges coincide with the Project site, including:

1. Cerulean warbler, designated under the ESA as a species of special concern;
2. Golden-winged warbler, designated under the ESA as a species of special concern;
3. Least bittern, designated under the ESA as threatened;
4. Bald eagle, designated under the ESA as endangered;
5. Red-headed woodpecker, designated under the ESA as a species of special concern;
6. Blanding's turtles, designated under the ESA as threatened;
7. Northern map turtle, designated under the ESA as a species of special concern;
8. Spotted turtles, designated under the ESA as endangered;
9. Stinkpot, designated under the ESA as threatened;
10. Eastern ribbonsnake, designated under the ESA as a species of special concern;
11. Massasauga rattlesnake, designated under the ESA as threatened;
12. Milksnake, designated under the ESA as a species of special concern;
13. Monarch butterfly, designated under the ESA as a species of special concern; and
14. Branched bartsia, designated under the ESA as threatened.

Due to the lack of site-specific studies and wildlife surveys, the effects of the Project on these species have not been evaluated. The ESA is a new regime that demands the highest levels of scientific rigour and protection to designated species. Moreover, this Project involves major changes to the environment due to proposed construction and site alteration activities. These factors point to a serious need to address possible effects on these species. This has not been done in SREL's ESR.

4.2.3 Effects on Cultural Heritage

The ESR states that the Project will have a negative impact on PPBH&M by requiring the closure of its dock and boat rental operations that have been in operation since 1907.

The ESR Heritage Impact Assessment also states that the Project intake and powerhouse could have negative effects on the cultural heritage attributes of Bala Falls and suggests mitigation measures. However, these measures have not been committed to by SREL. Nor has a net effects analysis been conducted.

As a result, the Township remains concerned about the stated impacts on PPBH&M, and the unassessed net effects on the Bala Falls cultural heritage landscape.

4.2.4 Effects on the Local Economy

The SREL Economic Impact Assessment states that there will be negative impacts on the local economy, but does not quantify these impacts, or propose mitigation (Economic Impact Assessment, p.4-5).

The Township's economy is driven by tourism and seasonal cottagers, as was recognized in both the Economic Impact Assessment and the Township Peer Review. The Ministry of Tourism and Culture provided information to your Ministry on the importance of tourism in a March 24, 2011 email (attached), including:

- 57% of the economy is related to tourism and seasonal residents; and
- in 2008, 2.4 million visits to Muskoka generated \$472,000,000.

The Township Peer Review found that a potential source of negative economic effects is the reduced attractiveness of the Falls to tourists and seasonal residents. These effects have two sources: the presence and design of the Project powerhouse (an issue also noted in the SREL Cultural Heritage Assessment), and the reduced scenic flows over the Falls due to the operations of the Project.

The economic effects of these changes were not assessed. Instead, the ESR simply states that its proposed reduction of flows over the Falls will change the character of the community. As a result of the lack of adequate study, the potential negative economic effects of the Project on the local economy appear to be serious and yet remain unassessed and unmitigated.

4.2.5 Effects on Shoreline Accessibility

The Project would be located entirely on public lands. As a result of the Project location, shoreline access will be limited in the vicinity of the intake (including the PPBH&M docks) and tailrace. The economic impacts of reduced access were not assessed in the Economic Impact Study.

4.3 HOW THE DIRECTOR'S DECISION FAILS TO ADDRESS THE REQUESTER'S ENVIRONMENTAL CONCERN(S)

The Director's failure to address the inadequacies of the ESR fall under three broad categories:

1. failure to address lack of compliance with requirements of the Guide;
2. failure to address the inadequate study conducted by SREL; and
3. failure to fully address the negative effects of the Project.

4.3.1 Failure to address lack of compliance with the requirements of the Guide

In her March 25, 2011 letter to the Township, the Director states that "SREL has planned and developed the Project in accordance with the provisions of the Electricity Guide". However, as set out in s. 1 above, the ESR does not address three of the requirements of the Guide, most notably, the requirement to evaluate the overall advantages and disadvantages of the Project.

4.3.2 Failure to address the inadequate study conducted by SREL

The lack of adequate study falls under the four categories. The Director's failure to address study inadequacies is addressed under each category. On the whole, the Director overlooked significant deficiencies in the ESR studies.

(1) Effects on the Muskoka River watershed upstream and downstream of the Project: The Township raised the issue of insufficient data respecting the impacts of the Project on the watershed. The Director's response failed to address the lack of study and data with respect to the following issues:

1. unassessed effects of the proposed post-ESR alteration of the Project;
2. no information on water taking;
3. no assessment of effects of reduced flows;
4. no assessment of effects of the proposed BMZ; and
5. no assessment of how the Project will be operated or coordinated with other dams in the MRWMP.

(2) Effects on endangered species: The failure to conduct site-specific studies and wildlife surveys, despite the potential presence of 14 species at risk, was not addressed by the Director.

(3) Effects on cultural heritage: The Township raised concerns regarding the cultural heritage effects of the Project. The Director did not address the lack of an assessment of net effects on the Bala Falls cultural heritage landscape, nor did the Director address the lack of an assessment of the effects of the closure of the PPBH&M docks on the cultural heritage attributes of the PPBH&M. On the whole, the Director's review of the Township's cultural heritage concerns reveal a lack of understanding that a cultural heritage assessment is distinct from an archaeological assessment. The Director's response focused on the latter.

(4) Effects on the local economy: The Director stated that she was satisfied with the Economic Impact Study, despite concerns raised by the Township in its November 27, 2009 elevation request. As set out in s. 4.1.5 above, the Economic Impact Study failed to assess negative effects to the local economy – the very concern that it was directed at, used improper methods, failed to gather appropriate data, and failed to support its conclusions on key issues of importance to the local economy.

4.3.3 Failure to fully address the negative effects of the Project

As a result of the Director's failure to address several ESR study deficiencies, the Director also failed to address many of the negative impacts of the Project as set out below:

(1) Effects the Muskoka River watershed upstream and downstream of the Project:

The Township raised the issue of impacts on the watershed. The Director did not adequately address the potential impacts of the Project on the watershed (as set out in s. 4.2.1 above) and the lack of information on these impacts due to the inadequacies of the ESR as set out in s. 4.1.2.

The Director's approval of the side-deal with OPG fails to address the serious effects of this Project. It is particularly troubling to the Township that, by making this side-deal a condition of approval, the Director has placed the Ministry behind an alternative which the ESR rejected peremptorily due to its potential negative impacts.

It is also troubling that the Director stated that "SREL will ultimately determine if scenic flows over the North and South Dams are adequate or if modifications will need to be made to ensure the tourist industry and overall character of the area are not impacted". The Director's decision to leave the issue of scenic flows entirely to SREL despite the potential impacts to the public represents an abdication of her authority to safeguard the public interest.

(2) Effects on endangered species: The effects of the Project on endangered species were not addressed by the Director.

(3) Effects on cultural heritage: The Township raised concerns regarding the cultural heritage effects of the Project. The Director responded to these concerns by citing the statements in the archaeological reports in the ESR regarding a lack of negative impacts from the Project. However, the Director failed to appreciate that a cultural heritage assessment is distinct from an archaeological assessment. As a result, the Director failed to address the cultural heritage effects of the Project, with more details on such effects provided in s. 4.2.3 above.

(4) Effects on the local economy: As noted, the Township raised concerns with the SREL Economic Impact Study, but the Director accepted the conclusions of the study without detailed review. As set out in s. 4.1.5 above, the Economic Impact Study failed to assess negative impacts to the local economy, failed to gather appropriate data, failed to support its conclusions, and failed to address net effects. As a result of the Director's reliance on this faulty study, the Director failed to adequately address the negative effects of the Project on the local economy.

(5) Effects on shoreline accessibility: The economic impacts of reduced accessibility was not addressed by the ESR, nor were these impacts addressed by the Director.

4.4. A DESCRIPTION OF ANY ADDITIONAL INFORMATION THAT THE DIRECTOR DID NOT CONSIDER IN MAKING THE DECISION

As noted above, the Township retained Watson & Associates to conduct a Peer Review of the SREL Economic Impact Study. The Watson & Associates Peer Review was not reviewed by the

Director as it was completed on April 1, 2011, shortly after the Director had rendered a decision on the elevation requests.

4.5 ANY OTHER MATTERS CONSIDERED RELEVANT BY THE REQUESTING PARTY

The Project includes use of District, Township, and Crown lands. To date, neither the District nor the Township have consented to leases to SREL with respect to their lands.

5.0 CONCLUSIONS

The SREL ESR does not meet the requirements set out in O.Reg. 116/01 and Part B of the Guide. This failure voids its exemption from an individual EA under Part II of the EAA. The Township thus concludes that an individual EA is required.

Additionally, there are strong policy reasons for requiring an individual EA. In particular, there is potential for significant negative environmental effects that have not been adequately studied or addressed under the current EA process.

If an individual EA is not ordered, the only legal alternative available to the Minister is to order that the Project cannot proceed until the requirements of Part B of the Guide are met. The Minister has authority to specify all outstanding studies or other work that must be conducted in order to meet these requirements. In particular, the following studies are required if this alternative option is selected:

1. **studies on the effects on the Muskoka River watershed upstream and downstream of the Project**, including the effects of the agreement with OPG to use the Project in a manner similar to a peaking facility, current flows over the North and South Falls, information on daily water takings, effects of reduced minimum flows on aesthetics, aquatic habitat and water quality, effects of the proposed BMZ, and how the Project's use of North and South Bala Dams will be coordinated with the Baysville, Port Sydney, Port Carling, and Go Home Lake dams;
2. **studies on the effects on endangered species**, including site-specific studies using an ecosystem approach and wildlife surveys;
3. **studies on the effects on cultural heritage**, including an assessment of the effects of the Project on the heritage attributes of PPBH&M and the net effects on the Bala Falls cultural heritage landscape; and
4. **studies on the effects on the local economy**, including the additional study requirements, surveys, and revised modeling set out in the Township Peer Review assessment of the economic impacts due to reduced scenic flows, reduced accessibility to the shoreline and the aesthetic impacts of the Project, quantification of impacts to local businesses and tourism, quantification of costs to the Township and District to service the Project, and quantification of the net economic effect on Bala Falls and the Township.

Absent these additional studies, the conduct of the missing overall analysis of advantages and disadvantages of the Project would lack an appropriate basis, and the requirements of Part B of the Guide would not be met. As a result, the purpose of the EAA would remain unfulfilled. Once

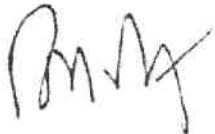
these studies are completed appropriately, SREL would then be in position to conduct the required overall analysis of the advantages and disadvantages of the Project required by Part B of the Guide.

In closing, we note that in the past there have been occasions when the Ministry of the Environment has relied on submissions and information derived from off-the-record meetings with a proponent to refuse an elevation request. The information from these meetings was not made publicly available, and the parties that requested an elevation were not provided an opportunity to respond, or even informed of the meetings. This practice is contrary to the longstanding EA principle of transparency and to your legal duty of fairness.

In addressing the Township's elevation request, the Township respectfully requests that this practice not be continued, as it undermines the integrity of the process and the public confidence in your Ministry.

Yours truly,

FOGLER, RUBINOFF LLP



Rodney V. Northey

RVN/mh

Attachments

cc: Quinto Annibale, Loopstra Nixon LLP,
Lawyers for Swift River Energy Limited (by email only)

Attachment 1



P.O. Box 129, 1 Bailey Street, Port Carling, Ontario, P0B 1J0
Website: www.muskokalakes.ca
Phone: 705-765-3156
Fax: 705-765-6755

File: Ministry of Environment

November 27, 2009

Fax: 1-416-314-8452
Email: michael.harrison2@ontario.ca

Ministry of Environment
Director of EAAB
Attn: Michael Harrison
2 St. Clair Avenue W., Floor 12A
Toronto, ON M4V 1L5

Attention: Michael Harrison

Reference: Swift River Energy Limited, Environmental Screening Review Report, North Bala Small Hydro Project, Request to Elevate the project to an Environmental Review or an Individual Environmental Assessment

Dear Mr. Harrison:

Attached please find the Township of Muskoka Lakes letter of request for an Elevation for an Environmental Review or Individual Environmental Assessment for the above noted project submitted to HATCH Energy.

The Township has been in discussions with the proponent over the last number of years on this project, has review the ESR report and has submitted its concerns to HATCH. We have yet to come to a resolution on these issues and accordingly are requesting a formal elevation of the projection accordance with my discussions with Ms. M. Dixon of your office.

We look forward to meeting with HATCH and SREL as soon as mutually possible.

Yours truly,


Walt Schmid, P. Eng. CAO
Phone: 705-765-3156 Ext 272
Email: wschmid@muskokalakes.ca
Attachments

c.c. Hatch Energy, Trion Clarke, Senior Environmental Scientist
Mayor Ellis
Karin McGhee
Jim McIntosh

/kb

→ sent via Email



P.O. Box 129, 1 Bailey Street, Port Carling, Ontario, P0B 1J0

Website: www.muskokalakes.ca

Phone: 705-765-3156

Fax: 705-765-6755

File: North Bala Small Hydro Project

November 27, 2009

Fax: 1-905-374-1157

Email: tclarke@hatch.ca

HATCH Energy

Attn: Trion Clarke, Senior Environmental Screening

4342 Queen Street, Suite 500

Niagara Falls, ON

L2E 7J7

Attention: Trion Clarke, Senior Environmental Scientist

Reference: Swift River Energy Limited, Environmental Screening Review Report, North Bala Small Hydro Project, Request to Elevate the project to an Environmental Review or an Individual Environmental Assessment

Dear Mr. Clarke:

Further to our recent conversations and e-mails and my own conversations and emails with Karen McGhee of Swift River Energy Limited (SREL), the Township of Muskoka Lakes wishes to confirm its right to request an elevation of the above noted project should it be unable to establish a resolution to the municipalities concerns as outlined in the staff report dated November 24, 2009. Accordingly we have made the formal submission to the MOE, EAAB.

Yours truly,

A handwritten signature in black ink, appearing to read "Walt Schmid".

Walt Schmid, P. Eng. CAO

Phone: 705-765-3156 Ext 272

Email: wschmid@muskokalakes.ca

Attachments

c.c. Ministry of the Environment, Director of EAAB, Attn: Michael Harrison
Mayor Ellis
Karin McGhee
Jim McIntosh

/kb



TOWNSHIP OF MUSKOKA LAKES REQUEST FOR AN ELEVATION
OF AN ENVIRONMENT REVIEW OR INDIVIDUAL ENVIRONMENTAL ASSESSMENT

<u>Request:</u>	Application for an Environmental Review or Individual Environmental Assessments
<u>Name of Project:</u>	North Bala Small Hydro Project (Bala Ontario, Township of Muskoka Lakes, District of Muskoka)
<u>Name of Proponent:</u>	Swift River Energy Limited
<u>Basis of Request:</u>	To address the concerns of the Corporation of the Township of Muskoka Lakes, relating to the Environmental Screening Report, North Bala Small Hydro Project, October 2009, including but not limited, to environmental, heritage, fishery, public safety, water level, tourism, and short and long term economic issues, as detailed in the attached staff report dated November 24, 2009.
<u>Request:</u>	The Township is requesting that the project be elevated to an Environmental Review or to an individual Environmental Assessment
<u>Nature of Concerns:</u>	As outlined in the Council Resolution and staff report dated November 24, 2009 (attached)
<u>Benefits of Requiring a formal elevation request:</u>	The Township wishes to resolve its issues and concerns relating to the project which are of public concern.
<u>Efforts to resolve and discuss concerns:</u>	The Township has had a number of conversations with SREL over the last number of years. The ESR does not clearly address the earlier discussions. The Township has submitted the November 24, 2009 staff report and has not received a response to the issues raised in the report. The Township has requested the ability to request an elevation of the project past the November 27 th dead line, but has been unable to receive a satisfactory assurance that the ability to elevate the project will be available unless a formal request to elevate is made, no later than November 27 th . The Township is accordingly making this formal request in accordance with the "Guide to Environmental Assessment Requirements for Electricity Projects"
<u>Other Matters:</u>	The Township is prepared to meet with the proponent at a mutually convenient time to resolve its issues.

Walt Schmid

From: Clarke, Trion [TClarke@hatch.ca]
Sent: Thursday, November 26, 2009 3:29 PM
To: wschmid@muskokalakelakes.ca
Cc: eAABGen@ene.gov.on.ca; Karen McGhee
Subject: RE: North Bala Hydro Project - 90 days

Walt,

I am pleased that the stated commitment was found to be adequate. I am confident that the issues outlined by the Township can be resolved through cooperative effort with Swift Energy. Thank you for the opportunity to discuss the matter and in so doing address the immediate issue of the need (or lack thereof) for an elevation request from the Township.

Regards,
Trion

From: Walt Schmid [mailto:wschmid@muskokalakelakes.ca]
Sent: Thursday, November 26, 2009 3:23 PM
To: Clarke, Trion
Cc: eAABGen@ene.gov.on.ca; 'Karen McGhee'
Subject: RE: North Bala Hydro Project - 90 days

Thank you Trion.

Based on the commitment stated in your letter, the Township will cancel its Special Meeting to formally request an elevation of the project.

I look forward to meeting with you to discuss the municipalities issues of concern.

Walt Schmid, P.Eng. CAO

From: Clarke, Trion [mailto:TClarke@hatch.ca]
Sent: Thursday, November 26, 2009 3:03 PM
To: wschmid@muskokalakelakes.ca
Cc: eAABGen@ene.gov.on.ca; Karen McGhee
Subject: North Bala Hydro Project - 90 days

Hi Walt,

Attached please find the commitment from Swift River on the 90 days for discussion/resolution of issues raised by the Township.

Please do not hesitate to contact me should you require any further information.

Best regards,
Trion

Trion Clarke, Ph.D
Senior Environmental Scientist
Hatch Limited,
Suite 500
4342 Queen Street,
Niagara Falls, ON
L2E 7J7