

July 23, 2012

Ms. Agatha Garcia-Wright, Director,
Ministry of the Environment, Environmental Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, ON M4V 1L5

E-mail: Agatha.GarciaWright@ontario.ca

Dear Ms. Garcia-Wright:

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

Summary

The principles of natural justice require an unbiased and fair hearing. Yet we continue to find that the Ministry of the Environment appears both biased and conflicted, and that after years of asking, too many of the public's significant and relevant questions about environmental concerns have still not been answered.

This cannot result in a fair hearing, and this does not fulfill the requirements of public consultation as required by the *Guide to Environmental Assessment Requirements for Electricity Projects* (the "Guide").

Detail

As you know, in a letter dated April 16, 2011 we requested that the Minister of the Environment review your decision to deny the public's requests that the subject proposed project be elevated to require an individual environmental assessment.

In our letter, and in other letters from the public, many unaddressed concerns have been detailed. Also as you know, in a letter dated May 24, 2012 the Minister confirmed your decision. While the Minister's letter responds to some of our concerns:

- Many of the Minister's responses did not answer the actual question asked.
- Many specific questions detailed in our April 16, 2011 request letter were simply ignored by the Minister in his May 24, 2012 response letter.

We also note that the proponent's Addenda, dated May 30, 2012 and June 29, 2012 also do not provide answers to these unaddressed concerns.

Many important environmental concerns therefore remain outstanding. These include a concern for the proponent's Option 2 proposal, and is of even greater concern as we review the proponent's new proposal as presented in their Addendum. In the Appendix to this letter we note some of these unaddressed concerns and have also described what we see as the completely inadequate (or in some cases non-existent) response by the Minister.

The public has been asking these same fundamental questions for years, and still the responses from; the proponent, the Director of the Environmental Approvals Branch, and the Minister of the Environment do not answer the actual questions asked.

Section A.6.2.1 of the *Guide* notes that in the public consultation process it *“is necessary for the proponent to ... address the concerns of adjacent property owners, interest groups and members of the public that may be directly affected by some aspect of the project”* and that this consultation is to *“address public concerns and issues raised”*. This has not happened to date, and therefore the public consultation requirements of the *Guide* have not been fulfilled.

Sincerely,

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

Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: K. McGhee, Swift River Energy Limited, balafalls@m-k-e.ca

Appendix – Some Unaddressed Concerns

Issue	Minister's Response	Unaddressed Concerns
Scenic flow	The proponent may discuss this in the future.	<ul style="list-style-type: none"> • Reduced scenic flow over the falls would reduce the tourist draw to the area and therefore have a negative economic impact. • Such economic impacts must be addressed as part of the environmental assessment, not at some later date when the proponent would no longer have any obligation to accept input from the public. • The Ministry of Natural Resources' input on this is irrelevant as they have no obligation to consider economic impacts to the area.
Economic impact study	The proponent made <i>“reasonable attempts to determine potential negative ... impacts”</i> .	<ul style="list-style-type: none"> • For their survey of business owners, the proponent could have, but chose to not ask about negative impacts. • The proponent did not interview tourists to understand the negative impacts. <p>The proponent could easily and inexpensively have obtained this information during their study period, but chose not to. Without considering the negative impacts, the proponent's economic impact study therefore does not provide any conclusions about net effects, and therefore economic impacts have yet to be evaluated, so the Director's request has not been fulfilled.</p>
Appearance	Is <i>“confident that the tourism and recreational activities that are currently enjoyed could still be permitted.”</i>	<p>The proposed structure would be in the most popular location in Bala for tourists to appreciate the natural beauty of the area, yet:</p> <ul style="list-style-type: none"> • The renderings provided are incomplete and inconsistent. • There is no information on whether the proponent would be required by others to use barbed-wire fencing. <p>Bala is in competition with the rest of the world for tourism, and the economic impact of this proposed change has not been evaluated.</p>
Completion bond	Does not consider the cost of damage to public infrastructure (the north dam and highway bridge) despite the blasting required directly adjacent to these.	<ul style="list-style-type: none"> • Damage to the highway bridge supports would require a 50 km detour which would have a major negative impact on the area's economy, and on public safety as emergency vehicles would be delayed. • Damage to the north dam would threaten private property and loss of life as dam failure would result in a 20'-high wall of water flooding the residences along the Moon River. <p>The proponent has not offered any secured protection to public infrastructure or other's private property for the possibility that the proponent causes unplanned damage (and this is far more likely for their new proposal) to the Crown's or municipality's public infrastructure during construction.</p>
Portage	Does not respond.	<ul style="list-style-type: none"> • Section 65(4) of the <i>Public Lands Act</i> (R.S.O. 1990, Chapter P.43) requires that the existing portage route be maintained. • Section 2(c) of the <i>Lakes and Rivers Improvement Act</i> (R.S.O. 1990, Chapter L.3) provides for

Issue	Minister's Response	Unaddressed Concerns
		<p>the protection of the interests of riparian owners.</p> <ul style="list-style-type: none"> • The Ontario Ministry of Natural Resources' <i>Lakes and Rivers Improvement Act Administrative Guide</i>, August 2011 notes in Section 1.42 the riparian rights of adjacent land owners, including the right of access to the water, and in Section 1.4.3 notes the right of navigation including anchorage and moorage. <p>The proponent is proposing to eliminate the existing portage both by obstructing the portage route with their proposed powerhouse, and also by the turbulent water exiting their proposed tailrace causing danger to both marine navigation and vessel launching at the traditional portage landing point on the Moon River. Eliminating an existing portage is not an option according to the current legislation. Even if the proponent was allowed to eliminate an existing portage, their proposed alternate routes are unsafe, unworkable, and unrealistic.</p>
Noise	Does not respond.	<p>The proponent:</p> <ul style="list-style-type: none"> • Includes only two of the six main noise sources in their calculation, and assumes the building would have 8"-thick concrete walls with no openings, even though there must be many large openings to provide the required ventilation. • Assumes that the noise would be masked by the north falls, but neglects that the north falls would no longer have any significant flow, so would not provide such masking. <p>Therefore the noise calculations are incorrect and incomplete.</p> <p>However our main concern is that Ontario's noise regulations are controlled and administered by the Ministry of the Environment, and the Ministry of the Environment is also determining whether the information provided by the proponent is adequate. The Ministry of the Environment is therefore conflicted as it is judging its own work so there is no opportunity for an unbiased assessment. This is clearly contrary to a fundamental principle of natural justice.</p>
Loss of publically-accessible shoreline	Does not respond.	<p>Tourists visit Bala to view the falls, admire the natural beauty, and safely access the water. Most shoreline in Muskoka is private property and therefore is not available to promote tourism. The proposed project would both:</p> <ul style="list-style-type: none"> • Eliminate the publically-accessible shoreline at the intake and tailrace. • Make the shoreline within the safety booms too dangerous to access. <p>The proponent has not examined the impact of this significant loss. For example, the proponent's economic impact study made no effort to consider this.</p>
In-water recreation	Does not respond.	<p>In-water recreation is acknowledged by the proponent to be an important activity both upstream and downstream of the proposed generating station. Transport Canada confirms they have no mandate or expertise to determine the risk to in-water recreation due to the proposed generating station. This is a public safety issue that has not been addressed.</p>