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Agatha Garcia-Wright
Director, Environmental Approvals Branch
Ministry of Environment
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Email: Agatha.GarciaWright@Ontario.ca

Dear Ms. Garcia-Wright:

**Re: Wabagishik Rapids GS - Proposed Waterpower Project
Part II Order Request – Follow-up**

Ontario Rivers Alliance (ORA) and Vermilion River Stewardship (VRS) are writing further to our Part II Order request on the Wabagishik Rapids Generating Station Environmental Report (ER), dated 1 November 2013,¹ and as a follow-up to my visit of its Public File (PF) on the 7th of April 2014, at the Ontario Ministry of Environment's (MOE) offices. Dorothy Moszynski assisted me with this visit and can verify the documents which were accessed.

What was found in the PF was encouraging, and yet at the same time very concerning. It was encouraging to see that MOE concurred with ORA and VRS, when it reported "*NR's review of the ER indicated that in several instances, the proponent has not met the requirements of the Waterpower Class EA*"; however, it was disturbing that "*EAB has indicated they are considering denying the Part II Order requests with conditions, noting that it may be possible to impose detailed conditions to ensure all outstanding concerns are addressed*". This referenced document goes on to express the questions, concerns and uncertainty of how to deal with this deficient ER, and whether this would "*expose the Ministry to any risk (ie: other proponents seeking the same level of direction during the proponent-driven EA process, or liability issues if the approach taken leads to unforeseen negative impacts on the environment or other users)*".²

Several times under "Required Element" this MOE review document refers to instances where further research, analysis or other investigations were required to demonstrate potential impacts

¹ *Part II Order request by ORA on Wabagishik Rapids GS, dated 1 November 2013.*

² *Wabagishik Rapids Waterpower Project – Table for EAB, MOE NR Comments regarding Wabagishik Final ER, dated September, 2013 (Letter of November 25, 2013 to Xeneca) – attached.*



and allow for the identification of mitigation measures. Many of the deficiencies reported should also require further public and First Nation consultation, as well as opportunity for comments. Our concerns were also reflected in MOE's "*concerns that, in some cases, technical studies and detailed analysis provided in the ER and Annexes do not support the findings, commitments, or other statements made within the ER*". This alone puts into question the integrity of the ER and in those who prepared it.

Many of the deficiencies reported in this MOE document are also mentioned in our Part II Order request, and several more are listed that we weren't aware of; however, one of our most serious concerns, regarding the severely contaminated sediment, was not addressed or even mentioned in this review report.

As was indicated in our Part II Order request, "*the Vermilion River system in the Greater District of Sudbury has already been highly compromised by over 100 years of mining waste and effluent, and a long history of 9 upstream wastewater treatment facilities releasing treated, undertreated and untreated effluent into its waters.*^{3,4} A 1986 MOE Sediment Study for Wabagishik Lake (attached) underscores this history when it reported contaminated sediment containing heavy metals such as nickel (24 times over the severe effect level (SEL), copper (5 times over the SEL), arsenic (3 times over the SEL); lead (1.5 times over the SEL), iron, and manganese over the SEL, and zinc, chromium and cadmium at elevated levels. On several occasions (both verbally and formally⁵) VRS requested that Xeneca undertake sediment sampling on Wabagishik Lake, and downstream in the bay area where silt and sediment have collected over the years, an area that is very vulnerable to the extremes of flushing, dewatering, erosion and scouring. However, Xeneca refused.^{6,7}"

The review report does mention "*as previously indicated, additional work is required to demonstrate all potential effects and propose mitigation. A review of the overall advantages and disadvantages of the project is therefore premature.*"⁸ However, this review must also take into consideration the common and repeated concerns of the 19 requesters regarding the severely contaminated sediment that could be dispersed into the water column and how that would impact on public health and safety, the health of the riverine ecosystem, and that of the North Channel of Lake Huron. Xeneca has refused to address this issue, either in their studies or in providing mitigation measures.

The Class EA for Waterpower states: "*There are some groups or "classes" of projects which are: Carried out routinely; and Have predictable and mitigable effects to the environment and therefore, do not warrant an individual EA. These are known as Class Environmental Assessment (Class EA projects).*"⁹ We submit that the potential impacts of this waterpower project are not being adequately addressed through the Class EA for Waterpower, as they are neither routine, predictable, nor mitigable.

³ *Flushing Out the Truth: Sewage Dumping in Ontario – Ecojustice Report - 2009*

⁴ *The Great Lakes Sewage Report Card – Ecojustice - 2013*

⁵ *Wabagishik Rapids GS ER - Appendix D – Part 2, P-222 to 223*

⁶ *Wabagishik Rapids GS ER - Appendix D – Part 2, P-226 to 228*

⁷ *Part II Order request by ORA on Wabagishik Rapids GS, dated 1 November 2013, P-6*

⁸ *Wabagishik Rapids Waterpower Project – Table for EAB, MOE NR Comments regarding Wabagishik Final ER, dated September, 2013 (Letter of November 25, 2013 to Xeneca), P-10*

⁹ *2014 OWA Class Environmental Assessment for Waterpower Projects – Fourth Edition – January 2014, P-11*



The Big Picture

The Environmental Commissioner for Ontario reported that "*Class EA approaches were intended for projects that occur frequently, with generally predictable ranges of effects and relatively minor environmental impacts. But critics have long argued that too many large and environmentally significant projects have been inappropriately slipped into the Class EA fast track....*"¹⁰

Additionally, hydroelectric proposals under the Class EA for Waterpower cannot be appealed through the Environmental Review Tribunal. This leaves costly litigation as the only possible option for stakeholders and the public.

ORA, VRS, and many other organizations and individuals have made requests to the Minister of Environment to issue a Part II Order to elevate an Environmental Assessment to an Individual Environmental Assessment. However, in the almost 20 years that this option has been available to the public and stakeholders, not once has a request been granted for a waterpower proposal.

Xeneca also has Feed-in-Tariff contracts for three other hydroelectric proposals that are upstream of the Wabagishik Rapids site, which Xeneca refused to even consider in their cumulative effects assessment, and for which MOE would be setting a dangerous precedent if the proponent is allowed to proceed with conditions.

If this proponent is accommodated by MOE and allowed to go through with only conditions on the Wabagishik ER, what kind of a dangerous precedent is MOE setting for the remainder of its proposals? The Agency Consultation documents contained within this ER, and all other ERs for this proponent which ORA has reviewed to date, have revealed a consistent and chronic resistance to follow the recommendations and guidance of the MOE and Ministry of Natural Resources (MNR) representatives in addressing, reporting, and adequately mitigating the numerous negative impacts of their waterpower proposals.

For instance, the Ivanhoe River ER for The Chute did not meet the requirements of the Class EA for Waterpower its first time around in 2011, according to MOE's decision letter which stated, "*The planning process for the Project overall lacks the level of transparency, clarity, and certainty expected from proponents under the OWA Class EA. The decision-making process employed by Xeneca in reaching its conclusion is neither transparent nor traceable, and therefore Xeneca did not meet the requirements of the OWA Class EA.*"¹¹ As a result, the proponent was sent back to complete studies and do additional planning work.

On the 14th of May 2014, after the proponent completed 2 ½ years of additional studies and planning on the Ivanhoe River proposal, ORA submitted another Part II Order request on the new ER, citing many of the same reasons for which it was rejected the first time around by MOE. Our Part II Order request stated, "*The decision-making and reporting process used by Xeneca in reaching its conclusions in this ER are neither transparent nor traceable. First Nation and public consultation were inadequate, many kilometers of riverine ecosystem have not been adequately assessed, and there are many other concerns and uncertainties detailed above. As*

¹⁰ *Getting to Know. Annual Report, 2007-2008, ECO, P-28 and P-5.*

¹¹ *Correspondence from Agatha Garcia-Wright, MOE to Patrick Gillette, Xeneca Power Development Inc., dated 2 March 2012*



a result, ORA submit that Xeneca has not met the requirements of the Class EA for Waterpower."¹²

ORA and VRS suggest that since this approach did not work to bring the proponent up to the necessary standards, that it is time to change the approach – not only for the Wabagishik Rapids GS ER, but for all the rest as well.

How can we trust a proponent to build a safe and environmental sustainable hydroelectric facility when they can't even get their ER right?

ORA has reviewed numerous Environmental Reports and suggests that the significant and ongoing negative impacts that are likely to result from projects using headponds, diversions, and cycling and peaking operating strategies are not being adequately addressed through the Class EA for Waterpower, and are neither routine, predictable, nor always mitigable. In fact, in some instances many kilometres of designated zones of influence and potential negative effects are not even being studied and; therefore, are not adequately assessed or mitigated.

Many times ORA have raised concerns regarding insufficient public and First Nation consultation, piecemeal planning and studies, and insufficient consideration for cumulative effects. The proponent led process has undermined confidence and trust and has not been effective in adequately addressing the numerous potential impacts that waterpower projects entail.

Recommendations

ORA and VRS recommend that MOE take the precautionary approach in dealing with ERs that do not meet the requirements of the Class EA for Waterpower, and place the onus on the proponent to demonstrate, through an Individual EA, that its proposal/s will be a benefit, and not a scourge, to the people of Ontario.

ORA and VRS are requesting that, since we all agree that the Wabagishik Rapids GS ER has not met the requirements of the Class EA for Waterpower in several instances, and since this proposal is neither routine, predictable nor mitigable, that the Ministry elevate this proposal to an Individual EA. This would require the development of a Terms of Reference that may bring the proponent up to the rigour and standards that are necessary for the environmentally and socially sustainable development of this proposed project.

ORA and VRS further recommend that in order to bring this particular proponent up to the standard necessary for the completion of their many other waterpower proposals currently going through the EA process, and so far seem to have similar chronic deficiencies, that the Ministry seek to make an agreement with this proponent to do an Individual EA for each and every one of their waterpower proposals, as well as overall, to adequately consider their individual and cumulative effects, and how all of these small hydroelectric projects would contribute to the overall benefit and "*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*", per the purpose of the Ontario Environmental Assessment Act. R.S.O. 1990, c. E.18, s. 2.

¹² Part II Order Request, The Chute & Third Falls Waterpower Projects – Ivanhoe River, 14 May 2014



We are requesting a meeting with you to discuss the way forward on this important matter, and look forward to your response.

Respectfully,

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Enclosures (2)

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