Ministry of the Environment

Environmental Approvals Branch

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Mr. Patrick Gillette
President and COO
Xeneca Power Development
5160 Yonge Street, Suite 520
North York ON M2N 6L9

Dear Mr. Gillette:

Between August 9, 2011 and September 12, 2011, the Minister of the Environment (MOE) received seven Part II Order (PIIO) requests from members of the public asking that Xeneca Power Development Incorporated (Xeneca) be required to prepare an individual environmental assessment for the proposed Ivanhoe River – The Chute Hydroelectric Generation Station (Project).

Based on the MOE staff review of the Environmental Report, the key features of the Project are the following:

- Run of the river type facility with modified peaking;
- A nameplate capacity of 3.6 megawatts;
- Intake and powerhouse facility;
- 85 metre (m) spillway dam and a 110 m long earthen embankment;
- 27.6 kilovolt transmission line to connect to the provincial power supply grid;
- Zone of Influence (ZOI) is expected to span a distance of 6.4 kilometres (km) upstream and 400 m downstream; and,
- Existing access road upgrades (1.8 kilometres) and new road construction (500 m).

It is my understanding that the Project is being planned in accordance with the category of new projects on managed river systems provisions of the Ontario Waterpower Association's Class Environmental Assessment for Waterpower Projects (OWA Class

EA). The OWA Class EA requires proponents of projects in this category to complete a series of steps from which the project moves from concept to implementation.

Under Section 13 of the Environmental Assessment Act (EAA), a proponent of an undertaking subject to a class environmental assessment shall not proceed with the undertaking unless the proponent does so in accordance with the class environmental assessment (in the alternative, the proponent may carry out an individual environmental assessment). Staff of the MOE have reviewed the Project's Environmental Report and I have determined that the Project was not planned in accordance with the requirements of the OWA Class EA. Therefore, the Minister of the Environment is unable to consider the Part II Order requests at this time.

Based on MOE's review of the Environmental Report, Xeneca has failed to meet the OWA Class EA requirements in the following ways: baseline data and the assessment of potential impacts and associated mitigation is incomplete; insufficient public and Aboriginal consultation and engagement as a result of significant Project changes; and, lack of traceability and transparency in Xeneca's decision-making process and associated documentation. Furthermore, I have concerns that Xeneca proceeded with the issuance of its Notice of Completion for the Environmental Report despite the outstanding environmental issues identified by both the MOE's Northern Region, and Ministry of Natural Resources (MNR).

Assessment of Impacts

Phase 3 (Project Assessment) of the OWA Class EA requires proponents to assess key potential impacts, and develop strategies and mitigation measures to manage them. At the end of the project assessment phase, proponents should be in a position to assess the overall environmental advantages and disadvantages of the project.

Based on MOE staff review of the Environmental Report, Xeneca has not completed the project assessment phase of the OWA Class EA because the Project was not fully assessed, the impacts of the additional ZOI (3.6 km) was not evaluated, and the documented assessment work in the Environmental Report is incomplete.

It is my understanding that the stated ZOI of this Project has more than doubled since the start of the OWA Class EA planning process from 2.8 km to 6.4 km. I understand that Xeneca has completed some additional studies on the additional ZOI since the posting of the Notice of Completion for the Project; however, the evaluation of the potential environmental effects of the additional ZOI is incomplete and the additional studies are

not documented in the Environmental Report. Also, I understand that the MNR and MOE's Northern Region have outstanding concerns with the current ZOI because of deficient hydrology modelling and analysis. Without sufficient baseline environmental information to confirm whether the current ZOI is appropriate, a thorough assessment of effects cannot be completed.

Proponents are required to ensure that all potential impacts are identified, assessed and mitigated as part of the OWA Class EA planning process prior to finalizing the Environmental Report and posting the Notice of Completion. Part II Order requesters raise concerns relating to visual aesthetics, navigable waters and tourism which are potential effects identified in the Environmental Report as either unknown and/or outstanding data. Commitments in the Environmental Report to complete data collection and assessment of effects post EA does not provide the public, Aboriginal communities and agencies with a meaningful opportunity to provide input on the Project nor to submit a Part II Order request on a completed Class EA study.

Public and Aboriginal Consultation and Engagement

A key aspect of Phase 1 (Project Concept) under the OWA Class EA is the development of public and Aboriginal consultation and engagement plans. The Public and Aboriginal Consultation Plans are to be developed in the early planning stages of projects in order to inform a meaningful consultation program with the public and Aboriginal communities. The Notice of Commencement for the Project (Phase 2 in the OWA Class EA) was issued in December 2010, but the Public and Aboriginal Consultation Plans for the Project are dated May and June 2011, respectively. The Plans should have been developed and implemented during Phase 1 of the OWA Class EA process.

MOE staff have concerns with how information was communicated to the public and Aboriginal communities as a result of considerable changes to the Project description, planning process and the stated ZOI. Based on MOE staff review of the Environmental Report and the Public Information Centre (PIC) materials, the change in the ZOI was only communicated at the July 6 and 7th PICs, just one week prior to posting the Notice of Completion of the Environmental Report. In the MOE's view, this prevented the public and Aboriginal communities from having a meaningful opportunity to be engaged in Project planning and to have their interests and concerns considered and/or addressed as part of Xeneca's planning process. Also, based on the materials, Xeneca does not appear to have presented information on the assessment of effects of the Project in its entirety (current ZOI, new access road, location of powerhouse) and the assessment of

the effects of the additional 3.6 km ZOI was not communicated to the public at either of the July 2011 PICs.

Specific to Aboriginal Consultation, Section 4.1.3 of the OWA Class EA states that proponents need to engage with Aboriginal communities to allow them to contribute to and inform decisions relating to a project. The Environmental Report states that Xeneca has not consulted with individual Aboriginal communities to gather information specific to land and water use. Although the MNR's Site Information Package, included in the supporting documentation to the Environmental Report, indicates that several Aboriginal communities have preliminary interests and concerns about the Project, the Environmental Report does not document how these concerns were considered or addressed during Project planning.

In the Environmental Report, Xeneca commits to engaging with Aboriginal communities after the posting of the Notice of Completion. While ongoing consultation is encouraged, such a commitment is not a substitute for engaging Aboriginal communities in a meaningful way during Project planning (i.e. prior to issuing the Notice of Completion). The OWA Class EA states in section 7.1 that "Proponents are expected to involve Aboriginal communities who may be directly affected by, or have an interest in, the development of a waterpower project" and in section 4.1.3 that "Early and meaningful engagement of representative interests and public that may be affected by the Project is [...] a critical element of achieving the intent of the OWA Class EA."

Overall, there is insufficient information in the Environmental Report to demonstrate the potential impacts of the Project and identify mitigation measures, to a level that would have allowed Aboriginal communities and the pubic to understand the anticipated impacts and provide comments on the Project in its entirety.

Transparency

Xeneca's issuance of the Notice of Completion on July 14, 2011 for the Environmental Report was premature given that: the assessment of effects for the Project in its entirety and mitigation are not complete; the change in Project scope is not adequately explained and documented; and, the location of the powerhouse has not yet been determined. The decision making process employed by Xeneca is not transparent and not clearly documented in the Environmental Report in order to meet the intent of the OWA Class EA process as it relates to the documentation requirements.

Agency Comments

I have been made aware of the outstanding concerns raised by the MOE's Northern Region, as well as other key government agencies (Transport Canada, the Canadian Environmental Assessment Agency, Fisheries and Oceans Canada, the Ministry of Tourism and Culture, MNR) during the planning process for this Project. The significant outstanding concerns raised by these agencies include: gaps in baseline data; incomplete assessment of effects and associated mitigation plans; concerns with the proposed ZOI; incomplete and inadequate public and Aboriginal consultation; concerns with cultural landscapes, impacts on aquatic habitat and species, and cumulative effects. The MOE staff have raised similar concerns to those of the key government agencies. Xeneca has not met the intent of the consultation provisions of the Class EA or the expectations of the MOE to consider and address comments provided by government agencies. It is advantageous for proponents to work closely with agencies and address their concerns during the Class EA planning process as this will help to facilitate proponents proceeding through subsequent permits and approval processes more efficiently.

I understand that assessment of the transmission line is not required under the OWA Class EA; however, I recommend that Xeneca consider working with the MNR to assess potential impacts and select a preferred route. I also recommend that the effects of the improvements to the existing multi-use road be undertaken by Xeneca to support any other decisions by MNR to dispose of Crown land.

Conclusion

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.

In order to correct the above noted deficiencies, I am advising Xeneca to complete the following actions:

1. Consult with potentially affected or interested Aboriginal communities to gain information relating to traditional land and water use and potential impacts to Aboriginal or treaty rights, and incorporate this information into the Environmental Report. Document how any concerns raised with respect to the Project were considered and addressed.

2. Consult with MNR and MOE Northern Region on further studies needed to identify and confirm the ZOI. Conduct these further studies to confirm the ZOI.

3. Consult with appropriate key agencies to determine what further baseline data/studies and field work is required in order adequately assess the potential effects of the Project on the natural, social and economic environment. Assess any potential effects and document the work in the Environmental Report.

4. Based on the assessment of effects, select and document in the Environmental Report the location of the powerhouse facility.

5. Once the assessment of effects is completed, include appropriate mitigation and impact management measures in the Environmental Report. Any individual net effects (after mitigation) and their significance and the overall positive, neutral and negative effects of the Project are to be included and documented.

6. Revise the Environmental Report and I recommend that a draft be made available to the public and Aboriginal communities on Xeneca's website.

7. Circulate copies of the draft Environmental Report to appropriate agencies (MNR, MTC, MOE Northern Region and other relevant government agencies) for a minimum 30-day review and comment period. I recommend that Xeneca revise the draft to address any additional agency comments and concerns.

8. In accordance with the Class EA requirements, finalize the revised Environmental Report and issue a new Notice of Completion, making the Environmental Report available for a 30 day public, Aboriginal community and agency review period. The Notice should indicate that there is an opportunity to submit a Part II Order request to the Minister of the Environment during the 30-day public review period. Xeneca is advised to ensure that Aboriginal communities who may have an interest in the Project, as well as all other parties who have previously expressed an interest in the Project and those who submitted a Part II Order request, receive a copy of the Notice of Completion.

9. Provide a copy of the Environmental Report and the Notice of Completion to this Branch and the MOE's Northern Region office when the Notice of Completion is issued.

If Xeneca decides to proceed with the Project and completes the above steps, MOE staff will review the Part II Order requests received between August 12 and September 9, 2011, in addition to any other requests received after the re-issuance of the Notice of Completion once Xeneca has completed these steps. I encourage Xeneca to continue to work with the requesters and attempt to resolve the concerns raised in their Part II Order requests.

Lastly, I would like to ensure that Xeneca understands that failure to comply with the EAA and more specifically, proceeding with the Project without complying with the provisions of the OWA Class EA are contraventions of the EAA and may result in prosecution under section 38 of the EAA. I am confident that Xeneca recognizes the importance and value of the EAA and will ensure that its requirements and those of the OWA Class EA are satisfied.

MOE staff would like to offer to meet with Xeneca to discuss the content of this letter in greater detail to provide clarity to enable Xeneca to meet its obligations under the EAA. Please feel free to contact Cindy Batista, Project Officer of the Environmental Approvals Branch of the MOE, at 416-314-8214 or by e-mail at cindy.batista@ontario.ca to arrange a meeting or to discuss any questions Xeneca may have relating to this matter.

Sincerely,

Agatha Garcia-Wright
Director
Environmental Assessment and Approvals Branch