



July 24, 2009

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Re: Approval and permitting requirements document for renewable energy projects. EBR Registry #010-6708

Dear Ms. Jones,

Lake Ontario Waterkeeper ("Waterkeeper") has reviewed the Policy Proposal Notice and supporting materials regarding the Ministry of Natural Resources' Approval and permitting requirements document for renewable energy projects (the "Draft Document"). We offer the following analysis and recommendations for your consideration.

Background

According to the Notice of Policy, "The proposed requirements document outlines the Ministry of Natural Resources' requirements for review and approval of renewable energy projects as per section 13.2 of the *Ministry of Natural Resources Act*." Section 13.2 of the *Act* states:

The Minister may require that the proponent of a renewable energy project, as defined in section 1 of the Green Energy Act, 2009, provide to the Minister the information or studies that the Minister considers necessary before the Minister issues a permit or approval under an Act for whose administration the Minister is responsible under the Executive Council Act, 2009, c. 12, Sched. L, s. 6.

Essentially, the Draft Document outlines how the Ministry of Natural Resources will go about reviewing and approving renewable energy projects in Ontario.

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Analysis and Recommendations

1) The Draft Document creates loopholes that could foster abuses of process and unfair decision-making

Section 2.2 of the Draft Document states that not all renewable energy projects will need to fulfill the approval and permitting requirements: “All requirements may not need to be fulfilled for all projects based on project type or anticipated site specific effects,” (p. 8). Section 2.2.1 states that the Ministry may reduce the scope of requirements and that a proponent may request a reduction in the scope of requirements. Section 2.2.2 contains a list of types of renewable energy projects that may be subject to a lesser scope of requirements. It is not clear if this list is exhaustive, or if the Ministry and the proponent may reduce the scope of requirements for any renewable energy project following the process described in 2.2.1.

It is important to note that renewable energy projects are *already* subject to a reduced scope of requirements, when compared to other industrial development projects in the Province of Ontario. Indeed, the very intent of the *Green Energy and Green Economy Act* is to prioritize renewable energy development and “streamline” the decision-making process. The lesser scope of requirements described in Section 2.2 represents a *further* reduction of regulatory process and review.

Furthermore, this reduction is highly discretionary and lacking in transparency. No decision-making criteria or guidance is offered in the Draft Document. No public notice provisions are included. No public consultation requirements are imposed. No opportunities for public appeal or request for reconsideration are offered. No requirement for written reasons from the decision-maker is included. This creates an opportunity for abuse of process that could negatively impact individual’s rights, the environment, and the renewable energy market.

Recommendation #1: Remove the provision for reduced scope of requirements from the Draft Document. In the alternative, impose a requirement for the Ministry to provide written reasons its decision, as well as mandatory public notice, comment, and reconsideration requirements to ensure full transparency in the decision-making process.

Section 10 of the Draft Document is similarly problematic. This Section describes how proponents may amend project plans *before* permission has been granted, or *after* permission has been granted but prior to project construction. This provision is highly discretionary and lacking in transparency. No decision-making criteria or guidance is

offered in the Draft Document. No public notice provisions are included. No public consultation requirements are imposed. No opportunities for public appeal or request for reconsideration are offered. No requirement for written reasons from the decision-maker is included. This creates an opportunity for abuse of process that could negatively impact individual's rights, the environment, and the renewable energy market.

The ability to change a project after it has been approved and after public consultation has been completed poses a significant threat to the legitimacy of the decision-making process. As such, every effort to ensure full transparency and informed decision-making is crucial.

Recommendation #2: Impose a requirement for the Ministry to provide written reasons its decision, as well as mandatory public notice, comment, and reconsideration requirements to ensure full transparency in the decision-making process.

2) The role of the Renewable Energy Facilitation Office creates the appearance of bias in the government decision-making process

Waterkeeper has consistently expressed concerns about the Renewable Energy Facilitation Office, created by the *Green Energy and Green Economy Act*. The *Act* created the Facilitation Office, which will spend government money helping private proponents develop "renewable energy projects". This section of the *Act* binds the government, through legislation, to create a government-funded and staffed agency dedicated to serving a specific segment of for-profit private companies. As such, it represents a profound perversion of the principles of democracy.

Waterkeeper remains concerned that the Facilitation Office institutionalizes a profound conflict-of-interest in the regulatory process and undermines the government's authority as a regulator. Our concern is deepened because of the language used in the Draft Document: The Facilitation Office "will assist project proponents at any stage of the approvals cycle in navigating the various processes and requirements associated with the development of renewable energy projects," (p. 10, emphasis added). In our view, it is highly improper for the Facilitation Office to serve only the project proponents and not the public at large. In its current form, the Facilitation Office does not encourage or facilitate public participation in the decision-making process. Its purposes and activities may fail to uphold the *Environmental Bill of Rights* and the Ministries' Statements of Environmental Values.

Recommendation #3: The role of the Facilitation Office should be broadened to ensure that it works for the public, not just developers.

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We note that proponents are encouraged to exceed minimum consultation requirements (p. 15), but that there are no provisions for government-led public consultation. In many cases, the public would welcome the assistance of an independent facilitator.

3) Failure to recognize non-commercial fishing interests

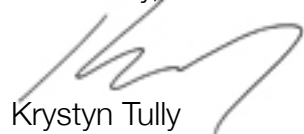
Section 6 of the Draft Document describes additional technology-specific requirements for projects on Crown lands. Section 6.2.1 describes the site plan requirements for off-shore wind projects. The site plan must include “commercial fisheries zones”, but it does not need to include other fisheries activities. As the Ministry is well-aware, in areas such as the Great Lakes, sport and subsistence fisheries are common, vital aspects of daily life. A failure to identify and eliminate impacts on sport and subsistence fisheries is equally important.

Recommendation #4: Add “sport and subsistence fisheries” to the list of site plan requirements contained in section 6.2.1.

Conclusion

Waterkeeper remains concerned that the Green Energy and Green Economy Act and its associated regulations and policies are unresponsive to important decision-making considerations such as fairness, transparency, public consultation, and the paramountcy of ensuring clean air, water, and healthy ecosystems. Our recommendations are intended to help improve the Draft Document. We would like to add, however, that it is not clear that decisions made regarding renewable energy projects would withstand the test of a legal challenge unless clear and genuine consideration for due process and environmental protection are afforded at every step of the decision-making process.

Yours truly,



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Vice President

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