

# concerned citizens of king township inc.

P.O. Box 875, King City, Ontario L7B 1A9

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January 18, 2010  
Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Fax: 416-440-7656

Email: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Dear Ms. Walli:

**RE: York Energy Centre LP Application for an Electricity Generation License  
File No. EB-2009-0242**

As directed previously my written interrogatories are limited to those for eliciting information that is relevant to the OEB's consideration of the "Applicant's ability to own and operate a generation station and to participate reliably in the energy market."

## **Interrogatory No. 1--Prematurity**

**1-1** Consistent with our letters of August 13, 2009, September 12, 2009 and December 16, 2009 we continue to believe that the YEC's Application is premature. In the absence of any certainty about the ability of Pristine Energy Inc. to start construction and subsequently operation, the YEC's ability to participate reliably is affected.

**1-2** In their January 4, 2010 letter YEC indicates that many unknowns and uncertainties will be resolved in the upcoming Ontario Municipal Board (OMB) hearing set for February 2, 2010. Specifically they anticipate conformity to Provincial Policy Statement (2005) and "safe access" to be addressed there.

As I will elaborate further below, this case is very complex; it is difficult to imagine that a one day OMB hearing will be adequate. From two different experienced lawyers I have heard great surprise and shock that only one day has been scheduled. For example: even if there are no additional parties it is impossible to imagine how expert witnesses on the subject of zoning and flood plain can be

heard and cross examined along with the other aspects of the

hearing, in one day. It is surely reasonable to anticipate that additional days will be required. We have talked to the OMB Planning Assistant assigned to the case; she indicated that if additional days are required it will not continue the following days and that it could be “1,2,3 months” before it is resumed. Hence, the critical issues of conformity to the PPS and safe access will likely not be resolved in February 2010 and hence site plan approval will likely not occur in February 2010.

**1-3** As indicated in our November 6<sup>th</sup> letter to the OEB we have been sceptical of the robustness of the YEC’s Stage 2 Archaeological Assessment dated May, 2009 (“Archaeological Report”) and commissioned a Peer Review. We thought such was appropriate given the risk of destroying significant archaeological artefacts from the PaleoIndian period, and which had been established as part of a registered Paleo-Indian site in 1982. Further, as indicated previously, we do acknowledge that YEC’s Legal Consul has informed us that a clearance letter was issued by Ministry of Culture on August 26 and that an Archaeological Clearance letter was subsequently issued October 8.

The peer review has just been completed. Based on it we believe there is a strong basis for asking the Ministry of Culture to make an intervention and ask for time to complete more research on the site. We are in process now of setting up a meeting with Minister Carroll and/or Deputy Minister Rappolt.

The conclusions by our consultant, Dr. Andrew Stewart Ph.d of Strata Consulting (formerly of the Royal Ontario Museum), are below.

*Stage 2 archaeological assessment by D.R. Poulton and Associates adequately assessed the YEC property in accordance with standards set by the 1993 technical guidelines (Ministry of Culture, Tourism and Recreation 1993) but not in accordance with 2006 draft standards and guidelines.*

*My review of the evidence, including the context of the site, taking into consideration the extensive discussion and review of Ontario Ministry of Culture archaeological assessment standards and guidelines that has been taking place since 2006, suggests that further work should be undertaken at the YEC property. The isolated finds on the YEC property are not an adequate indication of the archaeological potential of this property, which is not assessable through surface pedestrian survey. Deep testing is necessary to explore this potential within the area affected by past tributary stream flooding and by downslope movement of sediment originating from gullies and uplands located to the east. Backhoe trenching is the recommended method for deep testing on this property based on experience in comparable settings elsewhere.*

**1-4** In relation to the high pressure gas pipeline proposed for the YEC, Enbridge has filed its Environmental Report. The Report has not yet been reviewed nor have public hearings been held in relation to the proposed pipeline. The proposed pipeline requires a separate environmental assessment from that of the YEC project and is still at an early stage.

Given that the key criterion for granting a license is the assessment of the proponent's capability to participate reliably in the energy market it is inconceivable that a decision to grant a license would be made prior to awarding Enbridge its permit to construct the gas pipeline.

### **Interrogatory No. 2—Flooding**

**2-1** As I reviewed in my December 16<sup>th</sup> letter, Lake Simcoe Region Conservation Authority (LSRCA) in their December 3<sup>rd</sup> letter clearly states that safe access has not been resolved. The provision of safe access (depth of flooding not to exceed 0.3 meters) to the site is a requirement of the LSRCA's Watershed Development Policies.

It is my understanding that on January 11, 2010 LSRCA met with Legal Counsel of YEC and advised them that that had completed another review of the flood plain mapping and that again, they had come to the conclusion that safe access has not been demonstrated.

As LSRCA has authority over this jurisdiction we expect that LSRCA will strongly defend this position at the OMB hearing scheduled for February 2<sup>nd</sup>, 2010.

**2-2** Since issuing our December 16 letter we have had opportunity to read the Minister of Environment's Expert Panel report on Climate Change Adaptation. One specific recommendation to the Ministry of Energy & Infrastructure is highly relevant to this hearing: priority should be put on adapting the province's electricity system to the impact of climate change which includes "notably more frequent and severe windstorms and precipitation events, especially ice storms."<sup>1</sup>

Given this we believe that it is even more important to challenge the wisdom of locating a generator in the proposed YEC site. Specifically, does the YEC "fit" with a plan to adapt the province's electricity system to the impact of climate change."

There are numerous efforts underway to prove or not prove safe access to the YEC site. There are numerous mappings underway to prove or disprove that the building is on the flood plain. As acknowledged in 2-1, this will be well argued at the February 2 OMB hearing.

The experience of long time residents, some simple measurements and recent observations indicate that the area surrounding the generator including all access roads will be under water in a significant rain event. Exhibit 1 is a Lake Simcoe Region Conservation Authority Map showing waster courses in the YEC area. It is our belief that in a flood event the depth will be measured in feet not inches. No matter what the OMB rules, the OEB must consider whether building a generator, in and/or surrounded by a flood plain, is consistent with adapting the electricity system to climate change . Furthermore, OEB needs to assess whether such facility will be a capable of operating reliably in the energy market.

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Accompanying this letter, 5 photos are attached. 4 were taken on May 9, 2009 after a heavy rainfall. (Also attached is a google map showing location of the 4 shots.) In addition there is 1 photo showing the canal north of the YEC site looking east from Dufferin St. It was taken a few springs ago during a regular, typical spring runoff; this photo shows that the land where the YEC plant will be, if built, is only about 1 foot above the top of the bank. (To clarify: in the photo, on the north side of the canal i.e. the left side of canal in photo, there is a dike; on the south side there is no dike; between the canal and the YEC property there is one small lot.)

*Conservation Ontario in 2009 is advocating that more attention be paid to the big storms.*

*"Flooding in Ontario is escalating. It is clear that storms have become more frequent and powerful. From 2000 to 2005, Ontario experienced ten severe storms that exceeded intensities that are normally expected less than once every 100 years.....The lesson from this recent history is not that the 100 year storm is becoming more frequent; rather it is that storms are getting bigger just as our scientists have warned us. What is considered a 50 year storm today will likely be the 20 year storm by the 2050s."*<sup>2</sup>

It is entirely appropriate that Ontario needs to reapply learnings from Hurricane Katrina as the Hamlet of Ansnorveldt, in which the York Energy Centre is situated, was inundated by Hurricane Hazel in 1954. Most of the Holland Marsh (7,000+ acres) was under 4 to 20 feet of water. Local flash-flooding of the stream (Ansnorveldt Creek) that crosses the property caused the dike to breach in 1954.

It is important to recall that flooding is not just the result of the water from rain or run off. In the case of Hurricane Hazel the wind blowing from the north east prevented the Holland River discharging into Lake Simcoe. As a result the only place water from the watershed could go was the Holland Marsh.

Following Hurricane Katrina, Cummins Power Generation wrote the following.

*"As was typical with powerful storms, scattered power outages triggered hundreds of standby power systems installed at hospitals, commercial businesses and government buildings across the region...The result was that many standby generating systems located in basements and ground-floor levels failed immediately due to flooding... **The only power systems that functioned properly were those that had been properly maintained and located above the floodwaters, or which also had sufficient fuel supplies or were in a part of the city accessible to refueling trucks. ....***

*.....Where a generator set is located in often makes a significant difference in whether it functions as designed when disaster strikes. At times of flooding, generators located in basements and at ground level may fail almost immediately due to the rising water. One Cummins Power Generation customer in New Orleans did have the generator elevated on a five-foot stand, but it still got flooded out when the water level was more than eight feet high. <sup>3</sup>(Emphasis added.)*

**2-3** Questions posed in our December 16 letter are outstanding, as YEC has not addressed them. We do not believe that they will be satisfactorily addressed at the upcoming OMB hearing, as YEC indicates, as they are relevant to understanding the flood plain surrounding YEC whereas the OMB hearing is focused on site plan approval issues such as "safe access" and whether the building is on a flood plain. Hence, our questions are repeated below.

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Protecting People and Property: A Business Case For Investing in Flood Prevention and Control, Conservation Ontario, A<sub>3</sub> ugust 6, 2009

"Lessons in Emergency Power Preparedness: Planning in the Wake of Katrina," Cummins Power Generation Inc., Power Topic 7006

Questions

1. With the improvements coming to the canal and dyke system, and in a flood event that causes the water on the outside of the Holland Marsh to reach the top of the dykes but not to breach them, what would the water levels be on Dufferin Street from the canal bridge to the intersection with the Claireville line?

2. What would the water levels be on Dufferin Street from the canal bridge to the intersection with the Claireville line for a flood event that causes the dyke system to be breached?

**Interrogatory No. 3—Permits etc.**

**3-1** We appreciate being told that Certificates of Approval for both Air and Industrial Sewage Works have been obtained from the Ontario Ministry of the Environment.

YEC argues that they are not relevant to the subject under review, namely YEC's ability to own and operate a generation station and to participate reliably in the energy market.

We disagree. It is appropriate for the OEB to know the standards against which the YEC is going to be monitored as it operates. If those standards (and hence the internal operating targets of YEC) are not robust enough to stand the "test of time" and inevitable changing standards for emissions, YEC may have to shut down or at least modify its operations which will affect its output.

**3-2** We previously have asked for a comprehensive list of all (including minor) required minor permits, licences and approvals.

We accept YEC's arguments against this as outlined in their January 4, 2010 response.

**Interrogatory No. 4—connection point**

**4-1** We appreciate that YEC provided us with the The System Impact Assessment Report. It confirms that the YEC will be connected to the Claireville line in close proximity to the junction with the Armitage Tap.

This connection point may be good for the YEC's secondary purpose, the supply of power to the Ontario grid at large. However, the location abandons "islanding" as we understood it - the ability of the YEC to provide power to the Armitage Transformer Station when the Claireville line is in a "N-2" contingency. With the YEC, northern York Region continues to have all its power supply eggs in one basket. An ice storm or tornado striking at the junction of the Claireville Line and the Armitage Tap could easily leave northern York Region completely without power - with a \$400 million dollar generator isolated from the grid but more importantly isolated from the Armitage transformer station.

We believe that the Minister's January 31, 2008 order places an emphasis on local generation as the primary purpose of this generator and we urge the OEB to consider the YEC's licence application in light of the primary objective.

**4-2** Furthermore in light of Climate Change Adaption Report referenced previously, we suggest that the OEB's should be considering whether the YEC contributes to the reliability of the Ontario grid in an environment with "notably more frequent and severe windstorms and precipitation events, especially ice storms."

**4-3** In our December 16 letter we posed 2 questions about the connection of the YEC to the Ontario grid as had been identified in the RFP. YEC has refused to answer them as they do not believe they are relevant to the purpose of this interrogatory. We agree that the RFP is historical. It is probably correct that the questions are not relevant to the YEC's ability to be a reliable supplier if there is certainty that the OPA's process will not be challenged.

**4-4** We asked whether YEC informed First Nations of their new connection point. From YEC's answer on January 4 (see page 6 of their answer, point #4) we guess that they have not as the "area is situated on privately owned lands and not within a treaty area or situated upon traditional lands or lands in which First Nations have asserted aboriginal rights." We are not certain that their rationale is valid.

#### **Interrogatory No. 5**

**5-1** In our December 16 letter we outlined a concern that "green" (i.e. renewable) electricity produced by The Chippewas of Georgina Island will not be fed into the grid due to lack of transmission capacity on the Claireville line. In their January 4 response YEC essentially argued that this is not relevant to this interrogatory or, at least, it is not their responsibility to address this issue.

We can appreciate why YEC would prefer the above to be not their concern. But, it is surely a serious concern of Pristine Power Inc., one of their partners. Per Pristine Power's website their business strategy is to capitalize on opportunities in the independent power market by actively pursuing the development of dependable.....environmentally responsible power generation plants." [emphasis added] It may be the responsibility of the OPA and Hydro One to assess whether the addition of the YEC output to the Claireville line will impede transmission of the "green" electricity from Georgina Island; but, I would not expect Pristine wanting to be party to impeding such.

Hence we will ask again. Will the YEC connection reduce connection capacity for renewable energy project on the transmission system or local distribution systems?

#### **Interrogatory No. 6—Experience**

**6-1** In our December 16 letter, we expressed concern about Pristine's experience related to building and operating a 393MW generator such as the YEC. As we indicated the premise for our concern is that a company with practical experience building and operating large gas-fired generators would produce a reliable product. Similarly, a company new to the field might use their first large generator as a proving ground for their corporate expertise. With only one transmission line serving northern York Region, we cannot afford to be a test bed.

We asked 3 questions to which YEC has responded. We appreciate the responses. We do have some additional questions.

**6-2** YEC has attempted to address our concerns about lack of experience, particularly with such a large project by adding up work experience of the Pristine Management Team, both in term of number of years and number of MW produced. That is a totally understandable thing to do. How else to respond when the facts are that the Company is young and the projects underway are small?

There is additional worrisome reality which YEC touched upon in their response: the sheer number of projects which add up to in excess of 5,000MW. We understand that Pristine has 3 projects in process (one being YEC) and that there are 7 others in the pipeline at various stages from bid submission to having an “underlying agreement.” What organization structure and work processes will be used to ensure that the attention of the Pristine Management Team does not get diverted by crisis and emergencies in the 9 other projects?

**6-3** To provide some assurances about their ability to deliver to market on time YEC identified key contractors/suppliers. We appreciate this and have made some effort to understand the performance profile of them. We have some comments and questions about Lill and DiFazio Constructors Canada with whom YEC has contracted to engineer, procure and construct YEC.

Our research indicates that Lill and DiFazio has delivered many power plants but they are all small in contrast to YEC’s 393MW—see below. If our research is correct, we would like to ask the question as to what evidence does YEC have to believe that Lill and DiFazio will be able to scale up their capability to deliver this large project on time?

Freeport Equus	47-50MW
Shoreham	80 MW
Edgewood	80 MW
Pine Lawn Power, NY	80MW
Waterbury, CT	96 MW

Furthermore, has Lill and DiFazio worked in the Ontario labour market?

### **Interrogatory No. 7—Financial Strength**

**7-1** Our concern about YEC’s ability to participate reliably in energy market is triggered by the simple fact that this project is 4 times bigger than the biggest project Pristine has included to date. It remains to be seen if they can handle a project of this size.

Pristine has nearly 2000 (gross) MW of opportunities in their pipeline; roughly 1100 of them have capital projections associated with them representing 575 net MW to Pristine with \$1.8 billion in projected capital costs to the company. Clearly the company has massive future capital requirements, arguably beyond the current financial capabilities of the Company. Many of these obligations will be in the form of debt tied directly to certain projects. We believe Pristine’s size relative to the overall obligations will be a challenge.

The company lost \$9,000,000 in the first nine months of 2009; said differently they are burning roughly \$1 million per month. Equity investors and lenders will continue to be very cautious as long as the company continues to lose money; access to capital may be difficult.

We posed a number of questions about the robustness of YEC's finances in our December 16 letter. YEC partially responded. We appreciate the information provided; but, we still have questions.

**7-2** Pristine has market capitalization of roughly \$90 million with \$100 million in long term debt. The balance sheet is already stretched. Lenders to the YEC will certainly examine the underlying capital structure of the partners. We would expect that Pristine's current financial position will present obstacles to the lenders.

As there is already a great deal of debt, how is Pristine going to be able to raise additional debt if needed? Given the bridge loan negotiated in early January with 12% interest (see further below) it is evident that raising capital is a challenge for early stage growth company such as Pristine.

The company recently raised \$12 million in equity capital via bought deal financing. The day after it closed, they raised an additional \$5,000,000 via a secured bridge loan financing with a Vancouver based investment management company. The loan is secured by a general charge on all current and future assets of the company and carries a 12% rate of interest over the term of one year. This appears to be an expensive way to raise money costing \$600,000 per year in interest.

Would not the Company have been better served by increasing the equity component of the financing in order to keep the cash burn low?

**7-3** We do have a couple questions directly related to Harbert York Canada Company mentioned in YEC's response.

What relationship does this company have to Harbert's US operations? Was this a new company specifically set up to develop this project? What are the potential negative implications of this?

Is it easier for them to walk away from their obligations as Harbert Canada is a smaller subsidiary of a foreign parent?

**7-4** YEC's January 4<sup>th</sup> response also mentions that the partnership has "outstanding credit posted with counterparties to secure the continued development, construction and operation of the facility." It further states that "the partners are making a significant progress toward securing non recourse debt financing through a syndicate of financial institutions."

We can appreciate that York Energy Centre would not divulge details to the public but I do believe that it is critical that the OEB and the Municipality of King should see written confirmation from lenders that they are prepared to lend to the partnership. Given that Pristine is a small, debt laden company it should be clear where the money from the project is coming from

Pristine will need between \$21 and \$31 million in equity directly related to this project. Given current cash on hand, the company's burn rate and the capital required for all of their other projects



where is the company planning to get these funds?

7-5 Again, we can appreciate that Pristine would not divulge this information to the public. We do suggest that the OEB ask for a review of the 2010 capital budget with the following questions in mind. How much are they planning to spend in 2010 and to which projects is the spending allotted? Where is the cash coming from? What are the assurances that the spending required for Pristine will be in place?

7-6 The ability of this project to be brought to market “on time” is threatened by an economic downturn as the operators simply will not be able to access capital. A decline in equity markets brought on by worsening economic conditions will make it very difficult for companies of Pristine’s size to raise equity.

What assurances are there that Pristine and hence the partnership will be able to access both equity and debt capital markets should the economic environment not improve?

7-7 Pristine has stated that construction is slated to begin Q2 2010. Based on this we have several questions.

- i) YEC stated in their response that Pristine is responsible for funding all of the development costs and the equipment costs until financial close. In the absence of other information we interpret this to mean that Harbert has nothing to lose if they choose to walk away if construction does not begin Q2 2010 (i.e. it is delayed). Is this correct?
- ii) If construction is delayed and if Harbert does not walk away, is there a change in the relationship with Harbert or is there some sort of penalty?
- iii) If construction is delayed what will prevent Pristine’s capital and attention from shifting away from YEC to focus on their other near term opportunities?
- iv) Finally, as asked in our December 16 letter what are the financial contingencies to respond to construction delays which would delay earning a revenue stream and which would likely trigger a financial penalty from the Ontario Power Authority?

We continue to rely upon the submission made in our letters of September 12 and December 16 2009 and look forward to a response to the above inquires in accordance with the terms of the Procedural Order.

Yours very truly,

Debbie Schaefer  
Email: [cckt@kingtoday.ca](mailto:cckt@kingtoday.ca)

Attachments: With the electronic copy of this letter there is a PDF file including photos and map as referenced in 2-2. Hard copy of the latter will be included with hard copy of this letter to OEB.

cc: Arie D. Van Driel York  
Energy Centre LP Suite 2250  
350-7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3N9

Fax No. 403-444-6784

Email: [dvandriel@pristinepower.ca](mailto:dvandriel@pristinepower.ca)

Interested Parties

H. Tenenbaum

K. Parsons

S. Somerville, King Township

Chief Donna Big Canoe, Chippewas of Georgina Island