



# RECEIVED TOWNSHIP OF KING

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EB-2011-0024

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ONTARIO ENERGY BOARD

Mr. André Marin *2/7/11*  
Ombudsman of Ontario  
Bell Trinity Square  
483 Bay Street  
10<sup>th</sup> Floor, South Tower  
TORONTO ON M5G 2C9

Dear Mr. Marin,

*EB-2011-0024*

OEB BOARD	
File No:	Case No:
Panel	<i>PS MH KT</i>
Licensing	<i>ZC NM</i>
Other	<i>MM</i>
COUNCIL	

February 3<sup>rd</sup>, 2011

**RE: York Energy Centre Project (Gas-Fired Power Generation Peaking Plant)  
Located at 18781 and 18765 Dufferin Street, Township of King  
Procurement of Site by Pristine Power Inc.**

The York Energy Centre project is a natural gas-fired simple cycle peaking electrical generation facility (the Project), currently in the first phase of construction in the Township of King on lands that have been described as some of the most sensitive lands in Ontario. The Project is located on lands designated as "Protected Countryside" under the Provincial Greenbelt Plan and consists of prime agricultural soil in an area of farm holdings. The site is within 700 metres of the Holland Marsh which is designated as a "Specialty Crop Area" since it contains some of the most valuable agricultural resources in the province and is well-known as the 'Vegetable Basket of Ontario'. The site is also in close proximity to the hamlet of Ansnorveldt and within 500 metres of an elementary school.

The Holland Marsh farmers have made it known to the Township that this Project puts the viability of their farmland operations at risk both in terms of actual impacts and damage to the reputation of the area as one producing untainted product. A recent study of agricultural impact of the Holland Marsh funded by the Greenbelt Foundation notes that the Holland Marsh agricultural community generates annually in the range of \$35 to \$58 million dollars in Gross Domestic Product and between \$95 million and \$169 million of economic activity in the provincial economy.

The Council of the Township of King is extremely concerned about the approach that has been taken by the Province of Ontario by exempting this Project from all local regulatory control through the Order-in-Council Regulation 302/10 of July 29, 2010 and permitting what is effectively a large-scale industrial project in an extremely environmentally sensitive area. The Township has been an unwilling host to the Project since the beginning of the process which identified three possible sites within the Township. Many Township residents and interest groups have expressed concerns and opposition to the Project from the beginning and feel the enactment of the Regulation has removed the right of due process that would have ensured that all regulatory reviews have been completed, all applicable approvals obtained and appropriate safeguards would be in place.

A pre-condition for providing the exemption under the *Planning Act* is the requirement for an approval under the *Environmental Assessment Act* (EA Act). It is acknowledged that this approval has been achieved. However, the Township was actively involved in the EA process and believes the process to be fundamentally flawed when used to evaluate a single site identified by the Ontario Power Authority (OPA) through a competitive process which fails to give appropriate weight to the land use implications

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of the various competing sites. The OPA request for proposals resulted in five submissions, three of which were located in the Township of King and two in other municipalities that had industrial land designations. There did not appear to be any significant amount of weighting given to the appropriateness of locating the Project within the environmentally-sensitive lands. The OPA's site selection process placed an emphasis on price and the proponents' progress and the lack of barriers in moving a site forward. Further, the Township was required to respond to three different proposals in a short time frame which made local input virtually impossible in any meaningful way. Further, two of the three proposals were submitted by a company that was prepared to submit to the local planning process including Official Plan and Zoning By-Law Amendments. These proposals would then at least have been subject to local municipal input. However, the third proponent site located within the Township chose not to engage in the local planning process and used a strictly technical interpretation to avoid being subjected to the public planning process review. This, of course, was the York Energy Centre Project which was ultimately selected by the OPA.

The Township conveyed its wide range of concerns regarding the impact of this Project and requested the more detailed assessment by way of an elevation request in the EA process. This was refused and the Township then appealed to the Minister of the Environment. Again, the Township's request for additional consideration was denied by the Minister of the Environment by way of a letter dated August 17th, 2009. However, the Minister clearly indicated that local planning concerns regarding the Greenbelt Plan would be addressed by the local planning authority. After confirming that the Project was intended to meet significant growth in Southern Ontario beyond the Greenbelt, the Minister then concluded as follows:

"It will be up to the relevant planning authorities to determine whether or not the Project fits within 'infrastructure connections'. The EA process is not the appropriate mechanism through which to do this ..."

Effectively, the OPA's process evaluated competitive bids but did not truly address an evaluation of the land use and environmental significance of competing sites. With only one site moving forward to the EA process (which was a screening process and not a Class EA), the environmental concerns were addressed in a preliminary way but were not, and as far as the Township is concerned, addressed in an appropriate manner to identify the most appropriate or best site for the facility. Given the flaws in the process, the Township, as the relevant planning authority, was then left with only the tools under the Planning Act to determine whether this Project was appropriate in the environmentally-sensitive lands of the Greenbelt Plan.

At its meeting of January 31<sup>st</sup>, 2011, Council adopted the enclosed Resolution to ask the Ombudsman of Ontario to investigate the procurement process which led to the choice of the current site for the York Energy Centre located at 18781 Dufferin Street, and 18765 Dufferin Street, in the Township of King.

Your attention to this matter at your earliest convenience would be greatly appreciated. If you require any further information or materials to proceed, please contact Kathryn Smyth, Deputy Clerk at (905)833-5321, ext. 4018 or [ksmyth@king.ca](mailto:ksmyth@king.ca)

Yours truly



Chris Somerville, Clerk  
Encl.

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c.c. Hon. Dalton McGuinty - Premier of Ontario  
Hon. Brad Duguid - Minister of Energy  
Hon. John Wilkinson - Minister of the Environment  
Hon. Rick Bartolucci - Minister of Municipal Affairs and Housing  
Julia Munro - MPP York Simcoe  
Helena Jaczek - MPP Oak Ridges-Markham  
Ms. Fran Cappe, Office of the Ontario Ombudsman  
Ms. Emily Wong, Office of the Ontario Ombudsman  
Kristen Walli, Secretary, Ontario Energy Board  
Colin Anderson, CEO, Ontario Power Authority  
Ari Van Driel, Director, Asset Management, Osler, Harkin & Harcourt, York Energy Centre LP  
Gordon Nettleton, Osler, Harkin & Harcourt, York Energy Centre LP  
Julia Ciccaglione, Veresen Inc. (Re Pristine Power Inc.)  
Mayor & Members of Council  
Scott Somerville, CAO, Township of King  
Kathryn Smyth, Deputy Clerk, Township of King  
James Feehely, Solicitor, Feehely Gastaldi



**Corporation of the Township of King - Resolution  
Council Meeting Item, January 31, 2011**

**RE: Site Location of the York Energy Centre  
Request to the Ombudsman of Ontario  
To Investigate the Procurement Process**

Moved by Councillor Eek, Seconded by Councillor Schaefer

**Whereas** it is generally acknowledged that there have been expressed issues, concerns, inconsistencies, and problems surrounding the procurement process that led to the site choice for the York Energy Centre;

**And Whereas,** Council of the Township of King opposed the site location using all legal provisions available to no avail;

**And Whereas,** the Province enacted Ontario Regulation 305/10 thereby exempting the gas-fired generator in King Township known as the York Energy Centre (YEC) from all controls and provisions of the *Planning Act*;

**And Whereas,** by enacting Regulation 305/10 an Ontario Municipal Board(OMB)Hearing was aborted prior to a ruling being made by the Chair as to whether the YEC violated the Greenbelt Plan as was strongly advocated by the Municipality;

**And Whereas,** this OMB case and the likely subsequent Divisional Court appeal hearing would have been pivotal to future uses in the Greenbelt as the YEC is the first application to introduce and build heavy industry in the Protected Countryside;

**And Whereas,** by enacting Regulation 305/10, the Municipality has no authority to monitor the construction of the project beyond those afforded to any Municipality by the Building Code Act;

**And Whereas,** by enacting Regulation 305/10, the proponent has not been required to put into escrow any construction and/or environmental protection securities, to ensure adherence to appropriate land development and building construction practices, as might be expected under a *Planning Act* Site Plan Agreement;

**And Whereas,** the Provincial Agency, the Ontario Power Authority, said that the “municipality, through its official plan, zoning and permitting process has a direct say” but then selected a proponent who ignored the Municipality’s official plan and zoning requirements;

**And Whereas,** Ministry of Environment Minister Gerretsen said in his refusal to elevate the Environmental Assessment to an Individual one, that he would not comment on whether YEC is permitted in the Greenbelt but that the question would be determined by the relevant planning authorities; however, the most relevant planning authority, the local Municipality, has been precluded by Regulation 305/10 from adjudicating the YEC’s compatibility to the Greenbelt Plan;

**And Whereas** the Provincial Government continues to ignore the health, safety and best interests of all the Township’s citizens, Council, and its duly-elected local representatives in favour of a “regional” solution to solving its power requirements.

**Resolution re: Site Location of the York Energy Centre  
Request to the Ombudsman of Ontario  
To Investigate the Procurement Process**

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**THEREFORE THE COUNCIL OF THE TOWNSHIP OF KING HEREBY RESOLVES AS FOLLOWS:**

1. **That** the Council of the Township of King formally requests the Ombudsman of Ontario, an independent agency dealing with governmental problems, to investigate the procurement process which led to the choice of the current site for the York Energy Centre located at 18781 Dufferin Street, and 18765 Dufferin Street, in the Township of King.
2. **That** copies of this Resolution be circulated to the Hon. Dalton McGuinty - Premier of Ontario, the Hon. Brad Duguid - Minister of Energy, the Hon. John Wilkinson - Minister of the Environment, the Hon. Rick Bartolucci - Minister of Municipal Affairs, Julia Munro - MPP York Simcoe, Helena Jaczek - MPP Oak Ridges-Markham, the Ontario Energy Board, and the York Energy Centre.

CARRIED