



association to protect AMHERST ISLAND

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June 13th, 2013

Hon. Bob Chiarelli, Minister of Energy
900 Bay Street, 4th Floor
Hearst Block
Toronto ON M7A 2E1

Hon. Jim Bradley, Minister of the Environment
77 Wellesley Street West
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Toronto ON
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Hon. David Oraziotti, Minister of Natural Resources
Suite 6630, 6th Floor, Whitney Block
99 Wellesley Street West
Toronto, Ontario M7A 1W3

Hon. Linda Jeffrey, Minister of Municipal Affairs and Housing
17th Floor,
777 Bay Street
Toronto Ontario, M5G 2E5

Dear Ministers,

"It's a conundrum" said Premier Wynne about the flawed Green Energy Act processes in her brief meeting with Amherst Island and Ostrander Point protesters outside the Procter & Gamble Belleville plant in April 2013.

You have been asked to recommend changes to processes for the siting of renewable energy projects in Ontario and to allow municipalities to have more input into energy projects in their communities.

Here on Amherst Island we are well into the Renewable Energy Approval process; the REA documents, together with the consultation form have been submitted by Algonquin Power Company and they are

under review for completeness. We therefore are well placed to know of the problems with the whole Green Energy Act and Feed-In-Tariff process.

Substantive changes are needed in the following areas to address the essence of the conundrum raised by Premier Wynne and are forwarded for your consideration:

Application of the New Rules

Include FIT 1 and FIT 2 applications in your review and make specific recommendations to address applications in process, not just “going forward”.

Noise Regulation

Change the required minimum setback from 550 m to 1.5 km for industrial wind turbines from non-participants’ property lines consistent with some current international standards.

Lower the night-time maximum sound pressure level to 35 dBA, in line with the German regulation.

Staff the MOE with trained acoustic engineers and provide the appropriate technical resources to proactively monitor turbine noise. Enforce the Ontario noise guidelines for existing and planned projects. Require project proponents to contribute a percentage of their annual revenue to an enforcement fund. Publish annual performance reports on project compliance, complaints and enforcement.

A detailed critique of the present Ontario Noise Regulations and compliance testing will be sent separately to the Ministry of the Environment.

Shadow-Flicker

Shadow-flicker from turbine blade rotation between the sun and a residence is a problem in Ontario. There are regulations or guidelines throughout Europe. Basically, they come down to a maximum number of hours of shadow flicker under the ideal conditions that the sun always shines, that the blades are always rotating and that the blade circle faces the residence. The number of hours is 30 hours per annum.

Ontario has no regulation. Our municipality, Loyalist Township in the County of Lennox and Addington, passed a bylaw to adopt the European regulation, subject to approval by the Ministry of Municipal Affairs and Housing. Unbelievably, the Chief Administrative Officer of our municipality tells us the MMAH has never replied. We followed up with MMAH and MOE and got nowhere. Only when a letter was sent directly to Minister Bradley did staff at MOE reply, and the reply was unsatisfactory.

In our case, Amherst Island, Windlectric has a site plan that will subject 48 homes, or potential homes on lots of record, to more than 30 hours per year, with 9 homes to more than 50 hours per year. Obviously, this would never be allowed in Europe. It is a clear example of negligence that Ontario is allowing developers to get away with this.

The Ministry of the Environment should proceed immediately with the regulation of shadow flicker. The regulation should be applied to all projects under review, approved but not yet built, and mitigation should be applied to all operating projects.

Natural Heritage

Prohibit Class 4 wind turbines from locations within Important Bird Areas, migratory flyways, and locations with valued environmental features and functions such as wildlife habitat / corridors, groundwater recharge areas. Proactively map these areas with defined boundaries and take them off the table.

The REA “Consultation” process, specifically with regards to the Natural Heritage and Cultural Heritage is controlled by the Proponent, with no apparent MOE role to ensure a fair and open process. As it exists, Municipal Government, local naturalists and the general public have no mandated access to provide input to the Ministries of Natural Resources and Tourism, Culture and Sports involved in the REA process prior to a 30-day consultation period, which occurs long after these ministries have “approved” the project. This 30-day consultation period generally occurs 2 to 3 years after the Proponent has begun the required Natural Heritage and Cultural Heritage investigations.

All existing REA submissions should be sent back for proper community review.

The process issues and possible solutions are so numerous that they have been set out in detail in Appendix A to this letter. The Appendix uses the process as it unfolded for the Windlectric REA documents for Amherst Island but the proposed solutions are universal.

Initial Planning

Require the proponent to conduct a risk assessment of the project jointly with the local municipality prior to submitting an application or contacting any landowners to lease or sell their lands for a Renewable Energy project. The risk assessment would consider risk to the environment, cultural heritage, natural heritage, emergency services, health and safety, land use compatibility and so on at the preliminary stage of the project, so that an informed decision could be made concerning the potential impacts of the initiative and a Go/No Go decision made prior to investment of funds by the proponent.

Make it easy for the proponent to respond to municipal and community feedback by creating a preliminary planning phase such that the siting of wind turbines, access roads, and project infrastructure is developed in a way that allows collaboration and dialogue and does not go forward to the next phase until the municipality concurs. Create a mediation or arbitration process similar to that used for labour tribunals.

See Appendix B for an immediate problem with the minimum setback of 550 metres.

Public Consultation

Set out principles for public consultation such that all documents in support of an application are made available to local municipal councils and the public; public meetings should be conducted and documented by local municipalities according to existing processes under the Planning Act.

“Vibrancy Funds”

Eliminate negotiated “vibrancy funds” and simply require the project proponent to allocate 8% of the total capital project costs (to be defined by the Government) to the local municipality to be used for mitigation measures, remedial measures to support individuals affected by the project, and community improvement (to be defined).

Decommissioning

The major problem with the decommissioning report is the omission of a financial guarantee that it will happen. There are too many instances of companies walking away from mining and industrial sites. In the case of the Amherst Island project, Windlectric Inc. is a shell company, owned by Algonquin Power, responsible for just two or three wind energy projects. Well before the end of the contract, it could be closed down or sold. As noted in the April 9th Globe and Mail article by Richard Blackwell: *“The vast majority of Canadian Windpower is now controlled by a handful of large companies, many of them foreign owned ...”*. Mr. Sean Fairfield of Algonquin Power Co. has categorically stated that Algonquin will decommission the project but that is not as ironclad as a bond to cover the cost 20 years from now.

Decommissioning is essentially the mirror image of construction. A conservative estimate of the cost for the Amherst Island project is \$100M in present dollars, about half the total cost of the turbines and their installation.

Municipal Control

Reinstate and respect the requirement for municipalities to produce an Official Plan Amendment for Renewable Energy. Local government understands its communities far more closely than the Ontario Power Authority or the various ministries of the Ontario Government.

Note the following from the Municipal Act of Ontario (2001 with up-dates):

Health, Safety and Nuisance

Public nuisances

[128. \(1\)](#) Without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances. 2001, c. 25, s. 128 (1); 2006, c. 32, Sched. A, s. 68.

Premier Wynne, a past Minister of Municipal Affairs, should communicate with all municipalities and make them aware that she and the Ontario Government respect this section of the Municipal Act. As an

example, there has been no consideration of shadow flicker in the Ministry of the Environment regulations accompanying the Green Energy Act. Allowing local government to introduce a shadow-flicker by-law would not contravene any section of the Green Energy Act.

There is serious need for revision of sections of the Green Energy Act. We hope that you take Premier Wynne's request for change seriously and that you listen to the rural Ontario communities.

Yours Truly,

Peter Large, P. Eng.,
President of the Association to Protect Amherst Island

Cc:

- Hon Kathleen Wynne, Premier
- Hon. John Gerretsen, Attorney General
- Hon. Michael Chan, Minister of Tourism, Culture and Sports
- Mr. Randy Hillier, MPP
- Mayor Bill Lowry, Loyalist Township
- Deputy Ministers of Energy, Environment, Municipal Affairs and Housing, Natural Resources and Tourism, Culture and Sports

Appendix A: The Natural Heritage Consultation Process

The REA “Consultation” process, specifically with regards to the Natural Heritage and Cultural Heritage is controlled by the Proponent with no apparent MOE role to ensure a fair and open process. As it exists, Municipal Government, local naturalists and the general public have no mandated access to provide input to the various ministries involved in the REA process prior to a 30 day consultation period which occurs long after the ministries have “approved” the project. This 30 day consultation period generally occurs 2 to 3 years after the Proponent has begun the required Natural Heritage and Built Natural Heritage investigations.

All existing REA submissions should be sent back for proper community review.

Below is the process as it presently unfolds; issues and solutions have been identified.

REA Process:

Established process 1): Proponent identifies area as potentially suitable for installation of renewable energy project

Process Issue: As the process now stands, there is no mandated consideration of valued environmental features such as migratory bird flyways, significant wildlife habitat or cumulative effects at this stage of the process.

Solution: The following is from a letter to Mr. Ian Parrot and Mr. Eric Boysen authored by Mr. Allan McPhail, Chair of the Cataraqui Conservation Authority (CRCA)
“First, electricity contracts should only be awarded to projects in locations without known and valued environmental features and functions (e.g. migratory bird flyways, significant wildlife habitat / corridors, groundwater recharge areas). The cumulative impact of multiple large-scale generation sites in a given region should be considered at this stage. Ministry offices, conservation authorities and the public should have an opportunity to comment on project locations. To aid proponents with the identification of suitable locations, we encourage your Ministries to jointly prepare maps, using existing data and at a regional scale, to illustrate areas with known environmental features.”

Established Process 2): Proponent develops research protocols in conjunction with MNR

Process Issue: As the process now stands, while the Proponent is directed in numerous MNR documents to contact the local naturalists for input during the planning stage of the process, for the most part, this contact does not occur; certainly Algonquin Power and Stantec did not consult with the Kingston Field Naturalists on the Amherst Island Project. In the case of Amherst Island this resulted in studies for species at risk being undertaken in the wrong areas at the wrong time of the year, during the wrong time of the day.

Process Issue: The following is from a letter to Mr. Ian Parrot and Mr. Eric Boysen authored by Mr. Allan McPhail, Chair of the Cataraqui Conservation Authority (CRCA) “proponents should be required to properly assess features and functions before the commencement of site planning. Draft site plans are now being used as the basis for land negotiations and the detailed planning of roads and transmission lines. When the site plans are later compared against assessment results (e.g. monitoring for wildlife habitat), the approach appears to be to justify, rather than optimize, the preferred layout. This runs counter to an accepted principle of environmental assessment – first confirm the ‘setting’, and then fit the development around features and functions of importance.”

Process Issue: As the process now stands, MNR protocols require the Proponent to investigate (for Species at Risk and Significant Wildlife Habitat) an area of 120 metres surrounding project components.

Solution: Once the MNR research protocols have been developed in conjunction with local input, this information should be available to the Township / General Public for additional review / input. If the Proponent optimizes their research protocols at this stage of the process – there should be no issues at later stages. That is why local input at this stage is critical.

Solution: MNR protocols should take into consideration the fact that ecological functions can sometimes extend well beyond the fixed setbacks (from features) that are identified in section 38 of the current Regulation. This is the case with the significant wildlife habitat on Amherst Island, where wintering raptors such as owls need to forage for food over extensive areas.

Established Process 3): Proponent completes Natural Heritage studies following developed protocols.

Established Process 4): Proponent submits the Draft Natural Heritage / Environmental Impact Study to MNR

Process issue: As the process now stands, site plans are still in the draft stage, (turbine model to be finalized, traffic management plan to be finalized, location of turbines, access roads, cement batch plant, maintenance building, etc. to be finalized).

Solution: The documentation needs to be at the final stage in order to allow meaningful technical review and commenting.

Established Process 5): MNR reviews the reports to ensure the Proponent is following MNR protocol.

Process Issue: As the process now stands, the MNR reviews the documentation in order to ensure that MNR protocols / requirements have been met. There is no actual audit of the information provided by the Proponent. In the case of the Amherst Island Project this led to a *Letter of Confirmation* being provided to a Proponent despite the following deficiencies in their MNR submission (below is a partial list of the deficiencies):

1. Lack of Consultation with the Local Naturalist Club – Kingston Field Naturalists

- Although required by the key MNR Guidance Document *Draft Significant Wildlife Habitat Ecoregion 6E Criterion Schedule (MNR 2012)*, Algonquin Power's consultant (Stantec) did not request input from the KFN. Specifically, they did not request access KFN's 50 years of documentation / research and never requested information pertaining to the potential location of various Species-at-Risk found on Amherst Island.

2. Insufficient Survey time:

- Spring Waterfowl Nesting Surveys (May-July 2011) – **1 hour**
(Table 4B of the NHR indicates 2 waterfowl nesting surveys, one on June 7, 2011 and the other on June 5, 2011)
- Amphibian Breeding Surveys (April – June) - **14.5 hours**
(Despite the presence of numerous vernal pools, Amphibian breeding surveys occurred exclusively in the vicinity of one Provincially designated swamp. The surveys occurred April 19 / 20 and 26, May 17, and June 18 and 19 for a **total of 14.5 hours**)
- Spring Migratory Shorebird Surveys (May 2011) – **9.5 hours**
- Fall Migratory Butterfly Surveys (September 2011) –? **hours**
(Two migratory butterfly surveys occurred, August 16 and 26 of 2011. These occurred in conjunction with Staging Swallow Surveys at the wrong time of the year to survey migrating butterflies on Amherst Island. The MNR regulations discuss a time period over which this survey should take place. However, the staging of the monarch butterflies typically occurs later than elsewhere because of the microclimate of the island. The timing is well known to KFN, which as noted above was not consulted.)

3. Inadequate Site Investigation

- According to O. Reg. 359/09 and the NHA Guide for Renewable Energy Projects (MNR 2011a), the Project Location includes the public roads that construction activities will occur on, and a swatch of land 120 meters on either side of the road, the Zone of Investigation. The Project Location roads are delineated on

the maps in Appendix A with a dotted line suggesting that a 120-meter Zone of Investigation was inspected. However, Appendix C Field Notes provides no evidence of roadsides (120 meters on each side) being routinely included in any site investigations and a number of landowners have confirmed that they were never approached to grant access to their land for investigational purposes.

4. Inaccurate Ontario Wetland Evaluation System (OWES) review of wetlands 6 and 7 (Errors include but are not limited to the following):

- *Section 4.2 of OWES Wetland 6 Breeding Habitat for an Endangered or Threatened species*
 - KFN documentation of Bobolink use of this breeding habitat is available.
- *Section 4.1.2.1 of OWES Wetland 6 Traditional Migration or Feeding Habitat for an Endangered or Threatened Species*
 - Figure 3.3 of the Draft Natural Heritage Report indicates that a section of Wetland 6 is listed as a Migratory Butterfly Stopover Area. However, when completing the OWES form, the investigators indicate that there is no traditional migration habitat and quote Stantec Field Studies as the source of information.

5. Improperly Timed Ecological Land Classification (ELC) Studies

- According to NHA Section 3.1.2 and Table 4B, the first ELC and preliminary botanical inventories of vegetation communities occurred on July 26 – 29 of 2011. The ELC studies are used to identify Significant Wildlife Habitat. Of the 209 Site Investigations listed in Table 4B – 134 occurred prior to July 26. If over 60% of the Site Investigations occurred prior to the ELC surveys, how were the areas to search identified?

Solution: If input from the general public / Township and local naturalists is solicited at the beginning of the process, the Proponent would have optimized their research protocols and there would be no issues at this later stages. That is why local input at this stage is critical.

Established Process 6): MNR provides Proponent with a Letter of Confirmation

Process Issue: As the process now stands this is the end of the MNR involvement in the REA process. So far, the Township, local naturalists and general public have not had any mandated access to information, nor have there been any opportunities for input and yet the MNR have “approved” the project. Item 5 above provides some insight as to why this process is severely flawed.

Solution: Prior to issuance of the Letter of Confirmation the local naturalists / Township and general public must be provided with a means to comment on the document. This comment period must be at least 90 days in duration and comments should be sent directly to the MNR without the filter of the Proponent. The MNR should subsequently amend their review / recommendations as required.

Established Process 7): Proponent provides their REA reports to the local municipality 90 days prior to a 2nd open house and posts their REA reports to their website 60 days prior to 2nd open house

Process Issue: As the process now stands, documentation provided for local review is at the draft stage and is generic with key information, such as details on type and size of equipment being proposed, missing. This prohibits a meaningful review of the documentation.

Process Issue: As the process now stands, the MNR has “approved” the project and the local naturalists, township and general public have not had any opportunity for input into the process.

Solution: Provide meaningful opportunity for input at the beginning of the process.

Established Process 8): Municipalities, local naturalists and the general public review the reports, identify deficiencies and provide comments to the Proponent. This occurs within the timeline specified in order to ensure that the comments are captured in the REA Communication Report. This Communications Report, written by the Proponent, is the means by which the MOE is apprised of the concerns of the naturalists, municipalities and general public.

Process Issue: As the process now stands, all information provided to the MNR, MOE has been filtered through the Proponent. The MOE, MNR have had no direct contact with local naturalists, municipalities or the general public.

Solution: Provide meaningful opportunity for communication at the beginning of the process.

Established Process 9): Draft Natural Heritage Report and Communication Report are submitted to the MOE by Proponent as part of their REA package.

Process Issue: As the process now stands, the Draft Natural Heritage Report is submitted to the MOE without Township and / or the general public having the opportunity to review the information it contains. There is no indication that any of the comments provided to the Proponent by the Township, local naturalists, CRAC, general public have been addressed in any fashion.

Process Issue: As the process now stands, the Communications Report is submitted to the MOE without Township and / or the general public having the opportunity to review the information it contains.

Solution: The amended reports must be posted on the Proponent's web-site.

Established Process 10): The Proponent's REA package is reviewed by the MOE for "completeness"

Process Issue: We are at this point usually 2 to 3 years into the process and so far, all information received by the government has been filtered through the Proponent.

Solution: Provide meaningful opportunity for communication between Township, local naturalists, general public and the MOE, MNR at the beginning of the process.

Established Process 11): If the REA package is deemed complete, it will be posted on the EBR registry for public comment for a minimum of 30 days.

Process Issue: As the process now stands, the posting on the EBR Registry is the first opportunity the general public has to provide comments directly to the Government.

Process Issue: A 30-day review period is woefully inadequate.

Solution: Provide meaningful opportunity for communication between Township, local naturalists, general public and the MOE, MNR at the beginning of the process and extend the review period to 90 days.

Appendix B: Expropriation without Compensation

Per the Technical Guide to Renewable Energy Approvals, *Section 1.1: Measuring Setback Distances*:

“All setback distances refer to a length between two defined points, for instance the centre of a building (for a noise receptor) and the centre of the base of a turbine”.

Issue: The above has resulted in widespread expropriation without compensation. In areas where turbine locations are positioned too close to neighboring properties, non-participating landowners are within the 550-metre zone of turbines installed by their neighbors.

In the map below, the dots in the centre of the circles are proposed turbine locations, as supplied by Algonquin Power for the Amherst Island project; the circles show the 550 metre radius from the base of the turbines and the areas shaded in yellow show the encroachment on the land owned by neighbouring Islanders. Please ask yourself, would you want to undertake leisure activities on your own property, within that 550-metre zone? Would you plan to build your retirement home, on your property within that 550-metre zone?

Solution: As is seen in many municipalities throughout the world, turbine setback must be measured from the property line of the non-participating land-owner. All projects with a draft project description report must conform to this guideline.

