



OAKVILLE

REPORT

SPECIAL COUNCIL MEETING

MEETING DATE: OCTOBER 20, 2009

FROM: Environmental Policy and Legal Department

DATE: October 13, 2009

SUBJECT: TransCanada Power Plant

LOCATION: Town wide

WARD: Town wide

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RECOMMENDATION:

1. That the Ontario Power Authority (OPA) be requested to provide the Town with:
 - a. the detailed results of the Request For Proposal (RFP) evaluation and rating assessment of the four proposals received for the Southwest Greater Toronto Area (GTA) power plant; and
 - b. all records received, commissioned or requested by the OPA that address technical, environmental, social and/or economic issues relevant to the RFP evaluation.
2. That TransCanada Energy Ltd. be requested to release to the Town all related documents and reports submitted to the OPA and/or the Ontario Ministry of the Environment respecting technical, environmental, social and/or economic issues, including system requirements and data relating to: air quality, human health, ecological health, environment, infrastructure, property values, operations, plume, emission controls, noise, vibration, and any other related impact assessment data, for public review.
3. That the Province, including the Premier and the Ministers of Energy and Infrastructure, and the Environment, be advised that the Town does not accept as adequate for this large-scale project in this urban setting the environmental assessment process referenced as the 'Environmental Screening Process' under the *2001 Electricity Projects Regulation*, as it has no substantive standards, no process to consider alternatives, allows the proponents to define what impacts are or are not significant, involves no provincial approval, and permits no hearing or appeal by affected parties.
4. That local Members of Provincial Parliament, MPP Kevin Flynn and MPP Ted Chudleigh, be requested to ensure the following:
 - a. That the Minister of the Environment immediately elevate the required project environmental assessment to an "individual" Environmental

- Assessment (EA) under Part II of the *Environmental Assessment Act* and not permit the continuation of any 'Screening'- level EA for this proposed project.
- b. That the Minister of the Environment establish sufficient law or policy to direct or otherwise ensure that the appointed director under the *Environmental Protection Act* will, for any required Certificate of Approval or permit process for this project, demand necessary information on and consider:
 - i. All contaminants emitted from the proposed project, including toxic substances for which the Ministry has no binding standards, such as particulate matter (PM_{2.5});
 - ii. The quality of the existing environment in relation to its existing impacts on or risks to human health;
 - iii. Emission standards necessary to ensure protection of human health and the environment;
 - iv. Emission controls necessary to prevent any adverse effects from the project, alone, or in combination with existing pollution levels;
 - v. The risks to human health, assessed quantitatively, from anticipated and worst-case levels of project emissions, and with and without proposed emission controls and/or other mitigation.
 - c. That the Minister of the Environment establish sufficient law or policy to direct or otherwise ensure that the full rights of public notice and access to information, as set out and/or provided in the *Environmental Bill of Rights (EBR)*, exist for any instruments required by this proposed project, and that such rights are not exempted by the use of Ministerial powers or opinions set out in S. 32 of the EBR.
5. That the local Members of Parliament, the Honourable Lisa Raitt and MP Terence Young, be called upon to ensure that:
 - a. the Minister of the Environment makes an interim order and future regulations under the *Canadian Environmental Protection Act* to deal with the significant danger to human life and health presented by PM_{2.5} emissions from the proposed project; and
 - b. the appropriate federal departments and agencies, including Environment Canada, Health Canada, Fisheries and Oceans Canada, and Transport Canada, are engaged in the review of the potential health, environmental, and safety impacts of the siting of a natural gas fired power generating station in south east Oakville.
 6. That Region of Halton Chair Gary Carr be requested to ensure that the regional Health Department continue to monitor and provide input throughout the approval process addressing human health and air quality impacts of the proposed generating station in south east Oakville.

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EXECUTIVE SUMMARY:

This report addresses the Town's involvement in the review of the proposed Ontario Power Authority (OPA) 850 megawatt (MW) natural gas fired power plant in the southwest GTA and its continued focus to review in detail the project approval process to determine and identify a '*Do No Harm*' outcome within the approval process.

The recommendations contained in this report attempt to ensure the approvals process is comprehensive, thorough, accountable and transparent.

BACKGROUND:

The Town has been engaged in the review of the proposed Ontario Power Authority (OPA) 850 megawatt (MW) natural gas fired power plant in the southwest GTA area since it was announced in fall 2008. The background on the Town's involvement is set out in the attached Appendix A.

COMMENT/OPTIONS:

The Town is continuing to focus efforts on a detailed review of the project approval process to determine the process steps and identify opportunities to advance a '*Do No Harm*' outcome within this process. As directed by Council, staff has engaged outside legal counsel and subject matter experts to provide input.

The key concerns continue to be impacts related to technical, environmental, social and/or economic issues, including the issues of: health, air quality, emissions and plume, environment including discharges to the environment and taking water from the environment, construction, noise, vibration, explosion, and site plan matters. All of these issues must be addressed through the approval process.

All appropriate federal, provincial and regional agencies with expertise and interest related to this project should be engaged in the review of the potential impacts. These include the Halton Region Health Department, Ontario Ministry of Health, Environment Canada, Health Canada, Fisheries and Oceans Canada, and Transport Canada.

To better understand the status of the environmental assessment studies related to TransCanada's proposal, all documentation related to: air quality, human health, ecological health, environment, infrastructure, property values, operations, plume, emission controls, noise, vibration, and any other related impact assessment data, should be provided to the Town and to the public. As well, there should be public disclosure of the TransCanada proposal in addition to details of their proposed electricity generation processes and equipment specifications in the interests of accountability and transparency.

In addition, the OPA should provide the Town with the detailed results of the Request For Proposal (RFP) evaluation and rating assessment of the four proposals to facilitate a better understanding of the project evaluation process.

Project Approval Process:

In accordance with Council's resolution of October 5, 2009 outside legal counsel and other subject matter experts have been retained. A detailed review of the approval process has been carried out to understand the process and gaps, and identify opportunities for the Town and residents to review, to comment, and to influence the project approval outcome.

Outside legal counsel, Rodney V. Northey, M.A., LL.M, of Folger, Rubinoff LLP, will provide a presentation on the approval process at the October 20, 2009, Special Council meeting.

Based on the results of this review, the following issues are of concern and should be addressed, including the:

- Elevation of the required project environmental assessment to an "individual" Environmental Assessment (EA) under Part II of the *Environmental Assessment Act* and not permit the continuation of any 'Screening'- level EA for this proposed project.
- Establishment of sufficient law or policy to direct or otherwise ensure that the appointed director under the *Environmental Protection Act* will, for any required Certificate of Approval or permit process for this project, demand necessary information on and consider:
 - i. All contaminants emitted from the proposed project, including toxic substances for which the Ministry has no binding standards, such as particulate matter (PM_{2.5});
 - ii. The quality of the existing environment in relation to its existing impacts on or risks to human health;
 - iii. Emission standards necessary to ensure protection of human health and the environment;
 - iv. Emission controls necessary to prevent any adverse effects from the project, alone, or in combination with existing pollution levels;
 - v. The risks to human health, assessed quantitatively, from anticipated and worst-case levels of project emissions, and with and without proposed emission controls and/or other mitigation.
- Establishment of sufficient law or policy to direct or otherwise ensure that the full rights of public notice and access to information, as set out and/or provided in the *Environmental Bill of Rights (EBR)*, exist for any instruments required by

this proposed project, and that such rights are not exempted by the use of Ministerial powers or opinions set out in S. 32 of the EBR.

A brief overview of the process is provided in Appendix B.

The Town does not accept as adequate for this large-scale project in this urban setting the environmental assessment process referenced as the 'Environmental Screening Process' under the *2001 Electricity Projects Regulation*, as it has no substantive standards, no process of considering alternatives, allows the proponents to define what impacts are or are not significant, involves no provincial approval, and permits no hearing or appeal by affected parties.

These processes are being reviewed in more detail by legal counsel in order to develop proposed legal strategies for Council's consideration at a future meeting.

Engagement of Other Levels of Government:

Through the environmental assessment process, the Ontario Ministry of the Environment (MOE) will be involved in the review of the Environmental Review Report (ERR) but will not have an approval role for the ERR. The MOE will have an approval role in the review of studies related to the potential impacts associated with the operations that require Certificates of Approvals and a Permit to Take Water, related to air emissions, noise, industrial discharges, and water-taking.

In addition to the role of the MOE in this project evaluation process, it is recommended that the following agencies be requested to engage in the environmental assessment process related to their mandates, potential interests and expertise, including: the Ontario Ministry of Health (MOH), Halton Region Health Department (HRHD), Environment Canada (EC), Health Canada (HC), Fisheries and Oceans Canada (DFO), and Transportation Canada (TC).

The MOH has a mandate to engage in activities that protect human health and expertise that would ensure sound scientific health-based review of the project's environmental assessment human health and air quality impacts.

The HRHD has expertise regarding human health and air quality impacts and has provided comments to the Town on these issues previously upon request. These detailed comments on health and air quality issues related to the OPA air quality impact study were included in the Council Information Package of March 12-18, 2009 and are attached to this report as Appendix C. To support the Town's efforts to ensure no harm to the residents of Oakville and Mississauga, the involvement of the HRHD is necessary during the review and evaluation of the project's environmental assessment human health and air quality impact studies.

In assessing the potential impacts related to the approval of this project, it is clear that federal expertise and potential interest is warranted due to its impact on the mandate and work of various federal departments.

Environment Canada (EC) works with Health Canada (HC) and territorial and provincial partners to monitor air pollution and emissions to understand the current state of air pollution in Canada. Their work seeks to enhance citizen and community awareness, understanding, and ability to participate in that which affects their health, environment and economic well-being, to identify new areas of concern, and model air quality processes and pollutants, such as ozone and particulate matter, to better anticipate, or forecast, future air quality conditions, as well as to better understand the potential impacts of proposed regulations, technologies, and changes in the environment. HC works to enhance and protect the health of Canadians including partnering with EC and territorial and provincial partners on national ambient air quality objectives, and evaluating urban air quality impacts on human health.

The Canadian Council of Ministers of the Environment (CCME) has developed Canada Wide Standards for air quality parameters, including particulate matter under the *Canadian Environmental Protection Act, 1999 (CEPA)*. Also under *CEPA*, the federal government maintains a National Pollutant Release Inventory and a National Emission Inventory for key air pollutants to provide Canadians with access to information on the releases of key pollutants from industrial facilities located in their communities and to track the progress of emission-reduction strategies for various pollutant sources, including industrial sources.

Environment Canada administers the *Canadian Environmental Protection Act (S.C. 1999, c.33)*. Under this Act, the Ministers of Environment and Health have determined that PM_{2.5} is a "toxic substances" and PM_{2.5} has been added to the list of toxic substances. However, to date, no regulations have been passed to address emissions of this substance into the environment. The *CEPA* does provide the Minister of Environment with the power to issue 'interim orders' where the Ministers of Health and Environment believe that a substance is not adequately regulated and there is a significant danger to human life or health.

The Department of Fisheries and Oceans (DFO) administers the *Fisheries Act (R.S. 1985, c. F-14)* that includes general provisions under S.36 and S.34 that no one shall deposit a deleterious substance of any type in water frequented by fish. There may be discharges related to the project operations with the potential to be deleterious.

Transport Canada administers the *Railway Safety Act (R.S. 1985, c. 32 (4th Supp.))* to ensure the safe operation of railways. The project site is adjacent to railways with the potential to impact the safety of federal railway operations.

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It is critical that the federal government be intimately involved with the review, evaluation and comment on this project's environmental assessment studies to protect the health, environment and safety of Canadians and ensure that no harm arises from the approval of this project.

With clear regional, provincial and federal expertise and interests related to this project's approval, it is recommended that Council call on Halton Region, the local Members of Provincial Parliament (MPPs), and Members of Parliament (MPs) to ensure the engagement of their respective government agencies and departments.

Staff is continuing to identify and engage subject matter experts for the review and evaluation of TransCanada's environmental assessment and Certificate of Approvals reports and documents at the appropriate times. Dr. David Pengelly has been engaged to evaluate air quality and human health impact studies related to the proposed project.

Staff will be bringing forward reports on this matter to future meetings. When necessary, such reports may be deemed confidential in nature requiring consideration in closed meeting session to address legal strategy options under solicitor-client privilege.

CONSIDERATIONS:

(A) PUBLIC

The Oakville community has clearly expressed concerns regarding the expected negative impacts on their community, air quality, environment and safety related to siting a natural gas fired power generation plant in south east Oakville.

(B) FINANCIAL

Financial implications related to this report will be brought forward at a later date.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

This project will have significant and numerous impacts on many Departments within the Town.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- enhance our natural environment
- be the most livable town in Canada

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APPENDICES:

Appendix A: Background – South West GTA Natural Gas-fired Power Generation Project

Appendix B: South West GTA Natural Gas-fired Power Generation Project, Approvals Processes – Overview

Appendix C: Region of Halton Health Department Comments on the OPA *'Land Use Study for Power Generation'*

Submitted by:
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Submitted by:
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