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Regulatory Affairs and Strategic Policy
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Mr Parkes:

Re: EBR Registry Number 010-6017 for the Proposed Green Energy and Green Economy Act, 2009 (Bill 150)

The following is a response from the Town of Ajax to the above noted posting of the Ministry of Energy and Infrastructure's proposed legislation to establish the Green Energy and Green Economy Act, 2009, which would enact a Green Energy Act and amend twenty-one other existing statutes. The response has been prepared by Town staff and is subject to review and ratification by Council. It was not possible to generate a Council-endorsed response to this legislation within the prescribed review period, however should additional information come from Council, you'll be advised accordingly.

Key Recommendations

Our recommendations focus primarily around the issue of approvals for renewable energy generation facilities. These recommendations are based on recent and direct experience with a number of potentially related projects.

- The Town of Ajax supports the intent of Bill 150 and agrees that the already high priority given to renewables in the legislative and policy framework should be reinforced.
- Municipalities should play a stronger role in optimizing the "fit" between renewable energy projects and facilities and surrounding communities than is proposed by Bill 150. Municipalities should be able to make decisions on the mitigation of effects of renewable energy facilities through the established land use planning framework. This would result in a process that is better understood, more effective and more sensitive to local conditions.
- The proposed legislation and the renewable energy approval process should address the use of existing planning tools to regulate land uses in buffer areas so that development can be compatible, to the extent possible, and not compromise other provincial and municipal policies and objectives over the long term.

- Conditions applied to existing renewable energy facilities through Planning Act and other approvals should not be invalidated by the new legislation and should continue to apply.
- The Town wishes to be consulted on proposed regulations that will include further refinements to the definition of a renewable energy source. Waste should not be classed as a renewable energy source for the purposes of Bill 150.
- The existing framework of land use compatibility guidelines and technical standards should be integrated and clarified (both in general and as they apply to renewable energy), while retaining flexibility to adapt to local circumstances. The proposed renewable energy approvals process should ensure that technical approvals will be open to public scrutiny and appeal.
- Where facilities, using modern generation and mitigation technologies and techniques, can achieve emission and other standards that exceed Ministry air quality standards, technical approvals should reflect the emission rates that can be achieved by the facility, and the cumulative effects of these emissions.
- Clarification is required on whether existing Certificates of Approval for renewable energy facilities will be replaced by renewable energy approvals, and/or whether the renewable energy approval process would be initiated once a Certificate of Approval comes up for renewal.
- The legislation should not restrict the use of municipal bylaws to enable or control the use of municipal land and rights-of-way for renewable energy facilities and related infrastructure.
- The relationship between the new legislation and approval requirements and municipal obligations under the Provincial Policy Statement, 2005 the Growth Plan for the Greater Golden Horseshoe and the Environmental Assessment Act should be clarified.
- The Town welcomes the introduction of a Renewable Energy Facilitation Office. This office should play an important role in acting as a technical resource to municipalities in reviewing and assessing the implications of proposals for renewable energy facilities.
- The Town is ready to contribute to the development of the renewable energy approval process and the regulations in support of Bill 150 through participation in consultation and further responses to postings under the Environmental Bill of Rights.
- Clarification is required with regard to the timing and process for entering into a Feed-In Tariff (FIT) contract with the Ontario Power Authority, and the distribution system's capacity to connect renewable energy projects.

Background

The Town of Ajax has a continuing interest in the regulatory and approvals regime for projects involving alternative and renewable energy sources, and has experience in dealing with these matters through its review of projects and proposals. The Town has a record of being supportive of positive and well executed proposals that enhance its physical environment and air quality. At the same time, Ajax takes a protective stance and has sought improvements where it considers elements of the Town's air quality and environment to be at risk.

The Town's involvement in a number of recent cases has resulted in a degree of success in pursuing these objectives. These include:

- Part II Order Request regarding a proposed expansion to the Duffin Creek Water Pollution Control Plant (including increased incineration of biosolids), October 2006.
- Environmental Bill of Rights Response to the Arbour Power proposal to burn waste fuel pellets at the Ajax Steam Plant, and to be exempted from environmental screening requirements, February 2007 (EBR Registry #RA06E0016).
- Environmental Bill of Rights response and review of Planning Act applications for a proposal by Index Energy Mills Road Corporation to upgrade the Ajax Steam Plant to utilize woodwaste for cogeneration, August 2008 (EBR Registry #010-4293).

Through this experience, the Town has developed insights into the required elements of an approval process for alternative and renewable energy facilities, including a facility's environmental impacts within an established and evolving urban area, as illustrated in the following example.

The Ajax Steam Plant

The Town of Ajax is continuing to work with Index Energy Mills Road Corporation towards the redevelopment of an existing Steam Plant. The plant has operated in various forms since the Second World War and is currently a woodwaste fuelled facility. It is proposed to become a cogeneration facility generating thermal energy (steam and hot/cold water) for end-users and electricity for supply to the grid through the continued use of woodwaste as a fuel.

Concurrent to the redevelopment application for the proposed Ajax Steam Plant, the Town conducted a land use compatibility study of an employment area with industrial type uses adjacent to the Downtown. The employment area included the Ajax Steam Plant which, due to its appearance and condition at that time, was identified as a significant barrier to the employment area's compatibility with the Downtown. The Town's existing policies for the adjacent Downtown promote intensification, including mixed-use and multi-storey residential buildings, as required of the Town by the Provincial Policy Statement 2005 (PPS, 2005) and the Growth Plan for the Greater Golden Horseshoe (Growth Plan). As a result of that Study, Official Plan policies and Zoning by-laws were established to ensure the facility and existing and future development in its vicinity was compatible.

The Official Plan and Zoning amendments for the Steam Plant redevelopment were approved within approximately 7 months of the Town receiving a complete development application. The Site Plan Amendment application is still in process, and approvals under the Environmental Protection Act are being processed by the Ministry of the Environment and are still pending.

The amendments and approvals provide for:

- regulated building setbacks and stack height;
- considerable improvement in aesthetic design, including enclosure of fuel and ash storage, enhancing compatibility with the adjacent Downtown;
- improved combustion technology and improved efficiency through co-generation;
- improved air emissions that would be well below Provincial standards
- supply of steam and hot water to end-users, utilizing municipal rights-of-way;
- generation of electricity for supply to the grid; and,
- Official Plan policies requiring proposals for multi-storey development within a 600 metre 'buffer zone' to be accompanied by studies demonstrating no adverse air quality impacts from the facility, with potential for restrictions on building heights.

Through the authority provided under the Planning Act, the Town of Ajax was able to take many steps in evaluating this redevelopment and its impacts within the context of our municipality. The Town was also able to negotiate improvements to air emissions from the facility, which would be well below Provincial standards. There have been no appeals under the Planning Act or under the Environmental Bill of Rights.

The New Renewable Energy Approvals Process

Bill 150 proposes a new process under the Environmental Protection Act (EPA) related to renewable energy approvals. Permits and approvals received under various other statutes, such as the Planning Act, would be replaced by a “renewable energy approval” permitting process under the EPA. Removal of Planning Act approvals for renewable energy projects under Bill 150 will exempt these projects from the tools municipalities use to ensure development respects local planning objectives. These tools include Official Plans, Zoning/Holding/Interim Control/Demolition By-laws, Site Plan control, and Subdivision approval. An approvals process that removes Planning Act approvals and attempts to institute a uniform approach to standards, setbacks and buffer zones for various types of renewable energy projects would be limited in the way it can respond to local circumstances, such as those presented by the Ajax Steam Plant redevelopment.

For example, a buffer zone in an urban area will already include existing land uses that are permitted in municipal official plans and zoning by-laws. Clarification needs to be provided on how the renewable energy approvals process under the EPA can be coordinated with municipal applications in a proposed buffer zone, such as draft approved (but not built) subdivisions at various levels of approval. As in the case of the proposed Ajax Steam Plant, municipalities may have to adjust their existing official plan policies and zoning by-laws to manage development in renewable energy facility buffer zones, such as requiring future studies to establish what can be permitted. The Town was able to require studies of the Steam Plant proponent to help develop its policies for the buffer area, and it would not have had this degree of control through the proposed permitting process.

Restrictions on development imposed through a standardized approach could also impact a municipality’s ability to meet provincially established intensification targets. The land use planning framework that is already available under the Planning Act enables a more responsive approach to these types of issues than a prescriptive formula that attempts to deal with all sets of circumstances. The retention of Planning Act approvals is especially critical for renewable energy projects that are located within urban areas as land use compatibility issues, such as air emissions, noise, dust, traffic, and outdoor storage, have a greater impact in densely populated areas.

The Ajax Steam Plant is but one example of a facility that could potentially be subject to the proposed permitting process under Bill 150 (depending on the ultimate definition of a “renewable energy source”). The range of provisions applied to this proposal illustrates the need for a sensitive and informed approvals approach to enable it to proceed in harmony with its surrounding land uses, both now and in the future. The removal of any requirement for Planning Act approvals for possible future expansion or change in the proposed cogeneration facility would undermine the controls put in place to protect resident health and land use compatibility.

Based on the above, the Town advises that the approach proposed by Bill 150 should be modified so that while the priority given to renewable energy is reinforced at a provincial level, a stronger municipal role and greater recognition of the tools and safeguards available under the Planning Act should be incorporated into the approval process. This would make it easier to

optimize the “fit” between facilities and local communities, while not interfering with the principle of the renewable energy use.

Approvals and Municipal Obligations under Other Legislation

The PPS, 2005 and Growth Plan, for example, require municipalities to protect resources such as aggregate resources, prime agricultural lands, and natural heritage features. These resources could be affected by renewable energy projects. While these resources could also be protected by a renewable energy approval process, this would require a parallel resource protection framework that is already provided for under land use policy. Bill 150, as proposed, may hinder a municipality's ability to implement many provincial policy directions and to take an integrated approach to ensuring land use compatibility between renewable energy facilities and their surrounding land uses.

It may be that some aspects of provincial land use policy and plans will remain in effect or could be considered as part of the renewable energy approvals process, but this is not clear to us from our reading of Bill 150.

Also, Bill 150 contains no amendment or reference to the Environmental Assessment Act, which is the parent legislation to Ontario Regulation 116/01-Electricity Projects and the screening process that currently applies to many renewable energy projects.

The Town of Ajax looks forward to further refinement of Bill 150 to clarify relationships with other legislation and policies.

Standards and Guidelines

The present system of standards and guidelines applying to renewable and other energy facilities is fragmented and unclear to the layperson. The MOE Land Use Compatibility Standards were last revised over ten years ago. There would be great benefit to updating standards where necessary, and bringing them into a common format for ease of understanding and consistent application, both for renewable energy facilities and other uses affecting land use compatibility.

An issue that arose in the Town's review of the Ajax Steam Plant redevelopment is that even though the proposed combustion technology was able to exceed Ministry air quality standards by a wide margin, in normal circumstances a Certificate of Approval for Air will reflect only the Ministry standards. The emission rates predicted by the proponent would not be reflected in legally enforceable limits. The Town considers that approvals should more closely match what modern technologies and practices can actually achieve, and what proponents are able to commit to.

At present, technical approvals for projects that are subject to a process under the Environmental Assessment Act do not have to be posted on the Environmental Bill of Rights registry. Unless the application is posted voluntarily it is not open to comment by municipalities or the public. The proposed renewable energy approvals process should ensure that technical approvals will be open to public scrutiny and appeal.

For municipalities to understand how air (and noise) emissions from renewable energy facilities will be addressed in the future, clarification is required on whether existing Certificates of Approval for renewable energy facilities will be replaced by renewable energy approvals, and/or whether the renewable energy approval process would be initiated once a Certificate of Approval comes up for renewal.

Renewable Energy Sources

Bill 150 defines “renewable energy sources” as sources that are “renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source”. However, since no draft regulations accompany Bill 150, we currently do not have a clear indication of the fuel types that could be encompassed by renewable energy sources such as biomass and biogas. Bill 150 does not provide that energy sources such as biomass and biogas have the same meaning as in Ontario Regulation 116/01-Electricity Projects under the Environmental Assessment Act (EAA), or in Regulation 347-General-Waste Management under the Environmental Protection Act (EPA).

With regard to biomass, some clarification may be provided in the definition of “Renewable Biomass” found in Ontario Power Authority’s draft “Renewable Energy Feed-In Tariff Program”, but it is unclear how this definition will be addressed in the forthcoming regulations. Clarification of the definition of biomass is needed for municipalities, such as the Town of Ajax, to comprehensively assess how Bill 150 will impact their local planning objectives.

Additionally, the proposed changes to the Ministry of Energy Act (to be changed to the Ministry of Energy and Infrastructure Act through Bill 150) make reference to the Minister encouraging, promoting, developing or participating in such activities, projects and programs as the Minister considers appropriate to “stimulate the search for and development of sources of energy, including those that utilize waste and those that are renewable, as alternatives to the sources of energy available for use in Ontario”. Given this provision, the Town is concerned that waste could be identified as a renewable energy source through future regulations. There are greater air quality concerns with the incineration or combustion of waste than there are with most renewable energy sources such as biomass.

The Town of Ajax would like to be involved in the consultation process that will enable it to review and comment on draft regulations including definitions of the renewable energy sources in support of the EBR review of Bill 150.

Use of Bylaws under the Municipal Act

Bill 150 contains provisions for renewable energy projects and sources in such a way as to limit or eliminate the effects of municipal by-laws. This would include by-laws other than those under the Planning Act.

Municipalities have protective by-laws such as noise, tree preservation, and property standards by-laws established under the authority of the Municipal Act. In the case of the Ajax Steam Plant the use of municipal rights-of way to convey steam and hot or cold water from the facility to off-site users and to allow for road widenings and access would all be confirmed by municipal by-law.

Care will need to be taken in framing regulations to ensure that they do not invalidate municipal by-laws required to enable renewable energy projects to proceed.

Renewable Energy Facilitation Office

The Town supports the introduction of a Renewable Energy Facilitation Office. Part of the role of this office should be to provide unbiased technical support to municipalities reviewing renewable energy proposals.

Feed-In Tariff Program

As municipalities forecast long term capital expenditures and build long term strategies targeting the generation of renewable energy for existing and new facilities, they need clarification with regard to:

- the timing and process for entering into a Feed-In Tariff (FIT) contract with the Ontario Power Authority; and,
- the distribution system's capacity to connect renewable energy projects.

Any opportunities to streamline and ensure a seamless and transparent process to connect renewable energy projects in a timely manner is needed for municipalities to consider these capital investments.

It is the Town's desire that the Ajax Steam Plant's redevelopment into a cogeneration facility would benefit from the feed-in-tariff program with regard to the sale of electricity.

Concluding Remarks

As Ontario's power system becomes more decentralized and renewable energy projects are increasingly proposed in densely populated areas, the likelihood of conflicts will increase. The Town of Ajax has observed this with the Steam Plant and its proposed redevelopment adjacent to its Downtown. As municipalities move towards meeting their provincially mandated intensification targets, municipal review of renewable energy projects will become more crucial.

While the Town strongly supports the objectives of the provincial government in increasing the role of renewable energy, it is important that the process for facility approvals provides for direct municipal involvement and the adaptation or continued application of proven land use planning tools to provide for compatibility with existing and future land uses, and to enable other provincial policies and objectives to be achieved. Therefore, the Town of Ajax submits that the comments and concerns expressed in this submission be carefully considered in refining Bill 150 and in preparing regulations and the proposed renewable energy approval process.

Thank you for your consideration of these comments.

Yours truly,



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Director of Planning and Development Services

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