

30 July 1974

Mr. D. McKay,
Planning Administrator,
Lakehead Planning Board,
995 Memorial Avenue,
Thunder Bay, Ontario.

Dear Mr. McKay:

RE: Generating Station Site

John Swaigen has passed your letter of July 24 on to me for response, regarding legal avenues that may be open to your city council or others to contest Hydro's generating station site.

Firstly, we have only a sketchy outline of the issue and only a limited amount of material in our office about this particular problem. However, we are assuming that the Bare Point site is the one which Hydro has selected, that it is within your planning board's area of jurisdiction, and that Hydro will have to appropriate to obtain this site.

Perhaps the goal which opponents should be working towards is a hearing before the prospective Environmental Review Board which will probably appear after the passage of the environmental impact amendments to the Environmental Protection Act some time next fall. Unfortunately, the former Minister of the Environment, James Auld, has hinted that projects already in the planning stages may be exempted from complying with the assessment requirements, an attitude which we hope is under reconsideration. The lack of information from the Ministry regarding the format for environmental impact assessment, therefore, leaves us with a great many unknowns, which must be dealt with later. Despite these problems, the Review Board will be the best forum for contesting the site selection.

Therefore, opponents should be seeking to delay approval of the site until the Review Board is empanelled.

The first step in delaying this project and forcing some kind of hearing is to ensure that the official plan designation of this site and the zoning of the site are incompatible with the use proposed by Hydro. If they allow this use, the municipality or any ratepayer can apply to the Minister of Housing to

change the Official Plan designation or for rezoning under the Planning Act. This would lead to an Ontario Municipal Board hearing of the matter. The Board would consider whether this is good planning and the best use of this particular land. Probably the Environmental Review Board would still be free to look at other questions concerning the appropriateness of this site.

Similarly, if the zoning and the Official Plan are presently inconsistent with Hydro's proposed use of the land, any change in the Plan or in zoning to accommodate Hydro can be fought at the Ontario Municipal Board. An appeal from an adverse O.M.B. decision to the Cabinet is possible, but is likely to be successful only in a situation where the provincial government feels it may lose more votes by dismissing the appeal than by granting it, i.e. only in very controversial issues.

Secondly, if the generating station will need certificates of approval from the Ministry of the Environment for its equipment and processes, as is likely, the Environment Minister might be asked to withhold these certificates. Hydro would then have to appeal to the Environmental Appeal Board, which has a power, but no duty, to hold public hearings and let the opposition make representations. This would probably be limited to a case where the point of opposition was that the nuclear generator is likely to cause pollution.

Thirdly, if Ontario Hydro has to expropriate for the site, prospective expropriatees should contest the necessity of the expropriation.

The procedures to be followed by an expropriating authority are, with some minor exceptions, controlled by the Expropriations Act. A notice of intention to expropriate must be sent by registered mail to all persons appearing in the records of the appropriate registry office to have an interest in the lands to be expropriated. This would include, as well as the owner, anyone with a financial claim registered against the lands, such as a municipality with a lien for taxes, a mortgagee or mechanics lienholder, and also a tenant. The notice must^{also} be published.

It is interesting that, generally, one expropriating authority cannot expropriate from another without its consent. (This is not in the Act but in the case law.)

Persons opposed then have thirty days to demand a hearing.

The hearing takes place before an inquiry officer chosen from a panel appointed by the Minister of Justice and the Attorney General. The officer reports his findings to the "approving authority", i.e. the Ministry charged with administering the statute which gives Hydro its authority. The Act directs the inquiry officer to inquire into "whether the taking of the lands or any part of the lands of an owner ... is fair, sound, and reasonably necessary in the achievement of the objectives of the expropriating authority." The officer reports to the approving authority, which may or may not follow his suggestions.

Another step might be a designation by the Minister of Treasury, Economics and Intergovernmental Affairs of a special planning area. Given Mr. McKeough's recent speech on July 11th re generating approvals, however, it seems unlikely that the cabinet would undertake this.

Again, I would point out that these responses are based on a very limited knowledge of the present situation, and we would be particularly interested in receiving more information and perhaps having an opportunity to speak with you.

We look forward to hearing from you again.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

John E. Low

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