

Enclosure: Provincial Advice Record: Summary of Issues and Potential Cooperation Plan

Project: Hydrogen Ready Power Plant Project

Proponent: Eastern Power Inc.

CIAR No.: 83696

Response invited by: July 18, 2022

All comments should be submitted via the **Submit a Comment** feature available on the Project's Canadian Impact Assessment Registry page (reference 83696)¹. Letters and forms can be uploaded using this feature. If you have any difficulties submitting this way, please contact the Agency at Hydrogen-Hydrogene@iaac-aeic.gc.ca.

1. Confirm whether your ministry would participate in the federal impact assessment process for this Project. Yes No

If yes, please provide contact details for the person(s) who will be working with the Agency.

Department/Agency: Ontario Ministry of the Environment, Conservation and Parks	
Date of Advice: July 18, 2022	
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2. Expertise

Please identify and describe the area of expertise within your ministry that is relevant to an assessment of the Project.

¹ <http://iaac-aeic.gc.ca/050/evaluations/proj/83696?culture=en-CA>.

Air Quality & Noise: The Ministry of the Environment, Conservation and Parks (MECP) is committed to protecting Ontario's air quality by holding emitters accountable, protecting local air quality, creating strong and effective environmental standards that protect human health and the environment, and regulating air contaminants released by certain industrial and commercial facilities.

Species at Risk: MECP is responsible for Ontario's Species at Risk (SAR) program and is committed to conserving Ontario's biodiversity by protecting and recovering SAR and their habitat.

Water: MECP is committed to protecting Ontario's watersheds and drinking water supplies now and for future generations by regulating drinking water, wastewater, and stormwater management.

3. Key issues and solutions

(a) From the perspective of the mandate and area(s) of expertise of your ministry, what are the key issues that are material and relevant to decision-making and should be addressed? In identifying key issues, be mindful of the Project's context (size, scope, geography, policy) and the definitions of *effects*,² *sustainability*³ and *public interest*.⁴

Air Quality: The key issue of adding another industry to the Sarnia area is the potential to further impact the existing stressed airshed. The two most concerning contaminants for local air quality are SO₂ and benzene.

Consultation with Indigenous Communities through the Environmental Screening Process: MECP regulates environmental assessments of electricity projects in Ontario through Ontario Regulation 116/01 Electricity Projects. Under this regulation, the Proponent is required to complete an Environmental Screening Process to fulfil the requirements of the provincial Environmental Assessment Act.

Section 5.7 of the Initial Project Description (IPD), dated May 24, 2022, indicates that the responses listed from the identified Indigenous communities were last updated April 1, 2022. Through the Environmental Screening Process, the Proponent received comments from Chippewas of Kettle & Stoney Point First Nation (CKSPFN) on May 13, 2022, which are not reflected in the IPD. Subsequently on May 19, 2022, CKSPFN submitted an "elevation request" to MECP indicating that the Project has the potential to create adverse impacts on their constitutionally protected Aboriginal and Treaty Rights and requesting that MECP elevate the Project to be subject to an individual environmental assessment under the provincial *Environmental Assessment Act*.

At the time of MECP's submission of this document to the Agency, the Proponent's consultation with CKSPFN, other Indigenous communities, and MECP through the Environmental Screening Process is ongoing. Documentation of this key issue should be addressed by the proponent.

Species at Risk: There is a high likelihood for SAR and/or SAR habitat to occur within the Project location and potentially be impacted by the Project. The Natural Resources Baseline Report and Environmental Impact Assessment (dated November 2012) are considered outdated and insufficient for the current project proposal due to probable changes to site conditions since then, as well as updates to the Species at Risk in Ontario List, SAR observations in the provincial database, and the protections afforded to endangered and threatened species under the *Endangered Species Act, 2007*.

Water: Sewage treatment (sanitary, process and storm) quantity, quality and discharge location.

² Note: *effects*, *direct and incidental effects*, and *effects within federal jurisdiction* are defined in section 2 of the *Impact Assessment Act*, which can be found at <https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations.html>

³ Guidance: Considering the Extent to which a Project Contributes to Sustainability <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-considering.html>

⁴ Policy Context: Public Interest Determination under the *Impact Assessment Act* <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/public-interest-determination-under-impact-assessment-act.html>

(b) For each **key** issue:

- i. Identify the relevant valued component(s) within your mandate and describe the key pathway of effect, or describe the nature of the issue. This may consider⁵ positive and negative effects on components of the environment or on health, social and economic conditions.

Air Quality: This key issue of negatively impacting existing local air quality was addressed in the Air Quality Impact Assessment Report completed during the Environmental Screening Process. This report indicates that for the maximum emission scenario, SO₂ emissions will be 0 and that the maximum POI concentration for benzene will be 0.0000209 ug/m³, or 0% of the MECP POI limit. NO₂ contributions will be 16% of the hourly MECP POI limit and 6.1% of the 24-hour limit.

Consultation with Indigenous Communities through the Environmental Screening

Process: The Crown has a legal duty to consult Aboriginal communities when it has knowledge of an existing or asserted Aboriginal or treaty right and contemplates conduct that may adversely impact that right. In outlining a framework for the duty to consult, the Supreme Court of Canada has stated that the Crown may delegate procedural aspects of consultation to third parties. MECP is responsible for ensuring that the duty to consult, and accommodation where appropriate, is met and has delegated procedural aspects of consultation to the Proponent through the Environmental Screening Process for this Project.

Species at Risk: One valued component of the ministry's mandate is the protection of SAR and their habitat. It is the responsibility of the Proponent to ensure that Species at Risk are not killed, harmed, or harassed, and that their habitat is not damaged or destroyed through the proposed activities to be carried out on the site. If the proposed activities cannot avoid impacting protected species and their habitats, then the Proponent will need to apply for an authorization under the *Endangered Species Act* (ESA). If the Proponent believes that their proposed activities are going to have an impact or are uncertain about the impacts, they should contact SARontario@ontario.ca to undergo a formal review under the ESA.

Water: Pathway of effect is from the system to the natural environment via a surface water receiver. Effects may be seen due to increase in flow and or increase in nutrient loading.

- ii. Identify any clarifications or commitments the Proponent could make in its Detailed Project Description and Response to the Summary of Issues that would build confidence that issues can be addressed and managed without further impact assessment⁶.

Air Quality: The Air Quality Impact Assessment Report committed to using state of the art low NO_x burner technology.

Consultation with Indigenous Communities through the Environmental Screening

Process: The Proponent should ensure that the Detailed Project Description and Response to the Summary of Issues include updated descriptions of all consultation that has occurred with CKSPFN and other Indigenous communities. Additionally, an updated general description of the Project's stage in the provincial Environmental Screening Process, described in Section 1.6.1 of the IPD, should be included.

⁵ Other considerations may include sources of high uncertainty that complicate predictions; the purpose and need for the Project and selected alternatives.

⁶ This could mean that mitigation measures that the proponent has committed to in the Detailed Project Description are referenced in the potential Tailored Impact Statement Guidelines.

Species at Risk: The Proponent could add to the Detailed Project Description and Response to the Summary of Issues a commitment to carry out an updated preliminary screening for the Project during detailed design, including conducting SAR-specific field assessments, studies or inventories by a qualified professional to identify and confirm the presence or absence of SAR or their habitat, in order to comply with the *Endangered Species Act*.

Water: The IPD and Appendix 7.1 HRPP ESRR Main Report committed to sending all process and sanitary sewage to the Courtright Wastewater Treatment Plant, which has an approved Environmental Compliance Approval (ECA). Storm flows up to the 1:100 storm event are to be captured on site and utilized in the process.

(c) For each issue and solution discussed, provide a concise, plain-language summary that is appropriate for inclusion in the Summary of Issues.

Air Quality: The Air Quality Impact Assessment Report was reviewed by MECP during the Environmental Screening Process. The report was revised to address our comments and has adequately assessed the project's impacts to air quality.

Consultation with Indigenous Communities through the Environmental Screening Process: During the provincial Environmental Screening Process under Ontario Regulation 116/01 Electricity Projects, an Indigenous community submitted an elevation request to MECP indicating that the Project has the potential to create adverse impacts on their constitutionally protected Aboriginal and Treaty Rights. The Proponent should maintain documentation of consultation with Indigenous communities through the Environmental Screening Process.

Species at Risk: As there is a high likelihood for Species at Risk and/or their habitat to occur within the Project location and impacted by the Project, the Proponent should undertake an updated preliminary screening, including necessary fieldwork, during detailed design to confirm the presence or absence of SAR or their habitat. If proposed activities may impact SAR or their habitat, the Proponent should contact SAROntario@ontario.ca to undergo a formal review under the *Endangered Species Act* and obtain an authorization if necessary.

Water: Sewage treatment, both quality and quantity, was addressed by sending process and sanitary sewage to an approved wastewater treatment plant. Stormwater will be captured on site and utilized in the process.

4. Provincial policies, operational guidance, and permits and approvals

Within the mandate and area(s) of expertise of your ministry, list, along with a brief description, specific operational policies or guidance documents that could help address issues and manage effects relevant to the project context.

Air Quality: Ontario Regulation 419/05 outlines the POI (point of impingement) air emission standards that the facility must meet.

Consultation with Indigenous Communities through the Environmental Screening Process: Ontario Regulation 116/01 Electricity Projects and the corresponding guideline available online at <https://www.ontario.ca/page/guide-environmental-assessment-requirements-electricity-projects> outlines requirements and guidance for consultation through the Environmental Screening Process.

Species at Risk: Should it be determined that an Overall Benefit Permit under the *Endangered Species Act* is required, the process to obtain such a permit is generally described on the provincial website at www.ontario.ca/page/species-risk-overall-benefit-permits. The intent for this permit type is to avoid impacts to threatened and endangered species wherever possible, and where these impacts cannot be avoided to provide compensation that is more than "like-for-like".

Water: Ontario Regulation 387/04 Water Taking and Transfer outlines requirements for a Permit to Take Water.
The *Ontario Water Resources Act* outlines requirements for process, sanitary, and storm water Environmental Compliance Approvals.

5. (a) List and provide a short description of provincial permits or regulatory approvals that might be applicable to the Project.

Authorization under the *Endangered Species Act*: The ministry refers to ESA authorization as a general term meant to include any type of permit, agreement, regulatory exemption, etc. that can be obtained under the *Endangered Species Act*, 2007.

Environmental Compliance Approval – Air Quality: This Project will require an MECP-issued Environmental Compliance Approval (ECA) for air emissions under Part II.1 of the *Environmental Protection Act* prior to construction and operation of the facility. This will provide another opportunity for a detailed modelling assessment of impacts from the project. The ECA stage also allows for conditions to be added to the approval such as additional monitoring activities including continuous emissions monitoring, stack sampling and/or fuel analysis.

Environmental Compliance Approval – Noise: This Project may require an MECP-issued ECA for noise emissions under Part II.1 of the *Environmental Protection Act* prior to construction and operation of the facility.

Environmental Compliance Approval – Water: This Project may require an MECP-issued Industrial Sewage ECA for discharge of sanitary sewage, process water and stormwater.

Environmental Screening Process: The Project is exempt from the *Environmental Assessment Act* on the condition that the Proponent fulfills the requirements of the Environmental Screening Process under Ontario Regulation 116/01.

Permit to Take Water (PTTW): This Project may require a PTTW for construction dewatering above 50,000L/day. Depending on regular operation, if water taking is greater than 50,000L/day, an ongoing PTTW may be required.

- (b) For each provincial permit or regulatory approval that would be required for the Project, please provide the following information:

- i. Explain any associated framework to address effects on valued components within your mandate.

Authorization under the *Endangered Species Act*: Once the detailed design of the Project is known and SAR fieldwork has been completed, it is recommended that the Proponent submit an Information Gathering Form (IGF) to SAROntario@ontario.ca for review under the *Endangered Species Act*, 2007 (ESA). The IGF, available at <https://forms.mgcs.gov.on.ca/en/dataset/018-0180>, will allow the Proponent and MECP Species at Risk Branch to better understand the potential impacts that development activities may have, specifically whether the development will contravene section 9 (species protection) and/or section 10 (habitat protection) of the ESA, and also determine whether an authorization should be sought.

It is recommended that the Proponent submit the IGF well in advance of the Project's proposed start date. Failure to allow adequate time for project review and authorization issuance (if required) could result in delays to the anticipated start date. Should an authorization under the ESA 2007 be required, general process timelines can take a minimum of 9-12 months.

Environmental Compliance Approval – Air Quality: The IAAC table on page 71 illustrates that the proponent has acknowledged that additional air quality impact assessment modelling must be undertaken during the ECA stage to use site specific meteorological data provided by the ministry (as opposed to the London regional meteorological data set used during the Environmental Screening Process). This will provide further scrutiny on the modelled maximum POI concentrations to confirm that emissions from this project will meet Ontario Regulation 419/05 standards.

Environmental Compliance Approval – Noise: MECP Guideline NPC-300 provides advice, sound level limits and guidance that should be implemented in the planning of the Project (available online at www.ontario.ca/page/environmental-noise-guideline-stationary-and-transportation-sources-approval-and-planning).

Environmental Compliance Approval – Water: The IPD states that an ECA for stormwater will not be required for the Project. This will need to be confirmed by MECP Approvals Branch, given that it is an industrial site and there are likely components which qualify the works for an ECA.

Environmental Screening Process: Ontario Regulation 116/01 Electricity Projects and the corresponding Guideline available online at <https://www.ontario.ca/page/guide-environmental-assessment-requirements-electricity-projects> outlines requirements and guidance for consultation through the Environmental Screening Process, including consultation with First Nations and other Aboriginal communities (Guideline section A.6.2.3) and the process for addressing the receipt of an elevation request (Guideline section B.4.1.1).

Permit to Take Water (PTTW): The MECP Guide to Permit to take water application form (available online at www.ontario.ca/page/guide-permit-take-water-application-form) provides a framework for applicants to comply with Section 34 of the *Ontario Water Resources Act*.

- ii. Describe any Indigenous consultation activities that would occur, potential timelines for Indigenous participation, and how potential impacts to Indigenous communities are addressed by your ministry.

Authorization under the *Endangered Species Act*: Ensuring that the Crown's Duty to Consult with Indigenous communities has been met would be included in the 9-12 month process for project review and authorization issuance under the *Endangered Species Act*, 2007. MECP would need to have a better understanding of the detailed design of the Project (site plan, timing, SAR survey assessment considerations and extent of potential activity impacts on SAR) to be able to speak concretely about Indigenous engagement and the duty to consult around and ESA authorization decision.

Environmental Compliance Approvals: Where a provincial environmental assessment has been completed, such as through the Environmental Screening Process for this Project, MECP will identify through the Environmental Compliance Approval application process whether:

- a) no consultation is required;
- b) consultation through the Environmental Screening Process was sufficient;
- c) consultation through the Environmental Screening Process was sufficient but requires an information request; or
- d) further consultation should have occurred and the applicant has not completed sufficient consultation to date. If further consultation is required, MECP may return the application and advise the applicant that the application is premature.

Environmental Screening Process: Indigenous consultation opportunities occurred earlier in the Environmental Screening Process. Upon receipt of the elevation request from Chippewas of Kettle & Stoney Point First Nation on May 19, 2022, the Proponent cannot proceed with the Project until MECP makes a decision on the request after analyzing information gathered from the Proponent.

Permit to Take Water (PTTW): MECP staff will review a PTTW application to ensure water takings are managed responsibly and consistently and will consider impacts to Aboriginal and Treaty right to determine whether a permit should be issued.

- iii. Describe any public participation opportunities that would occur, and potential timelines for public participation.

Authorization under the *Endangered Species Act*: A 30-day public posting of any required permit proposal on the Environmental Registry of Ontario would be included in the 9-12 month process for project review and authorization issuance under the *Endangered Species Act, 2007*. The nature of the Environmental Registry posting would be informed by the detailed design of the Project.

Environmental Compliance Approvals: If any of the ECA applications are classified as Class II for the purposes of the *Environmental Bill of Rights, 1993*, that application will require public notification on the Environmental Registry of Ontario for a minimum of 30 days. Some applications may undergo additional consultation due to their specific features that may be of interest to the public.

Environmental Screening Process: No further opportunities – public participation opportunities occurred earlier in the Environmental Screening Process.

Permit to Take Water (PTTW): In some cases, MECP may post a PTTW application to the Environmental Registry for a 30-day public comment period to help make a decision.

6. Is there any additional information related to the geographic context of the Project (e.g. potential effects to natural heritage features, Indigenous protected and conserved areas, provincial species at risk, provincial policy statements on planning or zoning in the area) for which your ministry has information or authority?

Species at Risk: MECP Species at Risk Branch has completed a preliminary species at risk (SAR) information screening under the *Endangered Species Act, 2007* for the Project location with respect to endangered and threatened species in Ontario. There are known occurrences of the following endangered and threatened SAR in the immediate area with potential to also occur at the project location:

- Eastern Foxsnake – Carolinian population (endangered, with species and regulated habitat protection)
- Jefferson Salamander and Unisexual Ambystoma – Jefferson Salamander dependent population (endangered, with species and regulated habitat protection)
- Butler's Gartersnake (endangered, with species and general habitat protection)
- SAR bats (endangered, with species and general habitat protection)
- Blanding's Turtle (threatened, with species and general habitat protection)
- Acadian Flycatcher (endangered, with species and general habitat protection)
- Prothonotary Warbler (endangered, with species and general habitat protection)
- Red-headed Woodpecker (endangered, with species and general habitat protection)
- Barn Swallow (threatened, with species and general habitat protection)
- Bobolink (threatened, with species and general habitat protection)

- Cerulean Warbler (threatened, with species and general habitat protection)
- Eastern Meadowlark (threatened, with species and general habitat protection)
- Butternut (endangered, with species and general habitat protection)
- Spoon-leaved Moss (endangered, with species and general habitat protection)

Please note that this is an initial screening for endangered and threatened SAR and the absence of an element occurrence does not indicate the absence of species. The province has not been surveyed comprehensively for the presence or absence of SAR and Ontario's data relies on observers to report sightings of SAR.