

4a-1

---

DATE: July 26, 2012

REPORT TITLE: **ALGONQUIN POWER ENERGY-FROM-WASTE**

FROM: Dan Labrecque, Commissioner of Public Works

---

**RECOMMENDATION**

**Whereas the Region of Peel has environmental controls under the Waste Supply Agreement with Algonquin Power Energy-From-Waste Inc. (the "Agreement");**

**And whereas, the Agreement as extended will expire on October 31, 2012;**

**And whereas, the Region of Peel's environmental controls duplicate controls available to the Ontario Ministry of Environment ("MOE");**

**Therefore be it resolved, that the Region of Peel waive the requirement under Section 17.5 of the Agreement that requires Algonquin Power to give the Region of Peel, following the expiry of the Agreement, the same environmental controls over the Algonquin Power Energy From Waste Facility (the "Facility") as are contained in the Agreement.**

July 26, 2012

**ALGONQUIN POWER ENERGY-FROM-WASTE****REPORT HIGHLIGHTS**

- The due diligence process undertaken by the Region in relation to the provision of short term waste disposal services did not result in the selection of Algonquin Power as the preferred vendor.
- As directed by Regional Council on November 24, 2011, staff negotiated a six-month extension to the Waste Supply Agreement with Algonquin Power. The Waste Supply Agreement is now scheduled to terminate on October 31, 2012.
- Algonquin Power has advised the Region that it intends to continue to operate the Facility following the expiry of the Waste Supply Agreement, and is attempting to source alternate waste.
- Section 17.5 of the Waste Supply Agreement states that Algonquin Power shall not operate the Facility following the expiry of its Agreement, unless and until it enters into a new agreement with the Region which provides for the same environmental controls to be exercised by the Region over the Facility as are contained in the Waste Supply Agreement.
- All of the environmental parameters in respect of which the Region exercises control under the Waste Supply Agreement are also regulated by the Province under the *Environmental Protection Act* ("EPA") and the Certificate of Approval ("CofA") for the Facility.
- As such, the Region's continued exercise of such controls following the expiry of the Waste Supply Agreement would result in duplication and little added value if any.
- It is therefore recommended that the Region agree to waive the requirements of s. 17.5 of the Waste Supply Agreement.

**DISCUSSION****1. Background**

At its meeting held on November 24, 2011, Regional Council adopted the following resolution:

Resolution 2011-1155

That the Commissioner of Public Works be authorized to extend the current agreement with Algonquin Power for six months or until October 24, 2012, should the due diligence process not result in the acquisition of the facility or a short-term waste disposal agreement with the Algonquin Power Company;

And further, that upon completion of the due diligence process with Algonquin Power Company, staff report back to Regional Council with their findings and recommendations.

On March 29, 2012, Regional Council adopted the following resolution:

Resolution 2012-411

That staff finalize negotiations of a short term disposal agreement with Waste Management of Canada Corporation at an estimated total cost of \$54,832,000 (excluding applicable taxes, annual CPI and fuel adjustments) for a five year term with renewal options as described in the report of the Commissioner of Public Works, dated March 21, 2012, titled "Short Term Disposal Agreement Negotiations,

July 26, 2012

**ALGONQUIN POWER ENERGY-FROM-WASTE**

Document 2012-225N", and otherwise on terms satisfactory to the Commissioner of Public Works in a form satisfactory to the Regional Solicitor;

And further, that if negotiations with WMCC are not finalized by June 29, 2012, that staff report back to Regional Council;

And further, that annual savings resulting from the short term waste disposal agreement be allocated to a long term waste disposal reserve to be established;

And further, that the report listed as Items related to Public Works – item PW-C1, be received.

With the due diligence process not resulting in either the acquisition of the Facility, or a short-term waste disposal agreement with Algonquin Power, staff negotiated and finalized an agreement to extend the current Waste Supply Agreement with Algonquin Power for an additional six-months, as directed by Council. The Waste Supply Agreement will now terminate on October 31, 2012.

During the negotiation process it became evident that an outstanding provision of the original Waste Supply Agreement had to be addressed. Section 17.5 of the Agreement states that Algonquin Power shall not continue to operate the Facility following the expiry of the Waste Supply Agreement unless and until a new agreement between the Region and Algonquin Power is executed, which agreement provides for the same environmental controls to be exercised by the Region over the Facility as are contained in the Waste Supply Agreement. The text of s. 17.5 of the Waste Supply Agreement is attached at Appendix I.

Algonquin Power has advised the Region on numerous occasions that it intends to continue to operate the Facility following the expiry of the Waste Supply Agreement, and that it is attempting to source alternate waste for that purpose. Pursuant to s. 17.5 of the Waste Supply Agreement, Algonquin Power would be prohibited from doing so unless and until it entered into a further agreement with the Region which would permit the Region to exercise the same environmental controls over the Facility as are contained in the current Waste Supply Agreement. Algonquin Power has requested that the Region indicate its intentions with respect to this provision.

## **2. Findings**

The original Waste Supply Agreement includes the following environmental parameters over which the Region is able to exercise some level of control with respect to the Facility through contractual means:

- stack emissions (which are controlled by the Province through the EPA and the Facility's CofA);
- acceptable operating limits, including hydrogen chloride in stack, opacity in stack, carbon monoxide in stack, primary chamber temperature, secondary chamber temperature, stack temperature, flue gas flow rate, boiler inlet and outlet temperature, boiler feed water temperature and steam temperature, pressure and flow rate for each boiler (all of which are controlled by the Province through the EPA and the Facility's CofA);
- acceptable waste burning rate (controlled by the Province through the EPA and the Facility's CofA)

July 26, 2012

## ALGONQUIN POWER ENERGY-FROM-WASTE

- compliance with the Facility's CofA or any order under the EPA (controlled by the Province);
- compliance with approvals under the *Environmental Assessment Act* (controlled by the Province); and
- compliance with the provisions of the Waste Supply Agreement (expires on October 31, 2012 and no longer applicable thereafter).

While there are a number of provisions in the Waste Supply Agreement aimed at ensuring environmental compliance, ultimately the Region could require operational cut-backs or a shutdown of all or part of the Facility if tests indicate that the Facility is not operating in accordance with the requirements for the above environmental parameters.

The Province, through the MOE, is the designated regulatory authority having jurisdiction to regulate and enforce compliance with requirements for the above environmental parameters. All such parameters are controlled through the EPA and Facility CofA. Any failure to comply with requirements for the stated parameters would be subject to the MOE's regular enforcement process, including, where necessary, Facility shutdown. The Waste Supply Agreement provided, to some extent, duplicative controls for the Region during the term of the Agreement, and contemplated a further opportunity for the Region to retain such controls thereafter. With the Agreement expiring, however, staff view it unnecessary to enter into a further agreement with Algonquin Power for the purposes of enabling the Region to exercise environmental controls over the Facility that are already regulated by the MOE, as this would result in a duplication of effort and cost to the taxpayer for the purposes of monitoring, testing and enforcement, with no added value.

### CONCLUSION

The Waste Supply Agreement between the Region and Algonquin Power is scheduled to expire on October 31, 2012. Given the MOE's regulatory control over the Facility through the EPA and the Facility CofA, and that the Region will have no ongoing contractual relationship with Algonquin Power after October 31, 2012, it is recommended that the Region waive the requirement of s.17.5 of the Waste Supply Agreement, and not require Algonquin Power to enter into a new agreement which provides for environmental controls to be exercised by the Region, as such controls are duplicative, in both effort and cost, to environmental controls exercised by the MOE.

7a-5-

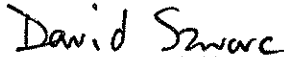
July 26, 2012

**ALGONQUIN POWER ENERGY-FROM-WASTE**



Dan Labrecque  
Commissioner of Public Works

**Approved for Submission:**



\_\_\_\_\_  
D. Szwarc, Chief Administrative Officer

*For further information regarding this report, please contact Ben Shepherd at extension 7925 or via email at [ben.shepherd@peelregion.ca](mailto:ben.shepherd@peelregion.ca)*

*Authored By: Ben Shepherd*

*PC/POL* Legislative Services  
Patrick O'Connor, Regional Solicitor

*NLC* N. Lee, Director, Waste Management

4a-6

July 26, 2012

**ALGONQUIN POWER ENERGY-FROM-WASTE**

**APPENDIX I**

**Waste Supply Agreement – s. 17.5**

17.5 Notwithstanding anything in this Agreement following the expiry of the initial 20 year term, without renewal, or the expiry of the Renewal Term, the Operator or any of its successors, assigns or any Purchaser or Transferee of the Facility shall not operate or cause or permit the Facility to be operated unless and until:

- (a) notice has been provided to the Region that such party wishes to operate or cause or permit the Facility to be operated;
- (b) a new Agreement between the Region and the Operator, or any such successors, assigns, purchasers or transferees is executed, which agreement provides for the same environmental controls to be exercised by the Region over the Facility, as contained in this Agreement.