

November 24, 2011

Ontario energy critic demands to know cost of partially constructed Mississauga gas power plant

GREG MECKBACH
digital media editor

The recently-cancelled [construction project on a gas-generated electrical power station west of Toronto](#) did not have a "termination-for-convenience" clause and cancellation could cost upwards of \$1 billion, sources tell the Daily Commercial News.

On Monday, the Ontario Power Authority (OPA) announced that it had reached an agreement with Greenfield South Power Corp. to stop construction on a 280-Megawatt plant in Mississauga and is working on an agreement to "relocate" the plant.

A significant amount of construction has already been done, a construction lawyer says termination-for-convenience clauses are rare, the opposition Progressive Conservatives may get the Auditor-General involved and the [Ontario energy minister says the province may have to improve its siting guidelines](#).

According to Greenfield Power's website, the financing for the project was finalized in May, 2011. As of the end of September, the foundations of the power plant buildings, steam turbogenerator pedestal, the gas turbogenerator pedestal and other structures were "nearing completion," the firm said.

■ [Cancelled Ontario contracts draw fire](#)

The province has not revealed any information indicating the cost to the government.

"The OPA and Greenfield continue to discuss details, including an agreement on facility relocation," an OPA spokesperson stated in an e-mail to the Daily Commercial News. "As a result of ongoing confidential discussions, we are not able to comment on particular provisions of the Greenfield contract."

As of Thursday morning, Greenfield officials had not returned calls from DCN Tuesday and Wednesday seeking comment.

■ [Ontario green energy plan a 'recipe for bankruptcy': Progressive Conservative candidate](#)

Energy Minister Chris Bentley stated Wednesday in the legislature that the government is "very pleased" that there will not be a power plant at the site, but critics are not pleased at the amount of work that has already taken place.

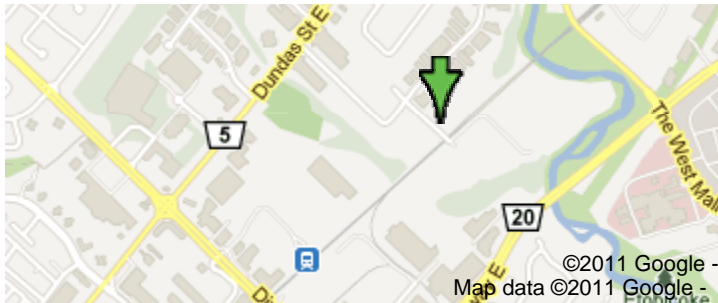
Vic Fedeli, the Ontario Progressive Conservative energy critic and Member of Provincial Parliament for Nipissing, said the government should be able to provide financial information.

"You would think that when Minister Bentley announced the termination (November 21) that he would know how much it was going to cost," Fedeli said in an interview with DCN. "He was asked that question and did not provide an answer. This is the taxpayer's money we're talking about."

■ [College of Trades, offshore wind eastern Ontario election issues](#)

Fedeli put this question to Bentley in the legislature Wednesday but Bentley did not talk about money. In his reply during Question Period, Bentley reiterated the fact that discussions are continuing, adding the government "listened to" residents of Mississauga and Etobicoke (a former municipality east of

Mississauga and now part of Toronto) and that the government has “heard that the guidelines for siting gas generating facilities, which have been successful in siting seven already, may require some additional improvement and strengthening.”



[View Larger Map](#)

In Ontario, power generation companies essentially sell electricity into the grid to the Independent Electricity System Operator (IESO) but the owners or operators of so-called “non-utility generation facilities” sign electricity generation supply contracts with the Ontario Power Authority, the provincial agency in charge of planning and procuring electricity supply. There are six gas-fired energy generation contracts currently in commercial operation and a seventh, the York Energy Centre, in development.

According to Reed Construction Data Canada’s Building Reports, the construction of Greenfield’s Mississauga gas plant was estimated at \$30 million.

Fedeli referred in an interview with DCN to an estimated cost of \$1 billion, but emphasized that was his own “guesstimate.” However, he noted a significant amount of work has been done.

■ [Mesa Power of Texas claims Ontario green energy plans violate NAFTA](#)

“I have stood in front of it, I watched the 100 men and women working on the construction of this,” Fedeli said. “It is several storeys out of the ground. The most expensive piece, the actual generator, was delivered to the site two weeks ago. So I know that an unbelievable amount of money has been spent, and will be spent to dismantle it and restore the land. With demolition and all of that, this is going to be a project of monumental size.”

A DCN reporter was contacted Tuesday by a source who requested anonymity claiming a contract related to the Greenfield project does not have a “termination-for-convenience” clause. The source had not personally read the contract and it was not clear whether that was a contract between Ontario Power Authority and Greenfield, or between Greenfield and a construction contractor.

A construction lawyer who is not familiar with the Greenfield contract said termination for convenience clauses are more common in design services contracts, such as architecture or engineering design, than in actual construction.

“When you’re in the middle of construction, it’s rare to have a termination for convenience clause and it makes it difficult for contractors because of the uncertainty it creates in the project, whether or not anywhere along the way they will just get word that it’s over,” said **Glenn Ackerley, a partner with WeirFoulds LLP**, who was commenting on termination clauses in general and not on the Greenfield power plant.

Some contracts have “force majeure” clauses designed to allow either party temporarily halt projects due to factors beyond their control.

"Those kinds of events are different from just the bare right to terminate, because a force majeure event is something out of either party's control where some other event has intervened, whether it's some governmental authority stopping the project or it could be a hurricane or something comes along and stops the project," Ackerley said. "That doesn't necessarily mean the project's over, but the parties may be stuck for a period of time, the project is delayed while the issue is sorted out."

He added force majeure clauses usually provide that when a project stops for a certain period, such as six months, the project is then terminated.

The amount owed to the contractor varies, Ackerley said, and sometimes termination clauses do not provide compensation for lost profits and overhead. Some contracts require the owners to pay a fixed cost, such as five per cent of the balance of the contract owing, Ackerley added.

In the case of the Greenfield power plant project, Fedeli said the Ontario Progressive Conservative Party will try to determine the cost to the taxpayers.

"We may have to look at involving the Auditor-General and that would only come through the Legislature," Fedeli said. "If we don't get the information in a reasonable time, that is an option that we hold."

Fedeli is also questioning the delay between the original announcement in September (when, during the election campaign, the Liberals said they would halt construction) and the OPA press release Monday announcing an agreement to halt construction was reached and the OPA and Greenfield are discussing a relocation.

"How much did this 57-day delay cost, from the time they first announced the cancellation to now allegedly cancelling it?" Fedeli asked. "How much did that delay also cost the taxpayer?"

The current Mississauga site of the gas plant is a 4.5-hectare property southeast of the intersection of Dixie Road and Dundas Street, about 20 kilometres west of downtown Toronto. The plant is part of the ruling Liberal party's plan to reduce the province's dependence on coal-fired electrical power plants. Ontario Power Generation operates four coal-fired plants.

Premier Dalton McGuinty also introduced, with the Green Energy Act, the feed-in-tariff program which offers fixed rates for 20 years for operators of power generating stations using renewable sources such as wind, solar photovoltaic and biomass.