Legislative Assembly of Ontario

Assemblée législative de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

METROLINX – LRT CONSTRUCTION AND INFRASTRUCTURE PLANNING

(SECTION 3.07, 2018 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR GENERAL OF ONTARIO)

1st Session, 42nd Parliament
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The Honourable Ted Arnott, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

Catherine Fife, MPP
Chair of the Committee

Queen's Park
February 2020

STANDING COMMITTEE ON PUBLIC ACCOUNTS
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1st Session, 42nd Parliament

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JESSICA BELL regularly served as a substitute member of the Committee.

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INTRODUCTION

On May 1, 2019, the Standing Committee on Public Accounts held public hearings on the audit of Metrolinx—LRT Construction and Infrastructure Planning (Section 3.07 of the Auditor General's *2018 Annual Report*).

The Committee endorses the Auditor's findings and recommendations, and presents its own findings, views, and recommendations in this report. The Committee requests that the Ministry provide the Clerk of the Committee with written responses to the recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

ACKNOWLEDGEMENTS

The Committee extends its appreciation to officials from the Ministry of Transportation, Infrastructure Ontario, and Metrolinx. The Committee also acknowledges the assistance provided during the hearings and report-writing deliberations by the Office of the Auditor General, the Clerk of the Committee, and staff in the Legislative Research Service.

BACKGROUND

Metrolinx is an agency of the Government of Ontario, created under the *Metrolinx Act, 2006* (Act). Infrastructure Ontario is a Crown agency owned by the Province that aims to "modernize and maximize the value of public infrastructure and real estate." Infrastructure Ontario is working with Metrolinx to deliver several transit-related projects within the Greater Toronto and Hamilton Area (GTHA).

The Metrolinx Board of Directors includes up to 15 members. All members are appointed by Order in Council. The Chair of the Board is accountable to the Minister of Transportation through a Memorandum of Understanding between Metrolinx and the Minister. Serving over 72 million passengers in 2017-18, the agency's operating costs in that year were $995 million.

According to the Act, Metrolinx's main objectives are to

- provide leadership in the coordination, planning, financing, development and implementation of an integrated transit network;

- act as the central procurement agency for the procurement of local transit system vehicles, equipment, technologies and facilities and related supplies and services on behalf of Ontario municipalities; and

- be responsible for the operation of the regional transit system and the provision of other transit services.

In 2009, Metrolinx merged with GO Transit, which had operated the regional transit system in the GTHA since 1967.

The GTHA includes the municipalities of Toronto and Hamilton; the regional municipalities of Durham, Halton, Peel, and York; and 24 local municipalities. Within this region, Metrolinx works with nine local transit agencies, of which the largest is the **Toronto Transit Commission** (**TTC**). Metrolinx continues to operate the GO train and bus systems, as well as the **Union-Pearson** (**UP**) **Express** trains. Metrolinx is also responsible for the **PRESTO** fare card system in the GTHA and Ottawa.

In 2018, Metrolinx released the *2041 Regional Transportation Plan*, which seeks to integrate local transit systems across the GTHA and examines ways to ease congestion, lower commute times, and reduce emissions. The plan projects a significant increase in the demand for public transit in the coming decades.

Metrolinx's Five Light Rail Projects

Light rail is best suited for areas that have too many people to serve with buses or streetcars, but too few people for subway construction to be economical.

Metrolinx plans to construct five **Light Rail Transit** (**LRT**) lines in the GTHA:

- The **Eglinton Crosstown LRT** will run from Kennedy TTC Station to Weston Road for 19 kilometers, 10 of which will be underground. It is the most complex and costly of Metrolinx's current LRT projects.

- The **Finch West LRT** will run from Finch West TTC Station to Humber College. Construction is underway and is expected to be complete in 2023. Unlike the Eglinton Crosstown LRT, the Finch West LRT will be almost entirely above ground.

- The **Sheppard East LRT** will run from Don Mills TTC Station to Morningside Avenue. This project is on hold until the Finch West LRT is complete.

- The **Hurontario LRT** will link Brampton and Mississauga. Construction is underway and is scheduled to be complete in 2023. In 2015, the City of Brampton decided not to extend the line to the Brampton GO Station. In December 2018, Brampton City Council voted unanimously to reassess this decision and on April 3, 2019, the City Council received a report on options for the extension.

- The **Hamilton LRT** will run from McMaster University to Eastgate Square. Construction is expected to begin in 2019 and to end in 2025.

In 2009, the Province directed Metrolinx to work with Infrastructure Ontario to deliver these lines using **Alternative Financing and Procurement** (**AFP**). The AFP approach—where government partners with the private sector to deliver major capital projects—is usually done through a **Public-Private Partnership** (**P3**). In 2012, Metrolinx announced that it would own the LRT lines and vehicles once construction is complete. Local transit agencies will operate the new lines. In Toronto, this means the TTC will need to integrate three LRT lines into its existing network.

AUDIT SCOPE AND OBJECTIVE

The main focus of the 2018 audit was on

- Metrolinx's regional planning responsibilities and work; and
- Metrolinx's oversight of LRT projects, and in particular the Eglinton Crosstown LRT.

MAIN POINTS OF THE AUDIT

The audit's main findings were that

- Metrolinx's work on LRT projects in the GTHA has incurred millions of dollars in delays and unnecessary costs, due to changes made by provincial and municipal governments and operating issues;
- the AFP contract under which the Eglinton Crosstown LRT is being constructed gives Metrolinx remedies to hold the AFP consortium responsible for project delays. However, Metrolinx paid the AFP consortium (Actividades de Construccion y Servicios, S.A., AECON, Ellis-Don, and SNC-Lavalin) $237 million in order to hold it to the agreed-upon initial completion date of September 2021;
- Metrolinx hired a consulting firm to advise it on LRT and GO projects, but Metrolinx failed to address the consulting firm's underperformance in a timely manner. Furthermore, the consulting firm has sub-contracted out $59 million worth of work, earning a 2.5% markup for doing so; and
- Metrolinx procured light rail vehicles too early in the process, adding $49 million to the total cost of its LRT projects. Metrolinx has also purchased two different kinds of light rail vehicles for LRT lines in Toronto, potentially raising the TTC's future operating costs.

ISSUES RAISED IN THE AUDIT AND BEFORE THE COMMITTEE

A number of significant issues were raised in the audit and during the Committee's hearings. The Committee considers the following issues to be of particular importance.

Transparency

The Committee raised concerns regarding Metrolinx's transparency practices, and made recommendations accordingly. The Committee was interested in the public release of Metrolinx's planning documents, as well as status update communication between Metrolinx and stakeholders.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

1. **Metrolinx should**

    a) **provide the Committee with a list of projects from the amended *2041 Regional Transportation Plan*, in order of priority, as well as information on sources of funding, where available;**

    b) **periodically report to the Ministry of Transportation and the general public on the progress of the plan; and**

    c) **publicly release the prioritization framework guiding Metrolinx's infrastructure project selection process.**

Regional Transportation Planning

The Auditor found that Metrolinx did not fulfill its mandate to lead transportation planning effectively. The cancellation of the Scarborough Rapid Transit project and delays in the Sheppard LRT project were cited as examples of the agency's deficiencies with its management of projects. Further, the Auditor reported that Metrolinx did not properly assess whether LRT was the best option for the rapid transit projects, and is lacking action plans in its *2041 Regional Transportation Plan*.

The Committee asked whether Metrolinx consulted with local transit authorities in Peel region and Hamilton to determine the cost of disruption due to future LRT construction. Metrolinx confirmed that projects are now managed by joint teams that include the municipalities. The joint teams have local offices in the community, and they hold information events and update sessions to keep the local community informed and up-to-date on the status and progress of the project.

Committee members also expressed interest in the transparency of Metrolinx's projects. Metrolinx and Infrastructure Ontario confirmed that there is a four-stage business case model (initial, preliminary design, full, and in-service). Metrolinx intends to publish all four stages. As of May 2019, the first three business cases for the GO expansion had been published; a fourth (an in-service business case) was in the process of being published. With respect to the publication of ridership impact studies, Metrolinx said that these studies are embedded in the full business case. In response to Committee concerns about the lack of transparency surrounding the LRT station selection process, Metrolinx stressed that the business case process has been completely revamped, with all the documents made public.

With regard to the cost of disruption, Infrastructure Ontario presented the example of lane rentals – a cost associated with closing a lane of traffic for a given period of time. When a bidder submits a bid that involves closing down lanes of traffic, the cost associated with the disruption has to be included in the bid. This model encourages bidders to close down traffic lanes for the least amount of time possible.

Metrolinx was asked about the costs and delays associated with changes to the plans for the Ontario Relief Line (a proposed extension of the subway line in the east end of Toronto to ease overcrowding). Metrolinx explained that the changes are not significant, and that very little of what has been done on the project will be wasted if the changes are implemented.

The Committee inquired about the prioritization framework Metrolinx uses for project selection. Metrolinx said that projects are selected on the basis of business cases, which provide a breakdown of economic benefits and costs. It was noted that the two things that benefit a business case most are an increase in ridership and a reduction in journey time. Projects that move a large number of people typically have benefits outweighing the costs.

In response to the Auditor's report, Metrolinx committed to the development of a prioritization framework. A framework was presented last spring to a regional roundtable involving large cities and municipalities affected by major transit projects.

Following a discussion of the 75 transit projects in the *2041 Regional Transportation Plan*, Metrolinx committed to clarifying exactly how many of the proposed projects are funded, and how many are unfunded.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

2. **Metrolinx should**

    a) **answer the 61 questions presented by the City of Toronto in response to the *2041 Regional Transportation Plan* and share the answers with the Committee;**

    b) **develop an action plan to identify and address the growing connectivity needs of the Greater Toronto and Hamilton Area (GTHA) regional transportation network as a whole, given that previously envisioned connections have been lost with changes in transit project plans;**

    c) **update its prioritization framework to guide the delivery of the projects identified in the *2041 Regional Transportation Plan*;**

    d) **prepare and propose a funding strategy for approval by the Province and municipal governments;**

    e) **prepare an action plan with execution timelines correlated with the funding strategy; and**

    f) **publicly report on its status in meeting this action plan.**

Use of Consultants

Metrolinx has awarded three contracts for management services to a single firm. These contracts total $272 million and include

- $127 million for the Eglinton, Finch, and Sheppard LRTs, the Scarborough Rapid Transit, and the York Bus Rapid Transit line;
- $40 million for the Hurontario and Hamilton LRTs and the GO Bus; and
- $105 million for GO Train electrification.

The Auditor found that, when it hired the consulting firm to provide these services, Metrolinx acted “without adequately detailed documentation to demonstrate that it had assessed the extent of the required services against the level and type of resources required to deliver the projects.”

Another issue identified by the Auditor relates to billing. The Auditor noted that the work plans Metrolinx submitted to the consultants did not include a breakdown of budgeted hours, costs per person, or start and end dates. Moreover, at the time of the audit, Metrolinx had never exercised its right to audit contractor records.

Of the $145 million Metrolinx spent on the second two contracts, the consulting firm spent $59 million on sub-consultants. The main contractor earns a 2.5% markup to administer sub-consultant agreements. As of June 2018, the Auditor estimated this markup at $1.4 million. The Auditor maintains that Metrolinx could have obtained these services at a lower cost if it had used competitive bidding, instead of allowing sub-consulting.

Finally, the Auditor found that Metrolinx did not address under-performance by consultants in a timely way. In response to ongoing issues, Metrolinx introduced new Vendor Performance Review provisions in mid-2015, which came into effect in mid-2018. This evaluation found that the consulting firm had not provided sufficient leadership in many areas.

The Committee heard that the use of consultants in major government capital projects is commonplace. For example, the government taps into the private sector for skilled trades, as well as consultants for engineering and technical services. Infrastructure Ontario mentioned that it is not aware of any comparable major capital projects that are being managed exclusively by public service employees.

In response to Committee questions about the performance of the consulting firm that had been awarded three contracts, Metrolinx said that the company was now performing well against Metrolinx’s performance management system. The agency further explained that, unlike fixed-hour or fixed-output contracts, a significant feature of these consulting contracts is their dynamism and variability – the contracts are set up with an “upset limit,” and are adjusted over their lifetime as the scope changes. “Upset limit” refers to a maximum amount, above which the consultancy cannot bill the client, regardless of the amount of work done. As stated by Metrolinx at the Committee hearing, with respect to billing, Metrolinx has put in place processes that manage sign-off on scope adjustments more effectively. Metrolinx also confirmed that all three contracts awarded to the consulting firm were competitively bid contracts.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

3. **Metrolinx should**

   a) **evaluate whether its current use of consultants is justified and adjust where appropriate to reduce the dependency on a single consulting firm;**

   b) **establish the scope of work and budget before hiring consultants and use this to assess proposals from bidders;**

   c) **conduct a request-for-proposal process to procure defined program management services;**

   d) **before extending contracts, evaluate and document whether it would be more appropriate to re-tender and/or use in-house staff;**

   e) **periodically review contractor records and assess contractor performance; and**

   f) **use the competitive bidding process instead of sub-consultants, where possible.**

4. **The Ministry of Transportation should direct Metrolinx to stop renewing contracts with companies that perform poorly on the vendor performance review.**

The Eglinton Crosstown LRT Project

The Eglinton Crosstown LRT has a budget of $11.3 billion, plus a contingency budget of $672 million. This includes the costs of the AFP contract for building, financing, and maintaining the LRT line for 30 years. In July 2015, this contract was awarded to a consortium of ACS (Actividades de Construccion y Servicios, S.A.), AECON, Ellis-Don, and SNC-Lavalin (AFP consortium).

The Auditor found that Metrolinx is not dealing effectively with project delays. Under the terms of the AFP contract, as long as the consortium certifies in writing that it can finish the entire project on time, Metrolinx indicated that it has limited remedies to hold the consortium responsible for delays over its current AFP contract.

The Auditor noted that the consortium began falling behind schedule in 2016, and that staff mentioned this to Metrolinx senior management in December 2016. Metrolinx formally communicated its concerns to the consortium in December 2017. In response, the consortium filed suit against Metrolinx in February 2018, requesting an extension of the project completion date, as well as compensation. Metrolinx and the consortium reached a settlement in August 2018, with

Metrolinx paying the consortium $237 million. The Auditor noted concerns with this settlement in her report. Specifically, Metrolinx did not have sufficient documentation of evidence linking the settlement amount to the AFP consortium's claims that Metrolinx was partially responsible for project delays.

When asked whether it considered building a subway instead of an LRT system, Metrolinx responded that while an LRT is a slower mode of transport that has less capacity than a subway, it allows for more intermediate stops and is more suited for shorter travel distance.

The Committee heard that while the settlement with the consortium did not involve a change of scope or delivery timeline, it did resolve several points of disagreement between the parties (also known as a single scope settlement).

The Committee also inquired about the size of the settlement, and how that figure was calculated. Infrastructure Ontario confirmed that, in dollar terms, the settlement was the largest P3 settlement in Ontario's history. Metrolinx clarified that the amount was arrived at by assessing Metrolinx's liability exposure (in percentage terms), and applying the percentage to the total amount of the claim.

The Auditor added that $100 million of the $237 million settlement was classified as incentive and acceleration compensation, to be clawed back if the consortium does not achieve substantial completion by September 29, 2021.

Asked why it did not fine the consortium when it began falling behind schedule, Metrolinx explained that the ownership model is structured in such a way that Metrolinx does not own the schedule. Infrastructure Ontario provides monthly payments to the consortium, as well as a significant sum at substantial completion. The completed construction work, as well as payments made to the consortium, are inspected and certified by an independent certifier, a contractual third-party.

Concerns were also expressed about potential future delays to the Eglinton Crosstown LRT project. Infrastructure Ontario reassured the Committee that the project is being closely monitored for any delay. When a delay is identified, the process is slowed down, such that no resources are idle. Infrastructure Ontario also said that it manages projects by applying the "earned value" principle, which allows for the development of a "cost performance indicator" and a "schedule performance indicator." Applying these indicators, Infrastructure Ontario is able to get a clearer picture of where a project is at any given time. Metrolinx and Infrastructure Ontario also have monthly meetings with senior members of the consortium and their staff to track progress.

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

5. **Metrolinx should work with the AFP consortium to**

    a) **promptly resolve issues identified by Metrolinx's technical advisors and the Toronto Transit Commission (TTC) regarding designs that do not meet project requirements and specifications;**

b) **minimize the number of partial design reviews and approvals by Metrolinx's technical advisors and the Toronto Transit Commission (TTC); and**

c) **design future contracts with provisions to avoid substantial penalties.**

6. **Metrolinx should**

   a) **consult regularly with relevant stakeholders on cost estimates as part of the budget-setting and cost-monitoring process;**

   b) **provide a valid reason for the $237 million settlement with the consortium; and**

   c) **explain what steps have been taken to ensure that cost overruns and delays are not repeated, and make the information public.**

7. **The Ministry of Transportation and the Treasury Board Secretariat should obtain all supporting documentation relating to a financial settlement, and sign off on any financial settlements before they occur.**

Metrolinx Electrification

The Committee asked about electrification of the GO rail network. Metrolinx said that electrified trains are faster and therefore bring more economic value, and noted that it rewards faster operation; however, it did not specify how electrification should be achieved – whether through an overhead catenary system (OCS), hydrogen fuel, or bi-mode trains. Bi-mode trains run on diesel on parts of the tracks that are not electrified, charge their batteries on electrified portions of the tracks, and use the battery power to run on a portion of the non-electrified tracks. Although trains running on diesel fuel was not ruled out, Metrolinx suggested that a business case involving diesel fuel might not have a significant chance of success.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

8. **Metrolinx should**

   a) **clarify its commitment to the electrification of the GO rail network; and**

   b) **set a clear timeline for the electrification of the GO rail network, specifying when each GO line will be electrified.**

Transit-Oriented Development

Metrolinx was asked how much revenue it expects to receive from agreements with private sector developers and firms that benefit from transit projects in their area. It was noted that the agency has closed two large agreements with private firms. In one agreement, the air rights over Mimico station were sold in exchange for $20 million to be used to refurbish the station. In the other, a new station, Woodbine, will replace the Etobicoke North station at no cost to taxpayers – a private firm will fund the project, with the expected cost between $90 million and $136 million.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

9. **Metrolinx should provide the Committee with details on how Metrolinx is structuring agreements with private sector developers, and make this information available to the public.**

The Alternative Financing and Procurement (AFP) Process

Metrolinx was asked to elaborate on a few aspects of the P3 mechanism, including the Design, Build, Finance and Maintain (DBFM) model, the transfer of risk to the private sector, and contract provisions addressing possible future delays on other LRT projects.

Under the DBFM model, Metrolinx receives solution bids from bidders on how to design a certain project. The designs are then reviewed on two levels – a system level (ensuring proper connections to existing infrastructure), and a deeper, practical level (how construction should be done, which permits and approvals are necessary). The independent certifier (a third-party entity) certifies whether the work and the scope have been done according to what was originally bid and procured.

Metrolinx said that it has improved some elements of the transfer of risk process, namely separating the procurement of rolling stock from the procurement of built assets. As part of the Eglinton Crosstown LRT project, for example, the agency procured rolling stock from Bombardier, while signing a contract with a consortium to build stations in the city.

As Bombardier began to fall behind on deliveries, however, the penalties imposed on Bombardier by Metrolinx were substantially lower than the penalties the agency was obligated to pay the consortium for delays in procurement of rolling stock. Metrolinx said that it has renegotiated its contract with Bombardier, reducing the contract value and fleet size, and matching Bombardier's late fees to those charged by the consortium. It also said that the lessons learned during the Eglinton LRT process have been implemented in current contractual negotiations regarding the Regional Express Rail (RER-GO) expansion.

Infrastructure Ontario responded to Committee questions about protections that might be included in the AFP contracts of future P3 to prevent the types of delays experienced with the Eglinton Crosstown LRT. It informed the Committee that, along with the Key Performance Indicators discussed in the Eglinton Crosstown LRT project, Metrolinx has increased the level of scrutiny regarding scheduling, and is willing to assist the consortium in overcoming obstacles, such as getting approvals from municipalities.

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

10. **Infrastructure Ontario should develop tools and remedies for incorporation into Alternative Financing and Procurement (AFP) contracts to address early indications of project delays.**

11. **Infrastructure Ontario and Metrolinx should**

    a) **initiate an independent, transparent, and rigorous assessment of the costs and benefits embedded in the traditional delivery model in comparison with a Public-Private Partnership (P3) model before signing a contract with a consortium; and**

    b) **clarify the process of calculating/estimating the risk transfer, which is central to the Public-Private Partnership (P3) model, and make the information public.**

METROLINX FUNDING

The Committee asked about Metrolinx's sources of funding. Metrolinx said that the sources of capital costs vary by project, with funds mostly coming from the provincial and federal governments. In terms of operations, the agency funds around 60% of its operating costs through revenues, while receiving a subsidy from the Ontario government for the remainder of the cost. In 2018, the subsidy was between 38% and 40% of operating costs.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

12. **Metrolinx should provide the Committee with details on how it plans to reduce its operating subsidy to zero, including any anticipated impacts on pricing, service levels, and ridership levels.**

CONSOLIDATED LIST OF COMMITTEE RECOMMENDATIONS

1. **Metrolinx should**

   a) **provide the Committee with a list of projects from the amended *2041 Regional Transportation Plan*, in order of priority, as well as information on sources of funding, where available;**

   b) **periodically report to the Ministry of Transportation and the general public on the progress of the plan; and**

   c) **publicly release the prioritization framework guiding Metrolinx's infrastructure project selection process.**

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   c) **update its prioritization framework to guide the delivery of the projects identified in the *2041 Regional Transportation Plan*;**

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6. **Metrolinx should**

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   - b) **provide a valid reason for the $237 million settlement with the consortium; and**

   - c) **explain what steps have been taken to ensure that cost overruns and delays are not repeated, and make the information public.**

7. **The Ministry of Transportation and the Treasury Board Secretariat should obtain all supporting documentation relating to a financial settlement, and sign off on any financial settlements before they occur.**

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