



EB-2010-0008

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an order or orders determining payment amounts for the output of certain of its generating facilities.

DECISION AND ORDER

Ontario Power Generation Inc. ("OPG") filed an application, dated May 26, 2010, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the "Act") seeking approval for increases in payment amounts for the output of certain of its generating facilities, to be effective March 1, 2011.

On June 29, 2010, the Board issued Procedural Order No. 1 which stated that counsel and consultants for intervenors would have the opportunity to execute and submit a Declaration and Undertaking (the "Undertaking") to review unredacted versions of documents for which OPG had requested confidential treatment. The Board has issued several Decisions and Orders on Confidential Filings in the course of this proceeding.

Breach of Declaration and Undertaking respecting confidentiality

On December 6, 2010, the Association of Major Power Consumers in Ontario ("AMPCO") filed its submission in confidence. On or about December 6, 2010, AMPCO also filed a redacted version of the submission for the public record. On December 15, 2010, the Board received correspondence from OPG identifying that a breach of the Decision on Confidentiality and Procedural Order No. 12 had occurred with respect to the redacted version. The breach relates to an undertaking response that the Board

had determined would receive confidential treatment in its entirety. AMPCO advised the Board on December 16, 2010 that the breach was inadvertent and was due to AMPCO's rush to meet the submission filing deadline.

In correspondence issued on December 20, 2010, the Board instructed all persons who received the redacted version of the AMPCO submission to permanently delete the document, destroy any hard copies and to file a certificate of destruction with the Board. The Board stated that it was considering a costs payment similar to one assessed against counsel for the School Energy Coalition ("SEC") for a breach of the Undertaking earlier in the proceeding. However, as AMPCO did not identify a person responsible for the breach in its letter of December 16, 2010, the Board stated that it would assume the proposed costs payment would apply to the signatory of the submission, counsel for AMPCO. The Board made provision for AMPCO to file a submission regarding the proposed payment.

AMPCO's submission, dated December 22, 2010, acknowledged that a mistake was made. AMPCO submitted that the letter of December 16, 2010 was filed by its counsel, but that was not to imply that AMPCO counsel was the person responsible for the breach. AMPCO is represented by a team of people in this proceeding and AMPCO takes responsibility for any mistakes. The submission noted that the Board's explanation for the costs payment imposed on counsel for SEC was that it was intended as a signal and was "not related either to the materiality of a breach or to direct costs of the Board."

Board Findings

The Board accepts that the disclosure of the confidential information by AMPCO was inadvertent; however the disclosure of confidential materials is a very serious matter. The Board finds that there are many similarities to the situation involving counsel for SEC. In both situations a document was filed in confidence with the Board and the redacted version filed for the public record disclosed material that should have been retained in confidence. Accordingly, the Board has concluded that a similar costs payment is warranted in the current circumstance.

Pursuant to its powers under section 30 of the Act, the Board finds that individuals acting for AMPCO shall make a \$10,000 payment towards the Board's costs in this proceeding. Since the breach is in relation to the Undertaking given by individuals, and as no person representing AMPCO has taken direct responsibility for the breach of the

Undertaking, the Board has determined that the costs payment will be the responsibility of the four individuals representing AMPCO who signed Undertakings: Tom Adams, David Crocker, Shelley Grice and Andrew Lord. The allocation of the \$10,000 sanction amongst these individuals will be at their discretion. If the individuals cannot agree to an allocation, then the Board expects each person to pay an equal share of \$2,500.

In addition, AMPCO (including its counsel and consultants) shall not file any cost claims associated with addressing the breach of the Undertaking.

THE BOARD ORDERS THAT:

1. Persons representing AMPCO in this proceeding and who signed Undertakings, shall make a personal payment totaling \$10,000 towards the Board's costs in this proceeding. That payment shall be made by January 21, 2011.

ISSUED at Toronto, January 7, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary