

20 April 2011

Ontario Energy Board
2300 Yonge St., 27th Floor
Toronto, ON
M4P 1E4

Attn: Ms Kirsten Walli
Board Secretary

By electronic filing and e-mail

Dear Ms Walli:

Re: EB-2010-0008 GEC response to OPG submissions on the GEC Cost Claim

In her letter of April 15th Ms Reuber raises objection to several items in GEC's cost claim in this case. We offer the following comments in response.

Meal expenses:

OPG objects to two meal expense items of counsel as excessive. GEC can advise that no alcohol-related expenditures were claimed. GEC notes that the total meal expense claim of counsel was \$346.46 covering 10 travel days and 20 meals. In our submission the average cost of \$34.64 per travel day and average meal cost of \$17.32 including tips is not excessive. However, GEC is prepared to limit its claim to any reasonable level the Board determines. The Board may wish to consider a fixed *per diem* allowance to simplify cost claims and assessments.

Claim relating to expert evidence of Mr Paul Chernick:

OPG seeks a reduction in the costs related to the evidence of Paul Chernick. Thirty of the thirty-two pages of Mr. Chernick's report filed by GEC addressed the issue of CWIP. OPG argues that GEC's claim should be reduced because the contribution of the witness to the proceeding was 'minimal'. In support of that allegation OPG cites a PWU assertion that the Board recited (but did not endorse) in its summary of the arguments presented. OPG (and PWU) suggest that Mr. Chernick was re-arguing the EB-2009-0152 report, but an examination of Mr. Chernick's report shows that he accepted the criteria in that report and conducted an

examination of the applicability of those criteria to the Darlington project. Indeed, in rejecting OPG's proposal the Board found the proposal premature and noted:

The Board is prepared to consider the proposal again in the future, but the Board will expect better evidence in support of the proposal. For example, prior to approval of CWIP, the Board would expect to see more persuasive evidence than was presented in this application as to the benefits for ratepayers in terms of improved credit metrics and rate smoothing. On the latter point regarding rate smoothing, the Board would expect to see additional evidence to support the proposition that ratepayers are better off if they begin to pay sooner for these large multi-year projects. (Decision p.79)

Mr. Chernick's report is a detailed rebuttal to Mr. Luciani's report that OPG filed in support of its claim. Mr. Chernick demonstrated that the benefits to ratepayers that Mr. Luciani claimed were not demonstrated, paying particular attention the very matters the Board cited in its statement reproduced above. Given PWU's support for OPG's position on CWIP it is not surprising that PWU would seek to downplay the value of Mr. Chernick's report. What is surprising is that OPG would suggest that such an assertion by PWU is at all relevant to the question of costs given that the Board's rejection of OPG's CWIP proposal cites several of the very matters discussed by Mr. Chernick.

It is ironic that OPG attacks the cost of Mr. Chernick's evidence but will be able to charge the public through regulatory costs or through its government shareholder for the expense of Mr. Luciani's report, a report that the Board found to be seriously inadequate:

Of greater concern to the Board is the nature of Mr. Luciani's report itself. While his report did not purport to be a review of all US jurisdictions, it was a completely one sided account of the issue as it included only those jurisdictions which had decided to allow CWIP and neglected to mention any that did not. In cross-examination, Mr. Luciani admitted that there were many jurisdictions that had rejected CWIP as a funding mechanism. In the Board's view the contents of his report created a misleading impression about the level of acceptance of CWIP as a mechanism. The Board expects objectivity from independent expert witnesses. (p.78)

Public interest intervenors like GEC cannot afford to take significant risks on witness expenses. We respectfully suggest that OPG's objection is little more than a poorly disguised effort to frighten such intervenors away from presenting evidence in future cases. Given the quality of OPG's expert evidence on CWIP in this case, it is vital that the Board ensure that opposing viewpoints are presented.

Sincerely,

A handwritten signature in black ink, appearing to read "David Poch". The signature is fluid and cursive, with the first name "David" and the last name "Poch" clearly distinguishable.

David Poch

Cc: OPG