



Eric Gould
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VIA EMAIL ONLY:

Mr. Colin Anderson
Director, Ontario Regulatory Affairs
Ontario Power Generation, Inc.
700 University
Toronto, Ontario M5G 1X6

July 14, 2014

RE: Response to Undertaking JT 3.8, File No. EB-2013-0321

Dear Anderson:

The following provides information from Burns & McDonnell Canada and Modus Strategic Solutions Canada ("BMcD/Modus") in response to Undertaking JT 3.8 received in the Technical Conference of the above matter on July 8, 2014. In my July 8, 2014 testimony at the Technical Conference (on transcript pages 100-106), Mr. Sheppard asked me certain questions and I gave an undertaking with respect to BMcD/Modus' Supplemental Report to the Nuclear Oversight Committee, dated June 26, 2014 (the "June 26, 2014 Report"). (July 8, 2014 transcript, p. 103) I agreed I would look at my files to verify whether any recommendations or instructions were in writing. (July 8, 2014 transcript, p. 104).

As per my July 8, 2014 testimony, I did not receive any instructions regarding the June 26, 2014 Report. My search revealed the following communications from OPG which contain recommendations, which are attached: two emails each dated June 16, 2014 from Mr. John Herron, Chairman of the Nuclear Oversight Committee of the OPG Board of Directors enclosing comments he received from OPG management and counsel regarding elements of the June 26, 2014 Report.

The initial draft of the June 26, 2014 Report was provided to OPG management on June 13, 2014. On June 16, 2014, Mr. Herron provided me with the two emails referenced above. These are the only written recommendations that came forward from OPG to me for discussion. I discussed the content of these emails with Mr. Herron, and in that discussion, I rejected most of management's recommendations, and those that were adopted were minor. Per my testimony, I can confirm that these communications resulted in no substantive changes to the June 26, 2014 Report. (See July 8, 2014 transcript, p. 106)

Very truly yours,

A handwritten signature in dark ink, appearing to read "Eric S. Gould", written over a light blue circular stamp.

Eric S. Gould
Partner

Eric Gould

From: John Herron <johnnyfish711@gmail.com>
Sent: Monday, June 16, 2014 4:48 PM
To: Eric Gould
Subject: Fwd: DRP

Eric,

Let's discuss these comments.

John

Sent from my iPad

Begin forwarded message:

From: GINTHER Chris -LAW DIVISION <chris.ginther@opg.com>
Date: June 16, 2014 at 2:30:05 PM EDT
To: "johnnyfish711@gmail.com" <johnnyfish711@gmail.com>
Subject: Fw: DRP

This just in from regulatory counsel. .

----- Original Message -----

From: Keizer, Charles [<mailto:ckeizer@torys.com>]
Sent: Monday, June 16, 2014 01:48 PM
To: MATHIAS Carlton -LAWDIVOPS&AD
Cc: GINTHER Chris -LAW DIVISION
Subject: RE: DRP

I have reviewed the recent Modus report. In general, I think it covers the issues. Although it is still fairly direct with respect to P&M's ability to execute, it does provide some balance by indicating that what P&M normally does is very different from what was expected as part of the execution of the Campus Plan. This will provide a counter argument in the event that an intervenor takes a run at P&M generally. My more specific comments are few:

1. First Paragraph - Executive summary: We have to make sure the rationale for the report is consistent with what is said in the report and what will be said in the evidence to be filed or at the hearing. According to the report the rationale for its preparation was because it was "requested by NOC to provide a Supplemental Report that recaps our role, the oversight activities we are performing and major findings to date while broadening the context for those findings in light of the influx of new members to OPG's Board of Directors ("BOD") and NOC." However, in the hearing we have postponed a panel of witnesses and there is a general impression that the postponement has occurred to carry out analysis and that the issue was of such a concern that the witnesses could not testify in the normal course.

I am OK with the sentence above, but I think it needs to be supplemented with something like "In this regard, a broader context was also important in order to contextualize comments and

recommendations that BMcD/Modus made with respect to the Campus Plan projects as set out in our report dated May 13, 2014."

2. Page 10, first full paragraph: I think that " the refurbishment of Pickering A Unit 1 a decade ago" should be "return to service of Pickering A Unit 1". Pickering was not refurbished.

3. page 16, last paragraph, first sentence: The sentence starts with "Each organization also exhibits a different level of maturity". Is there a different word than "maturity". It sounds like P&M is not as smart or developed. I think it could just be "experience".

That's all I have for now. I will be reviewing again.

Charles
Charles Keizer

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Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: MATHIAS Carlton -LAWDIVOPS&AD [<mailto:carlton.mathias@opg.com>]

Sent: June-16-14 7:32 AM

To: Keizer, Charles

Cc: GINTHER Chris -LAW DIVISION

Subject: RE: DRP

Charles, please see the note attached. I'd suggest that you send your comments directly to Chris and to me. As we discussed on Friday, last Thursday Eric had asked to meet tomorrow (Tues) afternoon to discuss. I need to confirm a time with him. I'll come down to head office from the OEB and you can meet us there. If there's a change base on the attached schedule, I'll let you know.

Carlton

Carlton D. Mathias
Assistant General Counsel
Ontario Power Generation
700 University Avenue H18G25
Toronto, Ontario
M5G 1X6
Tel: 416 592 4964
carlton.mathias@opg.com

-----Original Message-----

From: Keizer, Charles [<mailto:ckeizer@torys.com>]
Sent: Monday, June 16, 2014 7:18 AM
To: MATHIAS Carlton -LAWDIVOPS&AD
Subject: DRP

Carlton,

I reviewed Modus and have a few comments, but not many. What's the process going forward?

Charles Keizer
Torys LLP
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Fax: 416.865.7380
<mailto:ckeizer@torys.com>
www.torys.com

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Ontario Power Generation Inc.

Eric Gould

From: John Herron <johnnyfish711@gmail.com>
Sent: Monday, June 16, 2014 4:49 PM
To: Eric Gould
Subject: Fwd: Solicitor-Client Privileged and Confidential: Consolidation of Comments

Eric,

Let's discuss these comments also.

John

Sent from my iPad

Begin forwarded message:

From: GINTHER Chris -LAW DIVISION <chris.ginther@opg.com>
Date: June 16, 2014 at 1:24:06 PM EDT
To: "John Herron" <johnnyfish711@gmail.com>
Cc: GINTHER Chris -LAW DIVISION <chris.ginther@opg.com>
Subject: **Solicitor-Client Privileged and Confidential: Consolidation of Comments**

John,

In connection with my ongoing legal advice to the NOC, I have prepared the following consolidation of management comments from Finance, Law, Secretariat and Communications. Please note that Dietmar's comments were incorporated in the draft I sent to you last week.

1. At the beginning of the report it uses the phrase "cost overruns". It is the "estimates" that were incorrect. Later, the report uses the phrase "estimate variances" which is much better.
2. Page 2: There is a line about OPG non-project business practices and corporate policies putting the project at risk since it needs to operate differently: please clarify.
3. Page 2: The campus plan used part of contingency. It would be helpful to add a chart showing 10 Billion remains upper limit (high confidence) and the associated LUEC, and what that equates to at 9B and 8B to show it is all still in similar range.
4. Page 2: "certain corporate policies and controls meant to govern may actually create risks to the success of the project". While no significant details are provided in Report #5, in Report #4 this was identified as relating to controls that need to be streamlined to accommodate changes to contracts. This issue is referenced in Report #5 on page 18 under Leadership Changes where it says "intent on correcting the remaining issues around ...overly burdensome and ineffective internal processes and project performance". This point may actually be referring to controls that if removed, may be in opposite direction of the good "challenger" role and the hands-on oversight mindset being recommended. It may be necessary to remove these two references on page 2 and page 18, or clarify.
5. The executive summary in the early pages leaves the impression that the DR team did not have the right approach. Page 2- third bullet, and the Key Events on page 7, suggest that in 2Q 2013 the DR team abandoned "the hands off" and "moves to a more intrusive" oversight of contractions (almost 2 years into the planning stage). The "hands on" approach was one of the major findings of Pickering #4. These references could be taken out of context to suggest that OPG never learned a lesson from P4 if it started DR off on the wrong approach.

6. Pages 6 & 7: Chart suggests that in 1Q 2013 P&M had lessons learned about “schedule overruns” and multiple rejections of design, but in 4Q 2013 initial estimates of “cost overruns” are released by contractors. Is this correct?
7. Page 7: Says Mike Peckham retired but in other parts of report it suggests management took action. Needs to be consistent.
8. Page 16: The section on overall cost impact appears to send mixed messages, between the first and second paragraph. Could the first paragraph clarify that the \$10b overall budget is not at risk as a result of the revised forecasts for the campus plan projects. Is it necessary to refer to the “67% of the increase approved by the Board is due to the campus plan projects....” The % could easily be taken out of context.
9. Page 16: The report generally differentiates the approaches by P&M and DR. For example on page 16 it says “the Refurb project has from the start proceeded with its major EPC contracts using a more direct and intrusive management approach”. However the report is not as clear in the Executive Summary, where there the reader may not see the clear differentiation in the approaches that P&M and DR were using; as a result, a reader may mistakenly assume that DR had not taken learnings from Pickering Unit 4 of needing to provide sufficient oversight.
10. Page 17: There is a reference to the Campus Plan projects being helped by “the year delay in Refurbishment’s breaker open date (from October 2015 to October 2016). It has been October 2016 for a couple of years. A preliminary idea that was not adopted could be taken out of context.

Christopher F. Ginther
Senior Vice President Law, General Counsel and Chief Ethics Officer
Ontario Power Generation Inc.

416. 592. 5081

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