



## Jay Shepherd

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### **BY EMAIL AND PERSONAL DELIVERY**

August 11, 2010  
Our File No. 2010008

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2010-0008 – OPG Payment Amounts**

I am writing this letter both in my individual capacity and as counsel for the School Energy Coalition. Pursuant to the Board's letter dated August 6, 2010, these are submissions with respect to the breach of the Declaration and Undertaking by the undersigned.

We have reviewed the submissions of Board Staff and the Applicant. We have also had discussions with the Applicant about an appropriate sanction for this breach. In those discussions, we proceeded on the basis of three key principles proposed by OPG and agreed by SEC and myself:

1. Release of confidential information, however inadvertent, is a very serious matter. The Board's actions in response must be a strong signal, not only to myself and my client, but also to other parties and other stakeholders within the industry, that the Board has no tolerance for any failure to protect confidential information.
2. Any sanction should not be structured to give a benefit to the Applicant, or provide some tactical advantage. The point of the sanction is to reflect the seriousness of the confidentiality obligation, not to change the dynamics of the underlying proceeding.
3. The person who should be sanctioned is the individual, in this case the undersigned, who personally accepted the obligation to keep certain information confidential. The

sanction should not be directed at the person's client, in this case School Energy Coalition, since it is not their undertaking.

We urge the Board to confirm that these are the appropriate principles upon which to base a sanction for breach of confidentiality.

The Applicant has proposed a substantial fine in the amount of \$5,000, to be paid in the form of a personal payment to the Board to defray some of the costs of this proceeding. I agree that is a suitable sanction, both in terms of the type of sanction, and its quantum. If it is ordered by the Board, I will pay it forthwith out of my own funds. No part of the fine will be borne directly or indirectly by the School Energy Coalition.

The Applicant has also noted that the time spent in dealing with this matter is not eligible for costs. We concur, and have not docketed any of this time.

I want to once again apologize personally for this mistake, and assure the Board that I will take all possible steps to ensure that nothing of the sort ever happens again.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Mark Garner, SEC (email)  
Charles Keizer, Torys (email)  
Michael Millar, OEB (email)  
Violet Binette, OEB (email)  
Interested Parties (email)