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Reply To: Thomas Brett  
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Our File No. 106863

**VIA EMAIL AND COURIER**

Kirsten Walli  
Ontario Energy Board  
2300 Yonge Street  
Toronto, Ontario M4P 1E4  
BoardSec@ontarioenergyboard.ca

Dear Ms. Walli:

**Re: EB-2010-0279**

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In a letter to the Board dated August 5, 2011, objecting to CEEA's cost claim, Mr. Lyle of the OPA noted that the GEC claimed costs of \$70,000.00, while CEEA's claim was \$145,000.00. He further noted GEC's contribution to the proceeding, including provision of expert testimony, and that GEC addressed a similar number of issues to CEEA in its argument.

CEEA's participation in the proceeding differed from that of GEC in at least three ways.

First, on Issues Day, CEEA followed up its letter on issues and put forward a comprehensive and detailed rationale for extending the ambit of the hearing from previous years. In its subsequent decision on the Issues List and related comments, the Board appeared to adopt the bulk of CEEA's analysis of the proper scope of the hearing.

Second, CEEA's final argument did, contrary to Mr. Lyle's letter, cover several topics that GEC did not cover, including:

- A detailed analysis of the OPA's non-compliance with ministry directives.
- The culture of conservation (as an example of the lack of real milestones).
- The integration of conservation into load forecasting (as an example of lack of transparency).
- A failure in execution of the LDC-OPA CDM program (management failure).

- The failure to address performance-based conservation (which goes to the quality of the OPA's programming, the cost-effectiveness of its programs, and the outreach to outside centres of expertise in CDM in Canada).
- Co-ordination of Electricity and Gas CDM (goes to overall program cost-effectiveness and coherence).
- Detailed analysis of the requested resources (which goes to budgets, transparency and management).

The Board subsumed all of those issues, as well as those issues on which both CEEA and GEC made submissions, including the integrity and acuity of the planning, the resource budget, the third party audit, and the proper use of milestones and targets in two issues. First, resources, budgets, milestones, resource planning; and second, transparency, accountability, management competency, stakeholder engagements. CEEA addressed explicitly, or provided examples to illuminate aspects of, these two broad issues.

While length of argument does not always equal virtue, CEEA's argument was forty pages in length, twice the length of the GEC argument, reflecting the detailed analysis CEEA provided of the various facets of each of the major issues, as articulated by the Board in its decision.

One of the experienced, regular, consumer group intervenors, whose identity I cannot provide because of confidentiality, sent CEEA a note after reading all of the arguments to the effect of - "Congratulations. I have read all the arguments and CEEA's is much better than any of the others".

All of that said, these remarks are intended as a reply to Mr. Lyle's carefully worded attack on CEEA's cost submission, not a criticism of Mr. Poch's argument on behalf of GEC. CEEA respects Mr. Poch's experience, acuity, and track record in arguing the case for more and better conservation programming over many years. We agree with his analysis. In some ways, our arguments compliment one another. Knowing what areas, GEC would be focusing on in its argument, we chose to support but not restate GEC's position especially with respect to Mr. Neme's evidence.

CEEA made a conscious decision to make a major intervention in this case, on the basis that it concluded that OPA had not been successful in implementing the CDM part of its mandate, and there needed to be a course correction. The experience of CEEA, in particular their consultant, Marion Fraser, one of the recognized experts in CDM in Ontario, and one of the few people with first-hand knowledge of the institutional history of the OPA and its relationship with various energy ministers and the government, and its counsel, Tom Brett, who has had direct experience with CDM over many years as a lawyer, business executive, senior federal government official, and founding chair of the Canadian Association of Energy Service Companies contributed to the breadth and strength of its argument.



We would like to think that our argument provided a helpful roadmap for the Board and, hopefully, the OPA itself, with respect to areas of management and resource planning that need to be tightened up and focused, and made more open, and responsive to the community. Nothing less will do if the OPA is to deliver on its CDM mandate.

As a final comment, if the number of interviews OPA officials are giving to the newspapers is any indication, the Board may already be seeing a positive reaction by the OPA to its decision and to the proceeding generally.

Yours sincerely,

**FOGLER, RUBINOFF LLP**

A handwritten signature in cursive script, appearing to read 'Tom Brett'.

Thomas Brett

TB/dd