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BY EMAIL and RESS

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Our File: EB20130321

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0321– OPG 2014-15 – Draft Issues List and Confidentiality

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 1, these are SEC’s submissions with respect to the Draft Issues List and Ontario Power Generation’s (“OPG”) request for confidentiality status over certain information.

Issues List

2. Rate Base

SEC proposes the following additional issue:

2.X Is the methodology for calculating the initial rate base of the newly regulated hydroelectric facilities appropriate?

Pursuant to the proposed amendments to Regulation 53/05, certain unregulated OPG hydroelectric facilities are expected to become rate regulated. OPG is seeking payment amounts for those facilities effective July 1, 2014. Unlike when OPG was first rate regulated, the Board is not bound by section 6(2)5 of Regulation 53/05, which required the Board to accept the net fixed amounts of as set out in its then most recent financial statements. This is because the Board is not making its “first order under section 78.1 of the OEB Act”.^{1,2} The initial methodology

¹ EB-2007-0905, *Decision with Reasons*, dated November 3, 2008 at p.133

² O.Reg 53/05, s.6(2)5

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to determine the rate base for the newly regulated hydroelectric facilities is at issue in this proceeding and should be made a distinct issue.

4. Nuclear

4.9 Are the commercial and contracting strategies used in the Darlington Refurbishment Project reasonable?

SEC has had the opportunity to review the submissions of Board Staff which questions the appropriateness of issue 4.9. While SEC agrees there are some unanswered questions that will need to be addressed, the issue should remain on the Issues List.

The Darlington Refurbishment Project (“DRP”) when complete is projected to cost \$10.8 billion (excluding interest and escalation).³ It is the largest, by a significant margin, capital project the Board will ever have reviewed. SEC submits it would be in the best interest of both OPG and ratepayers for the Board to review the commercial and contracting strategies of OPG at this time. This would allow for the Board to learn about the project so as to provide OPG with appropriate feedback to minimize potential ratepayer and shareholder costs if it believes the commercial and contracting strategies are not appropriate. While OPG have awarded a number of major projects already, several remain to be awarded over the next few years.⁴

If the DRP is reviewed in its entirety for the first time when it fully goes into rate base, the Board may be limited in how extensive its prudence inquiry can be. This is because the presumption of prudence only allows consideration of information that the regulated utility knew or ought to have known, at the time it made its decision to proceed with a capital project (in this case, the awarding of a specific DRP contract).⁵ A review of the commercial and contract strategies of the DRP in this proceeding should help inform OPG about what it should have known was reasonable when it awards its remaining large contracts.

5. Production Forecasts - Nuclear

SEC proposes the following additional issue:

5.X Are the estimates for planned outages reasonable?

OPG in its December 6 update has materially increased its forecasted nuclear planned outages.⁶ SEC believes that the estimates for planned outages should be a discrete issue because of its significance.

11. Methodologies for Setting Payment Amounts

SEC proposes the additional of following two issues to issue 11 and the overall issue be re-named, *Methodologies and Design of Payment Amounts*.

³ Ex. D2/2/1/Attachment 5/p.1

⁴ Ex.D2/2/1/p.30

⁵ See *Power Workers' Union (Canadian Union of Public Employees, Local 1000) v. Ontario (Energy Board)*, 2013 ONCA 359 at para.16. Leave to Appeal to SCC sought.

⁶ Ex. N1/1/1/p.12

11.X Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?

SEC submits that the Board should include a specific issue regarding the design of the payment amounts as the Board has in previous proceedings. The determination and design of the payment amounts does not only become an issue because an applicant wants it to be, for example, by proposing a change. It is an issue in the proceeding because it is a fundamental component of the Board's statutory mandate to set just and reasonable payment amounts. The Board has agreed with this approach in previous proceedings.⁷

11.X To what extent, if any, should OPG implement mitigation of any rate increases determined by this Board? If mitigation should be implementing, what is the appropriate mechanism that should be used.

OPG is seeking a very significant increase to payment amounts and mitigation may be appropriate similarly to what the Board has done with electricity distribution rates. OPG itself has proposed mitigation measures in the past because it "recognizes that the revenue requirement increase over the current payment amounts is significant and will have an impact on electricity consumers."⁸ SEC therefore submits that the Board should include an issue that would allow parties to explore the issue of potential rate mitigation.

Confidentiality

SEC has reviewed the material OPG seeks confidential status and does not object to such treatment in so far as they are consistent with what the Board granted in EB-2010-0008 and the Board's *Practice Direction on Confidential Filings*.

One specific redaction that SEC believes is not appropriate is page 10 of Ex.D2/2/1/Attachment 5. SEC sees no reason why information on other nuclear refurbishments, presumably which OPG got from non-confidential sources, should be redacted.

All of which is respectfully submitted.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and Intervenors (by email)

⁷ EB-2010-0008, *Decisions and Orders on Confidential Filings and Issues List, and Procedural Order No. 3*, dated July 21, 2010 at p. 20

⁸ EB-2007-0905, Exhibit K1-1-2 at p.1 and EB-2007-0905, *Decision with Reasons*, dated November 3, 2008 at p.167