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**BY EMAIL and RESS**

March 31, 2014  
Our File No. 20130321

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-2013-0321 – OPG 2014-2015 Payment Amounts – Issues Prioritization**

We are counsel for the School Energy Coalition. Further to Procedural Order #4, this letter represents SEC's submissions on the prioritization of issues for an oral hearing. In SEC's submission, it is premature to designate specific issues as requiring oral evidence, or not. The Board's processes will be better assisted, in our view, if the parties propose issues prioritization after the Settlement Conference.

SEC share's the Board's desire to ensure that the oral hearing in this matter is efficient, and time is not wasted on issues that either a) have little material impact on the Applicant or ratepayers, or b) have been fully canvassed through the discovery process.

However, we are currently at an early stage in the process. While interrogatory were to be responded to by March 19<sup>th</sup>, only partial responses were filed that day, with the complete responses not being filed until March 26<sup>th</sup> (and not available to parties until the 27<sup>th</sup>). Even with a team of three people, SEC will be stretched to review more than 4,600 pages of responses before the April 14<sup>th</sup> date to provide a list of Technical Conference issues. Further, that review will be focused on identifying areas in which further discovery is required. At the Technical Conference, further information will be provided, some of it likely in undertakings to be received by May 2<sup>nd</sup>.

Notwithstanding the Board's Letter on November 11<sup>th</sup> 2011, SEC submits it is not possible for an intervenor to assess whether discovery has fully canvassed an issue until the discovery process is complete. In addition, a determination of whether an issue could have a material impact cannot, in most cases, be made until discovery is complete, and the impacts of the issue can be assessed.

The Applicant has already provided its list of proposed "primary issues", but that list clearly is not approached from the point of view of what issues will likely have to be addressed in an oral hearing. By



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way of example only, the Applicant has proposed that the following issues should not be considered primary:

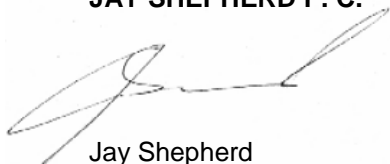
1. **All of the General issues 1.1 – 1.4.** It would appear to us there is little doubt that economic business planning assumptions, for example, will be a key element of the oral hearing, as they underlie all of the Applicant's revenue and expense forecasts. Similarly, prior Board orders, and whether the Applicant has followed them, are bound to come up in many areas. With the impact of the pension issue alone, it can be predicted that the Board will want to hear evidence on USGAAP conversion, and there will likely be other areas as well. Finally, central to the entire hearing will be whether the payment amounts are just and reasonable, so it is hard to imagine that issue 1.4 could be considered secondary, and would be ignored entirely in the oral hearing.
2. **All of the Cost of Capital issues 3.1 - 3.2.** The inclusion of the newly regulated hydroelectric facilities obviously raises the issue of equity thickness, and the debt rates of the Applicant are always a concern. Both of these issues have an impact of many hundreds of millions of dollars on revenue requirement, so unless they are settled we expect that the Applicant's positions will need to be tested through cross-examination.
3. **Capital Spending issues 4.2 and 4.6.** The biggest single impact on the payment amounts is the Applicant's significant capital spending plan. To say that capital spending plan should not be considered a primary issue is hard to fathom.

These are provided only by way of example. OPG also submits that all of Operating Costs (except compensation), all of the Production Forecasts, Other Revenue, Nuclear Waste Management and Decommissioning, all of the Deferral and Variance Accounts, Incentive Regulation, Mitigation (of a 30% rate increase) and Effective Date should all be considered secondary. We could make similar arguments about each of those, and all will have significant components that are contentious and need to be tested through cross-examination.

SEC believes that, after discovery is completed, and especially once the ADR has taken place, it will be possible for the parties to scope the issues on the Issues List, and then provide submissions to the Board so that the hearing is focused and efficient. However, in our submission it is not possible to do that today. As can be seen from OPG's proposals, any attempt to do so will inevitably prevent the Board from hearing necessary evidence on material issues.

All of which is respectfully submitted.

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



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties