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BY EMAIL and RESS

May 28, 2014
Our File: EB20130321

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: EB-2013-0321 – Ontario Power Generation 2014-15 Payment Amounts –
Technical Conference Undertaking Confidentiality Request**

We are counsel to the School Energy Coalition (“SEC”). These are SEC’s submissions with respect to Ontario Power Generation’s (“OPG”) request for confidentiality treatment over certain undertaking responses. While Procedural Order No. 9 provided interveners with the opportunity to provide submissions by May 26th, SEC only received copies of the unredacted undertaking responses from OPG yesterday afternoon.

OPG is seeking confidentiality treatment over Attachment 1 to undertaking response JT2.34 on the grounds that it is a) confidential advice to government, and b) the information may also be used by OPG during the next round of collective bargaining so disclosure may prejudice its position.

SEC submits that on the basis that it is advice to government, it should not be accorded confidentiality treatment. While the document may be titled “Confidential Advice to Government”, it does not actually provide any “advice or recommendations” to government, even under the broadest of interpretations of the word advice (see *John Doe v. Ontario (Finance)*, 2014 SCC 36). The document is simply a summary of the financial impacts of OPG’s concluded collective agreement with the PWU. Further, section 13(2)(a) of the *Freedom of Information and Protection of Privacy Act*, specifically excludes from the section 13(1) advice to government exemption, information that contains “factual material”.

With respect to the grounds that disclosure may prejudice future rounds of collective bargaining with the PWU, at this point it is not clear from the information OPG has provided how this would be the case. The document will be of some importance at the oral hearing, and unless there is

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evidence of likely harm from disclosure, it should be place on the public record. It would be helpful if OPG in its reply submissions provided more information to substantiate its claim. If the Board finds that disclosure could prejudice future collective bargaining based on further information from OPG, then SEC would support the request for confidentiality treatment.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

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