

May 28, 2014

**EMAIL AND RESS**

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
27th Floor, 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-203-0321 – OPG 2013/2014 Payment Amounts – Issues Prioritization**

We are counsel to the applicant, Ontario Power Generation, in the above-noted matter.

We are writing in response to counsel for the School Energy Coalition's letter of May 26th. For the reasons discussed below, it is OPG's position that there is no basis for the Board to reprioritize any of the issues in this case and SEC's request to do so should be dismissed.

SEC says that its request arises because, "during the course of the ADR process, there are deeper dialogues about many of the issues... resulting in a clearer picture of what still has to be put on the record." There are at least two problems with this assertion. First is the fact that discussions during a Board approved settlement conference – whatever those discussions may relate to – are confidential. Explicitly or implicitly they cannot form the basis of a submission to the Board for relief absent some claim of improper conduct which has not (and could not) be made here. The Board's Rules of Practice and Procedure and its Settlement Conference Guidelines are perfectly clear on this point. On this basis alone, SEC's request should be dismissed.

Second is the suggestion that SEC was not in a position to comment on the prioritization of issues at an earlier date. In fact, SEC's letter amounts to little more than an attempt to re-litigate the Board's decision in Procedural Order No. 9. The relevant history is set out below:

- On February 19, 2014, the Board issued Procedural Order No. 3 and the final, unprioritized issues list.
- On March 21, 2014, the Board issued Procedural Order No. 4, making provision for submissions on categorizing issues into primary and secondary issues following the interrogatory process. At that time, SEC, among a number of intervenors submitted that, due to the volume of interrogatory responses, issue prioritization would be more appropriate following the technical or settlement conference.

- On April 3, 2014, the Board issued Procedural Order No. 5 providing for the filing of additional submissions on issues prioritization following the technical conference and the filing of the unrelated undertakings.
- Pursuant to Procedural Order No. 5, on May 7, 2014 a submission was filed by AMPCO, CCC, CME, Energy Probe, LPMA, SEC and VECC (collectively, the "Group of Intervenor"). In their submission, the Group of Intervenor advised that they had "jointly reviewed the final issues list to exchange views and identify issues which they consider to be primary or secondary". Of the nine issues referred to in SEC's recent letter, the Group of Intervenor argued that most should be classified as primary issues by the Board.<sup>1</sup>
- The Board disagreed with the Group of Intervenor and their submission on issue prioritization. By Procedural Order No. 9, the Board rendered its decision on the Final Issues List (Prioritized). The Board held that each of the issues referred to in SEC's letter should be designated as secondary.

On the basis of the above, SEC is plainly wrong that none of its submissions relating to the alleged need for oral evidence were made by intervenors earlier. The best that could be said is that SEC has not used the precise words used by the Group of Intervenor in their prior submissions. This is a distinction without a difference. It is not a basis for a request that the Board review and vary its earlier decision under rule 44 or otherwise. This is particularly the case given that the evidence referred to in SEC's letter – the answer to interrogatories, technical conference transcript and undertakings – were available at the time the parties made their submissions on the Issues List. SEC essentially concedes as much in its letter. For example, despite claiming, in relation to issue 6.13, that OPG had "recently disclosed" an operating loss, the actual disclosure referred to is OPG's answer to Board Staff IR 166 which was provided by OPG six weeks before the Group of Intervenor filed their submission.

For all of the above reasons, OPG submits that SEC's request should be dismissed by the Board.

Yours truly,



Crawford Smith

CS/tm

Enclosure

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<sup>1</sup> Issues 4.6, 4.8, 5.2, 8.1, 8.2, 9.7 and 9.9, with only issues 6.13 and 7.2 proposed as secondary.