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BY EMAIL and RESS

May 28, 2014
Our File No. EB-2013-0321

Ontario Energy Board
2300 Yonge Street
27th 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. We have reviewed the submissions from OPG filed this afternoon, and wish to offer the following three comments by way of reply.

First, OPG appears to argue that the Board should refuse SEC's request because we have somehow breached settlement privilege. If this is what OPG is alleging, it is false, and OPG knows it to be false. Nothing in our letter of May 26th disclosed confidential material of any type, let alone anything that breaches settlement privilege. The reason OPG knows this is that we circulated a draft of our letter to all parties well in advance of filing it, and counsel for OPG reviewed it before it was filed. Neither OPG nor any other party complained that there was any information in our letter that breached settlement privilege. There is good reason for that. There is no such information in the letter.

Perhaps what OPG is proposing is an expansion of settlement privilege - to prevent parties from being informed by the settlement discussions. ADR is usually the first time parties have a comprehensive discussion about the issues, so during the course of ADR parties understand better the positions of others, and the disagreements within each issue. It is one of the benefits of ADR. What OPG says is that we can't use that better understanding to propose a better procedure for the hearing. Presumably, we also can't use that better understanding to focus our cross-examination on the real issues in dispute, or target our argument at the things that really matter. We have to pretend that we are still in the dark about what is really going on.

That is not consistent with the Board's rules (which are, in fact, "perfectly clear"), nor with the general law relating to settlement discussions. Thus, if in fact OPG is proposing to expand the

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scope of settlement privilege, the Board should reject that proposed expansion.

Second, OPG argues that SEC is repeating its previous submissions, just with different words. This is incorrect. Any comparison between the rationales given in our May 26th letter, and the rationales in the joint intervenor letter of May 7th, will demonstrate that the reasons we are providing now are substantively different on virtually every issue. We understand the issues better, and therefore we understand the need for oral evidence, in some cases, better.

Third, what OPG is really proposing is a victory of form over substance. OPG is arguing that the Board has already made a determination as to the procedure for this hearing, and should now treat that as set in stone, even if in fact the Board would benefit from oral evidence on items that have been designated as secondary. The only way the Board can change its procedure for the hearing now, says OPG, is through a Motion to review PO #9.

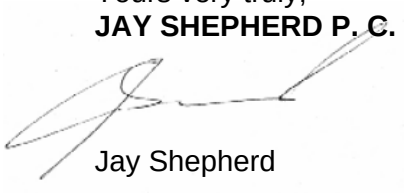
This, in our submission, fundamentally misunderstands the nature of procedural decisions during a proceeding, and the extent of the Board panel's power to control its own process. The Board makes procedural decisions throughout a proceeding, sometimes many of them. The fact that the Board makes a procedural decision does not mean that the Board cannot revisit that decision at any time. It also does not mean that some formal process is required to make a change. The procedure for this case is, each day, fully within the discretion of the Board panel, who can make any change they want, any time they want.

The reason a Board panel must have broad discretion to control its process is that the Board panel has to make the ultimate decisions on the issues. To do so, the Board panel has to assess, on an ongoing basis, how it can best get the information it needs to make those decisions. While they may prefer to achieve consistency, and even finality, in their procedural decisions, no Board panel that we have seen has been willing to let those goals get in the way of ensuring that they have the best information available to them when they decide the issues.

OPG is arguing that the finality of a procedural order should take precedence over the Board's need to have the optimum evidentiary record. This is contrary to the Board's normal practice, and would in our submission be a step backward. The Board benefits from its relative flexibility on procedure, and should not give up that benefit to adopt the excessive formalism OPG proposes.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties