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Our File No. 211923
Date December 23, 2014

SUBMITTED VIA RESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Suite 2700
Toronto, Ontario M4P 1E4

Attention: Kirsten Walli, Board Secretary

Re: Greenfield South Power Corporation
Application for CPCN
EB-2014-0299

We are counsel to Greenfield South Power Corporation ("**Greenfield South**") in respect of the above-noted matter. This letter is in response to the letter from counsel to Union Gas Limited ("**Union**") dated December 19, 2014 in which Union requests that the Board reverse portions of Procedural Order Nos. 1 and 3. Specifically, Union seeks an Order permitting it to cross-examine witnesses during the oral hearing, despite acknowledging that the Board has already ruled that the parties shall follow a written discovery process.

Union should not be permitted a second kick at the can in challenging Greenfield South's evidence. Union had the opportunity to ask an unlimited number of interrogatories to Greenfield South, including on the factual issues set out in its letter. In fact, Union sought and received an extension of time to consider Greenfield South's evidence and prepare its interrogatories. Greenfield South delivered comprehensive interrogatory responses on November 28, 2014, nearly a month ago. Union has never taken the position that Greenfield South's answers were deficient in any way. All of the factual issues identified by Union have already been addressed in interrogatories.

Reversing the procedure at this late stage would seriously prejudice Greenfield South. Greenfield South conducted itself in reliance on the process set out by the Board, and proceeded on the understanding that its only opportunity to challenge Union's evidence would be through the interrogatories. If Greenfield South knew that cross-examinations would be conducted at the oral hearing, it would not have filed such extensive interrogatories that reveal the strategy that Greenfield South would take on any cross-examination well in advance of the hearing. It would be fundamentally unfair to allow Union to deliver interrogatories under the expectation that it would have a second opportunity at the oral hearing, while Greenfield South filed its complete interrogatories on the understanding that it would have no such opportunity.

Union relies on Procedural Order #4 in EB-2012-0365 ("**Dufferin Wind**"), which has no application to this case. In Dufferin Wind, the Board had not yet ruled on whether there would be oral or written discovery and no interrogatories had been delivered; this was the Board's initial decision on the matter, similar to Procedural Order #1 in the present Greenfield South case. Further, the Board was deciding whether to have written or oral *final argument*, not whether to allow oral cross-examinations during the hearing. In any event, the Board in Dufferin Wind concluded that a written, not oral, process was the appropriate one.

Most importantly, cross-examinations are not required for the fair and just determination of this matter. The mere fact that the parties' evidence and conclusions differ does not mean that cross-examinations are needed. Union is free to argue in its oral argument that the Board should prefer Union's evidence or conclusions to Greenfield South's or give Greenfield South's evidence less weight.[1] There is a comprehensive written record before the Board that will allow the Board to fully consider all of the material issues in this application. The Board has already determined through its previous procedural orders, after input from the parties (including a prior Union request for a full oral hearing), that a written discovery process is most appropriate, particularly given the urgency of this matter.

Greenfield South therefore requests that the Board refuse to reverse the portions of its Procedural Orders to allow cross-examination during the oral hearing.

Yours truly,

Mike Richmond

via email:

Union Gas Limited
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Ontario Power Authority
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[1] As the Board stated in the Dufferin Wind decision cited by Union:

> "[Intervenor] has identified a number of issues which it proposes to address in an oral hearing: the status of negotiations with landowners; the proposed forms of agreement; [applicant's] financial position; the status of other regulatory approvals. These issues have been addressed in the applicant's evidence. In addition to the pre-filed evidence, all intervenors have had the opportunity to submit written interrogatories on these issues, and the applicant has answered them. Intervenors may address these matters in final written argument."