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BY EMAIL and RESS

August 23, 2016
Our File: EB20160152

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0152 – OPG 2017-2021 – Request For Access To Redacted Transcripts

We are counsel to the School Energy Coalition (“SEC”). We write to request the Board make available in this proceeding, unredacted copies of certain oral hearing and technical conference transcripts, related to the Darlington Refurbishment Project, that were redacted in Ontario Power Generation’s (“OPG”) previous payment amounts proceeding (EB-2013-0321) because they contained confidential information. Further, SEC requests the Board set up a process to determine if the redactions, in whole or in part, are still warranted pursuant to the *Practice Direction on Confidential Filings* (“*Practice Direction*”).

Background

In OPG’s last payment amounts proceeding (EB-2013-0321), the Board ordered on the request by OPG, for various reasons, that certain evidence submitted by OPG relating to the Darlington Refurbishment Project, including pre-filed (and updated) evidence, interrogatories, and undertaking responses, be accorded confidentiality treatment pursuant to the *Practice Direction*.¹ The Board also ordered that portions of both the technical conference and oral hearing that related to the confidential materials (and those subjects) be held in camera, and their transcripts be redacted.

While SEC, and other intervenors, will have the opportunity during the interrogatory stage of this proceeding to request that OPG provide certain materials that it filed and that received confidentiality treatment in the previous payment amounts proceeding, it is not able to do so regarding the transcripts. It is the Board, not OPG that has control over the transcripts.

Specifically, SEC seeks full access to the following portions of transcripts which relate to confidential Darlington Refurbishment Project information which were redacted:

¹ See for example, EB-2013-0321, Tr.12, p.31-34, *Decision and Order on Confidential Filings and Procedural Order No.13* (EB-2013-0321), August 13 2014; *Decision and Order on Confidential Filings and Procedural Order No.4* (EB-2013-0321), March 21 2014

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- Technical Conference, Day 2² (July, 9 2014)
- Oral Hearing, Volume 15 (July 17 2014)
- Oral Hearing, Volume 16 (July 18 2014)

Transcripts Are Relevant To The Current Proceeding

The redacted portions of the transcripts are clearly relevant as they relate to approvals being sought in this proceeding. OPG is seeking approval in this proceeding for in-service additions of \$5.54Bn³, and an additional \$126.9M⁴ in OM&A expenses, related to the Darlington Refurbishment Project. The confidential portions of the transcripts from both the technical conference and oral hearing should be made available to parties in this proceeding, so that they can be reviewed and, if needed, be put to OPG in interrogatories and cross-examination, as all non-confidential information would be.

The Board granted confidentiality status and redacted certain portions of the transcripts in the last proceeding related to the Darlington Refurbishment Project on two primary grounds. First, they related to the cost of the project and contracting strategies.⁵ At the time of the last proceeding, OPG had not finalized its contracts so issues related to contingency amounts, and specific costs, required confidentiality or there would have been harm to its negotiating positions. Ultimately, the Board determined in its decision that it would make no findings on these issues at that time and that it was for a future proceeding.⁶ This is that proceeding. OPG has now finalized its contracts and is seeking approval of the cost consequences of them. Insofar as they are related to aspects of the project in-service in the test period it does not appear there is any need for this information to remain confidential.

Second, confidentiality was also sought and granted on the basis that it relates to evidence about a specific Burns & McDonnell /Modus Strategic Solutions Report in which there are comments about issues related to specific vendors, and individuals, who were (and are likely still) carrying out work on the project.⁷ OPG has filed a follow-up report in its pre-filed evidence in this proceeding.⁸ Confidentiality was granted because of the potential harm to the ongoing relationship with these vendors from public disclosure of this information at that time as well as potential reputation harm to specific individuals.⁹ Since the work is still on-going or still requiring approval in this proceeding, this information is relevant to the proceeding. The Board referenced the concerns in its denial of the approval of the contracting strategies sought in the proceeding, because those reports were about “project execution and raised concerns including the impact on Darlington Refurbishment schedule and costs”.¹⁰

SEC submits the confidential and redacted portions of the transcripts are relevant to this proceeding, and without the Board providing copies of them to intervenors, they are not accessible for review and use.

All of which is respectfully submitted.

² Day 2 of the second set of the Technical Conference. The Board held a second set of technical conferences due to the filing by OPG in the middle of the oral hearing of new and updated evidence regarding the Darlington Refurbishment Project.

³ \$4.8Bn related to Unit 2 refurbishment, an additional \$743.1M related to other unit refurbishment in-service projects. (See Ex. D2-2-1, p.6)

⁴ Ex.D2-2-1, p.6

⁵ EB-2013-0321, Tr.12, p.5-7; Tr.12, p.31-34 (Decision)

⁶ *Decision with Reasons* (EB-2013-0321), November 20, 2014, p.64

⁷ EB-2013-0321, Tr.12, p.7-8; Tr.12, p.31-34 (Decision)

⁸ Ex.D2-2-8, Attach 2

⁹ *Ibid*

¹⁰ *Decision with Reasons* (EB-2013-0321), November 20, 2014, p.64

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

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