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BY EMAIL AND RESS

December 8, 2016
Our File: EB20160152

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0152 – OPG 2017-2021 – Undertaking Responses Confidentiality Request

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 5, these are SEC's submissions regarding Ontario Power Generation's ("OPG") request for confidentiality over certain undertaking responses.

SEC has concerns with respect to the request for confidential treatment over Attachment 2, to Undertaking JT 1.7, a document titled, *Cost Estimate Classification System – As Applied In Engineering, Procurement, and Construction For the Process Industries (AACE International Recommended Practice No. 18R-197)*.

The document is the AACE International Inc ("AACE") guideline for cost estimating and budgeting framework that has been utilized by OPG in the Darlington Refurbishment Project ("DRP"), and referenced as the industry standard by both its own expert, Dr. Galloway¹, and the Board's Staff's expert, Schiff Hardin.²

SEC understands the basis for the request of confidential treatment is that AACE does not allow disclosure since its recommended practice guides, as well as its other publications, are either sold individually or are a perk of membership.³

The issue in this proceeding is that this document has been relied upon heavily by OPG⁴, third-parties it has retained in the planning process⁵, and both its own and the Board's Staff's expert. It will

¹ *Testimony of Dr. Patricia D. Galloway on behalf of Ontario Power Generation Inc.*, Exhibit D, Tab 2, Schedule 11, Attachment 3, p.23-24

² *Darlington Refurbishment Project Report to Ontario Energy Board*, (Schiff Hardin), Exhibit M1, p.16-17

³ See JT 1.7, Attachment 1; Exhibit L, Tab 4.3 Schedule 15 SEC-028(a)

likely be referenced during cross-examination. If this document is accorded confidential treatment then this will potentially require a significant part of the DRP portions of the proceeding to be held in-camera.

SEC submits that if the issue is that AACE does not want the document to be available free of charge to any member of the public that would normally have to pay to have access to the document, then the problem is solved by limiting access to it while not making it confidential. This can be done by, for example, not posting it on the Board's online webdrawer as would normally be the case. This has the benefit of preserving the economic value of the document for AACE by practically limiting who can reasonably access it, while allowing references to it in argument and cross-examination to be public.

If the Board disagrees and does provide confidential treatment to the document, SEC requests clarification on the scope of what is specifically confidential. Is it anything contained within the document or is it only the document itself? For example, there are many references through the evidentiary record to date on AACE cost estimate classes and their accuracy range. Would it be permissible for parties, during cross-examination, to discuss with the witnesses on the public record the detailed descriptions of the estimate classes that are detailed in the document, without putting the document itself to the witnesses? The line between what is confidential and what is not in this instance is not clear. SEC requests guidance from the Board and OPG on this matter.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

⁴ For example see, Exhibit D2, Tab 2, Schedule 8, p.2-8, 11-13; Exhibit L, Tab 4.3, Schedule 15 SEC-032, Attachment 1, p.16; Exhibit L, Tab 4.3 Schedule 15 SEC-033 Attachment 4, p. 4 Exhibit L, Tab 4.3, Schedule 15 SEC-033, Attachment 4, p.19; Exhibit L, Tab 4.3, Schedule 1 Staff-072 Attachment 2, p.18; Exhibit L, Tab 4.3, Schedule 15 SEC-029 Attachment 1, p.6; Exhibit L, Tab 4.3, Schedule 15 SEC-029 Attachment 1,p.8; Exhibit L Tab 4.3, Schedule 1 Staff-072, Attachment 13, p.2; Exhibit L Tab 4.3, Schedule 1 Staff-072, Attachment 19, p.4; Exhibit L, Tab 4.3, Schedule 1 Staff-072, Attachment 27; Exhibit L, Tab 4.3, Schedule 1 Staff-073, Attachment 5, p.280; Exhibit L, Tab 4.3-1 Staff-048, Attachment 24, p.31; Exhibit L, Tab 4.3, Schedule 2 AMPCO-044(b); Exhibit L, Tab 4.3, Schedule 2 AMPCO-044, Attachment 1, Page 8 of 58; Exhibit L, Tab 4.3, Schedule 1 Staff-072, Attachment 11, Page 6; Exhibit L, Tab 4.3 Schedule 2 AMPCO-076, Attachment 1, p.19; Exhibit L, Tab 4.3, Schedule 2 AMPCO-076, Attachment 3, p.31; Exhibit L, Tab 4.3. Schedule 15 SEC-022. Attachment 2, Tab 2, p.2; Exhibit L, Tab 4.3, Schedule 2 AMPCO-076, Attachment 4; Exhibit L, Tab 4.3, Schedule 15 SEC-022, Attachment 2, Tab 1, p.1; Exhibit L, Tab 4.3, Schedule 15 SEC-022 Attachment 2, Tab 3, p.9; Schedule 15 SEC-022, Attachment 2, Tab 7, p. 6; Exhibit L, Tab 4.3, Schedule 15 SEC-022, Attachment 2, Tab 7, p.17; Exhibit L, Tab 4.3, Schedule 15 SEC-022, Attachment 2, Tab 16, p.8; Exhibit L, Tab 4.3, Schedule 15 SEC-022, Attachment 2, Tab 16, p.48; Exhibit L, 4.3, Schedule 15 SEC-022, Attachment 2, Tab 23, p.28 Ex. L-04.3-1 Staff-048, Attachment 23,p.5-6; Ex. L-04.3-1 Staff-048, Attachment 24, p.18-19; Exhibit L, Tab 4.3 Schedule 1 Staff-068, Attachment 1, p.8-11; Exhibit L Tab 4.3 Schedule 20 VECC-015; Exhibit L, Tab 4.3, Schedule 15 SEC-029, Attachment 1, p.55; EB-2016-0152, Exhibit L Tab 4.3, Schedule 1 Staff-072, Attachment 10, p.2

⁵ For example, Exhibit L, Tab 4.3, Schedule 1, Staff-072, Attachment 1, p.13, 56, 60-64 (Burns & McDonald, Modus Strategic); Exhibit D2-2-8, Attachment 4, p.12 (Burns & McDonald, Modus Strategic) ; Exhibit D2-2-8, Attachment 2, p.8, 9, 31, 36 (KPMG) (Expert Review Panel); Exhibit L, Tab 4.3 Schedule 1 Staff-072 Attachment 25 Page 27 (Mike White CALM Management Consulting, Inc.)

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