

August 26, 2024

VIA RESS

Ms. Nancy Marconi
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ONTARIO ENERGY BOARD
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Dear Ms. Marconi:

Re: EB-2024-0063 – Generic Proceeding to Consider Cost of Capital Parameters and Deemed Capital Structure.

Redactions on the Basis of Relevance: SEC Interrogatory M4-0-SEC-84.

We write as counsel to IGUA herein, and in respect of the presentation of Dr. Sean Cleary's evidence in this proceeding as counsel for AMPCO as well.

Request for Confirmation of Non-Relevance

In one of its interrogatories to Dr. Cleary SEC asked as follows:

Please provide a copy of the retainer agreement and any [sic] all the instructions provided to Dr. Cleary.

With our interrogatory response filing we provided, as an attachment in response to this request, the agreement between IGUA and Dr. Cleary for his work in this case. In preparing to do so we also spoke with legal counsel for SEC regarding the intended focus of the interrogatory, to confirm our assumption that the focus was not on the financial terms of the retainer agreement, but rather on the nature of the instructions provided.

On that basis, we redacted the payment amounts from the version of the retainer agreement filed. In particular, information that would allow derivation of the agreed to hourly rate, milestone payment percentages, and an additional dollar amount provided for research support were redacted. Filed with this letter is a second copy of the retainer agreement filed in redacted form as an attachment to the SEC interrogatory, with the redacted information legible but indicated on this second copy, pursuant to section 11.1.1 (a) of the Board's *Practice Direction on Confidential Filings (Practice Direction)*.

We have confirmed with counsel to SEC that the details which we have redacted are not sought. These details have no bearing or relevance to the instructions provided, which we have been advised

was the intended focus of the interrogatory. Accordingly, we request that the OEB confirm that the information redacted from the publicly filed version of this document is not relevant to its deliberations, as contemplated by section 11.1.3 of the OEB's *Practice Direction on Confidential Filings*.

We note, in addition, that the redacted information is commercially sensitive (i.e. if made public could impede Dr. Cleary's or IGUA's ability to negotiate similar retainers in the future), and in respect of the pricing information is of a category of information that will be presumptively considered confidential by the OEB in accord with section 4 of Appendix B of the Board's *Practice Direction on Confidential Filings*.

Redactions in Third Party Document Filed

Attachment 4 to Dr. Cleary's response to N-M4-EDA-3 is evidence submitted by Dr. Cleary in an Alberta Utilities Commission (AUC) proceeding in 2020 on behalf of the Alberta Office of the Utilities Consumer Advocate (UCA). That Attachment 4 includes redactions requested by, and granted by the AUC to, a third party (the Alberta UCA) with whom our clients have no relationship.

Given that this document is "once removed" from the current (OEB) proceeding and was filed on behalf of another party in another jurisdiction, we are assuming that no further action on our part is required in respect of the redactions in this document. We are not asking the OEB to rule on those redactions, but rather we are presenting that evidence as publicly filed in response to an EDA request in the current proceeding for copies of all reports of Dr. Cleary concerning cost of capital prepared in the last ten years (N-M4-EDA-3).

Yours truly,



Ian A. Mondrow

c: S. Rahbar (IGUA)
M. Passi (AMPCO Chair)
F. O'Connell (Case Manager)
I. Richler (OEB Counsel)
Intervenors/Participants of Record

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