

Rick Lindgren

From: Rick Lindgren [r.lindgren@sympatico.ca]
Sent: Wednesday, October 01, 2008 2:37 PM
To: 'Kaitlyn Mitchell'; 'Krystyn Tully'
Cc: 'theresa@cela.ca'; 'Shawn-Patrick Stensil'; 'Mark@waterkeeper.ca'; 'Hugh Wilkins'; 'poch@perth.igs.net'; 'dpoch@eelaw.ca'; 'jcastrilli@cela.ca'
Subject: RE: IPSP thoughts: CONFIDENTIAL

PRIVILEGED & CONFIDENTIAL

Hello all:

It was great brainstorming with all of you this morning & I look forward to our next chat on Oct. 23rd.

In the meantime, I have re-read CELA's previous legal opinions (Feb. 2006 & Aug. 2006) & have concluded that a further updated opinion is definitely required. This is because the main opinion letter (Feb.) pre-dates the EA exemption reg (released in June) & the second opinion letter (Aug) focuses more on legally challenging the Ont govt's clumsy evasion of EBR requirements when passing the EA exempting reg.

Bottom line is that neither of CELA's 2006 opinions expressly examined the nature, extent or legal effect of s.3 of O.Reg.276/06 (the provision that purports to exempt all Crown undertakings "related to" the exempted IPSP). This specific issue should be the main topic of an updated opinion letter. The Feb. 2006 discussion of laches should also be updated & expanded, esp. since more than two years have now elapsed since the original opinion letter. Cost considerations should be updated.

Finally, in re-reading the original Feb. 2006 opinion, it appears to me that in addition to the various considerations & complications that we discussed this morning, there are two other significant legal hurdles we will have consider & overcome if we want to argue "new build" at Darlington is subject to provincial EA:

1. As far as I know, the Darlington EA exemption order still remains in effect & the j.r. respondent(s) will likely try to invoke it as a shield (or another reason) to protect new-build from prov EA coverage. As David knows from the TRF case brought by Energy Probe, the Div Ct seemed more than happy to give this exemption a broad & expansive interpretation, but does it shield new build, given the MW capacity limit specified in the original exemption order?

2. Section 15 of the general EA reg (Reg 334) provides, in effect, that if Crown undertakings (i.e. constructing/operating a generation facility) are NOT mentioned or caught by the electricity projects reg (O.Reg.116/01), then such undertakings are exempt from Part II of the EA Act. Nuclear facilities are not on the list of projects subject to the O.Reg. 116/01 regime – does this then mean that section 15 gives them an unconditional exemption from prov EA?

So, in light of the Darlington exemption order & the regulatory exemption under section 15 of Reg 334, it will be tricky (not impossible, but tricky) to argue new build at Darlington is nevertheless subject to individual EA requirements under the EA Act. This is in addition to the ever-daunting constitutional division of powers argument.

Hopefully we can successfully navigate around these rocks & shoals at our next meeting...

Regards.
 RL

From: Kaitlyn Mitchell [mailto:kaitlynemitchell@gmail.com]
Sent: Tuesday, September 30, 2008 6:17 PM
To: Krystyn Tully

10/1/2008

Cc: Rick Lindgren; theresa@cela.ca; Shawn-Patrick Stensil; Mark@waterkeeper.ca; Hugh Wilkins; poch@perth.igs.net; dpoch@eelaw.ca; jcastrilli@cela.ca
Subject: Re: meeting tomorrow

At our last meeting, Theresa, Shawn-Patrick, Krystyn and I discussed drafting a letter regarding the recently-approved Bruce Joint Review Panel Agreement and Environmental Impact Statement Guidelines. Attached is a draft version. We can discuss sign-ons, suggested changes, etc. tomorrow morning.

K

On 9/30/08, **Krystyn Tully** <krystyn@waterkeeper.ca> wrote:
 Joanna will be coming on behalf of Waterkeeper.

 Krystyn Tully, Vice President
 Lake Ontario Waterkeeper
 Co-host, Living At the Barricades

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On 30-Sep-08, at 4:30 PM, Rick Lindgren wrote:

613-385-1686. Maybe someone can call me & Theresa via a 3-way call from the CELA speakerphone in the library.
 Thanks,
 RL

-----Original Message-----

From: theresa@cela.ca [<mailto:theresa@cela.ca>]
 Sent: Tuesday, September 30, 2008 4:04 PM
 To: Shawn-Patrick Stensil; Mark@waterkeeper.ca; kaitlynemitchell@gmail.com
 Cc: krystyn@waterkeeper.ca; Hugh Wilkins; poch@perth.igs.net; dpoch@eelaw.ca; jcastrilli@cela.ca; r.lindgren@sympatico.ca
 Subject: Re: meeting tomorrow

Yes at last minute I do due to daughter breaking a finger and need to take her to surgeon tomorrow. Sigh. rick lindgren wants to call in too. If he and I are only ones you can call me at 416 662 8341 and him at his wolf island number from the phones at cela. Otherwise we will need call in.
 Theresa

-----Original Message-----

10/1/2008

From: Shawn-Patrick Stensil
To: Mark@waterkeeper.ca
To: Theresa McClenaghan2
To: kaitlynemitchell@gmail.com
Cc: krystyn@waterkeeper.ca
Cc: Hugh Wilkins
Cc: poch@perth.igs.net
Cc: dpoch@eelaw.ca
Sent: Sep 30, 2008 15:59
Subject: meeting tomorrow

Hi folks,

Just a reminder that we have a meeting bright and early tomorrow morning (9 am I believe) at the CELA offices. Does anyone need to call in?

Shawn-Patrick

Sent from my BlackBerry device on the Rogers Wireless Network