

To: Theresa McClenaghan <mcclenaghan@execulink.com>
CC: Paul Muldoon <muldoonp@lao.on.ca>,
"Theresa McClenaghan [CELA]" <mcclenat@lao.on.ca>
Subject: Re: Fw: "Meet with Donna" website
Hi Theresa:

This is a hoot!!! Thanks for sending me this link...

In a related matter, I've got a good jump start on the legal opinion (10 pages & growing by the hour), although I'm still waiting for Jennifer to send me her research results on the various legal issues we left her some time ago. She says she has blocked off today to make a serious dent in these tasks.

Do you have signed retainers from our client groups? I'm just looking for names & contact info to plug into the opinion letter.

Also, I seriously doubt this opinion letter will be completely finalized by the end of the next week, esp. since I need you & Paul to comprehensively review & revise what I've come up with so far. I think a realistic objective is to try to complete this by mid- to late January, so that we can sit down with the client groups to strategize about next steps before the end of the EBR comment period on the OPA report. Perhaps as part of the overall NGO reply to the OPA drivel, we should provide a legal perspective on the applicability of the EA Act to certain aspects of the proposed nuclear expansion.

Based on my work so far, the opinion letter is pointing towards a j.r. application for declaratory and/or injunctive relief. I think the strongest argument for EA Act coverage is to press for an EA of whatever "plan" or "program" that the Ministry of Energy/Cabinet comes up with to implement the OPA recommendations. Alternatively, the OPA's forthcoming 20 year integrated power supply plan can also arguably trigger EA Act application (although there are some legal questions about propensity here).

We could also cobble together arguments justifying the application of the EA Act to new or expanded facilities themselves, but this, too, is rife with constitutional & legal obstacles (i.e. an expansion at Darlington may be shielded by the pre-existing EA exemption). An argument that the Bruce A refurbishment should trigger prov EA (in addition to ongoing federal EA requirements) seems to be the weakest of all, in my view.

My overall opinion is that the further away we move from provincial "plans" or "programs" to site-specific facilities (excluding Hydro One transmission lines), the more tenuous the argument becomes re EA Act coverage. Of course, if the clients' objective is to simply buy time until the next prov election, they are free to j.r. the specific facilities, too, although the prospects of success are mixed at best, in view.

without taking court action, the clients could ask OPG to nit new/expanded facilities to the prov EA Act & with applicable federal EA requirements. While this may be a pressure point, I suspect the answer would be "no" for

alleged jurisdictional reasons, which moves us back to considering j.r. as a last resort.

Regardless of which tack is taken by the client groups, the main concern that I have about going public too soon is that it may give the Ont govt time to take the wind out of our sails. If, for example, we come out & boldly declare that the EA Act clearly applies to long-term energy plans, & that we are prepared to go to Div Ct if an EA is not done, the Ont govt could simply pass a declaration order wholly exempting the plan from the Act, & we would likely be powerless to j.r. the exemption reg.

The bottom line is that regardless of how we slice & dice it, this j.r. would not be a cakewalk for a variety of legal & procedural reasons. Stay tuned & pls let me know if you have any thoughts on the above-noted issues.

Thanks,

RL