



## Jay Shepherd

Professional Corporation  
2300 Yonge Street,  
Suite 806  
Toronto, Ontario M4P 1E4

### **BY RESS and EMAIL**

January 7, 2011  
Our File No. 20100131

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2010-0131 – Horizon 2011 Rates**

We are counsel for the School Energy Coalition. Due to illness we did not file our Declaration and Undertaking in this matter until yesterday, and so did not see the two pages for which confidentiality is claimed until today. We ask the Board to accept these submissions with respect to confidentiality, even though they are quite late.

Because of the nature of confidential documents, illness to the person who has responsibility for them cannot be managed through assigning work (such as writing submissions) to someone else. Only the person who will see the documents can actually write submissions. In this case, after the illness was over the Declaration and Undertaking was filed quickly, and these submissions are being provided within hours of receiving the documents themselves. It is submitted that this was an appropriate way to deal with an unforeseen circumstance.

In this case, confidentiality is claimed for two documents. The second, Exhibit 4, Tab 2, Schedule 10, page 14 of 25, is clearly confidential because it includes compensation information relating to individual employees, so we do not object to its designation as such by the Board.

However, we do not believe that Exhibit 4, Tab 2, Schedule 10, page 11 of 25, which is Appendix 2-K required by the Board's filing guidelines, should be treated as confidential. This is a standard document required in every rate filing, and allowing this to be confidential would dramatically expand the categories of rate filing documents that would have confidential treatment.

We recognize that forward-looking compensation information could be useful to unions negotiating contracts with the utility, and perhaps others. This is true, however, whether the 2-K is public or not.

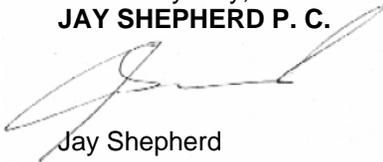
Tel: (416) 483-3300 Cell: (416) 804-2767 Fax: (416) 483-3305  
[jay.shepherd@canadianenergylawyers.com](mailto:jay.shepherd@canadianenergylawyers.com)  
[www.canadianenergylawyers.com](http://www.canadianenergylawyers.com)

Unions can still determine from the rest of the filing what the company is assuming for upcoming compensation increases. Indeed, in any forward test year application, there are numerous assumptions about future events that can be used by employees, their unions, contractors, and others in dealing with the utility. This is the fundamental nature of forward information. Any meaningful protection against this issue would require either blanket confidentiality over all or most of any cost of service proceeding, or a change from forward to historical test year rate setting. Neither, in our view, is a reasonable step by the Board.

Therefore, it is submitted that the Appendix 2-K is, in this proceeding and other cost of service rate cases, an integral part of the forward budget, and should be public along with the rest of that forward budget. Granting confidentiality treatment to this table would imply a much broader application of confidentiality to components of the budget for forward test year applications, and should be avoided in order to maintain the transparency of the Board's processes.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested parties (email)