



John De Vellis
Direct Line (416) 214-5232
Direct Fax (416) 214-5432
john.devellis@shibleyrighton.com

TORONTO OFFICE:
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5
Main 416 214-5200 Toll free 1-877-214-5200
Facsimile 416 214-5400

WINDSOR OFFICE:
2510 Ouellette Avenue, Windsor, Ontario, N8X 1L4
Main 519 969-9844 Toll free 1-866-522-7988
Facsimile 519 969-8045

www.shibleyrighton.com

Please Reply to the TORONTO OFFICE

BY EMAIL AND COURIER

January 18, 2011

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

Attn: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0142 Toronto Hydro Electric System Limited (“THESL”) Application Submissions of Entera Utility Contractors Co. Limited

We are counsel to Entera Utility Contractors Co. Limited ("Entera"). Below are the submissions of Entera pursuant to the Board's Decision on Confidentiality and Procedural Order #4 ("PO #4") and Procedural Order #6 (PO#6) in the proceeding.

In PO #4, the Board sought submissions on i.) whether the confidential status of the documents referred to therein (the "Contract" and schedules A, B and C thereto) should be maintained; and ii.) if so, whether only counsel to intervenors should have access to the documents. In PO#6 the Board granted Entera and other third-party contractors intervenor status in the proceeding.

Entera's submissions on these matters are as follows:

i.) Confidentiality Should be Maintained- Documents Highly Commercially Sensitive

We have read the December 23, 2010 letter from THESL to the Board in which THESL asks that the entirety of the Contract, including all of the schedules thereto, be treated as confidential. Entera, which is one of the counter-parties to the Contract, agrees with that position.

Entera provides engineering, design and building services to natural gas and electricity distributors, including the Applicant in this proceeding, THESL.

Entera submits, firstly, that the Contract has minimal relevance in this proceeding. It is a third-party contract. Entera is not an affiliate of THESL and the Contract was entered into following a competitive bidding process. The only reference to Entera in THESL's pre-filed evidence is in the Workforce Staffing Plan[Ex. C2/1/5, pg. 6], in which THESL states that it had secured external resources to support the delivery of its 2010 Capital Program. The Board has not in the past

scrutinized contracts entered into in good faith with third party, non-affiliated, contractors. As the Contract was subjected to a competitive tender process it is *prima facie* commercially reasonable. The Contract therefore is of limited value in assisting the Board in determining just and reasonable distribution rates for THESL.

In contrast, public disclosure of the Contract would be extremely prejudicial to Entera. The Contract, and in particular the unit pricing contained in Schedule C thereto, contains highly sensitive commercial information. This information was provided to THESL with the expectation and understanding, based on Entera's communication with THESL and industry practice, that it be held in strict confidence. Disclosure of the information contained in the contract could reasonably be expected to unfairly prejudice the economic interest and competitive position of Entera. The contract and unit pricing also constitute trade secrets or financial, commercial material that is consistently treated as confidential by Entera and THESL.

The documents also meet the definition of "third party information" in the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), which states follows:

17. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. [emphasis added]

Releasing the documents into the public domain would likely be prejudicial to THESL and its customers as well. Parties take great care in keeping pricing information confidential during the bidding process. If potential bidders for utility contracts cannot be assured that their pricing and contractual information will be held in strict confidence, they may be discouraged from participating in bidding for such work in the future.

The Board routinely treats third party information of this nature as confidential. In EB-2009-0273, for example, the Board treated as confidential the financial statements of Orillia Power Generation Corporation ("OPGC"). Unlike Entera, OPGC was an affiliate of the applicant in that proceeding, Orillia Power Distribution Company.

Given the minimal relevance or probative value of the documents in question to the subject-matter of this proceeding and the damage that their disclosure may cause to Entera and THESL, Entera submits that the potential harm to Entera and to THESL greatly outweighs any benefit that may be achieved by having these documents form part of the public record. In accordance with the Board's past practice, therefore, Entera asks that they continue to be treated as confidential pursuant to the Board's Practice Direction on Confidential Filings.

ii.) Only Counsel to Parties Who Require Documents Should Have Access

If the Board agrees that the confidentiality of the documents should be maintained, Entera submits that only counsel to those intervenors who require the documents should have access to them.

The parties to this proceeding include other utilities with whom Entera does business. Some may be potential competitors of Entera. Entera believes that allowing such parties access to the documents creates an unacceptable risk that the contents of the documents may be disclosed in a way that will damage Entera's competitive position. Furthermore, some parties may not require the information for the purpose for which it was originally sought- i.e. to assess the reasonableness of THESL's cost of service for the test year. Therefore, Entera submits that restricting access to the documents to counsel will not prejudice those parties.

In summary, Entera submits that the documents should be provided only to counsel to those parties whom the Board determines require access to the information in order to present their case.

All of which is respectfully submitted.

Yours truly,
SHIBLEY RIGHTON LLP

Original signed

John De Vellis

c.c. Mr. Mark Rodger, Counsel to Toronto Hydro Electric Services Ltd. (email only).
Ms Kristi Sebalj, Counsel to the Ontario Energy Board (email only)
Intervenors of record (email only).