

October 24, 2017

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Kirsten Walli,
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

Re: EB-2017-0024

We are counsel to the City of Hamilton (the “City”) in this proceeding.

We have just received a copy of Procedural Order No. 2. In the guise of providing “guidance” on the issues list, the Ontario Energy Board (“OEB”) has effectively pre-judged the issues of concern to the City. It has done so without providing the City the opportunity to make submissions in support of its positions.

The City provided comments on OEB staff’s draft issues list. The City, and indeed none of the parties, were advised that the opportunity to provide comments was to be taken as the occasion for providing detailed submissions, supported by reference to the relevant case law. The City was not advised that its comments on the issues list would be used by the OEB as the basis for what amounts to a decision dismissing its positions. To have dismissed the City’s position, without being given an opportunity to be heard, is unfair.

Unfortunately, the “guidance” in Procedural Order No. 2 is consistent with the procedure adopted for this entire proceeding, a procedure which has denied parties the right to a timely determination of the issues as well as the right to lead evidence.

The City takes the position that the OEB’s “guidance” is wrong in law. It would support that position were it given an opportunity, as fairness demands, to make submissions.

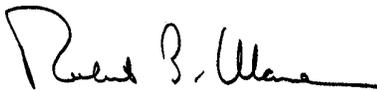
In light of the “guidance” contained in Procedural Order No. 2, there is little point in the City participating in the settlement conference. The “guidance” has robbed the parties of any incentive to have meaningful discussions with the City. That the City will now not participate in the settlement discussions should not be taken as it having abandoned its position in this proceeding.

That the City has, as a result of Procedural Order No. 2, been denied the opportunity to participate in a meaningful way in the settlement discussions means that there can be no universal agreement on either the issues list or the substantive issues. What effect that might have on the schedule set out in Procedural Order No. 1 is uncertain.

The City submits that, as a matter of fairness, it must be given the opportunity to make full submissions on the content of the issues list. The City asks for directions on when and how it may do so.

Yours truly,

WeirFoulds LLP



Robert B. Warren

cc: The City of Hamilton
cc: Torys LLP
Attention: C. Keizer and C. Smith
cc: Alectra Utilities Corporation
Attention: Indy Butany-DeSouza
cc: Parties
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