



BY EMAIL and RESS

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

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

September 28, 2018
Our File: EB20170182

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0182/0194/0364 – East-West Tie/Lake Superior Link – SEC Correspondence

We are counsel to the School Energy Coalition (“SEC”). SEC writes to address two issues.

First, in the letter dated September 28th, Hydro One has taken the position that it will only make unredacted materials available to counsel who have signed the Declaration and Undertaking, “at a time and at a place convenient to counsel, on the understanding that counsel are not to make notes on, make copies of, or take pictures of, the material”. Such a request is unprecedented. Hydro One has provided no rationale for why it believes this marked departure from the usual practice and what is included in the *Practice Direction on Confidential Filings* (“*Practice Direction*”) is appropriate.

The restrictions that Hydro One appears to be dictating to the Board will significantly impair intervenor counsel from properly assessing the application. The terms of the Board’s Declaration and Undertaking provided the necessary protections for confidential information. SEC requests the Board direct Hydro One to provide copies of the confidential material to parties that have filed a Declaration and Undertaking, and to which it has not objected, by the end of today (September 28th), as set out in Procedural Order No. 2.

Second, in SEC Interrogatory No. 8, SEC requested a copy of the unredacted version of the EPC contract between Hydro One and SNC-Lavalin Inc. that was filed as an undertaking response during the motion hearing. In its response, Hydro One refused to provide the contract.

Hydro One filed a redacted version of the EPC contract in the referenced undertaking. Given the competitive and commercial nature of this leave to construct application, Hydro One is not prepared to file the unredacted version of the EPC contract. Hydro One does not believe any further information in the redacted segments of the contract will assist the OEB in determining whether the Project is in the best interest of consumers with respect to price, reliability and quality of service given the fixed price element already discussed. Some additional information regarding EPC contract has been provided at Exhibit I, Tab 2, Schedule 43.¹

¹ Interrogatory Response SEC-8, (Exhibit I-5-8)

Hydro One had not provided a valid reason for refusal. The information is clearly relevant. SEC recognizes that certain information is likely competitive and commercial in nature, but the remedy to this concern is to request confidential treatment pursuant to the *Practice Direction*. This is what Nextbridge requested from the Board when it was asked by Board Staff to provide a copy of its EPC contract.²

Further, while Hydro One may *believe* that the redacted information will not assist the Board, it has provided no basis for making such a claim. In fact, the evidence demonstrates otherwise. For example, certain redactions appear to relate to termination for cause³ and the entire section related to liability and indemnity⁴. This information is relevant to assessing how the contract protects consumers.

SEC requests the Board order Hydro One to respond to the interrogatory in full.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicants and interested parties (by email)

² See Staff Interrogatory Response Staff No. 7 (EB-2017-0182), (Exhibit I.B.Nextbridge.Staff.7)

³ Motion Hearing Undertaking, JT2.22, p.75, article 43(e)

⁴ Motion Hearing Undertaking, JT2.22, p.81-82, article 49