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Ontario Energy Board  
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**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: Oakville Hydro's response to the letter on confidentiality submitted by  
Mr. Jay Shepherd – counsel of the School Energy Coalition**

**EB-2009-0271 – Oakville Hydro's 2010 Cost of Service Application**

Oakville Hydro is in receipt of correspondence from counsel to Schools dated October 16, 2009 relating to our request for confidentiality in respect of two agreements referred to in Oakville Hydro's 2010 cost of service rate application - a Construction Services Agreement and a Utility Locating Services Agreement, both of which are between El-Con Construction Inc. ("El-Con") and Oakville Hydro Electricity Distribution Inc. As we discuss in the Application (see Exhibit 1, Tab 3, Schedule 4), El-Con is an affiliate of Oakville Hydro that carries on utility construction-related activities within Oakville and the surrounding area. Oakville Hydro filed redacted versions of these agreements on the public record, for the reasons set out in our letter that accompanied the Application.

Our redactions were minimal, and related only to pricing. Counsel to Schools acknowledges that our approach to these documents – that is, our attempt to limit the confidential components of the documents to the narrow category of prices – "is, in our [Schools'] view, the best approach given the nature of the confidentiality claim in this case, and the Board's often-stated policy to have as much information as possible on the public record."

Having said this, counsel to Schools then sets out two questions that he suggests are related to the confidentiality claim. The first relates to pricing schedules for prior years. Oakville Hydro submits that if El-Con's pricing for prior years were made publicly available, it would be possible for competitors to estimate El-Con's more current pricing. While it may not be possible to match the current pricing exactly, it is likely that competitors could come close enough to trigger the concerns expressed in our letter supporting the confidentiality request – more



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particularly, that “The disclosure of El-Con’s pricing and price adjustment mechanisms in the agreements could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of El-Con since it would enable its competitors to ascertain El-Con’s pricing and manipulate their pricing so as to underbid El-Con on future projects.” Oakville Hydro is therefore not prepared to publicly release pricing information for prior years.

With respect to what counsel to Schools suggests is a second aspect of the confidentiality claim that requires an explanation, Oakville Hydro submits that the pricing information in the El-Con agreements is that of a third party. While it is true that El-Con is an affiliate of Oakville Hydro, the fact is that El-Con carries on competitive activities and provides services to unrelated parties. The issue for the Board at this time is not the manner in which Oakville Hydro has determined the appropriate costs for the goods and services it obtains from third parties, including El-Con, and, contrary to Schools’ suggestion, the issue is not whether Oakville Hydro is seeking contracts with other suppliers at higher, lower or equivalent prices. That may be a matter for interrogatories and/or submissions, but it is irrelevant to the current issue before the Board, and that issue is whether prices charged by El-Con, which constitute third party information, should be publicly disclosed in this proceeding. In the preceding paragraph, we reiterated our concerns with respect to the potential harm to El-Con’s competitive position in the event of public disclosure of its pricing and price adjustment mechanisms in the agreements. As discussed in our letter in support of the confidentiality request,

“The OEB’s *Practice Direction on Confidential Filings* (the “Practice Direction”) recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in subsection 17(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), and the Practice Direction notes (at Appendix C of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.”

Given the clear indication in the Practice Direction that the Board will treat information such as this as confidential, it is not clear to us why this is an issue. As we stated previously, the redactions in the Application are very limited. Moreover, there appears to be no prejudice to any party in maintaining this information in confidence. Those individuals with a legitimate interest in viewing the redacted information (that is, counsel and consultants to parties to this proceeding) have access to it provided that they have executed the OEB’s form of Declaration and Undertaking with respect to confidentiality and that they comply with the Practice Direction, subject to Oakville Hydro’s right to object to the OEB’s acceptance of a Declaration and Undertaking from any person. Counsel to Schools has already obtained a copy of this material on this basis. By contrast, the prejudice may be significant for El-Con. If Schools is concerned about the protections provided by the Practice Direction and FIPPA, that is a matter that is beyond the scope of this proceeding.



Oakville Hydro respectfully requests that the Board confirm that the El-Con pricing information filed in confidence in this proceeding shall remain confidential.

Respectfully submitted,

Cristina Birceanu

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