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BY EMAIL AND PERSONAL DELIVERY

December 9, 2009
Our File No. 2090460

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0332 – Horizon Z Factor – Submissions on Procedure and Confidentiality

We are counsel for the School Energy Coalition in this proceeding. Pursuant to Procedural Order #3, we are providing herein our comments on further procedural steps. We have included in these submissions our comments with respect to the claims for confidential treatment of certain interrogatory responses. We have ensured that no information for which confidentiality is claimed is disclosed in this letter.

Claims of Confidentiality

The Applicant has claimed confidentiality with respect to twenty interrogatories. We have the following comments:

Staff #3: This IR provides monthly load data for all large volume customers. While none are identified, we accept that it may be possible to guess their identities, and this may provide a competitive disadvantage to the companies whose information is listed.

Staff #2, #6, SEC #4, #5, #15, VECC #3: These IRs provide updated information with respect to the Subject Customer's load and costs to serve. We are concerned that this is similar to information that was provided without a claim of confidentiality in the Application, but now, after

the fact, confidentiality is being claimed. We understand this is at the request of the Subject Customer. That having been said, this Application is entirely about the load reduction for that customer, and the claim of confidentiality effectively prevents the public from knowing most of the salient facts underlying any Board decision. This is not in the Board's interests. In our submission, the Applicant should identify those pieces of information in these IRs that are truly sensitive – as limited a list as possible - and redact those items only.

Staff #1, #4, #5, #8, #10, Energy Probe #2, VECC #4, #5, #9: These IRs relate primarily to forward-looking information relating to the Applicant and their financial performance. In our submission, this is not confidential in nature. The Applicant is a utility regulated primarily on a forward test year basis, and as such is required by this Board and as a matter of law to provide the Board and the public with forward-looking financial information any time it seeks a cost of service rate adjustment. If the information in these IRs is confidential, then in our submission most of the information filed in a typical rate case would also be confidential.

CCC #7: This IR relates to reports to the Applicant's Board of Directors. While the content does not appear to us to be confidential in nature, except as set forth under Staff #2 et al above, the fact that it is a Board of Directors report suggests to us that it should be given confidential treatment in this case.

SEC #1: This IR relates to when the Applicant learned of the drop in the Subject Customer's load. We are unable to find anything in the IR that is remotely confidential in nature.

SEC #14: This IR relates to the working capital impact of the proposed Z factor change. There is no confidential information in this IR.

SEC #15: This IR relates to participation by the Subject Customer in conservation programs. We accept that it is confidential, although we would be surprised if it is not already public information.

USS #4: This IR discloses the identity of the Subject Customer, and so in our view most of the information should be confidential. While some is probably not, anything that is not confidential is, it appears to us, already included in other evidence.

It is submitted that the wholesale claim of confidentiality in this proceeding goes well beyond anything that the Board would normally accept, and flies in the face of the basic principle that, if at all possible, the Board's proceedings should be held in public and with full transparency. We believe that some of the information should simply be public, and much of the rest, with the exceptions noted above, should be given the protection of the confidentiality rules only to the minimum extent necessary to protect the legitimate interests of the Subject Customer.

Next Procedural Steps

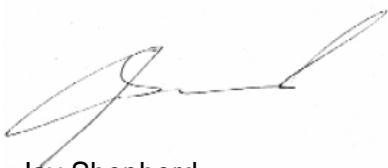
In our view, the most efficient way to handle this matter is by way of a one day hearing, with oral argument at the conclusion of the day by the Applicant, and then a short time frame before written argument is provided by the intervenors. At the outset of that day, the Board could also rule with respect to the issue of confidentiality, with whatever discussion the Board feels is necessary in light of the submissions.

We make this recommendation because this is a proceeding in which the main issue is a relatively simple one, but with a number of potential areas for confusion in the record. Since at least some of the matter must be confidential, use of an in camera hearing would allow a full and frank discussion of the issue, with clarity on the impacts and the implications. The ability of the Board panel to ask questions of the witnesses, and of counsel, would in our view crystallize the decision to be made in a direct way. Using a one day hearing would also shorten the process and allow the Board to get to a decision quickly.

We therefore submit that a one-day hearing is the appropriate method of completing the record in this matter.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Bob Williams, SEC (email)
Wayne McNally, SEC (email)
Interested Parties (email)