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BY RESS and EMAIL

January 29, 2011
Our File No. 20100131

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0131 – Horizon 2011 Rates

We are counsel for the School Energy Coalition. We have received the submissions of the Applicant in this matter dated January 28, 2011, claiming confidentiality for twelve interrogatory responses, seven of which are responses to SEC interrogatories. While we have not yet seen the documents in question, for a number of them we believe that we can assess the claim immediately without a review. Therefore, in an effort to move the process along we are providing these submissions on most of the confidentiality claims.

Our comments are as follows:

1. ***Staff #25 and #30, EP #26.*** These three responses appear to fall squarely within the Board's previous ruling, and therefore should be granted confidential status. We do believe that, as soon as the negotiations with IBEW are complete and the results publicly announced, this information should no longer be considered to be confidential.

2. ***SEC #13(h).*** Although we believe it is in the public interest that this document be public, the Board disagreed with us in the EB-2009-0269 (Newmarket) proceeding, and we therefore believe that this Board panel should also find this document to be confidential.

3. ***SEC #18(f) and 30(f).*** We agree that documents relating to security matters should in this context be treated as confidential.

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4. ***SEC #22.*** This document appears to include information relating to the age and condition of the assets of another utility, Guelph Hydro. As a general rule, it is our view that this type of information should be publicly available. However, in this case it was gathered in the context of merger discussions. If the Board were to require its public disclosure after the fact, that could have the potential to inhibit future merger discussions between utilities generally. Industry rationalization is an important evolution of the sector, and we believe that inhibiting that direction would be contrary to the ratepayers' interests. Therefore, it is submitted that this information should be considered confidential in this proceeding.

5. ***SEC #26.*** Undertaking JX1.3 has already been determined to be confidential by the Board, and we have not identified any factors that have changed since that time. Therefore, we agree it should continue to be confidential.

6. ***Staff #37.*** Generally speaking, we do not believe that communications between regulated utilities should have any form of blanket confidentiality protection. In our view, they should be confidential only if the information contained within them would be considered confidential under the Board's rules in the rate proceeding of the sender. For example, if Hydro One sends an email to Horizon, and the information contained in it would be public if it arose in a Hydro One rate case, it should be public in all contexts. Therefore, with respect to this response, we would ask that we be allowed to review it before making final submissions on its confidentiality.

7. ***SEC #3.*** The basic premise of this claim appears to be that if a regulated utility engages in competitive activities, the information on those activities is confidential. With respect, we fundamentally disagree with this principle. On the contrary, in our view if a regulated utility carries competitive activities, it should be taken to have waived any claim it may have relating to confidentiality of information on those activities based on their competitive nature (as opposed to, for example, based on security concerns, or labour negotiations). If the utility wishes to have confidentiality, it can carry on the activity in a separate company, and control the ties between that business and the regulated business. As soon as the utility uses the utility company, in our view the natural impact of that decision is that information on that activity should become public. There are many examples that demonstrate why this is true, but the simplest one is financial statements. If the principle expressed by the Applicant relative to SEC #3 is accepted, then clearly audited financial statements of the regulated utility, since they will include information on the competitive businesses, will also have to be confidential. This is not a reasonable result.

8. ***CCC #8.*** For the same reason (and another example of the problem we have identified), the financial plans and presentations requested in this IR should not be confidential. The rationale for confidentiality is that the materials include information on competitive activities, but the Applicant has chosen to carry on those activities within a regulated entity. It is not appropriate to allow that choice by the Applicant to undermine the Board's goal of transparency. If these plans and presentations would otherwise not be confidential, the fact that they include information about competitive activities of the regulated utility should not make them confidential.

9. ***SEC #6(a).*** The Applicant seeks to limit public scrutiny of its own borrowing from its parent by virtue of the fact that the terms are back to back with the parent's arrangements with a chartered bank. Their first rationale is that confidentiality is necessary to protect the Bank's competitive business. This is entirely inconsistent with the Board's common practice. Many rate applications include

copies of bank loan agreements, commitment letters, etc. The banks, in lending to regulated entities, understand that the terms of those credit arrangements will have to be made public. The same is true here, where the loan is said to be back to back. In this respect, we do not believe this situation is similar to the situation in EB-2007-0697, where similar documents came up in the oral hearing, and were left as confidential, without any debate, so that the proceeding could be completed in a timely manner. All of this leads us to conclude that this document should not be treated as confidential.

We note that the letter from the Applicant's counsel also discusses, at pages 5 and 6, the remainder of SEC #3, on which confidentiality is not claimed because the documents have been refused. These documents relate to planning analyses and presentations underlying the Solar Sunbelt structure.

If there is a Technical Conference in this proceeding, we would of course have the opportunity to put on the record our rationale for requesting this information, and ask for it again, but in an effort to assist the Applicant and the Board, it may be useful to set that out here.

The primary purpose of this is not to investigate the tax planning implications of this General Partnership structure. Rather, the question was prompted by statements by Standard & Poors and DBRS, filed in many rate applications, that competitive businesses like solar increase the risk level of a regulated utility. This has the potential to increase the cost of capital. For example, in this proceeding at Ex. 1/3/4, page 4, Standard & Poors says "increased exposure to the unregulated business [which refers in that report mainly to the solar business – see page 2] to exceed 10% of consolidated EBITDA or cash flow could lead to a negative rating action."

Given this concern from the rating agency, we believed, and continue to believe, that the Board would benefit from seeing the planning analysis done in setting up the structure of the solar business. We would expect that analysis, and the supporting presentations, to discuss the impact on risk, any potential impact on ratings, and a forecast of whether a level like 10% of EBITDA or cash flow is likely to be reached over time. If this kind of analysis is part of the process (e.g. there is an increase in risk, compensated by a tax saving of $X), then the Board should see it. If this kind of analysis is not included, it will be legitimate for the Board and parties to ask why a material potential impact was not considered.

We can, of course, raise these points in asking the questions at a Technical Conference, but by including them in this letter we hope that a fuller understanding of our rationale will allow the Applicant to provide these documents without a debate.

All of which is respectfully submitted.

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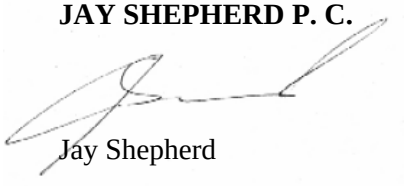
Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested parties (email)