



Jay Shepherd

Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

April 10, 2012
Our File No. 20110140

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

Attn: Kirsten Walli, Board Secretary

Dear. Ms. Walli;

Re: EB-2011-0140 – EWT Designation Proceeding – Cost Eligibility

I am writing on behalf of the School Energy Coalition (SEC) to respond to the Board's *Decision on Intervention and Cost Eligibility* dated March 30th 2012 in this matter.

As soon as we received the Board's Cost Eligibility Decision, I personally initiated discussions with the Canadian Manufacturers and Exporters (CME), Association of Major Power Consumers of Ontario (AMPCO), and the Building Owners and Managers Association of Greater Toronto (BOMA) to attempt to put together a coalition for cost eligibility in this proceeding as directed by the Board. Over the last week quite a number of discussions to this end have taken place. I regret to inform the Board that these discussions were not successful, either in putting together a full or partial coalition, or designating a ratepayer group to speak on behalf of the others.

The Board will be aware that SEC regularly works with other intervenor groups in the interests of the efficiency of the process. We split up responsibility for interrogatories, cross-examination, and argument, for example, based on relative expertise in the issues, and other such factors. This is especially effective when our views on the appropriate responses to the issues are similar. That is not the case here.

During the course of our discussions between the intervenor groups, three things became clear to us.

Tel: (416) 483-3300 Cell: (416) 804-2767 Fax: (416) 483-3305

jay.shepherd@canadianenergylawyers.com
www.canadianenergylawyers.com



First, despite the narrow scope of this proceeding, its implications are significantly broader. This is the first situation in which the Board is managing a large competitive process for transmission development. A successful process will likely lead to more over the next decade, as the East-West Tie Line is only one of five priority transmission projects identified by the OPA and contained in Ontario's Long-Term Energy Plan. Contestability of this type of project – something SEC has long supported – has the potential for many ratepayer benefits, but it also has numerous complexities, as evidenced by the Draft Issues List and the lengthy discussions that took place at the March 23, 2012 all-party conference. Of key importance, for example, will be the Board's approach to balancing local interests (whether First Nations, Metis or otherwise) with the desire to maximize the robustness of the competitive framework. There are a number of other examples of this type (the assessment weighting and methodology, affiliate arrangements and transfer pricing, access to equal information, duty to consult vs. ability to participate, etc., etc.). So, while the million dollar annual bill that Ontario schools will bear each year, long into the future, to pay for this particular project is undoubtedly important, the secondary implications to schools of the decisions in this proceeding may be much more important.

Second, the economic and other interests of all higher volume ratepayers are not, in this situation, aligned. Just to give one example, SEC and CME have members throughout the province, largely reflective of the general population in each geographic area. AMPCO also has members throughout the province, but many of those individual members will have very specific interests related to this project, and the issues raised, based on their location, their electricity needs, their other activities, etc. BOMA's members, while more geographically restricted, have a substantial financial interest in the outcome of this process as well.

Third, and this really appears to be the most important conclusion I reached in these discussions, the responses of the four intervenor groups to the issues identified in this proceeding are not likely to be the same. The Board will be aware, for example, that BOMA often does not take similar positions to SEC or CME, as has been seen in a number of recent proceedings. In this proceeding, the same thing will likely apply to all four of the intervenors. While on some issues some of the intervenors will have similar responses, on other issues their proposed resolution will be quite different. In more concrete terms, I found that the detailed issues analysis that SEC drafted for its internal use and client instructions is quite different from the analysis of the issues by the other three intervenors, both in emphasis and direction.

In these circumstances, it is not feasible for the groups to form a coalition, and it is not practical for any of the groups to represent the interests of the others.

Once this result was clear to me, I turned to the Board's proposed alternative: submissions supporting SEC as the sole intervenor representing higher volume ratepayers.

I have concluded that it is not possible to argue, in any principled way, for any one intervenor to be the sole representative of the higher volume ratepayers. For the same reasons as are set out above, whichever intervenor the Board would choose to be the "representative", that intervenor would not in fact be representing the interests of the other three intervenors. The



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effect of a choice between the four parties would in reality be nothing more nor less than the arbitrary exclusion of three parties with legitimate interests in this proceeding.

We are therefore not in a position to make any submissions, on any principled basis, supporting selection of SEC as an eligible intervenor over any other ratepayer group. Indeed, once we actually faced the task, it turned out to be quite counter-intuitive.

It would, in our submission, be exceedingly strange if the ratepayers – who are the only ones paying for this entire process, including the costs of the Board, the designated transmitter, the seven non-ratepayer groups given cost eligibility, OPA, IESO, Hydro One Networks Inc. and Great Lakes Power Transmission LP – would be the only ones with an interest in the outcome that have their participation restricted by the Board. This does not appear to us to be a result the Board should consider acceptable.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Mark Rubenstein, JSPC (email)
Interested Parties (email)