



## **Jay Shepherd**

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### **BY EMAIL and RESS**

August 10, 2012  
Our File No. HVAC0354

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2011-0354 – Enbridge 2013 Rates – Request for Late Intervention**

We are counsel for the HVAC Coalition. This letter is being sent to request late intervenor status for the HVAC Coalition in the above-mentioned proceeding, and other relief as set out below.

### **HVAC Coalition**

The interest of HVAC Coalition in this proceeding is limited to the issue of Open Bill Access, as described below.

HVAC Coalition is an organization representing the several hundred heating and air conditioning contractors offering services in the Enbridge franchise area. HVAC Coalition has been active in past Enbridge rate cases, including all proceedings relating to the Open Bill issue. HVAC Coalition is affiliated with the trade association, the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI), but has a separate legal status and membership.

In EB-2006-0034, the 2007 rate case, HVAC was instrumental in the establishment of the Enbridge consultative process that ultimately led to an interim settlement of all issues related to both Billing Services (third party billing through the Enbridge bill) and Bill Inserts. HVAC was also an active participant in the subsequent negotiations for a more lasting solution, which culminated in the Settlement Agreement filed and approved in EB-2009-0043.

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The effect of both the interim arrangement, and the Settlement Agreement, was to open up the Enbridge bill, breaking the monopoly on the bill previously held by Direct Energy. While today Direct Energy is still the most active user of the Open Bill program, there are now forty-five companies billing through the Enbridge bill, and some of those billers are financiers who are providing financing and billing for multiple contractors.

### **Reasons for Late Filing**

The approved terms of Open Bill Access from EB-2009-0043 provide that the program terminates December 31, 2012. Therefore, in the current proceeding Enbridge filed Exhibit D1, Tab 9, Schedule 1 and Appendices, entitled "Open Bill Access" on January 31, 2012. That Exhibit proposed continuation of the program on the same terms as previously agreed, with small increases in the fees charged to billers under the service.

Because the proposed continuation of the program was essentially identical to the agreed terms, HVAC did not seek intervenor status in the EB-2011-0354 proceeding. HVAC has limited resources, and is not in a position to participate in proceedings in which it does not have an active and substantial interest.

On June 8, 2012, Enbridge filed an update to Exhibit D1, Tab 9, Schedule 1, and Appendices. In the Update, Enbridge has proposed substantial changes to the Open Bill Access program, including in particular material changes to clauses in the Open Bill Agreement that were carefully negotiated as part of the EB-2009-0043 settlement. In effect, Enbridge is seeking to undo parts of that negotiated settlement, effective January 1, 2013.

Enbridge also gave notice in the Update that this fall it will – separately from this proceeding - make a determination whether it wishes to continue the Open Bill program at all after 2013.

No notice was given to HVAC (or HRAI) of these proposals, although HVAC actively participated in the negotiation of the interim agreement, and the Settlement Agreement in EB-2009-0034. As a result, HVAC was unaware that these changes were being proposed. This was a surprise to HVAC, since Enbridge has at all times been aware that Open Bill Access is a major concern for HVAC members.

On July 6, 2012, HVAC received from one of its members that is using the Open Bill service an email dated June 28, 2012 from Enbridge noting that changes were being made to the Open Bill Agreement, and referring the recipient to the evidence filed in this proceeding. The deadline for comments on the changes was stated to be July 6, 2012. The forwarded email did not include an attached letter, which was ultimately provided to HVAC on July 12, 2012.

In the meantime, HVAC engaged counsel, who confirmed the original advice that the initial rate filing did not contain any material changes to the Open Bill Access program. At HVAC's request, counsel then reviewed the June Update, and on July 13, 2012 provided a report on the new changes being proposed. The report noted that the deadline for filing interrogatories in the EB-2011-0354 case was July 5, 2012, and so was long past. (Some parties who were already



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involved in the proceeding on other issues did ask interrogatories on Open Bill, but many questions HVAC would raise were not asked by others.)

At HVAC's instructions, counsel made contact with Enbridge on July 17, 2012 to see if procedural arrangements could be put in place to allow HVAC to participate in the rate case on Open Bill alone, including interrogatories, filing of intervenor evidence, etc. Enbridge responded on July 19, 2012, advising that it would need to have internal discussions before discussing the matter with HVAC.

Given the timing during the summer, HVAC was unable to convene a full meeting of its Board of Directors, but did get certain key members back from vacation for a meeting on July 19, 2012 dealing solely with this issue. At that time, an initial position on the changes proposed was formulated, and the interim actions of HVAC's Executive Director in handling the matter prior to that date were confirmed.

Enbridge subsequently arranged to meet with HVAC on this issue on July 24, 2012. Out of that meeting arose a procedural proposal from Enbridge the following week, and several further discussions in the ten days since then.

Discussions between Enbridge and HVAC on the appropriate procedure to follow are not yet complete, and it is hoped that a joint proposal can be made to the Board that maintains procedural fairness while not disrupting the schedule of the current rate case.

However, while those discussions are ongoing, HVAC is making this application for late intervenor status so that it can get on the record as soon as possible.

**Costs Eligibility**

HVAC Coalition hereby requests that the Board exercise its discretion to determine that HVAC should be eligible for costs in this proceeding.

HVAC Coalition is not normally eligible for costs in rate proceedings, as it is an organization of private sector contractors. On some occasions, the Board has determined that the participation of HVAC Coalition is especially useful on particular issues, and has granted eligibility for costs. In addition, in the two consultative processes relating to Open Bill (in 2007 and 2009), HVAC recovered its costs from Enbridge by agreement with the utility, but following the Board's costs guidelines.

While HVAC Coalition is an organization of private companies, it has limited resources. For this reason, it does not participate in most Board proceedings. Most of its resources are directed at participation in DSM proceedings, and to its normal day to day activities serving its members. Very little is left for contested proceedings. In the past, where participation in such proceedings has been required, HVAC generally has had to seek additional contributions from its members. In the current case, there is no time to do that.



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It is submitted that the focused intervention by HVAC on this single issue will be of material assistance to the Board, and it is therefore an appropriate case for the Board to exercise its discretion and grant eligibility for costs.

**Notice**

As noted above, HVAC believes that it can, jointly with Enbridge, make a procedural proposal to the Board on Open Bill Access. In the event that HVAC and Enbridge are not able to agree, HVAC respectfully advises the Board that it intends to file a motion, no later than August 17<sup>th</sup>, asking that the Board set aside the Notice in the EB-2011-0354 proceeding as failing to provide notice of material changes to persons (HVAC and its members) affected by those changes.

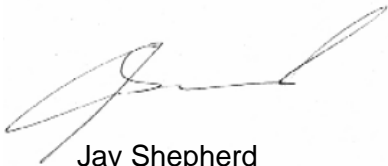
**Conclusion**

HVAC Coalition therefore requests that the Board accept its application for late intervenor status, and grant HVAC eligibility for costs.

HVAC notes that it is not, in this late intervention request, making the normal statement that it will accept the record as it currently stands. To do so would prejudice HVAC and its members. Instead, HVAC proposes that it will, on or before August 17<sup>th</sup>, either file a joint procedural proposal to deal with the Update and the lateness of HVAC's participation, or file a motion to deal with the adequacy of the notice.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**



Jay Shepherd

cc: Martin Luymes, HVAC (email)  
Wayne McNally, SEC (email)  
Interested Parties