



Jay Shepherd

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

BY EMAIL and RESS

June 4, 2013
Our File No. EB-2012-0160

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0160 – Peterborough – Request for Confidentiality

We are counsel for the School Energy Coalition. We have reviewed the confidentiality claim from the Applicant in this matter. This letter constitutes SEC's submissions on confidentiality pursuant to Procedural Order #2.

In our submission, the Board is presented, in situations such as this, with competing principles.

On the one hand, SEC accepts the Applicant's assertion that the financial statements of its affiliate Peterborough Utilities Inc. may contain information that could affect that company's competitive position. That competitive impact is very limited, however. Because of the nature of the business of PUI ("operating various renewable generation facilities, including hydro, solar, and land fill gas hydroelectric generation plants" – Ex.1/1/14, p. 1-35), there is little benefit any "competitor" could obtain from reading the financial statements. Renewable generation businesses in Ontario are operated under strict public rules that apply to everyone, and there is little that is secret about it. Competitors are merely other companies in the same business. They do not in practice "compete" with PUI for business. SEC therefore concludes that the harm associated with the disclosure of competitive information is, in the circumstances of this case, very small.



Jay Shepherd Professional Corporation

On the other hand, the Board strongly prefers to have its proceedings fully transparent and open. In this case, the owner of both the Applicant and the affiliate PUI has made a conscious decision to operate them essentially as one business, through another affiliate, PUSI. The only reason the Board and the parties need to see the financials of PUI is because it is so tightly integrated with PUSI and the Applicant. That integration was implemented by choice. One of the consequences of that – which was known or should have been known to the owner at that time - is that the financial information of PUI becomes relevant in setting rates for the regulated entity, the Applicant.

In our submission, owners of regulated businesses that deliberately commingle the business operations of the regulated entity and unregulated affiliates must accept that there will be some level of public scrutiny of those unregulated affiliates. This is not happening because the Board or the parties are nosy. It is happening because the Applicant's owner chose to mix regulated and unregulated businesses together. If they were operated independently, the problem would not arise.

Therefore, in this particular case, where the potential competitive disadvantage is clearly small, perhaps even immaterial, and the need for the information is the result of the unusually tight integration of regulated and unregulated activities, the Board should in our view opt for enforcement of the principle of transparency, and require that these financial statements be on the public record.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties