



## Jay Shepherd

Professional Corporation  
2300 Yonge Street  
Suite 806, Box 2305  
Toronto, ON M4P 1E4

### **BY EMAIL and RESS**

July 5, 2013

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-2012-0153 – Northern Ontario Wires – Information Withdrawal**

We are counsel to the School Energy Coalition (“SEC”). Pursuant to the *Decision and Rate Order*, these are SEC’s submissions with respect to the request of Northern Ontario Wires (“NOW”) to withdraw their Strategic Financial Plan from the record in this proceeding. SEC submits that the Board should deny this request.

In our submission, the Board should only allow a party to withdraw a document that has been ordered to be placed on the public record if,

- i) it is clearly not relevant to the determination of the issues in the proceeding, and
- ii) it was produced by that party in addition to any requirements for information set out in the Board’s Filing Guidelines or as requested by way of interrogatory, technical conference question, or undertaking.

The Strategic Financial Plan does not meet either of these categories. It is clearly relevant, and it was sought by SEC by way of interrogatory.

The simplest way to look at this is making the assumption that this case went to hearing on all issues. In those circumstances, would NOW have been required to produce this document? SEC submits in this case it would have been required to do so.

The Strategic Financial Plan was relied upon by NOW to explain the increase in the principal balance for its long term debt from 2012 to 2013, as described in its response to Interrogatory 5-Staff-24. In trying to understand the answer to that Interrogatory, SEC specifically requested the Strategic Financial Plan in Supplementary Interrogatory 5-SEC-12s. If NOW had refused to

T. (416) 483-3300 F. (416) 483-3305

[mark.rubenstein@canadianenergylawyers.com](mailto:mark.rubenstein@canadianenergylawyers.com)

[www.canadianenergylawyers.com](http://www.canadianenergylawyers.com)

produce the document in response to the interrogatory, knowing that it would have been placed on the public record, SEC would have brought a motion pursuant to Rule 29.03 of the Board's *Rules of Practice and Procedure*. Since NOW did not dispute the relevance of the interrogatory, and had specifically referenced it in a previous interrogatory response, the Board would have followed its normal practice and ordered its production. Therefore, *prima facie* the document should be and remain on the public record.

Given that the Board has already approved the Settlement Agreement and Rate Order, SEC submits the need for the Strategic Financial Plan to remain on the record in this proceeding is only increased. Intervenors who signed the Declaration and Undertaking and thus had access to the Strategic Financial Plan have relied in part upon that document in agreeing to the Settlement Agreement. More importantly, the Board itself may have relied in part on that same document for the purposes of reaching its decision that the Settlement Agreement resulted in "just and reasonable" rates. It would be inappropriate that after the Decision in this proceeding had been released, a portion of the evidence, specifically relied upon by NOW in its application, relied on by at least some of the intervenors, and possibly relied on by the Board, at this point be withdrawn from the record.

All of which is respectfully submitted.

Yours very truly,  
**Jay Shepherd P.C.**

*Original signed by*

Mark Rubenstein

cc: Applicant and Intervenors (by email)