

April 14, 2014

Robert B. Warren
T: 416-947-5075
rwarren@weirfoulds.com

File 15441

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

Re: EB-2013-0234/Motion for Review

We are counsel to Toronto Hydro-Electric System Limited in this matter. On behalf of our client we enclose herewith its Motion, seeking a review of the Decision on Confidentiality dated April 8, 2014.

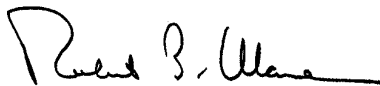
With the original of this letter we are delivering three copies of the Motion.

A Motion Record and Factum will be delivered in due course.

Although not included in the Orders requested, we ask that the present schedule for the processing of our client's application be maintained.

Yours truly,

WeirFoulds LLP



Robert B. Warren

RBW/dh

cc: Michael Miller
cc: Julie Girvan
cc: Peter Faye
cc: Patrick Hoey
cc: Mark Rubenstein
cc: Michael Janigan
cc: Rob Barrass
cc: Nikiforos Iatrou
6326654.1

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order pursuant to section 29 of the Ontario Energy Board Act, 1998;

AND IN THE MATTER OF Rules 42, 43 and 44 of the Ontario Energy Board's Rules of Practice and Procedure;

AND IN THE MATTER OF a motion by Toronto Hydro-Electric System Limited for a review and variance of the Decision on Confidentiality dated April 8, 2014.

NOTICE OF MOTION

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED ("THESL") will make a motion on a date and at a time to be fixed by the Ontario Energy Board ("Board"), at the Board's Chambers at 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order staying the implementation of the Decision on Confidentiality ("Decision"), dated April 8, 2014;
2. An Order that the Decision be reviewed;
3. An Order varying the Decision to provide that the Board will grant THESL's request that certain interrogatory responses (the "confidential information") be kept confidential;

4. An Order that the Motion to be heard by a panel of the Board other than the panel which rendered the Decision; and
5. Such further and other Orders as counsel may advise and the Board permit.

THE GROUNDS FOR THE MOTION ARE:

The Board committed the following errors:

1. It failed to properly distinguish between the Board's function under section 29 and its function under other sections of the Act.
2. It failed to properly distinguish between the requirements for the treatment of confidential information in an application under section 29 of the *Ontario Energy Board Act, 1998* ("Act") and under other sections of the Act.
3. It failed to properly distinguish between the nature of the public interest in an application under section 29 and the nature of the public interest in a proceeding under other sections of the Act.
4. It failed to properly interpret and apply the Legislature's intention in enacting section 29 of the Act.
5. It failed to consider the adverse consequences of the Decision and, in particular, failed to consider that the Decision will severely limit, if not eliminate altogether, the use of section 29 of the Act.
6. It erred in striking an inappropriate balance between any public interest in the disclosure of the confidential information and the harm to THESL and to the public from the disclosure of the confidential information.
7. It failed to properly consider the effect that publicly disclosing commercially sensitive information will have on competition and in so doing failed to consider how the Decision would undermine and harm competition.
8. It erroneously found that information about THESL's costs was already a matter of public information and that, therefore, THESL would suffer no harm from the disclosure of the confidential information.
9. It erroneously reversed its decision, made in an earlier proceeding, to keep a contract confidential.
10. It failed to apply, or to properly apply, the "Considerations in Determining Requests for Confidentiality" in its "Practice Direction in Determining Requests for Confidentiality".

11. It failed to acknowledge or apply principles with respect to the treatment of confidential commercial information accepted and applied by superior courts and other administrative Tribunals considering analogous issues.
12. It erroneously held that the confidential information at issue would have to be referred to by experts and intervenors.

THESL's application is the first of its kind under section 29 of the Act. It is essential, therefore, that the Board correctly interpret that section, that it correctly reflect the Legislature's intention in enacting section 29, and that it establish a correct precedent in its interpretation and application of section 29, including the treatment of requests for confidentiality.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The record in this application; and
2. Such further and other material as counsel may advise and the Board permit.

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Robert B. Warren
Nikiforos Iatrou
WeirFoulds LLP
4100 – 66 Wellington Street West
PO Box 35 Toronto-Dominion Centre
Toronto, ON M5K 1B7
Tel: 416-365-1110
Fax: 416-365-1876
E-mail: rwarren@weirfoulds.com
niatrou@weirfoulds.com

Rob Barrass
Lead Regulatory Counsel
Toronto Hydro-Electric System Limited
14 Carlton Street
Toronto, ON M5B 1K5
Tel: 416-542-2546
Fax: 416-542-3024
E-mail: rbarrass@torontohydro.com

Lawyers for Toronto Hydro-Electric System Limited

TO: Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto, Ontario M4P 1E4
Tel: 416-440-8111
Fax: 416-440-7656
email: boardsec@ontarioenergyboard.ca

AND TO: Consumers Council of Canada
Julie Girvan
62 Hillside Avenue East
Toronto ON M4S 1T5
Tel: 416-322-7936
Fax: 416-322-9703
email: jgirvan@uniserve.com

AND TO: Electricity Distributors Association
Afreen Khan
3700 Steeles Ave. W. Suite 1100
Vaughan ON L4L 8K8
Tel: 905-265-5334
email: akhan@eda-on.ca

AND TO: Energy Probe Research Foundation
Peter Faye Counsel
Consultant
42 Eastwood Crescent
Markham ON L3P 5Z7
Tel: 905-294-2013
email: pfaye@rogers.com

AND TO: Hydro Ottawa Limited
Patrick Hoey
3025 Albion Road North
P.O. Box 8700
Ottawa ON K1G 3S4
Tel: 613-738-5499 Ext: 7472
Fax: 613-738-5485
email: regulatoryaffairs@hydroottawa.com

AND TO: Schools Energy Coalition
Mark Rubenstein
Jay Shepherd Professional Corporation
2300 Yonge St. Suite 806
P.O. Box 2305
Toronto ON M4P 1E4
Tel: 416-483-3300
Fax: 416-483-3305
email: mark.rubenstein@canadianenergylawyers.com

AND TO: Vulnerable Energy Consumers Coalition
Michael Janigan, Counsel
Public Interest Advocacy Centre
ONE Nicholas Street Suite 1204
Ottawa ON K1N 7B7
Tel: 613-562-4002 Ext: 26
Fax: 613-562-0007
email: mjanigan@piac.ca