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CONFIDENTIAL UNTIL REVIEWED BY APPLICANT

BY EMAIL

August 12, 2014
Our File No. 20140002

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2014-0002 – Horizon 2015-2019 Rates – SEC Confidentiality Submissions

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #3, this letter constitutes SEC's submissions in response to the Applicant's claim for confidentiality of certain parts of the interrogatory responses.

SEC does not believe this letter contains confidential information. However, as the claim for confidentiality belongs to the Applicant, this letter is filed in confidence pending review by the Applicant. It will be filed on the public record once the Applicant has reviewed it for any claims of confidentiality, or when the Board determines that it should be placed on the public record.

These submissions deal with each of the claims of confidentiality in turn.

2-Staff-21

No submissions.

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4-Staff-26(f)

In this response, the Applicant either refuses to provide documents, provides them in a manner that remains redacted, or seeks confidential treatment.

Item (i) MEARIE Management Salary Survey

No submissions.

Items (ii) and (iii) Mercer Executive Compensation Documents

There are two problems with this response.

First, the Applicant seeks to keep information with respect to the compensation of its senior executives secret, even from the Board and the parties, contrary to Board policy.

Second, the Applicant seeks to have the remaining information in the documents confidential.

In SEC's submission, the Applicant should be held to the same standard as the Board, IESO, OPA, Hydro One and OPG, all of which are required to provide details of their top compensation, by employee, on the annual Sunshine List. In our technical conference questions, SEC will be asking the Applicant to file a document equivalent to the Sunshine List for the Applicant's employees in 2013.

In our submission, it is not reasonable for the Applicant to spend ratepayer money on the compensation of senior executives, and expect to have that information not only secret in the public disclosure sense, but secret even from the regulator and the parties.

SEC therefore submits that all redactions in these documents should be removed, and the documents should be filed on the public record.

Item (iv) Mercer Compensation Cost Benchmarking Study

With respect to the information Horizon proposes to redact even for the Board and parties, our submissions above apply.

With respect to the report generally, we do not see in the Applicant's submissions any reason for this to be kept from the public. The submissions allege that the position of the Applicant will be prejudiced in some way, but what that way is does not appear in the submissions. There is a reference to "items (b) and (c)", but we were unable to find that reference. If the intention was to reference items (ii) and (iii), our comments above apply. Otherwise, we do not see a way in which the public disclosure of this report prejudices the Applicant in any way.



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The Applicant also notes that Mercer provided this report in confidence, and the Applicant does not have authorization to place it on the public record. The Board has determined in numerous previous cases that this is not a valid reason to claim confidentiality. Further, if this argument were valid, it would apply equally to the MEARIE study, which the Applicant has already filed on the public record.

Item (v) Mercer Short Term Incentive Pay Design Survey

The only rationale given for refusing to provide this document to the Board and the parties is that it was provided to the Applicant in confidence. This is not a valid justification for confidential treatment, and is certainly not a justification to refuse to provide the document at all, even in confidence.

Further, the Applicant, having refused to comply with the Board's procedure with respect to this document, then says that if it is ordered to provide the document, it still wishes to have an opportunity to make submissions on confidentiality. SEC believes that this is disrespectful of the Board and its rules, and should not be tolerated.

SEC submits that this document should be filed forthwith, and should be placed on the public record.

4-AMPCO-16(b); 4-AMPCO-21(p); 4-Energy Probe-29(b); 4-SEC-23; 4.2-VECC-41

SEC does not disagree with the thrust of the Applicant's submissions. Forecasts of unionized rate increases in the Test Period should be treated as confidential, in this particular case.

We have two comments, however.

First, the proposed redactions appear to us to be more than are required to achieve the result of confidentiality of union rate increases. In our submission, much more limited redactions would achieve that result, but leave more on the public record.

Second, this issue is one that will come up more and more in the future as utilities file multi-year applications based on forecast future costs. Since compensation costs are a major component of future revenue requirements, this will inevitably mean that the level of transparency of the Board's processes will decrease over time.

This is particularly unfortunate in the context of union pay increases, because the actual secrecy of these numbers is doubtful. The unions can be expected to know, within a relatively narrow range, what the employer is budgeting for future increases. Thus, transparency is lost with zero, or very limited, benefit arising out of the confidentiality.



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It may be time for the Board to consider whether information of this type – forecast compensation increases – should be considered confidential at all. While SEC is not proposing that in this case, we invite the Board to consider the issue in the context of the potential future harm to the process from reduced transparency in multi-year applications.

4-AMPCO-21

Please see SEC’s submissions under 4-Staff-26, above.

SEC has no submissions with respect to part (p).

CCC-1

The confidential documents package provided to SEC with respect to this response contains 384 pages of material provided to the Board of Directors. There are no redactions indicated on the documents, so we must assume that the Applicant is claiming that the documents should be treated as confidential in their entirety.

If that is the case, this is clearly unjustified. Almost all of the information in these documents can be placed on the public record. There are a few cases where information related to unregulated affiliates, or to future union contract negotiations, is included. Those could be redacted, leaving most of these documents on the public record.

SEC therefore proposes that the Applicant be ordered to do so.

CCC-2

SEC was not provided with any version of these documents, redacted or unredacted. From the description, it appears the concern is with the email addresses of employees. SEC agrees that the email addresses should be redacted, but the names of the employees who received the communications should not be redacted. What is the point of filing a communication, if the Board does not know to whom the communication was addressed?

Question CCC-8

No submissions.

4-Energy Probe-43

No submissions.



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2-SEC-18

SEC agrees that the pricing of the consultant's work should be redacted. However, none of the parts of the response that deal with the scope of work, the nature of the retainer, the schedule, or any other aspect of the contract, aside from price, appear to us to need secrecy. They can all be placed on the public record, and should be.

4-SEC-36

The study in question has already been placed on the public record by Hydro One in EB-2013-0416. The reference is I-4.04-9-SEC-37, Attachment 1. It is therefore submitted that, whether or not it would otherwise have been appropriate to treat this as confidential, this is no longer a confidential document.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

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