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

BY EMAIL and RESS

July 27, 2015
Our File No. EB20110140

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2015-0216 – Upper Canada Transmission Inc. – East-West Tie Line

We are counsel to the School Energy Coalition ("SEC"). We have become aware of an *Invitation to Comment* issued by the Board to a limited number of entities, inviting comment on a request by Nextbridge/Upper Canada Transmission Inc. ("UCT") for approval of a revised schedule and additional costs related to the development of the East-West Tie Transmission Line ("EWT Line"). [1] SEC writes to raise concerns about the process the Board has undertaken in this matter, specifically the lack of notice and opportunity for ratepayers to provide their comments on the request relief.

As we understand UCT's request, it is seeking approval for: i) a revised development and reporting schedule, and ii) the recovery of additional development costs it believes it requires on the same basis as was approved in the Board's Phase 2 designation decision.

While not stated explicitly anywhere in its filing on May 15th or June 24th, the approval sought requires an order of the Board pursuant to the Board's statutory authority under the *Ontario Energy Board, Act, 1998* ("*OEB Act*"). The revised development schedule is intended to be a part of UCT's license which requires an amendment.[2] The approval of development costs to be collected from ratepayers can only be made pursuant to the Board's rate-setting authority pursuant to section 78 of the *OEB Act.*[3]

---

[1] *Invitation to Comment*, dated July 9 2015 (EB-2015-0216)
[2] Amendments to a license can either being made pursuant to section 70 of the *OEB Act* which does not require a hearing or section 74 of the *OEB Act* which does. It is not clear if UCT is seeking amendments to its license pursuant to section 74 of the *OEB Act,* or the Board as a result of its *Decision and Order Regarding Reporting by Designated Transmitter* (EB-2011-0140) issued January 22 2015, is doing so on its initiative pursuant to section 70 *OEB Act,*.
[3] *OEB Act*, s.78(3), (3.0.5)

Tel: (416) 483-3300 Fax: (416) 483-3305
mark.rubenstein@canadianenergylawyers.com
www.canadianenergylawyers.com

The *OEB Act* requires that unless there is another legislative provision to the contrary, orders of the Board made pursuant to its statutory authority cannot be made until it has held a hearing, and after first providing notice.[4]

While the Board has the general authority to waive the requirements of a hearing, it can only do so if either, i) no person requests a hearing after the Board gives notice of the right to request one[5], or ii) if the Board determines "no person other than the applicant will be adversely affected in a material way".[6] Neither of these exceptions is present in this situation. No notice of a request for a hearing has been given, and the relief sought by UCT, the request for approval to recover additional costs, adversely affects ratepayers in a material way. No notice was provided, or at the very least, inadequate notice was provided as only a few entities were sent the Board's letter seeking comment.

In addition to the notice issue, the process set out in the Board's *Invitation to Comment* does not conform to the requirements of procedural fairness since it does not provide for an opportunity for all those affected by the requested relief, an opportunity to provide comment.[7] The Board's own website says that applicants and stakeholders have a right to be heard and that "the OEB must allow all parties with legitimate direct interests to participate."[8] The Board has only provided this right to the IESO, AltaLink, and OEB Staff. No ratepayer groups, who represent those who will ultimately bear the consequences of the requested relief through their rates, were invited to provide comment. This includes no ratepayer groups or any other stakeholders who took part in the Board's designation proceeding (EB-2011-0140), such as SEC.

SEC requests that the Board issue a letter of direction requiring UCT to provide Notice to all those affected by the required relief, including those who took part in the designation proceeding, so that they may provide their comment. This includes SEC who wishes to provide comments on the requested relief. A copy of SEC's proposed comments has been appended to this letter.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Original signed by

Mark Rubenstein

---

[4] *OEB Act,* s.21(2)
[5] *OEB Act,* s.21(4)(a)
[6] *OEB Act,* s.21(4)(b)
[7] "The hallmarks of procedural fairness are well understood: the right to notice, the right to know the case to be met, the right to be heard and the right to an impartial decision-maker." *Partial Decision on Settlement Agreement (*(EB-2011-0327), dated February 8, 2012, p.4. Further see, *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission*), [1995] 2 SCR 781, para 29. *Moreau-Bérubé v. New Brunswick*,, 2002 SCC 11, para 75,
[8] http://www.ontarioenergyboard.ca/OEB/Industry/Media+Room/Publications/OEB+Resource+Guide/Understanding+the+Adjudication+Process
"What are the rights of applicants and stakeholders?
Applicants and stakeholders are entitled to:
1. the right to be heard:
- the OEB must deal with all applications that are within its mandate; and
- the OEB must allow all parties with legitimate direct interests to participate."

cc: W. McNally, SEC (email)
D. Richmond and J. Lea, Board Staff (email)
E. Chin and K. Hughes, Enbridge/UCT (email)
Interested Parties (email)

APPENDIX

School Energy Coalition Comment's on Upper Canada Transmission's Requested Relief

NextBridge/Upper Canada Transmission ("UCT") has sought approval of a revised development schedule, and additional costs to be recovered from ratepayers on the same basis as the originally approved development budget. This would mean that UCT would be allowed to recover costs up to the amount of any approved revised budget, regardless of if the East-West Tie Line is eventually needed.

These are the comments of the School Energy Coalition ("SEC") on the requested relief.

Updated Costs. SEC submits the Board should deny UCT approval of the additional costs at this time. The additional development costs are very significant. UCT is seeking an approval of an additional $23.2M, which is greater than the $22.4M that was originally approved.[1]

SEC does not dispute that the IESO's (formerly the OPA) recommendation for the in-service date to be postponed to 2020 will result in an extended development period and therefore, UCT will likely incur some additional development costs. Further, SEC accepts that based on the Phase 2 Designation Decision, UCT should be allowed to recover any prudent incremental development costs, even if the East-West Tie Line is eventually not required.[2] The issue is how much of the proposed additional costs are reasonable. To ensure that the amount to be collected is just and reasonable[3], the Board must ensure while approving any of these forecast development costs, that they are both reasonable in quantum, and also reflect truly *incremental* costs related to the revised in-service date.

In the Phase 2 Designation Decision, the Board determined that UCT's costs were reasonable on the basis that the forecast was tested by the competitive development process:

> By designating one of the applicants, the Board will be approving the development costs, up to the budgeted amount, for recovery. The School Energy Coalition submitted that there is insufficient information for the Board to determine that the development costs are just and reasonable. The Board does not agree. The Board has had the benefit of six competitive proposals to undertake development work. In the Board's opinion, the competitive process drives the applicants to be efficient and diligent in the preparation of their proposals. With the exception of Iccon/TPT, the development cost proposals ranged from $18.2 million to $24.0 million which is relatively narrow given the overall size of the project. Therefore, the Board finds that the development costs for the designated transmitter are reasonable, and will be recoverable subject to certain conditions.[4]

Unlike in the original forecast development, the additional costs proposed have not been tested by a competitive process. The information provided by UCT regarding these costs is wholly insufficient for adequate scrutiny. While they describe the drivers of the additional costs at a high level, they do not provide enough information to determine if the newly budgeted amounts are reasonable or appropriate. They also do not provide sufficient information to determine if, due to the extended

[1] UCT Letter dated May 15 2015, p.7
[2] *Phase 1 Decision and Order* (EB-2011-0140), dated July 12 2012, p.19
[3] *Ontario Energy Board, Act, 1998*, s.78(3), (3.0.5)
[4] *East-West Tie Designation Phase 2 Decision and Order* (EB-2011-0140), dated August 7 2013, p.30-31

Tel: (416) 483-3300 Fax: (416) 483-3305
mark.rubenstein@canadianenergylawyers.com
www.canadianenergylawyers.com

development schedule, UCT's rate of spending of the original development budget based on the original development schedule is appropriate. In determining what additional costs should be approved, the Board must ensure that the additional costs are reasonably incremental considering the change of the in-service date.

SEC submits the Board should require UCT to provide more detailed information, and provide for a discovery process (interrogatories etc.) so there is a proper testing of the evidence, before seeking submissions. In the alternative, the Board can allow UCT to accrue the additional costs in the already established variance account where they will be subject to full review at a later date.

Updated Schedule. SEC understands that UCT has worked with the IESO to determine an appropriate revised development schedule to allow for a 2020 in-service date[5], which includes a filing of a leave to construct application by 2017. SEC is not in a position, based on the information provided to date, to provide comments on the appropriateness of the revised milestones between where UCT is at now, and the filing of the leave to construct application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Original signed by

_____

Mark Rubenstein
Counsel for the School Energy Coalition

[5] UCT Letter dated May 15 2015, p.7