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April 17, 2017

VIA E-MAIL

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2016-0105 Thunder Bay Hydro Electricity Distribution Inc.
New Evidence – School Energy Coalition Letter of April 13, 2017

VECC is in receipt of the letter of April 13, 2017, by School Energy Coalition (SEC) with respect to the filing of additional evidence by Thunder Bay Hydro. We are in general agreement with the position put forward by SEC. VECC has also communicated with the Applicant to request clarification about the nature of this new evidence.

Evidence of Mr. Tsimberg

It is clear to us that Mr. Tsimberg is not being sought simply to testify to the Kinectrics Asset Condition Assessment (ACA) provided in TBH's evidence.[1] The ACA Report was written by a Ms. Katrina Lotho, whereas Mr. Tsimberg is noted as a "reviewer" of the Report. The Report, which was authored prior to the finalization of the Distribution System Plan (DSP), does not address the issue of whether or how the resulting health index is addressed in the DSP. The DSP does state: "*Thunder Bay Hydro has revised its previous capital plan to harmonize with the results of the Kinectrics report*."[2] To our knowledge, nowhere does the pre-filed evidence contain an opinion by Mr. Tsimberg or any other independent party as to how (or whether) the DSP addresses the ACA results.

We are in agreement with SEC that there is insufficient information to ascertain what facts Mr. Tsimberg's opinion is based on, or the methodology used to come to its conclusion. The entire substance of the March 24th letter by Mr. Tsimberg is contained in three short paragraphs. Paragraph 4 explains that Mr. Tsimberg is a self-declared expert, paragraph 6 lists areas that he has considered, and paragraph 7 provides short and vague conclusions indicating that "the prioritization process for ranking projects … is a good start." VECC does not think this is evidence that can be tested. In our view, it is a

[1] The ACA is filed at Appendix C of the Utility's Distribution System Plan.
[2] *Ibid*., pg. 52.

last-minute attempt to bolster the Applicant's position with respect to its capital spending plans—plans that were in dispute and not resolved during the settlement conference.

Inappropriate Post-Settlement Filing of Evidence

We would also like to express our concern with evidence (of whatever quality) being submitted by an Applicant subsequent to the conclusion of a settlement agreement. Where parties fail to come to agreement on issues and also fail to agree as to the need for further evidence, the Board should, in our view, proceed with caution. Settlement conferences allow parties to understand opposing positions and anticipate ways to deal with those in the subsequent hearing. We do not see a problem with using knowledge garnered in confidential negotiations—indeed, that is probably unavoidable.

However, in our view, there is significant difference between using knowledge gained in negotiations to prepare for a hearing, and preparing new evidence to counter revealed positions of parties. The latter, it seems to us, can be unfair. Allowing such behaviour further tilts the asymmetrical information gap that exists between applicants and those critically examining their respective proposals.

The Applicant may reject this characterization, arguing that submitting new evidence at this stage is simply serving the Board's needs by providing greater clarification of the issues. While there are times when this can be appropriate and helpful to the Board, it nevertheless raises questions of procedural fairness. And as SEC noted, citing the case of Grimsby Power (EB-2015-0072), this should certainly not happen without the Board granting interveners the opportunity to exercise proper review and discovery of the late evidence before the hearing itself.

In any given proceeding, however, there can always been "more evidence", suggesting an unending linear path leading to a singular correct answer. This is not the reality of Board proceedings, however. Rather, the Board plays a discretionary role in balancing a multitude of factors in determining any given issue, where a range of reasonable resolutions is available. This is what makes it all the more important that a clear and fair procedure is set out and followed, particularly with regards to new evidence.

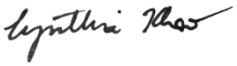
Conclusion

Therefore, VECC submits two requests:

First, VECC supports the position of SEC requiring Thunder Bay Hydro to provide revised and proper evidence, and requesting that the Board allow for full discovery of that evidence, with the hearing date correspondingly adjusted as necessary.

Second, in our view, it would be reasonable for the Board to reject both Mr. Tsimberg as a witness and to strike from the record his letter of March 24, 2017.

Yours truly,



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