



BY EMAIL and RESS

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September 11, 2018
Our File No. 20160160

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0160 – Hydro One Tx 2017-2018 - Rehearing

We are counsel for the School Energy Coalition (“SEC”). On behalf of our client, we are writing with respect to the procedure to be followed for the reconsideration of the EB-2016-0160 decision (the “Original Decision”) on the tax issue, as contemplated in the Board’s Motion for Review decision in EB-2017-0336 (the “Review Decision”).

Under the Review Decision, the Board identified errors in the Original Decision, and remitted the tax issue back to the original panel “to reconsider in light of these findings and all the evidence and argument the original panel and the reviewing panel heard on this issue”. While two of the original panel members, Vice-Chair Quesnelle and Member Thompson are no longer members of the Board, we understand that they still constitute the original panel (along with Member Elsayed) for the purposes of this reconsideration¹.

The errors identified in the Review Decision revolve primarily around how the actions of the province should be characterized, and how the standalone principle should be

1. See *Statutory Power Procedures Act*, section 4.3; *Piller v. Assn. of Ontario Land Surveyors*, 2002 CanLII 44996 (ONCA)

interpreted in the context of past Board policy and practice. There was also additional evidence led before the reviewing panel, which that panel noted in the Review Decision.

Given the importance of the issue, and the amount of money involved for customers (including our client), SEC would like the opportunity to have further discovery, both with respect to Hydro One and with respect to the province, in order to better understand how the standalone principle should be interpreted and applied in this case.

In addition, once discovery is complete, SEC believes that procedural fairness requires that parties have an opportunity to make written submissions on the full record, in light of the findings in the Review Decision and the applicable law. In our view, the appropriate way to structure this is submissions from the Applicant (and the province, if it chooses to participate), followed by submissions from OEB Staff and PWU, then submissions from the customer intervenors, and finally reply from the Applicant.

In our view, it is important that OEB Staff and PWU submissions precede those of the customer groups by perhaps a week or more, if OEB Staff and PWU end up supporting the positions of Hydro One, and opposing the positions of the customers. This structure of submissions mirrors what would normally happen in oral submissions. If they are not supporting Hydro One, of course, this step is not necessary.

In the event that the original panel is considering alternative approaches to procedure in this rehearing, SEC requests that it be given the opportunity to provide submissions on that alternative procedure.

All of which is respectfully submitted.

Yours very truly,

SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties