



**BY EMAIL and RESS**

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Our File No. 20160160

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**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”). We are responding in this letter to the submissions of Hydro One dated September 12, 2018. In our submission, Hydro One has mis-characterized the situation in two significant ways.

Hydro One says: “SEC suggests that the original panel members are required to be the panel that reconsiders this matter.”

With respect, that is not what SEC said, and it is not what Macaulay says. The Review Panel was and is the panel that reconsidered the matter. A new panel was constituted for that purpose. That is provided for in the Board’s Rules of Practice, and is consistent with the passage cited from Macaulay.

The Review Panel remitted the case back to the Original Panel. This is not the reconsideration that Macaulay refers to. That reconsideration (which the Board refers to as a review), has already happened. The Review Panel has made a determination that there were errors with respect to the Original Decision, and thus has ruled on the motion

by sending the Original Decision back to the Original Panel to be “fixed”. The Review Panel has completed its task.

The Original Panel, however, has not yet completed its task. That is the second problem with the Hydro One letter. Hydro One takes the position that the EB-2016-0160 Original Decision was a final decision. That cannot be, because if it were then the Original Decision could not be changed.

Further, the Hydro One position that the Original Panel should not be the ones that “fix” the Original Decision is inconsistent with the express determination of the Review Panel. The Review Panel ordered that the case be remitted back to the Original Panel, which had heard the original evidence and considered the original arguments of the parties. The Review Decision can only be complied with if the Original Panel considers the issue in light of the comments of the Review Panel.

We note that the Review Panel could have substituted their decision for that of the Original Panel, and perhaps could have remitted the issue back to a new panel (to be selected by the Chair) for determination (although that would have been unprecedented). They did neither, and instead issued a final decision on the motion that places the case back in the hands of the Original Panel. While the Review Panel is, presumably, functus, the Original Panel is not. They have unfinished business.

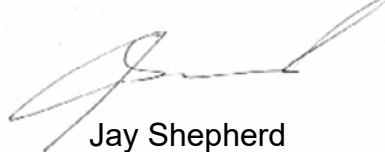
We also note that the Hydro One letter refers only to former Member Thompson as being disqualified. They fail to recognize that former Vice-Chair Quesnelle would also be disqualified on their argument. In both cases, that would only be true if the Original Decision was a final decision, which it is not. Further, if that were true then there is a dilemma, because the Review Decision would be incapable of being implemented.

SEC believes that the correct action of the Board is to bring the three members of the Original Panel back together to complete their EB-2016-0160 task on this issue. That panel can then make a determination on whether further discovery, or further argument, is appropriate.

All of which is respectfully submitted.

Yours very truly,

**SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties