



BY EMAIL and RESS

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Our File No. 20180219

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

Dear Ms. Walli:

Re: EB-2018-0219 – PUC Distribution – Confidentiality Submissions

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #4, these are SEC's submissions in respect of the four documents that the Applicant claims are confidential.

SEC submits that no component of any of the documents is confidential. On the face of it, it appears that the reason that the Applicant is claiming confidentiality is that it is contractually obligated to do so.

Our comments on each of the documents are as follows:

1. Appendix 9: This is the original 2013 Letter of Intent between Infrastructure Energy LLC (then called Energizing Co.) and PUC Distribution. It appears to have been written by a non-lawyer. The body of the document is standard wording from many common precedents. The only thing special is the Attachment, which is a Term Sheet. However, all of the terms in the term sheet are very general, and are consistent with the terms described in the Application. Since it was replaced in

2015, it's value is context. The Board will find it useful in considering the eventual deal, but it doesn't add anything surprising or unique.

2. Appendix 11: This is the amended, 2015 Letter of Intent between the same parties. This was likely written by lawyers (although probably not the lawyers who wrote the Agreement), and contains much more detailed terms of the deal. It also includes a number of terms that are not described in the Application, including some that appear to be inconsistent with the Application. SEC expects that there will be extensive questioning at the Technical Conference, and cross-examination at the oral hearing, based on this document. On the other hand, while the terms described are somewhat surprising, they are not unusual. All of the terms are seen commonly in agreements of this type. Further, the overall structure described is not only neither unique nor innovative, but is in fact quite conventional. Any competent deal lawyer, with the goals of this deal, would produce something similar.
3. Appendix 13: This is the draft Project Agreement between the Applicant and a company not yet formed, SSG. It was prepared by a major Toronto law firm, and contains almost entirely standard terminology for this kind of contract. For example, parties have seen these terms in OPG agreements, and in documentation relating to many large projects by other utilities. Most commercial lawyers who do deals would be familiar with both the structure of this Agreement, and the protections built into it for both parties. Further, the document does not disclose anything about the UDM project that is different from other projects. Although some of the terms are quite different from the Letter of Intent, they are not different from other construction agreements.
4. Appendix 12: This is the Interpretation schedule for Appendix #13. In it, the various defined terms are provided, and the standard rules for interpretation of the Agreement are listed. It is also a standard document for the Toronto law firm that drafted it, but is certainly quite a sophisticated version of this category of boilerplate. However, the interpretation rules are nothing unusual. The definitions are, on the other hand, specific to this particular deal. If the deal structure and its details were unusual, then the definitions could be proprietary to the author of the agreement. However, that is not the case, because neither the deal structure nor the details are unusual.

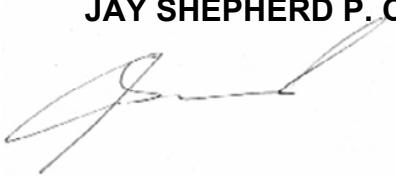
After review of the documents, SEC therefore submits that there is nothing in them that meets the Board's definition of "confidential information". Further, SEC notes that these documents are critical to the Board's consideration of the issues, because central to the Application is the claim that this deal structure is the only way they can bring their system up to industry standards. Both the technical conference and the oral hearing will include significant discussion of these issues. The Board's preference for having its hearings transparent to the public will be sorely tested if the key questions have to be discussed behind closed doors.

SEC has not gone through the individual components of these documents in these submissions, because the Applicant has insisted that the entire documents are confidential, and therefore they have refused to file the redacted versions normally required under Section 5.1.4(c) of the Practice Direction on Confidential Filings. We have also avoided detailed parsing of the clauses of the documents because to do so would require that these submissions themselves be confidential.

However, if the Board has any concerns that specific clauses may be more unusual than others, SEC is prepared to make specific submissions on any such clauses.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties