Shepherd Rubenstein

By EMAIL and RESS

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January 14, 2021
Our File: EB20200198

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

Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2020-0198 – Enbridge Waterfront Relocation

We are counsel to the School Energy Coalition ("SEC"). SEC is concerned that the scope of the ADR ordered in Procedural Order #4 may be unachievable because there will have been no opportunity for discovery prior to the ADR.

Our concern relates to the first of the two issues to be addressed in the ADR, i.e.:

> ***Is the Proposed Pipeline the most cost-effective solution and have all viable alternatives been properly considered, including the Utility Corridor proposed by Waterfront Toronto?***

In order to reach any agreed resolution of that issue, or any part of it, the parties will have to consider the Applicant's evidence on the proposed project, and the alternatives the Applicant considered. The parties will also have to consider the new evidence to be filed by Waterfront Toronto on the alternative they have proposed, and the materials already filed by the City of Toronto.

This is all substantive information, and none of it has been tested in any discovery process. This creates two necessary results.

First, it is almost impossible to have a real discussion about cost-effectiveness or alternatives, since it will inevitably devolve into debates over the reliability or completeness of the facts currently on the record. In our experience, incomplete information always produces such a result in negotiations.

Second, parties will be unwilling to commit to resolution of the issue or any part of it, because lack of information will create uncertainty about whether any given settlement terms are suitable. In our consistent experience, settlement is very difficult if the information on which it would be based is incomplete. When making offers, for example, the discussion between co-operating parties often revolves around whether they all have sufficient understanding of the facts to be confident that their offer will be fair.

In our view, there is no reasonable likelihood of settlement of Issue #1 prior to discovery.

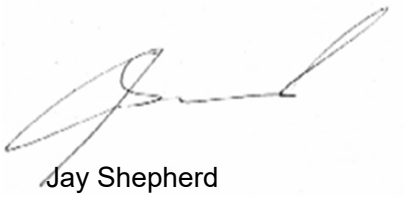
With respect to Issue #2, SEC believes that there is information on the record, and any gaps in that information can be dealt with during negotiations through the sharing of additional documents and explanations. Resolution of this issue has aspects of a regulatory ADR, but overall is more akin to a settlement discussion in litigation. As in a court case, legal responsibility has a higher impact than is normally the case in regulatory situations.

Thus, for Issue #2, SEC expects that a reasonable negotiation can take place. While it would perhaps be better to have discovery on that issue first, we are conscious that time is of the essence, particularly on this issue, and therefore a truncated negotiation may be justified.

Under the circumstances, SEC therefore requests that the Board modify its procedural orders to defer consideration of Issue #1 until there is a full interrogatory process, including interrogatories not just on the Applicant's evidence, but also interrogatories on the upcoming Waterfront Toronto evidence, and on the materials filed by the City of Toronto. In the absence of discovery, SEC believes there is no likelihood that Issue #1 can be settled, and the time spent on that issue will simply be wasted.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Wayne McNally, SEC (by email)
Interested Parties (by email)