



BY EMAIL and RESS

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March 9, 2022
Our File: EB20200293

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

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2020-0293 – Enbridge St. Laurent LTC – Disputed KT2.1

We are counsel to the School Energy Coalition (“SEC”). This letter is being sent to request that the OEB strike a disputed exhibit, KT2.1, from the record of this proceeding as being an improper exhibit.

The exhibit in question was put forward by Energy Probe, purportedly as an aid to examination of witnesses put forward by SEC, Pollution Probe, and the City of Ottawa, all intervenors in this proceeding. It consists of a printout of some pages from the website of an organization called Ottawa Wind Concerns. That organization appears in fact to be a federally incorporated non-share-capital corporation called Wind Concerns, which generally operates under the name Wind Concerns Ontario. However, nothing turns on the name or the corporate status.

Energy Probe advised SEC counsel and other parties on Saturday, March 5, 2022 at 10:44 PM that it planned to refer to the printout, and provided a copy. Although technically non-compliant with Rule 14.01 (by reason of Rule 6.01(c)), nothing turns on that, and SEC does not object that proper notice was not given. From our point of view, the notice was adequate, although obviously we cannot speak for other parties in this regard.

A copy of the communication from Energy Probe is attached. In it, Energy Probe makes clear that it would not ask any questions with respect to the contents of this printout. Its only intent was to refer to it to seek confirmation that there was some community opposition to the Energy Evolution Plan approved by Ottawa City Council and being implemented by the witnesses, employees of the City and a related entity.

At the technical conference, Mr. Ladanyi on behalf of Energy Probe sought to introduce the printout, and SEC counsel objected. SEC counsel also stipulated that the witnesses would agree that there was opposition to the Energy Evolution Plan in Ottawa. The exchange, slightly abbreviated, is as follows (Transcript, p. 5-6):

“MR. LADANYI: ...I also sent a link to a printout from a web page that I will not be actually asking the witnesses to agree to, just to acknowledge that there is opposition in Ottawa to what they're planning. So may I have an exhibit number for the printout from the web page, please.

MR. SHEPHERD: I object to that. Who is the author of the web page material?

MR. LADANYI: It is a group called Wind Concerns Ottawa, as far as I know. They're --

MR. SHEPHERD: Who --

MR. LADANYI: And I am not -- this is not evidence. I am just saying that I wanted to show, and any amount -- anything can be brought in to show there is opposition -- I could have brought in a placard. I decided that would be the simplest way to show there is opposition, because I think you are trying to show this is all a done deal, and it is definitely not a done deal. So that is my plan.

MR. SHEPHERD: ... The witnesses are not claiming that there is no opposition, and we're happy to stipulate that there is some opposition in Ottawa to the energy evolution plan that has been passed by Ottawa city council. There is no need for you to file your material.

MR. LADANYI: Well, it goes like this. This is a technical conference and not a hearing, so I think you should -- your objection can be noted in the hearing. However, the rules in a technical conference are not that clear. So I can have an exhibit number, and then you can argue that this exhibit should be struck or nothing done with it. You can do whatever you like with it, but since there is no Board panel here, there is nothing that can be done. I can have a number. That's all I am asking for. A number.” [emphasis added]

There followed a lot of back and forth for several minutes, in which it was clear that:

- Energy Probe would not ask any questions about the document.
- The witnesses would agree that there is opposition to Energy Evolution in Ottawa.
- Energy Probe believes they have an absolute right to file anything they want on the record in a technical conference, even though it is not evidence, and it will not actually be used for anything, and there are no rules or other restrictions on their ability to do so.

It is the last point that has prompted SEC to write this letter.

SEC believes that flexibility in the rules at a technical conference is a good thing, and we regularly rely on that flexibility ourselves. It is often easier to ensure that the evidence is clear and complete (the purpose of a technical conference) if you find an external document that says what you think is consistent with the evidence of the witnesses, and simply ask them to agree or disagree.

Where that is done, the document itself is not evidence. The evidence is what the witnesses say about its contents. This is why such documents are referred to as aids to examination (or, in a hearing, aids to cross-examination). They can be seen as essentially elegant ways of delivering a question in a clear manner.

A good example of this arises at pp. 29-34 of the same Transcript. Mr. Elson filed a document (KT2.2) that included a report from the International Energy Agency on electrification. He brought the witnesses to specific statements in the IEA document, and asked them to relate those statements to the Energy Evolution Plan. The statements were relevant because Enbridge has



claimed that Energy Evolution is not feasible, and the witness' evidence in response to Mr. Elson's questions was that Energy Evolution is less ambitious than the IEA report. As Mr. Millar correctly pointed out (at p. 32), "[Mr. Elson] has read to them from a document and asked their views on that document. That is them giving evidence, not him, I think."

Contrast that with KT2.1. Energy Probe admitted that they did not intend to use it as the basis for any questions, nor to refer to any of its contents and ask the witnesses to agree or disagree. That was in fact the case, They did not use the printout as an aid to examination. They simply used the opportunity of a technical conference to put it on the record, assuming that the OEB would take no action to prevent that.

SEC believes that, if a document has a legitimate reason to be used in questioning, the flexibility of a technical conference should be maintained. Everyone benefits from that flexibility. However, if there is no connection between proper questions and the document, then there is no basis on which it should become an exhibit.

We wish to make clear, by the way, that the views of the author or authors of the document are not part of our argument in this matter. This is not about credibility. It is about the appropriate process for using external documents (from anyone) for questioning. The IEA document was OK not because it was the IEA, and they are somehow more worth listening to than Ottawa Wind Concerns. The IEA document was OK because it was used to make the questioning clearer, and thus to make the answers from the witnesses more useful to the OEB.

SEC therefore requests that the printout marked KT2.1 not be included in the record of this proceeding.

All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein Professional Corporation

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a faint, light-colored signature line.

Jay Shepherd

cc: Ted Doherty, SEC (by email)
Interested parties (by email)

Jay Shepherd

From: Thomas Ladanyi <tom.ladanyi@rogers.com>
Sent: March 5, 2022 10:42 PM
To: 'Cherida Walter'; egiregulatoryproceedings@enbridge.com;
guri.pannu@enbridge.com; spainc@rogers.com; jack@cleanairalliance.org; 'Kent';
amanda@elsonadvocacy.ca; 'michael.brophy'; 'Ian.Mondrow'; srahbar@igua.ca;
mike.fletcher@ottawa.ca; 'Adam Stiers'; DR Quinn
Cc: 'Zora Crnojacki (She/Her)'; 'Pascale Duguay'; 'James Sidlofsky'; 'Michael Parkes';
'Michael Millar'; 'Brittany.Zimmer@enbridge.com'; 'Stephanie.Allman@enbridge.com';
ckeizer@torys.com; fred@shepherdrubenstein.com; 'SEC@oesc-cseo.org';
jay@shepherdrubenstein.com; mark@shepherdrubenstein.com; daniel_dicaire@och.ca
Subject: EB-2020-0293 Enbridge St. Laurent Ottawa North LTC Technical Conference- Energy
Probe Reference Material for Panel 2
Attachments: Ottawa Wind Concerns.PDF

At the Technical Conference on Monday, Energy Probe may seek from Panel 2 clarifications of responses to the following interrogatories:

Sponsors-1.1- Energy Probe 1, 2,3,4,7,8,9,10. Energy Probe may also refer to the attached document to ask the panel to confirm that there is opposition in Ottawa to the Energy Evolution plan. The document is a pdf scan of the material on the [Ottawa Wind Concerns](#) website. Energy Probe will not question the panel on the content of the document.

Tom Ladanyi
Consultant representing Energy Probe