



By EMAIL and RESS

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July 21, 2022
Our File: HVAC20220001

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

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2021-0110 – Hydro One JRAP – HVAC Intervention

We are counsel for the HVAC Coalition ("HVAC"). We have enclosed the Notice of Intervention of HVAC in this proceeding, and are requesting late intervenor status. With this letter, we are providing an explanation of the intervention, the proposed scope, and the reason for the late filing.

On July 15, 2022 HVAC was made aware through a member of the trade press that Hydro One has apparently entered into exclusive brand endorsement arrangements with three companies for the sale of heat pumps in their franchise area. A copy of the article describing this is attached. While dated July 11th, it appears to have been publicly posted on July 15th. From the information we have currently, it appears that this arrangement may be part of an outsourcing deal with an American company. Again, the details are unknown.

We have reviewed the Application in EB-2021-0110, and the many other filings, and have not been able to find any reference to this arrangement, even though it appears from the Hydro One website that it is an activity of the regulated distribution company. We have not been able to find any information on the financial implications of this (costs incurred, payments received from the endorsed companies, etc.). Our clients have canvassed many of their members, who are most of the HVAC contractors in Ontario, and none were aware of, or were given any opportunity to participate in, these arrangements.

As will be clear from the attached article, endorsement by a regulated utility of a select group of HVAC contractors has the potential to seriously undermine competition, and therefore the availability of energy-efficient equipment and services to Hydro One customers at affordable prices.

The OEB will be aware that, in the distant past, Enbridge (then Consumers Gas) did something similar, seeking (and for a time succeeding) to control the HVAC marketplace in Ontario. The effect then was to harm competition and limit the ability of consumers to source products and get the best financial terms. The OEB put a stop to this, and the industry has flourished since then, which has benefitted customers significantly.

HVAC is seeking late intervention in this proceeding because it is a five year rate application, and is therefore the only opportunity HVAC will have to raise this issue before the regulator for a very long time. If it is left until the next rebasing, the industry – and Hydro One customers - could incur permanent damage as a result of anti-competitive activities of a regulated utility.

We note that this issue engages the rate jurisdiction of the OEB, as it deals with costs and revenues arising in the regulated utility. It also engages the jurisdiction of the OEB to police the activities of regulated utilities to ensure that they are consistent with their licences and with applicable legal and regulatory limitations. We note that in the past the Competition Bureau federally has made clear that issues such as this – anti-competitive activities of Ontario regulated utilities - are considered to be within the primary jurisdiction of the Ontario Energy Board.

We also note that HVAC Coalition, although a past intervenor in a number of gas and electricity proceedings before the OEB, had no notice of this rate application. Further the Application does not appear to provide any disclosure of the facts underlying this problem, and were it not for the fortuitous information provided through press digging, we might not have known about this until it was too late. As a result, neither HVAC, nor any other party, nor the OEB could have been aware that this issue existed.

HVAC proposes, if accepted as an intervenor, to participate fully in this proceeding from this time forward, including ADR, oral hearing, and argument. Depending on the information filed (see below) and the results of the upcoming ADR, if this issue remains unresolved HVAC may seek the OEB's permission to present a panel of heat pump contractors to provide evidence on the potential impact of these Hydro One activities on competition, product and service availability, and pricing to consumers.

Normally, a late intervenor would be expected to accept the record as filed to date. In general, HVAC commits to do so. However, we ask that the OEB order Hydro One to answer a short series of interrogatories on this issue. Those interrogatories are attached. If HVAC has responses prior to the start of the ADR, we believe that will bring us right up to speed and provide an opportunity for useful dialogue during ADR.

As noted in the attached Notice of Intervention, HVAC is seeking an OEB decision allowing it eligibility for recovery of reasonably incurred costs. In past proceedings in gas and electricity, the OEB has generally agreed that HVAC, with its narrow focus on competitive issues that directly impact customers, adds value and should be able to recover its costs of intervention.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Martin Luymes, HVAC (by email)
Interested Parties (by email)

IN THE MATTER of the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. for an Order or Orders approving just and reasonable rates and other service charges for the transmissions and distribution of electricity, effective on January 1, 2023.

NOTICE OF INTERVENTION

OF THE

HVAC COALITION

1. The HVAC Coalition hereby applies for intervenor status in this proceeding, and requests that the OEB allow recovery of its reasonably incurred costs of its participation.

General Interest of the Intervenor

2. The HVAC Coalition is a coalition established more than twenty-five years ago to represent the interests of Ontario heating and air conditioning contractors, suppliers, and manufacturers in matters relating to energy regulation, policy, and management. It counts amongst its members a majority of the heating and air conditioning contractors operating within the Applicant's franchise area.
3. The intervenor's members have a significant interest in the activities of regulated electricity distributors and their affiliates in the province, because any action by an electricity distributor to use its monopoly power to affect the competitive markets can affect not only the economic viability of the members' businesses, but also the nature and price of the services available to the members' customers. Past actions of gas and electric utilities and their affiliates have created significant barriers to the competitive flow of goods and services within the HVAC equipment and servicing sectors, in some cases causing bankruptcies or other serious impacts on local small and medium sized enterprises around the province. The OEB has, in many of those cases, stepped in to prevent regulated utilities from using their monopoly powers in anti-competitive ways. Where in the past the gas utilities utilized their regulated activities to subsidize competitive activities, to the detriment of the ratepayers, we are now seeing an increasing tendency by electricity distributors to seek higher profits through unregulated activities that can be detrimental to their regulated customers.

Issues to be Addressed

4. HVAC Coalition's intended participation in EB-2021-0110 will focus on the following issues:
 - (a) The proposed preferred arrangements by the Applicant with competitive companies for heat pumps and other equipment;

- (b) The costs and impact of those arrangements, including but not limited to any responsibility of the regulated ratepayers in that regard; and
- (c) Generally to represent the interests of local heating and air conditioning contractors in this process.

The Intervenor's Intended Participation

- 5. The HVAC Coalition intends to participate in any pre-hearing procedures, including interrogatories or technical conferences, and settlement conferences. HVAC Coalition also intends to participate in any oral hearing of this matter, and in written or oral submissions, as well as any other parts of the process that the Board should order.
- 6. Depending on the answers to interrogatories and the results of the ADR, the HVAC Coalition may seek to file evidence relating to:
 - (a) The possibility that the actions of the Applicant and its affiliates in the franchise area are anti-competitive and harmful to customers; and/or
 - (b) The appropriate level of costs of the regulated utility that should be borne by the ratepayers through regulated rates, vs. those that should be excluded from rates.

Nature of Hearing Requested

- 7. HVAC Coalition accepts the record to date, and understands that an oral hearing has been ordered by the OEB.

Counsel/Representative

- 8. The HVAC Coalition requests that a copy of all documents filed with the Board by each party to this proceeding be served on the Applicant, and on the Applicant's counsel, as follows:
 - (a) HVAC Coalition:

HVAC COALITION
2680 Matheson Blvd. East,
Mississauga, Ontario
L4W 0A5

Attn: Martin Luymes, Co-ordinator
Phone: 416 453-5899
Fax: 905 602-1197
Email: mluymes@hrai.ca

(b) HVAC Coalition's counsel:

SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION

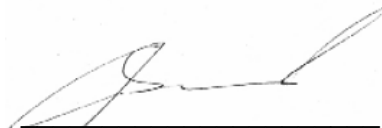
2200 Yonge Street, Suite 1302
Toronto, Ontario, M4S 2C6

Attn: Jay Shepherd
Phone: 416-483-3300
Cell: 416-804-2767
Fax: 416-483-3305
Email: jay@shepherdrubenstein.com

Costs

9. In recent years, the HVAC Coalition has sometimes sought and been awarded costs relating to its participation in proceedings before the Board. Those situations in which costs have been allowed have been ones in which the primary focus has been on the impact on ratepayers, and HVAC Coalition can provide a perspective to the Board that would otherwise not be available. HVAC Coalition generally does not intervene where those conditions are not met.
10. This Applicant, unlike some other electricity distributors, appears to have proposed a procurement program that could reduce competition, reduce selection, and increase ultimate prices to customers for HVAC goods and services.
11. In this proceeding, and notwithstanding the wording of the Board's Practice Direction on Cost Awards, HVAC Coalition therefore asks the Board to exercise its discretion to order that HVAC Coalition be awarded recovery of its reasonably incurred costs of participation, as the Board did in EB-2013-0159, EB-2016-0079, EB-2018-0318 and a number of other cases.

Respectfully submitted on behalf of the HVAC Coalition this 22nd day of July, 2022.



Jay Shepherd
Counsel for the HVAC Coalition

IN THE MATTER of the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Hydro One Networks Inc. for an Order or Orders approving just and reasonable rates and other service charges for the transmissions and distribution of electricity, effective on January 1, 2023.

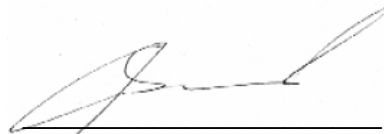
INTERROGATORIES

OF THE

HVAC COALITION

1. Please provide copies of all agreements, memoranda of understanding, and other such commercial documents, relating to residential HVAC and plumbing products and services, between the Applicant and
 - a) HomeServe
 - b) Home Depot
 - c) 1Click Heating and Cooling, or
 - d) Bidgely.
2. Please provide copies of any business plans, business cases, roadmaps, or similar planning documents relating to the sale, rental, servicing, or marketing of residential HVAC and plumbing products that involve any participation by the regulated utility.
3. Please provide a full explanation of the business activities described in the attached article in Mechanical Business magazine.
4. Please provide details of all costs, whether operating or capital, and whether direct or allocated, relating to the Applicant's activities involving residential HVAC and plumbing products and services, and identify where in the Application those costs and allocations can be found.

Respectfully submitted on behalf of the HVAC Coalition this 22nd day of July, 2022.



Jay Shepherd
Counsel for the HVAC Coalition

LATEST NEWS

Supply and service sector faces new competition

By MechBiz On Jul 11, 2022

Mechanical Business has uncovered information regarding Hydro One that will impact mechanical contractors and their suppliers. Our interest was prompted by a flyer an MB staffer received in the mail concerning a British-based company named HomeServe that sells a range of emergency home repair programs.

Subsequently, we learned that Hydro One, an electrical utility in Ontario, is endorsing three exclusive partners, one of which is HomeServe, in the sale of residential HVAC and plumbing products, and services.

The other partners are Home Depot and 1Click Heating and Cooling, which bills itself as Canada's first fully ecommerce-based HVAC company. When you visit My Energy Marketplace on the Hydro One website a variety of products are highlighted including home repair plans along with brand name air conditioning units, heat pumps and water heaters among other products.

These web pages have general notes about these products but when you scroll down to "Featured Products" actual pricing is listed along with rebates, which you can only access if you purchase from that vendor. A button is provided to let the reader learn more or as the site says "explore" about each product. These buttons take the reader to the HomeServe or Home Depot or 1Click websites.

Similar to industry challenges in the 1980s with Ontario gas utilities, Hydro One is taking a different but somewhat similar route into the HVAC and plumbing marketplace. *Mechanical Business* sent questions to Hydro One to better understand the relationships and intention of the parties involved.

Responses from Hydro One stressed their commitment "to meeting our customers' evolving energy needs by providing choice and flexibility. As a trusted energy advisor, we have made it easy for customers to learn about energy-efficient appliances that suit their lifestyle through My Energy Marketplace." It is interesting to note that Hydro One has a disclaimer on the product pages.

While HomeServe refers to Hydro One as a partner and displays its logo on its website, there are no partnership agreements between Hydro One and the three providers. In fact, Hydro One has no direct relationship with any vendors on My Energy Marketplace. The utility has instead entered into a contract with a California website vendor named Bidgely who services utilities throughout North America.

This website acts as a referral service for customers who want to pursue products and services listed on the site. Vendors are authorized by Hydro One to be listed on the site, which is seamlessly integrated in the Hydro One website. Interestingly, Bidgely has the following statement on its website "Bidgely smart shop experience empowers utilities to become the center of customers' universe for smart home and appliance shopping."

Hydro One's response goes on to confirm its customer databases are not available to approved vendors. However, the Hydro One logo is being made available to vendors if requested.

It is clear Hydro One's strategy is coming from the electrification climate change push from the provinces and the federal government. What will other Canadian electrical utilities do when they look at Hydro One's strategy? Electrical utilities can



certainly promote electrification in a generic sense but featuring specific vendors outside of the traditional service and supply chain seems problematic. This promotion would be less concerning if it simply informed consumers on how to engage reputable and qualified electrical, HVAC or plumbing contractors for access to product and services.

[ecommerce](#)[home repairs](#)[hvac](#)[Hydro One](#)[industry challenges](#)[industry partnerships](#)

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