



By EMAIL and RESS

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July 29, 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 are in receipt of the Applicant’s July 29th objection to our intervention, and have the following brief reply.

The following points may be relevant to the OEB:

1. **Notice.** The Applicant claims that HVAC had adequate notice. This is incorrect. The notice provided by the Applicant to members of the public made no mention of the issue that concerns HVAC. Notice is an issue-specific concept.
2. **Relevance.** The Applicant alleges that the issue that concerns HVAC is not relevant to a rate proceeding. HVAC has already stipulated that it will keep its intervention within the bounds of a rate proceeding, meaning that it’s focus will be on the impacts on customers, and on what they are getting for their rates. HVAC has a long history of ensuring that its interventions in rate proceedings remain so focused, and the OEB has never had any occasion to doubt that when we say we will stick to customer and rates issues, we do exactly that.
3. **Materiality.** The Applicant is concerned that the costs associated with this activity are not material. The OEB has no evidence of that, but in any case the issue is not limited to how much customer money is being spent to promote multinational equipment vendors at the expense of local Ontario HVAC contractors and their customers. The more problematic issue is the impact on customer price and choice of Hydro One interfering in the competitive markets for residential and other HVAC equipment. If customers pay more, and get less selection, or poorer service, for energy efficient products because of Hydro One’s actions, it is difficult to argue that is not material. At the very least, it is material to those customers.
4. **Anti-Competitive Practices.** The Applicant, not surprisingly, denies engaging in anti-competitive practices. They may well be right. The evidence is not in, and no-one is alleging that anti-competitive activity has been proved. HVAC seeks to ask questions about this, so that the OEB

can determine whether the customers are being harmed by anti-competitive practices. At this point, the burden on HVAC is to show that there may be an issue that harms customers. In this respect, we invite the OEB to look at just one example (out of several with similar impacts) of a page on the utility's website: [Central Heating and Heat Pumps](#). As the OEB will see, the page starts with a statement that this is the only place a customer needs to look for this information:

"Looking to buy a home heating system? We've got you covered! See all the information you need below" [emphasis added]

Then, the page lists available products from the three preferred vendors, specifically saying that Hydro One chose the best ones, as follows:

"The products below have been curated for you based on the discounts available on them." [emphasis added]

The page then goes to links to those products, without indicating they are third party sites, but under a button labelled "Explore". The customer doesn't know until they reach the final link that it is no longer the Hydro One site. We note that there is also no indication that the whole Marketplace set of pages is provided by a third party in California. It appears to be something provided by Hydro One.

Finally, in very small type at the very bottom of the page, where no residential customer will look, the Applicant includes a legal disclaimer that only a lawyer would understand.

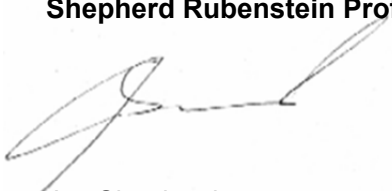
HVAC submits that, *prima facie*, the OEB should be sufficiently concerned about the impact of this on customers to want additional information.

5. **Regulatory Efficiency.** HVAC has not asked for any delay in the process, nor any special provision except the answers to a few simple questions that the Applicant should have readily available. HVAC has not asked for any permission to file evidence, or provide a panel of witnesses (whether contractors or customers), and understands that, if and when that appears to be necessary, HVAC will have to demonstrate to the OEB that it is both efficient and necessary to do so. We hope that will not be necessary, but until we have more information we have no way of knowing. This appears to be an issue that is perfectly suited to ADR, where a dialogue can produce a solution. In fact, the purpose of sending a brief set of questions was to facilitate an early and complete resolution of this issue.

6. **Costs.** HVAC has been found eligible for costs in many previous rate proceedings. It is always a precondition that HVAC stick to issues relevant to those proceedings, and that HVAC focus on adding value for the OEB, and we have always done so. We would assume that the same would be true in this case.

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)