



By EMAIL and RESS

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August 26, 2024  
Our File: HV 2024-0011

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

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2024-0111 – Enbridge Rebasing Phase 2 – Confidentiality Claim**

We are counsel for the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI). This letter is being sent in response to the letter of the Applicant's counsel dated August 23, 2024.

HRAI divides the issue of confidentiality as claimed by the Applicant into two distinct components.

At one level, there is the general question of whether the items redacted in the undertaking responses are appropriately treated as confidential under the OEB's Practice Direction. To make submissions on this question, counsel and our instructing representative Mr. Luymes will have to look at the redactions themselves, and we have (intentionally) not done so as yet. The general issue of confidentiality appears to be less urgent, because the proceeding can continue on its current schedule in parallel with this question being resolved. We assume that the Commissioners will establish a process for submissions on that.

The more pressing issue is the additional request that HRAI's potential witnesses be uniquely prohibited from looking at the redacted material, even if they sign Declarations and Undertakings (as they have done). This is a significant problem, because they will not even be able to start to prepare evidence until they have the numerical data that is redacted. Their evidence is due this Friday.

It is for this reason that this letter is being sent before an OEB Procedural Order, and before counsel has reviewed the redactions. When counsel meets with the witnesses in the next couple of days, it is important that we not be in a position to inadvertently disclose, directly or indirectly, the redacted information.

There would appear to be two categories of information that the witnesses could learn from the redacted information.

First, they could learn the size of the HVAC market Enbridge Sustain believes it can acquire, through seeing the revenue numbers and knowing, from the public filing, the Enbridge Sustain pricing. These witnesses know their own revenues, and those of other companies in the sector, and so can ascertain the Enbridge Sustain forecast market share.

However, the public information already provides sufficient information that one could make an informed guess as to the market share expected. Of particular importance is the estimates of distribution margin protected through sales of hybrid heating (which cause customers to commit to keeping their gas connection, and avoiding full electrification). These estimates range from a low of \$57.6 million (Exhibit I-1-18-HRAI-5, Attachment 3, at p 23) to a high of \$167.6 million (p. 24), in each case at their forecast that 70% of hybrid heating customers would otherwise have gone fully electric. This implies distribution margins from those residential customers that buy hybrid heating from Enbridge Sustain of \$82.3 million to \$239.4 million, which translates into between 165,000 and 480,000 hybrid heating systems installed in that time frame until 2033 (based on the EB-2022-0200 DRO, Schedule 19, which forecasts annual distribution margin per residential customer of about \$500 each).

While estimates such as these are obviously subject to a lot of variables, and so are not accurate, within a reasonable margin for error they tell the story quite well. It is not clear that witnesses would learn much more about Enbridge Sustain forecast market share from the redacted information.

Second, witnesses could learn the forecast pricing and cost parameters of Enbridge Sustain.

In part, this is also known, both in the industry and from the public version of the documents filed. A typical hybrid heating system will be delivered into the market at a price of about \$200 a month (Attachment 3, p. 45), which is similar to the major competitors. The market is sufficiently competitive that companies participating in it are price-takers.

The question, therefore, is how can Enbridge Sustain make a profit, charging competitive or even slightly better prices than other companies? We know Enbridge exited this business earlier because it failed to make it profitable. What has changed? That is the key question facing this OEB panel, since one of the two sources of that profitability is a ratepayer subsidy. Given that the other source is a shareholder subsidy, and that the Business Plan makes clear that there is no shareholder appetite to fund this initiative, a ratepayer subsidy seems likely.

However, in order to assess whether the profitability is being driven by a ratepayer subsidy, it is precisely the data that is redacted that the witnesses need. The witnesses know what those cost and other numbers should be, because they are carrying on a similar business. If the actual numbers are different from what is reasonably expected, the witnesses can identify that to the Commissioners, and the Applicant will be put to the test of explaining the result. Since the evidence already shows that some of the costs are higher than normal (e.g. for dealers, SAP, Accenture), the types of costs that are forecast to be lower will be telling.

Unfortunately, none of that can happen unless the actual experts can look at the data, yet it is those specific people that the Applicant wants to exclude from looking at it.

HRAI notes that the disclosure of the data to the expert witnesses cuts both ways. If some costs are lower than is reasonable, a ratepayer subsidy may be indicated. Conversely, if the costs are in line with industry norms, then the Applicant may have answered the OEB's concerns in Issue #27.

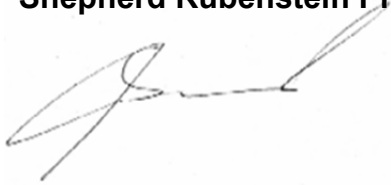
The evidence from HRAI is dependent on the witnesses having Enbridge Sustain data to review.

HRAI therefore submits that, regardless of the OEB's decision on the general question of confidentiality, the request from the Applicant to prevent the HRAI witnesses from seeing the redacted information, with appropriate Declaration and Undertakings signed, should be rejected.

From a procedural point of view, HRAI notes that, in the event that the witnesses are not able to review the data, we will have to re-evaluate whether we can provide any useful evidence to the Commissioners. On the other side, if the OEB orders that those witnesses can review the redacted material as confidential, then HRAI would request that our deadline to file evidence be extended to the date at least seven days after we have received the redacted information.

All of which is respectfully submitted.

Yours very truly,  
**Shepherd Rubenstein Professional Corporation**



Jay Shepherd

cc: Martin Luymes and Sandy MacLeod, HRAI (by email)  
Interested Parties (by email)