



By EMAIL and RESS

Jay Shepherd
jay@shepherdrubenstein.com
Dir. 416-804-2767

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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 compliance with the OEB's schedule set forth in Procedural Order #4, to make submissions on whether the redacted portions of the materials filed by the Applicant on August 23rd should be treated as confidential for the purposes of the Practice Direction on Confidential Filings.

These submissions do not deal with the information relating to the Canada Infrastructure Bank, which has not yet been provided to us. When we see that information, we will promptly file submissions relating to any confidentiality claims thereon, as the OEB directs.

These submissions are incremental to our submissions in our letter of August 26, 2024. The previous letter deals only with the narrower question of whether certain of the HRAI witnesses – unlike the undersigned and all of the parties in this proceeding - should be prevented from seeing the redacted parts of the materials.

Since the submissions yesterday, counsel has reviewed the confidential versions of the filing. None of the information was surprising, and thus the details do not affect these submissions. We are dealing instead with the categories of information redacted.

HRAI divides the items on which confidentiality is claimed into two components.

The first component is the three attachments to I.1.18.HRAI-5 (Attachments 2, 3, and 4), which include financial projections for the Enbridge Sustain business, including estimates of market share. The claim is that these figures constitute confidential information as described in Schedule A (a)(i) of the Practice Direction¹.

Here, it is important to distinguish between disclosure that is seen by the Applicant's key competitors, and disclosure that is seen by the public.

In the former case, the competitors costing specialists have to see the figures in order to file evidence. Without that disclosure, it would not be possible for the OEB to make a determination, based on full evidence, on whether (or how) the ratepayers are funding this major unregulated business.

In the latter case, disclosure of this information to the public at large has no additional impact on the Applicant's competitive position. Members of the public don't care what Enbridge forecasts as its market share, cost profile, or profitability for this new business, and Enbridge's competitive position will not be affected by public knowledge of these items.

At the highest, members of the public may be interested in the overall market assumptions by Enbridge (the speed of electrification, for example). That information, on the other hand, should not be protected, as it is in the public interest for that information to be disseminated to the Applicant's ratepayers and other stakeholders. This is particularly true because it can be compared to evidence filed by the Applicant in Phase 1 of this proceeding relating to the Energy Transition.

HRAI therefore concludes that, in this first category of information, redactions in the attachments to HRAI.5, the only competitive concern is the one that would prevent the OEB from having a full record in this proceeding. If that is resolved as HRAI has proposed, then in our submission there is no reason why the information redacted should be hidden from public view.

The second category of confidentiality claimed relates to I.1.18.HRAI-10, specifically the Dealer Agreement in Attachment 2.

This category is more difficult. It is still essential that it be provided to the witnesses (how else would they be able to assess the costs of Enbridge Sustain and therefore the extent of any subsidy?), but whether it should be available publicly is less clear.

This information may, depending on one's perspective, be considered to be presumptively confidential under Schedule B of the Practice Direction, items 1 and 2². Dealers who have signed this agreement may be concerned that their own competitors and their customers know the details of their contractual relationship with Enbridge Sustain, and how those details affect product pricing.

¹ The factors to consider include "the potential harm that could result from the disclosure of the information, including: i. prejudice to any person's competitive position"

² "1. Unit pricing of a third party 2. Billing rates of a third party"

While this information may well be known throughout the HVAC industry, given the nature of the sector (as we noted in our submissions on the Motion), HRAI has no evidence to provide that this information is already in the public domain.

This category, therefore, appears to us to be closer to the normal balancing of interests that the OEB is used to with confidentiality claims. The Dealers have a reasonable expectation that their commercial arrangements be private matters. Ratepayers and other stakeholders have a reasonable expectation that a company that operates a regulated utility should be transparent in its business dealings, including those in unregulated activities to the extent they may affect the regulated business.

All of this is bracketed by the OEB's general policy on transparency, stated in the Practice Direction as follows³:

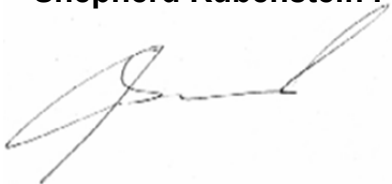
"The OEB's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the OEB's view that its proceedings should be open, transparent, and accessible."

HRAI believes that the balance should be in favour of making this information public. However, we recognize that it is a nuanced issue, and either public disclosure, or continued protection under the Practice Direction, could be a reasonable response.

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)

³ Practice Direction, p. 1.