



By EMAIL and RESS

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Our File: HV 2024-0011

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2024-0111 – Enbridge Rebasing Phase 2 – HRAI Cost Claim

We are counsel for the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI). The Applicant has objected to the cost claim of HRAI in this matter, and this is HRAI's response.

The fact that the Applicant objected at all to the cost claim is itself surprising. The Applicant knew throughout the proceeding that the HRAI cost claim would be substantial, largely because the Applicant's actions caused HRAI and its counsel to spend more time on this matter than should have been necessary.

The primary problem was that the Applicant objected to HRAI's participation, and any consideration by the Commissioners of the Enbridge Sustain issue, from the beginning, and resisted every step of the way:

- The Applicant objected to HRAI being given intervenor status, requiring HRAI to make extensive submissions not needed from most other parties.
- The objections to participation included a spurious claim of conflict of interest, which was not only improper (as it was not a matter that should have been any concern to the Applicant) but was also entirely incorrect. HRAI should not have had to respond to such a claim when it had already taken the appropriate steps in its retainer arrangements to deal with the matter.
- The objection also included an allegation that HRAI would not add value, but the Applicant now says that HRAI was interested in a unique issue. The Commissioners will also recall that the only reason HRAI had to seek intervenor status (as a late intervenor) was that the information on Enbridge Sustain, entirely within the control of the Applicant

(since it was a division of the regulated utility), was hidden from the Commissioners until HRAI brought it to light.

- The Applicant also objected to costs eligibility for HRAI, despite knowing that its predecessor and former affiliate HVAC Coalition had been given costs eligibility multiple times in the past in similar situations.
- The Applicant also disputed that any issue relating to Enbridge Sustain be included in the Issues List. This required extensive submissions by HRAI on that procedural matter, mostly because the Commissioners had no information about Enbridge Sustain in front of them other than that provided by HRAI.
- Subsequent to HRAI being granted intervenor status and costs eligibility, and Issue #27 relating to Enbridge Sustain being added to the Issues List, the Applicant filed further information that finally gave some limited information on Enbridge Sustain.
- When HRAI sought disclosure of the information the Applicant had omitted from its evidence, the Applicant either refused to give answers, or gave answers that were incomplete. This required HRAI to prepare and file a motion for proper answers. The Applicant's resistance to that motion required negotiation of the procedure for the motion. It was ultimately argued in a virtual hearing and was successful in part. The Commissioners and the parties ended up being given access to the key information necessary related to the issue.
- HRAI notes that, for the Issue #27 evidence, the interrogatories and the Technical Conference, HRAI could not rely on other parties to deal with components of the issues, as would normally be the case with intervenors like SEC, CCC and others, who are able to work together as a kind of team. HRAI had to take full responsibility for Issue #27 in the disclosure process.
- As part of eventually disclosing information, the Applicant sought confidential treatment of key aspects of that information, and resisted allowing HRAI to see that information for competitive reasons. This required substantial discussions/ negotiations between HRAI and the Applicant, and specialized undertakings with respect to some of the information. It also required HRAI counsel to seek instructions and guidance from its clients in circumstances in which counsel had access to important information that they could not disclose to the clients.

All of this added to the time that HRAI and its counsel had to spend up to the settlement conference. It is not surprising that time claimed during that period was higher than many others. Those other parties did not have to contend with this level of relentless resistance by the Applicant.

During and after the settlement conference, some time was saved, but the Applicant overstates the case on this. HRAI did not participate in most of the main settlement conference, but instead carried out a one on one parallel negotiation with the Applicant on Enbridge Sustain. While those negotiations are, of course, privileged, it will be clear to the Commissioners that this was a negotiation being held in the context of a utility that was resisting HRAI with every tool it could possibly use. Despite this, the Applicant and HRAI came to a full settlement of all aspects of Issue #27.

It should be noted that HRAI still participated in the settlement conference with other parties to ensure their acceptance of the separate settlement of Issue #27, but this participation was limited.

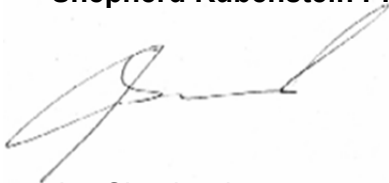
Except for monitoring the drafting of the agreement to make sure that the Enbridge Sustain settlement terms survived intact, and monitoring the remaining components of the proceeding to make sure Enbridge Sustain was not raised again in any indirect manner, HRAI did not spend further time once the settlement was accepted by the Commissioners.

As noted in the cover letter to the HRAI cost claim, HRAI spent 38.8 hours prior to its intervention, when the Application contained no information on Enbridge Sustain, in direct preparation of what ultimately became this intervention, but did not claim any of those hours. It is also true that HRAI had counsel that, while experienced with the OEB's processes, was also knowledgeable about the HVAC industry and had a thirty year history with the very issues raised by the Enbridge Sustain initiative. This also saved time.

At the end of the process, one HRAI member described the situation as "HRAI dragged Enbridge kicking and screaming to the table and forced them to agree to a fair deal". With apologies for the perhaps overly colourful language, that is probably a fair description. As a result, HRAI spent more time on this proceeding than we wanted to, trying to overcome the contentious approach taken by the Applicant to all matters related to Enbridge Sustain. Steps were taken to limit the time spent, but in the end a highly litigious matter will always take more time than the usual regulatory process.

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)