Shepherd Rubenstein

By EMAIL and Pivotal

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Our File: 20240198

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
M4P 1E4

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2024-0198 – Enbridge DSM Plan Rollover – Confidentiality Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order #6 in this matter, the Applicant provided SEC with an unredacted copy of Undertaking JT1.6 at 8:42 PM on August 18th. This letter contains the submissions of SEC with respect to confidentiality and relevance of the redacted parts of the document, as directed in PO #6.

This letter does not include any information on which confidentiality is claimed.

With respect to the confidentiality claims generally, SEC will not reiterate the standard arguments with respect to the presumption of transparency, and the OEB's policy to include as much as possible on the public record. The OEB will be completely familiar with those principles, which also informed our review of the unredacted document.

As a general submission on relevance, SEC notes that many parts of any commercial agreement are going to be irrelevant to the issues being considered by the Commissioners in this or any other proceeding. Most commercial agreements are 50-90% standardized clauses to protect the parties from liability or make clear their respective responsibilities in very limited scenarios, or deal with the technical mechanics of the transaction or relationship. The OEB is not informed in any material way by that information, but redacting all of it for relevance would limit the ability of any reader to understand the agreement as a whole.

It is therefore SEC's view that irrelevant portions of an agreement should be included in the document that goes on the public record, unless there is some specific harm arising out of making identified portions public.

The following submissions on each redaction follow the numbering in the agreement and attachments that comprise JT1.6:

Section 10.1 (a) and (b) – The insurance limits are standard terms in any commercial agreement, and SEC sees no reason why the amounts should be treated as confidential. If they were unusually low, perhaps confidentiality would be appropriate, but the numbers used seem pretty standard.

Section 11.2 (b) – As with the insurance limits, the limit on the indemnity is within the standard range.

Schedule 5.1 (c) – This refers to personal information of an individual, and SEC believes it should remain confidential.

Schedule A Section 3.1(g) – This clause does not appear to be confidential. The rationale stated in the Enbridge August 8th letter – that it would be prejudicial to the parties in future negotiations and competitive bidding processes – does not follow from the actual wording of the clause.

Schedule A, p. 87-89 and p. 92 of 137 – This is the illustrative budget for the joint work, and all of the figures on the page are money to be collected from either gas or electricity ratepayers. By definition, they are relevant and should be made available to the public whose money is being spent.

Further, while the figures may change as new information is available, they are the information currently available to the OEB. All budgets will ultimately change. That does not make them irrelevant.

Finally, and perhaps most important, the ratios of spending in individual categories (including the ratio of admin to incentives for both EGI and IESO) are useful information, and of interest to the public.

This material should all be on the public record.

Schedule A, p. 90 of 137 – We were unable to identify any unit pricing on this page, only total amounts billed by contractors. We therefore do not understand the rationale for confidentiality.

Schedule A, p. 91 and p. 96-97 of 137 – These pages appear to include the compensation of identifiable individuals, and therefore should be treated as confidential.

Schedule A, p. 93-95 – This appears to be the buildup to p. 92, which is clearly relevant and should not be confidential. However, 93-95 are less useful if 96-97 are not public, so SEC agrees that 93-95, which contain granularity that may not be helpful to the OEB, should be included with 96-97 and treated as confidential. The totals, in p. 92, should not be confidential, as noted above.

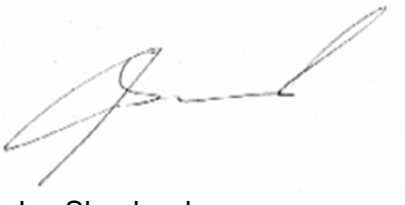
Schedule E, p. 99-101 – There is nothing in the cybersecurity protocols that discloses information that is confidential. It is standard wording seen today in many commercial contracts.

Style Guide, p. 102-137 of 137 – This material has some use in understand the marketing of the joint programs, but in our opinion has limited probative value for the Commissioners. It should be included on the public record as a matter of completeness of the agreement, since none of the information in the Style Guide is confidential.

SEC therefore submits that, with a couple of exceptions noted above, the entirely of JT1.6 should be placed on the public record.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



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cc: Brian McKay, SEC (by email)
Interested Parties (by email)