



## Jay Shepherd

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### **BY EMAIL and RESS**

November 14, 2012

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario, M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2012-0006 – THESL IRM 2012-14 – CCC IR#19**

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order #3, these are SEC’s submissions with respect to Toronto Hydro-Electric System Limited’s (“THESL”) request for confidentiality treatment of certain information contained in response to CCC IR #19. THESL provided a redacted version for the public record. SEC has reviewed the un-redacted portion of the interrogatory response and submits that that it should not be accorded confidentiality treatment.

CCC# 19 interrogatory sought information regarding the process, terms of reference and cost of THESL external consultants were retained to provide an independent assessment of its business cases for its proposed ICM projects and AM methodology. CCC asked:

The evidence states that THESL has retained external consultants to provide independent analysis and opinion on its Business cases for its proposed ICM projects and its AM methodologies. Were the consulting contracts obtained through an RFP process? If not, why not? If so, please provide the RFPs, the responses from those retained, and the Terms of Reference for each study. What was the cost of each of the studies and how are those costs to be recovered?

In the response, THESL provided information about why an RFP process was not undertaken and the reasons, in its view, why each individual firm retained was “uniquely qualified”. THESL seeks confidentiality treatment over the costs of each of the five studies undertaken. SEC submits that this information should be placed on the public record and not accorded confidentiality treatment.

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THESL's is seeking confidentiality treatment on the basis that the information "...includes terms of commercial sensitive, negotiation agreements with third parties in competitive markets. That disclosure of this information could negatively affect LDC's future negotiations." SEC disagrees.

The *Practice Direction on Confidentially Filings* is clear, "the onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case."<sup>1</sup> SEC submits THESL has not met this burden and has not demonstrated why the total cost of each study is commercial sensitive information that would create harm for future negotiations. THESL cannot simply assert that this is the case; it needs to provide cogent reasons for it. THESL is not being asked to produce the specific contracts but simply the total cost of each study. Further, it has not provided any reasons why this information is different than any other third-party cost information that it has to provide in the course of any application before the Board.

As the Board aptly stated in EB-2010-0144, regarding a similar claim by Waterloo North Hydro:

While WN Hydro, and all other electricity transmitters and distributors in Ontario are business corporations, they are also licensed and rate-regulated because they provide essential or near-essential services and have effectively a monopoly in their licensed service areas. Economic regulation is legislated to ensure the public interest is upheld – notably that the financial viability of the firms in the sector are upheld while also protecting ratepayers with respect to the prices (i.e. ensuring no abuse of monopoly power), quality and reliability of electricity services, as well as achieving other public policy objectives of the Ontario Government. WN Hydro should expect that its transactions will be subject to scrutiny in the public domain.<sup>2</sup>

In this case, the cost of these studies requires even greater public scrutiny considering they were not undertaken pursuant to any competitive procurement process but instead were sole sourced.

SEC submits the cost of the individual studies should not be accorded confidentiality treatment by the Board.

Yours very truly,  
**Jay Shepherd P.C.**

*Original signed by*

Mark Rubenstein

cc: Applicant and Intervenors (by email)

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<sup>1</sup> *Practice Direction on Confidential Filings* at p. 2

<sup>2</sup> EB-2010-0144 *Decision on Confidentiality*, dated November 29, 2010 at p.7