

SCHOOL ENERGY COALITION

FINAL ARGUMENT ON BREMNER

March 1, 2013

I do not have materials. I wanted to wait and see what the materials were that were filed yesterday, and I did and adjusted these accordingly. I didn't want to be duplicative, but I do wish, if it is okay with the Board, to take the transcript and provide footnotes. I don't propose to put any words in, just references. So if that is suitable, useful for the Board, that will allow me not to have to break this up with, Let's go to the transcript, let's talk about it.

MS. HARE: That's fine. Thank you.

MR. SHEPHERD: So I want to start with a story. Because I get to go first, I get to start with a story.

My story is this. Your neighbour comes rushing over and says, I need your car, I need your car. My wife is having a baby. If the wife is having the baby right now, your decision is, Here's my keys, go.

But if his wife is three months pregnant and he's not going to the hospital and he doesn't need it right now, you make the decision differently.

So the purpose of the story is that we have the same issue here. The question -- there's two steps to this process. First, is it urgent to make this decision about Bremner now? If it is, that's one thing, and you have to deal with it in a certain way.

If it's not, then your next question is: What's the best way to make a decision and what would you like to see in order to make that decision?

So I am putting that as a framework around our submissions because it is, in essence, where we're going to conclude, as well.

So there are three tests here: Need, prudence and materiality. Clearly, there is no issue about materiality. I'm sure everybody in the room agrees that a project that ultimately will be more than a quarter of a billion dollars, and in this proceeding is \$193 billion -- or million or something, probably is material. It certainly would be material for me.

Prudence is entirely dependent on need. That is, you determine whether something is prudent based on the need. If you're serving a particular need, you're solving that problem. One thing will be prudent. If you're serving a different need, something different might be prudent.

So I'm not actually going to end up dealing with prudence, because I don't think you get there.

The third thing, then, is need, and in our case, we think that the need question has two components. First, is there a real need, in fact? And second, if there is a real need, is that need immediate or urgent? So it comes back to the first question: Does this question have to be decided today?

Our conclusion is this. There are three needs proposed: load growth, switchgear replacement at Windsor TS, and feeder connections, lack of feeder connections at Windsor TS.

We have concluded that none of those are urgent, that all of them have issues associated with either whether they're going to arise at all or, if they are going to arise, how they're best solved.

And therefore we're going to propose that Bremner not be approved in this proceeding, and that when the needs, these three needs that have been identified, start to crystallize, Toronto Hydro should come back to the Board, A, with the regional supply plan that we have heard about finished so the Board can review this in context; secondly, with a more sophisticated load forecast that does not pretend that the future is going to be the same as the past; and, third, with a proper review of all the options, not just the "build the infrastructure" options that they have looked at so far.

So let me deal with the three needs in order, and I will start with load growth.

As I've said, the first part of this question is: Is this need real? Is there a real need to add more capacity for load growth in the downtown core?

And, you know, we get stuck in the hearing room and we start to look -- look at the world as if the world is seen through this hearing room, and sometimes it is good to get out and actually see the real world.

And so I went to the auto show last Sunday, and while I was at the auto show -- it is at the convention centre, and I looked outside. I don't get downtown very often, and I saw: Wow, look at all of these condos. Everywhere that I remember as, you know, sort of vacant land, developable land, is built up. There are new condos already there, or if not already there, the cranes are topping them off right now. They're going to be occupied before the spring.

So my initial reaction was maybe we're being unfair to Toronto Hydro. Maybe their talk about this new load growth is correct, that maybe it is more than we think.

But then I realized, well, no, all that load growth, all of those condos all around this location, the Bremner location, they're all built. They will be load before Bremner comes on-stream; Bremner doesn't solve that problem.

This is what Mr. Bach said in his evidence. He said: You know what? Eventually, you run out of land.

So I looked around and I said: Well, where's the land to build new load?

And the answer is unless you're going to replace the convention centre, unless you are going to replace the Rogers Centre or the CN Tower or you are going to tear down the Roundhouse, there is no more land left.

There is land; there is land to the west in the railway lands. That is served by Strachan.

MS. SPOEL: Mr. Shepherd, are you giving evidence?

MR. SHEPHERD: No, I'm --

MS. SPOEL: You are about the -- about the land use planning future of downtown Toronto, because it sounds to me a lot like evidence, and we haven't heard -- you didn't call -- your client didn't call any evidence in this proceeding.

And I am concerned that your personal observations of what has already been built and what might be to come are in the nature of evidence.

I think that is probably -- it is going to cause a lot of problems for us in writing our decision, if you are intending us to rely on these submissions as evidence of what may or may not be required.

MR. SHEPHERD: Well, I'm sorry if I gave that impression, Ms. Spoel. I didn't intend to.

The point I was going to get to, in my particular style, is that Toronto Hydro hasn't told you where the new load is going to come from in this particular service area. They haven't told you anything about that. If you look in the evidence, you will see nothing about where new load is going to come from.

They've said: Oh, there's lots of growth in the downtown core. Well, yes, there is growth in the downtown core, but as Mr. Bach -- who did give evidence on this point¹ -- said, at some point there is no more land.

¹ Tr.7:116-8.

And Toronto Hydro has given you no evidence that there is more developable land in the Bremner service territory.

So that is the point of my story, which perhaps was more colourful than it needed to be.

So that is the first point.

The second component of this -- is the need real -- is Hydro One says they need 100 percent capital contribution² because there won't be any incremental load to pay for the \$60 million they have to spend.

Toronto Hydro says: Well, that's conservative³ and there is a true-up and everything. But right now, they say: We don't need it.

The OPA was asked: Well, Bremner's needed for new load in 2017, right?

And they said: No. And this is during our cross-examination of Mr. Toneguzzo⁴. They said: No, 2017, no, much later than that. That is the exact words, "much later than that."

And in fact, the document that Toronto Hydro filed, which is -- which although it came from Hydro One -- this is Exhibit K7.2 -- although it came from Hydro One, in fact, Toronto Hydro says is their numbers⁵. It says the only load requirement up till 2014 is 49.5 megawatts, and that's because of the switchgear problem at Windsor⁶. There is no new load problem.

And if you look, in fact, at their load forecast, their own -- which I have problems with, but nonetheless it is their own -- there is no need for Bremner, for new load, for a number of years. And that is their own evidence.

Indeed, I think it is fair to say that no one in this proceeding, including Toronto Hydro, says that load growth will require Bremner in 2014. The earliest is Toronto Hydro, who say 2017; everybody else says later.

So furthermore, the Toronto Hydro load forecast is itself faulty, and here's the problem we have with it. They've admitted that they took the last five years, they established a trend line, and they brought it forward⁷. That's how they did their load forecast. It is very simple. And it is a normal way of projecting the future, but it embeds an assumption, and that assumption is that the future is going to be the same as the past.

² Ex. K7.1, p. 1, 9.

³ Tr.7:28 et seq.

⁴ Tr.6:42.

⁵ Tr.7:84.

⁶ Tr.7:92.

⁷ Tr. 6:129; Tr.7:58-9.

We know that's not true in the downtown core of Toronto. We know it's not true in at least three ways.

First, as I said before, there is a finite amount of developable land. At some point, future growth by new buildings will not be as great as the past. That has to be true.

Secondly, CDM uptake is likely to increase. It certainly won't be the same as the past, because the government and the OEB have added new licence conditions to the utilities. So notwithstanding that Toronto Hydro says they will miss their licence conditions by 90 megawatts⁸, in fact they have an obligation to deliver that.

Similarly, the increasing price of electricity, the fact that all of these new buildings will be affected by new codes and standards, and there will be distributed generation. We know for sure there will be some; we just don't know how much⁹.

All of these things say that whatever you think the actual future load will be, it won't be the same as the past. That, we know for sure. It will be in material ways different from the past.

So load forecast that says the future is going to be the same as the past is not a reliable basis on which to determine that you spend a quarter of a billion dollars.

So our conclusion on the load need is the Board does not have to approve Bremner in this proceeding to meet any load growth issues. I think the evidence is crystal-clear on that, and I don't even think Toronto Hydro disagrees with that.

So then the second one, the need based on switching out or on replacing the Windsor TS switchgear.

And in order to do that, you have to switch load over somewhere else. So the question is: Is this need real?

I think the answer is pretty clear. This need is well established. It's not just a question of them saying it in this proceeding.

[Cell phone ringing]

MR. SHEPHERD: I will get it.

No evidence has been provided to the contrary, in terms of whether this switchgear has to be replaced. Nobody has credibly challenged Toronto Hydro's evidence that it has to be

⁸ Ex. K7.1, p. 10; Tr.7:60.

⁹ Prefiled evidence of Mr. Bach.

replaced. And indeed, they have been doing it for at least five years¹⁰. They have been replacing it on a regular pattern. We know there is a problem with air blast switchgear, and we know it has to be replaced.

So there are two questions: the timing of the Windsor TS switchgear, and the best solution to that need.

On the timing, it is important to understand that Toronto Hydro, except for that I recall oral evidence where they've said, Oh, no, we need to do this, has given no evidence, no background at all, as to why the Windsor switchgear has to be replaced in 2014.

It does have to be replaced, for sure, but they have given no evidence as to why it needs to be replaced in 2014.

In EB-2011-0144 - and we brought you to this during our cross-examination¹¹ - there was a whole plan to replace switchgear over the period 2012 to 2014. Windsor was not included¹².

When we asked about that, there was a funny cross-examination¹³ where we asked, Well, so what happened? Why did you change it? Why did you move it up? Well, the switchgear is bad. We have to fix it, et cetera, et cetera.

In the end, in that cross-examination they said, Well, we actually haven't had any problem at Windsor with the switchgear¹⁴. It's actually fine there, and it's always been included in the 2015-2016 time frame¹⁵.

They have not given any evidence to show why it would be moved up to 2014. So on timing, there doesn't appear to be any basis to say you need Bremner in 2014 to change out the Windsor switchgear.

Then the second part of this is, well, what about other solutions? And everybody appears to admit that the feeder ties either to Esplanade or Strachan can be used to provide this capacity relief at lower cost¹⁶.

¹⁰ Tr.7:44

¹¹ Tr.7:43

¹² Ex. K7.1, p. 6-8.

¹³ Tr.7:43-46

¹⁴ Tr.7:46

¹⁵ Tr.7:44

¹⁶ See, e.g. Ex. K7.1, p. 4.

And, in fact, at one point the Toronto Hydro admits really the only significant problem with doing that is the timing¹⁷. They want to start this in 2014 and they can't really have this done, the feeder ties done, by 2014.

So our conclusion is Bremner does not need to be approved in this proceeding to solve the switchgear replacement problem.

Now, that leaves the third and final component of the -- or justification, and this is the new one, and that is -- and I want to keep -- I want to remind the Board Panel this was never raised in this proceeding until day 6 in cross-examination by Mr. Brett¹⁸.

It was first raised by Mr. Simpson, and, in fact, when I heard it, my reaction -- I was upset with myself. I said you missed something critical. You better go find this. I had already prepared my cross-examination. I hadn't even mentioned this. Oh, well.

So I went back and looked, because, you know, sometimes things like this can be buried in the fine print of an application and later they become important. You've seen that. We've all seen that.

I didn't find anything. So I cross-examined Mr. Simpson the next day on that point, and he admitted it might not be in the application at all¹⁹.

Now, I've gone back and looked. I still haven't found it. Maybe there is a reference to it there somewhere. I haven't seen it. What is clear is this is -- they're asking you to approve \$190 million of spending, so if the only basis that you have is you need new feeder connections and they don't have enough at Windsor, where is a report on the problem showing how the problem arose, when it arose, all of that sort of stuff?

Where is an identification and analysis of the options to solve that problem? Where's an independent review? I don't mean Mr. Schlatz' review where he reviews his own recommendations and says, Yes, I made a good recommendation²⁰. I'm talking about a real independent review where somebody comes in and says, Well, there are some other ways of doing this.

We have none of that, no report on the problem, no identification or analysis of options, and no review of any of that.

¹⁷ Tr. 7:48.

¹⁸ Tr. 6:101

¹⁹ Tr. 7:88

²⁰ Tr. 7:23-4

Is this how Toronto Hydro decides to spend \$190 million? I don't think so. I hope not. If that's the justification, if that's their basis for needing this station in 2014, they should have done their homework. They have none of that.

I was going to tell a story, but I'm not going to tell a story, because I told my two stories. I think I'm not allowed any more, but my bottom line on this is, if this is the justification, they have to support it with evidence. They can't just say so on the stand. They can't just say, We're out of feeder connections and expect you to say, Okay, well, then you can have your \$190 million. That is not how it works.

It looks like it was added at the last minute. Whether or not it was added at the last minute and it's not credible, I don't know whether that is true, but what I do know is they have not given you an evidentiary basis for this, except the only thing they've done is say, We've run out of connections. Nothing else. That's not enough.

So our conclusion on this is Bremner does not need to be approved in this proceeding to provide additional feeder connections in the downtown core.

MS. SPOEL: Mr. Shepherd, can I just ask you, with respect to your first story about the guy with the wife in labour, are you suggesting that it's not until the baby is on the way that he should be making arrangements to get his wife to the hospital so she can deliver there instead of in the car or at home?

MR. SHEPHERD: No, no, actually not.

MS. SPOEL: Of course you as a neighbour are making a decision based on urgency, but you are not suggesting that he should be making his decision based upon the kind of emergency nature of the situation? He should have planned ahead and made sure his car was working, or he had previously arranged to borrow your car or something like that, before she was in labour?

MR. SHEPHERD: Sure, but what I was actually driving at was the decision that you make - not the decision that they make, the decision that you make - and whether you do it differently if you have to do it now. If this really has to be built by the end of 2014, you can't say, Well, there is some other evidence that would be better and we would like to see it.

You can't say, Let's see what the regional plan looks like, because you have to make the call.

MS. SPOEL: Oh, okay, I understand. I understand the analogy. All right.

I just wanted to ask you one more thing about your comment about lack of an evidentiary basis. Are you suggesting that oral evidence given by a witness is not evidence?

MR. SHEPHERD: No. I'm saying that an unsupported statement that it has never been included in the original evidence that has not been subject to any testing whatsoever, because we never heard about it until the last minute, is not credible.

The Board normally would not rely on something like that for a big decision. Normally, the Board would say, Well, do your homework.

So, all right, that leads me to my conclusion, which is: What is the best way to make this decision? We have concluded on the three causes that none of them are urgent enough to force you to decide now.

If that's true, then you have to ask the question: Well, what is the best way to make a decision, because actually if you have everything you need now and you know that sooner or later you are going to need this station, then there is no reason to delay?

But that's not the best way to make this decision. You should at least see the regional supply plan first. It's going to be ready in a few months²¹. Why would you jump the gun on a plan and say, Go ahead with a big component of the plan before we've even see what the plan is?

The plan will allow you to see the broader transmission and generation context, and you will see more fleshing out of what you heard from the OPA when they gave evidence on the first day.

Secondly, the best way to do this is to require a more sophisticated load forecast. A trend line does not help you.

The load forecast, to justify this sort of spending, should decompose the components of demand going forward. It should consider not just the -- it should consider changes in new buildings. It should consider changes in the trend of CDM in either direction. It should consider changes in the amount of DG. All of those things are things that are appropriate in a plan in a load forecast.

Then, thirdly, you should require that the applicant consider all of the options, because it's clear that in this case they only considered options that involved building more infrastructure. It's understandable. They're engineers. That is what they do; they build.

²¹ Tr. 7:107.

But sometimes the option -- the best options are not building things. Sometimes the options are CDM, DG, having some deal with EnWave, maybe getting somebody to build a downtown gas plant for peaking, as well. There may be lots of other options. We don't know, because they didn't investigate them.

So what we conclude is that Bremner may well be needed at some time in the future. We hope that is not true, but we accept it might be true. If there is additional load growth in the downtown core, for example, then the evidence suggests that it may be one of the viable options. It may even be the best one. We don't know.

But if you defer the decision on this, if you say: We don't need to make it now, then you do three things.

You have a proper evidentiary basis to make the decision when it eventually comes before you.

You have the results of the government's CDM and DG directions, and you get to see how much traction will actually happen for those things.

And you get a solid view of the potential changes in the trajectory of load.

Look, the -- for the Toronto District School Board, the approval of Bremner could mean half a million dollars of additional distribution rates this year and next. And Toronto Catholic, probably something similar.

So if the work has to be done now, if it really has to be done now and they have to pay this, of course they don't object. But they don't want to have to cut programs in order to pay for something that perhaps may be needed in the future, but certainly is not needed today.

And those are our submissions.