



## Jay Shepherd

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### **BY EMAIL**

February 10, 2010  
Our File No. 2010022

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-2010-0003 – Hydro One Tx Motion to Vary**

We are counsel for the School Energy Coalition in this proceeding. We have reviewed the submissions of VECC, CCC, CME and AMPCO on both the threshold issue and the merits, including drafts of those submissions earlier this week. We have concluded that any submissions we would provide to the Board would be essentially duplicative, and not be of sufficient additional assistance to the Board to warrant the time involved in their preparation and filing.

We note that, as set out in our letter of January 8, 2010, we believe that Hydro One's motion fails to meet the threshold test. Their position is that there has been a change of circumstances that affects the decision appealed from. It appears clear to us that, on any possible interpretation, this simply cannot be the case.

If Hydro One is correct that the decision they are seeking to vary is the December 16<sup>th</sup> decision, then nothing has happened since that time that would constitute a change in circumstances.

If other parties are correct that the decision Hydro one is really seeking to vary is the May 28<sup>th</sup> decision, then the only change of circumstances that Hydro One has referred to, the publication

of the Cost of Capital Report, by its express terms, and by their own submissions in the original proceeding, does not apply to them.

We therefore advise the Board that we support the submissions of VECC, CCC, CME and AMPCO, and will not be filing further argument at this time.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P.C.**



Jay Shepherd

cc: Bob Williams, SEC (email)  
Wayne McNally, SEC (email)  
Interested Parties (email)