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Please Reply to the TORONTO OFFICE

BY EMAIL

February 5, 2009
Our File No. 2080486

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0408 – International Financial Reporting Standards

Further to our letter of December 30, 2008, and our subsequent discussions with Jennifer Lea of Board Staff, this letter is sent to request approval by the Board of funding for an expert advisor, to be retained jointly by nine ratepayer groups.

As the Board is aware, the ratepayer groups have been discussing ways in which they can co-operate in this consultation. Of particular concern has been that each group realizes it will need assistance and advice on the technical aspects of this proceeding. Although the ratepayer representatives are all experienced in regulatory policy, the issues in this matter include many concepts and rules that do not normally need to be confronted directly in ratemaking. This is, of course, not a trivial question. Many of the utilities have already retained expert advisors on IFRS, which reflects the importance to them. It is clear that their interests will not necessarily be the same as those of the ratepayers, who may ultimately be on the hook for the direct costs, and rate implications, of this transition. Since the utilities are participating in this proceeding with expert backup, it is of course essential that the ratepayer groups be put in a similar position.

On the other hand, the ratepayer groups are concerned with the potential for duplication if we each obtain expert assistance. To that end, we have explored whether a shared resource person could be more effective. As a result, the following ratepayer groups have agreed, subject to the Board's approval, to a joint retainer of an expert:

Association of Major Power Consumers of Ontario
Building Owners and Managers Association
Canadian Manufacturers and Exporters

GREAT LAKES
LAW



Consumers Council of Canada
Energy Probe
Industrial Gas Users Association
London Property Management Association
School Energy Coalition
Vulnerable Energy Consumers Coalition

The focus of the expert advice is the rate implications of IFRS, and in particular the interaction between accounting rules and (rate) regulatory policy. We anticipate that the work would be done in two initial phases:

- ***Technical Foundation.*** The advisor will review the material on the record to date in light of his existing extensive knowledge of the rate implications of IFRS. Through in-person presentations and discussions he will provide the ratepayer groups with a solid technical understanding of the rate issues that arise out of the IFRS conversion. The intention is to ensure that the ratepayer groups have a thorough comprehension of what are highly specialized questions, to allow them to participate intelligently in the policy discussions of the Board. This would also allow the ratepayer groups to have a sounding board for questions about the implications of policy positions they may wish to propose. Their proposals will, as a result, be more viable and thus have more value to the Board.
- ***Issues and Options Analysis.*** The advisor will review the KPMG report and identify for the ratepayer groups:
 - Issues or options that have not been included, or variations on those that have been included;
 - Rate implications of the various options, and ways of mitigating, transitioning, ameliorating, or avoiding those implications;
 - Accounting and financial implications of policy proposals under consideration by parties to the proceeding, including the ratepayer groups.

We expect that the expert will be available to provide assistance and answer questions for the ratepayer groups during the stakeholder conference, but would likely not attend the conference throughout.

It is not expected that either of these two phases would include a written report or any deliverable to be filed with the Board. It is anticipated that the ratepayer groups, together with the expert, will assess at the end of the second phase whether the expert can provide something to the Board that is consistent with the joint retainer (i.e. would not involve specific recommendations contrary to the interests of the groups retaining the expert), and would be helpful to the process, such as a written report or a presentation at the stakeholder conference. At the current time, we have not identified a report or other deliverable that would meet those criteria, so no third phase is included in this proposal. As the process unfolds, that has to be reviewed. We understand that normally costs are not available for an expert unless there is a report filed, but we are also aware that in the past the Board has made exceptions to that rule in circumstances very similar to these.

We have identified an expert, John T. Browne, who has extensive experience with the interaction between rate regulation and accounting, with a particular knowledge of IFRS. His focus is on the rate regulation side (in contrast to KPMG, whose focus is more on the accounting side), but it is the interaction between the two on which he can provide the most assistance. Although most of Mr. Browne's consulting work has been for utilities, the ratepayer groups are confident that he will be able to provide the kind of independent and objective advice that will give us the most assistance. A copy of his background information is attached.

In discussions between the ratepayer groups, and with the expert, we have estimated that the time of the expert required to do these two phases of work, over the period from now until April, is approximately 150 hours, and we propose to establish that limit in the contract with the expert. His hourly rate for this work is \$330, which is also the qualifying rate for an expert at this level in the Practice Direction on Cost Awards. If it turns out that there is a way a useful report or presentation could be prepared to assist the Board, we propose to communicate with the Board at that time with respect to the nature and cost of that "phase three" work.

We have a concern with the timing of payments to the expert. Unlike a large accounting or consulting firm, which can wait for payment until the costs process has been completed, an individual expert would be significantly disadvantaged if, when assisting ratepayer groups (unlike the Board or utilities), he has to wait until September or October for payment of work done in February through April. We would therefore request that the Board make provision for an interim payment on account to the expert in April, prior to the filing of the cost claim. We suggest the amount of \$25,000, which would then be deducted from the amount paid when the cost claim is filed and approved.

The ratepayer groups have agreed that the work of the expert will be co-managed by CME and SEC, with the active participation of all other groups.

We therefore request that the Board approve funding for 150 hours of expert assistance and advice to the nine named ratepayer groups, as described above. Please contact Jay Shepherd (416-804-2767) or Peter Thompson (613-787-3528) if you have any questions or wish to discuss this further.

All of which is respectfully submitted.

Yours very truly,

SHIBLEY RIGHTON LLP

A handwritten signature in dark ink, appearing to read 'Jay Shepherd', with a stylized, elongated flourish extending to the right.

Jay Shepherd

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