

IN THE MATTER of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15, Sch. B;

AND IN THE MATTER OF a consultative process initiated by the Ontario Energy Board to determine whether its cost of capital parameter values are appropriate in light of current economic and financial market conditions.

**NOTICE OF INTERVENTION
OF THE
SCHOOL ENERGY COALITION**

1. The School Energy Coalition applies for intervenor status in this proceeding.

General Interest of the Intervenor

2. The School Energy Coalition is a coalition established to represent the interests of all Ontario publicly-funded schools in matters relating to energy regulation, policy, and management. It is made up all seven of the major school-related organizations, representing all of the school boards, and all levels of school management, and through them representing the approximately 5000 schools and about 2 million students in Ontario. The primary goal of these organizations is to promote and enhance public education for the benefit of all students and citizens of Ontario. SEC is the joint initiative of those organizations that deals specifically with energy-related issues.
3. The intervenor's members have a significant interest in the activities of regulated utilities and their affiliates in the province, due to the severe financial implications those activities have on school boards, their students and the people of the province of Ontario. Utility costs are one of the most significant cost pressures facing school boards. The cost of energy services to the intervenor's members is currently in excess of \$400 million, and has increased rapidly over the last ten years. To produce balanced budgets in the face of ever increasing utility costs, school boards have repeatedly been forced to cut essential programs and services to the detriment of the students and the public of the province of Ontario.

Issues to be Addressed and Intervenor's Intended Participation

4. SEC's intended participation will focus on the following issues:

- a. Review the current cost of capital parameters under the Board's existing policies and assess whether they continue to provide for a reasonable rate of return, both overall and for the various components of cost of capital, given the current economic and financial market conditions; and
 - b. Generally represent the interests of the school boards and their students in this proceeding.
- 5. The intervenor is not planning to engage in any review of the existing approach to cost of capital, including ROE, long term debt, short term debt, and capital structure. The intervenor understands that the Board, in its letter of March 16, 2009, has specifically determined that the methodology used by the Board to determine each of the components of cost of capital is not in scope in this consultation. It is our understanding that the Board, in formulating the questions it has asked, is in essence asking whether there are aspects of the current economic and financial market conditions that are so unusual that the Board's current methodology is producing inappropriate results. The inquiry is one, therefore, about the results derived from the current methodology in extreme conditions, and not about whether the current methodology is in general the optimum approach.
- 6. As a specific application of our understanding of the limited scope, it is our understanding that the Board will not be considering in this consultation the recent decision of the National Energy Board in Docket #RH-1-2008, the cost of capital for Trans Quebec & Maritimes Pipelines Inc. ("TQM"), for at least the following reasons:
 - a. The TQM Decision replaces the current NEB (and OEB) methodology with ATWACC, a fundamentally different methodology, and the scope of this proceeding does not allow for consideration of a change in methodology;
 - b. The ATWACC methodology assumes that financial risk is linear, and this Board has no evidence before it that would support that assumption, so a fuller inquiry would be required if this Board were to consider ATWACC or any variation of it;
 - c. The TQM Decision focuses heavily on supply risk (and other aspects of throughput risk), which electricity distributors do not face in Ontario, and which Ontario natural gas distributors have already shifted to ratepayers through their current IRM structures; and
 - d. The TQM Decision rests on the foundation of electricity having a price advantage over natural gas in Quebec, which makes it not equally applicable to electricity and gas distributors, and which in any case is not true in Ontario.
- 7. Based on the assumptions we have made as to scope, we have not retained an expert on cost of capital issues, and we have planned our participation to stay within the 16 hours allowed for costs in this proceeding. In the event that the Board determines that these

scope assumptions are not correct, we would ask that the Board advise the parties, so that we can consider whether to participate more fully than the current scope would allow.

Counsel/Representative

8. The School Energy Coalition requests that a copy of all documents filed with the Board by each party to this proceeding be served on the Applicant, and on the Applicant's counsel as follows:

- (a) School Energy Coalition:

ONTARIO EDUCATION SERVICES CORPORATION
c/o Ontario Public School Boards Association
439 University Avenue, 18th Floor
Toronto, ON
M5G 1Y8

Attn: Wayne McNally, SEC Co-ordinator
Phone: 416 340-2540
Fax: 416 340-7571
Email: wmcnally@opsba.org

- (b) School Energy Coalition's counsel:

SHIBLEY RIGHTON LLP
Barristers and Solicitors
250 University Avenue, Suite 700
Toronto, Ontario, M5H 3E5

Attn: Jay Shepherd
Phone: 416 214-5224
Fax: 416 214-5424
Email: jay.shepherd@shibleyrighton.com

Costs

9. The School Energy Coalition intends to apply for recovery of its costs reasonably incurred in the course of its intervention in this matter. SEC has participated in many past natural gas and electricity proceedings in Ontario, including consultations, rate cases, and other processes and hearings, and has been found eligible to be paid its reasonably incurred costs in all of those proceedings.
10. The School Energy Coalition is eligible for a cost award because it "primarily represents the interests of consumers (e.g. ratepayers) in relation to regulated services". School boards are one of the largest groups of non-industrial energy consumers in the province,

and their energy costs have a direct impact on the education of millions of Ontario children. The formation of the School Energy Coalition ensured that all representatives of the interests of schools participated jointly in OEB proceedings.

11. The School Energy Coalition is not ineligible by reason of any of the criteria contained in section 3.05 of the Practice Direction on Cost Awards.

Respectfully submitted on behalf of the School Energy Coalition this 23rd day of March, 2009.

SHIBLEY RIGHTON LLP

Per: 

Jay Shepherd