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BY EMAIL

May 22, 2009
Our File No. 2080889

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0102 – Union DSM Assumptions

We are counsel for the School Energy Coalition. Pursuant to the Board's Procedural Order dated May 4, 2009, we are providing herein our comments on the proposed 2009 DSM assumptions filed by Union on March 31, 2009.

While we have reviewed the document filed by Union in detail, it became readily apparent during the course of that review that, without the ability to ask questions and get further details, it would be impossible, particularly given the severe time constraints, to provide the Board with detailed substantive input on these proposed assumptions.

Generally speaking, the gas DSM regulatory process has been set up, since 2006, to divert the detailed discussions about measures and programs and savings to an increasingly active Evaluation and Audit Committee, as well as the DSM Consultative. In determining the most appropriate way to move forward, the Board essentially told the gas utilities that the best approach was to work things out with the stakeholders first, then come to the Board with a consensus or with clearly defined areas of disagreement. This was not just to end the colossal waste of the Board's time that was arising due to lengthy and detailed DSM proceedings. It was also because, where there is a thorough dialogue and exchange of information, better results can arise.

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The risk, however, is that utilities will elect to manage that process, rather than engage in an open consultation. In our view, the utilities have in this case reduced their willingness to work with their stakeholders, assuming, we think, that the Board will approve whatever they ask for rather than embark on another extensive review of the information. This approach is not constructive, but the utilities appear to think it can work, particularly in this period in which the Board is under such intense pressure to take on the regulation of additional, critically important areas of government policy, piled on top of an otherwise busy regulatory calendar.

In our submission, the Board should reject the DSM Input Assumptions proposed by Union in their entirety, on the basis that these assumptions were supposed to be reviewed with stakeholders as part of a “real consultation” prior to filing with the Board, and the failure of Union to follow the Board’s directions in that regard renders these proposals unacceptable.

Instead of approving these DSM Input Assumptions, we believe the Board should allow Union to use whatever input assumptions they consider appropriate for 2009 planning and operations, but should determine the 2009 SSM on the same basis as the 2009 LRAM, i.e. best available information at the time the calculation takes place. We note that, in addition to ensuring that the utility is only incented for savings that they actually deliver, this approach would provide an immediate incentive for Union to work with their stakeholders now, so that by the time the audit of 2009 is done there are assumptions in place based on consensus, as they should have been in the first place.

Because we were delaying in filing these submissions (for which we once again apologize), we had the opportunity to see the excellent submissions in this regard by CME. We adopt those submissions in their entirety.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

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