SHIBLEY RIGHTON LLP
Barristers and Solicitors

TORONTO OFFICE:
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5
Main 416 214-5200 Toll free 1-877-214-5200
Facsimile 416 214-5400

WINDSOR OFFICE:
2510 Ouellette Avenue, Windsor, Ontario, N8X 1L4
Main 519 969-9844 Toll free 1-866-522-7988
Facsimile 519 969-8045

www.shibleyrighton.com

Please Reply to the TORONTO OFFICE

Jay Shepherd
Direct Line (416) 214-5224
Direct Fax (416) 214-5424
jay.shepherd@shibleyrighton.com

BY EMAIL

June 11, 2009
Our File No. 2080422

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0381 – Deferred PILs Combined Proceeding

We are counsel for the School Energy Coalition. This letter constitutes the procedural submissions by SEC in response to Procedural Order #5.

After reviewing the interrogatory responses, and in light of the Technical Conference and the issues identified by Board Staff and other parties throughout this process, we believe:

- This is not a situation in which an oral hearing is useful. An oral hearing is useful for the testing of evidence, particularly when credibility is in issue. There is no issue here of credibility, and conventional testing of the evidence is not the central problem. Further, oral hearings are not well-suited to highly complex or very technical issues, and this certainly qualifies on both counts. For both of these reasons, we do not see value in an oral hearing.

- Despite the Technical Conference and the interrogatories, which generated a lot of useful information, we find that there are still many aspects of these applications that are unclear. This is not primarily about the quality of the IR answers. The real problem is that this material is very complex, and the contemporaneous "rules" that utilities followed to populate

their account 1562 were, due to both interpretations and different levels of understanding, not consistent between these three applications. Add to that the many accounting and tax judgments utilities made, some of which were not contemplated by the 1562 rules of the day, and the murkiness is increased.

- The issues raised by these applications fall into two general groups: issues relating to the correct application of the model as it was originally intended, and issues of principle relating to how much PILs should be recovered from ratepayers. The second category (and some of the first, to the extent that they also raise issues of principle) should in this case be determined by the Board. They set a precedent, and they raise broad issues of concern, so resolving them by agreement between parties is not really appropriate. The first category does not need to be decided by the Board. In general, this is about figuring out the correct answer, and that is best done by the parties working together to identify and fix inconsistencies.

Because this proceeding is so unique, we believe that the Board can and should consider new approaches to getting the information out and reaching a good decision. In this case, we propose three steps in the process, to reach a set of principles/rules that can be used for 1562 account clearances:

1. Convene a meeting/ADR/technical conference for the parties to come to a consensus on the mechanical or technical issues, and identify those issues on which a consensus cannot be reached. We note that we have called this an "ADR", but we do not propose that the parties have freedom to reach compromises on issues. What we are contemplating is a meeting of the parties, off the record, to exchange information and discuss inconsistencies, in order to determine matters on which everyone agrees on the correct approach. In this, we would not see Board Staff as an "active observer", as they often are in ADR, but rather a full participant. In particular, Board Staff should be in a position to advise what they intended the models to do when they promulgated them. As we have noted during the Technical Conference, that is not definitive of the appropriate Board policy, but we believe that many aspects of these calculations will be non-controversial if approached in this way. For those that are more controversial, having a common starting point for the discussion is still of considerable value.

2. Board Staff should, in parallel, commence developing a comprehensive multi-year Account 1562 model that, once decisions on issues of principle, etc, are made, would be available to determine amounts to be cleared by any LDC. Since this kind of model would have to be developed in any case, the incremental effort is negligible. However, developing it earlier allows the model to be used during this proceeding to model the effects of decisions of principle. Once the decisions are made, the model evolves to reflect them, and becomes a filing model.

3. With respect to the issues that the Board must determine, we suggest a two-step approach to submissions. We propose that all parties provide written submissions on those issues, followed by an oral proceeding in which all parties will have an opportunity to give reply submissions. The reason for the former is to allow the positions of parties to be put to the

Board with precision, given the complexity of the issues. The reason for the latter is to allow the Board members to ask questions of the parties on the positions they are advocating.

We acknowledge that there are many ways of approaching these issues. Our proposal seeks to maximize the ability of the parties and the Board to engage in a (largely non-adversarial) dialogue.

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)