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BY EMAIL

October 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. Staff has written a letter dated October 7, 2009, proposing submissions on a key legal issue, prior to any further steps such as determining the final Issues List.

In our view Staff's proposal is a useful step. Even if the Board in the end concludes that the Bill 210 restrictions do not have application to the particular deferral/variance accounts in issue, making a clear decision on that jurisdictional question is in any case a precondition to the Board making a decision on the merits. As long as there is doubt about the legal question, we expect that it will complicate the discussions relating to the actual amounts in issue, an inquiry that is already complicated enough for other reasons.

We also note that, given the large amount of money involved, and the nature of the legal issue raised, there is at least some chance that the Board's decision on jurisdiction may be reviewed or appealed. By making that decision before dealing with the merits, the Board would provide a clear point in time at which jurisdiction is determined, and any review or appeal could be dealt with before any further time and effort is expended on the substantive issues. Then, once jurisdiction is finalized, the proceeding on the merits will be driven by the facts, a much more tractable problem to solve.

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)

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