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**BY EMAIL**

January 5, 2009
Our File No. 2090439

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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**Attn:  Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re:  EB-2009-0271 – Oakville**

We are counsel for the School Energy Coalition in this proceeding.  We have reviewed the letter of the Applicant dated December 30, 2009, and delivered today, requesting an adjournment due to a material transaction currently being negotiated by the parent company.  We have three concerns with this request.

1. We are initially concerned about the lack of information being provided to the Board with respect to the proposed transaction.  Because the Board doesn't know, at this point, what affiliate is being sold, or whether the transaction will actually proceed, or when, the Board cannot assess how big a change this involves, nor whether the response proposed by the Applicant is appropriate.  The Applicant advises that they do not expect to know the impacts of this transaction until later in January, which is when the transaction is, it appears, targeted to close.  Despite this, and despite the extensive changes in the Application that are said to be required (changes to every exhibit), the Applicant believes that it can refile an amended Application on February 18, 2010.  It is difficult to reconcile this timing with the transaction described in the letter.

   That having been said, we don't see how the Board can proceed with the Application at this point, knowing that prior to the decision on this matter there is likely to be a material change in circumstances.  In our view, despite the limited information it is appropriate for the Board to grant an adjournment, but on terms, as discussed below.

2. The second concern is notice.  Given the extensive nature of the proposed changes to the Application, and the potential materiality of the impact, coupled with the additional impact of the Cost of Capital policy, in our submission it is not appropriate to simply delay the proceeding, and then continue as if nothing had happened.  The rate increase being requested, already fairly high, is likely to be significantly higher.  In those circumstances, we believe that the Applicant is obligated to publish a new notice of its Application with updated information.


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There would appear to be two possible ways of doing this. Within the current proceeding, the Applicant could give an updated notice, with a further opportunity for local residents and others to provide comments and/or intervene. Alternatively, if the changes to the Application are pervasive enough, it may actually be more efficient for the Applicant to withdraw the current Application and file a new one, with the appropriate notice for that new proceeding. Either way accomplishes the goal, i.e. to ensure that those affected by this proceeding have proper notice.

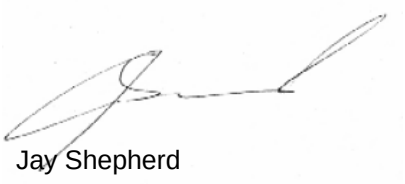
3. Our third concern is with the time and effort wasted as a result of the unfortunate timing of the transaction by the parent company. The list of changes to the Application provided by the Applicant is lengthy, yet probably accurate given the assumed nature of the contemplated transaction. Since proceedings like this are so thoroughly driven by the numbers, changing most of the numbers in material ways will likely result in the work done to date by the Applicant, the intervenors, and the Board being, for the most part, wasted.

   In our submission, all or some portion of the costs to date should be borne, not by the ratepayers, but by the shareholder, who chose the timing of the transaction and thus caused the costs to be wasted. Because of our submissions on notice, how this is handled may depend on how the notice question is handled. If this Application is withdrawn, and a new one filed, then in our submission the costs of the withdrawn Application should be dealt with separately, and paid by the shareholder. On the other hand, if this Application is continued, but with a new notice, then in our submission some reasonable amount of the costs incurred by all involved – Board, intervenors, and Applicant – should be identified as wasted and not included in the amounts recoverable from ratepayers.

It is therefore submitted that the Applicant should not be required to proceed on the basis of the current schedule in Procedural Order #3, but should be permitted either to withdraw its Application and refile, or to file updated information within the existing proceeding, but providing a new public notice as well. In either case, in our submission all or a substantial portion of the costs of all parties incurred to date should be for the account of the shareholder, not the ratepayers.

All of which is respectfully submitted.

Yours very truly,
**JAY SHEPHERD P. C.**



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