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BY EMAIL

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Our File No. 2090661

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

Dear Ms. Walli:

Re: EB-2009-0405 – Enersource Deferral Accounts Clearance

We are counsel for the School Energy Coalition in this proceeding. We have reviewed the Reply Submissions of the Applicant, filed yesterday and then filed with an amendment today.

In our submission, the material at paragraph 15 of the Reply Submission is not properly included. It refers to meetings between Board Staff and distributors of which members of the public, and intervenors, had no knowledge, and amounts to the provision of new “evidence” in Reply. This is not consistent with the Board’s normal practices, and in our view should not be permitted.

We also note that the essence of the Reply Submission is that the EDDVAR Report is not correct, and should not be followed. This is seen most clearly in paragraph 7, but is apparent throughout, the assumption being that the rapid growth in Account 1588 in all LDCs makes the policy in the EDDVAR Report no longer appropriate for any utility. Whether or not this is true, the general appropriateness of the EDDVAR policies is not an issue in this proceeding, and it is not proper to raise it as a new issue in Reply. This does not in any way constitute a “reply” to the submissions of Staff or the intervenors. Indeed, the Application was filed on the basis that it was compliant with the policy, and used that as the basis for seeking recovery. Reply is not the point at which new grounds for relief can be introduced.

It may well be true that events are unfolding for all LDCs in a manner that was not fully contemplated by the EDDVAR Report. Given how current that Report is, such a result would be surprising, but it is not impossible. The appropriate Board response to that, however, is not to simply ignore the Report the first time its application is being considered. This makes a mockery of the Board’s policy-making processes, and throws all Board policies into question.

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It is particularly inappropriate for an Applicant to mount an overall challenge to a recently-announced policy in a Reply Argument, where no-one would have the opportunity to debate with them the appropriateness of the policy, or the Board's options for a different policy if one is to be considered. By way of example, if there really is an ongoing and increasing problem with a build-up of balances across the sector, the Board would presumably want to see evidence of the extent and cause of the problem, to see how long it is likely to persist. If the growth is structural, consideration of importing the QRAM concept, something we have raised in the past, should be one of the approaches the Board considers to deal with this.

In our submission, the LDC correctly points out that any Applicant has the right to show that their circumstances are an exception to a policy. By asserting that the growth in their Account 1588 is the same as the other LDCs – “an industry-wide phenomenon” – the Applicant has admitted that their circumstances are not an exception. Their position can therefore only be accepted if the Board concludes that the EDDVAR Report policy of Account 1588 clearance is wrong in general. That should not be done without proper review and debate.

It is therefore submitted that:

- a) Paragraph 15 of the Reply Submissions should not be considered by the Board at all.
- b) The argument that the Board should not apply the EDDVAR Report because of the large growth in Account 1588 at Enersource, since it is founded on their similarity with other LDCs, and since it is an argument not appropriately raised for the first time in Reply, should not be given any weight by the Board.
- c) In the event that the Applicant wishes to show that their situation is an exception to the general situation of all LDCs, they should file evidence to show that is the case, and intervenors should have an opportunity to make submissions thereon.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

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