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BY EMAIL

February 10, 2010
Our File No. 2090426

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0172 – Enbridge 2010 Rates

We are counsel for the School Energy Coalition in this proceeding. We have reviewed Procedural Order #5, and would like to express our concern with respect to the steps in the submission process.

In the normal course, the Applicant has the responsibility to file first submissions, thus setting out the rationale behind their position and what they are seeking from the Board. That sets the framework for the debate, and allows the intervenors as responding parties to know the arguments they have to meet. The Applicant is then given a reply, completing the circle.

In PO #5, the first step does not appear. To our mind, that means that

- a) the Applicant's updated evidence of January 22, 2010 constitutes, in effect, their argument in chief, in which case the Applicant cannot in reply raise any new arguments or approaches that are not already in the updated evidence, or
- b) the Applicant is not filing argument in chief, in which case the intervenors are in effect the proponents of the first position (i.e. the ROE should not be amended), and after Enbridge's submissions the intervenors would normally expect to have a right of reply.

It would appear to us that it would be fairer to all parties, and provide a clearer record on which to base the Board's decision, if the Board were to add an initial step, in which Enbridge sets out its arguments in favour of its interpretation of the Settlement Agreement. The intervenors could then respond to that, and Enbridge would have its normal reply.

We ask that the Board consider this change to the planned procedure.

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)