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### **BY EMAIL and RESS**

September 14, 2010  
Our File No. 20090269

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2009-0269 – Newmarket Tay 2010 Rates**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1 in this matter, these are SEC's comments on the proposed issues list at Ex. 1/1/4 of the Application.

### **General**

We are concerned that, at this early stage in the proceeding, it is not yet clear what issues will arise. For most electricity distributors, there is no Board-approved issues list, so this is not a problem. Where an issues list is approved, it is usually based on the standard format that has been used by the Board (with variations) many times, and so is already understood by the parties to include all of the relevant components of a distribution rate application. In the comments below we have used a typical standard list, that from EB-2009-0096, where a different wording should be used.

In this case, with an issues list that proposes new wording for many subject areas, and is being considered before there has been a full review by the parties of the Application, there is the risk that the issues list could constrain the Board's review.

Therefore, we ask that the Board make clear that the establishment of the issues list in this proceeding will not operate as a restriction preventing exploration of issues that legitimately arise in the context of the Application. If the issues list does not cut off lines of inquiry, it can then operate as a useful guide, without requiring an immediate, detailed and perhaps unproductive analysis of all possible issues that could conceivably arise.

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## **Specific Issues**

We follow the numbering in the proposed issues list in the following comments:

1 (a) to (c). These are procedural matters that are not issues the Board needs to consider substantively in this proceeding. Further, in the context of seeking a settlement, it is not likely that these procedural matters could be settled before a full hearing that tests the evidence. Therefore, we think it is not useful to include them. In place of those, we propose the standard “General” issues, as follows (using the wording from EB-2009-0096):

*1 (a) Has the Applicant responded appropriately to all relevant Board directions from previous proceedings?*

*1 (b) Are the Applicant’s economic and business planning assumptions for 2010/2011 appropriate?*

*1 (c) Is service quality, based on the OEB specified performance indicators, acceptable?*

We also propose the following additional “General” issues:

*1 (d) What is the appropriate effective date for any new rates flowing out of this Application? If that effective date is prior to the date new rates are actually implemented, what adjustments, if any, including credit or debit rate riders or other mechanisms, should be implemented to reflect the sufficiency or deficiency during the period from effective date to implementation date.*

*1 (e) Is the overall increase in revenue requirement appropriate given the impact on consumers?*

The latter is an issue added by the Board in EB-2009-0096 and other cases. The former is self-explanatory.

2 (a). In this, and also in 3 (a) and (b), the words in brackets should be preceded by “e.g.” to make clear that they are not exhaustive.

2 (b). The words “amounts proposed for” should be deleted. The issue should not be just about the amounts, but also the purpose, timing, and other issues related to the capital expenditures.

2 (c). The word “recent” appears unsuitable. Perhaps “projects closed to rate base prior to the Test Year” would be better.

2 (e). It is not just the “calculation” of the rate base that is important, but the amount itself. For example, one of the things the Board regularly considers is whether, regardless of the justification of individual capital additions, the overall growth in rate base is appropriate given the size of the utility, its resources, and the growth in its customer base. Therefore, it is suggested that the words “the calculation of” be removed.

In the Rate Base section, we would also add the following standard issue:

*2 (f) Does the Applicant's Asset Condition Assessment information and Investment Planning Process adequately address the condition of the distribution system assets and support the O&MA and Capital expenditures for 2010/2011?*

3 (c). This should read

*3 (c) Is CDM appropriately reflected in the load forecast?*

3 (d). This should read

*3 (d) Are the proposed Revenue Offsets appropriate?*

3 (e). The words "the calculation of" should be removed. See 2 (e) above.

4 (a). This does not capture the breadth of the issue. In our view, it would be more appropriate if it read:

*4 (a) Are the amounts paid by the Applicant to affiliates (including all related parties), or paid by affiliates to the Applicant, appropriate, are the methodologies used to calculate those amounts appropriate, and is the allocation of costs between activities within the affiliated group appropriate? Are there any services provided by the Applicant to affiliates, for which there is no payment, that should be compensated? Are all affiliate relationships documented with Service Level Agreements on appropriate terms?*

4 (b). We believe a fuller issue would be more appropriate, such as:

*4 (b) Are the 2010/2011 Human Resources related costs (wages, salaries, benefits, incentive payments, labour productivity and pension costs) including employee levels, appropriate? Has the Applicant demonstrated improvements in efficiency and value for dollar associated with its compensation costs?*

5 (c). We believe this should read:

*5 (c) Is the proposed return on equity appropriate?*

9. We do not believe the following are included in the proposed issues, and so should be added:

*9 (d) Is the proposed new deferral account to record Green Energy Act costs appropriate?*

*9 (e) Is the proposed new deferral account to record LEAP costs appropriate?*

*9 (f) Is the proposed new deferral account to record late payment penalty class action costs appropriate?*

10 (a) We believe this should read:

*10 (a) Are the proposed amounts for LRAM/SSM based on full and accurate information, properly audited, and calculated correctly, and should they be recoverable from ratepayers?*

We would also like to ensure that the existing, or new, issues are considered by the Board to address the following matters:

- A. Completion of the Smart Meter rollout and implementation of time of use rates.
- B. The new 15 minute to hourly interval meter conversion rate.
- C. The harmonization of rates between the Newmarket and Tay service areas.

All of which is respectfully submitted.

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

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested parties (email)