Jay Shepherd
Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

<u>BY RESS and EMAIL</u>

December 2, 2010
Our File No. 20100219

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

<u>Attn: Kirsten Walli, Board Secretary</u>

Dear Ms. Walli:

<u>Re: EB-2010-0219 – IFRS Working Group</u>

We are counsel for the School Energy Coalition. Pursuant to the Board's letters dated September 2nd and October 20th, 2010, these are SEC's submissions with respect to the report entitled "Options and Preferred Alternatives" (the "Report") prepared by Elenchus Research Associates Inc. for the Board.

In preparing these submissions, we have relied on both the Report and the presentation by Elenchus at the stakeholder meeting on November 18th (the "Presentation"). Where possible we have attempted to include references to those two documents in our comments below.

<u>MicroFIT Rate Class</u>

1. The Report recommends that each distributor be allowed to establish their own MicroFIT rate to reflect their specific costs [Report p. 12]. However, the consultant has not provided any rationale for this change [Presentation p. 10/11].

2. In our submission, the MicroFIT charge should not be changed at this time, for three reasons:

    a. The Board in EB-2009-0326 determined [page 15] that there should be a common MicroFIT rate throughout the province, at least in part so that distribution charges would not limit the uptake of MicroFIT in specific geographic areas. MicroFIT would grow on its own economics, and LDC charges would not become a location-specific barrier. The consultant has provided no rationale for changing this, and has done no empirical work to develop a better base of information on which to make this determination. In our view, absent further information, the Board's previous conclusion on this should not be changed simply because the consultant disagrees with the Board's finding.

Tel: (416) 483-3300 Cell: (416) 804-2767 Fax: (416) 483-3305
jay.shepherd@canadianenergylawyers.com
www.canadianenergylawyers.com

b. The establishment of utility-specific MicroFIT charges is likely to involve considerable consulting, legal, and other costs, potentially incurred by multiple LDCs, for a level of precision that is not justified by the dollars involved. Although many LDCs will probably accept a default value, some will not, and their ratepayers will be required to pick up the tab for analysis costs that are not really necessary. This is particularly problematic given the fact that there are much bigger cost allocation and rate design issues that should be addressed soon, and on which spending would be justified.

c. As a history of both MicroFIT data and smart meter data is being developed in the next couple of years, the Board will soon have better information on which to assess whether changes are required to this charge.

Unmetered Loads

3. The Report includes USL together with streetlighting and sentinel lights in its analysis. It then goes on to recommend that a separate sheet be added to the cost allocation model allowing LDCs to insert their own cost allocation weightings. It also recommends that, if LDCs do not have a separate USL class, they should still be required to calculate the effective revenue to cost ratio for USL customers [Report, p. 17].

4. We have three comments on this part of the Report:

   a. It is not clear to us why the Report assumes that USL, streetlighting and sentinel lights should be dealt with as a package, rather than separately as their current treatment would suggest. The consultant has done no investigation to determine if this is appropriate [Presentation, p. 35] and has not even looked at other jurisdictions to see if they have reviewed this area and reached conclusions that could be helpful [Presentation, p. 39].

   b. As with MicroFIT, the recommendation that LDCs be invited to insert their own weighting values in the cost allocation model has the potential to create significant consulting and other costs, and the value of doing so is not apparent. The consultant did not review whether the cost was justified by the potential benefit [Presentation, p. 39].

   c. Streetlighting, the largest of the three unmetered load categories, is often owned or operated by the local municipality, who in many cases will be an owner of the LDC. One of the advantages of the existing system, with default values that are not changed by the LDC, is that the potential for the LDC to consciously or unconsciously favour the interests of the shareholder is removed. If LDCs regularly change the weighting factors, we would expect that this would become an issue engaging time and resources in cost of service applications. Unless there is some evidence that locally-developed weighting factors would be materially better – and the Report gives no indication of such evidence – it would seem to us to be a change that is not justified.

5. In addition, we note that while the Report recommends that USL need not have a separate rate class, it proposes that calculation of the revenue to cost ratio for those customers should still be required, as if it were a separate rate class. We agree that calculating the USL revenue to cost ratio is appropriate. What we are not able to determine is how doing that without having a separate rate class would save money or other resources. It would seem to us that this is an unnecessary complication in a cost allocation and rate design system that already has enough complications.

6. In our view, if it is sufficiently important to match USL costs to rates, then the Board's processes already have a way to do that. It is to establish a rate class. The value of establishing a completely

different approach in this case is not clear. Further, one can foresee that if calculating the revenue to cost ratio for this subclass is considered appropriate, then there will be other customer groups with special situations (schools, for example, with multiple similar locations for a single customer) who will legitimately ask for the same treatment.

Transformer Ownership Allowance

7. We agree with the proposal, originally developed by VECC, and now implemented in all cost of service proceedings before the Board, that transformer ownership allowances should be re-allocated only to the classes that have customers owning their own transformers.

Allocation of Miscellaneous Revenues

8. The Report recommends that Miscellaneous Revenues be disaggregated and the major components allocated separately [Report p. 26], with the remainder being allocated based on composite OM&A.

9. We have no specific comments on this recommendation. However, as with other recommendations we are concerned that the additional costs associated with this greater precision may not be justified by the results. This is particularly true since the consultant did no review of whether there is any other, more accessible cost driver that could be used to avoid this additional work [Presentation, p. 30].

Weighting Factors for Services and Billing Costs

10. The Report recommends that weighting factors be established individually by LDCs, rather than all LDCs using default values. The Report rejects the option of updating the default values, on the basis that if the LDCs can use their own, an update is not required [Report, p. 28.

11. Our reasoning on this is similar to para. 2(b) above. For most or perhaps all LDCs, default values will be fine, and the additional cost to develop local default values would not be justified. In the interests of keeping costs down, in our view the Board should update the default values so that they are as good as possible, and encourage all LDCs to adopt them. In the extreme case where an LDC believes the default values are materially wrong for their customers, they always have the right to make their case for a different approach.

Allocation of Host Distributors Costs to Embedded Distributors

12. The Report recommends that utility-specific rates for embedded distributors be mandatory where certain thresholds (calculated by delivery point – Presentation p. 55) are met [Report, p. 33].

13. In general, the recommendation does make sense. However, we do have a concern that the proposed thresholds have no logical foundation, and are not based on any research or other analysis [Presentation p. 57]. It would be unusual for the Board to establish conditions, rates, or thresholds without some evidentiary basis, and in our view the unsupported judgment of a consultant is not an appropriate basis.

Allocation of Costs to Load Displacement Generation

14. The Report recommends that CDM avoided costs be applied to determine the benefits from specific load displacement generation projects of a certain size, or that an arbitrary value of 5% be used. However, distributors should be allowed to keep their existing standby charges if they prefer, without any additional investigation [Report p. 39].

15. The consultant admits that they did not look at what other jurisdictions have done to assess the costs and benefits of load displacement generation [Presentation, p. 19 and 21], even though they also sai that the Board should consider doing just that [Presentation p. 23]. In this particular case, that lack of research constituted a major weakness in the recommendation, for at least the following reasons:

    a. The costs and benefits of load displacement generation are a common concern of LDCs around the world, and a lot of work has been done, particularly in the U.S., on this issue.

    b. The recommendation assumes that the costs and benefits of this category of customer would be calculated on an incremental basis, although there does not appear to be any justification for treating these particular customers as incremental.

    c. It is not clear why the Board would consider avoided costs developed for CDM purposes to be appropriate for load displacement generation. While that might be true, there is just as much possibility that it will not, and there is no basis for the Board to reach either conclusion.

    d. There is no information on whether generator-specific benefit analyses are worth the cost of carrying them out, or even what that cost might be.

    e. The 5% figure is admittedly arbitrary.

    f. The recommended alternative of continuing existing charges is not analysed in the Report, and we do not see why it is a reasonable approach. If there is reason to believe that the existing charges are reflective of cost causality, why would the Board change them at all? If there is not, why would the Board allow them to be continued? In neither case does it appear to us that the matter should be in the discretion of the individual LDC.

Revenue to Cost Ratios

16. The Report deals with the revenue to cost ratio ranges for the three classes where the Board's ranges are wider than the others: GS>50 KW, Streetlighting, and Sentinel Lighting. It recommends that the bottom end of the range for lighting classes be brought from 70% to 80% over four years, and that the top end of the range for GS>50 KW (which includes most of the province's schools and small businesses) be brought down from 180% to 140% [Report, p. 44]. The result of the recommendation, if implemented, would be that GS >50 KW would be the only rate class that continued to have an asymmetrical range [Statement by Elenchus at Stakeholder Conference].

17. First dealing with the recommendation for Streetlighting and Sentinel Lighting, SEC agrees that moving the bottom of the range from 70% to 80% is appropriate, but does not understand why a four year transition would be required.

18. When many of the customers in these classes were at 10% or 20% of costs, it was understandable that the move to 70% should be transitioned over three or four years to avoid rate shock. That is not the case with this move, which would be relatively small. Continuing an undercollection for a longer period, and further complicating annual rate filings, is not justified unless there is a significant rate impact.

19. In our view, implementing this change immediately at the LDC's next cost of service application is the more appropriate approach. In the unusual case where that would result in an unreasonable rate increase, the Board has ample methods available to deal with that when it arises.

20. The issue of the GS>50 KW revenue to cost ratios is a significant concern for schools. Of the 52 LDCs reviewed by the consultant, 22 of them had GS>50 KW revenue to cost ratios in excess of 120%, and that is after all annual or multi-year adjustments ordered in rebasing applications for 2008-2010 [Presentation, p. 63].

21. This fact should be understood in the context of the consultant's statement that the most common revenue to cost ratio range across the country is 95% to 105% [Statement by Elenchus at Stakeholder Conference].

22. The Report and the Presentation have given no justification for leaving GS>50 KW as the only class that retains an asymmetrical range. The only reason given in the Report is that 140% is lower than 180%, but there is no analysis of why 120%, the highest top end of the range for any other class, was not selected [Report p. 43/4]. The only reason given at the stakeholder conference was that choosing 140% makes the move more gradual [Presentation, p. 64].

23. With respect, this recommendation completely misses the point. The best evidence before the Board currently is that the rates of GS>50 KW customers are significantly greater than the amounts that would be appropriate based on cost causality. As the consultant correctly points out "customer classes with revenue:cost ratios of less than one are considered to be subsidized by customer classes with revenue:cost ratios above one…"[Report, p. 39].

24. The appropriate response to a revenue to cost ratio as high as 163% [Report p. 42] is not to say that's OK. The appropriate response is to bring it down to a reasonable level immediately, unless there is a good reason not to do so. Asked whether there was a good reason not to do so, the consultant did not have such a reason [Presentation p. 64, referring to Report p. 40]. The only rationale was the desire to be gradual.

25. In our submission, the evidence is that schools and other GS >50 KW customers are overpaying for electricity distribution, in many cases by significant amounts. The Board has established tolerance ranges for cost causality that recognizes the inherent uncertainty in some data, and those tolerance ranges are in general 80% to 120%. No other rate class is now, or is proposed to be, outside of that tolerance range.

26. Unless there is a specific problem with applying that tolerance range to GS >50 KW customers – and none has been offered – in our submission that is the appropriate range for that class. There is no reason that we have heard why GS >50 KW customers should continue to bear the highest overcharges of any customer class. Lacking such a reason, the Board should in our view bring this class into line with the other classes.

27. In addition to establishing common ranges for all classes (except residential, which would be narrower), in our view the Board should continue to move towards a narrower range, with a goal within a reasonable period of time of getting to the 95% to 105% range that is common across Canada.

Transition to IFRS

28. The Report advises that the cost allocation model does not need to be modified to address changes in accounting rules such as the move to IFRS [Report, p. 47].

29. We are concerned that the consultant did not seek to determine whether, as a result of IFRS, the cost allocation model would produce materially different results. The consultant looked at whether the

model was no longer correct, but not whether new inputs would produce less reasonable results [Report p. 46 and Presentation p. 68].

30. Given the fact that some LDCs have reported significant potential impacts of IFRS for particular cost categories, it would appear to us to be appropriate to model those changes within the cost allocation model, to see if there are material changes in the results and, if so, whether those changes are justified.

31. By way of example, a significant impact is expected related to capitalization rules. To the extent that costs when capitalized are allocated differently than OM&A costs, this may present a shift in cost responsibility. It is, in our view, appropriate for the Board to determine through research whether any such shifts are material and/or appropriate.

General

32. The above comments contain two themes, which are worth reiterating. First, where dollar impacts are small, we are concerned that utilities should not be expending scarce financial or personnel resources – resources that should be used for higher priorities – to obtain unnecessary precision in cost allocation. Second, many of the consultant's recommendations are seriously weakened by the limited scope of their engagement. Because literature or empirical research was not done in many areas, some of the conclusions do not have a sufficient foundation to be implemented.

33. However, beyond those two themes, the most important issue raised by the Report, in our view, is the proposed continuation of the unfair rate levels for GS >50 KW customers. GS >50 KW customers have been overcontributing for years, and the Report proposes that this state of affairs continue. That is neither appropriate nor fair, and we oppose it in the strongest possible terms.

34. SEC submits that it has participated in this process in a responsible manner with a view to providing assistance to the Board, and therefore asks that the Board order payment of its reasonably incurred costs.

All of which is respectfully submitted.

.
Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

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