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BY RESS and EMAIL

January 12, 2011
Our File No. 20100142

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0142 – Toronto 2011 Rates

We are counsel for the School Energy Coalition. We are writing to bring to the Board's attention facts relating to the Board's January 12, 2011 Decision on Confidentiality in this matter which were not referred to in that Decision, and therefore may not have been known to the Board panel at the time it made the Decision.

The Business Plan that is the subject of one of the confidentiality claims of the Applicant was requested by SEC, among others. On December 23, 2010 the Applicant made submissions claiming confidentiality and providing its reasons for so claiming. Those submissions do not appear to have been copied to the parties, or at least not to SEC. SEC obtained a copy of those submissions by searching the Board's website on December 30th.

Pursuant to the Board's normal practice, counsel for SEC filed a Declaration and Undertaking in the Board's form on January 6, 2011, and requested from the Applicant a copy of the Business Plan in order to review it and assess whether an objection to the confidentiality claim should be filed. SEC has been on record a number of times in the past as resisting confidential treatment of certain classes of documents, and will likely, once it sees the Business Plan, wish to make submissions with respect to whether some or all of that plan should be confidential. Those submissions may, depending on the contents of the document, include submissions with respect to the applicability, if any, of the Ontario Securities Act to that confidentiality claim.

On January 7, 2011 counsel for the Applicant refused in writing to provide a copy of the documents in question. Counsel for SEC immediately contacted Board staff, who advised on the same day that a procedural order would be issued shortly. At no time was SEC advised that a Decision was being

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contemplated without affording parties the right to object that is set forth in the Practice Direction on Confidential Filings. What we reasonably expected was that a procedural order, providing us with access to the documents in order to make submissions, was being prepared.

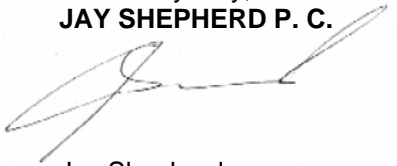
It is submitted that, in light of these additional facts, none of which are referred to in the Decision issued today, the practical effect of the Decision would be that the Board has decided a material issue having given the Applicant an opportunity to make submissions, but denying intervenors who actively sought to make submissions the same right. This is contrary to the Board's consistent practice of applying the principle *audi alteram partem* to matters before it.

Given the Applicant's refusal to provide SEC with a copy of the Business Plan, thus preventing SEC from objecting to its confidential status, it is submitted that the Board should reconsider the Decision, and allow SEC the opportunity, after reviewing the Business Plan, to make submissions on the extent, if any, to which the Business Plan should be accorded confidential status.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.



Jay Shepherd

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