

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.
O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, as further described in the Notice of Proceeding, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery;

AND IN THE MATTER OF Rules 8 and 29.3 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

NOTICE OF MOTION

The School Energy Coalition (“SEC”) will make a motion to the Ontario Energy Board (“the Board”) at its Chambers at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC proposes that motion be dealt with either orally or by written submissions.

THE MOTION IS FOR:

1. An order requiring the Electricity Distributors Association (“EDA”) to provide the materials requested in SEC Interrogatories 2,3,4,5 and 6.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on its own motion, pursuant to sections 19 and 78(2) of the *Ontario Energy Board Act, 1998*, to determine whether Affected Electricity Distributors should be allowed to recover from their ratepayers the costs and damages incurred as a result of the Late Payment Penalty Class Action (“LPP Class Action”) Minutes of Settlement in Court File No.94-CQ-50878, and if so, the form and timing of such recovery.

2. In the Notice of Proceedings, pursuant to section 21 of the *Ontario Energy Board Act, 1998*, the Affected Electricity Distributors, licensed Ontario electricity distributors that were named as defendant class members in the Minutes of Settlement, were required to file evidence collectively on the issues on the following issues:.

1. As a threshold question, whether Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action; and
2. If the answer to the first issue is yes, what would be an appropriate methodology to:
 - (a) apportion costs across customer rate classes, and
 - (b) recover such allocated costs in rates.

3. The Electricity Distributors Association (“EDA”), an intervenor in the proceedings, on behalf of the Affected Electricity Distributors filed with the Board on November 8, 2010 its evidence. On November 12, 2010 the Board received supplementary evidence from Toronto Hydro Electric System Limited.

4. SEC is an intervenor in this proceeding.

5. Pursuant to Procedural Order #1 issued December 17, 2010, SEC delivered the following written interrogatories to the EDA:

2. [Ref: para 54-55]

Please provide a copy of the full transcript of the Fairness Hearing held on July 15, 2010.

3. [Ref: para 10]

Please provide, for each LDC that was incorporated after the date the first impugned late payment penalties were charged to customers, a copy of the agreement by which the incorporated LDC became liable for the existing obligations, including legal claims, of the predecessor entity that carried on the electricity distribution business. To the extent, if any, that there were disclosures of existing claims at the time of the transfer of the electricity distribution business, please provide a copy of those disclosures.

4. [Ref: para 10]

Please provide, for each LDC that was acquired by, or amalgamated with, another LDC or entity after 1998, a copy of the agreement by which the successor LDC became liable for the existing obligations, including legal claims, of the predecessor entity that carried on the electricity distribution business. To the extent, if any, that there were disclosures of existing claims at the time of the acquisition or amalgamation, as the case may be, please provide a copy of those disclosures.

5. [Ref: None]

Please provide, for each LDC claiming recovery, details of any insurance in place at the

time of incorporation or thereafter covering any form of third party claim against the distribution business.

6. [Ref: None]

Please provide, for each LDC claiming recovery that, during the period of the impugned late payment penalties, billed charges for goods or services other than electricity and its distribution on the same bill, a breakdown of the billed charges, by year, between electricity and its distribution, and all other charges. Please provide details of any late payment penalty policies that differed between the components of the bill, e.g. different interest rates, grace or notice periods, order of disconnection rules, etc.

6. The EDA responded to the above interrogatories with the following answers contained in Exhibit I1, Tab 4, Schedule 5:

2. There is no transcript of the Fairness Hearing held on July 15, 2010.

3. The information requested cannot be obtained within the time lines prescribed by the Board for responding to interrogatories. Furthermore, the requested information is not relevant to either of the Board approved issues.

4. The information requested cannot be obtained within the time lines prescribed by the Board for responding to interrogatories. Furthermore, the requested information is not relevant to either of the Board approved issues.

5. The information requested cannot be obtained within the timelines prescribed by the Board for responding to interrogatories. However, The MEARIE Group has advised that its general liability insurance policy, which applies to the vast majority of LDCs, does not provide coverage for the Revised Allocated Amounts owing by LDCs. Furthermore, the EDA is not aware that any LDC carried insurance covering its liability under the settlement of the LPP Class Actions, but agrees that any proceeds from any such insurance that may have existed in the case of a particular LDC should be deducted from its Updated Recovery Amount.

6. The information requested cannot be obtained within the time lines prescribed by the Board for responding to interrogatories. Furthermore, the requested information is not relevant to either of the Board approved issues.

7. With respect to the response to interrogatory 2. SEC's submits that the EDA's response, that there is no transcript of the Fairness Hearing, is unsatisfactory. The Implementation Order of the Settlement which has been referenced (para 54-55) in the evidence filed by the EDA and a copy provided (Appendix B to their evidence) does reference a hearing occurring in front of Cumming J. In all but the most unusual of circumstances, court hearings are transcribed. No detail of why there was no transcript of the hearing was provided. Since the issue of fairness of the Settlement to ratepayers is important in determining if the Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action, SEC submits that the transcript is important evidence that

should be put before the Board. The only acceptable response other than production should be that the hearing was not, in fact, transcribed.

8. With respect to the response to interrogatories 3, 4, 5 and 6, the EDA raises the objection that, “the information requested cannot be obtained within the time lines prescribed by the Board for responding to interrogatories”. If the EDA is unable to provide the information because of time constraints set by the Board then they should have requested from the Board an extension to file their responses to these interrogatories. They did not do so. SEC submits that they should not be allowed to now refuse to answer the interrogatories on these grounds. At the very least, SEC should be allowed to designate a small number of LDCs from whom this information is provided.

9. With respect to the additional response to interrogatories 3 and 4, the EDA raises the objection that, “[f]urthermore, the requested information is not relevant to either of the Board approved issues.” SEC disagrees with this statement. The materials requested in interrogatories 3 and 4, are relevant to first issue, the threshold question, whether “Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action”.

10. The documents requested in interrogatories 3 and 4 are relevant to answering first issue, as they provide the Board with the proper foundation to understanding how legal liabilities were transferred to Affected Electricity Distributors from predecessor entities, either other Local Distributors Companies (“LDCs”) and/or municipally owned hydro-electric utility commissions (“MEUs”). This is important to understanding if ratepayers, instead of other legal entities, if any, should be responsible for the costs and damages incurred by the Affected Electricity Distributors in the LPP Class Action.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2010-0295, including EDA's responses to written interrogatories.
2. Such further and other documents as counsel may advise and the Board may permit.

January 14, 2011

Jay Shepherd Professional Corporation

2300 Yonge Street
Suite 806
Toronto, Ontario
M4P 1E4

Tel: 416-483-3300

Fax: 416-483-3305

Jay Shepherd

(LSUC# 196960)

Mark Rubenstein

(Student-at-Law)

Counsel for the Moving Party,
School Energy Coalition

TO: Ontario Energy Board

Attention: Kirsten Walli,
Board Secretary
Suite 2701
2300 Yonge Street
Toronto, ON M4P 1E4
Tel: 416-481-1967
Fax: 416-440-7656

AND TO: Ogilvy Renault LLP

200 Bay Street
P.O. Box 84
Suite 3800, Royal Bank Plaza, South Tower
Toronto, ON M5J 2Z4

Alan Mark

Tel: 416-217-3930
Fax: 416-216-3930

Counsel, for the Electricity Distributors Association

AND TO: All other parties (by posting on the OEB website)

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AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, Settlement in the late payment penalty class action, as further described in the Notice of Proceeding, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery;

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

Jay Shepherd
(LSUC# 196960)
Mark Rubenstein
(Student-at-Law)

Tel: 416-483-3300
Fax: 416-483-3305

Counsel for the Moving Party,
School Energy Coalition