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### **BY RESS and EMAIL**

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Our File No. 20100139

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-2010-0139 – Norfolk 2011 Rates**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1, these are SEC's submissions with respect to the threshold issue.

We have had an opportunity to review a draft of the thorough and thoughtful submissions of Energy Probe on this matter, and in general we agree with their analysis and their conclusion. We will only add the following brief comments.

### **General Framework**

1. SEC starts from the premise that it makes good sense for the Board to establish a standard schedule for rate applications by electricity distributors. There are more than eighty of them, and if the Board allowed all of them to seek cost of service every year, the cost of regulation would spiral out of control. Or worse, the Board's ability to deliver timely rate decisions would be compromised.
2. The Board has established such a schedule in its IRM framework, choosing a four year cycle. There is no magic to that cycle. It could be a one year cycle (i.e. cost of service every year), or a ten year cycle, or variable. What the Board has established is a four year cycle,

balancing regulatory efficiency with the need to review actual costs on a periodic basis. The policy was established after a comprehensive process in which the views of all stakeholders, and the input of well-respected experts, were considered.

3. The Board's schedule is, of course, still a policy, and thus not binding on any individual Board panel. Any utility has the right to ask for consideration outside of the schedule. Indeed, the Board has recognized that there will be exceptional circumstances. The policy is not simplistic. It includes, for example, an off-ramp if certain conditions have been met, along with guidance for how the off-ramp will be handled. It includes an incremental capital module, to respond to a specific category of special circumstances that concerned many distributors. It includes Z factors to deal with other special circumstances. And, the Board has made clear that in addition to those examples, it may consider an out-of-schedule cost of service application if other, unexpected circumstances arise.
4. But at its root, the policy is about controlling the Board's process. Utilities would like to have complete freedom to come in for new rates any time. The Board has to have guidelines to limit that, and has to enforce those guidelines unless there is a good reason not to do so.
5. In theory, a utility has a right to come in for new cost of service rates every month. "Here is our budget for next month. Please approve new rates." Everyone would agree that a Board guideline prohibiting that would be justified, and should be followed except in the most extreme circumstances. Everyone would also agree that, at least in theory, there might be a situation so extreme that an exception would be justified.
6. The fact that the Applicant is on a four year cycle is no different. This is a cycle developed by the Board in a careful way, balancing all interests. The Applicant has a substantial responsibility to show that its current, specific situation is so outside of the norms on which the cycle is based that it should not be applicable.
7. We agree with Energy Probe that the Applicant has not shown that in this case.

#### **The Justifications Proposed by the Applicant**

8. As we read the reasoning of the Applicant, the justifications for coming in for cost of service one year early are essentially twofold:
  - a. They will almost meet the off ramp test on a prospective basis for the test year, if some assumptions about test year cost of service are made.
  - b. They had a substantial capital expenditure in 2010 which would qualify for the incremental capital module, but they prefer cost of service instead.

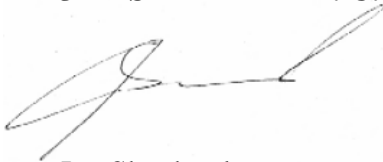
9. On the first point, the off ramp is a simple mathematical test based on actual historical data. This is not horseshoes. They meet it, or they don't. In this case, the fact that they don't meet it is not in dispute. Their historical data does not meet the test (and neither does the forecast data, even if the rule applied to forecast data, which it doesn't).
10. Further, as Energy Probe correctly points out, when calculated on a proper basis (i.e. without changing the treatment of smart meters and thus reducing the effective ROE), the Applicant is not even close to the off ramp level.
11. On the second point, the Board, after a significant debate, established the incremental capital module at the request of the distributors. The most obvious case in which it should be applied is the periodic requirement for some distributors to build transformer stations. The Board established a solution for utilities like the Applicant. It is not appropriate for the Applicant to simply reject the solution provided, then express concern that their ROE is slipping. Take the remedy the Board has developed for this specific purpose.
12. In addition, we note that other utilities in precisely the same situation as the Applicant, such as Guelph and Oakville, have followed the Board's policy and invoked the ICM. A decision to allow this Applicant to opt for cost of service because it isn't satisfied with the ICM would send a clear message to those other utilities that complying with Board policy is not the best course of action.

### **Conclusion**

Based in the foregoing, it is our submission that the Board should decline to hear this Application, and should advise the Applicant to apply for IRM, with or without ICM, all as set forth in the Board's clear existing policy for electricity distribution applications.

All of which is respectfully submitted.

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



Jay Shepherd

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