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BY RESS and EMAIL

January 20, 2011
Our File No. 20100377

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0377 – Cost Eligibility Objection by A. Parker Gallant

We are counsel for the School Energy Coalition. These are SEC's submissions with respect to the objection filed with the Board by Mr. Gallant on January 12, 2011, and forwarded to us on January 14, 2011.

SEC has no submissions with respect to the objections related to ECAO, APPrO, or Council of Canadians. While we are aware of the positive contributions those groups make to Board proceedings, we will leave it to them to respond with respect to their own claims for eligibility.

With respect to the cost eligibility of SEC, the essence of the objection appears to be that schools have lots of money, and so they should pay their own way.

It appears to us that this objection stems from an erroneous assumption as to the purpose of the Board's cost eligibility and reimbursement system. The essence of the costs system is not akin to Legal Aid, i.e. helping poor people get representation. Rather, it is about regulatory quality and efficiency, and about ensuring that the costs of regulation are borne correctly and fairly.

In a system in which certain energy services are provided on a monopoly basis, the competitive markets do not control prices. The role of the Board is to be a proxy for the marketplace,

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ensuring that monopoly participants do not take excessive economic rents because of their monopoly power.

This regulation comes at a cost, which has a number of components. The regulated entities have personnel and outside advisors/consultants to manage and support their role in the regulatory process. The regulator – in this case the OEB – has decision-makers, staff, and outside advisors to ensure that it can act in a knowledgeable and independent manner. And, the ratepayers and other stakeholders in the industry have either personnel or advisors/consultants to ensure that their perspective is also presented.

All of these components are legitimate costs of the regulatory process. The costs of the utilities and the regulator are, of course, borne by the ratepayers through rates. Under the Board's costs system, the costs of ratepayers and other stakeholders are also paid by the utilities and recoverable from ratepayers through rates. The result is that essentially all of the costs of the regulatory process are borne in the end by the ratepayers, since the purpose of the process is to protect ratepayers against unfair prices. The Board supervises the amounts spent, whether by utilities or ratepayers, to make sure they are reasonable.

Mr. Gallant wishes to remove cost eligibility for a key ratepayer group, the School Energy Coalition. In principle this would create the situation in which ratepayers fund the utilities to present their perspective to the regulator, but the ratepayers do not fund the customer groups (or at least one of them) to present their perspective to the regulator.

The appropriate concept, in our view, is that the cost of regulation is socialized, and this tends to make it fairer and more balanced. If the cost of regulation is, instead, borne by the players, those with the most interest in the outcome (typically the utilities), or with the deepest pockets (again typically the utilities), or both, will have the advantage. This is not an attractive result.

During the course of preparing these submissions, we have looked at the many interesting articles by Mr. Gallant in the Financial Post, and on the websites of ChristianGovernance.ca, Wind Concerns Ontario, and many other sites. The theme appears to be the increasing cost of electricity in Ontario.

Of course, the School Energy Coalition shares Mr. Gallant's concerns about increasing bills, and in fact we regularly fight to keep bills down. However, we believe that in seeking to exclude parties like SEC from costs, Mr. Gallant is quite unintentionally undermining his own goal, in effect being "penny wise and pound foolish".

Groups like SEC have been instrumental in first, working with utilities to keep rates as low as possible, and then, if consensus cannot be achieved, presenting the ratepayer perspective to the Board so that it can adjudicate rate cases (and establish policies) based on balanced information. This improves the quality of the Board's decisions.

The many hundreds of millions of dollars (likely billions, in fact) saved by ratepayers over the last decade due to the Board's regulatory processes are, at least in part, the result of active intervenors like SEC. This is one of the reasons why the OEB is considered a leader throughout North America in the quality of its regulatory processes.

The Board's policies provide that intervenors who represent ratepayer groups are eligible to be reimbursed for a portion of their costs to participate. This, a relatively small percentage of the overall cost of regulation, adds substantial value to the process, and helps keep rates down. If the overall spending on cost claims for intervenor groups is compared to the savings those groups are instrumental in creating, the cost is very small relative to the benefit.

We note in passing that the debate over the cost of electricity, the extent to which it is in fact rising, and the reasons for that, is one that is of considerable importance for the province of Ontario. Public discussions such as the opposing positions in the Financial Post on the cost and value of renewable energy by Kristopher Stevens, the Executive Director of the Ontario Sustainable Energy Association, and Mr. Gallant, a retired Vice-President of Trade Finance for TD Bank, are an important part of the development of energy policy in Ontario. Whether we agree with one side, or the other, or neither, the debate itself has significant value.

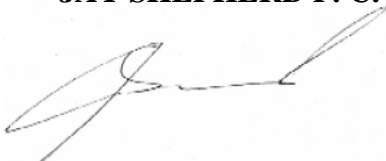
Thus, we are not in this response intending to be in any way critical of Mr. Gallant. What we are saying, rather, is that his attempts to reduce payment of cost claims by the Board are likely, in fact, to have exactly the opposite effect from that which he seeks. Instead of reducing the cost of electricity, excluding ratepayer groups like the School Energy Coalition is likely to result in higher costs to ratepayers.

It is therefore our submission that a) the Board's policies allow SEC and similar groups to apply for and receive reimbursement of their reasonable costs of participation in the regulatory process, and b) those policies have served the Board, and ratepayers, very well. Thus, the objection to cost eligibility for SEC should be denied.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.



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Interested parties (email)