



## Jay Shepherd

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### **BY RESS and EMAIL**

January 27, 2011  
Our File No. 20100142

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-2010-0142 – Toronto 2011 Rates**

We are counsel for the School Energy Coalition. We have reviewed the letter from counsel for the Applicant dated January 26, 2011 relating to rescheduling of the hearing, and with the Board's permission wish to provide the following comments.

1. We agree entirely with the Applicant that, given their intention to file a depreciation study, a costing study, and other material that appears to be of some significance, it is appropriate for the Board to change the schedule to reflect a major amendment to the Application.
2. Until we see the material, it is not possible for us to assess how long will be needed to review it and have a reasonable discovery process. It is also not clear whether a Technical Conference or interrogatories, or some other approach such as a combination, will be most efficient. A lot will depend, on the extent to which the new evidence and the changes in the revenue requirement and its components affect other aspects of the Application. For example, if any significant number of the earlier interrogatories and technical conference questions are now materially incorrect, that will make the process of discovery more complex and potentially more time-consuming.
3. Whether the new filing is relatively simple, or very complex, in its impact on the Application, it appears to us fairly clear that having to file technical conference questions about 36 hours after we receive it is probably shorter than is reasonable, and is certainly a shorter time period than the Board's normal practice. Further, the proposed schedule provides for a shorter ADR, followed immediately by the oral hearing. This appears to assume that no settlement is possible, since drafting of a settlement agreement and consideration by the Board will always mean that an oral hearing cannot follow a

settlement immediately. Finally, the proposed schedule appears to contemplate a three day hearing, given that the Kingston hearing is scheduled to start the following Monday.

4. In our submission, it is probably better for the Board to look at the material filed by the Applicant in the next two or three weeks, and then assess the schedule that should follow after that.
5. While we share the Applicant's desire to move this forward as quickly as possible, it does appear to us that it is the Applicant who is proposing to make material changes to the Application late in the process. That has natural consequences, and truncating the Board's normal process of discovery, negotiation and oral evidence is not an appropriate step to avoid those consequences.

While we are aware that a number of other parties may share our concerns, these submissions are provided on behalf of the School Energy Coalition. Other parties may communicate with the Board directly as to the appropriate procedure going forward.

All of which is respectfully submitted.

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

Jay Shepherd

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