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BY RESS and EMAIL

February 7, 2011
Our File No. 20070820

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0381 – Deferred PILs

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #9, these are SEC's reply submissions with respect to the unsettled issues.

We have reviewed the submissions of the Applicants, the Coalition of Large Distributors, and the Electricity Distributors Association, as well as the Reply Submission from Board Staff. Except as set forth below, we re-iterate our submissions of January 21, 2011, and have nothing further to add to the record.

With respect to the submissions of the CLD on Issue #10, and the submissions of the EDA with respect to settled Issue #4, we have the following submissions.

Issue #10 - Retroactivity

The CLD restricted their submissions to this issue, and their submissions were adopted by both the Applicants and the EDA (in the case of the Applicants with supplementary submissions).

SEC's original submissions on this point remain valid. However, we are concerned with the emphasis by CLD on the ratemaking concept of retroactivity. In the CLD argument, the focus is

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on whether the Board has the jurisdiction to adjust the final rate orders of utilities retroactively, where those orders were frozen by Bill 210. CLD argues that since the 2001 PILs proxy was baked into rates at the time those rates were frozen, the effect was to allow the utilities to keep that over-collection as long as it continued. The premise appears to be that the 2001 PILs proxy was no different from any other component of rates. All costs were frozen, and none of the changes that everyone expected took place. The excess PILs provision was just one of those frozen costs.

With respect, SEC believes that the CLD argument flows from an incorrect premise, and therefore is entirely unfounded.

In our submission, the issue today is not whether the rates in place at the time of Bill 210 should be changed. No-one is proposing retroactive changes to rates. Rather, the issue is whether the PILs proxy actually included in rates should be trued up in accordance with the variance account structure already in place at the time.

In this respect, the PILs amount is quite different from the third tranche of MARR, which as the Applicants and CLD point out was delayed by Bill 210. There was no variance account in place for MARR. It existed only as a rate component, and once rates were set there was nothing further to do.

By contrast, the PILs amount included in rates was always intended to be the subject of a true-up mechanism. It existed, not only as a rate component, but also as the basis of a variance calculation that was not affected by Bill 210.

The Board in the current proceeding is not doing anything, directly or indirectly, to alter the rates in place in 2002, 2003, or 2004. Rather, what it is doing is completing the process it has always had in place to true up the PILs proxy. It is not retroactive ratemaking to clear a variance account covering expenses in a prior period, as long as the account was in place in that period.

Issue #4 - Incomplete Cycle

The EDA has objected in their submissions to the Board's caution that the settlement of Issue #4 may not be a precedent for distributors with situations different from that of EnWin. In their view, the Board should in subsequent proceedings interpret the resolution of Issue #4 as agreement in principle with their "Incomplete Cycle" argument, and thus potentially authority for wide-ranging corrections of individual LDC concerns.

SEC disagrees with this interpretation of the Settlement Agreement. We believe, in fact, that the description of this aspect of the Settlement Agreement by the Board is correct. The Parties reached a principled result for EnWin because of their special circumstances, which did not fit neatly into the basic rule for regulatory assets. The Parties did not establish any general principle that would apply to the special circumstances of other utilities. In each case, in our view the Board has to look at the fact situation, and see if the basic rule can apply, or, if it cannot, whether some other approach will produce the appropriate result. The Board and the Parties are not in a position at this time to predetermine what that approach would be, because

by definition it applies only to fact situations that are not known at this time. In our view, if the Parties had sought in the Settlement Agreement to propose the principle espoused by the EDA as a rule of general application, they would have said so expressly. They did not.

It is therefore submitted that the Board should not alter its comments on the settled Issue #4.

Conclusion

SEC submits that it has participated in this proceeding in a responsible and focused manner with a view to assisting the Board, and requests that the Board order payment of its reasonably incurred costs of that participation.

All of which is respectfully submitted.

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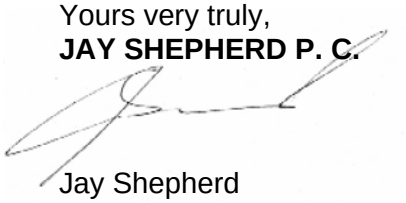
Yours very truly,
JAY SHEPHERD P. C.



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