SHIBLEY RIGHTON LLP
Barristers and Solicitors

TORONTO OFFICE:
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5
Main 416 214-5200 Toll free 1-877-214-5200
Facsimile 416 214-5400

WINDSOR OFFICE:
2510 Ouellette Avenue, Windsor, Ontario, N8X 1L4
Main 519 969-9844 Toll free 1-866-522-7988
Facsimile 519 969-8045

www.shibleyrighton.com

Please Reply to the TORONTO OFFICE

Jay Shepherd
Direct Line (416) 214-5224
Direct Fax (416) 214-5424
jay.shepherd@shibleyrighton.com

**BY EMAIL**

January 7, 2008
Our File No. 2060604

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

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: Gas IRM Applications – EB-2007-0606/615**

We are in receipt of the letter of Mr. Penny on behalf of Union, delivered after the close of business on January 4, 2008, and purporting to file additional evidence in the above proceeding.

Contrary to the assertions in Mr. Penny's letter, the issue of whether tax changes should be treated as a Z factor has at all times clearly been before the Board, and that is no surprise to the utility. The Board has treated taxes as a Z factor in all electricity proceedings, and recently has announced that 2008 rates for all LDCs will be adjusted automatically to reflect announced changes in tax rates and rules. This practice is, of course, the standard practice for both electricity and gas in most jurisdictions around the world, where tax changes are routinely used as the paradigm for what constitutes a Z factor event. It may well be, in fact, that Dr. Mintz and Dr. Wilson are among very few experts around the world in opposing Z factor treatment for tax changes.

Despite these facts, Union elected not to file evidence on this subject, and intervenors elected not to file any "reply" evidence on it either. The time for filing expert evidence in this proceeding has now long passed. Under the various procedural orders, the latest time for Union to file its evidence was many months ago, and even reply evidence had a deadline of December 4th. The interrogatories process has been completed, technical conferences have been held, intervenors have retained experts and filed evidence, and the Board-ordered settlement process is complete.

In these circumstances, it is submitted that a party wishing to file additional evidence must file a motion seeking leave of the Board to file that evidence without complying with the procedural orders. Included in that motion should be that party's proposal for how to ensure that the rights of

all parties are protected despite the late filing, including, for example, interrogatories, responding evidence, etc. That party should, we believe, also have the obligation to propose to the Board how the resulting delay should be dealt with, for example in terms of effective dates of rate implementation, etc. All of those conditions and terms should be set out in Union's motion for leave, so that parties have a reasonable time to respond.

We would therefore ask that the Board order Union, if it wishes to file additional evidence, to file a motion seeking leave to do so, including Union's proposals for the terms and conditions under which that evidence should be added to the record.

There is another implication of this proposed late filing. All parties entered into a Settlement Agreement on the basis of the record before the Board at the time. Intervenors, including School Energy Coalition, agreed to certain terms based on that record, and based on the intervenors' analysis of rate impacts. Those rate impacts would have in turn been based on probabilistic assessments of how the Board would deal with major unsettled issues. If Union now proposes to materially alter that record, then at least until the procedure for dealing with that new evidence is resolved, the intervenors' assessment of likely rate impacts may be affected.

The School Energy Coalition therefore requests that the Board defer consideration of the Settlement Agreement. That consideration, currently scheduled for January 8, 2008, should in our view be delayed until the Board hears and determines Union's motion for leave to file this new evidence.

We note that, if the new tax evidence is allowed to be added to the record, but at the same time a full process for interrogatories and responding evidence, and appropriate adjustments to reflect the resulting delays, are also ordered by the Board, then School Energy Coalition may well wish to continue to be a party to that Agreement. We hope that will be the case. However, until it is known how the Board will deal with the tax issue, the basis on which we were parties to the Agreement is altered, and therefore our ability to be parties to that Agreement is no longer certain.

All of which is respectfully submitted.

Yours very truly,
**SHIBLEY RIGHTON LLP**

Jay Shepherd

cc: Michael Penny, Torys (email)
Michael Millar, OEB (email)
Interested Parties (email)