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BY EMAIL and RESS

March 21, 2011
Our File No. 20100295

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

Dear Ms. Walli:

Re: EB-2010-0295 – Late Payment Penalties

We are counsel for the School Energy Coalition. We have received the objection of the EDA to our cost claim. This is our response as provided for in the Decision.

We have the following comments:

1. ***Motion.*** The EDA submits that time spent on the motion should not be covered by the cost claim. This, in our submission, confuses the concept of costs in the courts with costs at the Board. In the former case, costs are awarded to the winner against the loser. At the Board, costs are a recognition that the reasonable costs of the regulatory process should be borne by the regulated entities. Winning or losing is irrelevant. In this more correct paradigm, costs should be disallowed if a party is not legitimately seeking to be of assistance to the Board, or is not reasonable in how time and effort is spent. In the case of a motion, if it is not reasonable to pursue the motion, the Board should of course consider reducing or denying costs. That is not the case here. The motion was a reasonable response to refusals to provide information. The fact that SEC was not successful on the motion is not determinative of its reasonableness.

2. ***Transcript.*** While Mr. Mark believes that any Ontario lawyer would know that motions in court are not transcribed, the undersigned, with more than 30 years experience as a lawyer in Ontario, did not know that. In fact, the undersigned has appeared in the past on motions that have been transcribed. Given the amount of money involved in this class action proceeding, we considered it possible that a transcript for the fairness hearing had been

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prepared. Had the EDA responded to our interrogatory that the hearing was not transcribed, that would have been the end of it. They said, instead, that there was no transcript, which could equally mean that the hearing was transcribed, but none of the parties ordered the production of a transcript. It was not unreasonable to investigate this, and the fact that there are long lineups at the court house is not something within our control.

3. ***Hours Reduction.*** At the root of this objection is that there was time spent by Mr. Rubenstein in excess of the number one might have expected of a junior lawyer. SEC recognized this in reviewing the cost claim, and reduced the claim accordingly, by half the hours. What EDA appears to be saying is that this is an unwise approach, because the lower claim will then become the baseline against which further reductions will be sought. If the EDA's submissions are to be accepted, by implication it is better to claim every minute spent, and let any reductions occur only based on objections from the Applicants. In our submission, this is unnecessarily adversarial, and not consistent with how parties should deal with the Board. SEC believes that a responsible intervenor should review a cost claim before it is submitted, and only request a reasonable amount.

It is submitted that the claim has already been reduced by an appropriate amount, given the work involved in the proceeding and the tens of millions of dollars at issue.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)