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**BY EMAIL and RESS**

February 9, 2012
Our File No. 20110054

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

Dear Ms. Walli:

**Re: EB-2011-0054 – Hydro Ottawa 2012 Rates**

We represent the School Energy Coalition. We are in receipt of the Applicant's cost claim objection letter dated February 9, 2012, and this is SEC's response.

**Objections Specific to SEC**

The Applicant objects to both the dollars and hours in the SEC claim.

With respect to the dollars, it is respectfully noted that all intervenors relied on SEC counsel to take the lead on the IFRS issues, which took a total of 30-40 hours of senior counsel's time. This was the first major case before the Board considering IFRS issues, and they ended up being partially contested. This required senior counsel to engage in drafting and assessing interrogatories, attendance at technical conference, ADR and oral hearing, and drafting of a significant final argument.

When the IFRS involvement is set aside, the SEC claim is in fact lower than two of the other three intervenors. This, we believe, is a function of assigning most of the responsibility to an individual who, for part of the time, was at the tail end of his articles (and hence at the student rate), and for the rest of it was at the junior lawyer rate.

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The Applicant complains that the SEC hours were high, but that fails to take into account the experience levels of the lawyers involved. There is a reason why senior lawyers are paid at a higher hourly rate; in most cases, it should take them less time to do similar tasks. None of the time claimed in the application is, as the Applicant characterizes it, "training time". Training time is quite a different thing, reflecting the time spent by a junior person being taught something new. Mr. Rubenstein has taken a lead in a number of SEC interventions in cost-of-service rate proceedings before, so he did not need to learn how to do it. On the other hand, after something is learnt, less experienced people still often take longer to do it, particularly in more complex cases. If that were not the case, the hourly rate for senior and junior people would be closer to the same level.

The Board will be aware that SEC does not hesitate to write off hours worked by junior lawyers or analysts when their time was not as productive as their hourly rate requires. In this case, that was not required, because junior counsel provided full value for the hours submitted.

**Overall Objection to the Quantum of Claims**

The Applicant objects that cost claims in this case were significantly higher than the cost claims in the last full rate case, four years ago, going from $98,000 to $198,000. We note that a comparison could also be made to the EB-2010-0133 case, in which total costs ordered were about $80,000 for four intervenors, although the case terminated after interrogatories due to the decision on the threshold issue.

We have not seen the cost claims of the other intervenors, but we can comment generally on what we saw in this proceeding.

Every rate case requires a different amount of effort from intervenors, and that effort is driven largely by nature and complexity of the Application, and by the Applicant's approach to the process.

EB-2007-0713 was an application by Hydro Ottawa to set rates commencing May 1, 2008. Most issues were not highly contentious, and a settlement was reached on all issues but three. The three that were not settled did not take a lot of time and effort to resolve, as they were very discrete issues of regulatory policy.

In EB-2011-0054, an application for rates commencing January 1, 2012, the intervenors were faced with a utility that was seeking very high increases in spending on all fronts, despite having underspent and overearned in the preceding four years. Further, there was a refusal to provide key information that ultimately had to be resolved by negotiation. Additionally as the dockets show, settlement negotiations in this proceeding took much longer than usual, including multiple conference calls and email discussions after the two-day Board scheduled settlement conference.

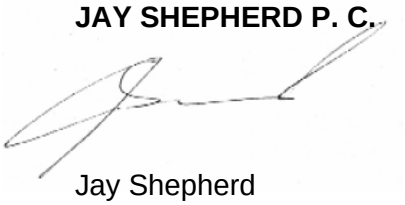
In the end, there was a full hearing on many of the largest revenue requirement issues, followed by an extensive argument phase.

We have said in the past, and we repeat here, that the Applicant largely controls the overall cost of the regulatory process. While there are of course situations in which the Applicant quite reasonably takes the more costly adversarial approach because of the issues involved, it is also clear that where the parties resolve issues cooperatively the cost of the process is usually much lower. In this case, the process ended up being more adversarial than in the 2008 rate case. It would have been very surprising if it had not been significantly more expensive.

SEC therefore believes that, subject to the details of the individual cost claims, as always, the overall cost of this proceeding is in the range that the Board would normally expect for a proceeding with a large utility, a substantial rate increase proposed, and most of the major issues fully contested.

All of which is respectfully submitted.

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



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties