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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.1998, c.15, Schedule B;

AND IN THE MATTER OF an appeal under section 7 of *Ontario Energy Board Act, 1998* of a Decision and Order of the Board in EB-2011-0291, regarding an application by EnWin Utilities Ltd. to amend its Electricity Distribution License

REPLY SUBMISSIONS OF
ENWIN UTILITIES LTD.

Part I. Background

This matter is an appeal of a Board Decision and Order (the “**Decision**”) made by a designated member of Board Staff, Ms. Lea, brought under section 7 of the *Ontario Energy Board Act, 1998*¹ (the “**OEB Act**”). EnWin Utilities Ltd. (“**EnWin**”) is responding to the submissions of the Appellant, Mr. Potomski, and dated March 19, 2012 as set out in Procedural Order No. 3. EnWin submits the appeal is without merit and should be denied by the Board. EnWin would note that it will not respond directly to the many of the Appellant’s submissions and unless explicitly agreed to herein, EnWin disagrees with the Appellant’s submissions. The Appellant has provided no legal support for its position in its materials and the appeal should therefore be denied.

These submissions will address the proper standard of review to be used by the Board in conducting an appeal under section 7 and the two primary substantive issues being: (i) Was the decision to prefer and accept the sufficiency of EnWin’s evidence reasonable in the granting of the requested exemption from the Distribution System Code (the “**DSC**”); and (ii) Was the Decision regarding the applicability of the OEB Act reasonable? Given the submissions of the Appellant, EnWin feels it has no alternative but to make specific comments regarding the allegation of bias and the attempt to introduce evidence during the appeal.

EnWin repeats and relies upon its evidence and submissions provided during the proceeding and this appeal and will not repeat such herein.

¹ S.O.1998, c.15, Schedule B.

1 **Part 2 - Bias and Matters Beyond the Scope of this Appeal**

2
3 ***a) Allegation of Bias***

4
5 During the additional submissions, the Appellant alleged the Chair was biased and made certain
6 requests pertaining to a recusal and the availability and dissemination of certain information.
7 EnWin strongly disagrees there is any bias on the part of the Chair or any other member of the
8 Board. There is no basis upon which one can surmise the Chair of the Board is involved in the
9 consideration of this appeal or that there is any real or apprehension of bias.

10
11 While not stated as such, it appears the allegation is one of institutional bias. In the Principles of
12 Administrative Law, Fourth Edition², the authors state the test for institutional bias is as follows:

13
14 As a result of *Lippé*, supra, and *Ruffo v. Conseil de la*
15 *magistrature*, [1995] 4 S.C.R. 267, inter alia, the test for
16 impartiality is well established. It is clear the governing factors are
17 those put forward by de Grandpré J. in *Committee for Justice and*
18 *Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at p. 394.
19 The determination of institutional bias presupposes that a well-
20 informed person, viewing the matter realistically and practically,
21 and having thought the matter through - would have a reasonable
22 apprehension of bias in a substantial number of cases. In this
23 regard, all factors must be considered, but the guarantees
24 provided for in the legislation to counter the prejudicial effects of
25 certain characteristics must be given special attention.

26
27 There is nothing in the record to support a finding of institutional bias. The appeal decision will
28 be made by a Member or panel of the Board, as appeals under section 7 of the OEB Act may
29 not be delegated to staff.

30
31 Ms. Lea, while being party to the appeal as provided for in the OEB Act, is not otherwise
32 involved in the appeal.

33
34 As such, there is no fact or circumstance that would permit a well-informed person, viewing the
35 matter realistically and practically, and having thought the matter through, to have a reasonable
36 apprehension of bias.

37
38 EnWin is of the view that the Board has gone to extraordinary lengths to permit Mr. Potomski to
39 participate in the original proceeding, the late submissions which were considered by the Board
40 despite the lack of compliance with the Procedural Order and the filing of an appeal with
41 absolutely zero detail to support the appeal.

42
43 ***b) "New Evidence" and New "Grounds of Appeal"***

44
45 The Appellant is seeking to introduce new evidence at paragraphs 3(a), (c), (d) (e) and (f) in its
46 submissions. Further, the Appellant seeks to pursue additional evidence for this appeal by
47 seeking to cross-examine EnWin's employees and/or contractors. Matters of evidence should

² Page 390.

1 have been raised during the original proceeding. In addition, the Appellant is now raising issues
2 regarding *Municipal Act, 2001* (see section 5) for the very first time. These issues were not
3 raised in the underlying proceeding nor did the Appellant make any reference to such in the
4 notice of appeal or the previous submissions regarding the appeal. Therefore, EnWin would
5 request the Board strike and disregard such statements.

6
7 During the Appellant's submissions, there are several unfounded, unsupported and irrelevant
8 statements regarding the Appellant's "qualifications" and "expertise" in computing and
9 information technology matters. These statements are not evidence and are not supported by
10 any evidence in the proceeding. It is improper to make such assertions during an appeal as
11 such issues were not raised during the underlying proceeding.

12
13 The Appellant has sought to tarnish EnWin and its employees with references to salaries and
14 the non-disclosure of such salaries. Again, these statements are not relevant to the issues in
15 dispute. In addition, the Board has been very clear in the past about the need to protect
16 individual personal information and EnWin's feels the resort to such tactics by the Appellant is
17 improper in this appeal.

18
19 This is an appeal brought under section 7(1) of the OEB Act. When a party to a proceeding is
20 unhappy with the outcome of a Board decision, there are two avenues through which the party
21 may challenge the decision, or part thereof, at issue: (i) motion to review: and (ii) appeal. The
22 Appellant has specifically chosen an appeal, not a motion for review and therefore has forfeited
23 any ability to adduce new evidence. As noted below, the motion for review deals with new
24 evidence or circumstances that bring into question the correctness of a decision.

25
26 In a motion to review, the Board's Rules of Practice and Procedure (the "**Rules**") are directed
27 towards a change in circumstance or an error in fact that result in a legitimate "*question*" as to
28 the correctness of the decision or order. The interpretation of how the Board considers a motion
29 to review and vary is provided in the following decision of the Board:³

30
31 "... [T]he grounds must 'raise a question as to the correctness of
32 the order or decision'. In the panel's view, the purpose of the
33 threshold test is to determine whether the grounds raise such a
34 question. The panel must also decide whether there is enough
35 substance to the issues raised such that a review based on those
36 issues could result in the Board deciding that the decision should
37 be varied, cancelled or suspended.

38
39 With respect to the question of the correctness of the decision, the
40 Board agrees with the parties who argued that there must be an
41 identifiable error in the decision and that a review is not an
42 opportunity for a party to reargue the case.

43
44 In demonstrating that there is an error, the applicant must be able
45 to show that the findings are contrary to the evidence that was
46 before the panel, that the panel failed to address a material issue,

³ EB-2006-0322 EB-2006-0338, EB-2006-0340, Motions to Review the Natural Gas Electricity Interface Review Decision, Decision with Reasons, May 22, 2007, p. 18.

1 that the panel made inconsistent findings, or something of a
2 similar nature. It is not enough to argue that conflicting evidence
3 should have been interpreted differently.
4

5 The applicant must also be able to demonstrate that the alleged
6 error is material and relevant to the outcome of the decision, and
7 that if the error is corrected, the reviewing panel would change the
8 outcome of the decision.
9

10 In the Board's view, a motion to review cannot succeed in varying
11 the outcome of the decision if the moving party cannot satisfy
12 these tests, and in that case, there would be no useful purpose in
13 proceeding with the motion to review."
14

15 In EnWin's submission the Appellant has not sought a motion to review and even had the
16 Appellant made such a motion, there are no new facts, no errors in fact or new and different
17 circumstances that would support such a review. Any facts to which the Appellant has referred
18 were available during the proceeding and should have been raised at that time. EnWin asserts,
19 for the benefit of the record, the position that even had these statements been made during the
20 original proceeding or in a motion to review proceeding, the Decision would not change.
21

22 Finally, even if one were to permit such statements of the Appellant to be considered, the
23 statements and position of the Appellant completely ignore the guiding principles and objectives
24 of the Board and the public interest mandate in making the Decision. EnWin's Application was
25 premised on meeting the public interest. Cost, timing, customer confusion and risk to
26 customers were factors in the evidence that supported EnWin's request. As was the case
27 during the original proceeding, the Appellant continues to completely ignore the primary factual
28 concerns that prompted the request for a temporary exemption and that formed the evidentiary
29 basis for the Decision.
30

31 **Part 3. The Appeal - Standard of Review**

32

33 The underlying Decision and Order were made by a delegated staff member, Ms. Lea, and the
34 Appellant brought an appeal under section 7 of the *OEB Act* which is reproduced below. The
35 Appellant has made no comment regarding the proper standard of review to be used by the
36 Board in considering this appeal. As such, EnWin will address the standard of review to be
37 applied in this appeal – the reasonableness standard.
38

39 7.(1) A person directly affected by an order made by an employee of the Board
40 pursuant to section 6 may, within 15 days after receiving notice of the order,
41 appeal the order to the Board.
42

43 EnWin would note that the *OEB Act*, subsection 7(8), see below, provides that a delegated
44 decision is to be accorded the same status as that of a decision of the Board.
45

46 7(8) Anything done by an employee of the Board pursuant to this section shall
47 be deemed, for the purpose of this or any other Act, to have been done by the
48 Board.

1 One would expect delegated functions are usually considered to be more straightforward and
2 less controversial, so it does not surprise EnWin that there are no direct statements regarding
3 the standard of review in these situations. As delegated decisions are statutorily deemed to be
4 that of the Board, EnWin submits the Board must grant the Decision issued by Ms. Lea the
5 same level of deference that an appellate body, the Divisional Court, would grant the Board in
6 an appeal of a Board Decision brought under section 33 of the OEB Act. As such, in an appeal
7 under section 7 of the OEB Act, the applicable standard of review is reasonableness.

8
9 EnWin submits the Board should conduct the appeal of the Decision using the standard of
10 reasonableness based upon the analysis of the Supreme Court of Canada in *Dunsmuir v. New*
11 *Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 (hereinafter *Dunsmuir*).

12
13 **Reference:** *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9.

14
15 In order to determine the appropriate standard of review, the Supreme Court of Canada
16 indicated that the Court must perform a contextual analysis looking at a number of factors.
17 EnWin submits the Board is in the same position as the court in an appeal. The factors to be
18 considered by the Court include:

- 19
20 (i) the presence or absence of a privative clause;
21 (ii) the purpose of the tribunal;
22 (iii) nature of the question at issue;
23 (iv) the expertise of the tribunal.

24
25 **Reference:** *Dunsmuir* at para 64.

26 In order to understand the expertise accorded the Board, it is instructive to consider the
27 statement of Mr. Justice Keith in an excerpt from *Union Gas v. Dawn (Township)* (1977), 15
28 O.R. (2d) 722, 2 M.P.L.R. 23 (Div. Ct.), at p. 731 where he stated the following:

29
30 In my view this statute makes it crystal clear that all matters relating to or
31 incidental to the production, distribution, transmission or storage of natural gas,
32 including the setting of rates, location of lines and appurtenances, expropriation
33 of necessary lands and easements, are under the exclusive jurisdiction of the
34 Ontario Energy Board and are not subject to legislative authority by municipal
35 councils under the *Planning Act*.

36
37 The courts have considered the expertise of the Board on several occasions. The courts have
38 determined the Board is a specialized tribunal with exclusive jurisdiction over all matters within
39 its authority as provided by the OEB Act, section 19.

40
41 **Reference:** *Re: Great Lakes Power Limited v. Ontario Energy Board* [2009]
42 O.J. No. 3146, para. 20.

43
44 *Re: City of Peterborough and Consumers Gas* (1980), 111 DLR (3d) 234 (Div.
45 Ct.)
46

1 Section 33 of the OEB Act provides that an appeal may only be brought on a matter of law or
2 jurisdiction and so the legislators have provided considerable authority and deference to the
3 Board.

4
5 Since *Dunsmuir*, the Divisional Court has considered appeals of OEB decisions brought
6 pursuant to section 33 of the OEB Act. The Court relied upon *Dunsmuir* and, further,
7 determined the appropriate standard of review was *reasonableness*. As such, EnWin submits
8 that reasonableness is the proper standard of review.

9
10 **Reference:** Re: *Great Lakes Power Limited v. Ontario Energy Board* [2009] O.J. No.
11 3146.

12
13 *Toronto Hydro-Electric System Ltd. v. Ontario Energy Board and the*
14 *School Energy Coalition*, (2009) Canlii 30148 (Ont. S.C.D.C.).

15
16 The underlying question and decision to be made by the Board was whether EnWin should be
17 granted a temporary exemption from certain elements of the DSC. The Board chose to
18 delegate to its employee, Ms. Lea, a question that is within the core of the Board's
19 responsibilities. As such, EnWin sees no reason that the Board should not accord a similar
20 level of deference to the Decision arising out of that delegated authority as would be accorded
21 to a Decision where the Board assigned the case to a Board Member or panel. Given the
22 nature of the proceeding and the preceding submissions, EnWin is of the view a considerable
23 level of deference is warranted.

24 25 **Part 4. The Reasonable Decision**

26
27 It is EnWin's view the Decision was reasonable and correct. The Board turned its mind to the
28 issues and the evidence and determined the public interest was satisfied with the granting of the
29 exemption. It appears the essence of the appeal can be stated in the form of two questions:

30 (a) Was the decision to prefer and accept the sufficiency of EnWin's evidence
31 reasonable in the granting of the requested exemption from the DSC; and

32 (b) Was the Board's decision regarding the applicability of the OEB Act reasonable?

33 For the reasons stated herein, EnWin supports the Decision of the Board.

34 ***(a) EnWin's Evidence was Sufficient to Grant the Exemption***

35 EnWin is of the view that it adequately and properly supported its request for the exemption in
36 the evidence and submissions made during the proceeding. EnWin's application pertained to
37 an exemption under section 74(1)(b) of the OEB Act to exempt EnWin from compliance with
38 certain elements of the DSC that prioritized payments received by a distributor.

39 **74. (1)** The Board may, on the application of any person, amend a licence if it
40 considers the amendment to be,

41 (a) necessary to implement a directive issued under this Act; or

(b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

In EnWin's view, it provided ample evidence to support the notion that the public interest favoured the granting of the exemption. Elements included in EnWin's evidence include:

- a. The fact EnWin is in the process of installing a new CIS system;
- b. The number of bills issued by EnWin on a monthly basis;
- c. The complexity of the task to reprogram a system that is in operation and will only be in operation for a short period of time;
- d. The risk of error should the exemption not be granted;
- e. The potential for customer confusion

Further, the exemption is of a temporary nature and consistent the length of time required to come into compliance in other situations. The Board was alive to the issues and the different positions of the parties in considering the evidence and the public interest.

The Merits of the Application

Board staff supported the application. Mr. Potomski did not, arguing that Enwin did not present any factual evidence to support its claim that early modifications to its CIS to enable it to comply with the DSC provisions would be risky and imprudent. In addition, Mr. Potomski argued that Enwin had had ample time to notify the Board of any problems it had in complying with a decision made by the Board nearly a year ago.

I find that the evidence presented by Enwin is sufficient to support the relief sought. The utility explained in some detail the difficulties it presently faces in complying with the relevant provisions of the DSC, and its plan for bringing its CIS into compliance with those provisions. A factor in this decision was the delay permitted by the Board under section 2.6.6.1 of the DSC, which exempts distributors operating under certain renewable billing agreements from applying the new allocation rules until the earlier of Ontario Energy Board the renewal date or two years. The period for which the exemption is sought by Enwin is not excessive. It was Enwin's evidence that it had anticipated being covered by section 2.6.6.1, but found that the renewal date of its services agreement was a year earlier than anticipated. The exemption sought by Enwin does not appear to be inconsistent with the Board's policy, provided that it indeed comes into compliance on or before January 1, 2013.

There was clearly a significant amount of evidence filed by EnWin in support of the requested exemption. Her reasons, cited above, clearly show the approach and consideration of the evidence and her awareness that the Appellant did not agree with the evidence and position of EnWin. The Appellant is merely disappointed that Ms. Lea found EnWin's evidence was sufficient to warrant the granting of the requested relief. There was no evidence filed during the

proceeding to refute EnWin's evidence. Further, Board Staff supported the request. As such, there is no basis upon which the appeal should be granted.

(b) Was the Board's Decision Regarding the Application of the OEB Act Reasonable?

EnWin submits that the Decision was not only reasonable but correct in finding the Board had the jurisdiction and authority to impose the conditions it did pursuant to the OEB Act and the Electricity Act. EnWin notes that the Appellant's position seems to have evolved over the course of the proceeding and this appeal from alleging the OEB does not have jurisdiction because of the *Collection Agencies Act* to one of the OEB is to enforce the provisions of the *Collection Agencies Act*. In EnWin's submission, neither of the Appellant's views are correct and the Decision is both reasonable and correct.

EnWin's application was for a temporary exemption from section 2.6.6 to 2.6.6.3 of the DSC. These sections of the DSC sought to establish a methodology for prioritizing payments received by a distributor in respect of electricity and other charges. EnWin, in its Application, sought a temporary exemption from these provisions of the DSC until it had implemented its new Customer Information System. EnWin is permitted to carry out these activities in accordance with the DSC.

The appellant had alleged during the proceeding that the billing activities of EnWin were not authorized. EnWin is permitted to collect monies related to distribution services and electricity. Subsection 5(2) of the O.Reg 161/99 permits a distributor, such as EnWin, to engage in providing billing services related to water and sewage.

5(2) Section 71 of the Act does not apply to a distributor if the only business activity that the distributor carries on, other than distributing electricity, is managing or operating the provision of water or sewage services on behalf of a municipal corporation that owns, directly or indirectly, by itself or with one or more other municipal corporations, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the distributor.

As noted above, the billing activities of EnWin are permitted. The Board turned its mind to this issue and specifically stated in the Decision the following:

The Decision

Section 71 of the OEB Act deals with the permitted business activities of transmitters and distributors, and restricts that business activity to transmitting and distributing electricity. However, Ontario Regulation 161/99 under the OEB Act, entitled "Definitions and Exemptions", provides a specific exemption for

1 municipal water and sewage services. Section 5(2) of the
2 Regulation reads:

3 *5. (2) Section 71 of the Act does not apply to a distributor if the*
4 *only business activity that the distributor carries on, other than*
5 *distributing electricity, is managing or operating the provision of*
6 *water or sewage services on behalf of a municipal corporation that*
7 *owns, directly or indirectly, by itself or with one or more other*
8 *municipal corporations, voting securities carrying more than 50*
9 *per cent of the voting rights attached to all voting securities of the*
10 *distributor.*

11 Enwin's relationship and arrangements with the City of Windsor
12 and the Windsor Utilities Commission mean that its activities
13 related to water and sewage services are permitted under this
14 provision.⁴

15 Since the activities are authorized, the next consideration is the manner in which the activities
16 are regulated. It is EnWin's submission the collection of accounts, the prioritization of payments
17 and the determination of amounts owing to a distributor are within the exclusive jurisdiction of
18 the OEB and that the conditions imposed by the Board were legitimate.

19 EnWin notes that the *OEB Act* is deemed to be superior legislation by virtue of subsection
20 128(1) and that any conflict is resolved in favour of the *OEB Act*. Further, the OEB has
21 exclusive jurisdiction over matters within its jurisdiction.

22 128(1) In the event of conflict between this Act and any other
23 general or special Act, this Act prevails.

24 19(6) The Board has exclusive jurisdiction in all cases and in
25 respect of all matters in which jurisdiction is conferred on it by this
26 or any other Act.

27 The courts have interpreted the Board's authority very broadly and to the exclusion of other
28 general statutes.

29
30 Section 31 of the *Electricity Act, 1998*⁵ (the "**Electricity Act**"), see below, permits a distributor to
31 disconnect a person where a person has not paid all amounts owing to the distributor related to
32 electricity. Further, section 70 of the *OEB Act* provides very detailed provisions about the
33 Board's authority in 70(2) and 70(15).

34 **31. (1)** A distributor may shut off the distribution of electricity to a
35 property if any amount payable by a person for the distribution or

⁴ EB-2011-0291, Decision and Order dated December 12, 2011 at p. 3.

⁵ S.O. 1998, c. 15, Schedule A,

1 retail of electricity to the property pursuant to section 29 is
2 overdue.

3 70. (1) A licence under this Part may prescribe the conditions
4 under which a person may engage in an activity set out in section
5 57 and a licence may also contain such other conditions as are
6 appropriate having regard to the objectives of the Board and the
7 purposes of the *Electricity Act, 1998*.

8 (2) The conditions of a licence may include provisions,

9 (d) governing the conduct of the licensee, including the conduct
10 of,

11 (ii.1) a distributor or suite meter provider as such conduct
12 relates to,

13 (A) the disconnection of the supply of electricity to a
14 consumer, including the manner in which and the time
15 within which the disconnection takes place or is to take
16 place,

17

18 (15) This section applies to the exercise of any power under this
19 Act or the *Electricity Act, 1998* in relation to a licence referred to in
20 section 57.

21 The Board has jurisdiction over distribution licences, the DSC and granting licence exemptions
22 from the DSC. It is through the legislative and regulatory scheme over which the Board has
23 statutory authority that the Legislature, Government and Board limit these business activities,
24 including prioritization of partial payments as between billed electricity and other billed utility
25 services.

26 By way of background, the Board issued a Notice of Amendments to Codes in relation to EB-
27 2007-0722. Among these were rules dealing with the allocation of partial payments between
28 electricity and non-electricity charges set out in sections 2.6.6 to 2.6.6.3 of the DSC. Those
29 rules were further amended in a Notice of Amendments to Codes in relation to the same
30 proceeding on March 30, 2011. Of note, there was no jurisdictional concern raised at the time
31 the Board passed the amendments.

32 As noted above, EnWin is permitted to collect monies related to electricity, water and sewage.
33 Therefore, a license issued by the Board may prescribe conditions related to the prioritization of
34 payments received by EnWin and the determination of when an amount is due and owing for
35 electricity is entirely within the jurisdiction and under the sole authority of the OEB. This

necessarily means that it will have authority over amounts received by the distributor related to water and sewage.

The Decision, see below, noted that the specific provisions of the OEB Act provided the Board with the authority to impose the conditions upon EnWin. The Board decided was of the view the more specific provisions in the OEB Act granted such authority.

It is a general principle of statutory interpretation that legislation that deals specifically with a topic prevails over legislation that is more general. There are specific provisions in the OEB Act relating to the licensing of distributors and conditions that may be imposed in those licences that, in my view, prevail over the provisions of the *Collection Agencies Act*. Of particular relevance in this case are the provisions in section 70(2)(d)(ii.1) of the OEB Act:.....

These sections give the Board the ability to impose very specific conditions on distributors dealing with customer service and disconnection. Similarly, section 5(2) of Ontario Regulation 161/99 deals specifically with the provision of water and sewage services by electricity distributors for their shareholder municipalities. I find that the specific provisions of the OEB Act and Ontario Regulation 161/99 prevail over the more general provisions of the *Collection Agencies Act*, and it is under the OEB Act, the *Electricity Act*, 1998, S.O. 1998 c. 15, Sched A (the "Electricity Act"), and the regulations under those Acts that the Board can prescribe codes, and grant exemptions to those codes, relating to billing and collection by distributors for services other than electricity.

EnWin agrees that the specific provisions of the OEB Act supplant or trump the more general provisions, and further submits that general provisions must be read in a manner that is consistent with the exclusive jurisdiction bestowed upon the Board. In EnWin's view the Board has the exclusive jurisdiction to regulate the prioritization of payments received by EnWin.

Part 5. Summary

EnWin submits the Board should apply a reasonableness standard in its determination of this appeal and should accord the Decision considerable deference given the nature of the application, the expertise and legislative/regulatory framework. There was ample evidence to support the Decision and the findings of the Board. The Decision contained detailed analysis and reasons supporting the conclusions.

EnWin requests the Board dismiss the appeal. EnWin submits the underlying Decision was not only reasonable, but was also correct, including its analysis regarding the applicability of the OEB Act, the *Electricity Act* and the *Collection Agencies Act*. Further, EnWin submits the Appellant has provided no basis upon which this Board could consider that the Appellant has discharged its onus to grant the appeal.

While EnWin accepts the Board's decision regarding an award of costs, EnWin would request the Board provide a clear statement that mere displeasure at the result of a Board Decision does not provide a basis for an appeal and that allegations of bias are serious matters that go to the integrity of the tribunal and its members. Appeals require the allocation of resources on behalf of the utility and the Board which adds costs to a regulatory regime that are ultimately paid for by ratepayers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

March 26, 2012

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