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BY EMAIL

October 2, 2012
File No. 1019261050

Kirsten Walli
Board Secretary
Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Approval of the SME/LDC Agreement
EB-2012-0100/EB-2012-0211**

We write to address three matters that arose during the Board's hearing on the approval of the SME/LDC Agreement on September 20, 2012.

Sections 7.1 and 7.2 – Availability of Insurance

With respect to Article 7 of the proposed SME/LDC Agreement, the Board inquired whether insurance coverage is available for any liabilities that might arise from the operation of the MDM/R.

The SME examined the possibility of acquiring insurance to cover a catastrophic MDM/R failure and identified several obstacles to obtaining such coverage:

1. As detailed in the Application and Prefiled Evidence, the MDM/R's function as an integral part of the "meter to bill" process for all of the province's distributors is unique and does not exist in other jurisdictions. As a result, the risk of a catastrophic MDM/R failure cannot be effectively pooled with other similar risks. The SME is not aware of any existing insurance product that would cover this risk.
2. The SME considered the possibility of obtaining a specialty insurance product that pools risk amongst the province's distributors, but determined that the benefits of such a policy were outweighed by the costs. While the

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likelihood of a catastrophic MDM/R failure is very low, if such a failure were to occur it would likely impact all or a substantial number of the province's distributors. In these circumstances, a policy that pools risk solely amongst the province's distributors does not offer any significant benefit over a regime of self-insurance.

3. The potential liability associated with a catastrophic MDM/R failure that could affect all of the province's 73 participating distributors is impossible to quantify, while recovery from IBM Canada (the Operational Service Provider) is subject to strict contractual limitations of liability. An insurer is unlikely to expose itself to this risk without strict limitations on its own liability.

Sections 7.6 - Allocation of service credits

The SME acknowledges that the Board will need to approve any disbursement to distributors of service credits received from the Operational Service Provider. The SME is working with the EDA on a mutually agreeable mechanism to allocate any service credits received amongst distributors. The SME expects to provide further information on this matter to the Board shortly.

Section 11.1 - Term

The SME has consulted with the EDA about the termination date for the SME/LDC Agreement and has been advised that the EDA will accept a termination date of January 26, 2016, which is aligned with the end of the current SME licence granted by the Board.

Yours truly,



Patrick G. Duffy

PGD/mas

cc: Registered Intervenors
Brian Rivard, IESO
Paula Lukan, IESO