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### **BY EMAIL and RESS**

December 10, 2012  
Our File No. 20100377

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2010-0377/8/9 – Renewed Regulatory Framework**

We are counsel for the School Energy Coalition. We have reviewed the correspondence to the Board dated December 7, 2012 by Mr. Vegh on behalf of the Distribution Regulation Review Task Force ("DRRTF"), and would like to provide our brief comments in an attempt to assist the Board.

### **Incremental Capital Module**

The first issue raised in Mr. Vegh's letter relates to uncertainty surrounding the incremental capital module, and the DRRTF's view that the RRFE report did not address this uncertainty.

It was SEC's conclusion from reading the report that the Board did resolve this issue. A number of parties wanted changes to the ICM, including expansions of its scope, changes in the calculations and formula, more precise definitions, limitations in its applicability, etc. It was one of the important themes in the RRFE process, strongly emphasized. We interpret the Board's report to say that those submissions were considered, and the Board has declined to make any changes to the ICM.

However, all parties agree that this is a complex subject. There are issues related to capital spending requirements of various types, regulatory paradigms such as the use of different regulatory models for different expenditure categories, and questions of regulatory efficiency,



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productivity, and use of the Board's resources. While the Board has considered those complex issues in the RRFE process, they will undoubtedly continue to be discussed well into the future.

Therefore, if the DRRTF feels that the views of the parties on this issue were not properly considered in the RRFE process, and the Board agrees, SEC would not object to a stakeholder process to review the ICM further. Such a review would have to include, of course, things like ways in which the ICM should be contained to ensure that ratepayers are protected from accelerated rate increases, and adjustments to the IRM escalator to exclude or change the capital component of the escalation.

In addition, SEC continues to believe that the starting point for any comprehensive review of that mechanism is a proper empirical analysis of the real capital spending pressures on utilities, if any, so that it is possible to identify with some rigour the options available to utilities and to the regulator to address those pressures. The current situation of anecdotal evidence only, and repetitive declarations of the "problem" as if it were fact, is not, in our submission, a proper foundation for such a review.

**Term of the Plan**

The Board considered the submissions of all parties concerning plan length, and consciously decided to go to a five year standard. The DRRTF, and maybe others, would perhaps have preferred to see a draft policy put out for comments, but the Board went directly to issuing its final policy, as is its clear prerogative.

This is not like the ICM, which is a complicated and evolving set of issues. In the case of the plan term, a straightforward judgment had to be made. It was considered, and it was made. It would appear to us that a reopening of that policy, before it is even implemented, is neither appropriate nor a good use of the Board's resources.

All of which is respectfully submitted.

Yours very truly,

**JAY SHEPHERD P. C.**

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties