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BY EMAIL and RESS

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Our File No. 20130029

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

Dear Ms. Walli:

Re: EB-2013-0029 – RESG Market Rules Review – Cost Awards

We are counsel to the School Energy Coalition (“SEC”). These are SEC’s submissions with respect to the issue of cost awards pursuant to Procedural Order No. 2, as well as supplementary submissions regarding SEC’s cost eligibility request.

Cost Award Responsibility

SEC believes that the IESO should be responsible for payment of cost awards. While generally the Applicant would be responsible, the unique nature of this proceeding justifies a derivation from the normal approach.

Section 33 of the *Electricity Act*, sets out a comprehensive Market Rules review scheme. The IESO initially must give notice to the Board of any amendment and send it a copy of the amendment and other information set out in regulation¹ [33(2)]. The Board then must hold a hearing when an application is filed by *any* person [33(4)], or may initiate a proceeding on its own, to review an amendment [33(5)]. It may also revoke the amendment without a hearing [33(3)]. In its review, the Board is not adjudicating a dispute between the Applicant and the IESO, but determining if the amendment does not meet certain criteria set out in the *Electricity Act* [33(9)]. The process is not appeal of the IESO’s decision to issue the amendment, but a review of its effects. This is much broader inquiry, and is more akin to a continuation of the IESO initiated process than that of a type of application that the Board generally hears (rate, license or facilities) which is truly separate. It should be the responsibility of the IESO, as the

¹ Section 7 of O. Reg 610/98 has been issued pursuant to this authority.

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initiator of the Renewable Integration Amendment, to pay cost awards that flow from what is essentially a continuation of that process.

Ratepayers also already contribute to the IESO Board-approved fees. Those fees are payable by market participants, but passed through to all ratepayers, and presumably include costs for reviews Market Rule amendments before the Board, including intervenor cost awards.

Cost Award Eligibility

In Procedural Order No. 2, the Board stated that while it make cost awards available to eligible parties, it will determine all requests for cost eligibility at the end of the proceeding. SEC requests that the Board determine cost eligibility at this time as is usual practice. SEC does recognize and accepts that even if it is eligible for costs, it must do so in a responsible manner and that the Board ultimately retains discretion in the awarding of costs.

SEC is eligible for cost awards pursuant to 3.03 of *Board's Practice Direction on Cost Awards* as primarily representing the interest of ratepayers. Those interests are important in this proceeding.

The cost of electricity will be affected by the dispatch and floor prices changes set out in the Renewable Integration Amendments. SEC has an interest in ensuring that ratepayer's perspective is considered. The IESO's Market Rules Amendment process itself recognizes that ratepayer interests need to be represented. Both its Stakeholder Advisory Committee and the Technical Panel have a number of appointed consumer representatives who are compensated for their participation.²

SEC is also concerned about the potential effects on the renewable generation industry. School Boards have been big supporters of renewable energy generation, and have an interest in ensuring the Market Rules Amendments do not harm the industry so as to potentially lead to significant longer term costs, reliability concerns and environmental impacts.

Further, this is only the second time that the Board has been asked to review a Market Rule Amendment. As is clear from submissions of all parties, and the Board's decision regarding the Applicant's production motion, the exact scope of section 33(9), including how the section 1 purposes should be considered by the IESO, are going to be at issue in this proceeding. There are significant implications of the Board's decision on this issue as it will affect what the IESO considers when it undertakes the many Market Rules amendments that are never reviewed by the Board.

SEC has a strong track record of providing substantive contributions in a wide variety of proceedings before the Board, and will do so once again in this proceeding.

All of which is respectfully submitted.

² See Stakeholder Advisory Committee Membership

(http://www.ieso.ca/imoweb/consult/stakeholder_ac_members.asp),

Technical Panel Membership (<http://www.ieso.ca/imoweb/governance/TechPanelMembers.asp>).

Section 9 - Remuneration of Members of the Committee, Stakeholder Advisory Committee - Terms of Reference (http://www.ieso.ca/imoweb/consult/stakeholder_ac_tor.asp).

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Applicant and Intervenors (by email)