



March 5, 2013

Ontario Energy Board

[boardsecretary@ontarioenergyboard.ca](mailto:boardsecretary@ontarioenergyboard.ca)

**Attention: Ms. Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: RRFE – Encouraging Distributor Efficiency (EB-2012-0397)**

Earlier today, the School Energy Coalition filed a letter in the above noted proceeding. In that letter, SEC expressed concern that during the Board's Stakeholder Consultation of February 27, 2013 in this proceeding there was a preference expressed by certain participants in favour of what was described during that consultation and in the SEC letter as the "PUC Model". SEC has asked the Board to draw a distinction between the PUC Model and what is described as a "LDC Model" and to rule the PUC Model discussion out of order for this proceeding and to take action to press LDCs pursuing the PUC Model into the LDC Model.

As SEC is aware, EnWin is an advocate and adherent to a shared services model of LDC operations and, perhaps because of that, kindly copied EnWin on its letter. As such, EnWin wishes to take the opportunity to make some brief comments in response to the SEC letter at this juncture.

**Jurisdictional Issues**

As SEC is surely aware, s. 5 of O. Reg. 161/99 and s. 73 of the OEB Act, 1998 permit municipally-owned LDCs and affiliates of municipally-owned LDCs, respectively, to engage in the management and operations of water and waste water systems. These permissions were ingrained in the government and legislature's policy framework from the outset of the electricity sector model that came into effect on January 1, 2000.

Presumably SEC is not criticizing the performance of these water and waste water management and operations functions by LDCs or affiliates of LDCs, which are clearly permitted pursuant to that framework. The Board's ratemaking process provides a check against cross-subsidization between electricity ratepayers and any other recipient of LDC services, such as municipal taxpayers, water ratepayers or waste water ratepayers. The Board's Affiliate Relationships Code provides decisive guidance on how to perform transfer pricing and other transactions as between affiliates and the Board has audit and investigative powers to ensure compliance with the Code.

EnWin takes the position that it is very much within the Board's statutory powers and prerogative to consider, clarify and interpret the OEB Act, 1998 and the ARC. Not only

would the courts show a high degree of deference to the Board in performing those roles, EnWin expects that the other branches of government would also benefit from receiving advice in respect of those instruments from the Board. Respectfully, EnWin suggests that the Board is best empowered to carry out those functions after consulting with the sector stakeholders – a point that is returned to later in this letter.

In short, there is no jurisdictional reason why the Board cannot and should not consider improving the sector through economies of scope and, in fact, the Board has a mandate to explore these options to the extent that they may reasonably be expected to improve the performance of LDCs for the benefit of ratepayers. This is not contrary to government policy; it is consistent with government policy and common law.

### **Substantive Issues**

In this section of its letter, SEC appears to be cautioning against the “melding” of multiple utilities within a public sector organization or within a LDC. EnWin understands “melding” to mean something akin to a merger, acquisition or amalgamation.

Just as there are legislative permissions that permit multiple utilities to be managed and operated by single utilities, there are prohibitions expounded in the same legislative breath that preclude water or waste water asset ownership or leases in LDCs. There are also constraints that limit management and operation of water and waste water systems to those systems that are part of the same municipal family as the LDC.

EnWin agrees that changes to this legislative framework would require significant effort and would have a significant impact. However, once again, it is imperative that if LDCs, ratepayers, the Board, and other stakeholders are to have a meaningful conversation about efficiencies that these topics be on the table.

### **Procedural Issues**

The Board has done a remarkable thing in holding the February 27, 2013 Stakeholder Consultation; namely, initiating an open dialogue about how to improve the sector. To EnWin this seems to be in the same spirit as the Board Chair’s consultations earlier in this process. EnWin submits that these consultations lead to better regulator awareness of opportunities and challenges and ultimately a better prioritized focus on how to perform its responsibility for reconciling the competing interests in the sector. EnWin encourages the Board to hold these consultations regularly, perhaps as part of the Board’s annual Business Plan development process.

EnWin respectfully submits that once areas of focus are identified through these open consultations, such as the one held last week, from a procedural standpoint the Board ought to then open a new policy file or in some other way provide fresh notice to stakeholders to invite their participation in whatever process is established to further

investigate the new area of focus. In the case in point, if the Board chooses to move forward with an Economies of Scope initiative or any other initiative that flows from the recent consultation and that does not neatly fit within an existing proceeding (e.g. revisions to calculation of the productivity factor), then a new file number with new notice, etc. should be issued. This maximizes stakeholder awareness and engagement which is important not only from a legal perspective, but leads to better policy-making.

Setting up a unique proceeding also allows the Board to better define the parameters for the initiative. While brainstorming consultations like that of last week ought to be open exchanges of ideas, regulatory efficiency and effectiveness ultimately require more structure as the idea transitions to policy.

EnWin notes that SEC cited the Ontario Distribution Sector Review Panel in its letter – a Panel with parameters set on economies of scale which excluded economies of scope. Though the EDA and others made submissions on economies of scope, the Panel did not have the mandate to address those and it may have been procedurally unfair for it to do so. Similarly, the parameters that the Board puts on something like an “Efficiency” or “Economies of Scope” initiative will play a crucial role in shaping which stakeholders become involved, what policies are in play and what outputs and outcomes are possible.

### **Closing Comments**

While it is not clear to EnWin what the SEC references to PUC Model and LDC Model mean exactly, it is clear that LDCs and their affiliates have the legislated scope to engage in multiple utility services, just as PUCs did pre-2000. The right services structured the right way are perfectly acceptable under the government policy.


To the extent that the Board sees value in examining how the further pursuit of economies of scope by LDCs may improve outcomes for stakeholders, including but not exclusive to electricity ratepayers and utilities, EnWin respectfully encourages the Board to open a new proceeding with fresh notice to stakeholders per its usual protocols. During that proceeding SEC, EnWin and others can discuss and debate the idea within Board-established parameters with the expected potential outcomes of a reaffirmation of current policies, revisions to policies, advice to the government on the legislative framework, or some combination thereof.

As a final point, EnWin is concerned by SEC’s closing recommendation, which is that the Board use the Stakeholder Consultation as a platform from which to initiate compliance enforcement activities. If the Board wants to promote open exchanges of ideas, as its intention appears to be, then the Board will need to walk a fine line between inappropriately turning a blind eye to non-compliance and inappropriately engaging in what might be best described as entrapment.

EnWin is concerned that even those LDCs and other regulated entities that are playing by the book will nevertheless become fearful of making imprecise statements that might be seized upon by the regulator and other parties. This could lead LDCs and other regulated entities to either participate through legal counsel or avoid participating altogether. Neither of these options is conducive to a positive, creative policy-making process or regulatory framework.

Yours very truly,

**EnWin Utilities Ltd.**



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