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BY FAX and EMAIL

February 26, 2007
Our File No. 2070119

Ontario Energy Board
2300 Yonge Street
26th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: 2007 Rates for Electricity Distributors

We are writing on behalf of our clients, the School Energy Coalition, to express our concern at the Board's actions to exclude or limit public participation in the rate proceedings for Ontario's electricity distributors, and thus to prevent the School Energy Coalition from determining whether the rates thus ordered are just and reasonable.

As you know, the School Energy Coalition has been active in protecting the interests of Ontario's 5,000 publicly-funded schools with respect to electricity rates. We participated fully in the Board's processes last year on Second Generation Incentive Regulation and Cost of Capital for those utilities, and we provided full submissions on the Board's original plan to use non-standard techniques to make binding rate decisions for the LDCs. We have also intervened in the rate cases of individual utilities in both 2005 and 2006.

The Board has just recently made available on its website the 2007 rate applications of some of the electricity distributors that have filed. After reviewing those Notices of Application, we note the following:

1. For most of these applications, the Board has determined, without any hearing or other process, that it will disallow costs for all ratepayer or other groups that would normally be eligible for costs. It is highly unusual for the Board to deny costs in rate cases. The only applications in which costs appear to be allowed are utilities who have requested exceptions to the Board's rate formula.

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2. Although we have asked the Board for a live version of the electronic model that the Board is using for rate calculations for 2007, the Board has refused to allow us to have one. The utilities receive a live version, but their own ratepayers do not. This is particularly problematic given that, as noted by some of the LDCs, some of the formulae appear to be incorrect, but we are not able to correct them to see the true numbers.

3. Whenever any regulated utility applies for a Board rate decision, the Board provides the utility with instructions on how to give public notice, and who should get direct notice of their application. In every case that we are aware of, the utility is instructed to give notice to everyone who intervened in their last rate case. For the 2007 distributor applications, the Board has apparently not done this, so that School Energy Coalition and others who intervened last year have not received any notice of these applications except by seeing them appear on the website.

4. Rate applications have in the past normally included actual utility financial results for the previous year or years. This allows the Board and parties to see who is overearning or underearning relative to Board-approved rates of return. The Board still receives this information as part of the utilities' confidential filings, but the 2007 rate applications do not include that data. As a result, ratepayers cannot determine whether utility rates are recovering more than is necessary to cover utility costs plus a reasonable rate of return. The Board has not provided any rationale for this secrecy.

We further note that the Board proposed, last fall, to proceed on the 2007 applications by way of a shortened process in which utilities would have to abide by a formula, and rates would be set on that basis. Both LDCs and ratepayers argued against that process being binding, because if implemented it would not allow the Board to exercise its individual judgment with respect to each utility.

The Board's response to those submissions, from both ratepayers and LDCs, appears now to be to give the utilities the relief they sought, but to deny the ratepayers any ability to assess whether the formula increases are appropriate, even though it is the ratepayers who are in all cases footing the bill.

This asymmetrical process is unfairly biased against the ratepayers, and in favour of the utilities.

- The utilities are left with complete freedom to seek exceptions to the Board's formula rate adjustment. If they wish rates to increase more than the formula allows, they are entitled to apply for a greater increase and make their case.

- Conversely, if the ratepayers believe, in the case of a specific utility, that the formula increase is not appropriate, and that a lower increase, or a decrease, should be ordered, the ratepayers do not have the ability to seek this result.

But ratepayers are unable to take any action in this regard. We have not been given notice of the proceedings, some of the evidence (ie. the live electronic model, and the actual prior year results) is known only to the Board and the utilities, and the Board is denying the normal costs eligibility. This would appear to us to be a concerted effort on the part of the Board to exclude the public from the 2007 rate-making process.

The end result appears to be that the rates for at least some utilities may not be "just and reasonable", but due to the Board's procedural decisions ratepayers will not be in a position to determine if this is the case. By way of example, if a utility has relatively low rates, and is earning a return on equity that is substantially lower than the Board-approved rate of return, the utility has the information and the right to apply for a higher rate increase than the formula would allow. On the other hand, if the utility has relatively high rates, and is earning a return on equity substantially higher than the Board-approved rate of return, the ratepayers have neither the information nor the resources to seek a lower increase, or a decrease. All other things being equal it is hard to see how granting that second utility a rate increase (whether by formula or any other means) could be considered "just and reasonable" by any test of the term. However, because ratepayers are excluded from certain information, and are denied costs for and notice of the proceedings, ratepayers are not in a position to seek just and reasonable rates. This appears to us to be both contrary to the Board's past practice, and contrary to the rules of natural justice, both statutory and common law.

In light of the above:

- We have enclosed Notices of Intervention for four distributors, representing the distributors who have sought exceptions to the formula and whose applications we have been able to access to date. While in some cases the technical notice period for those distributors expired last week, it is our view that, since the Board did not publish the applications on its website or in any other generally available way until February 16th, we are within the 10 day time period, and these Notices of Intervention are not late filed.

- We have included in the Notices of Intervention enclosed requests for an oral hearing. We note that, in some of those cases, it may well be possible to have a written hearing in the end. However, prior to determining that, some form of discovery process, likely interrogatories, may be required so that there is a sufficient record for us and the Board to review the application.

- We have enclosed a chart setting out the proposed distribution rates for sample schools in the franchise areas of the 76 LDCs whose applications have been made public. The following 18 LDCs have the highest distribution rates for schools:

Brant County Power	Haldimand County Hydro	PUC Distribution
Canadian Niagara Power – Eastern	Innisfil Hydro	Tay Hydro
Enersource Hydro Mississauga	Niagara-on-the-Lake Hydro	Toronto Hydro
Grand Valley Energy	Orillia Power	Veridian Gravenhurst
Greater Sudbury Hydro	Peninsula West Utilities	Wasaga Distribution
Guelph Hydro	Powerstream – Richmond Hill	Whitby Hydro

We may wish to intervene in the applications of those relatively high-priced LDCs, particularly in cases where their actual returns have also been high relative to Board approved. To make that determination, we would request that the Board take the following actions:

1. Make public the latest actual balance sheet and income statement of each of those LDCs, calculated on a regulatory basis, and showing the actual achieved ROE and return on capital invested for the utility for the latest year for which that data is available.

2. Provide that, for any of those LDCs that had ROE exceeding the Board-approved level, ratepayer groups who intervene in their rate applications will be eligible for costs under the normal guidelines.

3. Extend the notice period, for the purpose of filing a Notice of Intervention and/or objecting to a written hearing, to the date that is 10 days after items 1 & 2 have been completed, and extend the date for submissions in a written hearing to the date that is 21 days after items 1 & 2 have been completed.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

Cc: (all by email)
Howard Wetston, Chair, Ontario Energy Board
Bob Williams, Co-ordinator, School Energy Coalition
Wayne Burtnyk, Chair, SEC Technical Advisory Committee
Gail Anderson, Executive Director, OPSBA
Interested Parties and Others