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BY EMAIL and RESS

September 30, 2013
Our File No. 20120109

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0109 – Brantford Power – HVAC Coalition Late Intervention Request

We are counsel for the HVAC Coalition. This letter is a request to be allowed to intervene late in this matter. Our Notice of Intervention is attached.

We received instructions to intervene, prepared the Notice of Intervention, and had it approved by the client, all in late August. Through oversight (likely mine), it was not filed. However, because I was also included in the email list for this matter for the School Energy Coalition (represented by Mark Rubenstein of our office), I was receiving all communications and so everything appeared fine. The truth came to light one week ago, but my intervening illness prevented me from filing this until now.

We understand that, upon the Board's acceptance of our late intervention request, we must accept the record as it stands. We also understand that interrogatories are due today. Our brief interrogatories can be filed today.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties

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IN THE MATTER of the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Brantford Power Inc. for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective on May 1, 2013.

NOTICE OF INTERVENTION

OF THE

HVAC COALITION

1. The HVAC Coalition hereby applies for intervenor status in this proceeding, and requests that the Board allow recovery of its reasonably incurred costs of its participation.

General Interest of the Intervenor

2. The HVAC Coalition is a coalition established to represent the interests of Ontario heating and air conditioning contractors, suppliers, and manufacturers in matters relating to energy regulation, policy, and management. It counts amongst its members a majority of the heating and air conditioning contractors operating within the Applicant's franchise area.
3. The intervenor's members have a significant interest in the activities of regulated electricity distributors and their affiliates in the province, because any action by an electricity distributor to use its monopoly power to affect the competitive markets can affect not only the economic viability of the members' businesses, but the nature and price of the services available to the members' customers. Past actions of gas and electric utilities and their affiliates have created significant barriers to the competitive flow of goods and services within the HVAC equipment and servicing sectors, in some cases causing bankruptcies or other serious impacts on local small and medium sized enterprises around the province. Where in the past the gas utilities utilized their regulated activities to subsidize competitive activities, to the detriment of the ratepayers, we are now seeing an increasing tendency by electricity distributors to seek higher profits through unregulated activities whose cost advantages, if any, are the result of ratepayer subsidies.

Issues to be Addressed

4. HVAC's intended participation will focus on the following issues:
 - (a) The proposed costs for the test year, the resulting revenue requirement, the forecast of revenues, and the resulting deficiency, all as they are impacted by the utility's relationship with unregulated affiliates;

- (b) The use of utility assets, branding, reputation, and other advantages, without proper compensation, to compete with private sector companies in the Applicant's franchise area; and
- (c) Generally to represent the interests of local heating and air conditioning contractors in this process.

The Intervenor's Intended Participation

- 5. The HVAC Coalition intends to participate in any pre-hearing procedures, including interrogatories or technical conferences, and settlement conferences. HVAC also intends to participate in any oral hearing of this matter, and in written or oral submissions, as well as any other parts of the process that the Board should order.
- 6. The HVAC Coalition currently expects that it will file evidence relating to the subsidized anti-competitive actions of the Applicant and its affiliates in the franchise area.

Nature of Hearing Requested

- 7. Until interrogatories have been answered, we believe it is premature to assess whether a written or an oral hearing is more appropriate in this proceeding.

Counsel/Representative

- 8. The HVAC Coalition requests that a copy of all documents filed with the Board by each party to this proceeding be served on the Applicant, and on the Applicant's counsel, as follows:

- (a) HVAC Coalition:

HVAC COALITION
2800 Skymark Avenue,
Building 1, Suite 201
Mississauga, Ontario
L4W 5A6

Attn: Martin Luymes, Co-ordinator
Phone: 905 602-4700 Ext. 235
Fax: 905 602-1197
Email: mluymes@hrai.ca

- (b) HVAC Coalition's counsel:

JAY SHEPHERD PROFESSIONAL CORPORATION
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Costs

9. In recent years, the HVAC Coalition has only rarely sought or been awarded costs relating to its participation in proceedings before the Board. Those situations in which costs have been allowed have been ones in which the primary focus has been on the impact on ratepayers, and HVAC can provide a perspective to the Board that would otherwise not be available. HVAC generally does not intervene where those conditions are not met.
10. This Applicant, unlike some other electricity distributors, has an expanding business through an affiliate, Brantford Hydro Inc., competing with local Brantford businesses that are members of the HVAC Coalition. Only recently has the affiliate taken steps to distance itself from the utility, and the local community still sees the utility and the affiliate as one and the same. The resources of the utility appear to be used in whole or in part as the foundation of the Applicant's business.
11. In this proceeding, and notwithstanding the current wording of the Board's Practice Direction on Cost Awards, HVAC Coalition therefore asks the Board to exercise its discretion to order that HVAC Coalition be awarded recovery of its reasonably incurred costs of participation. Misuse of monopoly powers by a rate regulated entity is contrary to good public policy, and unfair to ratepayers who end up paying for unregulated activities through subsidies. While HVAC Coalition's members' commercial interests are undoubtedly affected by the issues in this rate proceeding, the impact on the members' commercial interests is secondary to the impact on ratepayers of these activities.

Respectfully submitted on behalf of the HVAC Coalition this 29th day of August, 2013.

Jay Shepherd
Counsel for the HVAC Coalition