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**BY EMAIL and RESS**

April 30, 2015  
Our File: EB20140072

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

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2014-0072– Essex Powerlines IRM – SEC Final Submission**

We are counsel to the School Energy Coalition (“SEC”). SEC was deemed an intervenor in this proceeding in Procedural Order No. 2, and has limited its intervention to the issue of the error discovered regarding accounts 1588 and 1589, which were disposed of on a final basis in Essex Powerlines Corporations (“EPL”) 2014 IRM proceeding (EB-2013-0218).

In its *Partial Decision and Procedural Order No. 3* (the “*Partial Decision*”), the Board determined that it would be retroactive ratemaking to seek recovery of the 2011 and 2012 under-collected amounts from Non-RPP customers.<sup>1</sup> In contrast, it did find that it had the *discretion* to order EPL to refund to RPP customers the amount that was over-collected during the same time period.<sup>2</sup> The Board ordered an oral hearing to hear further evidence from EPL on that issue.<sup>3</sup> On April 2<sup>nd</sup>, EPL filed a Motion to Review the Board’s *Partial Decision*. In Procedural Order No. 4, the Board determined that it would hold the motion in abeyance pending the release of its final decision in this proceeding.<sup>4</sup>

A significant portion of EPL’s Argument-in-Chief is unrelated to the remaining issues to be decided in this proceeding. They are simply attempting to re-argue the preliminary issue the Board determined in the *Partial Decision*. EPL’s requested relief includes seeking recovery from Non-RPP customers to pay the under-collected amounts made final in EB-2013-0218 due the accounting error.<sup>5</sup> This is clearly a collateral attack on the Board’s *Partial Decision*. A final decision on the legality of requiring payments from non-RPP customers has already been made. EPL has filed a motion to review and it will be heard in due course, and it will have to satisfy the Board’s threshold test. SEC strongly disagrees with the new legal arguments provided by EPL on the Board’s authority to order Non-RPP customers to now pay the

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<sup>1</sup> *Partial Decision and Procedural Order No. 3* (“*Partial Decision*”) at p.6

<sup>2</sup> *Partial Decision* at p.7

<sup>3</sup> *Partial Decision* at p.8

<sup>4</sup> *Procedural Order No. 4* at p.3

<sup>5</sup> EPL Submissions in Chief, at paras. 3 and 4

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under-collected amounts, and will respond in full when the Board hears the motion. We will not consider those arguments here. This phase of the proceeding is limited to considering whether EPL should repay the amounts over-collected from RPP customers.

**Should EPL have to repay over-collected amounts from RPP Customers (Account 1588)?**

As the Board correctly stated in the Partial Decision, “[u]tilities such as Essex Powerlines have ultimate control of their books and records and therefore bear the responsibility of ensuring that there are no mistakes in their filings with the Board.”<sup>6</sup> It is not the Board’s responsibility to determine, in every proceeding, if the underlying numbers presented in a rate filing not only lead to “just and reasonable” rates, but also reflect the correct amounts behind the numbers presented. If that was the case, it would be a regulatory nightmare, requiring the Board itself to audit the books of a utility every year, and intervenors to seek production of all underlying accounting records in every proceeding.

There is a special onus on a distributor, as a monopoly service provider, to ensure that the amounts they are seeking from their customers are correct. Accounting errors included in final rates can have a significant adverse impact on ratepayers. Consumption decisions are made based on the rates that are in place at any given time. The distributor has control of the information, and has a responsibility to get the numbers right.

While SEC does not doubt the accounting error was made in good faith, that is not where the inquiry ends. A review of the evidence shows that EPL’s review and oversight was inadequate.

***The error***

As SEC understands the evidence, upon the move to TOU pricing, EPL switched to a new electronic form to allocate costs between RPP and non-RPP customers. This new form contained a formula error<sup>7</sup>, first inputted by the Accounts Payable Senior Clerk, which had the effect of misallocating the costs between RPP and Non-RPP customers.<sup>8</sup> The form was submitted to, and reviewed by, the Operations and Regulatory Analyst for review and verification.<sup>9</sup> Apparently, the Operations and Regulatory Analyst did not notice the error because the split between Non-RPP and RPP matched the number of customers that were on and not on TOU pricing.<sup>10</sup> As Mr. Dimmel correctly pointed out, “[i]t is the wrong logic, but that was the logic at the time”.<sup>11</sup>

Since the same form was used every month, and the formula error not discovered until this proceeding, costs were similarly misallocated every single month. While the VP Regulatory Affairs has overall responsibility for Deferral and Variance Accounts, this person did not undertake a detailed review of the form or the amounts in each account every month. The VP Regulatory Affairs only reviews the amounts at the financial statement level.<sup>12</sup>

SEC has no doubt that the formula error was unintentional, but accounting systems are supposed to have checks and balances to prevent such errors from happening in the first place, and from persisting thereafter. The concern is the lack of oversight over the programming of the new form, and the complete lack of awareness which allowed the error to continue from 2011 until the end of 2014.

When the new form was created and programmed with the appropriate formulas, inadequate review was undertaken. Clearly, if the Operations and Regulatory Analyst thought that the amounts allocated to RPP and Non-RPP customers were supposed to be the same as the split of customers between TOU and non-TOU pricing, then that person was inadequately trained. The split between Non-RPP and RPP customers is about volumes, not customer counts. This is an elementary error that may be

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<sup>6</sup> *Partial Decision* at p.7

<sup>7</sup> Tr.1, p.50

<sup>8</sup> Tr.1, p.43

<sup>9</sup> Tr.1, p.43

<sup>10</sup> Tr.1, p.52

<sup>11</sup> Tr.1, p.52

<sup>12</sup> Tr.1, p.43. Response to VECC Supplementary Question No. 3.

understandable for the Accounts Payable Senior Clerk, it should not be for the individual who had the supervisory responsibility, the Operations and Regulatory Analyst.

More troublesome is that the error was not discovered until the end of 2014. While the formula error had the result of making the same error each month, it should have been clear month after month that there was an ever increasing debit in Account 1588 and credit in Account 1589.

The evidence is that EPL only monitored the overall balances of all deferral and variance accounts.<sup>13</sup> From EPL's point of view, it is the overall balances that matter. It wants to ensure that it recovers the full amount of money that it is owed from its customers. It would appear that not as much effort is put in to ensure that the recovery comes from the correct customers. This is unacceptable and negligent conduct. The balances of each account should have been monitored regularly. If EPL had been monitoring the individual accounts, it would have discovered the error and corrected it before the amounts were cleared on a final basis.

***Over-collected Amounts Should Be Refunded and Full Audit Ordered***

SEC submits EPL's oversight was clearly inadequate. The over-collected amounts from Non-RPP customers (due to the error made and lack of oversight in discovering the mistake), should be refunded. Those customers should not be penalized because of EPL's mismanagement. They have overpaid for their electricity consumption, based on rates that were declared final, between May 1, 2014 and January 31, 2015, the last billed date before the Board ordered the cessation of the 2014 Deferral and Variance Account Rate Order.<sup>14</sup> The Board should exercise its discretion and order EPL to credit customers \$3,689,041. While it is true that the distributor overcharged the customers by accident, those customers were still overcharged. The distributor took money from them that should not have been taken.

SEC recognizes the Board's comments made in the Partial Decision about the potential financial adverse effects on EPL.<sup>15</sup> In exercising its discretion to order a credit, the Board has to balance the objectives under section 1(1) *Ontario Energy Board Act* to protect consumers with respect to price, as well as the maintenance of a financially viable industry.

SEC believes that can be done by requiring the over-collected amounts to be credited to customers over a six year period. Since EPL has requested deferral of its next rebasing proceeding, this would represent the upcoming rate year (2015), and one full 4<sup>th</sup> Generation IRM cycle (EPL is scheduled to rebase for 2016). The amount would also represent roughly a 300 basis points reduction in EPL's regulated ROE in each year.<sup>16</sup> Under 4<sup>th</sup> Generation IRM, the Board has already determined that a +/- 300 basis point performance relative to the Board's allowed ROE does not trigger an off-ramp. This represents financial performance of a utility within an acceptable range.

In Supplementary Response to Undertaking J3, EPL stated that payment of any amount to ratepayers of over \$380,000 would trigger a default in its debt service coverage ratio with its lenders.<sup>17</sup> Since EPL has stated that in 2015, a 100 basis point reduction in ROE would represent \$215,663, a \$380,000 amount would represent a 177 basis point reduction. SEC is surprised by this evidence, since managing within a 177 basis point ROE variation would be a significant challenge for many distributors.

It is simply unfathomable to SEC that a company would find itself defaulting on its covenants with its lenders based on a reduction of its forecasted 2015 ROE of 9.3%<sup>18</sup> by only 1.7%. If this is correct, it raises very significant concerns about how EPL manages its relationships with its lenders. In our view,

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<sup>13</sup> Response to SEC Supplementary Question No. 2(b).

<sup>14</sup> Rate Order, dated February 28 2015

<sup>15</sup> *Partial Decision* at p.7

<sup>16</sup> EPL estimates 100 basis points on its ROE in 2015 is equal to \$214,663 (See Response to VECC Supplementary Question No. 5). A 300 basis point impact would be equal to \$643,989. Over 6 years using 2015 ROE amount equals \$3,863,934.

<sup>17</sup> Supplementary Response to J3, dated April 28 2015

<sup>18</sup> Response to VECC Supplementary Question No. 6

this very tight ROE range, if correct, would suggest that the Board should deny EPL's request to defer rebasing<sup>19</sup> and require it to come in immediately with a cost of service application.

It is further submitted that, in addition to requiring EPL to refund this amount to RPP ratepayers, the Board should order Board Staff to conduct a full audit of EPL's regulatory accounts, to be filed in EPL's next cost of service proceeding. Besides the issue regarding accounts 1588 and 1588, there were issues identified with 1590<sup>20</sup>, and various Group 2 Accounts that were discovered in Board Staff's audit of Accounts 1525 and 1572.<sup>21</sup> EPL's ratepayers deserve a full regulatory audit of its utility's accounts in light of these significant account issues.

All of which is respectfully submitted.

Yours very truly,  
**Jay Shepherd P.C.**

*Original signed by*

Mark Rubenstein

cc: Wayne McNally, SEC (by email)  
Applicant and Intervenors (by email)

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<sup>19</sup> See Letter to the Board from EPL, dated April 2, 2015, Subject: Essex Powerlines Corporation 2016 Cost of Service application Deferral Request

<sup>20</sup> It is not clear to SEC whether the model implementation error was a result of an error with the Board Staff provided model, or that of EPL's use of it.

<sup>21</sup> Audit Review of Group 2 Deferral and Variance Accounts Essex Powerlines Corporation, March 2013, Executive Summary, at p.1 (K1.2)