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January 25, 2019

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2018-0287 Report of the Advisory Committee on Innovation (ACI)

We are counsel for the Vulnerable Energy Consumers Coalition (VECC).

We have reviewed the submission of the School Energy Coalition (SEC) dated 24 January 2019 on this proceeding and we agree in substance and in the result. For the reasons given in SEC's letter, VECC likewise will not participate in the consideration and implementation of this report, both for the transparency and engagement problems with the process and the Board's lack of regard for consumer stakeholders' time and resources by deciding not to permit claims for intervenor funding on this file.

As for SEC's concerns with the one substantive change apparently implemented without any further discussion, namely the "regulatory sandbox" initiative, VECC does not concede that such a regulatory innovation is "not at its root a terrible idea" as we are concerned that it in fact is a terrible idea.

First, regulatory sandboxes are not true sandboxes¹ -- where the exemption from regulatory rules has no effect on customers. Instead, regulatory sandboxes permit a service or product to be live-tested on real customers who otherwise expect the protection of regulation and Board oversight. Problems affecting customers may not be fully corrected via "guarantees" of consumer protection in the sandbox

¹ A true "sandbox" in the software field is a programming innovation that is tested on a copy of a database without touching the live database handling actual transactions. See: Kálmán, János, *Ex Ante Regulation? The Legal Nature of the Regulatory Sandboxes or How to Regulate before Regulation even Exists* (September 20, 2018). Available at SSRN: <https://ssrn.com/abstract=3255850> or <http://dx.doi.org/10.2139/ssrn.3255850> at 3.1: "The concept like [sic] sandboxes come from the computer industry were [sic] sandboxes are created to test new developments interacting with a mirrored copy of the whole operative system, including databases and other software programs but without being able to affect any elements already running."

We are dismayed that Ontario regulators in areas such as equity crowdfunding and now the OEB consider it acceptable (and legal) to implement what amounts to regulatory forbearance under the name "sandbox" all in the name of the abstract concept of "innovation", all of which is not clearly authorized under the enabling legislation.

rules and we doubt regulators in charge of the sandbox process will spare much time for consumer protection and instead will be overwhelmed with questions from potential sandbox applicants. Our experience is that consumer redress is challenging enough where consumers have clear standard rules; we believe reaching customers who have problems under a sandbox trial and then fully resolving them is likely a far larger problem than the Panel report and the Board anticipates.

Secondly, we are struck by how poorly the Panel Report actually tracks to the main reference document, which it purports to wish to follow, namely the U.K. Office of Gas and Electricity Markets (Ofgem) “Regulatory Sandbox Window 2 Guidance”.² The Ofgem Guidance is very careful to define what the sandbox concept is and what it is not: “**The regulatory sandbox is not a mechanism to trial out new regulations.** Sandbox propositions must centre on the trial of a new technology or business model, rather than the application of new regulation to existing schemes.”³ [Emphasis added.] Yet the ACI Panel Report states on p. 19 that sandboxing: “would enable the OEB to ‘pilot’ innovative regulatory approaches.” This is either careless drafting or an endorsement of exactly the opposite of Ofgem’s approach; one that risks short-circuiting existing regulatory rules for those lucky enough to play in the sandbox; and creates a risk of “sandbox rules” becoming new regulations without proper process.

Yet the Board has, according to SEC’s account of the 16 January 2019 stakeholder meeting, decided to forge ahead with the sandbox initiative without hearing from affected consumer and public interest stakeholders. We are concerned that similar regard may be paid to any participation which VECC brings to other issues in this proceeding, with the additional burden of making this consultation unpaid.

For all these reasons, we are unable to participate in the above-noted proceeding.

Yours truly,



Counsel for VECC

Cc: Board Members
Interested parties
Geordie Dent, Executive Director, FMTA
Elizabeth MacNab, Executive Director, OCSCO

² Online: https://www.ofgem.gov.uk/system/files/docs/2017/10/regulatory_sandbox_window_2_guidance.pdf (“Ofgem Guidance”).

³ Ofgem Guidance at p. 2. Ofgem also notes on that page that: “The sandbox is not a means to change policy or regulation on a permanent basis. To make permanent changes to regulations, we have to follow appropriate processes and make them available to all parties.”