BY EMAIL and RESS

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Our File No. 20180329

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Christine Long, Registrar and Board Secretary

Dear Ms. Long;

Re: EB-2018-0329 – Town of Marathon – Intervention Objection Reply

We are counsel for the School Energy Coalition ("SEC"). We are in receipt of the letter from counsel for the Applicant dated October 22, 2019 objecting to our intervention. This is SEC's response.

The Applicant has objected to our intervention on two grounds. First, the Applicant claims SEC does not represent the interests of its members in the affected area. Second, the Applicant claims that the issues of concern to SEC are not appropriate issues to raise in this proceeding. Both are demonstrably incorrect.

Legitimacy of SEC Representation

The Applicant appears to misconstrue the role of the School Energy Coalition, even though SEC has described it publicly on many occasions, including in our annual frequent intervenor filing referenced in our Notice of Intervention. Member school boards do not retain counsel, or even "retain" School Energy Coalition, on a case by case basis. That is precisely the reason why SEC was created in the first place: so individual school boards would not have to make those decisions. School boards – all seventy-two of them – are members of SEC, and give SEC standing instructions to keep on top of the regulatory

calendar, and retain representatives to intervene when the interests of school boards are affected.

Some background can help explain this approach, which has been successful for the last fifteen years.

Background. SEC is part of Ontario Education Services Corporation ("OESC"), a non-profit set up almost two decades ago to deal with issues that school boards have in common, but in respect of which individually they lack either the financial resources, or the expertise, or both, to deal with them effectively.

The initial project of OESC was police record checks, required by law of all persons having access to certain school board properties and activities. All school boards had to obtain them, and the total was hundreds of thousands annually. Setting up the capacity to do so would require a financial investment and ongoing cost, plus development of an expertise in the area in each school board. School boards concluded that setting up a single central unit for all seventy-two school boards would save them a lot of money, and ensure that people with the appropriate skills were doing the work, and overseeing it.

The two goals – economic efficiency, and expertise – continue to be the foundation of the many other OESC projects: techniques for managing violent children, trustee governance training, etc.

SEC was established in 2004 when school boards recognized that they have high costs for energy, but neither the expertise nor the financial resources individually to be represented in the regulatory process. Since that time, although membership in the SEC project is voluntary for school boards, all Ontario school boards have consistently signed up and contributed financially, year after year. They have recognized, and repeatedly confirmed to SEC, that the area of energy regulation is complicated, and both retaining and instructing representatives in relevant proceedings would be virtually impossible for most school boards. They can't keep on top of the regulatory calendar, and they do not have the expert knowledge to know when proceedings could affect them and, if so, how.

The school boards' solution was to establish a group of people who are first and foremost educators, but that also have sufficient knowledge of energy regulation to retain and instruct representatives with expertise in the field. The school boards pay the costs of those people, and through them the costs of the counsel and other experts they retain. Otherwise, each school board would have to ensure that they have those people on staff, which for most school boards is simply impractical.

The Board has long been aware of SEC's extensive reporting to its member school boards, for example through annual, quarterly, and special purpose communications that are read by key individuals in member boards, and often circulated through the management team. SEC also engages with the associations that are OESC members, and counsel regularly speaks on current issues at meetings of school board officials.

What SEC does not do is contact each member school board every time it intervenes in a proceeding. When SEC was first formed, this was done fairly often, but member school boards made clear that they did not have the expertise to provide useful input on every single proceeding. Indeed, they told SEC that would defeat the purpose of SEC.

Instead, SEC's now longstanding practice is to contact local school boards individually in two ways:

- Periodically, SEC and their counsel meet with the representatives of several school boards in an area to talk about all of the current and upcoming proceedings that could affect them. For example, if the Kingston Hydro application is coming up, SEC may meet with the four local school boards about Kingston Hydro, Hydro One Distribution and Transmission, OPG, and Enbridge, and the various applications of each that could have an impact on the school boards. Usually none of this is news to the school boards, because of the active reporting of cases as they arise. Often, though, it helps SEC to understand the particular concerns of individual school boards.

- Where applications are unusual, SEC will contact local school boards to find out if there are any local or unusual issues of which counsel should be aware. In one such contact, for example, we found that there was a local controversy about capital spending by several municipal "departments", including the utility, that was seen by many in the community to be excessive. In many we hear comments, positive or negative, about reliability, customer service, community involvement, etc. And, of course, rates.

What we never hear is whether the local school board wants SEC to represent them in any particular proceeding. They are members of SEC, and rely on SEC to make the right decisions on when to intervene, and when not. They are never asked whether they want to be represented (that comes with membership), and they never directly retain or instruct SEC or its counsel. There are no exceptions to either fact, in the fifteen years and hundreds of cases in which SEC has been involved.

Regrettably, on a number of occasions utilities have chosen to speak directly to local school boards regarding an upcoming or filed application, to try to get them to convince SEC to back off intervening. Once SEC explains the rationale for intervening, those school boards have, in every case to date, supported our continuing involvement.

This Particular Case. In this case, SEC saw the situation as an unusual one (see below), and so made a point of contacting some of the local school boards to have discussions about the proposed application, and in particular to get a local perspective on this municipal initiative.

In its initial letter saying it was objecting to SEC's intervention, the Applicant said:

> *"The Corporation has since received advice from a number of school boards in the Applicants' municipalities to the effect that, although they were contacted by SEC, they declined to be represented by SEC in this proceeding."*

Now, in their latest letter, the Applicant says:

> *"Four of the school boards have responded, either in writing or by telephone, to the effect that they had been contacted by SEC and had advised SEC that they had no interest in this proceeding."*

These statements are not correct.

At no point has any affected school board been asked whether they wanted to be represented by SEC in this proceeding. That would be contrary to the whole reason that SEC exists.

Further, no school board has at any time asked SEC not to be involved in this proceeding, or not to represent their interests in this proceeding. One school board said that it was unlikely that they would connect their schools to the new distribution system (for other reasons). Another school board said they were glad SEC was intervening as they had been provided almost no information about the project.

Since we received the first objection letter on October 18, 2019, we have contacted the school boards again. With one, SEC has had a further detailed discussion. Superior-Greenstone advised that they had been contacted directly by counsel for the Applicant and had said they had little interest in the proceeding. However, they confirmed to SEC directly that they did not object to SEC intervening, as they understood it could help other school boards today, and their own board, and others, in the future.

SEC therefore submits that there is no issue with whether SEC is carrying out the wishes of its members, and no issue about whether the directly affected members in the local communities have sought to "opt out" of their SEC membership in this situation. No school board has, in fifteen years, ever sought to opt out of any proceeding, and that record continues to be true. SEC is doing exactly what its members created it to do, and the local members are supportive of the activities of SEC, including in this proceeding.

Relevance of the Issues

The Applicant has objected to two of the issues of concern raised by SEC.

The first issue is the uniqueness of the project. The Board receives many applications for rates, and many applications for leave to construct, each year. It does not hear many applications for a new gas distribution utility seeking conditional approvals, or for construction of several new distribution systems by an applicant that has never built one before, or for gas supply plans based on a proposed deal with a specific LNG supplier, in which the applicant seeks pre-approval for the cost consequences of that long-term contract.

The Applicant has a creative concept that it is putting to the Board: creation of a new gas distribution utility, construction of multiple small distribution systems from scratch, and a gas supply plan involving trucking LNG to each community.

This is not your everyday application.

SEC believes that, while there are certainly many questions to be asked about some of the details, this overall concept has some potential to solve the energy cost problems of northern and remote communities. This is exactly the issue SEC was referring to in its Notice of Intervention, when it mentioned its interest in ensuring schools have access to affordable energy sources. Thus, this application potentially affects all schools in areas not served by the existing gas distribution systems (more than 700). This concept may be at least one of the potential solutions to some of the problems the Board wrestled with in the Community Expansion proceeding (EB-2016-0004), particularly if it is done right.

It is in many respects unfortunate that an Applicant that seeks approval of a novel concept will have a longer and potentially more expensive process in front of them, but this is always the case for early adopters of anything. The Applicant has chosen to be first out of the gate, and may create a template for many other municipalities. The Application when considered as a whole is obviously unique, and so it may be entirely appropriate for some of the Applicant's regulatory costs to be socialized in some way. That is a policy decision that the Board may consider at some point.

But that question is not a reason to exclude intervenors with a legitimate interest on the grounds of cost. This is a public interest process, and potential customers are entitled to be heard. The uniqueness of the proposal makes it more important that the customers be there, not less.

The second issue is characterized as access to a "range of energy sources". In this respect, while the Applicant has quoted SEC correctly, it has then focused on the wrong part of the quote. In the case of this Application, the issue is not whether there is technical access to a range of energy sources. The issue is whether the terms and conditions of access to any particular energy source are reasonable. Counsel completely missed the point.

If the proposed structure for a new provider is that customers like schools cannot access service from this supplier except on onerous terms, this is not a practical alternative. SEC's job in the context of this Application is to make sure that a school that is on oil, electricity, or propane has an opportunity to switch to this new natural gas service on terms, and at rates, that are just and reasonable.

In the broader context, SEC's role is to make sure all members of SEC and their schools are able to access affordable energy sources, which include natural gas, on the best terms possible. That means ensuring that any template created by this Application, assuming it is approved in some form, is appropriate.

In addition to the two issues the Applicant has raised, discussed above, we note that the Applicant has not mentioned or objected to SEC's stated interest in the "requested pre-approval of cost consequences of long-term upstream contract Nipigon LNG LP" (4c). Clearly, potential customers have a direct interest in the terms and cost consequences of the gas supply plan and LNG contract, which require the Board to exercise its section 36 rates authority.

Overall Objection

This objection is ironic in two ways.

First, SEC (as with other customer groups) is likely to end up supporting the project, although not necessarily all of the terms of all of the approvals requested. SEC supports many projects by utilities. Our job in representing school boards is not to say no to everything. Generally, our school board members like their local utilities, and respect the work they are doing. They just understand that utilities are not perfect, and the public review that is central to the Board's role is valuable in making utility plans better.

Supporting a project, and supporting all of the terms and conditions and pricing proposed by the utility, are not the same things at all. This Application includes many aspects that are not "is it a good idea or not", but rather "is this cost or this approach to pricing, or this structure, appropriate to support just and reasonable rates", and things like that. SEC's participation will likely focus on things like the gas supply plan, the proposal to seek approval of the cost consequences of the long-term LNG supply contract, the arrangements with the construction partners, and other aspects of the project that may not be fully optimized to address potential customer needs and interests.

For the Applicant, the Town of Marathon and its local municipal peers, this should not be a problem. They know they are new at this, and have never built or operated a gas distribution system before. They are also motivated, it appears, by a desire to improve their local communities and benefit their local residents. We expect they would probably welcome input from persons knowledgeable in these areas, and a decision by the Board that maximizes the benefit to the customers in the affected communities.

Optimizing the terms of the project is only a problem for the external proponents of the project, the developers and the LNG supplier. They are the ones whose terms and prices are most likely to be questioned by representatives of customers, and it may be in their interest to fight the involvement of intervenors. Their interests, however, are not the same as the interests of the Applicant.

Second, one of the underlying "rationales" of the objection to SEC (and other intervenors) is the cost recovery payable to intervenor groups under the Board's rules.

The ironic thing is that fighting off all of the public interest intervenors is itself an expensive process. On the one hand, if it is successful, there is a reduction of OEB-approved cost claims, but at the cost of an expensive multi-national law firm spending additional time trying to exclude public participation. On the other hand, if this exclusion strategy is unsuccessful,

there is an increase in the costs of the intervenors, and still the increased cost of the expensive law firm. All of this is to pursue the goal of excluding intervenors that a) have an obvious interest as potential customers, and b) are likely to support the project in any case, although not necessarily all of the terms.

SEC does not understand why the Applicant feels that this onslaught against public participation is a good idea. Do they feel that the Board will accept terms it would not otherwise accept because the customer representatives have all been shown the door? Do they think they are stacking the deck in favour of approval on their terms? If either is true, they are likely wrong, in our submission. Any Applicant that does not want its customers in the room when their application is being considered is already suspect, and we believe the Board would give such an application much greater scrutiny because of that behaviour.

In addition, the Board could – and probably should – be concerned about a new regulated entity that so aggressively seeks to exclude public participation. Even if the reason for this approach is simply inexperience with the regulatory process, public participation and input is central to the Board's mandate, and any utility that seeks to exclude it is likely to be a problem down the line.

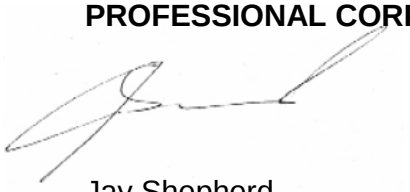
In short, SEC believes that the Applicant's fight to exclude all stakeholders from this process is ill-conceived and contrary to the public interest, as well as the Applicant's interest.

Conclusion

For all of the above reasons, SEC submits that the objection of the Applicant to the request of SEC, a representative of affected customers, to be an intervenor should be rejected completely.

All of which is respectfully submitted.

Yours very truly,
SHEPHERD RUBENSTEIN
PROFESSIONAL CORPORATION



Jay Shepherd

cc: Mark Rubenstein, SR (email)
Wayne McNally, SEC (email)
Interested Parties