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**BY EMAIL and RESS**

October 7, 2008  
Our File No. 2080775

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2008-0304 – Westcoast Energy Inc. and Union Gas Limited**

We are counsel for the School Energy Coalition. The School Energy Coalition wishes to intervene in the above-named application, and opposes the proposal of the Applicants to dispose of this application without a hearing pursuant to section 21(4) of the Act. The application was served on us, on behalf of our client, on October 6, 2008.

It is submitted that the proposal to interpose a holding entity, a limited partnership, between the existing franchise holder and the current holding company, is part of a series of transactions or events designed to alter in fundamental ways the corporate status, capital structure, and tax position of an entity – Union Gas – that is regulated by the Board. It may well be true, as the Applicants state in the application, that there is no material impact on the ratepayers, or on the operations of the utility, or on the ROE during IRM, or on the setting of rates under IRM, resulting from this series of transactions. In our view, it is not appropriate for the Board to simply accept the conclusions of the Applicants on these points, without any review. The Board, as regulator, must independently verify the claims of the Applicants in an application of this sort. Otherwise, why would the Board have to be involved at all? In requiring Board approval for changes of this sort, it is submitted that the Legislature intended that the Board act as gatekeeper, ensuring that any conclusions as to the impact of such a change are correct and verified.

We also note that, even if in this particular application there are no adverse consequences, the proposed procedure would establish a precedent, thus inviting other regulated entities to seek to short circuit the Board's usually thorough review of utility proposals.

GREAT LAKES  
LAW



We are conscious, of course, of the timing issues raised by the Applicants. We have three comments in that regard:

1. The Applicants have chosen when to file this application, and have thus themselves created the problem of limited available time. If the Board actually requires more time to consider the application, the fact that the Applicants waited until early October to file should not limit the Board's freedom to take the time necessary.
2. The action with the hard deadline, the preference share redemption, can be done independently of the remaining steps in the series. It is not dependent on the other actions, and does not, in itself, require Board approval.
3. It is possible, as we note below, to carry out the first level of this investigation and verification quite quickly, to maintain the timing the Applicants have proposed. It is only if that first level raises material issues requiring further review that timing becomes an issue. On the other hand, it is precisely in those circumstances that taking more time is appropriate.

We therefore propose that the Board establish an initial procedure in which intervenors and Board Staff can ask questions and seek documentary backup, on a relatively short time frame (say, October 21<sup>st</sup>), followed by a Technical Conference before the end of October so that the Applicants can provide answers and documentation. The parties can then make submissions on the issues, or agree to support the application, or propose further proceedings to deal with any material issues that are unresolved.

We would hope that this procedure would result in limited time commitment by the parties, but would elicit sufficient further information on the application that the Board could, with confidence and based on a proper record, approve it with or without modifications.

To the extent that SEC is involved, we would ask that we be found eligible for costs. SEC has been found eligible for costs with respect to numerous processes and proceedings before the Board in the past.

All of which is respectfully submitted.

Yours very truly,

**SHIBLEY RIGHTON LLP**

A handwritten signature in dark ink, appearing to read 'Jay Shepherd', with a stylized, flowing script.

Jay Shepherd

cc: Bob Williams, SEC (email)  
Gail Anderson, SEC (email)  
Michael Penny, Torys (email)  
Interested Parties (email)