

**IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c.O.15, Sch. B;***

**AND IN THE MATTER OF an Application by the Town of Essex under section 86(2) of the Act for leave to acquire shares of E.L.K. Energy Inc.**

**INTERROGATORIES**

**OF THE**

**SCHOOL ENERGY COALITION**

**Questions With Respect to the Post-Closing Covenants**

1. Please confirm that, under section 10.1 of the Purchase Agreement:
  - (a) The Applicant cannot allow the utility to terminate the employment of existing employees in order to obtain efficiencies of operation, for example by consolidating operations in Kingsville or Lakeshore into the town of Essex.
  - (b) In any subsequent M&A transaction involving the utility, the Applicant could not as shareholder consent to the transaction if the result of the transaction would be the termination any employees, or a requirement that any existing employees relocate outside of the existing franchise area.
  - (c) In particular, any acquisition by, or merger with, Chatham Kent Energy Inc. would have to have as a condition that existing employees of the utility would have to remain employed by the utility, and their place of employment would have to continue to be in the franchise area.
2. Please explain the reason why the Sellers have any interest in restricting the future operations of the utility as set forth in section 10.2.
3. With respect to the restrictive covenants in section 10.2 of the Purchase Agreement:
  - (a) Please confirm that (a) prohibits the outsourcing of service centre operations to a third party if the result would be to provide service from a location outside of the town of Essex.
  - (b) Please advise the test to be employed, and the reporting requirements that will arise, with respect to determining whether future “expansion opportunities” comply with (c).

- (c) Please advise the actions that the utility expects to take to comply with (d). In particular, and without limiting the generality of the question, please advise the extent to which operations will be affected by the requirement to be a “facilitator of economic development”.
  - (d) Please provide a list of assets in the territory of each Seller that would qualify as a “material asset” under (e). Please confirm that this section is not intended to apply to either after-acquired assets, or distribution assets such as poles, wires, substations, and the like. Please describe the process to be undertaken to implement this right of first refusal, and the nature and impact of any delay in sale that will result from that process.
  - (e) Please confirm that, under (f), the utility would be prohibited from reducing its capital spending in response to an economic downturn or a substantial slowing of load growth.
  - (f) What is the “contemplated transaction” described in (g)? Please describe the property involved, and the expected transaction to transfer it to Kingsville. Please advise why this is not a pre-closing transaction.
4. Please provide a copy of the document dated June 30, 2008 from Chatham Kent Energy Inc. on which the Purchase Agreement is based. If that document was tendered in confidence, please file it in confidence under the Board’s rules for confidential documents. Please also provide a copy of the Shareholders Agreement on which the right to match exercised in the Purchase Agreement is based. If any of the restrictive covenants in Article X of the Purchase Agreement are not contained in either the June 30<sup>th</sup> document, or the Shareholders Agreement, please identify those differences and explain why each one has been added.
  5. Please confirm that there are no understandings, expectations, promises, or other discussions between the Applicant or the utility, and either of the Sellers, with respect to the rates to be charged post-closing to the Sellers for general service, streetlighting, or other electricity distribution services.
  6. Please provide a copy of the Powerpoint presentation by Donna Hunter presented August 6<sup>th</sup> at the Essex meeting, as well as any presentations by or on behalf of the Applicant or the utility to the councils of the Sellers in the course of getting their approvals to the transactions.

#### **Questions with Respect to the Financing and Related Transactions**

7. Please explain why \$8 million of the purchase price is being borrowed by the regulated entity for the purchase of its own shares by one of its shareholders. Please advise how much, if any, of the \$3 million #2 credit facility, stated to be for capex, will be used directly or indirectly to support the purchase or any actions that arise as a result of the purchase. Please advise the expected interest rate on any fixed rate term loans included in the credit.
8. Please advise whether the existing promissory notes of Kingsville and Lakeshore, which are being transferred to Essex, will continue to be outstanding after the purchase, and if so for how long. If they are to continue to be outstanding, please provide copies of those notes. Please advise any changes to the interest rate on the promissory notes, or on the interest rate to be

included in rates, resulting from the transfer of the notes. If they are to remain outstanding, please advise why they were not replaced by bank financing as part of the overall financing transaction.

9. Please describe in detail all steps relating to the purchase and financing transactions that result in the proceeds of the financing being used by the shareholder for the purchase. Please include all dividends, capital inflows and outflows, and transfers of assets that have an impact on the result. Please provide a copy of the description of the transaction that was provided to the Bank in support of the application for credit.
10. Please provide a detailed report of the post-closing capitalization and capital structure of the utility, and show how each of the expected steps leads to that final result. Please provide a pro forma post-closing balance sheet and income statement showing those changes, and showing any changes to the actual cost of capital resulting from the purchase, the financing, and related steps. Please describe any tax impacts (both actual and deemed) resulting from the changes in the capital structure.
11. Please provide a copy of the three-year business plan referred to on page 4 of the Bank commitment letter.

Respectfully submitted on behalf of the School Energy Coalition this 23<sup>rd</sup> day of October, 2008

**SHIBLEY RIGHTON LLP**

Per: 

Jay Shepherd