

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

**AND IN THE MATTER OF a consultation by the Board on issues relating to low income consumers of energy.**

**SUBMISSIONS**

**OF THE**

**SCHOOL ENERGY COALITION**

1. From September 22 to September 25, 2008 the Board held a stakeholder conference on policies that might be considered to assist low income consumers of energy. In conjunction with that stakeholder conference, the Board published a study by Concentric Energy Advisors entitled “*A Review of Low Income Energy Assistance Measures Adopted in Other Jurisdictions*” (the “Study”), which was later updated by the same consultants in a Supplemental Report dated October 21, 2008 (the “Update”).
2. The Board has asked for comments on the issues raised in this process from interested parties by October 31, 2008. These are the comments of the School Energy Coalition with respect to those issues.

**The Interest of Schools**

3. In the real world, school boards actually have two interests in the problems faced by low income energy consumers:
  - a. ***Schools are ratepayers.*** To the extent that low income energy consumers are benefited through preferential rates, advantageous rate structures, or utility spending, there is the potential that it will represent a cost to other ratepayers, including schools.
  - b. ***There are about two million children in Ontario schools.*** School boards are concerned about the effects of poverty on those children, not only from a strictly pedagogical point of view (poverty creates specific problems relating to teaching and the ability to learn effectively), but also from a philosophical and moral point of view.
4. Notwithstanding those two interests, in our view the second of the two is driven by the question of whether, and to what extent, society as a whole takes steps to alleviate the poverty that strikes too many children in Ontario schools. This is about poverty per se, not “energy poverty” or “fuel poverty”. While it is true that a child living in a house that is too cold will

learn less effectively, and a child with intermittent electricity service will have more difficulty doing homework, as a practical matter these impacts, while important, are relatively small compared to chronic hunger and many other impacts of poverty. To a large extent, therefore, the concerns of school boards relating to poverty are not specific to the inability of low income consumers to pay their energy bills.

5. But it is submitted that, in any case, this proceeding is not about whether, or to what extent, this society should alleviate poverty. This proceeding, instead, focuses on who should take responsibility for anti-poverty programs and, if regulators and utilities are found to have a role in that, how can they most effectively participate in solving this societal problem.
6. Therefore, these submissions do not deal with the second of schools' two interests in this subject. We assume that interest is more appropriately dealt with in another forum. These submissions are limited to the interest of schools as ratepayers in considering how rates are set, and how their money is best spent, whether in the context of rate cross-subsidization, or direct spending by utilities.

### **What is the Question?**

7. Before dealing with rates and spending, it is perhaps appropriate to distinguish between mandatory vs. permissive policies of the Board. If the Board decides to have policies or rules that provide low income assistance, it can do so in two ways:
  - a. ***Mandatory.*** It can tell utilities that the Board's policy is that utilities should do X. Specific utilities can always seek exceptions, of course, but a low income program under this category would likely be adopted by virtually every utility in the province.
  - b. ***Permissive.*** It can tell the utilities the rules or parameters under which the Board would allow a utility to offer a low income program. Each utility would then decide whether such a program is appropriate for their customers and their franchise area.
8. In our view, the Board should not consider mandatory low income programs. Ontario is sufficiently diverse, and Ontario utilities have sufficiently different structures, economic models, and operational capacities, that a mandatory program is not a good approach. As far as we know, no-one is advocating mandatory programs, but if they do, we believe that would be very problematic for many utilities.

### **Special Rates or Income-Driven Rate Structures**

9. SEC is strongly opposed to special rates, or income-driven rate structures (such as reduced monthly charges), that depart from the principle of cost causality in order to reduce costs to low income energy consumers.
10. The Study contains a lot of useful analysis of this issue, and we will not reiterate it here. Instead, we summarize the reasons for our opposition to rate-based low income assistance as follows:

- a. ***Fundamental Principle.*** Cost causality has been, for some time, the fundamental principle underlying “just and reasonable” rates. We have little doubt that other principles could be employed. For example, income tax is based on “ability to pay”. There is no conclusive reason why the same principle could not be the basis for energy rates as well. However, if that were to be the case, it would be incumbent on the Board to engage in a more basic analysis of appropriate rate-making principles. This is not something that can just be shoved aside to put in some exceptions. For rates to be “just and reasonable”, they must in our view be principled, and if the Board determines to reject the primary principle currently in use, a new one must be developed and implemented.
  - b. ***Proxy for Competition.*** It is well-established law that the Board’s role as an economic regulator is to act as a proxy for the competitive markets. This involves not only ensuring that prices are based on related costs to provide a product or service, but also that price signals reflect that underlying truth. In a competitive market, disjuncts between cost-driven prices and actual prices will (at least in theory) drive customers to a competitor. Prices set by the economic regulator should produce the same result. Once cost causality is jettisoned, that would no longer be the case.
  - c. ***“Slippery Slope”.*** Lawyers are fond of talking about the “slippery slope” that a particular decision could generate. In this case, it is clear that low income energy consumers are not the only consumers that can make a case that rate assistance for them is in society’s interests. Obviously schools and other MUSH sector consumers could make a similar case, albeit for different reasons, but it goes well beyond that. For example, at what point does the Board have to consider rate relief for small businesses (especially in an economic downtown), particularly since small businesses are a key economic engine in Ontario? If the Board is not willing to go down the path of setting rates for all “needy” or “deserving” consumers on the basis of something other than cost causality, in our view it is logically inappropriate to do so for low income consumers.
11. For these reasons, we adopt the views of the New Brunswick regulator, quoted in the Study at page 43, where the regulator said:

*“The Board is an economic regulator and its role is to establish classes of service and rates for each class that are appropriate having regard to the costs that each class imposes on DISCO...The Board is aware of jurisdictions where the relevant legislation establishes policies that are clearly designed to assist certain customers. The Board considers this is the appropriate way for such policies to be established.”*

We agree.

### **Utility Spending on Low Income Programs**

12. If low income energy consumers are not assisted through rate decisions, what about through direct spending by utilities? It is submitted that there are two reasons why a utility might consider a low income program: to achieve operational or other cost benefits, or to reduce the

financial hardship to low income consumers. In SEC's view, it is important that utilities and the Board distinguish clearly these two motives, the types of programs each might justify, and the issues that arise in each case.

13. ***Operationally Justified Programs.*** Just as a company in a competitive market might, for purely business reasons, provide programs to assist low income customers, so too regulated utilities should develop such programs to generate operational/financial benefits. Those programs can be loosely lumped into two broad categories:
  - a. ***Payment-Related Programs.*** There is ample evidence that programs related to collections, bad debt reduction, customer deposits, and the like can be optimized so that they work well for low income consumers. Programs that provide payment plans, or emergency rate relief through charities, or waived deposits, can often ensure that low income customers do not fall behind or, if they do, that their arrears are collected.
  - b. ***Conservation Programs.*** Government policy dictates that utilities place a growing emphasis on encouraging conservation, and it is well established that conservation programs for low income consumers must have special design features. Notwithstanding that, there is a benefit to doing so, both in support of public policy and the long term public benefit, but also for short-term financial reasons.
14. It is submitted that low income programs that have as their primary goal a legitimate business purpose are part of the normal operations of a utility. That has two implications. First, like any other utility program they must be justified by a business case based on dollars, not philosophy or morality. Second, they are a normal cost to be included in revenue requirement, and ratepayers should not objecting to those costs being part of rates. If programs such as this pass the business case hurdle, then by definition they are financially beneficial to ratepayers in the long term. In effect, there is, over time, no net cost to the ratepayers, only a net benefit.
15. We believe that the Board should encourage programs in this category, and invite utilities to work together to offer creative ways of tackling the operational issues related to low income consumers. In fact, one theory of IRM says that is exactly why it works: because utilities are encouraged to develop creative and cost effective new programs.
16. In respect of these programs, the Board can assist utilities in developing the best programs by providing specific guidance where required. For example:
  - a. The Generic Gas DSM decision in 2006 included a "set aside" for low income conservation programs, because the normal ranking of programs by cost-effectiveness might have precluded them. The gas utilities have responded by developing programs that are still good investments, but ensure that low income consumers also participate.
  - b. Similarly, in England prepayment meters are in common use, but there was resistance because of a cost premium. By mandating that payment method – monthly billing vs. prepayment – could not affect rate levels, the British regulator has opened up the use of prepayment meters. This is a technique that this Board could also encourage.

- c. The use of load limiters is another example where utilities could benefit from the Board's guidance. If the Board established a simple set of guidelines for when and how they can be employed instead of disconnection, that may motivate more utilities to experiment with this technique.

These are but three of many examples in which specific Board policies already, or can in the future, encourage and assist utilities to develop and implement cost-effective programs that benefit low income consumers. Such programs are primarily designed to deliver valued business results. The benefit to low income consumers is a collateral effect.

- 17. ***Benevolent Programs.*** Many of the low income assistance programs described in the Study and the Update do not produce a net financial benefit to the ratepayers over the long term. They are a cost, justified not for business reasons, but for social or moral reasons. These programs are much more problematic, for two reasons:
  - a. ***Delivery.*** It is not obvious that utilities should be involved in the delivery of what are essentially social assistance programs, and the Board has already seen that many utilities are uncomfortable with the thought of being given that responsibility.
  - b. ***Funding.*** If such programs are funded by government or other third parties, or they are funded through voluntary contributions, that is one thing. If they are funded out of rates, i.e. as a cost of doing business paid by the ratepayers, then the Board must consider whether it is appropriate for the Board to require ratepayers to make what is in essence a charitable contribution.
- 18. On the issue of program delivery, we believe that utilities are ill-suited to be delivery agents for social programs. The programs around the world described in the Study are generally not delivered by utilities or, if they are, it is only with tight direction or a partnership with a social assistance organization. Utilities should do what they do best. Delivering social programs is not on the list of their core competencies, but there are lots of suitable agencies in Ontario that specialize in delivering social programs.
- 19. Funding of low income programs is a difficult question. SEC believes that all companies in business should be good corporate citizens, and act in a socially responsible way. That would include taking a tangible interest in the well-being of their customers and communities. Many utilities do just that. However, when the cost to do so is not designed to provide a business benefit (public relations, for example), but is essentially charitable or benevolent in nature, then in our view it is not an appropriate cost to be borne by the ratepayers. Charitable giving is by definition a voluntary act. If the shareholder's money is being spent, the shareholder should decide how to spend it. If the ratepayers' money is being spent, then in our submission each ratepayer should decide how to spend it.
- 20. With these principles in mind, SEC believes that there are many ways that utilities, with the Board's blessing, can alleviate financial hardship for their low income consumers. Mostly,

that should be left to the creativity of the utilities, consistent with the principles that program delivery should be by experts in the field, and funding, if from ratepayers, should be voluntary.

21. To give an example of the type of utility program that would in our view be appropriate and beneficial, consider the following hypothetical utility program:
  - a. The utility establishes in its billing system the ability to round bills up to the nearest dollar. This is usually a simple and inexpensive software routine (sometimes used by bank clerks to embezzle funds). Most billing systems already have a similar function in any case, since bills are actually more than two decimal points, but are rounded.
  - b. All customers are advised that the utility intends to round up all bills to the nearest dollar, and use the money for the Low Income Assistance Fund (or some other suitable name). All customers have the option at any time to opt out of the program through a simple procedure by telephone, on the website, or by mail. If they opt out, their bills are calculated to the cent. This is well publicized.
  - c. The funds raised are delivered to an outside agency to provide energy bill assistance for the utility's customers. For example, the agency could provide bill credit vouchers to low income consumers based on their own established means tests. Each utility would select the agency that is suitable for them, perhaps through local knowledge, or through some form of RFP or other public process.
22. This example is a simple method of assisting low income consumers. The annual potential cash for the fund is about \$36 million, so even if 20% of customers opt out, the amount available for assistance is about \$29 million per year.
23. There is no magic to this particular example. The point is this: utilities should have the freedom, within the principles outlined above, to be creative in developing programs, either individually or through their industry associations.
24. ***Other Issues.*** Except for providing the above example to illustrate the principles we believe should be in operation here, we do not believe it is appropriate or useful for us to comment on the many other issues that have been raised in this consultation relating to program design, eligibility, and similar matters. While a lot of material was provided on those points, we leave it to more knowledgeable parties to provide input on those issues.
25. ***Spending – Summary.*** It is therefore submitted that:
  - a. Utilities and the Board should be very disciplined in distinguishing between programs to relieve financial hardship for its own sake, and programs to produce a business benefit.
  - b. Operationally-driven programs should be subject to a favourable business case and, if they pass, should be paid for in rates. Utilities should be encouraged – through IRM and otherwise – to develop creative programs for this purpose, and the Board should identify program-specific policies from time to time that will remove barriers to these programs.


- c. Benevolent programs should be pursued by utilities only if two conditions are met: first, the primary delivery agent should be an entity or agency with expertise in that field, and not the utility; and second, to the extent that any funding comes from the ratepayers, it should be voluntary, and no ratepayer should be forced to participate.

### **Conclusion and Costs**

- 26. We hope these submissions are of assistance to the Board in dealing with these difficult issues. SEC would like to continue to be involved in this process going forward.
- 27. It is submitted that the School Energy Coalition has participated reasonably in this process with a view to assisting the Board in developing new policies, and we therefore request that the Board make an order for the payment of our reasonably incurred costs of participating in this phase of the consultation.

All of which is respectfully submitted on behalf of the School Energy Coalition on the 31<sup>st</sup> day of October, 2008.

**SHIBLEY RIGHTON LLP**

Per:   
Jay Shepherd