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November 10, 2008

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge St.  
Toronto, ON M4P 1E4

Dear Ms Walli:

Re: EB-2008-0310 Section 86(2) – Acquisition of Shares – Town of Essex/E.L.K. Energy Inc. - Procedural Order No. 1

We have read the evidence submitted by the Town of Essex and their solicitor Ogilvy Renault on the requirement to seek leave of the Board for the acquisition of the shares from the Town of Lakeshore and the Town of Kingsville, the two other shareholders of ELK Energy Inc.

We agree with the evidence provided and specifically that the Town of Essex, who currently holds 38% of the shares of ELK Energy Inc, already exceeds the 20% threshold as outlined in section 86 (2) of the Ontario Energy Board Act, 1998. It is our opinion that this section was intended for any new shareholders seeking to acquire shares in an existing local distribution company and therefore does not apply to the transaction amongst Essex, Kingsville and Lakeshore. Any current shareholders that exceed the 20% threshold should not require leave of the Board for the additional acquisition of shares.

Any changes in the debt and equity structure that affect the utility and ratepayers would be addressed by the Ontario Energy Board during the rate making process. At that time the shareholder could be held responsible to ensure the ratepayers are not adversely affected by the change in ownership. This information has been provided by the Town of Essex whereby they realize there will be an increase in the debt to equity ratio beyond the acceptable limit and they will be addressing this by foregoing any dividends or returns until the utility falls back within guidelines. The Town of Essex has exhibited due diligence in its assessment of the potential impact to ratepayers and has addressed this issue without the intervention of the OEB.

It is also evident that the forms provided as part of the MAAD application process do not fit this situation as several times it is outlined in the application to that effect.

**In summary, it is our opinion that Section 86(2) of the Ontario Energy Board Act does not apply to this transaction.**

**Sincerely,**

**Richard E. Dimmel, CMA  
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**cc: Town of Essex  
School Energy Coalition**