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### **BY EMAIL and RESS**

June 21, 2012  
Our File No. 20120064

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
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### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2012-0064 – Toronto Hydro 2012 IRM**

We are counsel for the School Energy Coalition. We have reviewed the letter from the Applicant sent yesterday, and in this letter provide our comments to the Board.

At the present time, the Applicant has two proceedings outstanding – a review motion and an appeal - that have as their purpose keeping their cost of service application for 2012 (EB-2011-0144) alive. It would appear to us that, as long as Toronto Hydro is continuing to pursue 2012 rates on a cost of service basis, they should not be permitted to seek the setting of 2012 rates on an IRM basis as well. This kind of multiplicity of proceedings, which as the Board knows is frowned upon in courts and in other administrative tribunals, is not only wasteful of resources, but is also fraught with risks of inconsistent or even conflicting results.

In our view, applicants seeking new rates should select the remedy that they feel is appropriate to their situation, within the rules and practices of the Board. If the Board determines their rates on that basis, that is the end of the matter. If the Board declines to hear the application in that form, the matter has not been heard on the merits. Then,



and only then, an alternative application can be made. They would be sequential, not parallel.

In this case, the Applicant proposes to continue the Motion for Review in respect of one issue. It is submitted that this is inappropriate. In effect, they are turning their original cost of service application into an application for an accounting order with respect to the half year rule. Under the Applicant's proposal, the Applicant would no longer be seeking 2012 rates through the Motion for Review, as the only issue remaining would not be sufficient to form the basis for rate-setting. Rates would, presumably, still be set through the IRM application. The only potential relief that could be granted through the Motion for Review would be an accounting order with respect to the impact of the half year rule.

Even that is doubtful, since the Board in EB-2011-0144 did not make a binding determination as to the impact of the half year rule. The Applicant would in effect be arguing that the Board erred in refusing to decide the half year rule as an independent issue, something that the Applicant did not request in the first place. Therefore, it appears clear that on a Motion for Review a challenge restricted to that issue alone would not meet the threshold test.

The position of the Applicant is made more inexplicable by the fact that their argument on the half year rule is and always has been wrong, and no amount of repeating it over and over again makes it less wrong. The Applicant is now aware that their error can be demonstrated mathematically, and SEC in its Renewed Regulatory Framework submissions has also exposed the error logically rather than mathematically.

In our submission, the Board should not proceed with the IRM application until the Applicant's requests for 2012 rates based on cost of service have run their course or been terminated in full, including both the Motion for Review and the appeal. At that point, the current IRM application – continuing the Applicant's practice of seeking special treatment rather than adhering to the normal practices of the Board – proposes additional relief for the half year rule. Toronto Hydro will argue that they should be afforded some relief, whether by way of accounting order or otherwise. Intervenors, including SEC, should then be free to argue against that relief on a number of grounds, including the underlying error in Toronto Hydro's logic, but also including the fact that the IRM system is a cohesive system, in which cherry-picking additional rate increases over and above the guidelines is neither contemplated nor fair.

The Applicant's letter appears to require that the Board must agree in advance to decide the half year rule issue on the merits in the IRM proceeding, failing which Toronto Hydro will continue their Motion for Review and their appeal. It reads as if this is a negotiation on procedure between Toronto Hydro and the Board.



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It is submitted that the Board should not accede to that demand. The Applicant should be invited to choose their remedy, i.e. continued pursuit of rates through cost of service (in which case the IRM application would be suspended while that is going on), or setting rates through IRM without any preconditions limiting the Board's discretion.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties