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BY EMAIL and RESS

October 7, 2013
Our File: EB20120064

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0064 – THESL 2014 IRM – Draft Issues List Reply

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order #6, these are SEC’s reply submissions with respect to the Board’s Draft Issues List for Phase 2.

3. Is THESL’s application of the ICM criteria appropriate?

SEC objects to THESL’s proposed amended wording of this issue. It would appear that THESL has misunderstood what this issue encompasses. While the Board in the Phase 1 Decision may have accepted in certain circumstances THESL’s interpretation of the ICM criteria, Phase 2 still requires the Board to determine if THESL has applied that criteria appropriately.

It is also important to identify what the Board did and did not decide in its Phase 1 Decision. The Board was not asked, and parties made no submissions, on the reasonableness of certain ICM projects or segment in 2014. THESL is incorrect in writing that “only if the nature and organization of work within an ICM segment had changed between Phase 1 and Phase 2 would it be appropriate re-assess THESL’s application of the ICM criteria.” All that was sought with respect to the ICM was recovery of amounts for 2012 and 2013. The Board explicitly stated so in its Phase 1 Decision:¹

As the Board has approved THESL’s request to hear the 2014 application as a separate phase of this proceeding, there is no decision required of the Board in respect of 2014 at

¹ Phase 1 Decision at page 11

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this time, with exceptions of matters related to the Bremner Transformer Station [emphasis added].

Ensuring that the 2014 capital projects that THESL seeks funding for meet the ICM criteria is not “re-litigating” the Phase 1 Decision and not “challenging the integrity of the OEB’s decision and reasons in Phase 1 of this proceeding”. While THESL may ultimately rely on the Phase 1 Decision and evidence, at this stage in the proceeding it is too early to determine if that is appropriate. For example, while THESL claims that the nature of the project/segments for 2014 have not changed, before interrogatories have been answered, SEC is not in a position to confirm that. Further, THESL’s actual capital spending in 2013 will inform the Board on how the application of the criteria to the 2014 projects, i.e. if THESL did not actually spend what it said on certain projects/segments, can it still claim that they were are non-discretionary for 2014?

SEC submits the Board should maintain the wording as proposed as to allow for an appropriate scope of the issue.

6. *Are THESL’s proposals related to rate implementation, including the disposition of the smart meter accounts, currently before the Board as a stand-alone, appropriateness for the year 2014?*

SEC submits that there is no need to revise the wording of the issue. Considering the submissions of both VECC and THESL, SEC believes that it would be sufficient for the Board to simply clarify if its intention is to somehow combine in some matter this proceeding with EB-2013-0287. The proposed revisions by THESL would seem to unintentionally change the nature of the issue from the appropriateness of the rate implementation proposals that arise out of the requested relief in this application, to one of just coordination between the two applications.

Written versus Oral Hearing

THESL in its submissions has reiterated its request for the Board to adopt a written process for this phase of the proceeding. SEC believes it is too early to determine if that is appropriate. The Board should wait until after interrogatories have been responded to and potentially a settlement conference has been concluded, to determine the method of hearing. While Phase 2 will undoubtedly be less complex than Phase 1, THESL is still seeking approval for a very significant amount of incremental capital funding.

All of which is respectfully submitted.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and Intervenors (by email)