



BY EMAIL and RESS

Jay Shepherd
jay@shepherdrubenstein.com
Direct: 416-804-2767

June 27, 2018
Our File No. EB-2017-0073

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0073 – Sioux Lookout 2018 Rates

We are counsel for the School Energy Coalition. We have reviewed PO #1, and the Board's letter of June 8, 2018. By this letter, we are hereby withdrawing SEC's intervention in this matter.

In our view, the Board has failed to comply with its statutory mandate in dealing with this Application, in at least three ways:

- a) The Registrar, by delegated authority, purported to make material decisions about just and reasonable rates without a hearing, and without affording affected customers the right to be heard, something the Board is not able to do directly (under section 21 of the OEB Act). Thus, when an adjudicative panel considers and determines just and reasonable rates, relying on the Registrar's Decision, that determination will not be compliant with the OEB Act.
- b) The Registrar considered evidence – a model developed by OEB Staff in secret – that is not on the public record. The level of reliance on the model is not relevant, as long as the model was relied on, which the Registrar's Decision specifically admits. The adjudicative panel determining rates will, by relying on the Registrar's Decision, be basing its determination on secret evidence, which we believe is contrary to the intent of the OEB Act, and contrary to good adjudicative practice.

- c) The commitment by OEB Staff to the Applicant to take certain positions before the Board demonstrates that OEB Staff is not acting in an independent manner in this Application, and potentially implies to the Applicant that the Board will make its decisions in a certain manner. Whether or not that was the intent, OEB Staff's promises were inappropriate and contrary to the intent of the OEB Act. The OEB Act does not contemplate negotiations between the Board and regulated utilities with respect to rates. The OEB Act contemplates a public adjudicative process for the setting of rates.

SEC's options with respect to the above issues appear to be limited to:

- An appeal of the Registrar's Decision under section 7 of the Act (with extension of time);
- A motion before the adjudicative panel setting rates asking it to expand the issues list to include all normal issues that arise in a cost of service proceeding, so that affected customers are granted their statutory right to be heard;
- A motion for review of the adjudicative panel's decision setting just and reasonable rates, presuming that the panel relies on the Registrar's Decision in the manner contemplated by PO #1; or
- An appeal of the adjudicative panel's decision under section 33 of the Act, presuming that the panel relies on the Registrar's Decision in the manner contemplated by PO #1.

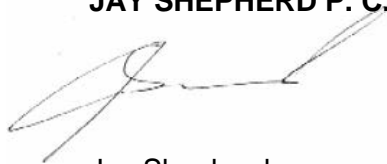
The problem is that, as we noted in our April 11th letter, this is not an Application in which we would normally intervene, despite having affected members. Our involvement was driven by the fact that this was the first application being considered under Proportionate Review.

Further, this is a very small utility, with about \$2 million in annual revenue. The direct cost to the utility of any review, motion or appeal could have a material impact on their financial condition, even if OEB Staff's promises to ensure that the Applicant doesn't have to bear anyone else's costs can be realized. Simply put, this small utility cannot afford to be a test case.

SEC therefore concludes that we must withdraw from participation in this proceeding. While at some point the details of the Proportionate Review concept will have to be tested against the requirements of OEB Act and against sound regulatory policy, we do not believe that asking the people of Sioux Lookout to bear the cost of that test is appropriate in this case.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties