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BY EMAIL and RESS

March 10, 2010
Our File No. 2090455

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0349 – Direct Benefits

We are counsel for the School Energy Coalition. On January 11, 2010 we provided detailed submissions with respect to the calculation of Direct Benefits, and we subsequently have had an opportunity to review the submissions of other stakeholders, and their presentations at the recent stakeholder conference.

In general, and with one notable exception, we continue to believe that the principled approach we proposed in our January submissions, which is for the most part consistent with the approach of Board Staff, is a proper foundation for the Board's response to OReg 330/09. We will not reiterate those submissions here, except to emphasize once more the importance, in our view, of precise characterization by the Board of the basic paradigm, i.e. direct benefits equal costs actually avoided by the local ratepayers, when they would otherwise have been incurred. That "baseline and variance" approach is critical to development of a comprehensive body of information for the detailed calculation of direct benefits on an ongoing basis.

The major change in our thinking came about because of the submissions and presentation of Hydro One.   The point they make, which is a good one, is that the amount of detailed information available to assess direct benefits with accuracy is limited right now, and the effort required to obtain that accuracy may not be money well spent.

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The obvious solution is for the Board to establish a default percentage of GEA-related spending that is treated as the direct benefits amount in the absence of a detailed analysis. For smaller utilities with limited resources, or for those who have only one project, this would allow them to rely on the default instead of doing an expensive analysis that might not make any material difference to their ratepayers.

Our concern about taking this kind of shortcut, as we expressed in our January submissions, was that, with no information whatsoever on the actual direct benefits of particular projects or utilities, the Board would have no basis on which to establish a default percentage.

Hydro One has now indicated that, based on 300 projects that they have, the average percentage of direct benefits is about 15% of total costs. This is calculated based on their view of the direct benefits principle, which probably includes more local costs than the paradigm we have proposed, or that Staff has used, but it is still not that far off.

If the Hydro One data is actually based on their own detailed analysis, which we understand that it is, then we believe that our opposition to establishing a default today may need to be re-thought. Given the fact that the amount of spending in this category in 2010 is likely to be relatively low, as the GEA activities in the province ramp up and planning gives way, in subsequent years, to implementation, establishing a standard default percentage today may be a good transitional step.

If the Board elects to do so, in our view the appropriate initial default percentage is the 15% that Hydro One has estimated from their own analysis. Not only does it have at least some empirical basis, but to the extent that it is wrong, it is probably a little high rather than a little low.

In our view, once a default percentage is established, it can then be adjusted as individual distributors file information and plans that do more detailed calculations. Some distributors will just accept the default percentage, but we would expect that a number of others will have the resources, and the will, to calculate the benefits on a more rigorous basis. This is particularly true if they feel that the default percentage is higher than their actual experience is showing.

Assuming that some distributors affected by GEA projects do file detailed information, the Board will then have a growing body of data with which to estimate the average split between local benefits and costs that should be socialized. Periodically, the Board can then adjust the default based on the additional accumulated data, and the default will become more and more reliable over time. It may well also become a more complex formula, as the Board identifies variables that have a direct connection to the average cost split.

Of course, it is always possible that all distributors will simply accept the default, rather than go to the trouble of doing a more thorough analysis. We think that is unlikely, but if that does transpire, the Board has ample ability to require, or even undertake directly, more detailed analysis so that a body of data is developed. That is, if this becomes a problem, it is a tractable problem.

Aside from that change to our views as a result of the dialogue between the parties, we believe that our submissions from January remain valid. Local ratepayers should not bear more distribution costs because of the GEA than they would have borne without it, regardless of any other impacts, such as service quality. In our view, the scheme of the Regulation is based on the notion that local ratepayers are kept whole, and all costs are socialized except those that are specifically offset by dollar savings at the local level.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested parties (email)