



## **Jay Shepherd**

Professional Corporation  
2300 Yonge Street,  
Suite 806  
Toronto, Ontario M4P 1E4

### **BY EMAIL and RESS**

December 24, 2014  
Our File No. 20140101

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2014-0101 – Oshawa 2015-2019 Rates – Request for Interim Rates**

We are counsel for the School Energy Coalition. The letter from Oshawa PUC Networks dated December 23, 2014, which was not copied to us or other known intervenors in their rate proceedings, has been brought to our attention.

Oshawa will be seeking rates effective January 1, 2015, and so should have filed their application no later than April, 2014, but probably earlier given that it is Custom IR. They now say they will file their application by the end of January, 2015. At normal pacing of board proceedings, they are unlikely to have rates in place prior to late fall, 2015.

The letter yesterday seeks to have current rates declared interim, making the point that the utility is currently underearning. This raises the issue of compliance with the Fair Return Standard during the period from January 1, 2015 until the date of the Board's decision on the application.

SEC believes that the Board should not declare rates interim at this time.

The Board's normal practice has been to declare rates interim without evidence or submissions in pretty well all cases where it is requested. The purpose is to preserve the Board's options when a decision later has to deal with the issue of effective date. All recent orders to declare



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rates interim have been very specific that the Board is not, in so doing, limiting its discretion in making a future decision on the effective date of new rates.

The Board will be aware that, in the recent OPG case, EB-2013-0321, OPG made the somewhat startling argument that the Board is legally prohibited from establishing an effective date later than the first day of the sought test period, in that case January 1, 2014. The argument made was that, having determined a reasonable revenue requirement for a period, in that case 2014, the Board was then required by the Fair Return Standard to set rates for that period on the basis of that revenue requirement.

The Board rejected that argument in the OPG case, and SEC agrees with that conclusion. However, SEC remains concerned that utilities will seek to convince the Board, or a court in an appeal or judicial review, that the Fair Return Standard would require backdating of rate orders, at least where rates have been declared interim.

To avoid the potential for this problem to arise, SEC asks that the Board require Oshawa – or anyone else seeking interim rates – to provide reasons why new rates should be effective at that interim date. Intervenors and Board Staff should also be given the opportunity to make submissions on that issue. Then, the Board should only declare rates interim if it determines that there is a reasonable argument for backdating of rates. That is, the Board would not make a final determination as to effective date, since it is not seized with the rate application and does not have an evidentiary basis for that determination. However, the Board would exercise its power to declare rates interim in a more limited class of cases, in which there is a reasonable possibility that the Board will later conclude backdating of rates is appropriate. That possibility would, in essence, be considered a threshold issue for orders declaring rates interim.

SEC therefore submits that the request from Oshawa should be denied, but that they should be given the opportunity to file submissions showing that they will have a reasonable case for backdating of their rates. SEC would also ask for the opportunity to file responding submissions on that issue.

All of which is respectfully submitted.

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

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Phil Martin, OPUCN (email)  
Ian Mondrow, Gowlings (email)  
Interested Parties