



By EMAIL and RESS

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February 18, 2021  
Our File: EB20200041

Ontario Energy Board  
2300 Yonge Street  
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Toronto, Ontario  
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**Attn: Christine Long, Registrar**

Dear Ms. Long:

**Re: EB-2020-0041 – Newmarket 2021 Rates – SEC Final Argument**

We are counsel to the School Energy Coalition (“SEC”). Further to PO #1 in this proceeding, these are SEC’s submissions. We note that, because we are filing later in the day, we have (essentially by accident) had the benefit of reviewing the OEB Staff submissions. This has saved us considerable time, as noted below.

After a review of the OEB Staff submission, SEC is in agreement with OEB Staff with respect to all of the issues we have reviewed.

Specifically, SEC notes as follows:

1. **Group 1 Disposition.** No submissions.
2. **LRAMVA.** No submissions.
3. **ICM – 2015 Holland TS Five Year True-up.** SEC agrees with OEB Staff that this does not qualify for ICM treatment under the Board’s rules, and there are no extenuating circumstances that should cause the Board to make an exception in this case. It would appear to us that:
  - a. The capital expenditure did not qualify for ICM treatment at the time it was made,

- because the Applicant had voluntarily selected the Annual IR ratesetting method, which did not include access to the ICM. This is not an artifact of the OEB's policies at the time. It was a conscious choice by the Applicant, knowing that Annual IR brought with it both advantages and disadvantages. The fact that subsequently the Applicant entered into a merger didn't change that. The Board's MAADs policy is not intended to allow merging companies to reach back as far as they want to make ICM claims for prior periods.
- b. There is a concern that allowing the ICM claim today would effectively be retroactive ratemaking. In the same way as it is not acceptable to go back and change final rates for prior years, it is also not acceptable to reach back into prior finalized years for expenses in those years and try to claim recovery in a current year. While the technical aspects of that claim are different, the concept is the same. The costs for 2015 were either covered in final rates for that year, or were reflected in Board-approved deferral and variance accounts at that time. This is neither. It is a 2015 cost that the Applicant seeks to claim in 2021. That is not appropriate.
  - c. In any case, if an ICM claim were allowed in 2021, the 2015 amount would not qualify. As OEB Staff correctly points out, the amount claimable above the threshold is already completely spoken for by the 2021 true up. There is no room left to claim the 2015 true up, and since it is not a capital expenditure in 2021, it does not add to the available 2021 capital on which an ICM can be based.
  - d. The Applicant argues that its financial viability may be compromised if it is not allowed to make this claim. SEC notes that, at the time of the merger application, the Applicant gave no indication that its financial viability was in any way in doubt, and in fact affirmed that it was and would continue to be in solid financial shape. If that has changed, then the Board has procedures available to facilitate a review of the finances of an LDC that has ROE more than 300 basis points below allowed ROE. Those would, however, involve a more complete review than simply an incremental payment to Hydro One made several years ago.
  - e. The Applicant also notes that it is inherently unfair for Newmarket ratepayers to have the benefit of the use of the Holland TS for many years without having to pay for it until rebasing. SEC notes that this lengthy deferral of payment is because the Applicant has for many years deferred rebasing. They cannot complain that they are not able to include costs in rates if they have elected not to have rates set on a cost of service basis. In addition, SEC notes that Newmarket ratepayers have not in fact had any material benefit from the Holland TS, and may never have any benefit. As seen in Fig. 4.1 of ICM Appendix A (also included at p. 21 of the OEB Staff Submissions), the Newmarket load on the Holland TS has been negligible to date, and it is likely to continue to be low well into the future. The Newmarket ratepayers will not even get their money's worth out of the ten year true-up payment, let alone the five year true-up.

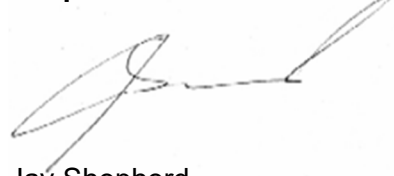
- 4. ICM Claim – 2021 Holland TS Ten Year True-up.** SEC agrees with OEB Staff that this claim does qualify for ICM treatment, and the calculations as adjusted are correct. SEC notes that the DSP that grounds the base capital shows substantial increases in spending, and that will have to be reviewed by the Board at some point, likely before the fifteen year true-up claim, although this proceeding may not be the most opportune time to do that. SEC believes that the Applicant should be considering how to pace capital spending in the future, given the expected additional Holland TS payment required in 2025/6.
- 5. Account 1576 Clearance and Base Rate Adjustment.** SEC agrees with OEB Staff that the adjusted amount of the final 1576 clearance is correct. As directed by the Board, the Applicant has also sought to adjust base rates to reflect the lower depreciation but higher cost of capital arising out of the accounting changes. SEC agrees with OEB Staff that this is effectively a type of issue-limited rebasing, and so the cost of capital and the working capital allowance should be those applicable to the current rate year. SEC notes that, if return on rate base is being adjusted in this way, it is at least arguable that the full impact of the shift from 15% to 7.5% for the WCA should be implemented, i.e. the impact on all expenditures and cost of power. However, we also recognize that estimating the revenue requirement already included in rates at the 15% level is, given the passage of time, very difficult, so limiting the WCA impact as OEB Staff has done is reasonable.

SEC notes that being able to review the comprehensive analysis of OEB Staff in this proceeding prior to completing our own submissions was of considerable assistance.

All of which is respectfully submitted.

Yours very truly,

**Shepherd Rubenstein Professional Corporation**



Jay Shepherd

cc: Wayne McNally, SEC (by email)  
Interested Parties (by email)