



By EMAIL and RESS

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Our File: 2022-0028

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0028 – EPCOR 2023 Rates – Issues List

We are counsel for the School Energy Coalition (“SEC”). We are in receipt of the Applicant’s surprising letter of today’s date, and in this letter provide our responding submissions.

The Applicant, which is asking the OEB to approve a 14.7% weighted average rate increase for the customers of this LDC, has proposed that the OEB cannot and should not go back and look at what the Applicant said they were going to do in EB-2017-0373/4, and compare it to what the Applicant has actually done, and is now proposing in this rate application.

To support this strange position, the Applicant is hanging its hat on the following statement in the OEB’s decision in EB-2017-0373/4¹:

“The OEB will not require EPCOR to file evidence to demonstrate how the efficiencies expected from the transaction have produced savings in its first Cost of Service Application.”

EPCOR would like the OEB to read this as saying *“Whatever the Applicant has said in this MAADs proceeding that they would do in the future will be presumed to be out of scope for future rate applications.”*

That is not what the OEB actually said. The OEB’s decision is more correctly interpreted as *“Parties have asked us to order the production of specific evidence in a future proceeding. We will not do that. We will leave that to be determined by the OEB panel in that future proceeding.”*

This is made clear by the words that follow those quoted by the Applicant from that Decision:

¹ EB-2017-0373/4, Decision with Reasons, p. 11.

“The evidence of projected savings in this application support a finding that there is a reasonable expectation that customers will not be harmed in the immediate and long term. The evidence filed in this application will be available to interested parties in a future cost of service application if it is relevant to the rates proposed at that time.”

In short, the OEB in that case was “staying in their lane”, making the specific decision necessary for the relief sought from them, and leaving future rates to a future OEB panel.

The Applicant, in today’s letter, also goes on to seek an order from this OEB panel that what EPCOR said they were going to do in the past is not relevant to the rates they want today².

At a high level, that is already very unusual. It is a regular feature of proceedings before the OEB that, where utilities say they will do something, they are later asked whether they in fact did what they promised. They may have reasons why what actually happened was different, but we cannot recall a utility saying that they cannot even be asked about their previous commitments, forecasts, or promises. Aside from whether it is legally possible for the OEB *prima facie* to restrict the scope of its rate inquiry in that way, it is just not the OEB’s practice to turn a blind eye to things like that.

We can provide dozens of examples where that principle arises in this proceeding, but probably one is sufficient. The Applicant provided their forecast OM&A and capital in EB-2017-0373/4 as follows³:

Table 3: Year over year comparative cost structure (\$ thousands)

\$000's CAD						
	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6
	2019	2020	2021	2022	2023	2024
OM&A						
Status Quo Forecast	5,331	5,425	5,520	5,616	5,752	5,814
EPCOR Forecast*	<u>5,872</u>	<u>5,191</u>	<u>5,110</u>	<u>5,189</u>	<u>5,306</u>	<u>5,350</u>
Projected Savings	-541	234	409	427	446	464
Capital						
Status Quo Forecast**	3,256	3,312	3,303	3,246	3,303	3,361
EPCOR Forecast	<u>3,256</u>	<u>3,312</u>	<u>3,303</u>	<u>3,246</u>	<u>3,303</u>	<u>3,361</u>
Projected Savings	0	0	0	0	0	0

* includes transaction and integration costs in 2019 only

** CollusLDC Distribution System Plan 2017 – 2022. Years 5 and 6 of the forecast is prior year plus 1.75% inflation

This was in fact cited by the OEB in its Decision⁴ as the basis for its conclusion that the “no harm” test was met with respect to price and cost structures.

² Indeed, they appear to be suggesting that the OEB ignore section 2.1.9 of the CoS Filing Requirements, which requires precisely this review as part of the first rebasing following a consolidation. EPCOR appears to be taking the view that, because this was not a merger of two existing LDCs, but rather an acquisition of an Ontario utility by an Alberta utility, it is not technically a “consolidation” so the Filing Requirements do not apply.

³ EB-2017-0373/4, Application p. 30.

⁴ At p. 10.

In this Application, by contrast, the Applicant is seeking \$6.530 million in OM&A⁵, rather than the \$5.306 million forecast, an increase of 23.0%. The Applicant is also seeking \$4.296 million of capital additions, rather than the \$3.361 million forecast, an increase of 27.8%. Based on those higher amounts than both forecast and status quo, it would appear that the “no harm” test was not in fact met. But, says the Applicant, their customers, and the OEB, cannot ask what changed?

This is exacerbated by the fact that the 23.0% OM&A increase appears to be the result of the Applicant’s parent company offloading significant non-incremental administrative costs from their Edmonton head office into the rates of Ontario LDC customers. Administrative and General OM&A, in fact, increased 61.5% right after the completion of the MAADs transaction (i.e. from 2018 to 2019⁶), and has continued at that higher pace up to and including the Test Year. Forecast A&G for the Test Year is almost double the pre-acquisition A&G.

This is in marked contrast to the EB-2017-0373/4 Application, in which EPCOR said of the forecast OM&A savings⁷:

“These permanent savings can be broadly categorized as efficiencies generated through the sharing of administrative and leadership functions. EPCOR has no plans to lay off any staff.”

The Applicant appears to be taking the position that their Collingwood customers cannot ask why, instead of administrative costs going down, they went way up.

On the capital side, the proposal to spend 27.8% more than was in the Distribution System Plan, and was forecast by the Applicant in the MAADs Application, is on top of capital additions for the period 2019 to 2022 being \$16.680 million, when they were forecast to be \$13.117 million. Thus, the Applicant proposes that the opening rate base for Collingwood ratepayers will be 27.2% higher than both status quo forecast and EPCOR forecast, and then 2023 bumps that up still further.

But, they say, the fact that they want a significantly higher rate base, and they want to continue to keep inflating it further, cannot be reviewed by the OEB with reference to what the Applicant said, in 2018, they would do.

This one comparison of the top-level forecasts for both OM&A and Capital is only one example of the ways in which what EPCOR is actually doing and planning to do, is not even remotely similar to what they told the OEB they were going to do.

The best that can be said of the past actions of the Applicant is that they presented the OEB with incredibly bad forecasts.

SEC submits that, when a utility tells the OEB that they are going to do something, and what they do in fact is different, the OEB, and the utility’s customers, are entitled to ask why that happened. This is true not just because exploring the differences between what was promised and what took place is instructive about how the utility is being operated. It is also true because the Test Year numbers on which EPCOR seeks to base their new rates, with a 14.7% rate increase, are also a forecast. If the 2018 forecasts were that bad, why would the OEB believe these new, 2022 forecasts?

SEC therefore submits that questions about the differences between what the Applicant forecast in 2018 and what they did since then, and are planning to do in the future, are relevant to just and reasonable rates for the Test Year, and should be included either expressly or by implication on the Issues List.

⁵ Ex. 4/1/1, p. 2.

⁶ Ex. 4/1/1, p. 3.

⁷ EB-2017-0373/4, Application p. 36.



All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a faint, light-colored background.

Jay Shepherd

cc: Brian McKay, SEC (by email)
Interested Parties (by email)