



BY EMAIL and RESS

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2300 Yonge Street
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May 9, 2023
Our File: EB20230098

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2023-0098 – OPG Bill 124 Accounting Order – Request For Further IR Responses

We are counsel to the School Energy Coalition (“SEC”). SEC writes on its own behalf, as well as that of the Canadian Manufacturers and Exporters (“CME”), to request that Ontario Power Generation Inc. (“OPG”) be required to provide further and adequate responses to certain interrogatories.¹ Due to the limited time before intervenor submissions are required to be filed, SEC and CME are making this request by way of this letter as opposed to a formal notice of motion.

Timing of OPG’s Knowledge of the Legal Challenge to Bill 124

Both SEC and CME asked specific questions regarding the timing of OPG’s knowledge of the legal challenge to Bill 124. OPG provided a single response, which was vague and not responsive to the questions posed. SEC Interrogatory #2a asked OPG the date on which it “first became aware of the legal challenge to Bill 124; i) generally, and ii) specifically the challenges brought by each of the Power Workers Union (“PWU”) and the Society of United Professionals (“Society”).” CME Interrogatory #1b asked OPG to confirm that it was “aware of the constitutional challenges launched by labour organizations against Bill 124 prior to the settlement conference in EB-2020-0290.” In response the company simply answered that “OPG would have first become aware of legal challenges to Bill 124 after the corresponding Notices of Application were filed.”²

The response does not actually answer the questions posed by the two interrogatories, which at their core are seeking information regarding the *specific* date OPG became aware of the legal challenge to Bill 124. OPG’s response that it became aware after the Notice of Application tells the parties very

¹ SEC Interrogatory #2a, CME Interrogatory #1b, SEC Interrogatory #8, CME Interrogatory #2, OEB Staff Interrogatory #4

² The response to CME Interrogatory #1b refers parties to SEC Interrogatory #2a.



little about the timing of its knowledge.³ This issue is of critical importance considering OPG acknowledges it made no reference to the challenge of Bill 124 in any of its evidence in EB-2020-0290.⁴

2022 Actual ROE

Each of SEC, CME and OEB Staff asked interrogatories seeking specific information regarding OPG's 2022 return on equity ("ROE") (SEC Interrogatory #8, CME Interrogatory #2, OEB Staff Interrogatory #4). OPG has refused to provide the information on the basis of relevance. In OPG's view, the requested information is not part of the test for establishment of a deferral or variance account.⁵

OPG has applied to the OEB seeking approval to establish an account to record, and eventually recover additional costs from ratepayers, over and above those approved in its most recent payment amounts application. These amounts cover the same time period and for a type of cost that is included in existing rates. This is a unique situation. Understanding the degree to which the company needs incremental funding is a relevant issue for parties to explore. While the OEB may ultimately agree with OPG, at this stage of the proceeding, it cannot reasonably be said to be irrelevant. We note that in Z-Factor context, which this application most closely resembles, the OEB explicitly requires the filing of information regarding a utility's most recent actual ROE.⁶

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Scott Pollock, Counsel to CME (by email)
Brian McKay, SEC (by email)
Applicant and intervenors (by email)

³ It is not even clear which Notices of Application OPG is referencing. Is it those filed by the PWU and the Society, or those filed by other labour unions/organizations? (See the preamble to CME Interrogatory #1 which provides various press releases regarding other legal challenges filed.)

⁴ SEC Interrogatory #3

⁵ The response to SEC Interrogatory #8 and CME Interrogatory #2 refers parties to OEB Staff Interrogatory #4

⁶ See [Filing Requirements For Electricity Distribution Rate Applications - 2022 Edition for 2023 Rate Applications, Chapter 3](#), p.22