Shepherd Rubenstein

By EMAIL and RESS

Jay Shepherd
jay@shepherdrubenstein.com
Dir. 416-804-2767

January 10, 2025
Our File: EB-2024-0039

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

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0039 – Lakeland Issues List

We are counsel for the School Energy Coalition (SEC). As directed by the Commissioners through OEB Staff, this letter constitutes SEC's submissions on the contested issue. Attached to this letter are the interrogatories from SEC, which have been prepared and filed early to assist the OEB and parties in considering the scope of the issues in this proceeding.

Background

The Applicant advises that, while the regulated utility has only 22 employees, there are another 75 employees of the corporate group in respect of which the utility "has access" to "lend support and expertise"[1].

In effect, Administrative and General expenses are incurred within the unregulated parent company or affiliates, and then charged to the utility. That includes, for the Test Year, $453,168 of Shared Services[2] and $1,080,775 of Corporate Cost Allocations[3], which in both cases appear to be only the OM&A component. That total of $1,533,943 appears to be 23% of Test Year OM&A, and 60% of A&G expenses. The Financial Statements note that all or virtually all of the allocations within the corporate group are assigned by the utility to A&G.

[1] Exhibit 1, p. 42.
[2] Exhibit 4, p. 61.
[3] Ibid.

We note that the board of directors, executive and management costs, IT, Finance, HR, Payroll, internet, telephone (incl. telephone system), office expenses, audit, legal, and training are all excluded from the utility's books and records. Even the GIS, building maintenance, and the hot water tank rental are intercompany charges.

Many of these charges are said to be market based (more than $450,000), but the Applicant has not filed an independent review of the market prices. The bulk of the others are based on timesheets (about $840,000), but of course parties my have difficulty asking to see the timesheets because of privacy concerns.

It also appears that, in some cases, the Applicant supplies its staff and services to affiliates or the parent to do the work for the unregulated clients. SEC has no details on that.

The context of this is that the Applicant underspent its budget in its last Test Year (2019), and then overearned substantially in the interim period, but now wants a material rate increase.

We also note that this utility, whose management, finance and regulatory are entirely outside of the regulated entity, also seeks in this Application authority to correct a number of past errors in amounts billed to customers.

<u>Scope of Issue</u>

SEC has proposed the following expanded scope issue relating to intercompany transactions:

> *"Are the charges and allocations from the Applicant to affiliates, and the charges and allocations from affiliates to the Applicant, appropriate in light of the relative size, complexity, and needs of the Applicant and each of its affiliates? Further, are any revenues or other payments from third parties appropriately allocated between the Applicant and its affiliates?"*

Notwithstanding the utility's heavy reliance on parent and affiliates, which SEC understands is intended to reduce costs borne by the utility and therefore the ratepayers, counsel for the Applicant has advised that they object to the clarification of scope contained in the issue proposed by SEC. The objection appears to be on the grounds of a) materiality, and b) an expectation that SEC will engage in an extensive review of the business activities of unregulated affiliates.

The first objection is clearly incorrect, given the absolute numbers. 60% of A&G is hardly immaterial.

On the second objection, SEC has filed its interrogatories early in order to demonstrate that SEC's focus is on the utility, and therefore the ratepayers, bearing appropriate costs, and no more. We are not interested in the other businesses, except as context for the charges to the utility. We are also hopeful that dealing with scope early in the proceeding will limit any future IR refusals and subsequent procedural wrangling.

Unfortunately, due to the compressed time frames, and the other proceedings currently before the OEB, counsel for the Applicant was unable to advise us to which, if any, of the SEC interrogatories they would object. We are not being critical. The lead time was limited.

It appears to SEC that the Applicant may object to responding to all or part of the following interrogatories:

SEC-1, b and c
SEC-3
SEC-9
SEC-10
SEC-11
SEC-12
SEC-17
SEC-21
SEC-25
SEC-26
SEC-27
SEC-29
SEC-30
SEC-33

While we are hopeful that the objections will be fewer, and that any concerns with competitive businesses can be addressed through the confidentiality rules of the OEB, we are including the whole list so that the Commissioners can assess whether any of the proposed interrogatories should be considered out of scope.

On a broader level, SEC is concerned that, without seeing the context of the corporate group, the OEB will not be in a position to determine whether charges from unregulated companies to the utility are reasonable and appropriate.

For example, if the "IT support and cybersecurity" services provided by the parent to the utility are a small part of the parent's IT support/cybersecurity business, the other customers may demonstrate a market. Conversely, if the parent's revenue from that business is dominated by the $331K to be paid by the utility, the OEB may have concern with whether a market price has indeed been shown.

The same may be true when allocation is based on another factor. If the utility revenues are 10% of the corporate group's revenues, but 90% of the cost of executive and management services are allocated to the utility, further investigation (of the timesheets, for example) may be required.

We also note that information on revenue allocation is also relevant. If an affiliate uses utility resources, and marks them up substantially when charging third parties, the amounts paid to the utility for those resources have to be tested for reasonableness.

None of the things we are seeking in this discovery are novel. They have been provided by many other utilities in the past, of which perhaps the most notable is the extensive investigation of intercompany charges by Enbridge more than a decade ago. This is a much smaller utility, and likely does not require that level of in-depth documentation. However, the best way to determine that is to get the higher level information SEC is requesting, and is contemplated by the expanded proposed issue.

Conclusion

SEC therefore asks that the issue proposed by SEC be added to the issues list.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

Jay Shepherd

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

EB-2024-0039

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule. B);

AND IN THE MATTER OF an Application by Lakeland Power Distribution Ltd. under Section 78 of the OEB Act to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of May 1, 2025

INTERROGATORIES ON BEHALF OF THE

SCHOOL ENERGY COALITION ("SEC")

SEC-1
[Exhibit 1, p. 12 and Appendix E] With respect to the Strategic Plans:

a. Please confirm that Strategic Plans are prepared for five year periods, as set forth in Appendix E, rather than three years as set forth on page 12. If not confirmed, please explain.
b. Please provide the Strategic Plans for the periods commencing 2019 and 2022, as well as 2024 if available.
c. Please confirm that Appendix E is the entire Strategic Plan, rather than excerpts related to the regulated utility. If not confirmed, please provide the entire Strategic Plan.

SEC-2
[Ex. 1, p. 25-6] Please confirm that no capital expenditure costs relating to renewable energy/connections/expansions, smart grid, and/or regional planning initiatives are currently known or anticipated. If any are known or anticipated, please provide details.

SEC-3
[Ex. 1, p. 40-3 and Ex. 4, p. 15] Please provide an Org. chart showing all positions within the corporate group that provide services related to the regulated utility (whether the 22 employed directly by the utility or the 75 others employed within the corporate group), and indicating for each position:

a. The legal employer of the individual.
b. The percentage of the individual's full costs (direct and indirect remuneration and benefits, overheads, and any other costs) expected to be borne in the Test Year by each of the companies in the corporate group.

SEC-4
[Ex. 1, p. 45] Please provide specifics as to the aspects of "the Cost Allocation and Demand Profile methodology" that the Applicant is asking the OEB to approve.

SEC-5
[Ex. 1, p. 55-6] With respect to the new customer portal:

a. Please confirm that the portal will be integrated with the Green Button program.
b. Please describe the extent, if any, to which the Applicant is leveraging its relationship with the CHEC Group to reduce the cost and/or increase the functionality of the portal.
c. Please provide details as to which customer classes will be able to use the functionality of the customer portal.

SEC-6
[Ex. 1, p.72 and Ex.4, p. 6] Please provide the total cost per customer for each of the years 2019-2023 (actual) and 2024-2025 (forecast).

SEC-7
[Ex. 1, p. 75] Please provide an estimate of the average unit cost of Stations CAPEX for each of 2023, 2024, 2025, and 2026.

SEC-8
[Ex. 1, p. 76] Please confirm that all Billing O&M costs are incurred within the affiliated companies and charged to the utility through shared services allocations. If not confirmed, please provide a breakdown of the Billing O&M costs directly incurred by the utility as compared to those incurred by affiliates and charged to the utility.

SEC-9
[Ex. 1, p. 88] With respect to the financial statements, please provide:

a. The 2024 audited financial statements, as soon as they are available.
b. The 2022, 2023, and 2024 consolidated financial statements for the parent company, together with any Annual Reports for those years by the parent company.

SEC-10
[Ex. 1, App. E, p. 10] Please describe how Board Members, Senior Executives, and Senior Managers "bear the risk of ownership just as our shareholders do" .

SEC-11
[Ex. 1, App. E, p. 11] Please provide a copy of the "comprehensive stakeholder/influencer analysis".

SEC-12
[Ex. 1, App. E, p. 15] Please provide a copy of the new "Human Resource Strategy".

SEC-13
[Ex. 2, p. 38] Please provide the original plan to "upgrade the service to 27.6kV", any current modified version of that plan, and a summary by year of progress to date.

SEC-14
[Ex. 2, p. 38] Please provide the most current version of the "long-term plan to upgrade its software against cyberattacks".

SEC-15
[Ex. 3, p. 8 & 20] Please explain why the GS>50 kW forecast for the Test Year is lower than all of the six preceding years' actuals, while the kWh forecast for the Test Year is higher than four of the six preceding years' actuals.

SEC-16
[Ex. 4,p. 6] Please provide a list of the “peer” utilities referred to. Please provide the most recent internal comparison of costs as against those peers.

SEC-17
[Ex. 4, p. 7-8] Please provide a copy of Table 2 with the names of all individuals listed that are directly employed by the utility (as opposed to affiliates) highlighted.

SEC-18
[Ex. 4, p. 8] Please reconcile the 2024 and 2025 controllable costs per customer of $339 and $346 with the information filed on Appendix 2-L (i.e. $355 and $372 respectively).

SEC-19
[Ex. 4, p. 9] Please provide the most recent “monthly Actual to Budget Review”.

SEC-20
[Ex. 4, p. 11] Please restate Table 3 as a comparison of 2025 to 2019 Actuals. Please confirm that the CAGR from actuals is 5.5%. Please calculate the CAGR for each of the five categories from 2019 actuals to 2025 Test Year.

SEC-21
[Ex. 4, p. 18] Please explain why costs allocated by affiliates to “fill resource gaps” produced an overall increase in OM&A as compared to Board-approved costs.

SEC-22
[Ex. 4, p. 20] Please provide details of any “data analytics and reporting capabilities” that have been implemented to date relative to the SCADA system.

SEC-23
[Ex. 4, p. 23] Please explain why the Applicant was able to absorb increases in locates costs since 2021 while still earning well in excess of the Board-approved ROE each year, but is now unable to do so without a rate increase in 2025.

SEC-24
[Ex. 4, p. 24] Please confirm that OM&A per customer has increased 30.5% from 2019 actuals, a CAGR of 4.54%.

SEC-25
[Ex. 4, p. 27] Please provide a detailed breakdown of “Miscellaneous Expenses”, which are more than half of A&G expenses, for the Test Year and each of the prior years being reported.

SEC-26
[Ex. 4, p. 31-35] An increase in shared services costs appears to be a driver of cost variances for each of the years 2022-2025. Please provide a comprehensive table of costs for each of those years that shows

a. The full amount of each cost incurred by an affiliate any part of which was allocated to the utility;
b. The allocation of that cost between affiliates, showing both the amount allocated to the utility and the amount allocated to each other company within the corporate group,
c. The basis for the allocation, including any allocation formula or algorithm, and detailed calculations of the amount allocated to the affiliate,

d. Any market value comparisons or other documentation showing the value of the services to the utility, and
e. A cross-reference to the dollar figure in Appendix 2-N that includes the allocation to or from the utility.

If the Applicant has received any independent third party review of its allocations and/or allocation methodology, please also provide a copy of that review.

SEC-27
[Ex. 4, p. 46-7] Please restate Tables 16 and 17 to include partial FTEs for all employees of affiliates that provide services to the utility for which the utility receives a cost allocation, and the cost of those partial FTEs to the utility.

SEC-28
[Ex. 5, p. 12] Please confirm that the overearning in Table 5 is primarily the result of billing determinants and therefore revenues being higher than 2019 Board approved.

SEC-29
[Ex. 5, App. A] Please confirm that none of the facilities are for use by the holding company, and all of the facilities are solely for use by the utility.

SEC-30
[Ex. 5, App. A, p. 10, 11] Please provide the most recent reports to the lender under "Reporting Covenants" for each of 1), 2) and 3), and under "Financial Covenants" for each of 1) and 2).

SEC-31
[Ex. 6, p. 19] Please recalculate the taxable capital excluding the building that is shared between the Applicant and its affiliates.

SEC-32
[Ex. 6, p. 23 and Ex. 9, p. 32] Please calculate the amount of Accelerated CCA expected to be foregone in each of 2024, 2025 and 2026.

SEC-33
[Ex. 6, App. 2-H] Please explain why accounts 4375 and 4380 are zero for 2024 and 2025. Please advise where the costs associated with those non-rate-regulated activities are included in the OM&A for those years. Please advise the actual amounts in 4375 and 4380 for 2024.

SEC-34
[Ex. 7, p. 23] Please provide details of the primary reasons why, with a decreasing number of customers, the costs allocated to GS>50 increased by 67.9%, while the overall costs to be allocated increased by 36.8%.

SEC-35
[Ex. 8, p. 27] Please confirm that one of the reasons for the plan to upgrade feeders to 27.6kV was to reduce loss factors. Please provide the original forecast or forecasts of loss factor improvements as a result of that upgrade program, and compare that forecast to actuals for each year in which data is available.

SEC-36

[Ex. 9, p. 15 et. seq.] With respect to the billing errors described in this exhibit:

a. Please provide copies of all final rate orders that include the erroneous amounts.

b. Please provide a table showing the incremental amounts the Applicant asks to be charged or credited to GS>50 customers in respect of each of the billing errors, both on an aggregate basis and on a per billing determinant basis.

c. For any impact of those billing errors for which the Applicant is not seeking disposition at this time, please identify the amount, by rate class, and the expected future handling of that part of the error.

Respectfully submitted on behalf of SEC this 7th day of January, 2025.

____

Jay Shepherd
Counsel for SEC