



January 31, 2025

Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto ON
M4P 1E4

Dear Ms. Marconi,

RE: EB-2024-0038 Lakefront Utilities Inc. – Argument Submission of CCMBC

Attached is the argument submission of the Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC) in the EB-2024-0038 Lakefront Utilities proceeding.

Respectfully submitted on behalf of CCMBC.

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Catherine Swift (CCMBC)
Parties to the Proceeding

Lakefront Utilities Inc. Application for Rates Effective January 1, 2025

**Argument Submission of
The Coalition of Concerned Manufacturers and Businesses of Canada**

Introduction

Lakefront Utilities Inc. (LUI, Lakefront) filed on September 6th, 2024 its application for electricity distribution rates effective January 1, 2025. Lakefront is using the Price Cap Incentive Rate-Setting (Price Cap IR) option to adjust its fixed and volumetric 2025 rates. The Price Cap IR methodology provides an adjustment to distribution rates and charges between Cost of Service applications.

As part of its application, Lakefront is seeking Incremental Capital Module (ICM) funding for 2025 and 2026, based on actual 2023 expenditures for a transformer station (variously referred to in the evidence as Victoria Street Transformer Station or Transformer Station on Ontario Street or MS28-3 Substation), to cover capital costs and the associated annual revenue requirement claiming that this request is driven by the unexpected nature of the project, which arose due to unforeseen residential developments.

If the load forecast of incremental revenues from a residential development is inadequate to cover the owning and operating cost of a new facility such as a transformer substation required to serve it, the OEB Distribution System Code (DSC) allows electricity distributors to ask that the developer to pay a contribution-in-aid-of-construction (CIAC) to cover the shortfall. This is normally done prior to the construction of the new substation. The distributor starts construction of the new substation after the developer has agreed to pay the required CIAC. The developer can recover the cost of the CIAC in the sales price of the homes. Even though the need for the MS28-3 Substation was caused by residential developments, Lakefront decided not to ask developers for CIAC prior to construction of the substation. After the station was built it decided to seek approval from the OEB to charge its existing customers to pay for the revenue shortfall using the ICM funding mechanism.

The Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC) intervened in the proceeding because some of its members are commercial and small industrial customers of Lakefront. The rates they pay in 2025 and 2026 would be impacted by the application by Lakefront Utilities for the recovery of the MS28-3 Substation costs through the ICM funding mechanism.

CCMBC will only deal with the ICM application in its argument submission and leave other issues to OEB Staff and VECC.

ICM Request

Lakefront is requesting that the OEB retroactively approve ICM funding for 2025 and 2026 of a 27.6 kV substation (the MS28-3 Substation project), with a total capital expenditure of \$2,535,311. The substation was built in 2023 and is now in operation. The funding would be paid by ratepayers in Coburg and surrounding area served by Lakefront.

Lakefront acknowledged that ICM funding is always requested prior to the construction of a project which Lakefront did not do.¹

At the time Lakefront developed its 2022-2026 Distribution System Plan and presented it during the 2022 Cost of Service proceeding, did not anticipate needing the MS28-3 Substation within the five-year Incentive Regulation Mechanism period, and thus did not request OEB approval of an Advanced Capital Module. Lakefront claims that the necessity to construct and commission the substation by the end of 2023 became apparent later due to emerging technical management challenges and significant system concerns in 2022 that escalated the urgency of this investment.

Lakefront claims that the sudden need that the MS28-3 Substation be in service by the end of 2023 was driven by unforeseen residential developments, which were influenced by the Provincial Government's incentives to encourage faster home construction, and Cobourg has experienced an increase in housing developments because of these incentives.

To mitigate the financial impact on its existing customers Lakefront considered seeking capital contributions for the project from housing developers as permitted by the Distribution System Code (DSC) but decided against it. Its reasons can be seen in the following quote.²

“Lakefront deliberated on invoking cost-sharing with residential developers, as directed in the Distribution System Code (DSC), to mitigate the financial impact on our existing customers. However, we are persuaded that recent events, including the Ontario government's intervention in overturning an OEB directive regarding Enbridge's economic evaluation for rural expansion, may override this requirement. Hence, in this application, we are proposing full recovery of the substation costs from our entire customer base. We seek OEB guidance and direction on this matter to ensure compliance and equitable cost distribution.”

¹ Page 47

² Pages 54-55

CCMBC Submission

Lakefront is applying for OEB retroactive approval for ICM funding of its MS28-3 Substation which was completed in 2023. The application was filed in September 2024. CCMBC is not aware of the OEB ever issuing a retroactive ICM funding approval in the past. Lakefront confirms this in its evidence.³

“LUI acknowledges that typically, Incremental Capital Module (ICM) funding is requested prior to the construction of a project.”

The DSC outlines the conditions under which distributors may obtain contributions from developers to support system enhancement projects. Specifically, Section 3.2 of the DSC requires that when a distributor plans an expansion of its main distribution system, developers must make a capital contribution if the cost of the expansion and ongoing maintenance exceeds the projected incremental distribution revenue. It appears that Lakefront never calculated a contribution that the developers would have to pay.⁴ Lakefront management made the decision not to charge a contribution without knowing if a contribution could or should be charged. Lakefront provided an estimate of potential contributions based on current information in response to two interrogatories⁵ but that was long after the decision not to charge contributions was reached.

Lakefront claims that its decision not to charge housing developers for a contribution was based on three Ontario Government actions which occurred after the MS28-3 Substation was built. The sequence of events can be seen from Lakefront’s response to an interrogatory.⁶

“Additionally in November 2023, the Minister of Energy issued a Letter of Direction to the OEB, emphasizing the importance of aligning energy infrastructure development with the government’s housing and economic objectives. The letter requested the OEB to review electricity distribution system expansion connection and revenue horizons to ensure an appropriate balance between growth and ratepayer costs.”

Ontario Government’s *“intervention in overturning an OEB directive regarding Enbridge’s economic evaluation for rural expansion,”* was issued on December 22, 2023.⁷

“In 2024, the Ontario government introduced amendments to the Ontario Energy Board Act, 1998, through Bill 165, the Keeping Energy Costs Down Act, 2024. These

³ Page 47

⁴ CCMBC-9

⁵ VECC-13 and Staff-7

⁶ CCMBC-6

⁷ <https://news.ontario.ca/en/statement/1004010/ontario-government-standing-up-for-families-and-businesses>

*amendments empower the government to issue directives to the OEB concerning various matters, including economic evaluations related to system expansions for housing developments. The goal is to ensure that energy infrastructure costs do not hinder growth and that the financial responsibilities are balanced among stakeholders.*⁸

The MS28-3 Substation was completed by the end of 2023. Unless LUI was prescient it could not have known before the work on the station started that the minister of Energy would issue a letter in November 2023, or that Ontario Government would step in and overturn the OEB Enbridge decision in December 2023 or introduce amendments to Bill 165 in 2024. Lakefront decided to not charge a CIAC long before any of these events took place.

Lakefront is asking the OEB to retroactively approve an ICM application, something that it has never done in the past. It has not provided sufficient evidence that it is facing financial difficulties⁹ that would justify why the OEB should depart from its practice for ICM approvals in this case. It claims that housing developments that are the main reason for the MS28-3 Substation project were unforeseen, but the evidence does not support that claim.¹⁰

In summary, it is now clear that Lakefront did not believe that it should ask the developers of new housing developments to pay a CIAC and proceeded to build the MS28-3 substation in 2023. It neglected to perform any economic analysis to see if it would need a CIAC from developers.

In late 2023, Lakefront became aware of Ontario Government initiatives to promote housing developments. It then decided to apply retroactively to the OEB for ICM funding for the MS28-3 substation.

The substation is now in service. The construction of housing developments is under way. Lakefront did not need CIAC funding from developers or ICM funding from ratepayers to build it. It could have applied for ICM funding prior to its construction, or it could have asked developers for CIAC funding but decided not to do either.

When the OEB introduced ICM funding option it clearly stated that it was intended for the funding of new capital investment needs, not the funding of old capital investments for assets already in service. (emphasis added)

“The incremental capital module has been incorporated into the 3rd Generation IR mechanism to address the treatment of new capital investment needs that arise during the IR plan term...”¹¹

⁸ CCMBC-6

⁹ Staff-1

¹⁰ CCMBC-3

¹¹ EB-2007-0673 Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors, September 17, 2008, Appendix B, page IV.

CCMBC believes that should the OEB decide to retroactively approve Lakefront's ICM proposal, it will be setting a precedent for similar retroactive ICM applications for old assets in service by many other distributors that are eligible for ICM funding including Enbridge Gas. CCMBC submits that the OEB should not approve Lakefront's ICM application.