



By EMAIL and Pivotal

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Our File: 20240039

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

Dear Ms. Marconi:

Re: EB-2024-0039 – Lakeland 2025 Rates – SEC Final Argument

We are counsel to the School Energy Coalition (“SEC”). Pursuant to the OEB’s Partial Decision and Order of March 27, 2025, this letter constitutes SEC’s Final Argument on the unsettled issue relating to Account 1595 errors in 2021 and 2022.

The factual background has been summarized in the OEB Staff Submission. It is common ground, we believe, that errors were made by the Applicant in 2021 (underrecovery of \$345,659 from customers) and 2022 (over-recovery of \$50,942 from customers). The Applicant has corrected those errors in Account 1595, and now asserts that there is a residual balance in that account that can be recovered from customers in an upcoming IRM proceeding.

SEC takes no issue with correcting the 2022 over-recovery by refunding it to customers in 2026. The LDC made an error, and the affected customers should be made whole. This appears to be settled policy of the OEB, and rightly so.

Correcting an under-recovery error from 2021 in 2026 or later is a bigger concern. Ratepayers in 2021 believed that the net amounts they paid to this utility were correct. They were calculated by the utility, and ratepayers paid them as required. To get a bill five years later for an error they didn’t make – one made in fact by the utility in calculating their 2021 bills – is unfair.

The Applicant appears to rely on three grounds to seek this after-the-fact recovery.

First is the operation of Account 1595, which has a built-in true-up mechanism by design. The Applicant argues that these amounts represent residual balances in that account, and under the normal rules they have a window starting two years after the applicable recovery periods to dispose of the residual balances.

SEC is concerned with this expansion of the concept of the residual balance. The intent of this true-up is to capture the difference between forecast and actual billing determinants used to recover

Account 1595 amounts. It is not intended to be a *carte blanche* for utilities to make calculation errors and correct them later, without any material consequences.

The logical result of this expansion of Account 1595 is that there is no concept of retroactivity or finality in this account, because it just goes on and on, year after year. If an error is made, it can be corrected at any time, no matter what the impact on the ratepayers. All balances, no matter what the reason, are “residual”.

The second ground relied on by the Applicant is a series of OEB rate cases in which the OEB exercised its discretion to allow recovery of past errors, in part because of the Account 1595 true-up. Those cases include Essex (EB-2017-0039), Guelph (EB-2018-0036), Synergy North (EB-2023-0106), and Newmarket-Tay (EB-2023-0039).

While these cases can all be distinguished on various factual grounds, SEC agrees that there are enough similarities that the current case can be informed by their reasoning.

In these cases, the utility has generally been let off the hook, sometimes with an interest penalty that is immaterial in each case. Ratepayers have routinely been required to pay after the fact for LDC errors. The high water point for ratepayer protection is Newmarket-Tay, in which the recovery was reduced by 12.7%, made up of 8.1% due to disallowed interest, and 4.6% additional disallowance to reflect customer departures (and therefore a specific intergenerational equity issue).

The OEB has so far not exercised its discretion to impose a more significant disallowance. As a result, LDCs are being told that Account 1595 errors have little or no consequences to the utility.

The third ground is that the amounts being charged to customers, if these recoveries are allowed, are still “just and reasonable”, because the customers are paying what they would have paid if the errors had not occurred. This has its roots in the following statement by the OEB in the Essex case:

“The OEB notes that the end result to customers is consistent with the principles of just and reasonable rates as the consequences were the same as if the errors had not been made.”¹

This is perhaps the most concerning of the issues here. If this statement were correct, then the rules supporting finality of rates and limiting retroactive and retrospective regulation would be completely gutted.

It is always true that the consequences of correcting an error are that the ratepayers end up paying what they would have paid, absent the error. That does not make the correction just and reasonable. It is not just and reasonable to pay today for services you received, and paid for, five years ago. It is not just and reasonable to allow utilities to correct errors without any consequences.

The ratepayers – and, it should be pointed out, the regulator that protects them – rely on utilities to follow the rules and calculate rates and riders correctly. They rely on utilities to have internal controls that limit mistakes. They rely on their bills to reflect what they are required to pay for the services they receive.

SEC therefore believes that the OEB should no longer give LDCs a free pass on Account 1595 corrections. Instead, in this case SEC recommends that the Commissioners take the next step after Newmarket-Tay, and disallow a larger portion of the 2021 recovery. Further, SEC recommends that the Commissioners make clear that Account 1595 true-ups are intended for billing determinant variations, not as a safety net for calculation errors.

¹ EB-2017-0039, Decision with Reasons, August 23, 2018, p. 9.



In the circumstances, SEC believes that a 50% disallowance of the 2021 under-recovery correction, over and above the denial of interest recovery, will send the appropriate message to LDCs that Account 1595 errors have consequences.

Finally, SEC believes that the Commissioners should state clearly that the fact that correcting an error puts collections from customers back where they would have been, absent the error, does not make charges to customers just and reasonable. The principles of finality and non-retroactivity are integral parts of the just and reasonable principle.

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 signature line.

Jay Shepherd

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