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**File No. 88175.42**

July 9, 2025

**BY EMAIL & RESS**  
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Mr. Ritchie Murray  
Ontario Energy Board  
2300 Yonge Street, 27th floor  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Mr. Murray,

**Re: Oshawa PUC Networks Inc. (“Oshawa Power”)  
Application for 2026 Distribution Rates (EB-2025-0014) (“Application”)  
Motion for Threshold Question Determination**

On May 20, 2025, the Ontario Energy Board (“OEB”) issued a Completeness Letter for the Application formally acknowledging the Application meets the filing requirements set out by the OEB. This determination was made prior to the unanticipated addition of Issue 7.3.

On June 24, 2025, the OEB issued a decision on the issues list that resulted in the following issue being added to the Standard Issues List for Electricity Distribution Rates:

7.3) Is the plan to seek additional funding for a new operational and administrative building in a subsequent IRM application appropriate?

For the reasons that follow, Oshawa Power is filing this motion under section 8 of the OEB *Rules of Practice and Procedure* requesting that the OEB issue an order to set a process to make a threshold decision on Issue 7.3. Oshawa Power requests that this threshold process run concurrently with the remainder of the issues in the Application and that the motion be heard in writing.

**Need for an Advance Ruling**

While not entirely clear to Oshawa Power, the scope of Issue 7.3 appears to involve a review of the decision by Oshawa Power in section 2.6 of Exhibit 2 of the Application to not propose an ACM application for the new administrative and operational facility. The central determination of the OEB under Issue 7.3 appears to be whether utilities have discretion under section 2.2.7 of the *Chapter 2 Filing Requirements* to propose qualifying ACM capital projects that are expected to come into service

during the IRM term. Interveners are effectively asking the OEB to supersede the utility's discretion and compel Oshawa Power to file an ACM application.

Should the OEB determine that Oshawa Power's plan to seek additional funding for a new operational and administrative building in a subsequent IRM application is not appropriate, Oshawa Power may need to amend the Application to file additional evidence to meet its burden of proof. If this determination is rendered as part of the OEB's final decision and order, Oshawa Power will have been deprived of an opportunity to respond to a novel and unanticipated filing requirement not contemplated in its original Application.

Oshawa Power submits that the OEB's determination on Issue 7.3 is a question of law as to whether utilities have the discretion to determine the timing and method of incremental funding requests, in compliance with applicable OEB policies and procedures. Thus, factual discovery is not necessary for the OEB's determination of this legal issue. Oshawa Power proposes that this letter constitute its submissions on Issue 7.3 and that the OEB set out a process for: (i) submissions from OEB Staff and interveners; and (ii) reply submissions from Oshawa Power.

Accordingly, Oshawa Power submits that Issue 7.3 be determined on a threshold basis in advance of the remaining issues and, ideally, before the settlement conference scheduled on August 18-19. This will allow Oshawa Power to address any new evidentiary gaps, if required. Cost of service applicants require clear guidance on what is expected before the application is filed as the burden of proof resides with an applicant. This is especially important here as the OEB determined in the completeness letter that Oshawa Power's application meets the filing requirements set out by the OEB. An advance ruling may also provide an opportunity for the OEB to clarify the scope of Issue 7.3.

### **Grounds for the Motion**

Oshawa Power submits that it would be a material change to the *Chapter 2 Filing Requirements* and *The Advanced Capital Module Policy*<sup>1</sup> if utilities are required to justify future ICM applications in their cost of service applications. Filing an ACM application or justifying the timing of future ICM applications at rebasing are not currently a prerequisites for ICM eligibility in a future IRM application.

As set out in the "OEB Staff Report – Review and Evaluation of the Incremental Capital Module Policy", ICM applications are to be requested as part of an IRM application and must only satisfy the eligibility criteria of materiality, need and prudence:<sup>2</sup>

The ICM is available for discretionary and non-discretionary projects, as well as for capital projects not included in the distributor's previously filed Distribution System Plan. [...] Under the current policy, ICM funding is to be requested as part of the incentive rate-setting mechanism (IRM) application for the year when the related capital project is forecast to go into service. **To qualify for ICM funding**, a request

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<sup>1</sup> Report of the Board EB-2014-0219, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014.

<sup>2</sup> OEB Decision and Order EB-2022-0024, Elexicon Energy Inc., July 6, 2023, at pg 5; OEB Staff Report, Review and Evaluation of the Incremental Capital Module Policy, April 22, 2025, at pgs 3-4.

must satisfy the eligibility criteria of materiality, need and prudence. [...] [Emphasis added]

As set out in *The Advanced Capital Module Policy*, ICM funding is not limited to extraordinary or unanticipated investments<sup>3</sup> and an ICM application is separate and apart from an ACM application:<sup>4</sup>

The Board will retain an incremental capital module (or “ICM”) for the IR years for projects not included in the DSP filed with the most recent cost of service application, and for projects that were included in the DSP but which did not contain sufficient information at the time of the cost of service application to address need and prudence.

Section 2.2.7 of the *Chapter 2 Filing Requirements* expressly states that it is the “distributor” that “may propose” qualifying ACM capital projects that are expected to come into service during the subsequent IRM term.<sup>5</sup> Taken together, the *Chapter 2 Filing Requirements* and *The Advanced Capital Module Policy* clearly intend for distributors to have the discretion of whether to propose qualifying ACM capital projects in their cost of service application. Moreover, the timing of filing an ICM application is only contingent on the year when the related capital project is forecast to go into service.

This makes good practical sense. It would be procedurally unfair for the OEB to compel distributors to bring applications and submit evidence in respect of matters where the distributors have not yet satisfied themselves that the project is sufficiently advanced to meet the applicable legal criteria. Such applications are bound to fail and waste scarce OEB resources. Indeed, this was the justification provided by Oshawa Power in Exhibit 2 of the Application and is expressly permitted under *The Advanced Capital Module Policy* (cited above):

[...] The total cost for the new building, including the estimated cost of construction, is not being provided in this Application as the design of the facility is ongoing and the construction work has not been tendered, and therefore final costs remain uncertain. Rather than filing an ACM as part of this Application, Oshawa Power intends to file an ICM application for its new operational and administrative facility once costs and in-service timelines are more certain. [...]

Yours truly,

**BORDEN LADNER GERVAIS LLP**



Colm Boyle

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<sup>3</sup> OEB Decision and Order EB-2022-0024, Elexicon Energy Inc., July 6, 2023, at pg 5.

<sup>4</sup> Report of the Board EB-2014-0219, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module

<sup>5</sup> Filing Requirements for Electricity Distribution Rate Applications - 2025 Edition for 2026 Rate Applications, May 7, 2025, at pg 22; OEB 2026 Cost of Service Checklist.