

ONTARIO ENERGY BOARD

FILE NO. EB-2025-0014 Oshawa PUC Networks Inc.

VOLUME: 1

DATE: September 29, 2025

BEFORE: Robert Dodds Presiding Commissioner

 Patrick Moran Commissioner

 Anthony Zlahtic Commissioner

<EB-2025-0123>

THE ONTARIO ENERGY BOARD

Oshawa PUC Networks Inc.

Application for electricity distribution rates

and other charges beginning January 1, 2026

Motion on Hearing held in person and virtually

at 2300 Yonge Street, 25th Floor, Toronto, Ontario

on Monday, September 29, 2025, commencing at 2:02 p.m.

---------------------------------------------------

SEC MOTION

---------------------------------------------------

COMMISSIONER DODDS

COMMISSIONER MORAN

COMMISIONER ZLAHTIC

LAWREN MURRAY Board Counsel

DARRYL SEAL

TOBIAS HOBBINS

ASTRIT SHYTI Board Staff

SHELLY-ANNE CONNELL

JAY SHEPHERD School Energy Coalition (SEC)

JOHN VELLONE Oshawa PUC Networks, Inc. (OPUCN)

TOM LADANYI Coalition of Concerned Manufacturers and Business of Canada (CCMBS)

LAWRIE GLUCK Consumer’s Council of Canada (CCC)

VALERIE BENNETT Oshawa Power

ZOË THORNS Borden Ladner Gervais LLP

MARK GARNER Vulnerable Energy Consumers Coalition (VECC)

SHELLEY GRICE Association of Major Power Consumers Ontario (AMPCO)

DT VOLLMER Distributed Resource Coalition (DRC)

MICHAEL BROPHY Pollution Probe (PP)

ALSO PRESENT:

HASSAN AHMED

[--- On commencing at 2:02 p.m. 1](#_Toc210805078)

[LAND ACKNOWLEDGEMENT: 1](#_Toc210805079)

[PRELIMINARY MATTERS: 1](#_Toc210805080)

[‑‑‑ Recess taken at 3:24 p.m. 49](#_Toc210805081)

[‑‑‑ Resuming at 3:41 p.m. 49](#_Toc210805082)

[‑‑‑ Recessed at 3:53 p.m. 55](#_Toc210805083)

[‑‑‑ On resuming at 4:00 p.m. 55](#_Toc210805084)

[--- Whereupon the proceedings concluded at 4:04 p.m. 58](#_Toc210805085)

[EXHIBIT KM 1.1: DOCUMENT PACKAGE. 5](#_Toc210805097)

Monday, September 29, 2025

--- On commencing at 2:02 p.m.

COMMISSIONER MORAN: Good afternoon, everybody. We are on a motion brought by Schools, seeking better and further disclosure with respect to some interrogatory requests.

I'm going to start with introducing the Panel. I'm Commissioner Moran. I am with Commissioner Zlahtic and Commissioner Dodds.

Ms. Connell, could we have the land acknowledgement, please?

LAND ACKNOWLEDGEMENT:

S. CONNELL: Sure. The Ontario Energy Board acknowledges that our headquarters in Toronto is located on the traditional territory of many nations, including the Mississaugas of the Credit, the Anishinaabe, the Chippewa, the Haudenosaunee and the Wendat peoples.

This area is now home to many diverse nations, Innuit, and Metis peoples. We also acknowledge that Toronto is covered by 13, with the Mississaugas of the credit. We are grateful for the opportunity to gather and work on this land and recognize our shared responsibility to support and be good stewards of it.

Thank you.

PRELIMINARY MATTERS:

COMMISSIONER MORAN: Thank you.

And Board, counsel, Mr. Murray, is there anything you want to say about hearing logistics?

R. MURRAY: Yes. I just wanted to go over three points with people. Parties, when they are not speaking and it's not their turn to speak, to turn off their video and their audio.

And second, I would remind people that the chat function is available, but nothing said in the chat function will be recorded or appear in the transcript of today's hearing.

And third, if a party loses Internet connection while they are speaking, the OEB will pause the hearing. The party can rejoin using their computer or call in using their cellphone or landline. The dial‑in information for the hearing, if necessary, is available. And with that, I will pass things back to Commissioner Moran.

COMMISSIONER MORAN: Thank you, Mr. Murray. And I guess we will take appearances next from everybody else. Mr. Shepherd.

J. SHEPHERD: Good morning. My name is Jay Shepherd and I represent School Energy Coalition.

COMMISSIONER MORAN: Mr. Vellone.

J. VELLONE: Good afternoon, Commissioner Moran. My name is John Vellone, and I represent the Applicant, Oshawa Power. With me this afternoon is my colleague, Zoe Thoms. And I think I saw also so Ms. Valerie Bennett from my client, who is here today.

COMMISSIONER MORAN: Thank you. Mr. Gluck.

L. GLUCK: Good afternoon, Lawrie Gluck on behalf of the Consumers Council of Canada.

COMMISSIONER MORAN: Ms. Thoms.

Z. THOMS: Good afternoon. Zoe Thoms on behalf of the Applicant, Oshawa Power.

COMMISSIONER MORAN: And is there anyone else? And if not, Ms. Grice.

S. GRICE: Good afternoon. Shelley Grice representing the Association of Major Power Consumers in Ontario.

COMMISSIONER MORAN: Thank you.

Mr. Brophy.

M. BROPHY: Good afternoon. I'm Michael Brophy on behalf of Pollution Probe.

COMMISSIONER MORAN: Mr. Ladanyi.

T. LADANYI: Good afternoon. My name is Tom Ladanyi. I'm a consultant representing the concern of Coalition of Concerned Manufactures and Businesses of Canada, CCMBC. We support the motion of the School Energy Commission, but we will not be making any submissions.

COMMISSIONER MORAN: Thank you, Mr. Ladanyi.

Mr. Garner.

M. GARNER: I am Mark Garner representing the Vulnerable Energy Consumers Coalition.

COMMISSIONER MORAN: Thank you.

Mr. Vollmer?

D. VOLLMER: Good afternoon, Commissioners and everybody else. Daniel Vollmer, counsel for the Distributed Resource Coalition.

COMMISSIONER MORAN: Thank you.

Have I missed anybody?

L. MURRAY: Perhaps I will just introduce Board staff. So it's Lawren Murray, Board staff. And with me I have cocounsel Tobias Hobbins and our articling student Hassan Ahmed. And I also have manager of electricity distribution Darryl Seal.

COMMISSIONER MORAN: Thank you, Mr. Murray.

J. SHEPHERD: Before we get started, Mr. Shepherd, I noted in the materials that you sent ahead of time that you might refer to that there's a table that's redacted. Will you be ‑‑ will you need to refer to the unredacted version? And if so, how should we deal with that from a protection of confidentiality?

J. SHEPHERD: Thank you, Commissioner Moran. I deliberately put it in the redacted version, and what I plan to do is not refer to any of these specific numbers, like not on the record, but I will ask the commissioners to look at the confidential version when that comes up.

COMMISSIONER MORAN: All right. Thank you. We have the unredacted version open and available if and when that happens.

And I would just caution anyone else who is going to refer to the table, if you're going to make an actual reference to that table, please, let me know ahead of time so we can go in camera.

Mr. Shepherd, are you ready to proceed?

S. SHEPHERD: I am.

COMMISSIONER MORAN: Please go ahead.

S. SHEPHERD: Thank you. First I should probably, just as a preliminary matter, get an exhibit number for the document package I filed today.

COMMISSIONER MORAN: That will be Exhibit KM 1.1.

EXHIBIT KM 1.1: DOCUMENT PACKAGE.

J. SHEPHERD: Thank you. I hope I won't spend the full 60 minutes I have allotted to me. I will be referring to that document, KM 1.1 to our Motion Record and perhaps to the package of documents that was filed late on Friday by the Applicant.

So, basically, I just want to go through the five interrogatories one by one and explain why we think the information that's been filed is not enough and more is needed to deal with the issues in this case.

I will start with interrogatory 7B, which is about the business transformation plan. And I acknowledge on the record that at 4:42 on Friday we received a package containing two additional documents that we had not seen before, something called a PESTLE, P‑E‑S‑T‑L‑E which anybody who's done strategic planning has had to suffer through, and another thing, a report from Bob Wong who is an IT consultant and also a business transformation person who spent a long time at Toronto Hydro, so some of us know him, and now is a consultant on mostly cybersecurity, but other things as well.

I should note that in the letter filing the stuff on Friday, the Applicant says we amended our request in 7B. I think the correct interpretation is that they misread the question and didn't note that we asked for the initial plan for business transformation, not the final strategic plan.

The reason I bring that up is if you go to the answer to 7A ‑‑ and Appendix A to our motion has all our questions in it, and you can refer to it there.

The answer to question A notes that step 1 in the business transformation process was a decision to modernize the company and adapt to the changing and evolving infrastructure and instead that evolution required leadership change.

So step 1 was a decision to change the company, and we've got to have a new management to do that, and they went out and got new management. It's the initial decision that we were asking for, how that came about, and what was it for, and what was the goal, and how does it affect the planning going forward? Was it the city asking for stuff? Was it the Board of Directors? Did the customers come and say, hey, we want you to change your company?

And we don't know any of that. And this is what is driving the whole application, so it's important that we understand that.

So after the decision to transform the company, the company then went out and hired a new CEO. That was step 1. They actually hired a new people and culture person and promoted internally Mike Weatherby to a higher position, a management position, a couple of months earlier. And then but the big change was they hired Dan Arbor as the new CEO. That was in April of 2023. And although Mr. Arbor had no utility experience, he had a lot of experience running a big organization. He worked for Shell running their mobile fueling operation.

Then subsequent to that and before the rest of the management came on, they did the pestle analysis, which that was in October 2023, which if you read it it is sort of funny, because they predicted the Liberals would lose the next election and the world would change accordingly, and they were wrong.

But that doesn't matter. What does matter is when you do a pestle analysis, you also do a SWOT analysis. SWOT, which stands for strengths, weaknesses, opportunities and threats, and you never do pestle without SWOT. Sometimes you do SWOT without pestle, but you never do pestle without SWOT.

So there is a SWOT analysis somewhere I think that talks about where the company was before the business transformation and how it affected where they were going to go.

So then in April 2024, they hired Ms. Bennett as the Director of Regulatory Affairs. And she has a lot of experience in this area, i.e. in the utility area, as I think we all know her.

And then in May 2024, they got ‑‑ brought a consultant in, Bob Wong, to talk about business transformation. And I'd like to refer to just one of the things in his report. His report is a PowerPoint and/or some kind of presentation.

And under Shareholder Expectations, this is the first page of our package, the first two bullets are the City of Oshawa wants a higher ROI. They want the company to make more money on their investment and, number 2, they want larger dividends. That is the first two goals, if you like, of the business transformation according to Mr. Wong.

Now, the reason I point that out is because there's only two ways or three ways that you can increase ROI or ROE in this context in a regulated utility:

(1), You can be more efficient, that is, get a certain amount of money in rates, but then operate the business more efficiently so that your profit level is higher. Lots of utilities do that. In fact, that's sort of one of the purposes of IRM.

The second is you can add to rate base. If you increase rate base, you will increase your profits. Now, you have to invest to do that, but typically the best to get ‑‑ the most common way for shareholders to get higher dividends is increasing rate base. And indeed it is one of the things that a regulator has to be cautious about.

Somebody ‑‑ I can't remember the guy's name ‑‑ won a Nobel Prize talking about that, an economist.

And the third way is you can shift some of the utility activities to affiliates. And whereas in the utility, if you do things with operating costs, you can't add a margin when you are charging your customers. However, if you shift it to an affiliate, you can add a margin, as long as you don't go above market rates. And so that allows you to get an increased profit.

Subsequently to this, the Wong report, we had ‑‑ the new CFO was hired in April 2025, Amanda Tang. And literally immediately after that, the strategic plan, which was the result of all of this business transformation stuff, was filed at the Board. So presumably whatever is in the strategic plan is not Ms. Tang's fault, because she just got there.

But what is not in the strategic plan, and this is sort of the bottom line to this part of the analysis to 7B, what is not in the strategic plan is there is no analysis of spending, there's no analysis of the trade‑offs that have to be made, there is no of affordability for customers or how much the utility can afford to spend on anything. No analysis about that at all which, of course, is sort of what this proceeding is all about.

And yet the plan appears to have two parts to it: One, is rate base is going to increase. And I'm going to talk about that in a second. And, secondly, they have got to outsource to affiliates and charge margins on that work. The work is probably going to be done by the same people, but it's way to be done and there's going to be a markup, and I will get to the details in a minute.

So what are we asking for here? There will be documents that talk about the trade‑offs being made, about the adjustments, and when they were planning for this business transformation, what adjustments did they make when they saw how much it was going to cost? How did they cut back spending in one area to achieve a goal in another area?

What were the rate impacts they were looking at, and how did they ameliorate those rate impacts in the plan?

This is all stuff that as a utility planning a business transformation, you have got to look at all of this and say indeed, if they didn't ‑‑ if they don't have documentation about all of that stuff, then that already would be telling, but I don't think that that's the case.

I think there, in fact, Is a pile of stuff on this. So they will have presentations to their Board of Directors and the results of those things and the Board of Directors saying, hang on a second, that's a lot of money, maybe we should rethink that; or the city saying, and how is that going to get as higher dividends? Isn't that just going to cause a problem later?

So I don't think there is nothing. I think there is quite a lot of information. And you as commissioners I don't think can look at this application, which is intentionally changing this utility ‑‑ they have admitted on the record we are changing this utility ‑‑ you can't look at how that change is being made and whether it is reasonable from a ratepayer point of view unless you have the analysis that they have on exactly those points.

So the information we asked for on the business transformation plan, what was the initial plan, where are their presentations and analyses and stuff like that, that seems all fairly self‑evident to me, that you would have to see it in order to understand where this utility is going. So that is 7B.

Let me move to number 9. This is about the building. And I am very conscious that we are not talking about whether building is improved an investment. That's not what this proceeding is about. The Applicant has made a decision that the prudence of the building will be a later application, which they are entitled to do.

We may not like it, but it is what it is. So ‑‑ but what the Board does do when it has major spending coming up is look at the five‑year capital plan of the DSP and say, well, is this capital plan sensible in light of all of the things that are going to be spent.

Have the right ‑‑ is the right pacing in place? Are there things in there that could be cut out to make it less, I guess, in this context egregious? So on that score I want to take you to page 10 of the DSP that was filed and that is the second page of our materials. This is the capital plan that they told us was the capital plan.

This is not correct. They knew it was not correct when they filed it. It is not correct today. This misses their biggest single capital expenditure or package of capital expenditures, the building. They didn't put it in there and they didn't say, oh by the way, our capital plan is actually, let's call it double this. I'm not going to look at this ‑‑ I'm not going to look at the specific numbers. I'm going to use just sort of generalizations, but you will see the actual numbers and you will know what I am talking about.

Instead of saying no, we are actually going to spend twice as much as this, they said here's how much we are going to spend. It's only a 16 per cent increase over last time, over our last five‑year plan. Aren't we good?

It's not the actual plan. They are not going from 70 million to 80 million in capital spending. That is just not true.

So they resisted even talking about it in this proceeding and resisted the issue saying no, no, no, no, no, never mind the man behind the curtain. But the Board said, look, the filing requirements require this. You have to talk about all of those spending you're planning over the next five years. That is what your DSP is supposed to do. In fact, more and more ‑‑ I should say more and more they are doing 10 year DSPs, not 5 years. The filing requirements asked for 5 years, and Enbridge (ph) and other large utilities are doing 10‑year plans.

So, in fact, the IR that is blacked out at number 12, you will see ‑‑ I will just make a general sort of statement. It's not a 16 per cent increase. It's more than double it. Capital spending is more than doubling in fact their actual plan. So what do we want, then? Well, fair.

For over year variances, blah, blah, blah, blah, blah. And on what they filed in DSP, that is true, but what they are actually planning to do, it is not true.

So what we want to know, and I think what you need to know, is what ‑‑ how did they actually prioritize their spending in light of this big investment they were planning to make?

You know, I have an older house, and it needs a lot of things. I have a list, like pages, but I can't do them all, obviously. You can never do all that you think needs to be done. Even though I really think it all needs to be done, I can't do it all. It's not realistic. So I have to prioritize. I have to say, okay, what's the most urgent or what do I want to do the most, what's going to give me the most near‑term benefit, that sort of thing.

But I am spending my money, so the only people I have to justify that you are my kids, who will, of course, be second‑guessing everything I say.

But Oshawa Power is in the same situation. They have a lot of things they want to do, and they are not spending their money. They are spending our money.

And that is the Board's role, of course. I don't need to tell you. Your role is to make sure that they spend our money prudently and they prioritize and minimize the rate impacts. But they don't want to tell you what the rate impacts are.

So we ask for what was your ‑‑ show us your options analysis. You would have done options analysis when you were planning for the building, because you have to look at how it fits into all the other things you're doing.

I mean, how are you going to borrow the money? How are you going to afford it? What is it going to do rates? That's another thing we asked for, rate impacts, revenue requirement impacts, benchmarking analysis.

Do you need to spend this much money? Is it better if you spend less money? And do you need to do all of that analysis to fit it into your capital plan? And if you haven't done that analysis, then your capital plan is wrong.

So what we are asking for is that they provide those options ‑‑ and they would have done all this stuff. I mean, I assume they've done all this stuff. I mean, they have already bought the land so you know that ‑‑ and spent a lot of money on it. So you know that they wouldn't have done that unless they've already decided to go ahead. And so there is going to be an options analysis somewhere around, including changes to it.

We've seen them. You know, this is not the first utility head office we've had to look at this where there has been nothing to look at. We've had to look at lots of them.

And in every case they look at, well, can we put it over there, and would it be cheaper? Could we rent it from somebody else? Can we have a public pilot private partnership? Is there an old building around that we can renovate? All sorts of things like that we could do.

On a benchmarking analysis, again, in the ICM proceeding, there will be benchmarking analysis from the company and from P interveners. But in the meantime, you need to see today where it fits into the DSP. And you can't do that if you haven't seen that they've actually done an analysis of is this the right amount to spend, is this the right amount of space we need, blah, blah, blah.

And most important, what are the rate impacts? Because, remember, this application already has a big rate impact. If they get what they asked for ‑‑ I don't remember what it is, but it's like 25 per cent or something ‑‑ but then they are saying, and by the way, this other thing that we didn't want to talk about, in a couple of years, it will be another 25 per cent. Well, that's a lot.

So what we would like to see is the things they've refused just to answer that they've said no, no, no, those are for the ICM application, which is true. But they are also relevant today, because today you are looking at, well, if they are going to be spending all this or asking to spend all of this, or by the time they make the application to the OEB, they've already spent it, which is even worse, the ‑‑ should they be spending all this money on a new ERP or a new CIS or an upgrade to the GIS system? I don't remember all the various items that they have like that.

Maybe they need to cut some of those back, just like I would have to do if I was going to spend money to replace all of the windows in my house. If I am going to do that, well, I can't spend money on the driveway this year.

So that is the second one. The 3rd, 4th, and 5th will be faster, by the way.

So the next one is the statements from the affiliates. And so I want to start with ‑‑ if you can look at the last page of our documents. This is their OM&A summary. And what you will see, I mean aside from the fact that they got approved a certain amount in the last rebasing, but then immediately shifted almost a million dollars from the operating side to the administrative side, but leave that aside. That was old management.

But what they have is on the OM&A line, they have a 67‑and‑a‑half per cent increase in OM&A. And on the G&A line, the biggest part by a long way is they have a 66 per cent increase. And remember, they already increased it by a lot after their last approval.

So the reason I raise that is because a significant part of that is their relationships with their affiliates. What they are doing is ‑‑

COMMISSIONER MORAN: Mr. Shepherd?

J. SHEPHERD: Yes?

COMMISSIONER MORAN: Sorry to interrupt. I just want to make sure I'm looking at the right page in your materials. Is that the one that says page 16 of 112 at the top?

J. SHEPHERD: Yes.

COMMISSIONER MORAN: Okay. Thank you.

J. SHEPHERD: Yes.

And ‑‑ sorry. The ‑‑ so what they are doing is they have a lot more affiliates now than they had in 2021. Just to give you an example, their payments to affiliates in 2021 ‑‑ and the information on that is on the sixth page of our material, page 100 of 112. If you look at the amounts being paid to Oshawa Power, they are ‑‑ sorry ‑‑ from Oshawa Power to affiliates, that's the corporate cost allocation at the bottom, that's $245,000.

Now if you go a couple of pages over to 2026, page 104 of 112, that number, which was 245 now, is now 1,193,725. It's gone up four times. And part of that, or a big part of that, is you will see in the section marked Shared Services, the market price for things like metering and collections, which are being done now by affiliates and being marked up.

And by the way, they are not proposing that that start in 2026. That started a couple of years ago. That markup started a couple of years ago. So if they do collections, for example, in the utility, they are not allowed to mark that up.

But if they shift it to an affiliate, then they can add ‑‑ what is the number ‑‑ $145,000 above actual cost, even assuming those cost numbers are correct.

So what we're asking for ‑‑ and this is pretty common, by the way ‑‑ we're asking can you please provide us with the most recent financial statements for all the affiliates that you're either providing services to or receiving services from. There's payments back‑and‑forth to the utility to the affiliates, and that's fine. Let's see their financial statements.

This, by the way, is not news. So I went just ‑‑ I ‑‑ it ‑‑ my initial thought was, well, we all know that this is something you have to look at. But since they are resisting it, and since their response ‑‑ I have to read it, just because it's interesting.

"Oshawa Power's affiliates are not regulated by the OEB and are separate legal entities. The information requested has no semblance of resemblance to the matters at issue in this application."

Which sounds a little bit like protesting too much. But, in any case, it is commonplace for the commissioners to look at the affiliate financial statements. And I just ‑‑ many utilities simply offer them, Kingston, for example, which operates through Utilities Kingston. They always file them and they are happy for them to be public. And Cambridge and Peterborough, and I could go on and on. There's numerous examples. I have probably seen 100 ‑‑ affiliate financial statements in 100 cases.

And so this is not something shocking. And I don't know how you can assess whether these payments to the affiliates are reasonable and should be included in rates, just and reasonable rates, unless you see what it looks like from the affiliate side. Are they making a whole pile of money? Is this how the ROI for the City is increasing? Because that wouldn't be kosher. And we don't know, because they refuse to provide the information. There is no semblance of relevance.

That next is question 26. This is sort of a little bit unusual. This corporate group is providing advice to lakefront utilities, which is a smaller utility, in ‑‑ it is not Bowmanville. Colburn, maybe, or Northumberland County, I think.

And its advice with respect to utility operations, from a group that includes a utility, but they're saying well, yes, if it's being provided by affiliates, so we don't have to tell you about it.

Well, if it is advice about running a utility, presumably it is utility people that are providing the information, and whether they technically work for an affiliate or work for the utility, they are part of the utility operations. And this seems to be a fairly straightforward thing, you are providing utility advice to another utility. Tell us about it.

So then the final one is ‑‑ we asked for ‑‑ this is in SEC‑169. We asked for a breakdown of the fully allocated cost analysis for shared services so they ‑‑ and the corporate cost allocations. So they are allocating costs for most of things ‑‑ and some of it is market rate, but a lot of it is allocated costs. They are simply taking a pile of costs and they are saying you get this much, you get this much, and you get this much. A lot of utilities do this. It is not rocket science.

And when they do, they have to show you that they are allocating it reasonably. And so what they have done instead is that they have said ‑‑ and this is in the second‑last page of our ‑‑ of our materials ‑‑ here's how much everybody is going to pay ‑‑ or sorry. Here's how much is going to be paid for these particular things, without talking about what the total costs are being allocated and the basis of the allocation. They just say the basis of the allocation is fully allocated costs.

So all we want is their allocation model. There will be a model of some sort. It's probably a spreadsheet. And so we've just asked, show us the allocation, how much is being allocated to each company, and the basis on which it is. Is it hours worked? Right? What they say is it's time spent on the utility business or time spent not on the utility business.

Well, that doesn't really help you very much if you don't know what the timesheet methodology is, which is probably just an estimate at the end of the year. How much of your time did you spend on the utility, Joe? 50 per cent. Okay.

And so we just want to see their allocation model. It shouldn't be a big deal. I mean, presumably they have one. They didn't just make these numbers up.

And that's it. Thirty minutes. I am proud of myself. Thank you.

COMMISSIONER MORAN: Thank you, Mr. Shepherd.

Commissioner Zlahtic, do you have any questions?

COMMISSIONER ZLAHTIC: Sorry. I am slow on the mic. Just one second here.

Mr. Shepherd, you were running us through a bunch of numbers when we were talking about 1‑SEC‑17. And, I apologize. I am following the documents for motion that you provided. I just wasn't able to keep up with you. Do you mind walking me through that again?

J. SHEPHERD: Okay.

COMMISSIONER ZLAHTIC: You were talking about a 67 and a half per cent increase in OM&A. And there's 66 per cent number tossed out there.

J. SHEPHERD: Okay. So the ‑‑ fair comment. So the 67‑and‑a‑half per cent is if you look at the line that says total, the second line from the bottom.

COMMISSIONER ZLAHTIC: Sir, what page are you on, sir?

J. SHEPHERD: This is on the last page of our document.

COMMISSIONER ZLAHTIC: Let me slow scroll and get there. Okay.

J. SHEPHERD: So you will see on ‑‑

COMMISSIONER ZLAHTIC: I'm not there yet I'm not there yet. Ease up. Okay. I'm there. Fire away.

J. SHEPHERD: Okay. So the second‑last line says total. That's the total OM&A. And I went from last rebasing year actuals which is 13.3 million to test year proposed which is 22 to 72 and that increase from 13.3 to 22272, which is about $9 million, is 67‑and‑a‑half per cent.

And then the other one I did is administrative and general, which is the line three up from that. And you will see they were approved for 5,000,885 in that category in 2021, but they actually spanned 6782. They reduced their spending in operations and maintenance and increased it in A&NG.

Anyway I took from 6782 to 11277725 in 2026, and that's 66.3 per cent increase.

COMMISSIONER ZLAHTIC: I've got it now. Thank you very much.

Commissioner Moran, I'm good now. I have no other questions.

COMMISSIONER MORAN: Thank you, Commissioner Dodds, do you have any questions.

COMMISSIONER DODDS: Commissioner Moran, I have no further questions.

Thank you.

COMMISSIONER MORAN: Okay. Thanks. Thank you.

Mr. Shepherd, anybody who wants to speak in support now. I think, Mr. Gluck, you indicated that you wanted to make a few submissions in support.

L. GLUCK: I do. Thank you.

Good afternoon, panel. The Consumers Council of Canada supports School Energy Coalition's motion which requests that the OEB order of Oshawa Power provide full and adequate responses to the interrogatories listed in the notice of motion at paragraph 1.

We also support the reasons for those requests as explained by SEC today. We have a few very brief submissions on the interrogatory responses that were the subject of the motion.

With respect to the response to part A of interrogatory 1-9, we strongly believe that Oshawa Power should be required to file all of the additional information related, information related to the new operational and administrative building, including business cases, planning documents, and internal presentations that were originally requested in the question.

The class B estimate that was provided, while useful, did not provide insight regarding how the company itself came to the conclusion that moving forward with the purchase of land and a plan to construct a new facility is the best path forward.

That information is certainly relevant to the current proceeding as you would expect that the company would have had to consider the new facility-related costs and the implication of those costs on the overall capital plan.

More specifically, you might expect that a company seeking to spend significant capital on a new facility would make adjustments to other aspects of its capital plan to reflect that, this issue. The internal planning documents and presentations should speak to that issue. And with respect to part H of the same response, Oshawa Power had stated that it does not have the adequate evidence at this time to provide fair and reasonable estimates of annual revenue requirement and bill impacts related to the planned new facility; and while we agree that Oshawa wouldn't be unable to provide the final figures, it certainly can provide a reasonable estimates and the revenue requirement and bill impacts using the current best available information.

This information is important to the consideration of Oshawa Power's investment plan in the current proceeding as it provides the necessary context regarding the estimated overall rate increases the ratepayers would experience during the 2026 to 2030 period based on its proposal.

In our view, it is completely unreasonable to expect the OEB to approve very significant rate increases in the current proceeding 2026 denying to further significant rate increases that are already planned by Oshawa Power for 2027. And those are our submissions.

Thank you.

COMMISSIONER MORAN: Thank you, Mr. Gluck.

Mr. Garner, I think has a submission to make. Yes?

M. GARNER: Yes, we do. It's a little unusual. We are not taking a position on the motion, but we would like to explain why.

We may be the only party in this proceeding who has not signed a declaration to see the confidential information. We generally don't. VECC generally does not because we believe in a transparent process and generally these items that are like this, are not as what I call severe as in this case, and we are very disturbed by that, and we haven't seen the seen the numbers, seen the information, but it is clear to us what the effect is.

So of course if Mr. Shepherd is successful in his motion, our feeling is that it's likely to be redacted again from us and therefore it is of little value to us in that sense and we think that should be a concern to the Board in and of itself.

So of course if Mr. Shepherd is successful in his motion, our feeling is that it's likely to be redacted again from us and therefore it is of little value to us in that sense and we think that should be a concern to the Board in and of itself.

The other thing I'd like to say is that although I share sympathy with a number of the points that Mr. Sheppard is making we do -- may disagree on some issues. And so, for instance, and to the point, we don't hold the policies, ICM policies, or any policy of the Board fetters a panel of the Board to make a just and reasonable decision; and we believe, and we may argue, in this case, that the policies of the Board are going to create a very unjust and unreasonable result; and, therefore, the board needs to address them; and therefore, we may be at odds with Mr. Sheppard on that point.

And so with that, those are our submissions. Thank you.

COMMISSIONER MORAN: Thank you, Mr. Garner. Is there anyone else making submissions in support?

L. MURRAY: OEB staff has a couple brief submissions with respect to some of the requests

Now, OEB staff supports SEC's requests for further information in response to interrogatory 1 SEC 9.

These interrogatories sought various information relating to the new building. The evidence on the record about this new building is minimal. We don't have any internal information about the building, such as how it connects to the rest of the DSP plan.

We have little information on the record about how the OM&A costs related to the current facilities will change with the construction of this new building.

The requested documents can provide greater context to how Oshawa considered the building's costs in the context of its whole DSP.

For example, if Oshawa is planning to incur the significant capital expense in the next year or two, what changes to other capital investments were considered? There should be documentation on this. The requested documentation would hopefully also provide some insight into how operations and maintenance costs will be impacted by the new building.

In OEB staff submission, more is needed in order to properly adjudicate issue 7.3, which asks: Is it the plan to seek additional funding for new operational and administrative building in the subsequent IRM application of appropriate.

I also have a very brief submission with respect to 1 SEC 7. And with respect to that request, OEB staff's position is to the extent the strategy documents speak to the planning and prioritization of Oshawa's capital plan, those should also -- to the extent they haven't already -- be produced in this matter.

And with respect to the other 3 requests SEC 17, SEC 26, and SEC 169, OEB staff takes no position on the motion. Thank you.

COMMISSIONER MORAN: Thank you, Mr. Murray. Is there anyone else who wishes to make submissions before we hear from Oshawa?

Okay. Seeing none, Mr. Vellone, are you ready to proceed?

J. VELLONE: Thank you, Commissioner Moran, I am. Let me see if I can keep it to half an hour like Mr. Sheppard did. I will do my best.

I have a couple of introductory remarks before I too walk through the disputed interrogatories, and it really is to ground the submissions that I'm making you today in Rule 2703, the full and adequate response to IRs provision that we're dealing with here today, and that is just to frame our approach to responding to this motion, that when the OEB considers a motion for further responses to interrogatories, the key factor kind of in my head is whether the requested information is relevant to the matters at issue in the proceeding.

In this motion context, the moving party, Mr. Sheppard, must demonstrate that the information sought is relevant to the matters at issue, as interrogatories are not meant to provide a general rate of discovery, but are instead intended to clarify the record and complete the record in the proceeding for the Board's determination.

My submissions to you, Mr. Sheppard has failed in this regard today. In this package of IRs, there are 2 general categories of IRs in dispute.

In the first set of IRs at category 1, let's call them, these are IRs that were asked by the interveners and were answered completely by the Applicant in its written response.

The issue we are debating is not one of relevance, but rather the scope of the interrogatory question as it was asked to my client, and what -- and whether or not the Applicant's response was sufficiently responsive to the IR as asked.

An example of that was 1 SEC 7B, the Business Transformation Plan. And I filed a letter this past Friday, and I won't go through all of it, but in short, our view continues to be that the answer that was provided answered the question exactly as it was asked.

And then SEC through its motion materials went on to effectively amend that question by asking for the very first time something called planning documents, what led to your modernization plan. I'm not going to argue that planning documents aren't relevant to the application, nor am I going to waste your time arguing semantics of an IR that if we had gotten it originally, we would have answered it as asked.

But if you go back and look, it does not -- that original IR doesn't say planning documents in there anywhere. It is not there. Rather than wasting your time today, we have prepared an updated response that we view as directly responses to Mr. Sheppard's amended interrogatory request.

My observation is simple: The Motion to Compel process is not an opportunity for interveners to amend the interrogatories they asked to ask questions that they meant to ask but never got around to it. It is a chance to look at the question that was asked to the Applicant and adjudicate on the sufficiency of the response that was provided to the question that was asked of the Applicant.

There is no prejudice to Mr. Sheppard or any of the other parties if they want to ask further clarifying questions. We are -- the panel is now aware and going to hearing on a number of issues and there will most likely be a further round of discovery opportunity where people can understand and ask the questions they wish they should have asked. That is not this process here today. Additional follow-up questions can be asked at a later date.

The second category of questions that I want to speak to really are ones that go into matters that are not relevant to the matters at issue in this application.

COMMISSIONER MORAN: Mr. Vellone, I am sorry.

J. VELLONE: Yeah, please.

COMMISSIONER MORAN: Just before we move on to your new point to just understand what you just said, it -- if the additional -- let's take it at face value that Mr. Shepherd has asked for that is in addition to what was originally asked, if I understand you correctly you are saying that you have no problem producing it, it's just you don't want to do it today, you want to do it later. Did I understand you? Did I understand that correctly?

J. VELLONE: We, as an applicant, are charged with reviewing an interrogatory or question that comes in in writing and responding as fully and as bestly as we can given the matters at issue in the application.

I don't think it's possible for us to guess at meetings that are not embedded in the words that are given to us, nor do I think that it is the right process to effectively amend your interrogatory questions through this motion to review -- motion for further and better IRs, amend your question.

COMMISSIONER MORAN: So if the current statement of the question is put to you a week from now, you don't have any objection to answering it a few weeks after that?

J. VELLONE: There's a category of questions here I'm not arguing on relevance, Commissioner Moran. There's a second category which I am arguing relevance and maybe allow me to get into those.

COMMISSIONER MORAN: Yeah, I just wanted to understand your position on the first category. Okay. Sorry to interrupt you and please.

J. VELLONE: Thank you. Yeah.

There are three that fall into the second category where we are arguing relevance; and it is SEC 169, the new building questions; 1 SEC 17, the Affiliate Financial Statement questions; and 1 SEC 26, the Lakefront Agreement.

And I guess what I would say just to begin is we are looking to this panel of commissioners to exercise your judgment to not allow this discovery process to become a fishing expedition. Rather, we are asking you to look to make a determination that prevents speculative and overbroad searches for information that are not directly relevant to the issues at hand.

My goal here is simple: It's to facilitate regulatory efficiency, avoid unnecessary costs and delays, and prevent deletory or speculative requests.

Disclosure in the context of this proceeding is intended to provide relevant information and to maintain efficiency of this legal process. But disclosure requires concrete connection between the documents or information sought and the facts in dispute, with an emphasis on proportionality and relevance.

Discovery is confined to matters raised in the application, and should not be used to investigate broad, or unsubstantiated allegations. Its scope is defined by relevance rather than the mere possibility of uncovering speculative defendant evidence.

Then we arrive at the conclusion that the discovery process should not be used as a tool for endless side issues or to try to embarrass parties in an application. The policy intent is to prevent undue burden and delay, maintain fairness and efficiency, and ensure discovery is focused on resolving real, substantive disputes, not speculative matters.

Now, allow me if you will, to go through each of the questions at issue. And I think I will start first with 1 SEC -- there's a bunch of acronyms here, but 1 SEC 7B, the Business Transformation Plan question.

And perhaps if I could, Ms. Thoms, are you able to put the SEC motion materials up on the screen so we could look at his -- the appendix Mr. Shepherd included with the actual question. Thank you very much, Ms. Thoms.

I added some highlights to this just to speed this up.

So you can see here, I've highlighted the initial question asked by SEC requesting from the Applicant documents and other materials. Describing is the verb they used. Describing the initial plan for modernization of the Applicant system and/or connection, if any, between that plan and the management turnover.

The response then provides the exact documents that describe the initial plan for the modernization of the Applicant system, those being the strategic plan and the strategic direction. And then it clearly and directly responds to those. Plans for modernizing the system were developed by the new leadership team following the management turnover. It's directly responsive.

Mr. Shepherd then went on in his motion materials to say that's all good but what I was really looking for were the planning documents. And we reviewed that and said, okay, well, if you had asked us that to begin with we would have answered it, and we amended our response and filed it with you on Friday.

Today he has now gone on further and said he is looking for documents relating to the trade-offs that have been made but impacts or adjustments have been made. How much did it cost? What were the rate impacts? Were they looked at? What was your planning process when you came up for this application?

I am sorry. I am trying to read that discovery question as written and sent to the application as saying that and I don't see it. I don't see requests for trade-offs. I don't see requests for information around planning documents to the extent they relate to prioritisation or planning of Capex.

The question as asked was answered. The question as amended was answered. And I suspect if Mr. Shepherd has further questions he can ask them in the process.

So I'm going to move on to 1 SEC 9A, production regarding the new building. And perhaps let's just get started because SEC only identified a few discrete parts of this question in its Notice of Motion parts A, F, G and H.

And I think you would agree with me as you read through this, it is an incredibly broad production request for information related to the new building including any business case budgets, estimates, forecasts, presentations, memos, or other documents relating to the new building or the new -- or the land purchase.

Options considered before the land purchase. Any benchmarking that's been done by the Applicant, as well as an estimate of the annual revenue requirement impact of the new building.

But this question needs to be placed into context. There is no relief sought in this rate application regarding this new building. It is not plan to go into service in the test year and the Applicant expressly did not choose to bring an ACM application as part of this cost to service and that's explained in the evidence.

Rather, the Applicant has expressly indicated its intention to bring a subsequent ICM application when its evidentiary basis is sufficient to meet the test for an ICM, which means that the issues of need, prudence, and materiality associated with the new building will be adjudicated at a later date by this or another panel of commissioners adjudicating a subsequent ICM request and ratepayers' interest will be protected. They will not have to pay a single penny towards that building until that case is heard and determined.

Now, I've heard a lot of questions and comments here this morning, both from Mr. Gluck, OEB staff, as well as Mr. Shepherd in his submissions, about how did you take into account the fact that you were going to do this building in your planning and prioritization in the DSP; and I'm sorry, but if you read parts A, F, G, and H, that is not in there anywhere. That is completely new and made up. It's not anywhere in that discovery question.

I want to take you briefly to how we did respond to this question, and as you are fully aware, the OEB issued its issues decision back in June of this year, adding issue 7.3 to the issues list, and when I first read that, I must admit I must have misread it, because I read it as is the plan to seek additional funding for the new operational administrative building in a subsequent IRM application appropriate?

The answers could be yes or no, I guess. And if it’s yes, I am fine; but if it’s no, I had real procedural issues to deal with because it was different than the OEB’s ACICM policy and I think I explained that in my Notice of Motion, which was filed back in July.

And in this context, I found the OEB’s ruling on that Notice of Motion very helpful, because although you did dismiss the motion, the commissioner provided the applicant with some very helpful clarifications of what was your intent with scoping issue 7.3.

And specifically, if I understood it properly, you were really looking for two things. One was the Applicant hadn’t provided any details on the estimated forecast cost of its new building, even though it is a lumpy investment that will happen over the 5 year DSP horizon. And the second thing was the Applicant had not given any sense of how the new building will impact the OM&A budget going forward.

We used that decision to guide our response to this IR. And in response to SEC 9A, the Applicant provided the most current estimated forecast for the new building and land costs, including at attachment 1-2, a class B estimate from an independent consultant; and at attachment 1-3, a Cushman & Wakefield market search analysis.

We qualified all of this, of course, to say that reflects the best information we have available at this time. That might evolve. And we confirm that we will file all required material in the future to support a future ICM request.

I will note that our response to SEC 9B was that the operational cost of the new building is not known at this time and that hasn’t changed. That fact has not changed. And rather, what we have proposed is a new variance account for consideration by this panel should it have concerns about changes with operational costs as it relates to what’s being embedded in rates versus what’s in the new building, including a round of voided rent, and potential OM&A costs and impacts.

In our view, SEC’s motion is seeking information well beyond the scope of what is issue 7.3 as framed by this panel. It’s not the appropriate forum today to be adjudicating the prints of a building project when the Applicant has told you repeatedly, we need to get our evidence together before we are ready to discharge our burden of proof, and we are going to do that as part of an ICM.

Oshawa Power has committed to bringing a complete application at a later date, which will address exactly those issues. It is not at all efficient to adjudicate it twice. To the extent the parties want to ask questions to Oshawa Power about how this building, which we knew was coming up in the future years impacted other aspects of the DSP, those are fair follow-up questions to ask in a proceeding. Things like, should we be spending on a GIS if the building is comp B. Fair follow-up question.

But that’s not in parts A, F, G, or H. None of the information requested in that interrogatory is probative to that question, to that concern. So my view is, my submission is, to the extent the building is relevant to this case, the Applicant has provided the best available information that we have to inform the commissioners and the parties’ determinations in this proceeding; and if parties have follow-up questions, they’re free to ask at a later date.

 Perhaps moving down here to SEC 17 is the next question here. This is –- this question is asking for the most recent financial statements for a range of entities. And perhaps -– and I’m trying to put this in context – the Applicant did file its audited financial statements for the year ending December 31st, 2024 in Exhibit 1 of the Application. This is not a request for the Applicant’s audited financial statements. It’s seeking financial statements of a bunch of nonregulated affiliates of the Applicant.

In my view, SEC has failed to establish how those financial statements offer any probative value to the matters at issue in this proceeding. They are, in each case, simply put, not relevant. The OEB routinely recognizes that affiliate financial information is not directly relevant to a utilities rate application just by fact that they’re affiliates, and to respond to this perhaps the easiest place to go is into Exhibit 1. There is a helpful section there at section 1.4.1 of the evidence.

Ms. Thoms, I’m not sure if you possibly could bring that up. 1.4.1. Sorry, 1.4.11. That’s the right one. Could you – and perhaps let’s go to page 46 of 120 at the start. All I’m doing is going to the end of this section framing all the affiliates. Who is who in the zoo. And I’m going to start at line 19 so I’m starting at the bottom of SEC’s list and I’m going up the list of affiliates that they have done from the bottom to the top. And at line 19 you see information about 2825407 which is an energy services provider which provides metering services and disconnect and reconnect services. It does compete with other metering services providers. Companies like Olameter, Earth, KPC.

And I note at line 22 that the metering service provider maintains separate financial records and books of account. The financial statements are separate. They are not linked to the utilities. And I note further, at lines 23 and 24, that yes, there are shared services related to finance and corporate support as between that numbered company and Oshawa Power. And all of that falls under the scope of a documented services agreement.

I would readily admit that if Mr. Shepherd was worried about flows of funds between this numbered company and Oshawa Power, one thing he could ask for is that services agreement; and in fact, VECC did, and we filed it in response to 4 VEC 170. A copy of that contract is already on the record in this proceeding. It’s attachment 4-7 in the interrogatory responses.

I found it striking to me that Mr. Shepherd never once makes reference to that document at all in his submissions today and it goes to the heart of my concern that what he really is interested in here amounts to a fishing expedition, not legitimate questions about flows of funds between a utility and its affiliate.

If we work our way up this list, at row 14 you see the second numbered company, 2825909, an energy services provider that holds an equity interest in wind assets under agreement with the IESO. It competes with companies like Transalta, Brookfield, Next Era. Again, they have separate financial records, separate books of accounts, separate financial statements.

In addition, notably, there are no shared services between this affiliate and Oshawa Power so there isn’t a services agreement, so I struggle to understand why Mr. Shepherd needs to see those financial statements except for the purposes of a fishing expedition.

Moving further up this list 2720665 is an energy service provider that has a biogas-based energy generation project under agreement with the IESO. It competes with any of these like Enbridge or Walker Industry. Again, separate financial records and books of accounts. Again, no shared services between this entity and the Applicant. Once again, a fishing expedition and should be refused.

Moving further up this, on line 1 we have 2252112 which is an energy services provider which is in the business of constructing and operating rooftop solar energy generation assets which competes with NextEra, Transalta, Brookfield. Once again, we know they maintain separate financial records and books of accounts. Those financial statements have nothing to do with Oshawa Power and I found it striking. Once again, Mr. Shepherd has not bothered to even ask for a copy of the services agreement relating to the IT services. If that’s what he’s interested in, if that’s what he’s worried about, that’s where you would go, not to the financial statements of a competitive affiliate.

Moving to the previous page, page 45 at line 19, we have Oshawa PUC Energy Services Inc., which operates as a company called EnerForg which is an energy service provider to the University of Ontario’s Institute of Technology at Durham College as well as Toronto Community Housing, and it owns generation assets. It competes directly with other district energy companies like NWave, Markham District Energy, Hamilton Community Enterprises. Once again, separate financial records and books of accounts.

Again, Mr. Shepherd has not bothered to even ask for the shared services agreements between these entities. If the financial relationship between these entities is what he’s worried about, wouldn’t you start there, not the financial statements.

Moving further up this list, Oshawa PUC Services Inc. is a dark fibre communication and LTE fibre service provider operating under the name Durham Broadband. It competes directly with Bell, Rogers, Atrium, among others. Once again, it maintains separate financial records, separate books of accounts. The financial statements have nothing to do with the Applicant, and again, Mr. Shephard hasn’t bothered to ask for the shared services agreement between the entity. This concern is flow of funds between Oshawa Power and these entities. That is where you start. Not on a competitive affiliate’s financial statement.

Finally, line 18 is the Oshawa Power, is the parent company or Holdco for OPUC in each of the other affiliates, and as a consequence it, as a holding company, competes with and in all of the other lines of businesses that I just listed off to you. Again, they maintain separate financial records and books of accounts. Once again, it is telling that Mr. Shepherd has not bothered to even ask for the services agreement between this entity and Oshawa PUC.

In my submissions, the requests for these financial statements is an unwarranted fishing expedition. There are ways to get at what Mr. Shepherd alleges his concern is without necessitating disclosure of competitively sensitive financial statements of affiliates that are not operating in a business that is part of the OEB’s purview.

Perhaps going back to the motion material. I’ll move on to 1 SEC 26 which is asking for a copy of all agreements, MOUs, Letters of Intent, and similar documents between Lakefront Utilities and the Applicant or any of its affiliates. For the benefit of the record, Lakefront is based in Cobourg, Ontario. Mr. Shepherd seemed to have some difficulties with his geography this morning.

In our view, this question was asked and answered. To the extent there were any contracts between the Applicant and Lakefront Utilities, they were produced and attached in attachment 1-7. To the extent and as noted in our response, to the extent Mr. Shepherd is seeking to have contracts between Lakefront Utilities and one of the Applicant’s competitive affiliates produced, that is entirely outside of the scope of this application.

I’ve already gone through the nature of the business of each of the Applicants in dealing with the previous IR -- and it is, simply put, to me, difficult to ascertain how a particular contract with a particular customer of that competitive affiliate has any relevance at all to this rate application. Those agreements don’t have any impact on rates or any other matter at issue before this commission. Once again, SEC is out there on a fishing expedition, and the attempts should be denied.

Moving down to SEC 169, this question I struggled with, in part because the question asks for for each year from 2021 to 2026 please provide a full breakdown of the fully allocated cost analysis for shared services showing –- and then it gives me a list of three things they want me to show: total costs for each category, what costs were allocated where, and the basis for the allocation.

So if I zoom in on, let's just take the very first year, 2021 of the response and zoom, if I go all the way over to the right‑hand side, you can see a column titled "Total Cost" right there, which, if you add it up for any particular service, will give you the answer to what is the total cost for the service for each category. Just add them up.

Second, the question was, what costs were allocated where? Well, while in this chart and the information we provided, this, we show you, who the allocation was from, in the left‑hand column, and to whom it was allocated. So we are showing you with every single year, every single service offering, where it came from and where it was allocated to.

And the last thing, the question asked was, what was the basis of the allocation? So what we did is we added a column to the table that provides the basis for the allocation for every year, for every service in question. In this instance, the example we just happened to be looking at, time allocated to the affiliate. Or, in the test year, estimate of time allocated to the affiliate, was the basis for the allocation for almost every single service. In our view, that was fully and directly responsive to the discovery question that was asked.

Mr. Shepherd appears to say in his submissions today, he wished he had asked for our cost allocation model. The behind‑the‑scenes, how do you get to the allocations to these different parties.

I'm sorry, that's not what the interrogatory asked for. Had Mr. Shepherd asked to see that more detailed model, I would have had a conversation with my client about it. We would have dealt with things like confidentiality of personal information and individual employees, and all of that jarboly‑juke to figure out how we can get responsive information on the record.

But quite frankly, that is not what the question as written asked for. I hope my submissions were clear today. I'm available for questions to the extent the panel has any.

COMMISSIONER MORAN: Thank you, Mr. Vellone.

Commissioner Zlahtic, do you have any questions?

COMMISSIONER ZLAHTIC: No, I do not.

COMMISSIONER MORAN: Commissioner Dodds?

COMMISSIONER DODDS: Commissioner Moran, no, I do not.

COMMISSIONER MORAN: Thank you, Mr. Vellone.

Before we continue, we are going to take a 15‑minute break so we will come back at 3:40.

‑‑‑ Recess taken at 3:24 p.m.

‑‑‑ Resuming at 3:41 p.m.

COMMISSIONER MORAN: Just before we resume with you, Mr. Shepherd, the panel just has a question for Mr. Vellone.

Mr. Vellone, in listening to your submissions, I think we've heard a bit of a theme that much of the requests that are being pursued here by schools are not necessarily irrelevant, but are part of a subsequent disclosure process leading up to the hearing. And I'm just wondering, I mean, if we're scheduling a hearing later on this month, you know, whether it makes more sense just to concede and provide those additional materials earlier rather than waiting for another procedural order from the panel.

J. VELLONE: I would have done that in the same way I did with, I guess it was, the question around the business transformation plan.

If I was able to, on the motion materials on its own, tease out what it is exactly he's asking for that we didn't give. Unfortunately, I heard a lot of new information today that certainly isn't in the black‑and‑white text.

If Mr. Shepherd is willing to give us an amended series of questions seeking the information that he's looking for, on the ones that I have verbally admitted to are relevant today, we would definitely consider a subsequent interrogatory round for that narrow scope.

What I was struggling with, Commissioner Moran, is we can only answer the questions we're given. We can't be asked to guess at stuff that's not in there. And this motion process is about the sufficiency of the responses to the questions we were given, not something different, and, in my view, they were sufficient. And what's to stop Mr. Shepherd from doing this again, just keep using the motion process to ask questions that he wished he should have asked the first time, like a week from now or a month from now?

The Applicant does have procedural rights to have their case heard.

COMMISSIONER MORAN: Thank you for that, Mr. Vellone.

Let's hear your reply, Mr. Shepherd, and see where that takes us.

J. SHEPHERD: Thank you.

Welcome back, Commissioners. I'll be fairly brief, I think.

I think what I'm hearing is two themes. Theme number one is, we didn't understand your questions or you didn't word them right. You didn't ask for the right things and now you can't have them. It doesn't matter whether they're relevant. It doesn't matter whether they would assist the panel, you can't have them. And if you want them, ask for them later. And, of course, the later would be the hearing; right? Which is the time at which discovery is supposed to be over by then. We're supposed to be testing evidence then, not discovering.

And the problem is that then we get all this information on the prioritization and on what the point of the business transformation plan was, and all that stuff, the initial plan that we asked for, and we can't do any follow up on it, and the Board can't do any follow up on it, so that's not sensible.

We should all be working to make sure there is a complete record here. And so if something is needed for a complete record, then ‑‑ and the Applicant has it, it should be provided. It's not really a complicated thing. So that's the first theme.

The second theme is fishing expedition. I don't know how many times I heard the words "fishing expedition" come out of Mr. Vellone's mouth in the last 30 minutes. A dozen probably. I'll count them on the transcript.

A lot of interrogatories are fishing expeditions, let's be clear. The Applicant has all of the information, the whole problem of information asymmetry, which we all know about. So when we suspect that there might be some useful information in a particular document, we asked for the document. OEB staff does the same thing. We all do.

It's ‑‑ for my friend to say, well, it's a fishing expedition to ask for the financial statements of a company that is marking up services to the utility and is an affiliate, yes, that's a fishing expedition. We want to know how they're marking up the services. Is it a fishing expedition that we're ‑‑ that the utility is providing services to an affiliate and we don't know anything about that affiliate except that it provides certain services to the public? How do we know that those are priced properly? How do we know there aren't a whole lot of people working on the affiliate in the company? Well, we'll know that if we see the, for example, that affiliate's financial statements that show, "Oh, no, we don't have any employees; our only costs are what the utility charges us."

And so I ‑‑ like the fishing expedition argument is just a poor one in my view. Discovery questions are often fishing expeditions. They can't be stupid. You can't just ask for a bunch of stuff because there might be something in there. You have to have a sensible reason, but if there's a bunch of affiliate transactions, it makes a lot of sense to ask, well, show us your lark. Show us what's going on. And my friend says, well, what about the services agreements? These are the agreements that are prepared for the regulatory process because the regulatory process requires them and are designed to be filed so that nothing looks bad.

I don't know how many affiliate services agreements I've looked at over the years. Hundreds and hundreds and hundreds. I've never seen a smoking gun in one of those agreements because the lawyers look at them before they're filed to make sure there's nothing bad in them. So affiliate services agreements ‑‑ they're important documents, but they're not helpful to the regulatory process.

The biggest area, I think, of disagreement ‑‑ I'm not going to agree that we didn't ask good questions. I think the questions we asked, it was obvious what the answers were that we were looking for. And Mr. Vellone is experienced counsel, the Director of Regulatory Affairs at Oshawa Power is long‑experienced, in this area and they knew what we wanted. To say otherwise is just not correct.

That having been said, it shouldn't matter.

But, first of all, the normal practice, if you have a question and you don't know what they're asking for, what happens normally? Well, what happens is, I get a phone call from counsel or from the utilities saying, "Hey, we have this question, can you tell us what it is you're looking for, because it looks a bit wonky?" Now, we don't have that happen to us a lot because we're pretty careful in how we word our questions, but other interveners often have that happen because they ask a sort of a mushy question, and the utility legitimately doesn't understand what they're looking for.

Well, that's not the case here. They knew what we were looking for in the business transformation plan. They had a decision prior to getting new management because that's why they got new management.

The biggest area, however ‑‑ I just want to make a comment on Lakefront, by the way. Lakefront is in North Cumberland County and it serves Cobourg and Colborne, just in case anybody has any questions about that.

The biggest area is question 9, and what my friend seems to say is we may have some of this information, I mean, presumably they did an options analysis. We may have a benchmarking analysis. We may even have estimated rate impacts, but you didn't ask for how it's going to affect the ratepayers because rate impacts doesn't ‑‑ isn't a question about how it affects the ratepayers, and so we don't have to answer it.

And, in any case, we have proposed a various account. And it's asymmetrical various account ‑‑ right? ‑‑ so if you go over budget on OM&A, then you get to collect that too; right? I think I'm remembering that correctly.

But what they want to do is push questions about prioritization, impact on OM&A, impact on ratepayers to the hearing so that we have a very limited opportunity to get discovery for that information. They have a pile of stuff sitting at their offices, and they don't want us to see it, and they don't want you to see it more importantly.

And so let me just ‑‑ yeah, okay, one other comment. My friend says, Well, on 7B, we amended our question in the motion and then today we amended it again because the initial plan, and its connection to the management turnover, is not clear enough, which is what we asked.

So, other than that, I think we're all talked out and, unless you have any questions, I'm done.

COMMISSIONER MORAN: Thank you, Mr. Shepherd.

So the panel will adjourn for a few minutes to confer and then we'll be back in shortly. So if you could just hold for a few minutes, that would be great.

Ms. Connell, can we get a breakout room, please. Thank you.

‑‑‑ Recessed at 3:53 p.m.

‑‑‑ On resuming at 4:00 p.m.

COMMISSIONER MORAN: Let me start by thanking everybody for their submissions. They've been very helpful to the panel.

Mr. Vellone, I think we heard, through your submissions, that there's not necessarily strong disagreement that the information being requested is largely relevant, and it's more a question of whether there should be another round of disclosure and so on.

The Panel's of the view that the more efficient approach would be for you and Mr. Shepherd to get together and just get organized around the stuff that is relevant, that you appear to have conceded is relevant, and then if there's something that's truly in dispute, we'd like you to report back on that by end of day Thursday, the 2nd of October, and then we'll decide what's truly in dispute.

It seems pretty clear to us that there isn't a strong dispute as to whether the information is relevant or should be provided, but there are a couple of things that might be truly in dispute and we're happy to adjudicate those.

And when you report in on the 2nd, it'll be a joint submission. When you report, let us know what timeframe is needed to file the documents that have been agreed on and whether time is needed to consider confidentiality issues and so on. But I think there's a practical path forward and, Mr. Vellone, and, Mr. Shepherd, I think you're both experienced professional counsel. I think you can probably resolve most of, if not all, the dispute between you, if you just sit down and talk. You've had a chance to hear each today and I think you've got a basis for finishing that out.

So any questions or concerns that you'd would like as to address?

J. VELLONE: So I do have legitimate relevance disputes on SEC 9, SEC 17 and SEC 26.

COMMISSIONER MORAN: Right. So sort that out with Mr. Shepherd, get it really sharpened up to what specifically needs to be adjudicated by us, and then just tell us what that is by end of day, October 2nd.

J. SHEPHERD: Can I just ask a clarification? Are you, Commissioners, are you asking us to sort of create a list of the documents that might be involved in these things and identify which ones are disputed and which ones are not?

COMMISSIONER MORAN: No. Just tell us what's disputed and then tell us how much time is needed to file the ones that aren't disputed. And I guess when the ones are filed, we'll see them when they're filed, right?

J. SHEPHERD: Okay.

COMMISSIONER MORAN: Everything that's agreed should be filed, you know. We'll be on the record, you don't have to tell us what those are, just ‑‑ we'll look at them when they come in the door.

J. SHEPHERD: Okay.

COMMISSIONER MORAN: I think the key thing is that we just need to know what specifically has to be decided by us.

J. SHEPHERD: I apologize.

My question was more, do you want us to do it document by document so that we are very precise on what it is that we're disputing?

COMMISSIONER MORAN: In terms of what's in dispute? Yeah, I mean, the more precision, I think the easier everyone's job is going to be on this. I think we understand the submissions that have been made across all of the documents and then if there's specific relevance problems with particular documents, we understand the issue, right? Thank you.

All right. And I guess with that we are adjourned.

--- Whereupon the proceedings concluded at 4:04 p.m.