



By EMAIL and RESS

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

October 1, 2025
Our File: 20250014

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

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2025-0014 – Oshawa Power 2026 Rates – Form of Hearing

We are counsel for the School Energy Coalition (SEC). Pursuant to Procedural Order #4 in this matter, this letter constitutes SEC's submissions on the optimum form of hearing in this proceeding.

In summary, SEC submits that the following unsettled issues can be dealt with in argument, and do not require hearing time:

- 3.2 – PILs
- 4.1 - Load forecast
- 5.1 – Cost allocation
- 5.2 – Rate design; Fixed variable splits
- 7.1 – Effective date
- 7.2 – Responding to all relevant OEB directions from previous proceedings

With respect to the remaining issues, which comprise basically all of revenue requirement, SEC submits that the OEB should convene an oral hearing to hear from the witnesses and test their evidence. All witnesses should appear in person unless there are exceptional circumstances.

The balance of these submissions deal with our submission that issues require an oral, in-person hearing.

OEB Rules of Practice and Procedure

Since parties normally agree on the form of hearing, it is rare that we have to refer back to the OEB's Rules of Practice and Procedure on this point. In this case, because the form is disputed, we quote

the Rules on form of proceeding as follows¹:

“32.02 The format, date and location of a hearing shall be determined by the OEB.

32.03 In determining the format for a proceeding or part of a proceeding, the OEB will consider:

- (a) The subject-matter of the proceeding, including its complexity and the issues to be addressed;*
- (b) The nature of the evidence, including whether facts are in dispute or credibility is an issue;*
- (c) The preferences and convenience of the parties, including any anticipated significant prejudice to a party;*
- (d) Requests from representatives of Indigenous communities for the proceeding or part of the proceeding to be conducted as an oral hearing;*
- (e) The costs for accommodation and travel for parties who reside outside of the Greater Toronto and Hamilton Area;*
- (f) The efficiency and timeliness of the proceeding, including the urgency of the matter or the avoidance of unnecessary delay; and*
- (g) Any other relevant considerations affecting the fairness of the proceeding or the fulfillment of the OEB’s statutory mandate.*

32.04 Where the OEB determines that all or a portion of a proceeding will be conducted as an oral hearing, the OEB may make provision to allow parties to participate by electronic means on such conditions as the OEB may impose.”

Application to this Proceeding

In dealing with the enumerated items to be considered by the OEB, SEC notes:

- a) This is a proceeding seeking approval for five years of rates, involving hundreds of millions of dollars of planned spending of ratepayer dollars, and the unsettled issues include essentially all of that proposed spending. The components of both the OM&A and the capital proposals are complex, particularly given that the Applicant is in what they have described as a “business transformation”. This complexity is exacerbated by the upcoming building proposal, the subject of Issue 7.3.
- b) The parties dispute the appropriateness of both past and planned spending on OM&A and capital. The doubling of the capital plan from the last five years to the current plan raises important issues of credibility. The “need” to spend as much as is proposed is based primarily on the judgment of individuals at Oshawa Power. The ratepayers expect – and the OEB should expect – management of the utility to appear before the Commissioners to justify the massive rate increases being proposed.
- c) Parties testing the evidence and the credibility of witnesses are disadvantaged if witnesses are not heard at all, or are heard only through video link. Past experience shows that virtual hearings make it difficult for cross-examining parties and Commissioners to see the body language and expressions of the witnesses, and thus miss a lot of the nuances of their testimony. The use of breakout rooms means that sidebars are not visible, and the presence of others off-camera is not detectable. Every experienced intervenor representative and adjudicator will agree that Commissioners get a better sense of the evidence if the witnesses are present in person.
- d) There are no indigenous representatives involved in this proceeding.

¹ Rules of Practice and Procedure, March 6, 2024, s. 32.02-32.04.

e) All witnesses from the Applicant are located in the Greater Toronto and Hamilton area, which expressly includes Durham and the City of Oshawa. Many people who work in Toronto, including some at the OEB, live in Oshawa and commute daily.

f) Since rates are requested for January 1, 2026, time is running out to have the evidence tested and the credibility of the Oshawa Power proposals assessed.

g) A public oral hearing allows the members of the public, whose money is the subject matter of the proceeding, to attend either in person or electronically, or to read transcripts of what transpired. It also allows the press the same access, and thus ability to report. Part of the mandate of the OEB is to demonstrate to the ratepayers that their interests are being protected, and this is done in part through transparency in OEB processes.

SEC further notes that s. 32.04, which allows some witnesses to appear in hybrid format, is written as an exception and not as the rule. This is used, for example, where expert witnesses live in other cities or countries, and the nature of their evidence does not require that they attend in person. It serves to reduce the costs of the proceeding if an expert from, say, Texas can appear from their office there by video link. Even in those cases, however, that option has been used sparingly by the OEB since the return to in-person hearings post-COVID.

Public confidence is enhanced if those who seek approval to spend large amounts of the ratepayers' money are expected to appear in person before the regulator to justify their proposals. In this case, the public is entitled to see the CEO and CFO of Oshawa Power show up and stand behind their spending plans.

SEC therefore submits that the Commissioners should order the holding of an oral hearing for all of the unsettled issues, other than those listed earlier, and require the witnesses to attend in person unless exceptional circumstances make that impossible. SEC estimates that this oral hearing will take three days.

All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein Professional Corporation



Jay Shepherd

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