

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)(the “Act”)

**AND IN THE MATTER OF** an Application by Oshawa PUC Networks Inc. for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of January 1, 2026;

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**FINAL ARGUMENT  
OF THE  
SCHOOL ENERGY COALITION**

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**November 28, 2025**

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## **1 GENERAL COMMENTS**

### **1.1 Introduction**

- 1.1.1* On April 30, 2025 the Applicant Oshawa PUC Networks Inc. (“Oshawa Power”, or the “Applicant”) filed a cost of service rate Application seeking approval for rates effective January 1, 2026.
- 1.1.2* The Application (after adjustments throughout the process) seeks approval of a weighted average rate increase of 19.5%<sup>1</sup> effective January 1, 2026. However, during the course of the proceeding it was revealed that a further rate increase (relative to current rates), currently expected to be 14.3%, will be proposed by the Applicant in a separate ICM application to be filed in 2026, for a total increase of 33.8% arising out of the Applicant’s current plans.
- 1.1.3* The case included a disputed issues list, extensive interrogatories including disputes over the responses to interrogatories and a contested motion on those responses, and further disputes over confidentiality claims on various utility filings. There was no technical conference. A three-day ADR produced a partial settlement, which was approved by the Commissioners on October 30, 2025. A three-day oral hearing was held October 28-30.
- 1.1.4* The Argument-in-Chief was filed by the Applicant on November 18, 2025. This is the Final Argument of the School Energy Coalition.
- 1.1.5* The Commissioners will be aware that the intervenors have worked together throughout the proceeding to avoid duplication, including sharing ideas, positions, and drafts. That has continued in the argument phase. We have been assisted in preparing this Final Argument by that co-operation amongst parties.
- 1.1.6* There is an issues list in this proceeding, approved by the Commissioners on June 24, 2025. However, given the nature of the disputed issues as they arose during the proceeding, SEC found that it was not able to organize this Final Argument to match the issues list. Instead, this Final Argument follows the natural structure of the evidence, and the conclusions we reach based on that evidence.
- 1.1.7* Where SEC does not state its position, approval of the Applicant’s position or any other position should not be assumed. Silence is just silence.

### **1.2 Information Asymmetry**

- 1.2.1* This proceeding has been characterized by the shocking degree to which the

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<sup>1</sup> RRWF dated September 22, 2025, Tab 8: \$6,290,641/\$32,209,176 = 19.53%.

Applicant has sought to use its natural advantage of information asymmetry to its advantage in an adversarial way<sup>2</sup>.

- 1.2.2** The problem of information asymmetry – the unfortunate reality that almost all of the information relevant to a rate case is under the control of the Applicant – is not a new one. Asymmetrical information is a foundational issue in economics, and in rate regulation has been studied extensively by academics, particularly in the 1980s and 1990s. One result has been the growth of formula-based regulation like IRM and PBR, which rely as much as possible on externally verifiable information to set or at least influence the prices charged by regulated monopolies.
- 1.2.3** But even a comprehensive IRM system such as that of the OEB is highly susceptible to the extent to which Applicants, especially in rebasing proceedings, are able to determine what information is available to the regulator.
- 1.2.4** The OEB has all of the standard methods for ensuring that it has full information, such as formal filing requirements, an extensive discovery process with multiple parties digging for information, oral hearings to test the information that has been made available, and the general oversight of the process by experienced and independent Commissioners.
- 1.2.5** However, it was once common for rate-regulated utilities in Ontario to take an adversarial approach to rate proceedings, using as one of their tools control over the flow of information. Slowly, over perhaps the last two decades, the OEB has changed the paradigm, making clear that the regulator expects utilities to be forthcoming with information that may be helpful to the adjudicators.
- 1.2.6** As early as 2013, the Filing Requirements for Electricity Distribution Applications said<sup>3</sup>:

*“An application to the Board by a regulated company must provide sufficient detail to enable the Board to make a determination as to whether the proposals are reasonable. The onus is on the applicant to substantiate the need for and reasonableness of the costs that are the basis of proposed new rates. A clearly written application that demonstrates the need for the proposed rates, complete with sufficient justification for those rates, is essential to facilitate an effective regulatory review and a timely decision.”*

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<sup>2</sup> Mr. Garner on behalf of VECC characterized it as “manipulate the process” [Tr.1:54], which is probably a fair description.

<sup>3</sup>

1.2.7 Today, the Filing Requirements say much the same thing<sup>4</sup>:

*“The onus is on the distributor to file a clearly written, accurate and complete yet succinct application that presents information and data consistently across all exhibits, appendices and models and demonstrates the need for the proposed rates, complete with sufficient justification for those proposals. To assist distributors, the OEB has streamlined its filing requirements and offers a pre-application meeting to allow parties to discuss issues that will assist in the preparation of their application. The filing of a comprehensive application is essential for the development of an accurate Notice of Hearing and for the timely and effective review of an application.”*

1.2.8 In fact, though, it has been a change in informal expectations that has been the most effective in ensuring that Commissioners have better information. Applicants, including electricity distributors, have seen over time that they were expected to be proactive in providing information that may be helpful to the OEB. Conversely, Applicants that did not take that approach were criticized. Today, it can be fairly stated that, while there are sometimes efforts by utilities to bury information not helpful to their applications, for the most part distributors and others understand that they are expected to tell the whole story, warts and all, and they endeavor to do so.

1.2.9 It is probably also fair to say that the much increased use of settlements to resolve rate cases, in whole or in part, has been the result of utilities laying all their cards on the table, then engaging in a respectful dialogue with their stakeholders. Both the industry and the customers have benefitted from this less adversarial, more collaborative, approach to rate regulation.

1.2.10 SEC (and, we presume, other parties) was unpleasantly surprised to see the extent to which this Applicant sought very aggressively to limit the information available to the Commissioners and the parties. This Application appears to be a throwback to the past, and not a good past.

1.2.11 ***The Flawed Distribution System Plan.*** The most obvious example of this, of course, was the conscious decision by Oshawa Power to file a Distribution System Plan that was non-compliant with the Filing Requirements and knowingly misleading to the OEB. The decision to exclude from the DSP the Applicant’s largest ever single capital project, and thus intentionally understate its planned capital spending over the DSP period by 43% (\$61 million) was not only contrary to the rules and policies of the OEB, but was also susceptible of no rational justification. It was as if the Applicant believed that it was simply not required to

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<sup>4</sup> Filing Requirements for Electricity Distribution and Transmissions Applications, June 2025, Chapter 1, p. 2.

provide the Commissioners with its true capital plan for 2026-2030, despite the clear requirements to do so.

- 1.2.12** It is not as if the OEB has been unclear as to the requirements for a DSP. The Filing Requirements contain an entire chapter dedicated to what should go in a Distribution System Plan<sup>5</sup>:

*“A distributor should provide the processes used to identify, select, prioritize (including reprioritizing investments over the five-year term), optimize and pace the execution of investments over the term of the DSP. A distributor should be able to demonstrate that it has considered the correlation between its capital plan and customers’ feedback and needs...”*

*The capital expenditure plan should set out and comprehensively justify a distributor’s proposed expenditures on its distribution system and general plant over a five-year planning period, including investment and asset-related O&M expenditures.”*

- 1.2.13** There are no exceptions. Nowhere in the Filing Requirements does the OEB suggest that future planned investments can be left out of the DSP. Indeed, the entire Chapter 5 makes clear that all planned investments must be included in the DSP.

- 1.2.14** In fact, the OEB is pretty specific when it comes to investments like the new head office campus<sup>6</sup>:

*“Where a capital investment substantially exceeds the materiality threshold (e.g., CIS, GIS, new office building) the distributor should file a business case documenting the justifications for the expenditure, alternatives considered (including NWSs, if applicable), benefits for customers (short/long term), and impact on distributor costs (short/long term).”[emphasis added]*

- 1.2.15** It was not as if Oshawa Power was excluding their \$61 million head office campus because they might not do it after all. They had already spent \$11 million on the land, and were actively moving forward with the procurement of the construction contracts<sup>7</sup>. Their evidence was that they would have to move to the new facility within two years<sup>8</sup>.

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<sup>5</sup> Filing Requirements for Electricity Transmission and Distribution Applications, Chapter 5, p. 9, 13.

<sup>6</sup> Ibid. p. 16.

<sup>7</sup> Tr.1:23.

<sup>8</sup> K1.3, p. 24.

- 1.2.16** Thus, despite the Completeness Letter issued by OEB Staff, the Application was not in fact complete, and is not currently complete, in the sense of being compliant with the Filing Requirements.
- 1.2.17** When intervenors proposed to add an issue to the Issues List dealing with the head office campus, the Applicant doubled down, claiming that because no relief is being sought in this Application for that expenditure, it was not relevant to this case<sup>9</sup>. Further, they sought to recharacterize the addition of the issue as if the intervenors sought to require them to file an ACM against their wishes, which no-one had suggested but was a convenient straw man.
- 1.2.18** The sole reason for opposing the issue was to hide information on the head office campus spending from the Commissioners, the parties, and the public.
- 1.2.19** The Commissioners rightly pointed out the terms of the Filing Requirements, and added the issue accordingly. The result was that some of the true extent of the Applicant's capital plan was revealed.
- 1.2.20** Even then, the Applicant refused to provide full responses to a number of interrogatories, and parties were forced to make a formal Motion to get proper answers.
- 1.2.21** But that still wasn't enough, Not only were the forced answers as limited as possible, but in some case they sought to minimize the actual capital spending. One of the best examples is the response to Interrogatory 1-X12, which includes the head office capital spending in Table 1-7 of the Distribution System Plan<sup>10</sup>. In that response, the Applicant provides the spending on the head office campus in separate columns, and does not include it in the spending totals. Done correctly, that table should look like this<sup>11</sup>:

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<sup>9</sup> Of course, that would mean that all of the information on the capital spending plans for 2027-2030 could have been left out of the DSP and the Application, since no relief is being sought for any of that capital spending. The argument was then, and still is, patently untenable.

<sup>10</sup> Distribution System Plan, p.10. The Restated table is reproduced in the Argument in Chief, at p.4.

<sup>11</sup> We note that, while this was originally filed as confidential, the decision of the Commissioners on October 28<sup>th</sup> resulted in the additional information in this table no longer being confidential. It is now included at page 34 of the Argument in Chief.

**OSHAWA PUC NETWORKS INC. 2026 RATES**  
**EB-2025-0014**  
**FINAL ARGUMENT**  
**SCHOOL ENERGY COALITION**

| Category                        | 2021          | 2022          | 2023          | 2024          | 2025          | 2026          | 2027          | 2028          | 2029             | 2030          |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|------------------|---------------|
| System Access                   | 4,219         | 3,839         | 7,105         | 6,694         | 7,995         | 9,186         | 9,270         | 9,356         | 9,443            | 9,532         |
| System Renewal                  | 6,507         | 6,538         | 12,069        | 4,585         | 7,948         | 8,045         | 8,756         | 7,056         | 7,421            | 8,108         |
| System Service                  | 2,828         | 953           | 1,294         | 1,805         | 1,093         | 1,336         | 300           | 778           | 962              | 588           |
| General Plant                   | 1,046         | 1,271         | 1,721         | 576           | 2,716         | 1,680         | 62,678        | 1,730         | 1,155            | 802           |
| <b>TOTAL EXPENDITURE</b>        | <b>14,601</b> | <b>12,601</b> | <b>22,189</b> | <b>13,660</b> | <b>19,752</b> | <b>20,247</b> | <b>81,004</b> | <b>18,920</b> | <b>18,980</b>    | <b>19,030</b> |
| Capital Contributions           | 2,049         | 1,201         | 2,580         | 4,856         | 2,343         | 3,228         | 3,253         | 3,277         | 3,303            | 3,328         |
| <b>NET CAPITAL EXPENDITURES</b> | <b>12,552</b> | <b>11,400</b> | <b>19,609</b> | <b>8,804</b>  | <b>17,409</b> | <b>17,019</b> | <b>77,752</b> | <b>15,642</b> | <b>15,678</b>    | <b>15,701</b> |
| Net DSP Expenditures            |               |               |               |               | 69,774        |               |               |               |                  | 141,792       |
| <b>DSP Expenditure Change</b>   |               |               |               |               |               |               |               |               | <b>\$ 72,018</b> | <b>103%</b>   |

**1.2.22** SEC notes that, even when Oshawa Power was required to provide information relating to the head office campus (and other things)<sup>12</sup>, they still sought to hide that information from their own customers, from whom they are seeking a lot of money. Oshawa Power made extensive confidentiality claims and even, at the last minute, threatened to file an appeal of the decision of the Commissioners requiring certain things to be on the public record<sup>13</sup>. It was only to avoid an adjournment of the oral hearing that Oshawa Power accepted that certain information would be on the public record<sup>14</sup>.

**1.2.23** In short, the Applicant only provided information on their largest capital project when ordered to do so, and then dragged out the process unnecessarily by requiring motions and disputes on confidentiality, resisting right up to the end. Some of the relevant information, in fact, was not even provided until after the oral hearing<sup>15</sup>, so that testing of the evidence was not possible.

**1.2.24** In our view, this is not an acceptable way to approach the regulatory process.

**1.2.25** *The Business Transformation Plan.* The building was not the only material aspect of the Application in which information was withheld from the OEB.

**1.2.26** Every rate application is supposed to be based on a business plan<sup>16</sup>:

*“The utility’s plan for its business is foundational to the proposals included in its rate application. This includes the overall strategy for the regulated business, particularly the utility’s goals, how these goals relate to what is sought in the application and the plan to meet them. The OEB expects the business plan to be informed by the utility’s engagement with customers. The business plan is supplemented and*

<sup>12</sup> Decision and Procedural Order 5, October 20, 2025.  
<sup>13</sup> Letter from the Applicant dated October 27, 2025.  
<sup>14</sup> That appeal, in which the Applicant claimed they would file additional evidence supporting their need for confidentiality, has not yet been seen.  
<sup>15</sup> See, e.g., undertakings J1.3, J1.8, J1.9, J1.11, J1.12 and related attachments. This material should all have been on the record prior to the oral hearing.  
<sup>16</sup> Handbook to Utility Rate Applications, October 2016, p. 5.

*supported by the associated plans, reports and documentation (including system plans<sup>10</sup>, capital and operational plans, programs, benchmarking, external reviews, and customer engagement activities) which form the core of the rate application. This utility business plan may differ from the corporate business plan that may include matters that go beyond the scope of the OEB’s review in a rate application.” [emphasis added]*

**1.2.27** In this case, their plan wasn’t just any old business-as-usual type plan. As Ms. Tang, the CFO, pointed out<sup>17</sup>, “***Oshawa Power is no longer business as usual***”, and this was indeed a theme early in the oral hearing, which we heard from Ms. Bennett and Mr. Weatherbee as well.

**1.2.28** They called it, in fact, a “business transformation”, but there was some confusion about what that meant. In their opening statement, Ms. Bennett said<sup>18</sup>:

*“To address these challenges, in 2023, Oshawa Power established a new senior management team with a renewed focus on business transformation.”*

**1.2.29** This is consistent with the prefiled evidence, where it says<sup>19</sup>:

*“The entire senior management team at Oshawa Power has turned over since the last Cost of Service rate filing. Aligned with Oshawa Power’s 2026-2030 Strategic Plan, the new team brings a renewed focus on business transformation to maintain and enhance how Oshawa Power manages its system and serves its customers amid local growth, policy and regulatory changes, and uncertainty related to the transformation of the energy sector.”*

**1.2.30** That sounds like a big change, and it is not surprising that parties explored what that meant. Unfortunately, trying to understand it only added to the confusion. SEC sought information in an interrogatory, but the response was<sup>20</sup>:

*“The Organization has undergone significant structural change at the leadership level to adapt and modernize in Ontario’s evolving energy sector. **Such evolution required leadership change at the management level...** The plans for modernization of Oshawa Power’s system were developed by the new leadership following the management turnover.”*  
*[emphasis added]*

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<sup>17</sup> Tr.1:47.

<sup>18</sup> Tr.1:36-7.

<sup>19</sup> Ex. 1, p. 8-9

<sup>20</sup> I-X-7.

**1.2.31** That sounded like the new executive team was brought in for the purpose of evolving or transforming the company<sup>21</sup>, but the Applicant says that is not the case. SEC's report to the Commissioners of October 2, 2025, approved by counsel for the Applicant, describes what happened as follows<sup>22</sup>:

*“Step one was bringing in a new CEO, who hired a mostly new management team, and it was that CEO and new team that initiated and developed the business transformation plan.”*

**1.2.32** In fact, that happened over the course of 2023 through a series of visioning sessions<sup>23</sup>:

*“J. SHEPHERD: Okay. And the new senior management team had some sort of visioning sessions, as it were -- I love that term -- to understand, to get on the same page about the direction you were going in. Is that right?”*

*V. BENNETT: I just had to confer with my colleagues because a lot of that work predates my time there, but, yes, it did include those types of sessions.”*

**1.2.33** This is important because when you transform a business, you do so because there is a major problem or challenge that needs to be addressed through a change to the organization. We never did find out the reason the business needed to be transformed. The closest we came was Ms. Bennett saying they needed to address turnover and antiquated systems<sup>24</sup>. You don't replace your entire management team to do that, and you certainly don't refer to dealing with those issues as a business transformation.

**1.2.34** In the end, none of this would be a major issue for the Commissioners, except that throughout the oral hearing the Applicant started distinguishing between the business transformation as being IT only, and the business plan, which was simply about serving the customers. The result of this distinction was that the witnesses avoided answering direct questions about the company's strategy.

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<sup>21</sup> That was in fact SEC's assumption in the Motion Hearing on September 29<sup>th</sup>.

<sup>22</sup> SEC letter of October 2, 2025.

<sup>23</sup> Tr.1:119.

<sup>24</sup> Tr.1:119.

**1.2.35** A good example is cross-examination on Day 1, in which we sought to find out whether the building was part of the business transformation strategy. The exchange was confusing<sup>25</sup>:

*J. SHEPHERD: ...So in the business transformation, does that include the building? Was that part of the business transformation?*

*V. BENNETT: Are you referring to the strategy document?*

*J. SHEPHERD: I am not referring to the document. I am referring to the -- Mr. Arbor came in in April 2023, and he had a plan, a vision for the direction of the company and started to implement it. We know that. That is on the record. I'm -- the first thing he did, appears, was he got Cushman & Wakefield to do a study, so presumably the building was part of that strategy. I am asking if that is correct?*

*M. YACKOUB: Mr. Shepherd, just for clarification, I think you may be conflating the business transformation strategy that we filed and largely centres around technology and has a couple of other issues in it such as staff performance and things like that with the business plan. So those are two different things. So the business transformation strategy is what we filed in Exhibit 1.*

*J. SHEPHERD: Ms. Bennett in her opening statement talked at length about modernizing the utility, including the new strategy and business plan and a whole lot of other things that have nothing to do with IT. So is that -- that not the business transformation? Am I mixing things up?*

*M. YACKOUB: So the business transformation strategy -- yes, I think you are conflating two different things. The business transformation strategy is what we filed in Exhibit 1. Everything else I think you are referring to is just the business plan.*

*J. SHEPHERD: So I asked you specifically, is this a transformation, does -- is it an IT-only thing? And you said, no, there is other things too.*

*M. YACKOUB: That is right. But --*

*J. SHEPHERD: It is on the record. So what is it?*

*M. YACKOUB: So you wouldn't conclude that there are other things, meaning that it is all-encompassing either; right? So it doesn't mean that everything is part of business transformation.*

*J. SHEPHERD: Okay. The goal, though, of all of this stuff, whether you call it a business plan or a business transformation or whatever, is to modernize and make the utility -- make this utility act like a larger, more sophisticated entity; isn't that right?*

*M. YACKOUB: Sorry. Are you referring to the business transformation strategy or just the general business plan?*

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<sup>25</sup> Tr. 1:116-7.

- 1.2.36** We never did get a straight answer<sup>26</sup>.
- 1.2.37** This confusion became a theme throughout the proceeding, with the witnesses sometimes limiting the business transformation to IT, and other times talking about it as an overall modernization of the utility.
- 1.2.38** This is not just semantics. If this is a utility undergoing a major change in goals, direction, priorities, or anything else like that, the OEB needs to know that, because it is the foundation of the rates being requested in this proceeding. Oshawa Power avoided sharing the nature of its change with the OEB.
- 1.2.39** What the Commissioners needed to hear is the underlying rationale for the transformation of the business, and the goals sought to be achieved, as the Handbook to Utility Rate Applications clearly requires. What was the new vision that was different from the old vision?
- 1.2.40** Instead, the OEB was referred to the business plan, which contains nothing of substance, and is entirely sanitized for regulatory consumption. Even the witnesses admitted “The business plan is high level”.<sup>27</sup> There is nothing different in it than the normal motherhood and apple pie in every utility business plan. There was certainly nothing transformative.
- 1.2.41** And, crucially, there is no action plan. In the series of visioning sessions the witnesses admitted to, there would have been debates over actions and deliverables. The Commissioners have seen none of that.
- 1.2.42** This is why SEC, to everyone’s surprise, questioned why the CEO – the architect of the plan – was not there to defend it<sup>28</sup>. Oshawa Power quite rightly noted that they have the right to present their case as they see fit, which is true to a degree. However, it is also true that the Commissioners have the right to hear the whole story, from witnesses that understand the whole story, and not to constantly hear that the witnesses can’t answer because “that was before my time”.
- 1.2.43** Had the CEO showed up, he could have articulated the overall vision and goal that the business transformation was trying to achieve. He could have answered questions (like, was the new building part of that transformation?).
- 1.2.44** More important, the CEO (or someone, at least) could and should have explained to

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<sup>26</sup> SEC concludes that the witnesses were seeking to avoid providing straightforward answers. The alternate explanation, of course, is inexpert cross-examination.

<sup>27</sup> Tr.2:81.

<sup>28</sup> Tr.1:113-4.

the Board why a utility that has relatively low rates, and yet has a distribution system in very good condition, and good metrics in terms of reliability, safety, and other requirements, needs some kind of massive transformation. What was wrong with it?

- 1.2.45** So far, the only failing that has been suggested is that it didn't have enough executives, and they were not being paid enough. They were delivering a good service to their customers already, and they are not now planning to deliver a better service to their customers. All they are planning to do is pay their top employees more.
- 1.2.46** *Rates vs. Costs.* Another area in which the Applicant failed to provide full information to the Commissioners and the parties is in their consideration of the rate impacts of the Application, particularly in light of the upcoming spending on the head office campus project. In short, they claimed again and again that they did not do rate impact analysis, because they were only focused on controlling costs to stay within Cohort II<sup>29</sup>. As long as they did, they argue, they did not need to concern themselves with the level of rate increases their customers were going to experience.
- 1.2.47** If management and/or the shareholder did not consider rate increases and the impact on customers as part of planning for this Application, that would clearly be incompetence. This is a rate application. Rates are an important element. Even inexperienced<sup>30</sup> regulatory staff know that.
- 1.2.48** But SEC does not think that the Applicant ignored the rate implications of their Application, and the planned ICM next year. We do not believe they are incompetent. Rather, we believe that they directly faced the rate impacts, but decided not to talk about them in the hearing or the Application because focusing on Cohort II is more palatable.
- 1.2.49** SEC does not believe that is how this process is supposed to work. If asked how management took rate impacts into account<sup>31</sup>, it is not acceptable to avoid the question and just talk about Cohort II. We understand that witnesses want to "stay on message". That does not justify failing to disclose to the Commissioners their discussions about rate impacts. Answering questions in the most favourable terms is one thing. Hiding what actually happened is quite another.
- 1.2.50** *The Applicant Challenges the Legality of the OEB's Treatment of LDCs.* Finally, the most appalling thing in this proceeding – at least, in the eyes of SEC – is the

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<sup>29</sup> By way of example Tr.1:38, 45, 123-4; Tr.2:52.

<sup>30</sup> Tr.1:38.

<sup>31</sup> Tr.1:122-3.

claim in the Argument in Chief that the OEB is not complying with its statutory and legal obligations in setting just and reasonable rates. The quote is as follows<sup>32</sup>:

*“Although the Supreme Court of Canada has affirmed that utilities must be allowed to earn their cost of capital, the OEB has, in practice, not ensured that this outcome is realized.”*

- 1.2.51** This is wrong on so many levels that it is hard to know where to begin. Start with the fact that the regulator’s job is not to ensure that utilities make enough money. That is management’s job.
- 1.2.52** Second, the principle is that utilities must be given the opportunity to recover their reasonable operating costs, and their market cost of capital. The principle is that the regulator cannot say “We think the shareholder should pay part of the operating costs”, or “we think that you should get lower cost of capital in order to reduce rates”. The principle is not that utilities should get whatever they ask for. The principle is not that, if they don’t earn enough money, it is the regulator’s fault.
- 1.2.53** The *OPG v. OEB* case cited by the Applicant is perhaps the single most important case on energy regulation in Canada. SEC was directly involved in that case at all levels, and we note that the result was that OPG lost. OPG argued that they should be entitled to higher rates (“payment amounts”, in their case), and the OEB was required to order those higher rates.
- 1.2.54** The Supreme Court of Canada disagreed. Although the OEB ordered substantial cutbacks in the revenue requirement for the utility, they did it in a principled way, assessing the reasonable amount of operating costs, and the market cost of capital. The fact that it was not as much as OPG wanted wasn’t the point.
- 1.2.55** Thus, quoting that case to support the notion that that failure of LDCs to earn sufficient profits is the regulator’s fault is exactly the opposite from what the Supreme Court concluded.
- 1.2.56** Third, the Applicant quotes the Minister of Energy referring to the “fiscal cliff”, as if that has something to do with how the OEB sets rates.
- 1.2.57** It does not. The Minister’s reference is to a new blue ribbon panel recently appointed by the government to look at the regulated energy sector. Note that their focus will in fact be on ways to get additional equity into regulated utilities, since their owners – often municipalities – are not able to make such investments. The problem the Minister was referring to was access to capital. He was not making a pitch for higher distribution rates.

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<sup>32</sup> Argument in Chief, p. 4.

- 1.2.58** Fourth, the Applicant quotes the Electricity Distributors Association’s evidence in another case alleging underfunding of distributors. Note that, in that case, the OEB did not conclude on the evidence that distributors are being underfunded. This is not an appropriate proceeding in which to re-argue that point.
- 1.2.59** Fifth, and finally, the Applicant cites evidence that, in 2022 and 2023 58% of distributors actually earned less than their allowed rate of return. Conveniently ignoring the 42% of well-managed distributors that earned the allowed rate or higher (some much higher), the Applicant concludes from the underearning that the regulator is at fault for failing to order high enough rates.
- 1.2.60** It is almost embarrassing to respond to this specious argument. Distributors underearn because management spends more than they have in revenues. This is no different than an individual, as famously captured in the words of Mr. Micawber from David Copperfield<sup>33</sup>:
- “Annual income twenty pounds, annual expenditure nineteen pounds, result happiness. Annual income twenty pounds, annual expenditure twenty-pound ought and six, result misery.”*
- 1.2.61** Distributors have some flexibility to spend a little more than their budget because they don’t pay all of their profits out in dividends. If they earn less than the allowed ROE, that just reduces their retained earnings. Within reason, they think they can live with that. Further, if they look like they are making too much, they fear that either their shareholder will ask for higher dividends, or the regulator will cut back their rates in their next rebasing. Therefore, they spend up to and just over the budget.
- 1.2.62** It is also true that they sometimes just spend more than they should because they don’t exercise sufficient restraint. Oshawa Power complains that, in a year in which they decided to increase their management and executive teams, and increase the compensation of all of those people by substantial amounts, they didn’t earn their allowed return. This is no different than putting things you can’t afford on your credit cards, hoping that “something will come up”.
- 1.2.63** It is also sometimes true that distributors spend more in the historical and bridge years in order to create a *fait accompli* cost requirement for the test year, a practice famously labelled “base year stuffing” by long time OEB counsel Peter Thompson. The theory is that it is more difficult for adjudicators to cut back amounts that are already being spent (the people have been hired, new levels of spending have already been set) than forecasts of new spending plans.

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<sup>33</sup> Dickens, Charles, David Copperfield, page unknown.

- 1.2.64** These are all reasons why distributor management may overspend, and thus earn less than the allowed rate of return. Blaming it on the regulator is misguided.
- 1.2.65** The argument that the OEB is systematically underfunding electricity distributors, and failing to meet its statutory obligations and the Fair Return Standard, is patently without merit, so one has to wonder why the Applicant even raised it.
- 1.2.66** The reason may be to set up a potential appeal of the decision in this case. Knowing that, with a rate increase as large as that proposed in this Application, there is the potential that the revenue requirement will be cut back substantially, the Applicant is putting the Commissioners in a bind. If you ignore the “systematic underfunding” and “breach of statutory obligations” arguments, they may argue that your decision did not consider all relevant arguments. If you engage with those arguments, on the other hand, you legitimize them.
- 1.2.67** SEC believes that the OEB should ignore these meritless arguments. No evidence has been provided that they are correct, and the analysis that gets to these conclusions is faulty on its face. In our view (and subject to our comments below), the OEB should do what it always does. Assess the evidence, establish a reasonable level of operating costs and rate base, and apply cost of capital principles to get to a revenue requirement that supports just and reasonable rates.
- 1.2.68** *How Should the Commissioners Deal with an Application that is Offside?* One might well ask the purpose of this lengthy diatribe on the behavior of the Applicant in this case. The answer is that an Applicant that takes an overly adversarial approach to the process, in essence seeking to game the rules, raises the unusual possibility that the Commissioners will “just say no”.
- 1.2.69** “Just say no” is not a decision of the OEB that one sees often. In fact, in the many hundreds of applications in which SEC has been involved over the years, we have never seen an application refused completely. Specific proposals or asks by a utility are often rejected, rates are set that are much different from those requested, and on a rare occasion an application fares so poorly during the process that it is withdrawn by the utility before the conclusion of the proceeding. We have never, however, seen a rate case in which a panel of Commissioners simply refused to make any changes to the applicant’s rates.
- 1.2.70** On the other hand, that option is in fact open to the Commissioners. The Applicant is, of course, entitled to have its Application heard, but only if it is complete. This Application was not, so the Application could be rejected on that basis. Further, if the Application is considered to be before the Commissioners properly, the onus is still on the Applicant to justify their proposed rates. The Commissioners are well within the statute to say “We don’t think we got the whole story, and we don’t think

you met the statutory onus, so we are going to decline to change your rates. You can come back any time with a more complete, more forthcoming application, and we will look at it then.”

- 1.2.71** The Applicant will naturally argue that this amounts to the Commissioners, at the urging of SEC, wasting all of the time and effort and money that went in to this proceeding.
- 1.2.72** That would be incorrect. It is the Applicant, not the Commissioners, that has wasted all of this time and effort and money, through filing a flawed Application and then doubling down on its own errors again and again.
- 1.2.73** The Partial Settlement could be a complication in that regard, but SEC believes that solves itself. The Partial Settlement is only valid if the remaining issues are resolved through a Decision. Indeed, most of the settled issues can only by their terms be implemented in the context of contested issues having been determined.
- 1.2.74** SEC believes that the OEB should seriously consider the “just say no” option for this Application. Not only is it a fair result for this Applicant, but it would send a clear message to other regulated entities that attempting to game the rules, or attempting to take the OEB back to a day when rate applications were fundamentally adversarial in nature, is not acceptable.
- 1.2.75** That having been said, SEC is practical. We understand that simply refusing the relief sought in this Application would be considered a radical result, and would be upsetting to many regulated utilities and their organizations.
- 1.2.76** Thus, while we believe that at some point the OEB must draw a line to ensure orderly regulatory proceedings, we also understand that it is unlikely the OEB will take the extreme step we are proposing. It is our primary submission, but we will, later in these submissions, make submissions in the alternative that follow a less radical approach.

### **1.3 Summary of SEC Recommendations**

- 1.3.1** The positions of SEC as set out in this Final Argument can be summarized as follows:
- 1.3.2 *Primary Submission – Reject the Application.*** SEC submits that, faced with an Application that is materially non-compliant with the OEB’s filing requirements, the Commissioners have the option of rejecting the Application entirely, and should seriously consider that option.
- 1.3.3** Rejection of the Application is complicated by the Partial Settlement Proposal,

which may be inconsistent with that rejection. One solution is to invite the parties to determine whether (and if so, how) they wish to continue the Partial Settlement Proposal in the face of rejection of the remainder of the Application. The other possibility is to treat the Partial Settlement as a nullity because by its terms it depends on a determination by the Commissioners with respect to the unsettled issues. Either solution may be appropriate.

- 1.3.4** The remaining submissions apply if the Commissioners decline to implement the option of rejecting the Application.
- 1.3.5** *Rate Target.* SEC submits that the Commissioners should establish an envelope-based target of a weighted average rate increase, including the expected rate impact of the head office campus, of no more than 19%. Since the head office campus is expected to increase rates by at least 14.3%, that leaves a maximum of 4.7% rate increase for the current Application. Assuming realistic IRM increases, the result is that over the five year period of this rebasing (2026-2030) rates would increase by around 35%. That should be treated as an upper limit of affordability for the customers in Oshawa.
- 1.3.6** *Distribution System Plan.* The Commissioners should treat the DSP with the head office campus included as the real Distribution System Plan. Even then, it is deficient.
- 1.3.7** Given the high level of capital spending proposed, the OEB should establish a capital spending envelope for the five year rate period of no more than \$117 million, including the head office campus, and should limit capital additions in the Test Year to \$10.5 million, which is 80% of the average of 2021-2024 actual capital additions. If this level is maintained, and with inflation impacts and the head office spending then added, the total for the five years should be about \$117 million. That is 70% more than the capital spending for the prior five year period, essentially leaving 50% of the head office campus project as incremental to a normal capital budget, and the other 50% funded by reducing other capital spending.
- 1.3.8** *OM&A Budget.* The OM&A budget envelope should be capped at \$17.3 million, which is a 30% increase over 2021 actuals. This is more than inflation plus growth combined, but would have the effect of rolling back some of the large increases already implemented in 2024 and 2025, plus the additional large increase proposed for 2026.
- 1.3.9** *Effective Date.* This proceeding has been prolonged by the actions of the Applicant. SEC therefore submits that the effective date should be the beginning of the month following approval of the Rate Order.

## **2 RATE INCREASE/AFFORDABILITY**

### **2.1 Introduction – Costs vs. Rates**

- 2.1.1** *A Regulatory Fable*<sup>34</sup>. Normally we would not use a simplistic analogy to characterize a serious situation. While it may be common sense, it can be taken as condescending.
- 2.1.2** On the other hand, sometimes the simplistic analogy illustrates the underlying point with precision. Such is the case with Oshawa Power.
- 2.1.3** You have an older house, so inevitably there is a long list of capital projects that need to be done. The windows are originals, so not only in poor condition, but also inefficient. The roof has to be replaced every 15-25 years, and that is coming up soon. The front porch is also original, and the concrete is crumbling. Not yet unsafe, but it makes you nervous. The kitchen and bathrooms are 30 years old, and need to be modernized soon. The backyard needs a patio or deck to make it more usable. The driveway is rutted and breaking up. And that is not even the full list.
- 2.1.4** All of that can be scheduled, so that the annual work you can afford – call it \$15/20,000 a year – is prioritized and completed over time.
- 2.1.5** Then the furnace breaks down, and the HVAC contractor correctly points out that the 20 year old air conditioner should be replaced at the same time as the furnace. Neither should wait, but that's more than \$15,000 right there.
- 2.1.6** The real problem, though, is that, when the time came, you have always planned to install an efficient heating/cooling system - geothermal. In the long term, it is a good investment, and it fits with your values. The catch? All in, it's \$75,000.
- 2.1.7** You can probably manage the cost of the expensive system, in the short term, but not if you do the other projects over the next few years – roof, a couple of windows, driveway, and so on – and continue your normal monthly expenses at current levels.
- 2.1.8** A homeowner, spending their own money, has limited options. You can't go to your employer and ask for a 35% increase in your salary (over and above your normal 3% annual raise) so you can manage these increased costs. You could in theory choose the conventional furnace and air conditioner, which is a poor investment that locks you in to a bad choice for 15-20 years. That can fit within

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<sup>34</sup> The Commissioners will recognize this as a theme of the SEC intervention, starting with our opening statement: Tr.1:51.

your annual budget, and the other projects simply move off a year. But, if you are thinking longer term, you may elect to invest in geothermal. That necessarily means rethinking everything else you are planning to spend.

- 2.1.9** There is only so much available money.
- 2.1.10** Oshawa Power is in exactly that situation. The smart thing to do may well be to invest in a relatively expensive head office campus in the north end of the city, joining a growing industrial base in that area. (We don't know yet. The evidence about that is upcoming in a later application.) If they do that, though, they simply can't afford to continue with the many critical and vital projects that they already have planned. While they may indeed be critical and vital, the money is simply not there. They must re-prioritize, with deep cuts to the rest of the capital plan, and tight constraints on their OM&A costs, so that the new facilities can fit within their budget.
- 2.1.11** Oshawa Power has rejected that option. Instead, they are seeking that 35% "raise". They are not offering to work harder for the extra salary, or produce better results. Instead, they are asking their employers – the ratepayers – to pay them a lot more solely because they want to spend more.
- 2.1.12** In the real world – the world in which the Applicant's customers live every day – that is not a realistic option.
- 2.1.13** *Costs vs. Rates.* Every time the Applicant is asked about rate impacts, they talk about costs. For example, they say multiple times that, while this is a big increase that they are requesting, they "need" it<sup>35</sup>.
- 2.1.14** And, they insist that they were conscious of affordability in everything they did in developing their plan, but they claim they never once actually looked at the rate increases, only the cost levels<sup>36</sup>.
- 2.1.15** In fact, their mantra throughout is that, as long as they remain in Cohort II, they should be able to spend – and collect from ratepayers in increased rates – as much as they want<sup>37</sup>.
- 2.1.16** This is not realistic. The Application and the related big capital project together will cost Oshawa schools an extra \$1.2 million over the next five years if approved. This is money the schools don't have. In the real world, if they have to pay that

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<sup>35</sup> For example, Tr.2:53.

<sup>36</sup> See Tr.1:122-3.

<sup>37</sup> This was a theme throughout, with numerous examples, including Tr.1:38 and 45, Tr. 1 123-4, and Tr.2:52. These are only examples, It kept popping up.

much extra, libraries close, school music programs are cut, and so on. Taking the approach that you should be entitled to whatever money you “need” to spend actually has consequences.

**2.1.17** This sense that what you “need” is more important than the customers is apparent throughout the Application. A good example is the discussion of customer engagement related to the head office campus. Asked why there was no survey of customers asking whether they support the spending on that project, the answer was that it would be premature. Once the procurement process is complete, Oshawa Power will know what the head office campus will cost within a reasonable range, and will ask for input from the customers at that time<sup>38</sup>.

**2.1.18** That is – to be clear – the Applicant will seek customer input on the head office campus once it is a fait accompli, but they need customer feedback to convince the OEB to raise rates once again<sup>39</sup>.

## **2.2**     **Comparative Rates**

**2.2.1** The best way to look at affordability is to look at rates, in this case distribution charges. The following table is, except for the top two lines, actual annual distribution charges for the Cohort II LDCs in Ontario<sup>40</sup>.

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<sup>38</sup> Tr.2:117-8.

<sup>39</sup> See also Tr.2:87.

<sup>40</sup> The 2025 figures are those accepted by Oshawa Power in 1-X-24, except that, as preferred by Oshawa Power, we have removed the DVAs, which they say “distort bill impacts” (1-X-24(a)). The 2026 figures are extrapolated from K1.4, which has the monthly equivalents as accepted by Oshawa Power.

| Comparison to Other Cohort II LDCs     |               |                |                 |
|--|---------------|----------------|-----------------|
| Utility                                | Residential   | GS<50          | GS>50           |
| <b>Oshawa 2026 Plus Head Office</b>    | <b>481.68</b> | <b>1017.24</b> | <b>12973.92</b> |
| <b>Oshawa 2026 Proposed</b>            | <b>428.28</b> | <b>904.44</b>  | <b>11689.32</b> |
| Centre Wellington Hydro Ltd.           | 409.56        | 870.00         | 8329.80         |
| Rideau St. Lawrence Distribution Inc.  | 423.72        | 871.20         | 8238.24         |
| GrandBridge Energy Inc.                | 374.04        | 737.76         | 7995.84         |
| <b>Oshawa PUC Networks Inc. 2025</b>   | <b>357.48</b> | <b>754.56</b>  | <b>7968.24</b>  |
| Niagara-on-the-Lake Hydro Inc.         | 425.52        | 915.12         | 7523.76         |
| Lakeland Power Distribution Ltd.       | 480.12        | 869.64         | 7138.20         |
| EPCOR Electricity Distribution Ontario | 381.60        | 752.88         | 7061.28         |
| Niagara Peninsula Energy Inc.          | 487.92        | 1002.72        | 6818.52         |
| <b>Averages</b>                        | <b>424.06</b> | <b>817.65</b>  | <b>6770.60</b>  |
| Westario Power Inc.                    | 394.08        | 723.48         | 6662.64         |
| Kingston Hydro Corporation             | 372.72        | 674.76         | 6486.72         |
| Fort Frances Power Corporation         | 478.20        | 947.76         | 6467.64         |
| Newmarket-Tay Power Distribution       | 402.84        | 821.40         | 6012.72         |
| Tillsonburg Hydro Inc.                 | 450.96        | 827.88         | 5677.92         |
| Burlington Hydro Inc.                  | 391.68        | 814.68         | 5568.36         |
| Hydro 2000 Inc.                        | 530.40        | 680.88         | 3609.12         |

- 2.2.2 The table is sorted in descending order based on GS>50 bills, since that is the rate class of most schools.
- 2.2.3 What can be seen is that, for GS>50, the Oshawa Power annual bill is already 17.7% above the 2025 average of the peer group. In this Application, the Applicant proposes to increase that to 72.6% above the average of the peer group, and then with the head office campus to 91.6% above the average, i.e. almost double. Of the fifteen LDCs in the comparison, Oshawa Power is already the fourth highest, higher than eleven of the fifteen group members. The proposed rate increase for 2026 would bump them up to highest, and they would then be higher still with the head office campus.
- 2.2.4 Of course, these figures would have to be adjusted to reflect rate increases for the comparators in 2026. Then, for 2027, Oshawa Power would have an IRM increase, as would most of the others, and a couple may have rebasing increases. None of that is likely to change the fact that Oshawa Power will be charging this customer class much more than any of their peers.
- 2.2.5 The story is somewhat different for GS<50. The annual distribution bill is 7.7% below the average of the peer group, but with this Application, if approved, would

go to 10.6% above the peer group, and with the head office campus to 24.4% above the average. Of the fifteen LDCs, five are currently lower than Oshawa Power for this rate class, and nine are higher. With the rate increase in this Application, that would shift to three higher and eleven lower, and once the head office campus is added Oshawa Power would be the highest of the group.

- 2.2.6** The same caveats as to 2026 and 2027 increases would apply, but in all scenarios Oshawa Power would be among the highest rates.
- 2.2.7** Residential is similar. Right now, the Residential annual distribution bill is 15.7% below the peer average. With this Application, it would move to 1% above, and with the head office campus to 13.6% above. Currently all of the peers charge Residential customers more than Oshawa Power. With this Application, that moves to nine charging less, and five charging more. Add in the head office campus, and only two are more expensive than Oshawa Power. Oshawa Power moves from the best performer in the group to one of the worst, from a Residential rate point of view.
- 2.2.8** Once more, the 2026 and 2027 caveats would apply, and would make more of a difference because the Residential charges are more closely bunched<sup>41</sup>.
- 2.2.9** *Inferences to be Drawn.* This is a rate case, so rates matter. On the other hand, they are the end result of a complex set of calculations and allocations, so they are more indicative than conclusive.
- 2.2.10** SEC has compared all of the general service classes because, as can be seen, each rate class leads to different inferences to be drawn.
- 2.2.11** From the perspective of a school, Oshawa Power is a high cost distributor relative to others, and is proposing to become excessively high. The story there is about being overcharged.
- 2.2.12** From the perspective of an individual homeowner, by contrast, they have been getting a good deal for years. Oshawa Power is now proposing to bring them up to and above the comparative rate levels in short order. The story there is an excessive rate increase, all at once<sup>42</sup>, adding \$124.20 to the distribution charge (in addition to IRM increases).

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<sup>41</sup> A similar table could be done for similar-sized LDCs, as was the case in 1-X-24, and it would tell a similar story, but the numbers are somewhat different. Cohort II is the example because it is the focus of the Applicant in this proceeding.

<sup>42</sup> Actually, 35% plus IRM over two years.

- 2.2.13** As noted earlier, sometimes you just can't afford to do everything that you believe is a good idea. Sometimes you have to live within your means.
- 2.2.14** Our conclusion from the rate comparison is that Oshawa Power has not sufficiently considered what the ratepayers can afford. It is appropriate, in our submission, for the OEB to establish a lower rate increase envelope that is more reasonable, and is more affordable for customers.
- 2.2.15** SEC believes that the optimum rate increase is 19%, including the head office campus. We come to that level recognizing that schools are already well above the peer group, so a 19% increase would still put them more than 40% above the average, but that is still a far cry from 91.6% above.
- 2.2.16** More to the point, a 19% increase would mean that GS<50 ends up about 10% above the average, and Residential ends up almost dead on the average. When adjusted for peer group increases in 2026 and 2027, and the Oshawa Power IRM in 2027, both GS<50 and Residential would likely be within 5% of the peer group average, one below and one above. This appears to us to be a reasonable result, despite the negative result for schools.
- 2.2.17** To get to the rate increase for this Application, then, involves calculating the impact of the head office campus, which we conclude is 14.3% relative to current rates<sup>43</sup>.
- 2.2.18** Based on that calculation, SEC proposes that the balance to get to 19% - i.e. 4.7% - should be considered the maximum weighted average rate increase in this Application. A revenue requirement that produces a 4.7% increase is, in our submission, as high as the Commissioners can fairly go while keeping rates just and reasonable. This will result, for example, after adding IRM increases over the rate period, in 2030 rates that are about 35% higher than today.
- 2.2.19** In the result, therefore, SEC proposes (in the alternative<sup>44</sup>) that the OEB establish a base revenue requirement for 2026 not to exceed \$33.7 million<sup>45</sup>.

### **2.3**      **Reliance on the PEG Model**

- 2.3.1** Whenever asked – in this rate case – about rates, the witnesses for the Applicant fell back on the refrain “Ahh, but PEG.” Their avowed target was to stay in Cohort II<sup>46</sup>, and as long as they did so they deemed that successful cost and rate control.

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<sup>43</sup> Based on K1.4, the new building rate rider is a 14.9% increase for Residential and GS<50, and 13.2% for GS>50, with a weighted average increase for all classes of 14.3%.

<sup>44</sup> Our primary submission being “just say no”.

<sup>45</sup> Revenue at current rates from the most recent Revenue Requirement Work Form, plus 4.7%.

<sup>46</sup> Tr.1:123-4.

- 2.3.2** The latest PEG benchmarking analysis<sup>47</sup> shows that Oshawa Power’s actual costs in 2024 were 18.2% below predicted costs. This compares to an industry average of 14.8% below predicted costs, and an industry median of 14.4% below predicted costs<sup>48</sup>.
- 2.3.3** From 2024 to 2026, Oshawa Power is planning to increase its capital spending by 93.3%, from \$8.804 million to \$17.019 million. It is also proposing to increase its OM&A spending by 18.5%, from \$18.800 million<sup>49</sup> to \$22.272 million. Despite these increases, Oshawa claims that for 2026 their costs will still be 16% below expected costs<sup>50</sup>.
- 2.3.4** That does not add up. One of three things must be true:
- “Expected costs” – the benchmark against which Oshawa Power is measured - are going to rise by 20% or more in 2026. This is plainly not correct.
  - Oshawa Power has operated the PEG model in a manner that produces an incorrect result.
  - There is a flaw in the PEG Model..
- 2.3.5** What cannot be true is that you can substantially increase all of your costs, and still have almost the same cost performance as previously.
- 2.3.6** SEC has not been able to identify which explanation is the right one. What we do know, however, is that the conclusion that Oshawa Power can increase costs this much, and still be in Cohort II, is not a sensible result.
- 2.3.7** SEC therefore submits that the OEB should give no weight to the utility’s argument that their costs are acceptable because they remain in Cohort II. Not only is their existing cost performance average rather than stellar (compared to other LDCs), but the conclusion that after the further proposed cost increases in this Application they will be better than average is not credible.

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<sup>47</sup> PEG Report to the Board, August 18, 2025.

<sup>48</sup> This already begs the question whether the PEG benchmarking identifies good cost performance. Oshawa Power is pretty close to average.

<sup>49</sup> We note that the PEG model on file with the OEB shows Oshawa Power OM&A at \$17.290 million, not \$18,800 million, but it is not clear to us that the two figures are directly comparable.

<sup>50</sup> Tr.1:39.

### **3 THE REAL CAPITAL PLAN**

#### **3.1 Introduction**

- 3.1.1** As noted earlier, the real capital plan – not the one in the Distribution System Plan – involves more than doubling capital spending from the historical five year period to the planning five year period. The claim that capital spending is being increased by 16%, repeated in the Argument in Chief<sup>51</sup>, is just not true. The actual proposed increase is 103%<sup>52</sup>.
- 3.1.2** SEC has had an opportunity to review the very thorough submissions of AMPCO and CCC on the details of both the capital plan, and opening rate base, and we support those submissions. We will therefore limit our submissions to a small number of specific points.
- 3.1.3** In the end, we conclude that the appropriate test year capital additions budget should be \$10.5 million, \$6.5 million lower than the level proposed by the Applicant. When adjusted for IRM increases, and when the new head office campus is added, this should result in total capital additions over the five year planning period of about \$117 million, an average of about \$9.0 million higher each year over that period, but with non-head office spending on average \$4.1 million lower each year. While still a stretch for a utility of this size, SEC believes that this level of spending is doable, but limits the longer term impacts on rates to a more manageable amount.

#### **3.2 The New Head Office Campus**

- 3.2.1** The plan to build a new head office campus, while well underway, is not the subject of any relief requested in this Application. A subsequent ICM application is expected to deal with the need and prudence of the project. This proceeding has a more narrow focus, on how the rest of the capital plan has been adjusted to handle this project, the largest in the Applicant's history.
- 3.2.2** That having been said, we have to be realistic. The land was purchased in 2024. The 2025 capital spending includes \$10.15 million more<sup>53</sup>, which will presumably go into CWIP. By the time the ICM application is filed, the construction contracts will have been signed, putting the Applicant on the hook for a further \$28.3 million or more in 2026, and \$9.9 million in 2027.

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<sup>51</sup> At p. 34.

<sup>52</sup> See para. 1.2.21 of this Final Argument.

<sup>53</sup> Restated Table 1-7.

- 3.2.3** When we eventually have the full discussion about the head office campus project, we will not be discussing the lack of a build vs rent analysis<sup>54</sup>. Make no mistake about it. This project is going ahead. There may be a debate about the prudent cost, and whether all of it should be recoverable from customers in rates, but it would be unreasonable to expect that any amount less than about \$60 million will be added to rate base in 2027 for the new head office campus.
- 3.2.4** Indeed, the amount may be considerably higher, since so far the Applicant has only underestimated the cost of this project. In 2019, a customer survey claimed that this project would add \$1.53 per month to a typical residential bill<sup>55</sup>. In 2024, another customer survey pegged that at \$3.66 per month on a typical residential bill. The current number is \$4.45 per month for a residential customer<sup>56</sup>.
- 3.2.5** Once the dust settles, the actual number is anyone's guess, but SEC thinks the pattern of successive increases is clear. The OEB should not assume that somehow the cost of this project will be less than the \$61 million current estimate.
- 3.2.6** We note that this also creates a financial risk for the utility. Since the shareholder is a municipality, it cannot inject capital into the LDC to cover the 40% equity component of rate base. Even if the sizeable windfall gain the City is expecting from the sale of the current head office property<sup>57</sup> is realized as planned, the City is probably not in a position to invest it in the Applicant.
- 3.2.7** Further, the City is planning to increase rather than reduce its dividends<sup>58</sup>, so the LDC cannot get the 40% equity component from reinvested profits.
- 3.2.8** The end result will be, as the Applicant admits<sup>59</sup>, an increase in its debt ratio above 60%, creating a financial risk<sup>60</sup>. While the CFO believes this risk is manageable, clearly financing \$61 million of capital will have consequences if the requisite \$24 million of equity is not available to match the \$47 million of deemed debt. SEC calculates that the debt ratio will increase to 70% due to this project, and it is not clear how quickly it will reduce over time, given the other capital spending planned by the utility<sup>61</sup>.

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<sup>54</sup> Tr.1:145.

<sup>55</sup> Tr.2:114 and K2.3.

<sup>56</sup> K1.4.

<sup>57</sup> See Tr.2:163

<sup>58</sup> K1.3, p. 22.

<sup>59</sup> Tr.2:155.

<sup>60</sup> Tr.2:85.

<sup>61</sup> If 100% of depreciation and amortization and 100% of earnings (net of dividends) are used to build up the equity percentage, SEC calculates that it will get back to a 60% debt ratio by the end of 2030. Note that, in the meantime, the customers will be paying equity rates, and related taxes, in their distribution rates assuming a 60% debt ratio, while the utility will actually be paying a fraction of that on the excess debt.

**3.2.9** SEC therefore submits that a) the OEB should assume that the head office campus will be built and added to rate base, and b) the remaining capital plan should be cut back as much as possible to reflect both affordability and the tightening financial position of the utility.

### **3.3 The Straw Man Reductions**

**3.3.1** The Applicant brings forward Appendix 2-11 to the interrogatory responses as evidence that it has already cut back its capital plan to accommodate the new head office campus. This was directly stated as follows<sup>62</sup>:

*“L. GLUCK: ...And the company in its opening remarks stated that this presentation outlines how much management considered capital envelope options in the context of future costs associated with the new administrative building. Is that right?  
M. WEATHERBEE: That is correct.”*

**3.3.2** However, shortly after that the witness backed off from that statement<sup>63</sup>:

*“L. GLUCK: Right. And as we just talked about, this presentation is the company's analysis of things it can do to lower costs in the context of the new administrative facility. Is that fair?  
M. WEATHERBEE: Along with other things, yes. Not specifically the administrative consolidated facility.” [emphasis added]*

**3.3.3** This latter quote is the correct one<sup>64</sup>. In fact, a capital spending envelope was provided by the Finance Department<sup>65</sup>, and the capital planners sought to stay within it. The head office campus was not part of their analysis<sup>66</sup>. The envelope was.

**3.3.4** The envelope, SEC notes, was \$80 million, which was a 16% increase over the previous five year period<sup>67</sup>. The head office campus was not considered part of the envelope.

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<sup>62</sup> Tr.2:56.

<sup>63</sup> Tr.2:57

<sup>64</sup> Nowhere in Appendix 2-11 does it talk about how to reprioritize the capital plan to make room for the head office campus. See Tr.1:108-9.

<sup>65</sup> Tr.1:60. We have no evidence from the Finance Department as to the process for establishing the capital spending envelope, but we do have the repeated statements from the witnesses that the head office campus was separate from the DSP.

<sup>66</sup> The head office campus was only an issue with respect to the ability to finance it. See Tr.1:107-8.

<sup>67</sup> Restated Table 1-7.

- 3.3.5** Appendix 2-11 does appear to show that some projects were moved out of the DSP forecast period. However, in each case the “deferrals” were in fact straw men, capital spending that is not expected to be incurred in the DSP forecast period in any case<sup>68</sup>.
- 3.3.6** The first example is the \$15.5 million station in the Columbus community. Appendix 2-11 claims it is being deferred. The DSP says it is not needed in the 2026-2030 period. In fact, the functionality of the station has been replaced by three new feeders, so that it does not need to be constructed by 2030<sup>69</sup>. It was not deferred. It would not have been constructed in the DSP forecast period in any case.
- 3.3.7** The second example is projects in 2029 and 2030 that would, if needed, be driven by third party requirements. The Applicant has assumed that they will not be required, and so has removed them from the DSP. Of course, if the third parties move ahead at that time, and do require them, they will be built and added to rate base. The witnesses claim the company is “assuming the risk” that these uncertain projects may be required, but in fact that is not the case. If they go ahead, they will still be in rate base, and if large enough could potentially be the subject of an ICM application.
- 3.3.8** Moving them out of the DSP is not a substantive decision, since it will have no impact on whether or when this money is spent, nor whether the ratepayers will end up picking up the tab. The only impact is to present to the regulator in this case a lower forecast capital spend. It is form over substance.
- 3.3.9** The same is true of the third example, \$5.5 million of meter replacements. The Applicant starts with the unlikely scenario that all meters have to be replaced on reverification. This is another straw man. The claimed “reduction” in the capital plan is an assumption that less than 100% of meters need to be replaced on reverification. In fact, the ones that fail will have to be replaced. Instead of forecasting a reasonable percentage of failures from the get-go, the Applicant started with 100%, then graciously cut that back to a more reasonable level. This is not prioritization. It is correcting a forecasting error.
- 3.3.10** The fourth example is \$20 million of assets that are in fair condition, but were assumed to be replaced in the plan period anyway, and now are not<sup>70</sup>. The Applicant seeks to justify replacing fair condition assets if their failure would be high risk. This is the first time we have seen an LDC take that approach.

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<sup>68</sup> For convenience, the four are listed in the Argument in Chief at p. 34, para. 128.

<sup>69</sup> Tr.1:58-9.

<sup>70</sup> Tr.1:62-3.

- 3.3.11** SEC notes that the capital plan still includes some assets in fair condition being replaced<sup>71</sup>. This is the utility that is proud of the excellent condition of their distribution infrastructure, and has very good reliability<sup>72</sup>, yet claims that it would replace more of its fair condition assets if it could.
- 3.3.12** Together, these examples constitute the “reductions” in the capital plan to keep in manageable. In each case, they are not decisions to delay or reduce real projects. They are decisions to use a different forecast assumption for something out of their control, or to remove from the plan something that should not have been in it anyway.
- 3.3.13** Every capital project that the utility wants to do in the next five years is labelled as mandatory, critical, or vital<sup>73</sup>, right down to replacing trucks and buying a new ERP system. In the capital plan presented to the OEB in this case, none of those projects are left out, as the witnesses admitted<sup>74</sup>:

*“M. WEATHERBEE: Oshawa Power balance both financial and operational risk in order to consider the investment in the building and the needs of the system. **We ensure that we could do all mandatory, critical, and vital equipment programs** as noted in attachment 211 of the Exhibit 2 IRRs and **made sure that we could maintain and enhance our system within the capital envelopes provided** without sacrificing any mandatory, critical, or vital equipment projects.” [emphasis added]*

### **3.4**     **IT Transformation Investments**

- 3.4.1** This section of Final Argument was originally headed up “Business Transformation Investments”, but the only ones we could find were those related to IT.
- 3.4.2** The category of IT capital projects was hailed as a transformation of the business, but it was nothing of the sort. The Applicant was behind in their hardware and software maintenance, and they caught up. They essentially admitted as much<sup>75</sup>:

*“J. SHEPHERD: Okay. Now, you talked about these many other technology upgrades that you have done, financial software, SCADA, OMS, GIS, phone system, self serve, meter data management, customer portal, and new networking equipment and servers. Plus cybersecurity.*

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<sup>71</sup> Tr.2:51.

<sup>72</sup> Tr. 2:48-9, K2.2, p. 35.

<sup>73</sup> Except the head office campus, which “was just addressed separately from this”: Tr.1:106-7.

<sup>74</sup> Tr.1:186.

<sup>75</sup> Tr.1:98-9.

*That was sort of normal course of business, you had to do those things; right? They are something that you have to do on a regular basis; right?*

*M. YACKOUB: Correct. The differentiating factor there was that I was trying to point out that most of those systems were already out of support before we were able to replace them. So we were quite a bit behind.*

*J. SHEPHERD: They had been left too long.*

*M. YACKOUB: Absolutely.”[emphasis added]*

- 3.4.3** That is continuing with their biggest upcoming IT project, replacement of the Enterprise Resource Planning (ERP) system. The Applicant is using Great Plains, a Microsoft product, for ERP, and that will go out of support in 2029<sup>76</sup>. Now called Microsoft Dynamics GP (for “Great Plains”), this ERP system is one of the most popular in North America, used by many companies, including many LDCs<sup>77</sup>. It is an on-premises system that is being replaced by Microsoft Dynamics, a cloud-based subscription system that includes the same functionality, plus some additional capabilities<sup>78</sup>.
- 3.4.4** The point is that this is a common issue, and Oshawa Power does not need to spend a lot of time and effort reinventing the wheel here. Collaboration with the other LDCs in the same boat, and even other businesses in Oshawa and surrounding area, can make this a relatively easy transition. It will not require any significant increase in IT staffing, and will likely not require any capital outlay, since most potential replacements are subscription-based<sup>79</sup>.
- 3.4.5** The other major IT project is the Customer Information System (CIS). That went live in October<sup>80</sup>, so it is pretty well done.
- 3.4.6** We note that the capital cost of the CIS built into opening rate base includes about \$250,000 of work allocated from an unregulated affiliate for billing staff. This was called “staff augmentation”, and the individuals involved were neither IT specialists nor anyone with knowledge of CIS systems. In fact, they came from an affiliate that does metering and disconnections, not billing, since billing is outsourced to a different company<sup>81</sup>.

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<sup>76</sup> Tr.1:90.

<sup>77</sup> Tr.1:91-2.

<sup>78</sup> Much of the enterprise software space has moved, or is moving, to cloud-based subscription systems (also called “SAAS”), since they provide the software company with an important commodity: Committed Annual Recurring Revenue, or CARR, one of the primary metrics used to value software companies today.

<sup>79</sup> The DSP includes \$500,000 of capital costs for the ERP, but SEC believes this cost is unlikely to materialize, since most ERP systems today are subscription-based.

<sup>80</sup> Tr.1:92.

<sup>81</sup> Tr.1:94.

- 3.4.7** SEC believes that the OEB has not heard sufficient explanation of this unusual addition to the capital cost of the CIS.
- 3.4.8** SEC notes that the CIS cost is about \$1.55 million<sup>82</sup>, which works out to more than \$24 per customer recordset. No evidence has been provided to show that this is a reasonable cost. Intuitively, it seems very high.
- 3.4.9** Another IT project with an issue is DayForce, a popular HR management system purchased from a third party, Ceridian. It is used by the utility and the affiliates, but only the utility paid the \$232,000 capital cost<sup>83</sup>, and added all of it to rate base.
- 3.4.10** SEC notes that, between the mobile workforce software and the HR software, the Applicant appears to have spent about \$5,000 per employee. No justification was given for this high level of spending.
- 3.4.11** Finally, SEC notes that the DSP includes \$1.8 million of end user hardware and software and server hardware and software over five years. In total, this appears to be more than \$20,000 per employee, even assuming that all employees will need to use these items. We have not been able to find another LDC with hardware/software spending at a per capita level that high. No attempt was made by the Applicant to justify high levels of hardware/software spending.
- 3.4.12** The IT material in the DSP refers to Oshawa Power as “a large organization<sup>84</sup>”. Oshawa Power, with about 90 employees, is not a large organization, and attempts to design an IT strategy as if it is Alectra or Hydro One are doomed to result in overspending. That appears to be what we see throughout the DSP, and in the plans for the IT department.
- 3.4.13** The Applicant, like many other LDCs (and many small and medium enterprises generally), was behind in maintaining its IT systems. It has now largely caught up, which should be cause for congratulations to the new management team. However, it is not a reason to dramatically increase IT spending even further. The cost to eliminate a backlog is almost always higher than the cost to maintain a steady state.

### **3.5** *Appropriate Level of Capital Spending*

- 3.5.1** This all leaves the question of what level of additional capital spending is reasonable in light of the \$61 million capital project next year, and that resolves to what level of capital spending is appropriate for the Test Year. SEC believes that number is \$10.5 million.

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<sup>82</sup> DSP p. 119.

<sup>83</sup> Tr.1:81 and J1.1.

<sup>84</sup> Appendix A, ERP Project, p. 2.

- 3.5.2** The principle that drives this was articulated in an exchange between Commissioner Moran and Mr. Weatherbee, as follows<sup>85</sup>:

*“COMMISSIONER MORAN: ... Over the last day and today, there has been a reference to the fact that the distribution system plan is not something that we typically approve. And as I understand it, the reason we don't approve a distribution system plan is that gives you the flexibility to address changes in priorities, and sometimes things have to be replaced earlier than planned, sometimes things last longer than planned. Do I have that concept accurately?*

*M. WEATHERBEE: Yes, that is correct.*

*COMMISSIONER MORAN: But that is not to say that the distribution system plan is of little value in the proceeding because **what you are here to ask us to approve, amongst other things, is a capital spending envelope for setting 2026 base rates which will then be subject to an IRM adjustment for the next four years. And so, of course, we have to understand if that envelope is a reasonable envelope that -- for the purposes of the five years, so we do have to pay a lot of attention to what is in the distribution system plan.** Do you agree with that?*

*M. WEATHERBEE: Yes, I would agree with that.” [emphasis added]*

- 3.5.3** That principle deconstructs into two parts. There is a test year capital budget, and if you do the math the result of that budget, x 5.35, will equal the total capital funded for the five year period (with IRM increases averaging 2.5% per year). Only one question therefore needs to be answered: how much capital spending over the five years is reasonable? Once you have that figure, you can work backwards to how much capex should be included in the test year capital budget. The Applicant will then have an envelope, and can assess amounts and timing as circumstances arise during the five year period.
- 3.5.4** On the other hand, the implied annual capital spend is still relevant, because if it is too high or too low it can create operational concerns.
- 3.5.5** The Applicant proposes a capital plan that totals \$141 million over five years, a 103% increase<sup>86</sup> over the last five years. This is too high, but is driven by the high cost of the head office campus.
- 3.5.6** At one extreme, it could be argued that the formula used for OM&A (see later in this Argument) is an appropriate approach, i.e. add inflation and customer growth to the past spending. This would increase the \$69 million historical capital by

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<sup>85</sup> Tr.2:165.

<sup>86</sup> At least. This assumes completion of all 2025 projects, which as CCC notes is unlikely.

about 26% to \$87 million, which would be a reasonable budget for the DSP forecast period. We know \$69 million was sufficient to get good results, and we know how to inflate that figure to today.

- 3.5.7** This, of course, is unrealistic. When the head office campus is backed out from that envelope, the amount available for all remaining capital would be \$26 million, which is a test year capital budget of \$4.86 million. This would be result in insufficient capital work on the distribution system, and is not in anyone’s interests.
- 3.5.8** SEC believes that the lowest amount that can reasonably be applied to capital spending other than the head office campus is indicated by the \$8.804 million actually spent on that category by the Applicant in 2024<sup>87</sup>. In that year, faced with the requirement to spend on the land for the head office campus, the Applicant cut back on other capital spending to make room. Since that is exactly what they should be doing in the 2026-2030 period, it is a good starting point.
- 3.5.9** If you inflate \$8.804 million two years to 2026, you end up with something close to \$9.5 million, which would result in a funded capital plan for 2026-2030 of just under \$51 million, plus the head office campus, for a total of \$112 million. That is still a 62% increase over the past five years, but results in almost 60% of the cost of the head office campus being covered through reprioritizing spending in other areas<sup>88</sup>.
- 3.5.10** SEC believes that this is still somewhat low for a utility like Oshawa Power. It is still appropriate to make some room in the capital budget for things like non-wires solutions, FLISR and other system automation enhancements, and the like.
- 3.5.11** SEC therefore recommends a test year capital budget of \$10.5 million, which translates to a five year budget of \$56 million plus the head office campus, for a total of \$117 million. This results in about half of the head office campus being incremental to a formulaic capital envelope (i.e. \$87 million), and the other half being dealt with by the rest of the capital plan “making room” for that project. Oshawa Power has demonstrated, in 2024, that it can handle making room at that level, so the OEB can be confident that the distribution infrastructure will remain in good shape, and a fair balance can still be achieved.
- 3.5.12** SEC takes comfort from the fact that the bottom up analyses by AMPCO and CCC would justify a similar level of capital spending in the test year, i.e. \$10-11 million.

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<sup>87</sup> See Table 1-7 Restated.

<sup>88</sup> If \$87 million is the formulaic 5 year envelope, and the recommended is \$112, then \$25 million of the \$61 million cost of the head office campus is incremental, and \$36 million is subsumed in reprioritization.

## 4 OM&A PROPOSALS

### 4.1 Introduction

- 4.1.1** The Applicant is proposing to increase its OM&A by 60.62% from its last OEB-approved figure, and 67.5% from its actual OM&A spend in its rebasing year. This represents a compound annual growth rate (CAGR) of about 11% per year.
- 4.1.2** The drivers of this increase can be seen in the revised Appendix 2-JB that was presented to the witnesses in the oral hearing<sup>89</sup>. What it shows is that, while the biggest percentage increase is in Software and Hardware Services (355%), the biggest dollar increase from 2021 actuals is the \$6.83 million combined increase in labour and outsourcing costs<sup>90</sup>, fully 76% of the \$8.97 million increase in total OM&A compared to the amount actually spent in 2021.
- 4.1.3** Except for the Galli Report (which cannot be relied on - see below), there is virtually no external support for the proposed OM&A budget<sup>91</sup>.
- 4.1.4** SEC believes that the appropriate level of OM&A spending should be at least \$4.8 million lower than proposed by the Applicant. The balance of this section will provide a summary of the approach SEC takes to this issue.

### 4.2 Resource Optimization Study (the “Galli Report”)

- 4.2.1** The Resource Optimization Study written by Ms. Galli<sup>92</sup> is relied on by the Oshawa Power witnesses dozens of times in the course of the oral hearing<sup>93</sup>, and so appears to have had an outsized influence over the increases in FTEs implemented and proposed by the Applicant. That fact is not disputed.
- 4.2.2** *Qualification as an Expert.* What SEC questions, however, is whether the OEB can treat the evidence of Ms. Galli as expert evidence. If it cannot, the evidence must be excluded from the record.
- 4.2.3** There are essentially two ways an individual can qualify as an expert witness, although usually both are applicable in most cases:

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<sup>89</sup> K2.6, p.16. And, through the vagaries of technology, refuses to be reproduced in this Word document.

<sup>90</sup> The Applicant admits these two categories can be combined as “People costs”. See Tr.2:187.

<sup>91</sup> The report by Bob Wong, filed in K1.3 at p. 79, is not helpful. It appeared, in fact, that the witnesses were happy to disavow that report. They certainly did not rely on it. .

<sup>92</sup> Ex. 4, Attach. 4-1.

<sup>93</sup> Tr.1:73-4; Tr.2:184, 218, 228; J2.11. There are many other examples.

- *Academic credentials*, such as an advanced degree specific to the field of expertise, teaching in that field, or scholarly publications, particularly in peer-reviewed journals.
- *Real-world experience*, which means past activities in which a similar or related study/analysis has been carried out and accepted by an independent regulator, preferably by the OEB.

4.2.4 Ms. Galli fails to qualify on both counts.

4.2.5 From an academic point of view, she has a BComm from McMaster and an MBA from the University of Phoenix. It is telling that, in the latter case, the MBA was not higher level study of workforce planning or any related issues. Ms. Galli did not select University of Phoenix to work with leaders in that field<sup>94</sup>.

4.2.6 Of her additional professional development certificates, only one is in the HR field, and it does not relate to workforce planning<sup>95</sup>.

4.2.7 Ms. Galli was a part-time instructor in HR management for one semester in 2018 at a Kitchener community college, Conestoga<sup>96</sup>.

4.2.8 Finally, she has never published an article in a peer-reviewed journal<sup>97</sup>.

4.2.9 Clearly, from an academic point of view Ms. Galli does not qualify as a person able to provide expert opinion evidence to the OEB on workforce planning.

4.2.10 On the experience side, the story is even worse. Prior to this study, Ms. Galli had only ever done one workforce plan for an LDC in her career<sup>98</sup>. That was when she was Director of HR for Horizon Utilities. At Horizon she prepared a study that she characterized as follows<sup>99</sup>:

*“I did spend six-and-a-half years working in an LDC, specifically Horizon Utilities, between 2006 and 2012. There, I had the role of director of human resources and organizational development, and **I also conducted a very similar workforce planning study for the skilled trades and direct supervisors.** Again, very similar inputs, operating in a very*

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<sup>94</sup> Tr.3:153.

<sup>95</sup> Attachment 4-1, Appendix A, p. 4.

<sup>96</sup> Attachment 4-1, Appendix A, p. 2.

<sup>97</sup> Tr.3:153-4.

<sup>98</sup> Tr.3:150.

<sup>99</sup> Tr.3:140.

*different market, but we did the same thing.” [emphasis added]*

**4.2.11** This is described in her CV as follows<sup>100</sup>:

*“Horizon Utilities Corporation (now Alectra Utilities)...  
Director, Human Resources and Organizational Development 2006 –  
2012...  
Corporate Representative for Cost of Service: Prepared HR submission,  
responded to interrogatories and acted as the Corporate witness for  
Horizon’s 2011 Cost of Service application **during which all strategies,  
models and plans were examined, justified and successfully approved.**”  
[emphasis added]*

**4.2.12** This statement was entirely false.

**4.2.13** In EB-2010-0131, the proceeding being cited, the Commissioners specifically did not approve the HR submission, and said so, declining to examine the proposals in detail. Not only that, but they also stated that the cost of the proposals was “excessive”, and declined to allow an OM&A budget in the range proposed by the utility. Instead of OM&A of \$47.5 million, as proposed by Horizon (an \$8 million increase), the Commissioners approved OM&A of \$42 million (a \$2.5 million increase). In so doing, the Commissioners said the following<sup>101</sup>:

*“While compensation is the largest component of OM&A, **the Board is not inclined to delve into the specific headcount or FTEE numbers, or the extent to which activities are contracted out or undertaken by Horizon’s staff. These are matters for Horizon to manage within the spending envelope approved by the Board.**  
...the Board finds that **the increase requested by Horizon is excessive.**  
The Board finds that OM&A spending of \$42 million... for the 2011 test period is appropriate. **This represents an average annual increase of slightly more than 3% since the last Board-approved budget in 2008.** ... the Board expects that Horizon will be able to prioritize its business activities, implement its workforce and maintenance renewal projects and find ways to implement a business model which reflects its economic circumstances...” [emphasis added]*

**4.2.14** This is the only time Ms. Galli has done a workforce planning study in this sector, and the only time she has appeared before any independent regulator<sup>102</sup>.

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<sup>100</sup> Attachment 4-1, Appendix A, p. 3.

<sup>101</sup> EB-2010-0141, Decision with Reasons, p. 29-30, excerpted in K2.6, p. 54-55.

<sup>102</sup> Tr.3:150.

**4.2.15** SEC submits that, on the basis of experience, Ms. Galli does not qualify to provide expert opinion evidence to the OEB on workforce planning.

**4.2.16** *Weight of Evidence.* While SEC believes that the entire Galli Report must be removed from the record, because it is neither based on personal knowledge nor on expert opinion, it is worthwhile to note that, even if allowed, it would not be suitable to give it any weight.

**4.2.17** The reason for this is three-fold:

- First, the only benchmarking done as part of the study was an informal poll of other LDCs that has not been entered into the record<sup>103</sup>.
- Second, no attempt was made to adjust for different levels of outsourcing by LDCs, leading to the witness admitting that the study was not an apples-to-apples comparison<sup>104</sup>.
- Third, the only examples in which specific roles were added that were discussed in the oral hearing were ones in which executives told Ms. Galli what they believed they should add, and she put it in her report<sup>105</sup>.

**4.2.18** SEC concludes that, in preparing the Galli Report, Ms. Galli's role in fact was to compile a wish list from utility executives of additional personnel that might be added to the utility. Converted into an "expert report" prepared solely for regulatory purposes, management of the utility could then pick and choose which ones they wanted to add, and justify them to the OEB by referring to the recommendations of their expert.

**4.2.19** None of this is helpful to the Commissioners or the regulatory process in general. It is just paperwork prepared to create an illusion of objective support for the plans of management.

**4.2.20** SEC therefore submits that the Galli Report should be rejected by the OEB.

### **4.3**     **Increases in FTEs and Compensation Costs**

**4.3.1** With respect to personnel numbers and compensation, SEC has had the benefit of reviewing the excellent analysis prepared by CCC (including the confidential Appendix to the submissions), with which we entirely agree. SEC will therefore limit this component of our Final Argument to a few overall comments.

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<sup>103</sup> Tr.3:157-8.

<sup>104</sup> Tr.3:158-9.

<sup>105</sup> E.g. Tr.3:160, 165, 167, 168.

- 4.3.2 Headcount/FTEs.** There is no evidence presented to the OEB that the numbers of employees proposed by the Applicant are appropriate, except the explanations by management of the utility. There is no benchmarking, comparative analysis, or other objective data to demonstrate that the large increases in numbers of people are necessary.
- 4.3.3** For example, the Regulatory team is five people<sup>106</sup>. How many LDCs of similar size have a regulatory team that large? Many have one or two people. Only larger utilities (Toronto Hydro, Alectra, Hydro One, Enbridge) have large regulatory departments. Is the size of the Oshawa department appropriate? The OEB has no evidence before it to assess that.
- 4.3.4** The same question could be asked of the IT department, another that seems very large relative to the size of the utility<sup>107</sup>.
- 4.3.5** We could go through the departments one by one, but the theme would be the same. The Applicant has provided no objective evidence to support the numbers of FTEs they are proposing in each functional area.
- 4.3.6** In this context, it is important to take notice of the regular refrain from the Applicant, i.e. the OEB approves an envelope, not specific numbers of staff. This is their rationale for consistent under-resourcing since the last rebasing. It is reasonable for the Commissioners to infer that, whatever FTE numbers seem reasonable to them based on the evidence, the Applicant will look only at the envelope, and will not adhere to the FTE forecasts that have been presented in this case.
- 4.3.7 Compensation Levels.** SEC has gone through a number of other rebasing applications to see how other LDCs are tackling compensation levels. With the exception of a couple of large utilities, which admittedly have unique compensation issues to address, almost all of the LDCs rely on the MEARIE compensation survey to establish benchmarks for compensation levels and structures.
- 4.3.8** Oshawa has instead obtained a compensation survey that assumes they compete with a broader group of companies for their personnel. They have provided no evidence to support that assumption<sup>108</sup>, nor any other justification for being out of

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<sup>106</sup> Tr.2:217.

<sup>107</sup> Adding 7.3 FTEs: Tr.1:41, despite the fact that much of the work the Applicant believes is necessary to upgrade IT system has already been done. See Tr.1:42.

<sup>108</sup> And SEC does not believe that assumption is generally true. In our experience, utility staff tend to look to work at other utilities, and utilities generally do not attract a lot of people who have worked in non-utility companies. It is not universal, but more often true than not. Utility employees often choose that sector because of the type of work, the job security, and the corporate culture in utilities. There is movement back and forth between the public sector

step with their peers around the province. It is a claim made by the Applicant, without any evidentiary basis.

- 4.3.9** Indeed, if the assumption were true, the way the Applicant would find out would be through exit interviews. They don't ask that question or, if they do, they don't retain or compile that data<sup>109</sup>. The witness was not sure.
- 4.3.10** SEC concludes from the evidence that Oshawa Power's management team looked at the MEARIE numbers and decided that they wanted higher compensation than that. The Korn Ferry study<sup>110</sup> has significantly higher numbers, so it was preferred.
- 4.3.11** *Conclusion.* The evidentiary record shows that the Applicant's business transformation is in large part about adding more people (which may or may not actually be added, of course, given their constant reliance on the envelope concept) and paying everyone more than they would get at other LDCs.
- 4.3.12** If you want more money for things like that, you bear a heavy burden as applicant to provide objective support for that need. You can't just ask for it because you want it.
- 4.3.13** In this case, SEC submits that the Applicant has not met the statutory requirement to support their requests for ratepayer dollars to fund additional FTE and compensation levels.
- 4.3.14** While we note that other intervenors will be providing cogent arguments calculating the adjustments to OM&A that this implies, SEC is focusing on the OM&A envelope rather than the bottom-up approach.

#### **4.4**     *Shift from O&M to G&A*

- 4.4.1** One of the most surprising aspects of this Application is the extent to which the utility has continued to shift its emphasis and resources in favour of General & Administrative spending as opposed to Operations & Maintenance spending. In their current proposed OM&A budget, G&A is 76% of the total OM&A, and O&M is only 24%.
- 4.4.2** To benchmark this, SEC looked to the most recent Appendix 2-JA of each of the LDCs of a similar size to Oshawa Power<sup>111</sup>. The percentage of their OM&A that is

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and utilities, but much less movement between utilities and for-profit competitive companies. Most LDCs assume this to be the case, and this Applicant has not provided any evidence to the contrary.

<sup>109</sup> Tr.3:64-5.

<sup>110</sup> Apparently contracted by previous management, given its date.

<sup>111</sup> The list can be seen in IRR Table 1-32, which is also excerpted in K1.3, p. 19. For this comparison, we have removed Newmarket-Tay, which was last rebased in 2007, and thus does not have a comparable 2-JA on the record.

not Operations & Maintenance can easily be calculated, and looks like this:

| <b>Utility</b>                           | <b>% G&amp;A</b> |
|--|------------------|
| Oakville Hydro Electricity Distribution  | 42.2             |
| Synergy North Corporation                | 46.3             |
| PUC Distribution Inc.                    | 47.7             |
| Greater Sudbury Hydro Inc.               | 48.9             |
| Lakeland Power Distribution Ltd.         | 57.5             |
| Bluewater Power Distribution Corporation | 59.0             |
| Niagara Peninsula Energy Inc.            | 63.6             |
| Milton Hydro Distribution Inc.           | 68.2             |
| Entegrus Powerlines Inc.                 | 70.7             |
| Essex Powerlines Corporation             | 72.1             |
| <b>Average non-O&amp;M spend</b>         | <b>57.6</b>      |
| <i>Oshawa PUC Networks Inc. 2026</i>     | <b>76.0</b>      |

- 4.4.3 Oshawa Power, at 76%, is thus proposing the highest G&A percentage of all of them, and significantly above the average.
- 4.4.4 A simple calculation would imply that the excess G&A at Oshawa Power is 18.4% of its OM&A total, i.e. \$4,098,046, relative to the average of this particular peer group. SEC believes this is overly simplistic, but indicative that prioritization of G&A over O&M may have a significant impact on the excessive OM&A being requested in this Application.
- 4.4.5 It would also be intuitive to think this high ratio is the result of the large increases in executive and management FTEs and compensation, but that is not the whole story. In its last OEB-approved OM&A budget, Oshawa Power had a G&A ratio of 69.4%, already very high relative to its peers. Their change in compensation approach only increased that disparity<sup>112</sup>.
- 4.4.6 That having been said, this ratio analysis supports the conclusion SEC has reached that the OM&A proposed in this Application is far too high. While we approach the recommended number in a different way, it is useful to note that this analysis would result in a similar reduction if it were used.

**4.5 Envelope Analysis**

- 4.5.1 Many times in the oral hearing the witnesses insisted that the Commissioners focus on the envelope that revenue requirement presents, rather than on individual

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<sup>112</sup> The shift from 69.4% to 76.0% implies excess G&A in the current OM&A proposal of \$1,469,951, but that too is overly simplistic, and ignores the fact that the already high ratio indicates excess G&A prior to the test year.

expense categories<sup>113</sup>.

- 4.5.2** In this case, the OEB starts with an LDC that has a distribution system in good shape, and has excellent results for the performance standards the OEB normally uses. This was true in 2021 (and today), and so suggests that the starting point is a good one. That is, the amount actually spent in 2021 produced very good results, and so can be assumed to be a strong foundation for any formulaic calculation.
- 4.5.3** GDP IPI FDD, the inflation factor most easily accessed for this purpose and often relied on by the OEB, shows an increase of 28.6% from 2021 to 2026 forecast<sup>114</sup>. Just on inflation alone, therefore, the \$13,300,173 of OM&A increases in real terms to \$16,134,439.
- 4.5.4** However, that is not the whole story. The number of customers served by Oshawa Power in 2021 was 59,955<sup>115</sup>. That is forecast to increase by 8.18% to 2026. OM&A does not go up dollar for dollar with customer numbers. As shown in a study by Pacific Economics Group filed in EB-2014-0110, an Oshawa Power Custom IR application, OM&A increases by 44% of the increase in customer count<sup>116</sup>, which in this case would be 3.60%.
- 4.5.5** Applying that volume increase to the inflated OM&A figure produces a total 2026 OM&A of \$16,715,279<sup>117</sup>. (Technically, this should be reduced by the Cohort II stretch factor of 0.15% for the five years applicable, but the difference is relatively small, so we have ignored that.)
- 4.5.6** In the result, the basic formula produces an OM&A figure that is \$5.56 million lower than the OM&A proposed by the Applicant.
- 4.5.7** Oshawa Power believes that the formula should be adjusted so that it matches, almost dollar for dollar, the OM&A they are proposing in this Application. Their analysis is found in J2.11.
- 4.5.8** What the OEB sees from this is the following main categories of adjustments:
- Changes in FTEs recommended in the Galli Report: \$1,574,071

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<sup>113</sup> There is a good exchange on this at Tr.2:202-3, but that is only one of many examples.

<sup>114</sup> StatCan shows 2021 at 109.9, and 2024 at 125.3. Add 7.3 for 2025 and 2026 (OEB calculations), and the resulting percentage is 28.6%. This is actually probably overstated, as the OEB forecasts have a lag factor, but the difference is not significant.

<sup>115</sup> Appendix 2-L. The OEB-approved was 61,303, but if we are using actual OM&A spend, it is only fair to use actual customer count as well.

<sup>116</sup> EB-2014-0110, J2.10. This is admitted in J2.11 in this proceeding.

<sup>117</sup> This is substantially higher than the calculations produced by the Applicant in J2.11, but SEC believes our calculation is more accurate.

- Other increases in compensation decided on by management: \$1,959,602
- Bad debt increases and additional spending to control it: \$1,402,154
- Additional software costs: \$434,412
- All other adjustments: \$223,560

**4.5.9** This tells the tale very well, we believe. The first two categories – spending more money on people – total more than \$3.5 million. The Galli Report is not an expert report and cannot be relied on, and the management compensation increases have not been justified in the evidence.

**4.5.10** The only other substantial adjustment is bad debt and increased spending to fight it. No evidence was provided as to why Oshawa Power, unlike most other LDCs, cannot get this problem under control. All LDCs and their customers went through COVID. All LDCs and their customers have been subject to the same evolving disconnect policies. All LDCs and their customers have lived through similar economic conditions over the last five years. No evidence was provided benchmarking these Oshawa Power costs (either the bad debt results, or the ballooning collection spending) to other utilities.

**4.5.11** The Commissioners are therefore faced with two distinct categories of information on the OM&A envelope. One category is objective, externally verifiable information – inflation, customer increases, actual base spending that produced good results. The other category is subjective, “this is what we need (want) to spend” information – FTE and compensation increases, worsening bad debt performance, and so on.

**4.5.12** SEC submits that even if some adjustments are warranted, such as OEB assessments, or cybersecurity, or insurance, the reasonable OM&A budget is still well within the range of the \$4.8 million reduction in revenue requirement that SEC believes is justified. There is certainly not more than \$700,000 of adds to the OM&A budget that can be supported by the evidence, so clearly not enough to make the \$4.8 million reduction we propose excessive.

**4.5.13** SEC therefore submits that the OM&A analysis, and the reduction of \$4.8 million that it shows, supports the overall recommendation in this Final Argument, i.e. limiting the weighted average rate increase to 4.7%. This would be a base revenue requirement of \$33.7 million, a reduction of \$4.8 million from that proposed by the Applicant.

## **5 OTHER ISSUES**

### **5.1 Load and Customer Forecasts**

**5.1.1** SEC has reviewed the detailed analysis of this issue by VECC, and concurs with both the analysis and the conclusions VECC has reached.

### **5.2 Deferral and Variance Accounts**

**5.2.1** SEC has reviewed the submissions of CCC with respect to the Deferral and Variance Accounts, and agrees with those submissions.

### **5.3 Effective Date**

**5.3.1** It is submitted that the effective date of the OEB order in this proceeding should be no earlier than the first day of the month following the final rate order issued by the OEB.

**5.3.2** While it is true that the Applicant filed its original materials in a timely manner, it is also true that:

- The Application was deficient in material ways, and those gaps caused this proceeding to be longer and more resource intensive than was necessary.
- The Applicant took an overly adversarial approach to the proceeding, resulting in the need for a disputed issues list, motions for proper interrogatory answers, and disputes on confidentiality. Without those delays, which were primarily the result of actions by the Applicant, this proceeding would already have been completed and a rate order issued.

**5.3.3** The consequence of those actions by Oshawa Power is that the OEB is likely unable to issue a rate order in time for a January 1, 2026 effective date. That is on Oshawa Power. Allowing recovery of any amounts for the period of delay is, in our view, not appropriate.

## **6 OTHER MATTERS**

### **6.1 Costs**

**6.1.1** The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

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Jay Shepherd  
Counsel for the School Energy Coalition