Shepherd Rubenstein

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BY EMAIL and RESS

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2300 Yonge Street
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June 8, 2026
Our File: EB20260142

Attn: Ritchie Murray, Registrar

Dear Mr. Murray:

Re: EB-2026-0142– IESO 2026-2028 – Draft Issues List and Process Comments

We are counsel to the School Energy Coalition ("SEC"). As invited in the Notice, below are SEC's comments on the draft issues list, and additional matters that may assist in the simplification of the proceeding or contribute to the just and most expeditious disposition.

Draft Issues List

SEC does not agree with the wording of issues 1.1-1.9 and 4.1, which ask whether various cost components sought for recovery through IESO fees are "aligned with the Minister's approved Business Plan". While alignment with the Minister's approved Business Plan is an important consideration in the OEB's review, it is not the test that must apply under the *Electricity Act*, nor is it consistent with the wording approved in any previous IESO fees case.[1]

The IESO did not provide any basis, including a legal explanation, for the change in its cover letter. The OEB has said that its responsibility as part of the review process is to "ensure that the IESO's expenditures, revenue requirements and fees are reasonable and consistent with the purposes of the Electricity Act and the OEB's objectives under the Ontario Energy Board Act, 1998." [2]

The OEB should revise the wording to ask whether each of the cost components are "appropriate", consistent with previously approved IESO issues lists and the same wording the IESO itself proposed

[1] See for example, *Procedural Order No.2* (EB-2024-0004), March 22, 2024, Appendix B; *Decision on Confidentiality and Issues List* (EB-2022-0318), May 19, 2023, Schedule A; *Decision on Confidentiality and Issues List* (EB-2022-0002), May 6, 2022, Schedule A; *Decision on Issues List* (EB-2020-0230), August 12 2021, Schedule A

[2] *Decision and Order* (EB-2024-0004), August 1, 2024, p.8; See also *Decision and Order* (EB-2007-0791), May 15, 2008, p.7, where the OEB commented in the context of a review of one of the IESO's processor organizations the Ontario Power Authority ("OPA") which operate under a near identical statutory scheme, that [t]The Board's role in a fees proceeding is to assess whether the proposed organizational budget is reasonable." [emphasis added]

in previous applications.[3]

Process

SEC has significant concerns with the IESO's proposed process for hearing this application and submits that it should be rejected by the OEB. It is not warranted, appropriate, or legally permissible. While it would simplify the process, it would result in a review of the application that is neither just nor effective. While there may be ways to appropriately streamline the hearing of this matter, what the IESO proposes would not be a hearing at all. It seeks to avoid any true scrutiny of the application and would breach fundamental tenets of procedural fairness.

The IESO's request, set out in the cover letter to the application, provides no explanation of why this application, it's largest to date in terms of both revenue requirement and fees, should be treated any differently than previous applications, or why it would be reasonable to drastically reduce the scrutiny and involvement of intervenors. There have been no changes to the review provisions under the *Electricity Act*, nor has the IESO cited any concerns with the previous review proceedings.

The process adopted for the review of those applications, considering the size of the proposed revenue requirement, was already far more streamlined than other applications seeking approval of similar amounts from electricity ratepayers. For example, like its previous 3-year application, there was no technical conference, even though one is usually held for a multi-year application.[4] Similarly, in previous applications where there was no settlement, the case was heard by way of written rather than an oral hearing.[5]

By issuing the Notice, the OEB has decided to hold a hearing on the application. The hearing must be conducted in accordance with the requirements of procedural fairness, and the process proposed by the IESO does not meet them. At a minimum, procedural fairness requires a right to be heard.[6] OEB proceedings demand considerably more. Yet the IESO's proposal would deny affected parties, the customers who pay IESO fees, any right to file submissions on the application, depriving them of even that most basic procedural right.

The IESO's other proposal, for a mediated interrogatory process through OEB Staff, is also inappropriate. It puts OEB Staff in a quasi-adjudicative position, is likely to be inefficient based on the OEB's recent experience[7], and strips parties of their ability to ask the questions they believe are appropriate. Moreover, since there is to be no settlement conference or final argument, what is the purpose of intervenors asking interrogatories, or participating in the review at all?

SEC accepts that the OEB's authority for review and approval of the IESO's revenue requirement and fees under the Electricity Act differs from its usual rate-setting authority over utilities. That difference

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[3] See for example, IESO Cover Letter to 2023-2025 Application (EB-2022-0318), March 29, 2023, Appendix A; IESO Cover Letter to 2022 Application, March 4, 2022, Appendix A, IESO Cover Letter to 2020-2021 Application (EB-2020-0230), May 27, 2021, Appendix A

[4] EB-2022-0318

[5] For example, see EB-2024-0004, EB-2019-0002, EB-2017-0150, and EB-2015-0275

[6] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para. 22; *Vento Motorcycles, Inc. v. Mexico*, 2025 ONCA 82, para. 23

[7] The OEB recently piloted a process where parties were to coordinate a single set of interrogatories (including one pilot that was undertaken through OEB Staff). In our experience that process did not lead to efficiency, and involved more work for all parties asking interrogatories, including OEB Staff.

is a factor to consider in determining the appropriate process to hear the application. However, it cannot be whittled away, as the IESO proposes, into an administrative and not an adjudication process.

While the IESO may wish for that type of process, that is not what the *Electricity Act, Ontario Energy Board Act*, and *Statutory Powers Procedures Act* requires, and is surely not what the Minister of Energy and Mines meant in his IESO Business Plan approval letter when he expressed support for "timely consideration by the Ontario Energy Board, including through approaches such as streamlined review."[8] Read in full, that paragraph is focused on the need for a timely review by the OEB, since the application covers the revenue requirement for the current year, 2026.

SEC believes a timely and efficient review can be achieved through a standard process, or by phasing the application to deal with 2026 separately from 2027 and 2028. The latter may be more appropriate, given the OEB's very busy regulatory calendar over the next several months. The OEB's use of settlement conferences, together with a flexible approach, such as the one it took in EB-2024-0004, is another way to address the application in a timely manner, or at the very least, the 2026 portion of it.[9] The OEB may also consider ways to adapt a version of its Small Distributor Process to the current application.[10]

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant (by emails)

[8] B-1-3, p.2

[9] In EB-2024-0004, the OEB held a settlement conference with OEB Staff and intervenors providing clarification questions to the IESO in advance of the settlement process (See EB-2024-0004, Notice of Hearing and Procedural Order No.1, p.2-3).

[10] OEB 10-Point Action Plan – Implementation Update #9 (December 1, 2025)