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By EMAIL and RESS

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July 20, 2026
Our File: 20250014

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Ritchie Murray, Registrar

Dear Mr. Murray:

Re: EB-2025-0014 – Oshawa Power 2026 Rates – Cost Claim Objection

We are counsel for the School Energy Coalition (SEC). Pursuant to the Decision in this proceeding, this letter constitutes SEC's response to the cost claim objection of the Applicant filed on July 16, 2026.

General

SEC was somewhat taken aback by the nature of the objection filed. While we accept Oshawa Power's testimony that they have inexperienced regulatory staff[1], we would have expected even newcomers to have done a basic review, and seen that SEC has a long history of care in cost claims, including tight internal controls to ensure that we only claim reasonable amounts (and regularly writing off amounts that we feel we shouldn't claim). As a result, we have been fortunate in seeing the vast majority of our cost claims over the last 24 years approved without adjustment.

That having been said, we will respond to each of the objections by the Applicant in turn.

Comparison to Enbridge

One doesn't need regulatory experience to understand that the relationship, if any, between intervenor costs and the Applicant's revenue requirement is not linear. There are basic costs that apply in all applications, and the increment is driven by the complexity and forthrightness of each individual application. When an application includes unusual increases in executive complement and compensation, or when it includes once-in-a-lifetime capital projects, it takes more time to do a proper review. When an applicant seeks to bury relevant information, and particularly when intervenors have to fight to get that information, intervenor costs go up.

[1] Apparently confirmed by their error in getting the name of School Energy Coalition wrong.

This is all just common sense.

Less obvious, but still true, is that larger intervenors like Enbridge have highly experienced teams to develop and manage their applications. This means that the initial application will often be more thorough, and throughout the process the utility will generally find the most efficient ways of moving forward. Despite all of the many applications filed by Enbridge, SEC only very rarely has to file motions to get information. The Applicant calls, we discuss it, and we find an acceptable solution.

We also don't see Enbridge engaging in the sort of brinksmanship with intervenors and the Commissioners that we saw Oshawa Power do on October 28, 2025.

All of this is in contrast to the Applicant in this case. Despite their inexperience, they tried their best, but it is just not correct to try to compare their regulatory process to that of Enbridge.

All the Oshawa Power objection letter demonstrates to the OEB (at least on this point) is that actual intervenor costs totaled less than 0.15% of the $220 million+ the utility was seeking to recover from ratepayers over 5 years (not including the head office campus), and less than 1.7% of the $20 million the OEB reduced the requested five year revenue requirement at the conclusion of a successful regulatory process. While the Applicant may not have liked the result, that result is precisely the reason why the intervenors had to spend the 900 hours that they did.

Comparison to Budget

This is also a head-scratcher. Oshawa Power quotes their $76,000 estimate of intervenor costs from Appendix 2-M, without noting that a) it is significantly less than their actual intervenor costs in their most recent rebasing (which was a much simpler application, and five years ago), and b) it pales in comparison to the internal legal and consulting costs estimated by the Applicant, even though those estimates are also much lower than last time.

We also note that the application costs are $705,231, and the legal and consulting costs total $544,500. While their legal costs were not by any means useless, clearly at least some of their consulting costs were.

It is evident that Oshawa Power badly underestimated regulatory costs, and then did not amend that estimate during the proceeding even as the costs started to add up due to the utility's own actions. To cry "Poor" at this point seems problematic[2].

Interrogatories Pilot

The Applicant complains that the interrogatories pilot did not reduce duplication. This misunderstands the process in two ways.

First, as with any pilot the OEB was determining whether a different approach would achieve a desired goal. Although SEC was not materially affected (because our interrogatories were pretty well complete before PO#1 was issued), it was the purpose of that pilot to find out if time and duplication would be reduced. It was never intended to be a guaranteed result.

[2] It is perhaps instructive that the Applicant used a materiality threshold of $100,000 in EB-2020-0048, but didn't offer to reduce their rates when their regulatory costs came in at $120,926 below the OEB-approved total included in rates. (Their actual materiality threshold for 2021 was $136,745.) They also underspent their total approved OM&A by about $566,000 (4.5%) in 2021, but did not clamour to reduce rates for that either.

Second, somehow Oshawa Power conflates duplication of interrogatories with duplication of positions at the end of the proceeding. There was very little duplication of interrogatories in this case. On the other hand, final positions were very similar on some issues, which is exactly what one would expect when experienced intervenors look at the same evidence. The interrogatories pilot was never intended to prevent intervenors from agreeing with each other after reviewing the evidence.

Discovery

SEC took the lead on issues relating to the head office campus. Given the approach of the Applicant to disclosure, the investigation of that major project, and tracking down information relating to it, took a lot more time than we believe should have been necessary if the Application had been prepared properly. That resulted in SEC spending about 50% more time on discovery than other all-issues intervenors. This should not be surprising.

On some other issues, SEC also took the lead, but that was generally balanced out by relying on other intervenors when they took the lead. This happens in most rate cases. It was mostly the head office campus that had a material impact on the discovery time for SEC.

Timing of Motion and Compendium Materials

There was no delay in filing any motion materials or compendia. All were filed at the appropriate times according to standard OEB practice.

We note that the filing of the motion to compel on August 18th did not in any way disrupt the ADR. It was filed as quickly as possible after SEC received and reviewed the more than 1000 pages of interrogatory responses filed July 30th and the following week. The ADR ended up taking about as long as expected, and produced a partial settlement that also covered the areas most would have expected it to cover, given the Application.

With respect to compendia, they are filed at least 24 hours in advance if they contain new materials. If everything is already on the record, they are typically provided at the commencement of cross. (Or sometimes not at all; the cross-examiner simply refers to the evidence when asking the questions.) SEC generally prefers to have a compendium for the assistance of the Commissioners, but not all counsel do.

We note that the compendium material relating to the expert witness, Ms. Galli, was filed 24 hours prior to cross-examining her. In any case, the primary document (aside from an OEB decision in which Ms. Galli was a witness, included in the SEC Compendium) was Ms. Galli's own CV, which was filed by the Applicant.

Procedural

The Applicant challenges the 19.5 hours claimed by SEC under the heading "Procedural". Given that the Applicant filed a motion to overturn the Issues List decision, and SEC had to file and pursue a motion to compel delivery of relevant documents, this seems low rather than high.

The comparison to other intervenors is inapt. SEC is represented by experienced counsel, and as a result it is sometimes the case that legal matters (such as motions) are primarily the role of the SEC representatives, rather than non-lawyers representing some of the other intervenors. The hearing on the SEC motion was a good example of that.

Written Argument

SEC does not apologize for its Final Argument being thorough. We do note that limited time was spent drafting the “diatribe”, contrary to what Oshawa Power seems to think. That flowed easily, because it was directly responsive to the actions of the Applicant, and the Argument in Chief.

We also note that Oshawa Power fails to mention the totally unfounded attacks on the OEB in the Argument in Chief, which consumed the bulk of the time writing the impugned “diatribe”.

IT Assistance

The Applicant seeks disallowance of the 11.7 hours claimed for work by John Shepherd (brother of SEC counsel), an IT consultant retained by our firm, on the basis that he was “not qualified as an expert in this case”, and was “not approved as part of SEC’s team”.

The Applicant appears to misunderstand how this works.

Experts are not “qualified” before the OEB as such unless they are giving expert evidence. While John Shepherd’s history for a number of years as an IT Manager with a major US corporation means he has knowledge that many others don’t have, there was never any intent to have him give evidence, and therefore never any opportunity or requirement to qualify him as an expert. His sole role was to advise counsel of issues in the IT evidence that counsel might otherwise not identify or understand.

Further, the OEB does not “approve” SEC’s team. It accepts SEC as an intervenor. SEC selects the team. The list of parties attached to PO#1 is a distribution list, identifying who on behalf of SEC is on the email list for the Application (as identified by SEC). We don’t include on that list people who do not need to get the hundreds or thousands of emails an application generates. That is standard practice.

SEC and other intervenors are allowed and expected to make their interventions as efficient as possible. One way to do that is to ask a specialist for information on a specialized area, rather than counsel trying to figure it out for themselves[3]. An IT specialist will know, for example, common metrics for comparing IT spending between similar companies. An IT specialist will know the history of Microsoft and General Dynamics, and help counsel develop cross-examination and argument on that point. This category of information saves us time and money.

As IT spending by distributors increases, SEC finds it useful to have a low-cost way of understanding those spending proposals. It helps us know not only what to look at more closely, but also what to accept as standard, even good, IT planning, even if it looks excessive to the uninitiated.

Language in Final Argument

The exhortation to, in effect, punish SEC for the blunt language in our Final Argument may just be the Applicant’s anger at having revenue requirement trimmed by $20 million over the next five years, and having to rethink the DSP before seeking another $61 million for the head office campus. If so, there is no point in talking about it.

[3] In many cases, the specialist we ask is a representative of another intervenor, and vice versa.

However, it is appropriate to respond to the specific submission. We want to point out that the OEB has seen hundreds of Final Arguments from SEC over the years. In each of those Final Arguments, we have tried to be clear, precise, and measured, but also to tell the OEB the truth as we see it. In our view, our job is to review the evidence thoroughly, and then tell the Commissioners what we saw in that review, honestly and directly.

The OEB will be aware that SEC's Oshawa Power argument is more pointed than other Final Arguments the OEB has seen from SEC over the last two decades. If this as a "tactic", as Oshawa Power seems to think, then the OEB would have seen variations on this "tactic" in the past from SEC. That has not been the case.

What we saw in this Application was a different approach to the regulatory process than we're used to seeing. It was important to call that out. Not only was that appropriate. It was our job.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

Jay Shepherd

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