PUBLIC INTEREST ADVOCACY CENTRE
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January 28, 2016

**VIA E-MAIL**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: EB-2015-0064 E.L.K. Energy Inc. 2016 Rate Application**
**Submissions of Vulnerable Energy Consumers Coalition (VECC)**

Please find enclosed the final submissions of VECC in the above-noted proceeding.

Thank you.

Yours truly,

Michael Janigan
Counsel for VECC

Cc: E.L.K. Energy Inc.

**EB-2015-0064**

**E.L.K. Energy Inc.**

**Application for electricity distribution rates and other charges effective May 1, 2016.**

**Final Submissions of the Vulnerable Energy Consumers Coalition**

<u>Overearnings Performance 2014</u>

- E.L.K. Energy Inc. (E.L.K.) filed an application on September 28, 2015 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule 15), (Schedule B) for electricity distribution rates effective May 1, 2016.

- E.L.K. is applying for an annual adjustment (1.6%) to its rates for 2016 under a Price Cap Incentive Rate-setting plan.

- E.L.K.'s last cost of service application was for 2012 rates (EB-2011-0099) and E.L.K. was expected to file its next cost of service application for 2016 rates. In response to a request from E.L.K. to defer its rebasing year to 2017, the OEB concluded that it will not require E.L.K.'s 2016 rates to be set on a cost of service basis.[1] E.L.K. is scheduled to file a cost of service application in 2017.

- The OEB's Filing requirements indicate that a regulatory review may be triggered if a distributor's earnings are outside of a dead band of +/- 300 basis points from the OEB approved return on equity. The OEB monitors results filed by distributors as part of their reporting and record-keeping requirements and determines if a regulatory review is warranted. Any such review will be prospective, and could result in modifications, termination or the continuation of the respective Price Cap IR or Annual IR Index plan for that distributor.[2]

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[1] OEB Letter May 21, 2015

[2] Filing Requirements For Electricity Distribution Rate Applications - 2015 Edition for 2016 Rate Applications - Chapter 3 Incentive Rate-Setting Applications July 16, 2015, Section 3.3.5 Off-ramps Page 23

- On October 16, 2015 the Board sent a letter to E.L.K. regarding its 2014 ROE of 19.22% which is 1,010 basis points (+10.10%) above the target ROE (9.12%) that was the basis upon which its rates were established; or 710 points above the dead band.

- In 2011, 2012 and 2013, E.L.K.'s ROE was 4.07%, 11.9% and 9.2%, respectively.[3]

- Given E.L.K's earnings in 2014, the Board indicated in its letter that it is appropriate to consider whether an amendment to E.L.K's rate plan is warranted, in order to ensure that customers pay distribution rates that better reflect the value of the services provided to them.

- The Board also indicated it may consider whether E.L.K.'s 2016 rates should be set on an interim basis so that earnings for 2016 can be considered in E.L.K.'s next rebasing application in 2017.

- Based on OEB Audit Staff's review, the increase in net income is due to a 25% decrease in expenses (OM&A underspend & decrease in amortization) offset by a 13% decrease in revenues.

- E.L.K. further explains that the drivers of the OM&A underspend are the decrease in amortization expense due to E.L.K.'s change in capitalization policies due to IFRS, resulting in extended useful lives which impact the ROE. E.L.K. did not incur any costs related to a planned 2016 Cost of Service application as E.L.K. received approval for deferral as forecasted. One quarter of $240,000 is $60,000. Maintenance of Meters and Overhead services was down approximately $30,000 as E.L.K. incurred less cost as compared to forecast. The operations supervisor was also $30,000 less as more time was deployed for capital projects. E.L.K. also incurred $20,000 less in legal compared to forecast. There were no structural or material changes in how E.L.K. operated in 2014. The decreases in revenues is due to less consumption and less distribution revenue achieved for most rate classes in 2014 as compared to the forecasts in the 2012 COS.[4]

- VECC notes that E.L.K. could have refrained from seeking an adjustment to base rates given its 2014 earnings are in excess of the dead band. E.L.K.'s position is that a request to not increase its base rates in 2016 is not warranted as the

[3] E.L.K. 2013 & 2014 Scorecard
[4] VECC IR#1 (h) & (i)

circumstances that gave rise to the overearnings in 2014 is a one-time scenario, unique and not persistent as the drivers for the increase are not expected to continue in 2015 and beyond.[5] E.L.K. does not forecast over-earnings in 2015 and 2016.[6] However, E.L.K. was not able to provide the forecasted ROE for 2015.[7] As such, a particular trend of over earning has not been established one way or the other.

- In considering the above, VECC concludes that the nature of the underspend is likely a one-time scenario. Given that the Board has conveyed to E.L.K. that it expects it to adhere to the schedule to file a cost of service application for 2017 rates[8], VECC submits an amendment to E.L.K.'s 2016 rate plan is not warranted and VECC does not oppose a Price Cap IR adjustment to E.L.K.'s current rates. However, VECC submits that 2016 rates should be set on an interim basis so that earnings for 2015 and 2016 can be considered in E.L.K.'s next rebasing application in 2017. VECC submits this approach appropriately responds to the interests of consumers.

**Recovery of Reasonably Incurred Costs**

- VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an order of costs in the amount of 100% of its reasonably-incurred fees and disbursements. All of which is respectfully submitted this 28th day of January 2016.

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[5] Board Staff IR#2
[6] VECC IR#1 (d)
[7] VECC IR# 1(e)
[8] OEB Letter October 16, 2015