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February 15, 2017

Delivered by Email, RESS & Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: E.L.K. Energy Inc. ("E.L.K.")
OEB File No.: EB-2016-0155
Argument in-Chief**

Please find enclosed E.L.K.'s Argument in-Chief.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A.D. Vellone

John A.D. Vellone

Encl.

Cc: Mr. Pasquale Catalano, Hydro One Networks Inc.
Mr. Ken Thoman, Project Manager, Sellick Equipment Limited

E.L.K. Energy Inc.

Argument in-Chief

1. Introduction

E.L.K. Energy Inc. (“**E.L.K.**”) files this written argument to the Ontario Energy Board (the “**OEB**” or the “**Board**”) in respect of E.L.K.’s application filed April 12, 2016, as amended and restated, to amend its licensed service area pursuant to Section 74 of the *Ontario Energy Board Act, 1998* to include a parcel of land owned by Sellick Equipment Ltd. (the “**Customer**”).

Section 74(1) of the *Ontario Energy Board Act* allows the Board to amend distributors’ licences where the amendment is in the public interest. For service area amendments, the “public interest” is guided by the Board’s *Filing Requirements for Service Area Amendment Applications*¹ and the principles articulated in the Board’s decision on the combined service area amendments proceeding RP-2003-0044.²

These filing requirements and the RP-2003-0044 stipulate three key considerations which are relevant in this case:

1. Customer preference;
2. Efficient rationalization of the distribution system; and
3. Impacts arising from the proposed amendment, including but not limited to rate impacts.

2. The Customer prefers E.L.K.

Beginning with the first criterion, customer preference, the Board has consistently held that customer preference is an important, but not overriding consideration when assessing the merits of a Service Area Amendment request.

The facts are clear in this case - the Customer would prefer to have E.L.K. provide electricity distribution service over Hydro One.³ This is not disputed.

The Board also made a determination in the RP-2003-0044 decision which is directly relevant in this case:

*Customer choice may become a determining factor where competing offers to the customer(s) are comparable in terms of economic efficiency, system planning and safety and reliability, demonstrably neutral in terms of price impacts on customers of the incumbent and applicant distributor, and where stranding issues are addressed.*⁴

E.L.K. submits that this passage is particularly relevant for the Board to consider when considering the other criteria.

3. E.L.K.’s offer to connect the Customer is the most efficient

In respect of the efficient rationalization of the distribution system, the facts in this case are clear. Prior to this Service Area Amendment application being filed, E.L.K. had an existing pole located proximate to the north-east corner of the Customer’s lot. This existing pole was being used to provide service to existing E.L.K. customers

¹ Ontario Energy Board, *Filing Requirements for Service Area Amendment Applications*, EB-2006-0327.

² Ontario Energy Board, Decision and Order dated February 27, 2004, RP-2003-0044.

³ See E.L.K. Revised Offer to Connect (October 6, 2016), Exhibit 4 – Updated Letter of Support Sellick Equipment.

⁴ RP-2003-0044, *supra* note 2 at para 233.

located eastward along Clark Street. This existing asset could also be utilized in a very efficient manner to also provide service to the Customer.

By contrast, Hydro One would have to install new poles to draw power from the M7 feeder and span Rosebourough Road to be able to provide power to the Customer's lot.⁵

This fairly simple efficiency advantage resulted in connection costs comparisons of \$8,702.67 for E.L.K. and \$16,103.17 for Hydro One. E.L.K.'s estimated costs to connect the Customer are 54% of those of Hydro One.

Even Mr. Siebert concedes that E.L.K.'s existing pole would result in the most economically efficient connection. He goes so far as to suggest that the OEB should order a transfer of ownership of the pole to Hydro One so that Hydro one could use it to serve the Customer.⁶

4. The Municipality's relocation request is not relevant

We expect that our friends at Hydro One will suggest that the Board must also take into account the costs associated with a municipal relocation request that arose in the course of this service area amendment process.

The facts associated with this pole relocation are fairly straight forward. They were discussed in detail by Mr. MacAulay during the oral hearing.⁷ In summary: The municipality wanted to expand Clark Street west of Rosebourough Road, but the existing E.L.K. pole was located squarely in the middle of the planned right of way. E.L.K. had no choice but to complete the relocation work when they did because the civil work on the road expansion was completed, the curbs were in and the construction crew was ready to pour asphalt. E.L.K. completed the relocation work in the most cost effective way possible: E.L.K. moved the existing pole out of the right of way, and added a new pole across the street in order to comply with new engineering requirements.

The total cost of \$8,432.49 for this relocation work has already been invoiced to the municipality.⁸ Ratepayers will be held harmless from these costs.

Despite these facts, Hydro One will likely insist that the Board should take into account the \$8,432.49 relocation costs as part of the "fully allocated connection costs", despite the fact that Hydro One has already conceded that these relocation costs should not be included in the connection costs that get charged to Sellick:

"The Customer should not be responsible for relocation charges that resulted from the expansion of a municipal roadway, charges that should be a responsibility of the municipality or, if an arrangement has been made, the Developer."⁹

E.L.K. disagrees with Hydro One's suggestion that the relocation costs in question should be included in the "total costs of connection" for a number of reasons.

First, the relocation work was done at the request of a third party, the municipality, not the Customer. Consequently, the work is not directly relevant to this Customer's connection request. This is why all parties agree that the

⁵ Transcript Feb. 9, 2017 at page 105, lines 21-26.

⁶ Transcript Feb. 9, 2017 at page 105, lines 11-20.

⁷ Transcript Feb. 9, 2017 at page 15, line 13 to page 18 line 20.

⁸ Transcript at page 72, lines 3-11.

⁹ HONI Intervenor Evidence (Sept 22, 2016) at page 7.

Customer should not be charged for this work. It is also why it should not be included in the “total costs of connection” for the Customer.

Second, the evidence is that this relocation work would have been done, and the costs incurred, regardless of which utility ultimately provides service to the Customer.¹⁰ This is because the pole was required to support the tension on the existing E.L.K. line running east along Clark Street that is used to service existing E.L.K. customers located in E.L.K.’s service territory.¹¹

Third, there would be negative public policy implications if the Board determines that third party relocation work should be included in the “total costs of connection”. Specifically, it would create a disincentive to complete necessary third party relocation work if an LDC is involved in a contested service area amendment application - because those costs may be used against you in that case. This could, in turn, cause delays for unrelated municipal and other third party projects, which is not in the public interest.

5. There are no negative impacts arising from the proposed amendment

E.L.K. would like to conclude with submissions on three relevant impacts arising from the proposed amendment: on reliability, on the system’s ability to meet future growth potential, and on rates.

On reliability, since both Hydro One and E.L.K. propose to service the customer from the same M7 feeder, there are no material differences between the anticipated reliability performance of the two connection proposals. This is not contested.

Next, the ability of the system to meet future growth potential was addressed by E.L.K. in response to OEB staff interrogatory #1 filed on August 26, 2016. In that response E.L.K. explained that it does not anticipate any limitations with this new customer connection, explaining that the current limitation would be on the existing conductor servicing Clark Street which has a capacity of 17MW, a current peaking load of approximately 1MW.¹²

Third, and finally, rate impacts are most clearly seen in reference to the table supplied at Tab 3 in the E.L.K. Compendium.¹³ Using this table, Mr. Bacon explained the different circumstances that may arise regarding rate impacts. His conclusions are summarized as follows:

First, from a total bill perspective, the Customer will be paying the full cost of service regardless of whether or not E.L.K. or Hydro One ultimately serves the Customer.¹⁴

Second, and contrary to the assertions of Hydro One, there is no incremental \$125,000 in ST Charges which get charged to E.L.K. only if Sellick becomes a customer of E.L.K. Rather, the evidence is clear: Hydro One will bill E.L.K. incremental ST Charges and the IESO will bill E.L.K. incremental regulatory and commodity charges regardless of whether Sellick becomes a customer of Hydro One or a customer of E.L.K.¹⁵ This is because E.L.K. is designated as the wholesale market participant at the Harrow North PME, which is located upstream from the Customer in question. Because of this, E.L.K. will also recover from Sellick (if E.L.K. provides service) or from Hydro One (as an Embedded Distributor or using the Pseudo LTLT charge) the **exact same amounts** for Low Voltage (\$546.60), Transmission Network Service (\$2,850.64), and Transmission Line Connection (\$1,940.67)

¹⁰ Transcript Feb. 9, 2017, page 15, lines 20-24.

¹¹ Transcript Feb. 9, 2017, page 70, line 3 to page 71, line 15

¹² E.L.K. IRR (August 26, 2016) OEB #1.

¹³ Exhibit K1.1 at Tab 3.

¹⁴ Transcript Feb. 9, 2017, page 38, lines 17-26.

¹⁵ Transcript Feb. 9, 2017, page 115 at line 20 to page 116, line 4.

regardless of whether Sellick becomes a customer of Hydro One or a customer of E.L.K.¹⁶ This was acknowledged by Mr. Andre who noted:

*“I have already previously said that we're in agreement with the E.L.K. charges to Hydro One using embedded distributor rates, that that delivery component comes out to 126,000, which is the same number that we come up to, and then the second column, Hydro One charged to E.L.K. of \$124,000. I have already said that we're in agreement with that number.”*¹⁷

During the oral hearing, the Board panel asked Hydro One a number of questions to try to better understand the calculations that Hydro One used in the Hydro One Compendium (Exhibit K1.2) at Tab 2 in the table labelled “Hydro One: Table 1 – Fully Loaded Connection Costs for Sellick Connection”.¹⁸ This discussion culminated in Undertaking J1.1, where Hydro One undertook to provide a short reconciliation table to clearly explain the derivation of the net annual incremental settlement between distributors of \$124,564.66 for ELK and \$1,594.80 for Hydro One.

E.L.K. has reviewed Hydro One’s response to Undertaking J1.1. While there is plenty of new evidence and calculations included in this 7 worksheet excel file – none of which has been tested by E.L.K. – it is not at all clear how this undertaking response serves to explain, reconcile or supports the calculations provided in Hydro One in Table 1 of Tab 2 of Exhibit K1.2. It appears that rather than support their original evidence, Hydro One has used the undertaking J1.1 to introduce new evidence that has not been fully tested.

Third, and finally, the Customer also benefits from E.L.K.’s status as a lean group 1 efficiency distributor with a lower monthly bill - \$939.49 less per month or \$11,273.90 less per year – if E.L.K. provides service rather than Hydro One.

6. Conclusion

We would like to conclude by thanking Mr. Ken Thoman of Sellick Equipment for attending the oral hearing, and for your patience during this somewhat lengthy contested service area amendment process.

What we can say is that customer preference will play an important, but not an overriding, role in the OEB’s determination of this case.

In fact, the OEB previously ruled in its RP-2003-0044 decision that:

Customer choice may become a determining factor where competing offers to the customer(s) are comparable in terms of economic efficiency, system planning and safety and reliability, demonstrably neutral in terms of price impacts on customers of the incumbent and applicant distributor, and where stranding issues are addressed.¹⁹

However, the Board must also take into consideration the efficient utilization of the distribution system and system and rate impacts are also important considerations.

¹⁶ Exhibit K1.1, Tab 3 and the Transcript Feb. 9, 2017 at page 116, line 5 to page 121 at line 2.

¹⁷ Transcript Feb. 9, 2017 at pg. 128 at line 7-17.

¹⁸ Transcript Feb. 9, 2017 at pg. 123, line 1 to pg. 132, line 27.

¹⁹ RP-2003-0044, *supra* note 2 at para 233.

We have canvassed the evidence, and in E.L.K.'s view, the economics are clear: E.L.K.'s connection is more economic than what is proposed by Hydro One. However, we expect Hydro One will attempt to complicate this assessment.

We have also canvassed the evidence, and in E.L.K.'s view, the proposals are comparable in terms of system planning, safety and reliability, there are no stranding issues, and the proposals are demonstrably neutral in terms of price impacts on customers. However, we expect Hydro One will attempt to complicate this assessment.

All of which is respectfully submitted this 15th day of February, 2017.