EB-2016-0066

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

AND IN THE MATTER OF an application by E.L.K. Energy Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2017.

E.L.K. ENERGY INC.

SETTLEMENT PROPOSAL

June 29, 2017

E.L.K. Energy Inc.

EB-2016-0066

Settlement Proposal

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APPENDICIES

Appendix A – 2017 Annual IR Index Model for E.L.K. Energy.

LIVE EXCEL MODELS

In addition to the Appendices listed above, the following live excel models have been filed together with and form an integral part of this Settlement Proposal:

- 2017 Annual IR Index Model for E.L.K. Energy.

ADDITIONAL EVIDENCE

Concurrently with the filing of this Settlement Proposal, E.L.K. Energy is filing its responses to the pre-ADR interrogatory questions together with additional evidence on the remaining issue in dispute (being the request for disposition of amounts included in Account 1595).

The Parties agree this material should be added to the evidentiary record, subject to the OEB allowing a further round of written discovery to give the Intervenors and OEB staff an opportunity to fully test and clarify the additional evidence and issues related to Account 1595.

E.L.K. Energy Inc.

EB-2016-0066

Settlement Proposal

Filed with OEB: June 22, 2017

E.L.K. Energy Inc. (the "Applicant" or "E.L.K. Energy") filed a complete cost of service application with the Ontario Energy Board (the "OEB") on November 1, 2016 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the "Act"), seeking approval for changes to the rates that E.L.K. Energy charges for electricity distribution and other charges for 2016, with such rates and charges to be effective May 1, 2017 (OEB Docket Number EB-2016-0066) (the "Application").

The OEB issued and published a Notice of Hearing dated February 6, 2017, and Procedural Order No. 1 on March 9, 2017, the latter of which required the parties to the proceeding to develop a draft issues list and attend a Settlement Conference. The OEB later issued Procedural Order No. 2 on March 31, 2017 which established the Settlement Conference dates to be May 15, 2017 to May 17, 2017 and a deadline of May 5, 2017 was set for the draft issues list to be filed by Ontario Energy Board staff ("OEB staff").

E.L.K. Energy filed its interrogatory responses with the OEB on April 21, 2017. On May 3, 2017, OEB staff filed a proposed issues list which was agreed to by all parties. On May 4, 2017, the OEB issued its decision on the proposed issues list, approving the list submitted by OEB staff (the "Issues List"). This Settlement Proposal is filed with the OEB in connection with the Application and is organized in accordance with the Issues List.

Further to the OEB's Procedural Order No. 2, a settlement conference was convened on May 15, 2017, in accordance with the OEB's *Rules of Practice and Procedure* (the "Rules") and the OEB's *Practice Direction on Settlement Conferences* (the "Practice Direction"). Chris Haussmann acted as facilitator for the settlement conference which lasted three days.

E.L.K. Energy and the following intervenors (the "Intervenors"), participated in the settlement conference:

Association of Major Power Consumers in Ontario ("AMPCO")
School Energy Coalition ("SEC"); and
Vulnerable Energy Consumers Coalition ("VECC").

E.L.K. Energy and the Intervenors are collectively referred to below as the "Parties".

OEB staff also participated in the settlement conference. The role adopted by OEB staff is set out in page 5 of the Practice Direction. Although OEB staff is not a party to this Settlement Proposal, as noted in the Practice Direction, OEB staff who did participate in the settlement conference are bound by the same confidentiality requirements that apply to the Parties to the proceeding.

This document is called a "Settlement Proposal" because it is a proposal by the Parties to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB's approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms. As set forth later in this Preamble, this agreement is subject to a condition subsequent, that if it is not accepted by the OEB in its entirety, then unless amended by the Parties it is null and void and of no further effect. In entering into this agreement, the Parties understand and agree that, pursuant to the Act, the OEB has exclusive jurisdiction with respect to the interpretation and enforcement of the terms hereof.

The Parties acknowledge that this settlement proceeding is confidential in accordance with the Practice Direction. The Parties understand that confidentiality in that context does not have the same meaning as confidentiality in the OEB's Practice Direction on Confidential Filings, and the rules of that latter document do not apply. Instead, in this settlement conference, and in this Agreement, the Parties have interpreted "confidential" to mean that the documents and other information provided during the course of the settlement proceeding, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the settlement conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal. Further, the Parties shall not disclose those documents or other information to persons who were not attendees at the settlement conference. However, the Parties agree that "attendees" is deemed to include, in this context, persons who were not physically in attendance at the settlement conference but were a) any persons or entities that the Parties engage to assist them with the settlement conference, and b) any persons or entities from whom they seek instructions with respect to the negotiations; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions.

This Settlement Proposal provides a brief description of each of the settled and partially settled issues, as applicable, together with references to the evidence. The Parties agree that references to the "evidence" in this Settlement Proposal shall, unless the context otherwise requires, include (a) additional information included by the Parties in this Settlement Proposal, and (b) the Appendices to this document. The supporting Parties for each settled and partially settled issue, as applicable, agree that the evidence in respect of that settled or partially settled issue, as applicable, is sufficient in the context of the overall settlement to support the proposed settlement, and the sum of the evidence in this proceeding provides an appropriate evidentiary record to support acceptance by the OEB of this Settlement Proposal.

There are Appendices to this Settlement Proposal which provide further support for the proposed settlement. The Parties acknowledge that the Appendices were prepared by E.L.K Energy. While the Intervenors have reviewed the Appendices, the Intervenors are relying on the accuracy of the underlying evidence in entering into this Settlement Proposal.

Outlined below are the final positions of the Parties following the settlement conference.

This Settlement Proposal differs from other settlements. Specifically, this Settlement Proposal is premised, in part, on an agreement among the Parties that rates should be established for the test year using the "Annual IR Index" methodology as defined in the Report of the Board titled *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* dated October 18, 2012. Because of the use of the Annual IR Index to set rates for the test year, many of the issues in the Issues List (which assume that a cost of service methodology will be used) are no longer relevant. The Parties have reflected this in this Settlement Proposal by adding an additional category of "Not Relevant", as further described below.

The Parties are pleased to advise the OEB that they have reached a partial agreement with respect to the settlement of the issues in this proceeding. Specifically:

"Complete Settlement" means an issue for which complete settlement was reached by all Parties, and if this Settlement Proposal is accepted by the OEB, the Parties will not adduce any evidence or argument during the oral hearing in respect of these issues.	# issues settled: **1**
"Partial Settlement" means an issue for which there is partial settlement, as E.L.K. Energy and the Intervenors who take any position on the issue were able to agree on some, but not all, aspects of the particular issue. If this Settlement Proposal is accepted by the OEB, the Parties who take any position on the issue will only adduce evidence and argument during the hearing on those portions of the issues not addressed in this Settlement Proposal.	# issues partially settled: **2**
"Not Relevant" means an issue which the Parties agree is no longer relevant if this Settlement Proposal is accepted by the OEB. If this Settlement Proposal is accepted by the OEB, the Parties will not adduce any evidence or argument during the oral hearing in respect of these issues.	# issues not relevant: **9**
"No Settlement" means an issue for which no settlement was reached. E.L.K. Energy and the Intervenors who take a position on the issue will adduce evidence and/or argument at the hearing on the issue.	# issues not settled: **None**

According to the Practice Direction (p. 3), the Parties must consider whether a Settlement Proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. These adjustments are specifically set out in the text of the Settlement Proposal.

The Parties have settled the issues as a package, and none of the parts of this Settlement Proposal are severable. If the OEB does not accept this Settlement Proposal in its entirety, then there is no settlement (unless the Parties agree in writing that any part(s) of this Settlement Proposal that the

OEB does accept may continue as a valid settlement without inclusion of any part(s) that the OEB does not accept).

In the event that the OEB directs the Parties to make reasonable efforts to revise the Settlement Proposal, the Parties agree to use reasonable efforts to discuss any potential revisions, but no Party will be obligated to accept any proposed revision. The Parties agree that all of the Parties who took on a position on a particular issue must agree with any revised Settlement Proposal as it relates to that issue prior to its resubmission to the OEB.

Unless stated otherwise, the settlement of any particular issue in this proceeding and the positions of the Parties in this Settlement Proposal are without prejudice to the rights of Parties to raise the same issue and/or to take any position thereon in any other proceeding, whether or not E.L.K. Energy is a party to such proceeding.

Where in this Agreement, the Parties "Accept" the evidence of E.L.K. Energy, or the Parties or any of them "agree" to a revised term or condition, including a revised budget or forecast, then unless the Agreement expressly states to the contrary, the words "for the purpose of settlement of the issues herein" shall be deemed to qualify that acceptance or agreement.

SUMMARY

In reaching this partial settlement, the Parties have been guided by the Report of the Board titled *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* dated October 18, 2012, the Filing Requirements for 2017 rates, the approved Issues List attached as Schedule A to the OEB's Issues List Decision of May 4, 2017.

This Settlement Proposal reflects a partial settlement.

E.L.K. Energy takes pride in having the second lowest distribution rates in the Province of Ontario and in being a Group 1 utility in the OEB's benchmarking of utility cost performance, however, this does not represent the condition of the distribution system. This Settlement Proposal reflects a unique plan created jointly by the Parties to leverage this record of good cost performance with a focus on improving incrementally the internal processes and procedures of E.L.K. Energy to better align with RRFE outcomes. The Parties do not believe that setting rates on a cost of service basis, based on E.L.K. Energy's evidence in this proceeding, would be the best way to achieve this objective. In particular:

- due to concerns regarding the accuracy and consistency of certain underlying data in the evidence, as described below, E.L.K. Energy is willing to undertake to complete a detailed regulatory audit to satisfy such concerns going forward and as discussed further below, as part of an operational review, ensuring that E.L.K. Energy has proper accounting procedures and practices;

- due to concerns regarding E.L.K. Energy's resourcing requirements, as described below, E.L.K. Energy is willing to undertake a detailed operational review to help create a plan to address those requirements going forward; and

- due to concerns regarding E.L.K. Energy's lack of information about its assets, as described below, E.L.K. Energy is willing to undertake a formal independent asset condition assessment.

Instead, in addition to the three undertakings outlined above and further described below, E.L.K. Energy agrees to withdraw the Application (except for the request for disposition of Account 1595, as further described in issue 4.2 below) and the Parties agree that rates for the test year should be established using the OEB's Annual IR Index methodology rather than a standard 4th Generation forward test-year cost of service basis. Going forward, rates will be set using the OEB's Annual IR Index in a manner consistent with the RRFE until such time as E.L.K. Energy brings forward a new forward test-year cost of service rebasing application.

E.L.K. Energy agrees that this will generate sufficient revenue to allow E.L.K. Energy to operate its business over the near term. The intervenors encourage E.L.K. Energy to bring in a new cost of service rebasing application as soon as is practical after E.L.K. Energy completes the three requirements identified below.

Unless the OEB requests that E.L.K. Energy apply for cost of service rates earlier than 2022, prior to bringing its next cost of service rebasing application, the Parties agree that E.L.K. Energy will undertake to:

a. ***Regulatory Audit***: cooperate with and participate in an audit of its regulatory and accounting practices. The scope of the audit will be determined with the assistance of OEB staff, in their sole and absolute discretion. OEB staff's assistance with the scoping of the audit will not in any way limit the OEB from undertaking a new or different audit pursuant to their statutory mandate and powers, which shall remain in the sole and absolute discretion of the OEB. If OEB staff choose not to perform the audit, E.L.K. will retain a qualified, independent third-party auditor to complete the audit. Upon conclusion of the audit, E.L.K. Energy will prepare a reporting letter, attaching a copy of the audit report, which will be delivered to the Parties and to the OEB under this EB-2016-0066 file number. A further reporting letter will be delivered to Parties and filed after all recommended changes have been implemented.

b. ***Operations Review****:* undertake an independent third-party review and risk assessment of its operations, which will comprise an examination of E.L.K. Energy's:

    (i) accounting procedures and practices;

    (ii) budgeting processes, business planning processes, and management oversight;

    (iii) distribution system planning information, processes and procedures;

    (iv) information technology systems, data control, and privacy and security procedures; and

    (v) human, fleet and financial resources compared to an organization of its size and revenue requirement.

    The review will include a comparison of E.L.K. Energy's data and records, practices and procedures against industry best practices, and recommendations for improvements where possible. Upon conclusion of the operational review, E.L.K. Energy will prepare a reporting letter attaching copies of the aforementioned reviews which will be delivered to the Parties and to the OEB under this EB-2016-0066 file number. The letter will include an explanation from management about how the findings and recommendations of these reviews will inform the E.L.K. Energy business plan going forward.

    This requirement may be satisfied if the OEB elects to undertake or direct itself, a substantially similar review and assessment as described above, pursuant to its statutory powers and functions as part of its public interest mandate.

c. ***Asset Condition Assessment:*** undertake an independent third-party asset condition assessment of its distribution system infrastructure, which will form an input into E.L.K. Energy's distributions system plan, and for the purposes of building an asset registry. The Parties agree that E.L.K. Energy staff may be utilized to collect information and data to inform the asset condition assessment. E.L.K. Energy will file this independent asset condition assessment when completed and delivered to the Parties and the OEB under EB-2016-0066 file number.

This requirement may be satisfied if the OEB elects to undertake or direct itself an asset condition assessment pursuant to its statutory powers and functions undertaken as part of its public interest mandate.

Finally, E.L.K. Energy will be required to file its next cost of service rebasing application for rates for 2022 rates, by no later than the last date the OEB would accept a cost of service application for 2022 as specified in the OEB's filing requirements for that year. A cost of service rebasing application may be filed by E.L.K. Energy at any time prior to this deadline, provided the conditions in (a)-(c) above are satisfied prior to filing the application.

The requirement to file a cost of service application for 2022 rates at the latest, in no way restricts the OEB's ability to require on its own initiative, as in the normal course, for E.L.K. Energy to file an early application.

In addition, the Parties agree that nothing in this Settlement Proposal will in any way bind, limit or restrict the OEB in any way from exercising its public interest mandate in accordance with the *Ontario Energy Board Act, 1998.* For greater clarity, and without limiting the generality of the foregoing, the completion of the regulatory audit as contemplated in paragraph (a), the operational assessment as contemplated in paragraph (b), or the asset condition assessment as contemplated in paragraph (c) will not in any way bind, limit or restrict the OEB from undertaking a new or different audit or assessment pursuant to its statutory powers and functions.

E.L.K. Energy will perform conditions agreed to in this Settlement Proposal in a way that is commensurate with an organization of its size and revenue requirement. The Parties agree that if due to an unforeseen change in circumstances, E.L.K. Energy is unable, or it becomes unreasonable, to meet any of the conditions agreed to in this Settlement Proposal, it may bring a motion pursuant to Rule 40 of the *OEB Rules of Practice Procedure,* on notice to the Intervenors, to request the Board vary the Settlement Proposal. Intervenors are free to take any position they deem appropriate regarding the appropriateness of any such required relief. If an Intervenor chooses not to participate in such a motion, after being adequate notice (as determined by the OEB) and afforded full procedural rights to participate, including cost eligibility, it shall be deemed to take no position on the requested relief.

Based on the foregoing, and the evidence and rationale provided below, the parties agree that this Settlement Proposal is appropriate and recommend its acceptance by the OEB. Please refer to Appendix A for the completed Annual IR Index model, including a schedule of draft tariffs resulting if this settlement is accepted by the OEB.

1. Planning

1.1 Capital

Is the level of planned capital expenditures appropriate and is the rationale for planning and pacing choices appropriate and adequately explained, giving due consideration to:

- *customer feedback and preferences;*
- *productivity;*
- *compatibility with historical expenditures;*
- *compatibility with applicable benchmarks;*
- *reliability and service quality;*
- *impact on distribution rates;*
- *trade-offs with OM&A spending;*
- *government-mandated obligations;*
- *the objectives of E.L.K. Energy and its customers; and*
- *distribution system plan.*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

1.2 OM&A

Is the level of planned OM&A expenditures appropriate and is the rationale for planning choices appropriate and adequately explained, giving due consideration to:

- *customer feedback and preferences;*
- *productivity;*
- *compatibility with historical expenditures;*
- *compatibility with applicable benchmarks;*
- *reliability and service quality;*
- *impact on distribution rates;*
- *trade-offs with capital spending;*
- *government-mandated obligations; and*
- *the objectives of E.L.K. Energy and its customers.*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

2. Revenue Requirement

2.1 *Are all elements of the revenue requirement reasonable, and have they been appropriately determined in accordance with OEB policies and practices?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

2.2 *Has the revenue requirement been accurately determined based on these elements?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

3. Load Forecast, Cost Allocation and Rate Design

3.1 *Are the proposed load and customer forecast, loss factors, CDM adjustments and resulting billing determinants appropriate, and, to the extent applicable, are they an appropriate reflection of the energy and demand requirements of E.L.K Energy's customers?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

3.2 *Is the proposed cost allocation methodology, and are the allocations, and revenue-to-cost ratios appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

3.3 *Are E.L.K. Energy's proposals for rate design appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology. For greater clarity, rate

design has been addressed in a manner consistent with the Annual IR Index methodology, as further detailed in Appendix A.

Evidence: Not applicable.

Supporting Parties: All

3.4 *Are the proposed Retail Transmission Service Rates and Low Voltage Service Rates appropriate?*

Partial Settlement: The Parties agree that the Retail Transmission Service Rates should be updated to reflect 2017 Hydro One rates, if available at the time of a final rate order.

The Parties agree that the question of whether the proposed Low Voltage Service Rates are appropriate is not relevant in light of the Parties agreement to set rates using the Annual IR Index methodology. Low Voltage Service Rates are not traditionally updated under the OEB's Annual IR Index methodology.

Evidence:

Application: Exhibit 8

IRRs: None applicable

Appendices to this Settlement Proposal: Appendix A

Settlement Models: 2017 Annual IR Index Model for E.L.K. Energy Inc.

Supporting Parties: All

4. Accounting

4.1 *Have all impacts of any changes in accounting standards, policies, estimates and adjustments been properly identified and recorded, and is the rate-making treatment of each of these impacts appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

In addition, as described in the Summary section above, E.L.K. Energy has agreed to undertake to, *inter alia*, cooperate with and participate in an audit of E.L.K. Energy's regulatory accounting practices..

Evidence: Not applicable.

Supporting Parties: All

4.2 *Are E.L.K. Energy's proposals for deferral and variance accounts, including the balances in the existing accounts and their disposition, requests for new accounts and the continuation of existing accounts, appropriate?*

Partial Settlement: E.L.K. Energy applied for approval for disposition of its Group 1 deferral and variance account balances as at December 31, 2015 and the forecasted interest through April 30, 2017. Table 9-1 of Exhibit 9-1 contains the account balances from E.L.K. Energy's 2015 audited financial statements as at December 31, 2015. Exhibit 9 further provides an explanation of any variances between Table 9-1 balances and E.L.K. Energy's E2.1.7 RRR trial balance filed as of April 30, 2016.

As explained further in the response to 9-Staff-54 (accompanying this Settlement Proposal), E.L.K. Energy is seeking recovery of $2,785,175 from account 1595, which E.L.K. Energy is proposing to dispose of over a two year period. This removes the interest after the sunset date. The Parties do not agree to E.L.K. Energy's request for disposition and recovery/refund of regulatory balances in Account 1595. E.L.K. Energy's acceptance of this settlement is based upon OEB staff's position at the time of the settlement conference that they are supportive in principle of disposition of 1595, although they said they required further information to determine the exact amount and the disposition methodology. The Parties have agreed that the question for consideration by the OEB as it relates to account 1595 included as follows:

> *Should the OEB permit E.L.K. Energy's request for disposition and recovery/refund of regulatory balances in Account 1595 in view of:*
>
> - *The OEB's rules regarding billing errors, if applicable;*
> - *Any material adverse effects on E.L.K. Energy should the OEB disallow recovery of these amounts as further evidenced by E.L.K. Energy in the additional evidence submitted concurrently with this settlement proposal;*
> - *E.L.K. Energy's view that an error was made when 1595 balances were attributed to the Embedded Distributor customer class as further evidenced by the additional evidence submitted concurrently with this settlement proposal;*
> - *The proper amount that should be included in Account 1595 for disposition and methodology for recovery or refund, which is further evidenced by E.L.K. Energy in the additional evidence submitted concurrently with this settlement proposal; and*
> - *Any other factor that a Party may include in their final submissions*?

The Parties agree that a further round of written discovery would be appropriate to give the Intervenors and OEB staff an opportunity to fully test and clarify the issues and evidence related to Account 1595.

The Parties agree with E.L.K. Energy's request for approval for disposition of the balance of its Group 1 deferral and variance accounts with the exception of (i) account 1595 (as noted above), and (ii) accounts 1588 and 1589. These later 2 accounts (being accounts 1588 and 1589) will be included as part of the regulatory audit discussed in the Summary above prior to disposition.

The Parties note that this agreement is consistent with the Annual IR Index methodology.

Evidence:

Application: Exhibit 9

IRRs: 9-Staff-39 to 9-Staff-49

Appendices to this Settlement Proposal: Appendix B

Supporting Parties: All

5. Other

5.1 *Is the proposed adjustment to the specific service charge for service call – customer owned equipment appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

5.2 *What is the appropriate effective date for 2017 rates?*

Complete Settlement: The Parties agree that the appropriate effective date for 2017 rates is the date that E.L.K. Energy can first implement those rates following the OEB's final decision and order in respect of this Application.

Evidence: Not Applicable.

Supporting Parties: All

Appendix A
2017 Annual IR Index model for E.L.K. Energy

Please see attached.