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Ontario

BY E-MAIL

July 7, 2017

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: E.L.K. Energy Inc. (E.L.K. Energy)
2017 Distribution Rate Application
OEB Staff Submission
OEB File No. EB-2016-0066

In accordance with Procedural Order No. 3, please find attached OEB staff's submission on the filed settlement proposal for E.L.K. Energy's 2017 cost of service application. This document is also being served on E.L.K. Energy, the Association of Major Power Consumers in Ontario, the School Energy Coalition, and the Vulnerable Energy Consumers Coalition.

Yours truly,

Original Signed By

Donald Lau
Project Advisor – Rates Major Applications

Encl.

2017 ELECTRICITY DISTRIBUTION RATES

E.L.K. Energy Inc.

EB-2016-0066

OEB STAFF SUBMISSION ON SETTLEMENT PROPOSAL

July 7, 2017

INTRODUCTION

E.L.K. Energy Inc. (E.L.K. Energy) filed a complete application with the Ontario Energy Board (OEB) on November 1, 2016 seeking approval for changes to the rates that E.L.K. Energy charges for electricity distribution, to be effective May 1, 2017. The Parties to the settlement proposal are E.L.K. Energy and the following approved intervenors: Association of Major Power Consumers in Ontario (AMPCO), School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC).

A community meeting was held as part of the proceeding on March 2, 2017. OEB staff and E.L.K. Energy made presentations at the meeting. A summary of the community meeting was posted to the record of the proceeding. The comments during the community meeting generally expressed concerns over rising electricity costs, cost allocation to customers, and E.L.K. Energy's justification for the rate increase. OEB staff took these concerns into consideration in reviewing E.L.K. Energy's application. For a typical residential customer with monthly consumption of 750kWh, the total bill impacts under the filed settlement proposal would be an increase of $5.64 before taxes per month or an increase of 4.76%. The distribution portion of the total bill is an increase of $0.57 per month.

The OEB issued an approved Issues List for this proceeding on May 3, 2017. A settlement conference was held on May 15, 2017 to May 17, 2017. E.L.K. Energy filed a settlement proposal setting out an agreement between all the Parties to the proceeding on June 29, 2017.

The settlement agreement has brought to light significant challenges faced by the utility and, in OEB staff's view, the Parties should be commended for bringing them to the OEB's attention. The significance of this information and the scope of any settlement proposal that the OEB Panel should approve, in OEB staff's view, will be discussed later in this submission.

In arriving at a settlement, the parties are proposing the use of an Annual IR methodology to set rates in what was initially a cost of service application. As a result, only two issues on the Issues List remain applicable in this proceeding and the Parties reached a partial settlement on them, as is described in more detail below. The two issues are:

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

The Parties' proposal to use an Annual IR methodology to set rates has however rendered the remaining issues on the Issues List as not applicable in this proceeding.

This submission is based on the status of the record as of the filing of E.L.K. Energy's settlement proposal and reflects observations which arise from OEB staff's review of the evidence and the settlement proposal. It is intended to assist the OEB in making an informed decision on E.L.K. Energy's application and the settlement proposal.

Settlement Proposal

OEB staff has reviewed the settlement proposal in the context of the objectives of the *Renewed Regulatory Framework* (RRF), other applicable OEB policies, relevant OEB decisions, and the OEB's statutory obligations. The Parties considered the issues and outcomes of the RRF in the context of E.L.K. Energy's application.

OEB staff does not support the settlement in whole as filed. However, OEB staff supports the Parties' positon that E.L.K. Energy's 2017 cost of service application should be withdrawn and accepts the agreement that E.L.K. Energy may go on the Annual IR Index mechanism until such time as it files its next cost of service application. OEB staff notes that it would not be an efficient use of the OEB's time to review this application in further detail given the difficulties that the applicant has experienced in supporting the information filed in its application. OEB staff shares concerns regarding the accuracy and consistency of E.L.K Energy's evidence, resource requirements, and lack of information about its assets.

Parties have also agreed that E.L.K. Energy undertake three distinct reviews of its operations in advance of its next cost of service filing. The undertakings include a regulatory audit, an operational review, and an asset condition assessment. The regulatory audit would review E.L.K. Energy's regulatory and accounting practices. The operational review would examine E.L.K. Energy's budgeting and planning processes, and the adequacy of its resources overall. The asset condition assessment would assist E.L.K. Energy in building an asset registry and form an input into its distribution system plan.

OEB staff agrees that reviews of the nature noted in the agreement should be conducted before E.L.K. Energy files its next cost of service application. However, OEB staff notes that the process for determining how such reviews should be conducted must remain at the sole discretion of the OEB as part of its monitoring and audit function. OEB staff submits that it supports the general intent of the three undertakings proposed but does not support them being implemented through a settlement agreement. OEB staff submits that if the OEB accepts the withdrawal of the application, it should then refer the matter of E.L.K. Energy's challenges to the OEB's Consumer Protection and Industry Performance Division which will decide on among other matters, the exact scope and timing of the reviews, having been informed by the reasons for the withdrawal of the application through this settlement proposal.

As noted above, this settlement proposal has brought to light significant challenges faced by the utility. Parties have also included language in the settlement proposal that is intended to allow the OEB full discretion and flexibility to conduct its own reviews. The Parties have noted that:

> 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 this public interest mandate.

OEB staff submits that the OEB should accept the withdrawal of the application (and the rate-setting mechanism to be applied until such time as E.L.K Energy rebases) but that the other monitoring and auditing requirements be left to the OEB's Consumer Protection and Industry Performance Division to consider and implement.

OEB staff offers two examples to demonstrate why it is preferable that the reviews outlined in this settlement proposal be treated as recommendations to the OEB and not requirements.

First, it is unclear what a “substantially similar review” means. OEB staff submits that the operational review noted in the settlement proposal is a significant undertaking which will require preliminary work and consideration as to its scope, cost and timing. The OEB should be allowed to carefully consider all these matters with the utility, and not have the utility constrained by any parameters embedded in a legally binding agreement.

Second, the settlement proposal notes that E.L.K. Energy will perform the conditions agreed to in a way that is commensurate with an organization of its size and revenue requirement. On the surface, this does not seem unreasonable. However, it is unclear what that means in terms of a budget for these reviews. E.L.K. Energy’s forecast revenue requirement was $3.9 million. Does “commensurate” mean 5% of revenue requirement? Will $200,000 be sufficient to conduct all three reviews? In OEB staff’s view, it is inappropriate to commit to such unknowns before the OEB conducts its preliminary review and assessment to determine the need and scope of such reviews.

In conclusion, if the OEB accepts this settlement proposal as filed, it is unclear to OEB staff what that would mean for each of these reviews in terms of the OEB’s flexibility to conduct (or not) such reviews, conduct other reviews instead, as well as what it would mean to their nature, scope, cost and timing. OEB staff submits that the undertakings outlined in the settlement proposal should be positioned as recommendations to the OEB, and not requirements.

OEB staff further submits on the following partially settled issues:

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

OEB staff supports that the Retail Transmission Service Rates should be updated to reflect 2017 Hydro One rates, which are available and should be used in the update at the time of a final rate order. OEB staff has no concern with the rates as proposed.

The unsettled portion of this issue is the update to the Low Voltage Charges which would not be updated as part of an Annual IR application and therefore the issue does not have to be settled.

Issue 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?

The settlement proposal states that Accounts 1588 and 1589 should be included in the proposed regulatory audit prior to disposition of these accounts. OEB staff agrees. OEB staff is not satisfied with the explanation of the Regulated Price Plan (RPP) true-up process with the Independent Electricity System Operator (IESO) that E.L.K. Energy presented in its evidence. In staff interrogatory 9-Staff-47 c) and d), E.L.K. Energy was asked if the balances in Account 1588 and 1589 proposed for disposition have been trued-up for actual RPP and non-RPP consumption with the IESO. From E.L.K. Energy's interrogatory responses and the evidence on the record, E.L.K. Energy does not appear to have adequate systems and processes to calculate RPP settlement claims with the IESO. Since this process has a direct impact on the balances recorded in Accounts 1588 and 1589, OEB staff is not confident of the accuracy of the amounts recorded in these accounts. To ensure the accuracy of the balances being disposed, OEB staff submits that if the OEB decides not to accept the settlement proposal, a specified procedures audit be completed on the account balances prior to final disposition of the account balances.

The settlement proposal also includes an agreement that Account 1595 will proceed to a hearing at this time and that a further round of written discovery would be appropriate to give intervenors and OEB staff an opportunity to test and clarify the issues related to Account 1595. There are several issues that require clarification prior to the disposition of account 1595. E.L.K. Energy stated in its evidence that the Global Adjustment rate rider was incorrectly charged to only a subset of non-RPP customers leading to a shortfall in the recovery of the approved disposition amount. The balance in account 1595 proposed for disposition is a result of two errors.

The first error was related to billing errors by E.L.K. Energy in which non-RPP retail customers were billed the rate rider but other non-RPP customers were not. The evidence submitted indicates that E.L.K. Energy incorrectly used two rate riders related to GA (one effective until April 20, 2014 and the other effective until April 30, 2015) in its CIS system. E.L.K. Energy applied these rate riders to only the non-RPP retailer customers, and did not charge the GS 50 to 4,999kW service classification, resulting in a large residual amount in Account 1595.

The second error was also related to the same GA rate riders. The evidence submitted indicates that E.L.K. Energy calculated GA rate riders for its embedded distributor class, but this rate class should not have been allocated any GA. The embedded distributor class does not contribute to the GA variance as it settles its GA similar to Class A customers. Further, E.L.K. Energy did not charge this rate class the rate riders, and as a result, the allocated amount is still part of E.L.K Energy's residual balance in Account 1595.

If the OEB accepts that this account should go to hearing at this time, OEB staff will be exploring, among other matters, the accuracy of the proposed balance and whether any adjustments that E.L.K. Energy proposes to make are considered retroactive and potentially not appropriate. OEB staff notes that any further review of this matter should include both a further written discovery process and an oral hearing in order to provide the OEB with an opportunity to better understand the issues and to make further inquiries of their own. However, OEB staff cautions that any review will be very detailed and may provide the level of granular information that would normally be reviewed in an audit. Therefore, one alternative is to defer this matter to the regulatory audit review noted above.

All of which is respectfully submitted