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 Essex Powerlines Corporation for an order approving a Smart Meter Disposition Rate Rider ("SMDR") and a Smart Meter Incremental Revenue Requirement Rate Rider ("SMIRR"), each effective January 1, 2015;

AND IN THE MATTER OF an application by Essex Powerlines Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015.

REPLY SUBMISSIONS OF ESSEX POWERLINES CORPORATION

Introduction and Background

1. These are the reply submissions of Essex Powerlines Corporation ("**EPL**") to the submissions of Energy Probe, School Energy Coalition ("**SEC**"), the Vulnerable Energy Consumer's Coalition ("**VECC**") and Board Staff.

2. EPL has requested the Board permit EPL to correct both the accounting error and the impact of the error that was included in customer bills commencing May 1, 2014. EPL is of the view such a request does not offend the treatment against rate retroactivity. Nor does the request offend the principles of the Retail Settlement Code ("**RSC**"). Further, a complete correction eliminates the potential future problem of continuing the balances until final disposition of the accounts.

3. It is clear that the Board's treatment,[1] and that of other regulators,[2] of retroactivity and errors brings together a number of competing principles which must be weighed against

[1] Ontario Energy Board, see for example: EB-2009-0063, Decision and Order ("**Brant County**"). EB-2010-0090, Supplemental Partial Decision and Order ("**Hydro Hawkesbury**"). Re Natural Resource Gas Ltd., Board Review Decision, April 19, 2004. *Natural Resource Gas Ltd. v. Ontario Energy Board* [2005] OJ No. 1520 (Div. Ct.) ("**NRG**"). EB-2005-0013/0031, Decision and Order, ("**Great Lakes**"). EB-2009-0113, Decision and Order ("**North Bay**").

[2] See for example: *Re Section 101 of the Public Utilities Act* (1998) CanLII 18064 (NL C.A.); *Epcor Generation Inc. v. Alberta (Energy and Utilities Board)*, 2003 ABCA 374 (CanLII).

one another in consideration of the specific circumstances presented to the regulator. As such, it is important that the particular facts in the current situation are understood.

4. During the Smart Meter and IRM application, EPL discovered an error in the way costs were allocated to two variance accounts from the Independent Electricity System Operator ("**IESO**") Global Adjustment and the Hydro One Networks Inc. power bills. The allocation errors occurred during the years 2011, 2012 and 2013. The 2011 and 2012 amounts were recorded but did not impact customer bills until May 1, 2014 – the current effective rate order. The 2013 balance has not impacted customer bills.

5. On February 26, 2015, EPL filed a request with the Board to immediately cease collecting the rate rider which was to dispose of the balances from the years 2011 and 2012 which EPL had begun to collect from customers for electricity consumed on or after May 1, 2014. This has mitigated the extent of any actual impact felt by the customers. The Board, on February 27, 2015 granted an order to prevent the error from being applied to bills on or after February 1, 2015.

6. Further, while the Board asked 2 specific questions, EPL is providing some additional context as that is relevant to any further consideration of these matters. In the end, EPL is requesting the Board issue a decision and order:

    a. Approving the correction of the account balances for the years 2011, 2012, and 2013;

    b. Approving the refund of the over-billed amount from May 1, 2014 to January 31, 2015 of approximately $7,095,054 to RPP customers over 2 years ; and

    c. Approving the collection of the under-billed amount from May 1, 2014 to January 31, 2015 of approximately $6,448,046 from Non-RPP customers over 4 years.

7. If a new or additional deferral/variance accounts is required to implement the above relief, EPL would request such accounts be ordered by the Board.

8. EPL believes such a resolution is consistent with regulatory principles, corrects the errors and does not cause undue customer impacts. EPL acknowledges that the attached rate generator information has not been subject to cross-examination but are provided to support the contention that EPL's request does not violate the principle of retroactive ratemaking.

<u>2011 and 2012</u>

9. It is important to note that during each of the years, 2011, 2012 and 2013 there was no actual collection error in the amounts from customers with respect to the allocation error. Customers were paying the correct amount until May 1, 2014.

10. In EB-2012-0123, EPL had applied for disposal of the Group I DVA balances. EPL's Group 1 Account balances, including interest until April 30, 2013, was projected to be $263,305 which represented a credit of $0.0005/kWh. Given the credit amount was

below the threshold, the Board determined that no disposition of the accounts was required at that time.[3]

11. A credit balance of $4,592,942 for the Group 1 DVA was approved for disposition by the Board and was to be disposed of over 1 year effective May 1, 2014.[4]

12. The 2011 and 2012 original amounts and the corrected amounts for accounts 1588 and 1589 are summarized below:

Table 1 – 2011 & 2012 Balance Summary

2011 & 2012 Balances for Disposition in 2014 (excluding interest)		
	1588 Cost of Power	1589 Global Adjustment
2011 & 2012 Balances Approved by the Board	9,554,493	(8,731,842)
2011 & 2012 Balances Corrected & Proposed by EPL	2,664,924	(305,036)

13. The 1588 cost of power account disposition approved for 2014 included amounts owing of $9,554,493 (excluding interest) and the 1589 Global Adjustment account disposition approved for 2014 was a refund of $8,731,842 (excluding interest).

<u>2013 and 2014</u>

14. The 2013 1588 and 1589 amounts proposed originally and the proposed corrected amounts are summarized below:

Table 2 - 2013 Balance Summary

2013 Balances for Disposition in 2015 (excluding Interest)		
	1588 Cost of Power	1589 Global Adjustment
2013 Balances Originally Proposed to the Board	(7,027,455)	9,078,803
2013 Balances Corrected & Proposed by EPL	(4,442,136)	6,719,097

15. The evidence requested by the Board on February 6, 2015 and submitted by EPL on February 11, 2015 included 6 different rate models and corresponding bill impacts.

16. The bill impacts provided to the Board on February 11, 2015 reflected significant increases as high as 89% for disposition over one year and as low as 37.52% for disposition over 4 years for the GS>50 kW non-RPP rate class, for example. These percentages are high because of the transition from a negative to a positive rate rider and the fact the 2013 allocation adjustment was included. However, the 2013 balances have yet to be disposed of through a final order so there is no real impact for customers.

[3] EB-2012-0123, Decision and Order, April 4, 2013, page 8.
[4] EB-2013-0128, Decision and Rate Order, March 13, 2014, pages 5 and 6.

This reduces the bill impact considerably for customers as does the issuance of the order on February 27, 2015.

17. EPL has completed an additional analysis and proposal for the Board to consider and to clarify what the real impact is to the customers that were most affected. To accomplish this, EPL corrected the errors utilizing the Board rate model as if the error had not occurred to determine where EPL should have been in this process for the filing of the 2015 IRM rates. The results of which are shown in the corrected and current actual variance account balances in Tables 1 and 2 above. EPL has not included interest in these calculations and any interest would be calculated in accordance with the Board's decision.

18. To complete this additional analysis, EPL started with the 2012 opening balances and corrected the RPP and non RPP split of the global adjustment and during our review process it was determined that the 1590 Recovered Regulatory Asset Balances rate rider was not included in the approved model for the 2014 filing. Also, as included in the interrogatory responses to Board Staff, the disposition amounts for 2012 had not been moved to the 1595 account. The adjusted rate model continuity schedule for all these changes is shown below. The Board should note that the closing principal balance for 2013 that would have been proposed for disposal in 2015 rates for the 1588 ($2,652,918) and 1589 ($271,051) accounts are more reasonable. Also note, for the purposes of deriving the actual variance account balances and, therefore, the corrected 2015 Total Claim, we have adjusted the Principal Disposition amounts showing for 2014 since this rate rider has been discontinued as approved by the Board on February 27th, 2015 and therefore has an impact on the corrected 2015 Total Claim.

Table 3 – Corrected Continuity Schedule

		2012			2013			2014		2015 Claim
Account Descriptions	Account Number	Other 1 Adjustments during Q1 2012	Other 1 Adjustments during Q2 2012	Closing Principal Balance as of Dec-31-12	Opening Principal Amounts as of Jan-1-13	Transactions Debit / (Credit) during 2013 excluding interest and adjustments[2]	Closing Principal Balance as of Dec-31-13	Principal Disposition during 2014 - instructed by Board	Closing Principal Balances as of Dec 31-13 Adjusted for Dispositions during 2014	Total Claim
Group 1 Accounts										
LV Variance Account	1550	708,191		726,325	726,325	609,899	1,336,224	537,752	798,472	798,472
Smart Metering Entity Charge Variance	1551				0	46,737	46,737		46,737	46,737
RSVA - Wholesale Market Service Charge	1580	(3,573,954)		(2,578,260)	(2,578,260)	(802,533)	(3,380,793)	(2,748,989)	(631,805)	(631,805)
RSVA - Retail Transmission Network Charge	1584	347,134		(795,852)	(795,852)	(186,687)	(982,539)	279,864	(1,262,403)	(1,262,403)
RSVA - Retail Transmission Connection Charge	1586	(1,267,076)		(926,718)	(926,718)	(1,336,054)	(2,262,772)	(969,713)	(1,293,058)	(1,293,058)
RSVA - Power (excluding Global Adjustment)	1588	9,554,493	(5,178,750)	2,664,924	2,664,924	(12,006)	2,652,918	7,095,054	(4,442,136)	(4,442,136)
RSVA - Global Adjustment	1589	(8,731,842)	5,178,750	(305,036)	(305,036)	576,087	271,051	(6,448,046)	6,719,097	6,719,097
Recovery of Regulatory Asset Balances	1590	(1,684,689)		(1,684,689)	(1,684,689)	0	(1,684,689)	0	(1,684,689)	(1,684,689)
Disposition and Recovery/Refund of Regulatory Balances (2008)[4]	1595			0	0		0		0	0
Disposition and Recovery/Refund of Regulatory Balances (2009)[4]	1595			0	0		0		0	0
Disposition and Recovery/Refund of Regulatory Balances (2010)[4]	1595			0	0		0		0	0
Disposition and Recovery/Refund of Regulatory Balances (2011)[4]	1595			0	0		0		0	0
Disposition and Recovery/Refund of Regulatory Balances (2012)[4]	1595			0	0		0		0	0
RSVA - Global Adjustment	**1589**	(8,731,842)	5,178,750	(305,036)	(305,036)	576,087	271,051	(6,448,046)	6,719,097	6,719,097
Total Group 1 Balance excluding Account 1589 - Global Adjustment		4,084,099	(5,178,750)	(2,594,270)	(2,594,270)	(1,680,644)	(4,274,914)	4,193,968	(8,468,882)	(8,468,882)
Total Group 1 Balance		(4,647,743)	0	(2,899,306)	(2,899,306)	(1,104,557)	(4,003,863)	(2,254,078)	(1,749,785)	(1,749,785)
LRAM Variance Account	**1568**			0	0		0	0	0	0
Total including Account 1568		(4,647,743)	0	(2,899,306)	(2,899,306)	(1,104,557)	(4,003,863)	(2,254,078)	(1,749,785)	(1,749,785)

19. The corrected claim for 1588 and 1589 is lower than what was submitted to the Board on February 11, 2015. The total deferral account disposition amounts now show that, in total, the disposition is an overall credit in the amount of $1,749,795.

20. Despite the overall credit, we must consider the fact that the 1588 and 1589 variances are settled with different types of customers (RPP and non-RPP). The claim (not including interest) for 2015 rates for account 1588 is a refund of $4,442,136 and for account 1589 an amount owing of $6,719,097. These amounts essentially reverse the effects of the incorrect billing that occurred during 2014 for the RPP and non RPP customers as a result of the accounting error.

21. Also, since EPL eliminated the 2014 rate rider, we have reduced the disposition amount in the model above for the actual amounts disposed. This affects all variance accounts but the most significant impact is on the RPP and non RPP customers. See Table 4. To illustrate the impact of this change, we have included the rate impacts that would result from our revised model. These include a 4 year disposition for non RPP customers and 2 year for RPP customers. The non RPP customers would now see a Total Bill increase in the 4% range that is well under the Board's materiality limit of 10%. This is more reasonable and provides assurances to the Board that customers are not significantly impacted.

Table 4 – Customer Bill Impact Summary

Customer Bill Impact Effective May 1st, 2015						
2015 RPP Bill Impacts - Over 2 Years						
			Distribution Bill Impact		Total Bill Impact	
Rate Class	kWh	kW	$	%	$	%
Residential	800	0	(6.44)	-21.01%	(7.84)	-6.52%
GS<50	2,000	0	(16.68)	-23.64%	(19.76)	-6.78%
GS 50 - 2,999	1,198,113	2968	(9,922.40)	-71.52%	(12,932.50)	-7.28%
UMSL	2,000	0	(15.66)	-20.10%	(20.81)	-6.27%
Sentinel Lights	36	0.1	(0.26)	-5.94%	(0.34)	-3.57%
Street Lights	36	0.1	(0.24)	-4.82%	(0.27)	-2.93%

Customer Bill Impact Effective May 1st, 2015						
2015 Non RPP Bill Impacts - Over 4 Years						
			Distribution Bill Impact		Total Bill Impact	
Rate Class	kWh	kW	$	%	$	%
Residential	800	0	6.20	20.23%	5.57	4.56%
GS<50	2,000	0	14.92	21.14%	13.74	4.64%
GS 50 - 2,999	1,198,113	2,968	8,184.18	58.25%	7,796.58	4.31%
UMSL	2,000	0	15.73	20.12%	14.66	4.34%
Sentinel Lights	36	0.1	0.33	7.53%	0.33	3.44%
Street Lights	36	0.1	0.31	7.35%	0.31	3.26%

22. The nature of the correction of the errors is different than other cases that have come before the Board in that EPL has not been enriched or deprived by these mistakes. Rather EPL is simply trying to correct a cost allocation error that ultimately is impacting customers and which can be done with reasonable impacts to the customers involved.

23. Accounting entries are required to correct deferral account balances. The rate riders issued from the incorrect account balances in the 2014 IRM filing are wrong and should be corrected.

24. The accounting error affected two different classes of customers on a flow through charge. These variance accounts are specifically designed to protect both the customer and the distributor.

<u>Retroactivity: Does the issuance of the final order EB-2013-0128 preclude correction?</u>

25. EPL submits that there are exceptions to the rule against retroactivity and the list of exceptions is not closed. For example, the concept of a variance account is an exception or the Board's Z-factor process is retroactive ratemaking as utilities must incur costs.

26. EPL would submit that the relief sought is not inconsistent with the principle of rate retroactivity but rather the other principles guiding the Board in the present situation necessitate correction.

27. The other principles or facts that support correction include:

a. the OEB Act, section 78(3), obligates the rates to be "just and reasonable" and the existing rates were based upon an error which EPL submits should be corrected;

b. the cost of power variance accounts, which includes the accounts in question, are intended to be a "pass-through" without profit for the utility;

c. the Board's policy in the RSC is to permit a correction to cover a two year period for customers; and

d. retroactivity is ultimately a fairness issue balancing the interests of customers and the utility.

28. The Board's statutory mandate is to establish just and reasonable rates. EPL would submit that an error discovered which impacts rates currently in effect and having commenced less than 1 year ago should be corrected. To do otherwise would not be "just" in the circumstances.

> 78(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*. 2009, c. 12, Sched. D, s. 12 (1).[5]

29. The purpose of the variance accounts is to track the cost of power and ensure the customer pays the correct amount for the power consumed. Commodity is not intended to enrich or deprive a utility and so the Board should, in considering the recourse, look to satisfy these objectives.

30. It is instructive to consider the language in the Sub-section 78(3.3) of the OEB Act which mandates, note the use of the word "shall", that rates reflects costs.

> (3.3) In approving or fixing rates under subsection (3.1),
>
> (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the *Electricity Act, 1998* and **shall** ensure that the rates reflect these costs; and[6]

31. EPL would submit the failure to correct the allocation error and the consequent bill impacts would deviate from the principle provided in the statute quoted above. There may be situations where the error is so removed that it should not be corrected, but given the rates have only been in effect for a few months, this is not such a situation.

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[5] *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, section 78(3).
[6] *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, section 78(3.3).

32. EPL submits the RSC provides useful guidance to the present situation and provides for a two year period for which errors are to be corrected. The rationale for the applicability of the RSC is provided below.

33. The Board, in Brant County, specifically considered the issue of retroactivity and made this observation:

> Doctrinally, in the context of utility rate regulation, the retroactivity principle is described by Penning in this way:
>
> "...the rule is concerned more with issues of fairness, both to customers and to utility shareholders. The customer-related fairness issue is often referred to as the 'inter-generational equity' problem, which, broadly stated, means that today's customers ought not to be held responsible for expenses associated with services provided to yesterday's customers. The fairness concern in terms of utility shareholders arises because to attract and maintain reasonably-priced equity investment in a utility, shareholders require some certainty that matters already dealt with by the regulator have some degree of finality associated with them."[7]

34. The intergenerational equity concern is not significant given the recency of events. The general concern of fairness includes factors discussed below such as arbitrariness and the principle enunciated for "billing errors" provided in the RSC. In the present situation, one group of customers has been over-billed and the second group of customers has been under-billed. To date, EPL has been held whole in respect of the allocation error.

35. As such, to the correct the imbalance between customers, EPL has suggested that the correction be made to refund the amount over two years and collect the amount that was under-billed over four years.

36. EPL would submit that leaving the status quo correction, or even a partial correction, would not be appropriate in the circumstances. The status quo is based upon an error and would leave some ratepayers being advantaged and some being disadvantaged and incorrect balances in the accounts to be disposed of at some future date which may be unfair to those future customers.

37. A partial correction would presumably take the utility from its current position of being whole and place it into a deficiency if forced to refund but prohibited from recovering. This would be unfair as it would compound the existing error by acknowledging the error but ignoring the solution.

<u>Do the Provisions of the Retail Settlement Code apply?</u>

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[7] OEB, EB-2009-0063, Decision and Order, paragraph 73, quoting from *Re Section 101 of the Public Utilities Act* (1998) CanLII 18064 (NL C.A.).

38. EPL submits the RSC should apply or the principles of the RSC should apply. If the Board determines the "error" is not a "billing error", then EPL would submit the expectations regarding recovery/repayment espoused by the RSC could be transferred to other errors.

39. Board Staff has submitted that the "error" is not a "billing error" but it is rather an "accounting error". Board Staff goes on to submit that the situation does not qualify for any exceptions to the rule against retroactivity. Board Staff take the position that any correction would violate the rule against retroactivity. As such, Board Staff is suggesting that a customer, in receipt of his January bill, knowing there is an error in the bill has no recourse. What if the customer did not pay the amount that was in error? Would the utility be within its rights to pursue payments that are owed as a result of an acknowledged error? It's EPL's submission, such a result would be inappropriate.

40. EPL understands Board Staff's position to be that the rate order was final; the approved rates were applied to the correct consumption quantities so there is no "billing error". This ignores the inextricable link between the allocation and the customer's bills.

41. As such, EPL submits that failure to correct the allocation error and the incorrect amounts paid is not a proper result. If the allocation error is not corrected then it will be perpetuated until the deferral and variance account is finally disposed of as the amounts in the account do not disappear. This would have an unpredictable result at that time. Further, correcting the accounting angle without correcting the billing error would be fixing half the problem.

42. As noted the RSC does not define billing error. It is interesting that the Retail Settlement Code excludes errors which have involved Measurement Canada from being part of the billing errors addressed by the RSC. Measurement Canada – who has responsibility for the acceptability and accuracy of meters – has specific provisions for situations where there has been inaccurate measurement of the energy consumption. That is not an issue in the present situation.

43. EPL notes that the RSC does not speak to the cause of the erroneous bill but rather speaks to the issue of "under-billed amounts" and "over-billed amounts". EPL submits the wording of the RSC is sufficiently broad to cover any situation which has resulted in either over or under billing customers.

44. EPL would note that the Board, in Brant County, stated:

> "[83] For the reasons indicated above, the Board does not believe that the rule against retroactivity prevents the Board from correcting certain billing errors."[8]

45. Section 7.7.7 provides a two year limitation period which permits the over or under billing to be corrected. As noted, customers were actually impacted for electricity consumed

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[8] EB-2009-0063, Decision and Order, page 23, paragraph 83.

since May 1, 2014 – less than 10 months ago and well under the two year period of the RSC.

Arbitrariness

46. EPL would note that Energy Probe has listed several reasons as to why it agreed with EPL's request and agrees with the comments made by Energy Probe.[9] Of note, the Energy Probe asserts that failing to correct the situation would be arbitrary. EPL agrees and asserts that arbitrary results are to be avoided.

47. If the amounts had not been disposed of in EB-2013-0128, but rather were carried over then there would be no question regarding the ability to fully correct the error. As such, the right to recovery in this case is dependent upon the fact that the balances in the other variance accounts were sufficient to warrant disposition. Had the balance been less than the threshold as it was the prior year, there would be no issue about recovery.

48. The correction of the error removes the arbitrariness of the discovery of the error and the issue of the impact of the various deferral/variance account balances.

Asymmetry – Customer and Utility

49. EPL submits that prior cases are different where the Board has determined that a utility is not permitted to recover for under-billing or must return over-billed amounts. In those cases, the utility was either not being permitted to collect something it had omitted to collect or had inadvertently collected amounts to which it was not entitled.

50. For example, North Bay was not permitted to recover where it had failed to correctly bill customers. The Board prevented North Bay from improving its then present financial position – there was no evidence of financial distress on the part of the utility – and collect the under-billed amounts.

51. Where the utility was enriched by over-collecting, in the aggregate, the Board has required the utility to refund such amounts. Therefore, the Board did not permit the utility to retain the benefit of the error.

52. In the present situation, EPL has collected the appropriate amounts in the aggregate. The utility was neither enriched nor was it deprived of its appropriate recovery as it relates to the allocation error.

53. The error comes from the allocation split in the two sub-accounts. As such, the over/under recovery from the various customers is inextricably linked together. To provide an asymmetric response would require de-linking the allocation.

54. EPL submits that such a treatment would be to compound the existing error with a correction that would create another error. Further, an asymmetric treatment would put

[9] Energy Probe Submissions, February 23, 2015, page 3.

EPL into a financially worse position – it would be financially harmed by such treatment. EPL submits that a regulator's decision should not result in harm.

55. If the Board decides that an asymmetric resolution is the responsibility of EPL, this would be a significant cash flow impact to EPL. This would negatively affect all customers.

56. What is clear is the rather unique factual scenario which has unfolded in the present circumstances. In most cases involving billing errors or other errors, the utility has either been enriched by collecting revenue which it was not entitled to collect or seeking to recover revenue that it had in error omitted to collect. However, in the present situation, EPL is currently whole, having collected the proper amount to remit to the IESO in respect of the Global Adjustment but having allocated the charges incorrectly to its customers.

Summary

57. EPL would note that SEC has jumped to the conclusion that EPL was not an innocent party. With respect EPL disagrees, while there was an error, there is no evidence to assert the level of blameworthiness that SEC has in its submissions. Mistakes may happen without negligence and the law, especially for regulated industries, recognizes that a person can be duly diligent yet still have the misfortune of committing the *actus reus* of an offence. However, where the person took reasonable steps in the circumstances the law does not convict and punish the person.

58. EPL requests that it is proper to fix the accounting errors that affected the applicable rate riders and that customers' bills should be corrected for both the amounts that were over or under billed. Since this error affected two different customer types and EPL itself did not gain by this error, then it is proper and fair to correct both customer types and not subject EPL to any asymmetric risk.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

ESSEX POWERLINES CORPORATION
By its Counsel

Scott A. Stoll

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April 7, 2015

VIA COURIER, EMAIL AND RESS

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

Dear Ms. Walli:

Re: Essex Powerlines Corporation
Response to Interrogatories
Board File No. EB-2014-0072 & EB-2014-0301

We are co-counsel to the Applicant, Essex Powerlines Corporation (**"EPL"**), in the above noted proceeding.

Please find attached EPL's Responses to Interrogatories pursuant to the Partial Decision and Procedural Order No. 3 dated March 25, 2015. Please note, the response to SEC Question #4 has been filed under separate cover pursuant to the Board's Practice Direction on Confidential filings.

If there are any questions, please contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP

Scott Stoll

Scott Stoll

SAS/bm

cc: Case Manager, Georgette Vlahos *(via email)*
Board Counsel, Richrad Lanni (via email)
All Intervenors (via email)
Co-Counsel, George Vegh

Encl.

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Responses to Board Staff Supplemental Questions

With respect to the deferral and variance account (DVA) continuity schedule:

1. Please provide an updated DVA continuity schedule beginning from January 1, 2010 for the requested disposition of 2013 Group 1 DVAs reflecting this Partial Decision:
   a. With no adjustments to the 2011 and 2012 balances of Accounts 1588 and 1589;

Response:

Please refer to Rate Generator file (Exhibit 1). As requested, there are no adjustments to the 2011 and 2012 balances of Accounts 1588 and 1589 in the updated Tab 5. 2014 Continuity Schedule.

   b. With correcting adjustments to the 2013 balances of Accounts 1588 and 1589 made in the Other Adjustment column;

Response:

Please refer to the updated Tab 5. 2014 Continuity Schedule (Exhibit 1 - cells AR29 and AR30 respectively) for the correcting adjustments to the 2013 balances of Accounts 1588 and 1589.

   c. With the inclusion of the credit balance in Account 1590, to be disposed over a one-year period commencing May 1, 2015; and

Response:

Please refer to the updated Tab 5. 2014 Continuity Schedule (Exhibit 1 –cell BE31) which indicates the credit balance in Account 1590 to be disposed of over a one-year period commencing May 1, 2015.

   d. With the inclusion of any true-up of the residual balance in Account 1595 (2012) (i.e. for the rate riders which have already expired).

Response:

Please refer to the updated Tab 5. 2014 Continuity Schedule (Exhibit 1 – cells AM36 and AU36) which indicates the true-up of the residual balance in Account 1595 (2012).

2. If there any differences between the 2013 RRR balances and the DVA continuity schedule balances, please explain.

Response:

Yes, there are differences between the 2013 RRR balances and the DVA continuity schedule balances. Essex Powerlines Corporation ("EPLC") has identified three issues that cause these difference and the reasons are identified in Table 1 and explained below:

Table 1

Account Number	DEC 31/13 RRR 2.1.7	DVA Continuity Schedule	Variance	Explanation
1550	1,338,519	1,359,168	20,649	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1551	46,735	46,737	2	
1580	(4,490,491)	(3,489,832)	1,000,659	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1584	187,817	(1,000,422)	(1,188,239)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1586	(2,650,884)	(2,317,001)	333,883	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1588	15,548,194	7,488,461	(8,059,733)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Variance also includes a correction for RPP/Non-RPP allocation. Please refer to item i) & ii).
1589	(14,209,341)	(4,479,934)	9,729,407	The OEB approved 2012 disposition was not moved into 1595 until 2014. Variance also includes a correction for RPP/Non-RPP allocation. Please refer to item i) & ii).
1590	0	(1,477,327)	(1,477,327)	Account balances in 1590 were not used in the calculation of rate riders and therefore not refunded to customers. Please refer to item iii).
1595	1,215,169	(231,191)	(1,446,360)	Account balances for 1590 were reported in Account 1595 for RRR 2.1.7 reporting purposes. Also the OEB approved 2012 disposition was not moved to 1595 until 2014. Please refer to items i) & iii).

i) **1595 Allocation:** The 2012 OEB approved disposition amounts that were subsequently moved into the 1595 account and resulted in overstated/understated amounts in accounts 1550, 1580, 1584, 1586, 1588, 1589, 1590 and 1595.

ii) **RPP & Non-RPP Global Adjustment Allocation:** As per OEB Appendix A question 1 b), a correcting adjustment of $6,419,261 was made in cells AR29 and AR30 respectively in order to correct for the RPP and non-RPP allocation differences in Accounts 1588 and 1589.

iii) **1590 Disposition:** A rate rider was not created for the disposition of approved 2012 balances in account 1590. Therefore the approved amount was not refunded to customers. As instructed in OEB Appendix A 1 c), EPLC has brought the 1590 balance forward to be disposed of in one year effective May 1st, 2015.

3. If there are any differences between the Board approved December 31, 2012 principal and interest balances in EB-2013-0128 and the balances in the DVA continuity schedule, please explain.

Response:

Yes, there are differences between the Board approved December 31, 2012 principal and interest balances in EB-2013-0128 and the balances in the OEB DVA continuity schedule. These differences relate to the 1595 Allocation (as described in 2 i) above) and are identified and explained in Table 2 below:

Table 2

Account Number	EB-2013-0128	DVA Continuity Schedule	Variance	Explanation
1550	714,909	735,558	(20,649)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).
1580	(3,655,463)	(2,657,175)	(998,288)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).
1584	372,455	(815,784)	1,188,239	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).
1586	(1,289,358)	(955,474)	(333,884)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).
1588	9,428,584	7,738,112	1,690,472	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i). Also included in this difference is a subsequently identified $50k adjustment.
1589	(8,626,407)	(5,316,260)	(3,310,147)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).
1590	(1,452,494)	(1,452,494)	0	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to Table 1, item i).

4. Provide a summary consumption report by customer class supporting the correct allocation between RPP and non-RPP for 2011, 2012 and 2013.

Response:

Tables 3-5 below provide a summary consumption report by customer class supporting the correct allocation between RPP and non-RPP for 2011, 2012 and 2013.

Table 3

2011	Billed Consumption	RPP	Non-RPP	RPP %	Non-RPP %
January	46,067,388.39	25,799,334.33	20,268,054.06	56.00%	44.00%
February	55,202,119.48	32,496,423.51	22,705,695.97	58.87%	41.13%
March	47,978,186.78	28,169,925.21	19,808,261.57	58.71%	41.29%
April	41,428,763.41	22,008,832.84	19,419,930.57	53.12%	46.88%
May	40,499,858.57	22,070,482.07	18,429,376.50	54.50%	45.50%
June	42,204,299.54	22,374,656.91	19,829,642.63	53.02%	46.98%
July	44,231,884.35	24,493,714.93	19,738,169.42	55.38%	44.62%
August	63,856,684.08	38,188,533.03	25,668,151.05	59.80%	40.20%
September	66,522,682.57	42,647,643.89	23,875,038.68	64.11%	35.89%
October	49,684,116.62	24,905,077.06	24,779,039.56	50.13%	49.87%
November	38,264,112.32	17,720,325.89	20,543,786.43	46.31%	53.69%
December	31,997,664.89	16,632,246.20	15,365,418.69	51.98%	48.02%
Total	**567,937,761.00**	**317,507,195.87**	**250,430,565.13**	**55.91%**	**44.09%**

Table 4

2012	Billed Consumption	RPP	Non-RPP	RPP %	Non-RPP %
January	52,750,108.55	32,421,100.47	20,329,008.08	61.46%	38.54%
February	49,619,002.75	30,169,266.19	19,449,736.56	60.80%	39.20%
March	40,108,335.22	22,998,273.51	17,110,061.71	57.34%	42.66%
April	33,441,380.23	17,501,181.79	15,940,198.44	52.33%	47.67%
May	47,101,848.04	29,308,041.95	17,793,806.09	62.22%	37.78%
June	38,470,606.56	20,613,446.19	17,857,160.37	53.58%	46.42%
July	55,076,364.45	34,213,509.50	20,862,854.95	62.12%	37.88%
August	64,274,550.42	41,756,810.19	22,517,740.23	64.97%	35.03%
September	51,624,934.00	30,064,589.94	21,560,344.06	58.24%	41.76%
October	50,336,603.34	29,358,537.46	20,978,065.88	58.32%	41.68%
November	39,774,126.33	21,940,860.57	17,833,265.76	55.16%	44.84%
December	41,620,857.64	23,285,597.58	18,335,260.06	55.95%	44.05%
Total	**564,198,717.53**	**333,631,215.34**	**230,567,502.19**	**59.13%**	**40.87%**

Table 5

2013	Billed Consumption	RPP	Non-RPP	RPP %	Non-RPP %
January	49,529,549.32	32,128,083.96	17,401,465.36	64.87%	35.13%
February	44,335,514.04	26,567,530.02	17,767,984.02	59.92%	40.08%
March	44,911,511.38	26,217,765.35	18,693,746.03	58.38%	41.62%
April	40,432,858.92	22,770,951.89	17,661,907.03	56.32%	43.68%
May	39,105,575.49	22,522,833.69	16,582,741.80	57.59%	42.41%
June	38,321,811.88	22,173,268.10	16,148,543.78	57.86%	42.14%
July	47,582,839.11	28,631,787.67	18,951,051.44	60.17%	39.83%
August	56,250,242.72	34,724,124.69	21,526,118.03	61.73%	38.27%
September	52,563,891.53	31,775,075.53	20,788,816.00	60.45%	39.55%
October	49,318,539.68	28,296,623.25	21,021,916.43	57.38%	42.62%
November	40,677,366.34	21,994,596.88	18,682,769.46	54.07%	45.93%
December	37,238,417.11	19,701,657.43	17,536,759.68	52.91%	47.09%
Total	**540,268,117.52**	**317,504,298.46**	**222,763,819.06**	**58.77%**	**41.23%**

With respect to Account 1595 (2014), which is not included in the DVA continuity schedule:

5. Please provide the residual balance in Account 1595 (2014) (i.e. the remainder after the 2014 DVA rate riders were stopped in February 2015).

Response:

Please see the residual balance in Account 1595 (2014) outlined in Table 6 below.

Table 6

Account Number	Total Approved Disposition	Actual Recovery - May 1 2014 to Jan 31 2015	Residual Amounts
1550	727,886	518,509	209,377
1580	(3,720,954)	(2,650,620)	(1,070,334)
1584	378,816	269,849	108,967
1586	(1,312,577)	(935,014)	(377,563)
1588	9,603,767	6,841,167	2,762,600
1589	(8,786,415)	(6,132,938)	(2,653,477)
Total 1595 Balances	(3,109,477)	(2,089,045)	(1,020,432)
1590	(1,483,365)	-	(1,483,365)
Total Approved Balances	(4,592,842)	(2,089,045)	(2,503,797)

6. Confirm the credit balance in Account 1590 is excluded from Account 1595 (2014) (i.e.: as it is already included in the DVA continuity schedule referenced above).

Response:

EPLC confirms the credit balance in Account 1590 is excluded from Account 1595 (2014). Please refer to Table 6 above for additional information.

7. Provide the proposed correction of the RPP and non-RPP misallocation to the residual balance in Account 1595 (2014) and explain how the proposed correction was calculated.

Response:

Please see Tables 7-9 below for the proposed correction (related to the RPP and non-RPP misallocation) to the residual balance in Accounts 1595 (2014). These values were determined by first calculating the difference between the OEB approved 2014 disposition and the amounts actually collected/paid between May 1st, 2014 to January 31st, 2015. Table 7 outlines this calculation. The amount collected represents approximately 71% (1588) and 70% (1589) of the total approved respectively.

Based on the corrected allocations between RPP and non-RPP outlined in the response to question 4 above, EPLC determined the corrected allocations would have resulted in a reduction in the OEB approved 2014 disposition in the amount of $5,178,750 in account 1588 and a corresponding increase of $5,178,750 in account 1589. Applying the same 71% and 70% proportionate share values determined above, EPLC was able to determine the misallocation figures described in Table 8 below. Table 9 subtracts the amounts that were a result of the misallocation (Table 8) from the approved amounts (Table 7) and shows the corrected values that will carry forward to the next rate disposition period.

Table 6

Account	Approved Disposition incl Principal & Interest	Actual Recovery - May 1 2014 to Jan 31 2015	Residual Amounts
Cost of Power - 1588	9,603,767	6,841,167	2,762,600
Global Adjustment - 1589	(8,786,415)	(6,132,938)	(2,653,477)

Table 7

Account	Misallocation incl in Approved Amt	Misallocation Recovered in Rates - May 1 2014 to Jan 31 2015	Estimated Remaining Misallocation
Cost of Power - 1588	5,178,750	3,689,041	1,489,709
Global Adjustment - 1589	(5,178,750)	(3,614,779)	(1,563,971)

Table 9

Account	Corrected Principal & Interest	Corrected Recovered in Rates - May 1 2014 to January 31 2015	Corrected Residual Amounts
Cost of Power - 1588	4,425,017	3,152,126	1,272,891
Global Adjustment - 1589	(3,607,665)	(2,518,159)	(1,089,506)

With respect to the potential new rate riders and bill impacts:

8. Please provide a one-page summary of the calculated rate riders for each of the following:
    a. Disposition of the 2013 Group 1 DVA balances by customer class, excluding Accounts 1588 and 1589. Please provide rate riders based on a one-year period effective May 1, 2015;

Response:

Rate riders based on disposition of the 2013 Group 1 DVA balances by customer class, excluding Accounts 1588 and 1589 for a one-year period effective May 1st, 2015 are provided in Table 10.

Table 10

Please indicate the Rate Rider Recovery Period (in years) 1

Rate Class	Unit	Billed kWh	Billed kW or kVA	Balance of Accounts Allocated by kWh/kW (RPP) or Distribution Revenue	Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		(1,563,673)	(0.0062)	0	49,171,885	0.0000		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		(420,640)	(0.0064)	0	11,417,536	0.0000		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	(1,125,909)	(2.5282)	0	427,102	0.0000		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			(111,760)	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		(9,721)	(0.0061)	0	309,879	0.0000		
SENTINEL LIGHTING	$/kW	323,368	903	(2,249)	(2.4911)	0	128	0.0000		
STREET LIGHTING	$/kW	6,259,173	18,995	(37,441)	(1.9711)	0	6,792	0.0000		
microFIT										
Total		495,693,903	465,243	(3,271,393)		0	61,333,323		0	

b. Disposition of the 2013 Account 1588 balance (only) by customer class. Please provide rate riders based on a one to four year disposition period, effective May, 2015;

Response:

Rate riders based on disposition of the 2013 Account 1588 balance (only) by customer class based on a one to four year period effective May 1st, 2015 are provided in Tables 11-14 below.

Table 11

Please indicate the Rate Rider Recovery Period (in years) | 1 |

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		(1,092,249)	(0.0043)	0	49,171,885	0.0000		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		(285,770)	(0.0043)	0	11,417,536	0.0000		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	(737,988)	(1.6571)	0	427,102	0.0000		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		(6,863)	(0.0043)	0	309,879	0.0000		
SENTINEL LIGHTING	$/kW	323,368	903	(1,404)	(1.5543)	0	128	0.0000		
STREET LIGHTING	$/kW	6,259,173	18,995	(27,166)	(1.4302)	0	6,792	0.0000		
microFIT										
Total		495,693,903	465,243	(2,151,441)		0	61,333,323		0	

Table 12

Please indicate the Rate Rider Recovery Period (in years) | 2 |

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		(1,092,249)	(0.0022)	0	49,171,885	0.0000		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		(285,770)	(0.0022)	0	11,417,536	0.0000		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	(737,988)	(0.8286)	0	427,102	0.0000		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		(6,863)	(0.0022)	0	309,879	0.0000		
SENTINEL LIGHTING	$/kW	323,368	903	(1,404)	(0.7771)	0	128	0.0000		
STREET LIGHTING	$/kW	6,259,173	18,995	(27,166)	(0.7151)	0	6,792	0.0000		
microFIT										
Total		495,693,903	465,243	(2,151,441)		0	61,333,323		0	

Table 13

Please indicate the Rate Rider Recovery Period (in years) | 3 |

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		(1,092,249)	(0.0014)	0	49,171,885	0.0000		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		(285,770)	(0.0014)	0	11,417,536	0.0000		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	(737,988)	(0.5524)	0	427,102	0.0000		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		(6,863)	(0.0014)	0	309,879	0.0000		
SENTINEL LIGHTING	$/kW	323,368	903	(1,404)	(0.5181)	0	128	0.0000		
STREET LIGHTING	$/kW	6,259,173	18,995	(27,166)	(0.4767)	0	6,792	0.0000		
microFIT										
Total		495,693,903	465,243	(2,151,441)		0	61,333,323		0	

Table 14

Please indicate the Rate Rider Recovery Period (in years): 4

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		(1,092,249)	(0.0011)	0	49,171,885	0.0000		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		(285,770)	(0.0011)	0	11,417,536	0.0000		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	(737,988)	(0.4143)	0	427,102	0.0000		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		(6,863)	(0.0011)	0	309,879	0.0000		
SENTINEL LIGHTING	$/kW	323,368	903	(1,404)	(0.3886)	0	128	0.0000		
STREET LIGHTING	$/kW	6,259,173	18,995	(27,166)	(0.3575)	0	6,792	0.0000		
microFIT										
Total		495,693,903	465,243	(2,151,441)		0	61,333,323		0	

c. Disposition of the 2013 Account 1589 balance (only) by customer class. Please provide rate riders based on a one to four year disposition period, effective May 1, 2015.

Response:

Rate riders based on disposition of the 2013 Account 1589 balance (only) by customer class based on a one to four year period effective May 1st, 2015 are provided in Tables 15-18 below.

Table 15

Please indicate the Rate Rider Recovery Period (in years): 1

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		0	0.0000	952,553	49,171,885	0.0194		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		0	0.0000	221,180	11,417,536	0.0194		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	0	0.0000	3,158,941	427,102	7.3962		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		0	0.0000	6,003	309,879	0.0194		
SENTINEL LIGHTING	$/kW	323,368	903	0	0.0000	888	128	6.9372		
STREET LIGHTING	$/kW	6,259,173	18,995	0	0.0000	43,358	6,792	6.3834		
microFIT										
Total		495,693,903	465,243	0		4,382,923	61,333,323		0	

Table 16

Please indicate the Rate Rider Recovery Period (in years): 2

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution Revenue	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		0	0.0000	952,553	49,171,885	0.0097		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		0	0.0000	221,180	11,417,536	0.0097		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	0	0.0000	3,158,941	427,102	3.6981		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		0	0.0000	6,003	309,879	0.0097		
SENTINEL LIGHTING	$/kW	323,368	903	0	0.0000	888	128	3.4686		
STREET LIGHTING	$/kW	6,259,173	18,995	0	0.0000	43,358	6,792	3.1917		
microFIT										
Total		495,693,903	465,243	0		4,382,923	61,333,323		0	

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Table 17

Please indicate the Rate Rider Recovery Period (in years): 3

Rate Class	Unit	Billed kWh	Billed kW or kVA	Accounts Allocated by kWh/kW (RPP) or Distribution	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Billed kWh or Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		0	0.0000	952,553	49,171,885	0.0065		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		0	0.0000	221,180	11,417,536	0.0065		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	0	0.0000	3,158,941	427,102	2.4654		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		0	0.0000	6,003	309,879	0.0065		
SENTINEL LIGHTING	$/kW	323,368	903	0	0.0000	888	128	2.3124		
STREET LIGHTING	$/kW	6,259,173	18,995	0	0.0000	43,358	6,792	2.1278		
microFIT										
Total		**495,693,903**	**465,243**	**0**		**4,382,923**	**61,333,323**		**0**	

Table 18

Please indicate the Rate Rider Recovery Period (in years): 4

Rate Class	Unit	Billed kWh	Billed kW	Accounts Allocated by kWh/kW (RPP) or	Deferral/Variance Account Rate Rider	Allocation of Balance in Account 1589	Estimated kW for Non-RPP Customers	Global Adjustment Rate Rider	Allocation of Account 1568	Account 1568 Rate Rider
RESIDENTIAL	$/kWh	251,655,122		0	0.0000	952,553	49,171,885	0.0048		
GENERAL SERVICE LESS THAN 50 KW	$/kWh	65,841,765		0	0.0000	221,180	11,417,536	0.0048		
GENERAL SERVICE 50 TO 2,999 KW	$/kW	170,033,148	445,345	0	0.0000	3,158,941	427,102	1.8491		
GENERAL SERVICE 3,000 TO 4,999 KW	$/kW			0	0.0000	0	0	0.0000		
UNMETERED SCATTERED LOAD	$/kWh	1,581,327		0	0.0000	6,003	309,879	0.0048		
SENTINEL LIGHTING	$/kW	323,368	903	0	0.0000	888	128	1.7343		
STREET LIGHTING	$/kW	6,259,173	18,995	0	0.0000	43,358	6,792	1.5958		
microFIT										
Total		**495,693,903**	**465,243**	**0**		**4,382,923**	**61,333,323**		**0**	

9. Please provide a summary of the overall bill impacts by customer class for the rate riders with the two and four year disposition periods proposed by Essex Powerlines for Accounts 1588 and 1589 respectively. The bill impacts must take into account the proposed price cap adjustment and the approximate SMDR and SMIRR based on what Essex Powerlines filed in its reply submission. The bill impacts should show the dollar and percentage change from rates as of January 31, 2015 to May 1, 2015 and the change from rates as of April 30, 2015 (after the rate riders were stayed) to May 1, 2015. Essex Powerlines should not make any annual adjustments to the models or DVA continuity schedule as proposed in its reply submission of January 19, 2015.

Response:

Please see Tables 19 & 20 below that show the RPP and non-RPP bill impacts for the rate riders with the two and four year disposition periods for Accounts 1588 and 1589 as compared to 2014 Approved Rates. It is important to note that these impacts will not be directly experienced by customers as a one-time time impact, since customer bills have already changed to reflect the removal of the 2014 rate riders effective February 1st, 2015.

Table 19

2015 RPP BILL IMPACTS compared to 2014 Approved Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	(13.34)	-34.59%	(15.21)	-11.85%
GS<50	2,000	0	(25.25)	-27.94%	(29.13)	-9.35%
GS 50 - 2,999	1,198,113	2,968	(22,561.86)	-85.98%	(28,319.94)	-15.86%
UMSL	2,000	0	(35.47)	-36.31%	(43.91)	-12.39%
Sentinel Lights	36	0.1	(0.62)	-12.92%	(0.76)	-7.45%
Street Lights	36	0.1	(0.53)	-11.88%	(0.66)	-6.60%

Table 20

2015 Non-RPP BILL IMPACTS compared to 2014 Approved Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	18.42	175.81%	17.10	16.85%
GS<50	2,000	0	54.54	401.23%	52.02	21.81%
GS 50 - 2,999	1,198,113	2,968	26,693.29	124.37%	27,338.38	21.36%
UMSL	2,000	0	44.33	211.87%	46.26	16.93%
Sentinel Lights	36	0.1	0.83	24.36%	0.87	10.22%
Street Lights	36	0.1	0.79	23.83%	0.83	9.80%

Please see Tables 21 & 22 below that show the RPP and non-RPP bill impacts for the rate riders with the two and four year disposition periods for Accounts 1588 and 1589 as compared to 2015 Stayed Rates. Please note that these rate impacts more accurately reflect the actual impacts that customers will experience in rates effective May 1st, 2015 since the Board approved the removal of rate riders effective February 1st, 2015. As compared to Stayed Rates, it is also important to note that almost all customers will experience a net decrease in rates effective May 1st, 2015.

Table 21

2015 RPP BILL IMPACTS compared to 2015 Stayed Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	(5.42)	-17.68%	(7.15)	-5.95%
GS<50	2,000	0	(5.45)	-7.72%	(8.99)	-3.09%
GS 50 - 2,999	1,198,113	2,968	(10,195.39)	-73.49%	(14,345.83)	-8.72%
UMSL	2,000	0	(15.67)	-20.12%	(21.54)	-6.49%
Sentinel Lights	36	0.1	(0.26)	-5.85%	(0.36)	-3.61%
Street Lights	36	0.1	(0.20)	-5.60%	(0.29)	-3.02%

Table 22

2015 Non-RPP BILL IMPACTS compared to 2015 Stayed Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	(1.74)	-5.68%	(3.41)	-2.79%
GS<50	2,000	0	4.14	6.47%	0.76	0.26%
GS 50 - 2,999	1,198,113	2,968	(4,707.26)	-47.37%	(8,144.24)	-4.98%
UMSL	2,000	0	(6.07)	-8.51%	(10.69)	-3.24%
Sentinel Lights	36	0.1	(0.09)	-1.99%	(0.16)	-1.66%
Street Lights	36	0.1	(0.04)	-1.03%	(0.11)	-1.17%

Responses to VECC Supplemental Questions

1. Please provide a detailed description of how the error was detected internally.

Response:

In early December 2014, during the IRM process the VP Regulatory Affairs continued to review the application and was concerned with the magnitude of the 1588 and 1589 accounts. There was a review of the rate generator model and the entire process relating to the 1588 and 1589 accounts at which time the error was detected. During the course of this review, EPL received an interrogatory from Board Staff with respect to the 1589 Account. EPL then informally contacted Board Staff and advised that there was an issue with both 1588 and 1589 Accounts and that EPL was conducting further review. On January 19th, 2015, EPL formally filed this information with the OEB and described how the accounting error occurred and proposed how the error could be mitigated.

2. Please explain in detail how Essex monitors the task of clearing its Deferral and Variance accounts to ensure accuracy and discuss how long this process has been in place.

Response:

Energy sales by class and the energy purchases are manually entered into an Excel file from the general ledger. The energy sales are broken down by TOU bands by customer class, global adjustment sales, retailer sales, wholesale market services, network, connection and low voltage. The energy purchases include cost of power purchases from the IESO and Hydro One. Also included on the sheet are the costs for wholesale market services, network, connection and low voltage charges. These amounts are taken from the general ledger and are inputted by the Business Process Analyst.

The journal entries completed by the Business Process Analyst to move the energy sales and purchases to the variance accounts are verified, authorized and approved by the Operations and Regulatory Accounting Analyst. This verification, authorization and approval process undertaken by the Operations and Regulatory Accounting Analyst includes, but is not limited to, month to month and year to year variance account comparisons and compliance with the OEB accounting handbook.

During the IRM rate setting process, the general ledger balances are entered into the continuity schedule (Tab 5) by the Operations and Regulatory Accounting Analyst. The continuity total variance account balances are populated in the rate generator model Tab 6, Billing Determinants for Deferred Variances, cells C31 to 33, where a calculation is automatically performed to determine if the grand total of **all** variance accounts exceed the predetermined OEB threshold test. If this threshold test is exceeded, then all of the variance accounts are required by the OEB to be disposed and settled with customers.

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The input to the model is completed by the Operations and Regulatory Accounting Analyst and the completed model is reviewed by the VP Regulatory Affairs. This process has been in place as long as the OEB has had the authority to approve the disposition of variance accounts and was completed in the context of actively fluctuating Global Adjustment (GA) over the subject matter period.

This review by the VP of Regulatory affairs includes, but is not limited to, month to month and year to year variance account comparisons of the balance sheet statements, comparison to annual LDC levels from the OEB statistical reports and compliance with the OEB accounting handbook. The aforementioned processes undertaken by various levels of management are also audited annually by an external third party. This has been the process since the variance accounts were a requirement.

3. What oversight and checks and balances are in place? What is the process to audit this function?

Response:

All Business Process Analyst variance account work is verified, authorized and approved by the Operations and Regulatory Accounting Analyst. The VP Regulatory Affairs reviews and confirms the Operations and Regulatory Accounting Analyst's work at the financial statement level. The external auditors review the general ledger accounts on an annual basis. The external auditors report to the corporate audit committee. In addition, the OEB periodically audits deferral and variances accounts.

4. Please provide any internal documents that detail Essex's internal monitoring processes.

Response:

The Operations and Regulatory Accounting Analyst utilizes a monthly checklist in order to ensure that all month-end tasks, including variance accounts, are completed.

Both the Business Process and Operations and Regulatory Accounting Analyst utilize the OEB Accounting Handbook when completing work on variance accounts. Furthermore, the VP Regulatory Affairs frequently communicates to the Business Process and Operations and Regulatory Accounting Analyst responses to frequently asked questions from the OEB in relation to, amongst other things, variance accounts.

Financial Statements for comparison purposes are also used by the VP Regulatory Affairs when reviewing variance accounts.

5. Please provide the amount 100 basis points of Return on Equity is worth for the years 2011 to 2014 and forecast for 2015.

Response:

Return on Equity 100 basis points impact

Year	ROE 100 basis point impact
2011	$ (168,838)
2012	$ (179,729)
2013	$ (184,969)
2014	$ (194,452)
Projected 2015	$ (214,663)

6. Please provide Essex's weather normalized rate of return for the years 2011 to 2014 and forecast for 2015.

Response:

Essex Powerlines is unable to weather normalize the rate of return. The normal rate of return for the years 2011 to 2014 and projected for 2015 are in the table below.

Rate of Return

Year	Regulated Return on Deemed Equity
2011	10.4%
2012	8.3%
2013	11.2%
2014	8.8%
Projected 2015	9.3%

Responses to School Energy Coalition Supplemental Questions

1. Please provide a detailed step-by-step explanation of how Essex Powerlines records information in Accounts 1588 and 1589. The answer should include, but in no way be limited by, responses to the following specific questions:

    a. How often do the entries take place?
    b. What accounting system is used?
    c. Which member of Essex Powerlines staff makes the entry?
    d. What type of relevant of qualification and training does that person have?
    e. What type of verification process is conducted, if any?
    f. Are there any materials that Essex Powerlines uses for training and/or on-going guidance on how to records amounts in deferral or variance accounts? If so, please provide copies.

Response:

Account 1588 and 1589 entries are made monthly using Microsoft Dynamics GP (Great Plains) by the Business Process Analyst. The Business Process Analyst has a CPA, CMA accounting designation with nine (9) years of experience in the industry. The Operations and Regulatory Accounting Analyst attended a Sept. 20, 2009 OEB session regarding Regulatory Accounting as part of her on-going training. The EPL verification process is detailed in VECC IR #2. Ongoing guidance comes from the OEB frequently asked questions and the *Accounting Procedure Handbook –e.g. Article 490* and any other information made available by the Board such as webinars and bulletins. In addition Essex Powerlines frequently seeks direct guidance from the OEB by e-mailing questions to IndustryRelations@ontarioenergyboard.ca.

2. [Reference: Response to Procedural Order #2 February 6, 2015, Submission of New Evidence, Response No. 2]:

    "The source of the error occurred in the use of forms to arrive at the RPP and non RPP split. The data input error was not detected initially as the nature of the 1588 and 1589 as well as all the other variance accounts in total were being monitored and overall they were not changing drastically. The continued increases in the global adjustment amounts appeared to be the reason for the accumulating amounts in the 1588 and 1589 accounts."

    a. Please provide copies of the forms Essex Powerlines uses to arrive at the RPP and non-RPP split.

    Response:

    See Summary Forms - Appendix A

b. Essex Powerlines says that the variance accounts "were being monitored" Please explain in detail the process of monitoring these accounts.

Response:

The Business Process Analyst position is monitored by the Operations and Regulatory Accounting Analyst and this position is monitored by the VP Regulatory. The VP Regulatory monitors the overall balances of the variance accounts on the EPL internal monthly financial statements. The VP Regulatory would also compare the overall variance account balances with other LDC's through the OEB statistical reports annually. See VECC IR #2 for more detailed response.

3. As part of Essex Powerlines annual external financial audit process, are the balance of deferral and variance accounts audited? If so, why were the errors not detected during that process?

Response:

Yes. The balances of the deferral and variance accounts are audited annually by a third party. EPL is not in a position to advise why the errors were not detected during the aforementioned process.

4. When was the last time the Ontario Energy Board Staff audited Essex Powerlines deferral and variance accounts? Please provide copies of any relevant audit reports.

Response:

The Ontario Energy Board staff audited selected deferral and variance accounts during the period of January 2013 to March 2013. A confidential version of the audit report has been filed separately.

5. Please explain Essex Powerlines process for prepared IRM applications, specifically the disposition of deferral and variance accounts. Does Essex Powerlines do any verification at that stage regarding the balances in those accounts?

Response:

See VECC IR #2.

6. Please provide Essex Powerlines actual regulatory return on equity (both as a percentage and in dollars) including all supporting calculations for 2013 and 2014. Please provide the same information on a forecast basis for 2015.

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Response:

UTILITY NAME: Essex Powerlines Corporation		
YEAR END DATE: December 31, 2013		
Regulatory Net Income Calculation:		
Regulated net income, as per RRR 2.1.13 reconciliation		$ 2,795,766
Remove:		
Future/deferred taxes		$ 0
Non rate regulated items		$ 319,641
Adjustment to interest expense - for deemed debt		$ 401,575
Adjusted regulated net income		$ 2,074,551
Deemed Equity Calculation:		
Rate Base:		
Cost of power		$ 51,542,202
Operating expenses		$ 6,047,571
Total		$ 57,589,773
Working capital allowance %		15%
Total working capital allowance		$ 8,638,466
Fixed Assets		
Opening balance - regulated fixed assets (NBV)	$ 37,269,585	
Closing balance - regulated fixed assets (NBV)	$ 38,170,914	
Average regulated fixed assets	$ 37,720,250	$ 37,720,250
Total rate base		$ 46,358,715
Regulated deemed short-term debt	4.00%	$ 1,854,349
Regulated deemed long-term debt	56.00%	$ 25,960,881
Regulated deemed equity	40.00%	$ 18,543,486
		$ 46,358,715
Regulated Rate of Return on Deemed Equity		
		11.2%
ROE% from most recent cost of service applicati	last approved EDR	9.85%
Difference - maximum deadband 3%		1.34%
Interest adjustment on deemed debt:		
Regulated deemed short-term debt - as above	$ 1,854,349	6.67%
Regulated deemed long-term debt - as above	$ 25,960,881	93.33%
	$ 27,815,229	100.00%
Short-term debt rate	2.07%	0.14%
Long-term debt rate	5.40%	5.04%
Average debt rate		5.18%
Regulated deemed debt - as above	$ 27,815,229	
Weighted average interest rate	5.18%	
Deemed interest	$ 1,440,829	
Interest expense as per the OEB trial balance	$ 896,321	
Difference	$ 544,508	
Utility tax rate	26.25%	
Tax effect on interest expense	$ (142,933)	
Interest adjustment on deemed debt:	$ 401,575	

UTILITY NAME: Essex Powerlines Corporation		
YEAR END DATE: December 31, 2014		
Regulatory Net Income Calculation:		
Regulated net income, as per RRR 2.1.13 reconciliation		$ 1,936,260
Remove:		
Future/deferred taxes		$ 0
Non rate regulated items		$ 25,730
Adjustment to interest expense - for deemed debt		$ 197,519
Adjusted regulated net income		$ 1,713,011
Deemed Equity Calculation:		
Rate Base:		
Cost of power		$ 50,646,398
Operating expenses		$ 6,783,594
Total		$ 57,429,992
Working capital allowance %		15%
Total working capital allowance		$ 8,614,499
Fixed Assets		
Opening balance - regulated fixed assets (NBV)	$ 38,171,214	
Closing balance - regulated fixed assets (NBV)	$ 41,825,651	
Average regulated fixed assets	$ 39,998,433	$ 39,998,433
Total rate base		$ 48,612,931
Regulated deemed short-term debt	4.00%	$ 1,944,517
Regulated deemed long-term debt	56.00%	$ 27,223,242
Regulated deemed equity	40.00%	$ 19,445,173
		$ 48,612,931
Regulated Rate of Return on Deemed Equity		
		8.8%
ROE% from most recent cost of service applicati	last approved EDR	9.85%
Difference - maximum deadband 3%		-1.04%
Interest adjustment on deemed debt:		
Regulated deemed short-term debt - as above	$ 1,944,517	6.67%
Regulated deemed long-term debt - as above	$ 27,223,242	93.33%
	$ 29,167,759	100.00%
Short-term debt rate	2.07%	0.14%
Long-term debt rate	5.40%	5.04%
Average debt rate		5.18%
Regulated deemed debt - as above	$ 29,167,759	
Weighted average interest rate	5.18%	
Deemed interest	$ 1,510,890	
Interest expense as per the OEB trial balance	$ 1,243,067	
Difference	$ 267,823	
Utility tax rate	26.25%	
Tax effect on interest expense	$ (70,304)	
Interest adjustment on deemed debt:	$ 197,519	

UTILITY NAME: Essex Powerlines Corporation		
YEAR END DATE: December 31, 2015 Projected		
Regulatory Net Income Calculation:		
Regulated net income, as per RRR 2.1.13 reconciliation		$ 2,331,608
Remove:		
Future/deferred taxes		$ 0
Non rate regulated items		$ 108,811
Adjustment to interest expense - for deemed debt		$ 225,238
Adjusted regulated net income		$ 1,997,559
Deemed Equity Calculation:		
Rate Base:		
Cost of power		$ 50,646,398
Operating expenses		$ 6,676,777
Total		$ 57,323,175
Working capital allowance %		15%
Total working capital allowance		$ 8,598,476
Fixed Assets		
Opening balance - regulated fixed assets (NBV)	$ 41,825,651	
Closing balance - regulated fixed assets (NBV)	$ 48,308,736	
Average regulated fixed assets	$ 45,067,194	$ 45,067,194
Total rate base		$ 53,665,670
Regulated deemed short-term debt	4.00%	$ 2,146,627
Regulated deemed long-term debt	56.00%	$ 30,052,775
Regulated deemed equity	40.00%	$ 21,466,268
		$ 53,665,670
Regulated Rate of Return on Deemed Equity		
		9.3%
ROE% from most recent cost of service applicatio	last approved EDR	9.85%
Difference - maximum deadband 3%		-0.54%
Interest adjustment on deemed debt:		
Regulated deemed short-term debt - as above	$ 2,146,627	6.67%
Regulated deemed long-term debt - as above	$ 30,052,775	93.33%
	$ 32,199,402	100.00%
Short-term debt rate	2.07%	0.14%
Long-term debt rate	5.40%	5.04%
Average debt rate		5.18%
Regulated deemed debt - as above	$ 32,199,402	
Weighted average interest rate	5.18%	
Deemed interest	$ 1,667,929	
Interest expense as per the OEB trial balance	$ 1,362,521	
Difference	$ 305,408	
Utility tax rate	26.25%	
Tax effect on interest expense	$ (80,170)	
Interest adjustment on deemed debt:	$ 225,238	

7. Please provide details on the impact to Essex Powerlines if it was required to refund to RPP customers:

    a. The full amount that was over-collected.
    b. 50% of the amount that was over-collected.
    c. 10% of the amount that was over-collected.

Response:

All of the requested refund amounts are over EPLC's materiality limit of $60,000 and will impact the regulated return.

a. The full amount that was over-collected.

Response:

The impact to refund the full amount that was over-collected of $3.8 million would mean the loss of approximately 200% of annual regulated return and over 63x materiality. The rate of return projected for 2015 would be -3.8%. The loss of the $3.8 million of cash would result in additional loans with an estimated interest rate of 4% would create an additional interest expense of $399,000 over the next 5 years. The debt service coverage ratio currently in place with our lenders would be exceeded resulting in a default of the loan covenants.

The additional borrowing to replace the cash would increase our debt to equity ratio by 5% and with the anticipated loan requirements for the new Leamington Transformer Station; this will jeopardize our ability to borrow funds for that project.

b. 50% of the amount that was over-collected.

Response:

The impact to refund 50% of the amount that was over-collected which would be $1.9 million would mean the loss of approximately 100% of annual regulated return and over 31x materiality. The rate of return projected for 2015 would be 2.8% well below the approved level of 9.85%. The loss of the $1.9 million of cash would require additional loans with an estimated interest rate of 4% that will create an additional interest expense of $199,000 over the next five years. The debt service coverage ratio currently in place with our lenders would be exceeded resulting in a default of the loan covenants.

The additional borrowing to replace the cash would increase our debt to equity ratio by 2.5% and with the anticipated loan requirements for the new Leamington Transformer Station; this could jeopardize our ability to borrow funds for that project and the loan interest rate would be higher due to the higher debt to equity ratio.

c. 10% of the amount that was over-collected.

Response:

The impact to refund 10% of the amount that was over-collected which would be $380,000 would mean the loss of approximately 20% of annual regulated return and over 6x materiality. The rate of return projected for 2015 would be 8% compared to the approved rate of return of 9.85%.

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#1

Interval Metered Designated Loads

	Designated Units	Utilismart kWh's First Block	Utilismart kWh's Second Block	0 First Block	0 Second Block	Cost @ Spot
	82			$0.00	$0.00	
	1			$0.00	$0.00	
Sub Totals		0.00	0.00	$0.00	$0.00	$0.00
		0.00		$0.00		

Global Adj. per kwh

WAP Fixed Rate	WAP Spot	First Block WAP	Second Block WAP
		$0.00	$0.00
		$0.00	$0.00
		$0.00	$0.00

Load		kWh's (With Losses)	Cost @ First Block	Cost @ Second Block	Total @ Fixed Rate	Cost @ Spot w GA	Variance
Intervals @ First Block		0	$0.00		$0.00	$0.00	$0.00
Intervals @ Second Block		0.00		$0.00		$0.00	$0.00
Retail Total (From Download)							
Street Light (From Download)							$0.00
Less Street Lights on Spot Price or With Retailer		0					
Street Light on fixed price		0					
SL @ First Block		0	$0.00		$0.00	$0.00	$0.00
SL @ Second Block		0		$0.00		$0.00	$0.00
NSL (From Download)				$0.00			$0.00
Adjustment to NSL (RCB Customers)		0					
Adjustment to NSL (Non Designated Loads)							
Adjustment to NSL (Contract Designated)							
NSL Adjusted for (RCB & Non Designated)	%	0			$0.00	$0.00	
NSL (First Block)		0	$0.00			$0.00	$0.00
NSL (Second Block)		0		$0.00		$0.00	$0.00
Totals		0	$0.00		$0.00	$0.00	$0.00
		0		$0.00		$0.00	$0.00

Wholesale Total (From Download)							

0

RPP Portion %

WAP	Statutory Price	
		Block 1
		Block 2

		To IESO (Box 1)	To EPLC (Box 2)	Regulated Customers
Block 1	$	$ -	$ -	*(Box 3)* 343
	kWh	-	-	
Block 2	$	$ -	$ -	
	kWh	-	-	

		To IESO (Box 17)	To EPLC (Box 18)	Regulated Customers
Retailers using DCB	$	$ -	$ -	*(Box 19)* 0
	kWh	-	-	

1598 SUMMARY

#2

POST MONTH | Enter the post month, this will refresh all the queries automatically

IESO FORM

SSS CUSTOMERS ON RPP

	Dollars	Cons	Spot in dollars	POSTED GA	Difference	TO IESO	FROM IESO
RPP BLOCK 1				$ -	$ -	$ -	$ -
RPP BLOCK 2				$ -	$ -	$ -	$ -
SUM BLOCKS		-					
Actual Cost of Power							

RPP CUSTOMER COUNT:

SSS CUSTOMERS ON TOU

	Dollars	Cons	Spot in dollars	POSTED GA 0.05473	Difference		
ON PEAK				$ -	$ -	$ -	$ -
OFF PEAK				$ -	$ -	$ -	$ -
MID PEAK				$ -	$ -	$ -	$ -
SUM BLOCKS		-					
Actual Cost of Power							

TOU CUSTOMER COUNT:

FINAL VARIANCE SETTLEMENT

SUM RPPV STATS			$ -	$ -
CUSTOMER COUNT	0			
		%		

1598 SUMMARY

#3

POST MONTH Enter the post month, this will refresh all the queries automatically

IESO FORM

SSS CUSTOMERS ON RPP

	Dollars	Cons	Spot in dollars	POSTED GA	Difference	TO IESO	FROM IESO
RPP BLOCK 1				$ -			$ -
RPP BLOCK 2				$ -			$ -
SUM BLOCKS		-					
Actual Cost of Power							

RPP CUSTOMER COUNT:

SSS CUSTOMERS ON TOU

	Dollars	Cons	Spot in dollars	POSTED GA 0.00000	Difference	TO IESO	FROM IESO
ON PEAK				$ -		$ -	$ -
OFF PEAK				$ -		$ -	$ -
MID PEAK				$ -		$ -	$ -
SUM BLOCKS		-					
Actual Cost of Power							

TOU CUSTOMER COUNT:

FINAL VARIANCE SETTLEMENT

		TO IESO	FROM IESO
SUM RPPV STATS		$ -	$ -
CUSTOMER COUNT			

GA Split   % RPP portion

-

AIRD & BERLIS LLP

Barristers and Solicitors

Scott Stoll
Direct: 416.865.4703
E-mail: sstoll@airdberlis.com

April 21, 2015

VIA COURIER, EMAIL AND RESS

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

Dear Ms. Walli:

Re: Essex Powerlines Corporation ("EPL")
Response to Undertakings given by EPL
Board File No. EB-2014-0072 & EB-2014-0301

We are co-counsel to the Applicant, Essex Powerlines Corporation (**"EPL"**), in the above noted proceeding.

Pursuant to the schedule set at the oral hearing that took place on April 14, 2015, please find attached the response to undertakings given by EPL.

If there are any questions, please contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP

Scott Stoll

Scott Stoll

SAS/bm

cc: Case Manager, Georgette Vlahos *(via email)*
Board Counsel, Richard Lanni (via email)
All Intervenors (via email)
Co-Counsel, George Vegh

Encl.

22450859.1

Essex Powerlines Corporation

EB-2014-0072

April 21, 2015

Undertaking Responses:

Undertaking J1: To provide an explanation for inconsistencies between the yearbook data for billed consumption and the responses for billed consumption.

The consumption numbers identified by Board staff in Tab 4 of the Compendium referred to "Wholesale Consumption" and not "Billing Consumption" (which was the basis of EPLC's numbers). EPLC used the Billing Consumption as those volumes are used for the rate riders. EPLC's Billing Consumption numbers, as originally filed, are consistent with previously filled RRR values with modifications being made to account for system losses and unbilled revenue. These two items account for all material variances between the "Wholesale Consumption" and "Billing Consumption" values.

Undertaking J2: To explain Essex Powerlines' rationale for using the second option; to describe the benefits or the cons to Essex as a utility and the benefits and cons to rate-making implications.

At the Hearing on April 14th, we discussed the use of a second estimate. Essex Powerlines was referring to the use of the second estimate from the IESO for GA on the 1598 form for settlement with the IESO, not for billing purposes. The second estimate is used as it is the most accurate number available to meet the IESO due date for the 1598 of the fourth business day. The final number is available too late to meet the deadline. Any difference between the second estimate used and the final is trued up once a year.

EPLC uses the first Global Adjustment estimate for billing purposes. The first estimate is used to ensure all billings are completed and sent to customers on a timely basis given EPLC's current billing cycles. In terms of any rate making implications, the difference between the first estimate and the final is captured in the appropriate variance accounts and settled with customers when the accounts are approved for disposition. EPLC realizes no monetary gains or losses as a result of using this option.

According to the IESO website, any of the three GA options are acceptable choices for billing purposes. http://www.ieso.ca/Pages/Participate/Settlements/Global-Adjustment-for-Class-B.aspx

Undertaking J3: To calculate at what percentages of the return do the cash flow issues not occur.

A greater than 10% reduction in the regulated return would cause EPLC to be operating at the immediate edge of violating its debt covenants. From this point, any negative variation in routine operational revenues or expenditures could then trigger a financing and liquidity issue with our lender. It is not prudent to manage a business with no margin with respect to being off-side regarding debt covenants.

Further, and more importantly, given EPLC's current 3 year outlook, there is not a scenario where cash flow issues would not occur. It is important to note that that there is the potential for contributed capital required from EPLC related to the new Leamington Transformer Station (EB-2013-0421). This is not an EPLC initiated project. The cost of this station has been estimated at $5.4 million for Transmission costs, $3.75 million for Hydro One Distribution costs plus EPLC's cost of $600k for a total of $9.75 million to be paid in the 2016 to 2017period. The financing associated with the cost of this project and the resulting interest expense will put EPLC outside the required debt service coverage ratio and will require negotiation with the bank or an alternate lender to acquire the necessary funding. Any removal of a portion of our regulated rate of return will increase the risk for the lender and therefore they will be seeking higher interest rates for the financing for this project which will ultimately be included in rates charged to electricity consumers.

Undertaking J4: To reproduce Table 5 for 2013 with (Heinz) volumes excluded.

The revised Table 5 is shown below. The volumes for the intermediate user (Heinz) in Leamington were decreasing in 2013 to the point where there was no consumption in 2014 until the plant closed at the end of May 2014. *It should be noted that there is a large Non-Utility Generator on the premises which* serves to offset the vast majority of this customer's load. The Board should also note that this intermediate user (Heinz) did not receive any rate rider credits in 2014 due to zero consumption. The removal of these volumes from the table reduces the non RPP split from 41.23% to 41.00%.

Table 5 Revised for Removal of Heinz Consumption

	Billed Consumption					Heinz Consumption kWhs (1)	Revised Non-RPP with Heinz removed	Revised Billed Consumption with Heinz removed	Revised Non-RPP%
	A	B	C			D	E	F	
							C-D	A-D	E/F
2013	**Total**	**RPP**	**Non-RPP**	**RPP %**	**Non-RPP %**		**Non-RPP**	**Revised Total**	**Non-RPP %**
January	49,529,549.32	32,128,083.96	17,401,465.36	64.87%	35.13%	-	17,401,465	49,529,549	35.13%
February	44,335,514.04	26,567,530.02	17,767,984.02	59.92%	40.08%	-	17,767,984	44,335,514	40.08%
March	44,911,511.38	26,217,765.35	18,693,746.03	58.38%	41.62%	-	18,693,746	44,911,511	41.62%
April	40,432,858.92	22,770,951.89	17,661,907.03	56.32%	43.68%	-	17,661,907	40,432,859	43.68%
May	39,105,575.49	22,522,833.69	16,582,741.80	57.59%	42.41%	-	16,582,742	39,105,575	42.41%
June	38,321,811.88	22,173,268.10	16,148,543.78	57.86%	42.14%	85,613	16,062,931	38,236,199	42.01%
July	47,582,839.11	28,631,787.67	18,951,051.44	60.17%	39.83%	613,044	18,338,007	46,969,795	39.04%
August	56,250,242.72	34,724,124.69	21,526,118.03	61.73%	38.27%	492,548	21,033,570	55,757,695	37.72%
September	52,563,891.53	31,775,075.53	20,788,816.00	60.45%	39.55%	835,398	19,953,418	51,728,494	38.57%
October	49,318,539.68	28,296,623.25	21,021,916.43	57.38%	42.62%	7,019	21,014,897	49,311,521	42.62%
November	40,677,366.34	21,994,596.88	18,682,769.46	54.07%	45.93%	-	18,682,769	40,677,366	45.93%
December	37,238,417.11	19,701,657.43	17,536,759.68	52.91%	47.09%	72,713	17,464,047	37,165,704	46.99%
Total	**540,268,117.52**	**317,504,298.46**	**222,763,819.06**	**58.77%**	**41.23%**	**2,106,335**	**220,657,484**	**538,161,783**	**41.00%**

1) Heinz had no consumption in 2014 and therefore did not receive any rate rider credits

Undertaking J5: To explain the credit of $50,000

The Board is not being requested to approve disposition of this amount.

During the 2012 audit, there was an entry of $50,000 made to account 4705 (Cost of Power) that was not included in the RSVA clearing entry to the 1588 account. Subsequently, the Board audit staff recommended an entry be made to credit the 1588 account and offset Retained Earnings. This entry was done in 2013 and therefore would not have been recorded during the 2012 RRR filing. The net effect at the end of 2013 is a zero dollar impact on the 1588 account.

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May 7, 2015

VIA COURIER, EMAIL AND RESS

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

Dear Ms. Walli:

**Re: Reply Submissions of Essex Powerlines Corporation ("Essex Powerlines")
Board File No. EB-2014-0072 & EB-2014-0301**

We are co-counsel to the Applicant, Essex Powerlines Corporation (**"Essex Powerlines"**), in the above noted proceeding.

Please find enclosed Essex Powerlines' Reply Submissions to Board Staff and Intervenor submissions dated April 30, 2015.

If there are any questions, please contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP

Scott Stoll

Scott Stoll

SAS/bm

cc: Case Manager, Georgette Vlahos *(via email)*
Board Counsel, Richard Lanni (via email)
All Intervenors (via email)
Co-Counsel, George Vegh (via email)

Encl.

22649644.1

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 Essex Powerlines Corporation for an order approving a Smart Meter Disposition Rate Rider ("SMDR") and a Smart Meter Incremental Revenue Requirement Rate Rider ("SMIRR"), each effective January 1, 2015;

AND IN THE MATTER OF an application by Essex Powerlines Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015.

REPLY SUBMISSIONS OF ESSEX POWERLINES CORPORATION

Introduction and Background

1. These are the Reply Submissions of the Applicant Essex Powerlines Corporation ("**Essex Powerlines**").

2. Board Staff and Intervenor submissions in this Application addressed Essex Powerlines' submissions respecting various account balance issues and the consequences of its erroneous calculation of the allocation of costs between RPP and Non-RPP customers. Both of these categories of submissions will be addressed in turn.

3. In its April 23rd submission, Essex Powerlines brought forward a request that would correct the past billing impacts of the error, not perpetuate the error, and maintain Essex Powerlines' financial integrity in a manner that is fair in both principle and impact for all

customers. In order to ensure Accounts 1588 and 1589 are disposed of in a manner that achieves these objectives, Essex Powerlines has sought:

a. Disposition of Account 1588 in the amount of ($4,567,591) over a period of two years, being comprised of the amounts below:

Description	Amount[1]
May 1, 2014 to January 31, 2015- settled	($3,614,779)
February 1, to April 30, 2015 residual	$2,762,600
Correction to misallocation of GA	($1,563,971)
2013 Balance	($2,151,441)
Total:	**($4,567,591)**

b. Disposition of Account 1589 in the amount of $6,908,196 over a period of four years being comprised of the amounts below:

Description	Amount[2]
May 1, 2014 to January 31, 2015 - settled	$3,614,779
February 1, to April 30, 2015 residual	($2,653,477)
Correction to misallocation of GA	$1,563,971
2013 Balance	$4,382,923
Total:	**$6,908,196**

4. As Essex Powerlines noted, the customer impact, along with the disposition of the remaining deferral and variance accounts, results in all customers seeing a decreased bill which is summarized below:

[1] Exhibit K1_BdStaff Compendium_20150414 Tab 1, Tables 6, 3, 1 and 2.
[2] Exhibit K1_BdStaff Compendium_20150414 Tab 1, Tables 6, 3, 1 and 2.

2015 RPP BILL IMPACTS compared to 2015 Stayed Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	(9.18)	-29.95%	(10.97)	-9.13%
GS<50	2,000	0	(14.85)	-21.04%	(18.55)	-6.37%
GS 50 - 2,999	1,198,113	2,968	(15,539.28)	-112.00%	(20,384.42)	-12.38%
UMSL	2,000	0	(25.07)	-32.18%	(32.16)	-9.68%
Sentinel Lights	36	0.1	(0.43)	-9.66%	(0.55)	-5.56%
Street Lights	36	0.1	(0.36)	-8.99%	(0.47)	-4.84%

2015 Non-RPP BILL IMPACTS compared to 2015 Stayed Rates

Rate Class	kWh	kW	Distribution Bill Impact		Total Bill Impact	
			$	%	$	%
Residential	800	0	(3.26)	-10.64%	(4.95)	-4.06%
GS<50	2,000	0	0.34	0.53%	(3.10)	-1.07%
GS 50 - 2,999	1,198,113	2,968	(6,889.34)	-69.33%	(10,609.99)	-6.49%
UMSL	2,000	0	(9.87)	-13.84%	(14.99)	-4.54%
Sentinel Lights	36	0.1	(0.15)	-3.59%	(0.24)	-2.47%
Street Lights	36	0.1	(0.11)	-2.57%	(0.18)	-1.93%

5. Essex Powerlines would like to take the opportunity to clarify a concern[3] of Board Staff wherein it was noted that the bill impacts (comparing to 2015 stayed rates) varied as compared to the supplemental questions of Procedural Order No. 3 and in Essex Powerlines' Argument-In-Chief.

6. Essex Powerlines agrees that Table 2 - Responses to Supplemental Questions and Table 3 - Argument in Chief, which provide 2015 Bill Impacts as compared to 2015 Stayed Rates, are different because they were prepared for different reasons and with different assumptions. Table 2, which is referred to in Essex Powerlines Response to Supplemental Questions of April 7th, 2015 as "Table 22", provides a direct answer to the specific questions posed in Question 9 of Appendix A to the Partial Decision and Procedural Order. As such, Table 2 does not include correcting for the settled amounts

[3] Board Staff Submission, April 30, page 9.

for Accounts 1588 and 1589 (May 1, 2014 to January 31, 2015) nor does it include the residual for the stub period (February 1, 2015 to April 30, 2015). In contrast, Table 3 provides a comprehensive bill impact and includes the settled amounts for Accounts 1588 and 1589 (May 1, 2014 to January 31, 2015) and the residual for the stub period (February 1, 2015 to April 30, 2015). Table 3 re-affirms Essex Powerlines' initial position, and requests to correct the allocation error as well as adjust the current rate rider in an attempt to not compound the known error. These differences account for the variances between Table 2 and 3.

7. As Essex Powerlines previously noted, the error giving rise to this issue arose from an incorrect formula being used to allocate costs between RPP and non-RPP customers. The oral evidence[4] described the switch in settlement forms which accompanied the change to TOU pricing and provided the opportunity for the error to occur. The evidence clearly states the formula was entered and reviewed by senior staff within Essex Powerlines. Further, the initial results were reviewed and a shift in results was identified by staff but the discrepancy was erroneously attributed to a different factor. Deferral and variance account balances were being monitored by Essex Powerlines at both a staff and executive level.[5] Balances were audited by third parties and IRM flings by Board Staff – yet the error went undetected. A lack of oversight was not the issue but rather the ability to discern a particular movement in two accounts that were being subjected to multiple unpredictable variations.

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[4] Transcript Vol. 1, April 14, 2015, page 19, lines 10 to 13.
[5] Essex Powerlines, April 7, 2015, Response to VECC#2.

8. Board Staff acknowledged[6] the complex nature and intricacies of the Global Adjustment Settlement process with the IESO. However, as Essex Powerlines noted the Global Adjustment was just one of several factors that were moving independently and unpredictably. Other factors such as the new embedded generation from Hydro One, TOU pricing and the offsetting aggregate balances in prior years which deferred disposal of the accounts all served to mask the occurrence of the original error. Further, as the aggregate recovery of Global Adjustment was correct, there was no shortfall or over-recovery in settlement with the IESO which again served to hide the underlying error.

9. Essex Powerlines disagrees with Board Staff's submission that it has been careless, improperly using and has been unable to explain the balances in Account 1590.[7] Board Staff's conclusions about the origin of the balances in Account 1590 are incorrect. Mr. Dimmel rejected the suggestion that Essex Powerlines was still using Account 1590 for transfers but acknowledged there were still dispositions. The disposition of Account 1590 refer to balances from December 31, 2004 and December 31, 2008 and the account has not been used since. The inclusion of Account 1590 in the continuity schedule was intended to portray the entire picture and confirms the position of Essex Powerlines. Essex Powerlines did not move the 1590 balance to 1595 because it was not disposed of and Essex Powerlines wanted to ensure that the Board was aware of this by including it separately on the continuity schedule.[8]

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[6] Board Staff Submissions, April 30, 2015, page 11.
[7] Board Staff Submission, page 7.
[8] April 7, 2015, Continuity Schedule to support Response to Supplemental Questions.

10. Essex Powerlines would submit that the analysis of imposing a "*penalty*" is much more complex than portrayed by Intervenors. If one considers the issue of the potential violation of debt servicing covenants, one cannot look at annualized numbers and draw any reasonable conclusion as suggested by SEC[9]. As noted in this proceeding, the numbers for Global Adjustment and other accounts have seen wide fluctuations. The debt servicing covenant must be observed at **<u>all</u>** times and therefore, one would have to consider the impact during the most vulnerable period of time for the utility – the time when it is operating at the closest point to the required debt servicing ratio. That is why Essex Powerlines has indicated that a financial penalty of $380,000 would put it off-side its debt covenants. Any impact that would knowingly and intentionally put a utility off-side of its loan agreements would be contrary to the Board's statutory objective of maintaining a financially viable industry.[10]

11. Leaving aside the jurisdictional issue, Essex Powerlines has been consistent in its statements that any amount of "penalty" in excess of $380,000 will put Essex Powerlines off-side of its debt servicing covenants. Essex Powerlines is concerned that the imposition of a penalty, given the circumstances of this case, would increase the level of perceived risk of dealing with distributors. Such an increased risk could increase costs for all utilities and ratepayers going forward.

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[9] As a housekeeping note SEC has erred at page 3, paragraph 3 of its submissions. Essex Powerlines would note that it should read "RPP" customers not "non-RPP" customers.
[10] *Ontario Energy Board Act, 1998,* S.O. 1998, c.15 (Schedule B), subsection 1(1) paragraph 2.

12. Further, Essex Powerlines has already incurred significant costs to address the issues arising during this IRM process through the internal and third party resources that have been engaged to investigate the issue and participate in this proceeding. In addition, Essex Powerlines anticipates the Board will order the costs of Intervenors and the Board to be paid. It is likely that such costs will be approximately $175,000 and Essex Powerlines will not be recovering these costs from customers. In addition, it is expected that any interest pertaining to the error will be to the account of Essex Powerlines.

13. Essex Powerlines has noted that the process in place during the time of the error had functioned for a decade without incident and there had been no prior suggestion by any party that Essex Powerlines' was anything but one of the most efficient utilities in the province (as per the Board's benchmarking).[11] The checks and balances that were in place have been enhanced as a result of the error. Essex Powerlines disagrees with VECC's characterization of the Accounts Payable Senior Clerk as a "file clerk".[12]

Consequences of Essex Powerlines' Error

14. Essex Powerlines' evidence and submissions in chief provided a full and detailed account of its errors. Essex Powerlines did not seek to evade responsibility for these errors and, in fact, brought them to the Board's attention in this application on a voluntary basis with a *bona fide* intention of correcting them so as to put all parties into the position they would have been if the error was not made.

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[11] Essex Powerlines was classified in Group II in the "*Empirical Research in Support of Incentive Rate-Setting: 2013 Benchmarking Update – Report to the Board*", July 2014.
[12] Transcript Vol. 1, April 14, 2015, page 43, lines 1 to 2.

15. The Board has the express power to bring about this result through the use of Rule 41.02 of the Rules of Practice and Procedure. That Rule and the relevant case law in this regard were addressed in Essex Powerlines' submissions of April 23, 2015. Neither that rule nor the case law was addressed in Procedural Order No. 3 or in Board Staff and Intervenor submissions.[13]

16. Nonetheless, Board Staff and the Intervenors urge the Board to not fix the consequences of the error and, instead, they argue that the Board should punish Essex Powerlines by extracting a payment from its shareholder. The proposed payment ranges from $1.1 million (Board Staff) to $3.7 million (SEC, VECC and Energy Probe). The description of this payment is variously referred to as a "penalty" (Energy Probe, p.4), an award of damages for negligence (VECC, pp. 4-5), an exercise of the Board's discretion (SEC, p.3) and as a debit towards Essex Powerlines' return on equity (Board Staff, pp. 13-14).

17. In order for the Board to have such powers they would have to be explicitly or implicitly found in legislation. Neither is the case here.

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[13] Note, one intervenor argued that Essex Powerlines should not have made this point because it is essentially arguing its motion for review of Procedural Order No. 3. This is clearly not the case. The motion for review argues that the Board's decision respecting the consequences of its finding on jurisdiction was in error and thus should be reviewed under Rules 40 and 42. The argument in chief is that the Board has the authority to fix the underlying error in the Disposition Order under Rule 41.02. Further, the Board may exercise its powers under Rule 41.02 at any time and without a motion. As a result, both substantively and procedurally, the two arguments are distinct.

Lack of Explicit Authority to Impose Penalties, Award Damages or Appropriate a Portion of a Utility's Return

18. The Board's only power to order penalties is in Part VII.1 of the *OEB Act, 1998* which addresses compliance. There is nothing in the legislation to suggest that the Board has the power to impose penalties in any other circumstances.

19. There is similarly no statutory basis to support VECC's submissions that the Board has the authority to either make determinations on the tort of negligence or award damages for same.

20. The authority to award damages must be expressly provided for in legislation. The only references to damages in the *OEB Act, 1998* relates to damages in the use of land or expropriation context. Even in these limited contexts, any award of damages is to be made by the Ontario Municipal Board, not the OEB.[14]

21. There is also no legal basis for the argument that the Board somehow has discretion to make an ROE adjustment on the basis that a utility made an error. This argument effectively treats a utility's return as an account from with the OEB may withdraw funds at is discretion. This flies in the face of the fair return standard. As the Board has recognized: "Meeting the standard is not optional; it is a legal requirement."[15] The Board cannot hold that the fair return standard is a binding legal requirement and also treat a utility's return as an amount over which is has discretion to appropriate.

[14] See OEB Act, 1998, ss. 98(1.1), 102, and 100.
[15] EB-2009-0084, Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, p. i.

22. There is therefore no express statutory authority for the Board to exercise any of the powers proposed by Intervenors and Board Staff in the rate setting context. There is equally no implied authority.

Lack of Implied Authority to Impose Penalties, Award Damages or Appropriate a Portion of a Utility's Return

23. The Supreme Court of Canada addressed the test for demonstrating implied legal authority in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*[16]*("ATCO Gas")*. In that case, the Supreme Court held that a public utility regulator did not have implied authority to allocate proceeds of the sale of utility assets without express statutory authority: [17]

> "Consequently, in order to impute jurisdiction to a regulatory body to allocate proceeds of a sale, there must be evidence that the exercise of that power is a practical necessity for the regulatory body to accomplish the objects prescribed by the legislature, something which is absent in this case (see Re National Energy Board Act, [1986] 3 F.C. 275 (C.A.)).
>
> ...
>
> It is well established that potentially confiscatory legislative provision ought to be construed cautiously so as not to strip interested parties of their rights without the clear intention of the legislation (see Sullivan, at pp. 400-403; Côté, at pp. 482-86; *Pacific National Investments Ltd. v. Victoria (City)*, [2000] 2 S.C.R. 919, 2000 SCC 64, at para. 26; *Leiriao v. Val-Bélair (Town)*, [1991] 3 S.C.R. 349, at p. 357; *Hongkong Bank of Canada v. Wheeler Holdings Ltd.*, [1993] 1 S.C.R. 167, at p. 197). Not only is the authority to attach a condition to allocate the proceeds of a sale to a particular party unnecessary for the Board to accomplish its role, but deciding otherwise would lead to the conclusion that a broadly drawn power can be interpreted so as to encroach on the economic freedom of the utility, depriving it of its rights. This would go against the above principles of interpretation."

[16] [2006] 1 S.C.R. 140,
[17] *ATCO* Gas, paras. 77-80 (emphasis added).

24. There is no suggestion that implying an authority to issue penalties, award damages or appropriate a return is a practical necessity for the Board to fix consequences of mistakes. To the contrary, the courts have been clear that the existence of an express remedial power (here the power to correct an error in Rule 41.02) demonstrates that an alternative remedial power should not be implied (here the powers proposed by Intervenors and Board Staff).[18]

25. Further, the expansion of the Board's authority to new territories proposed in this case is more extreme than anything considered in *Atco Gas*. In *Atco Gas*, the regulator merely sought to allocate the proceeds of sale of assets, which is a much more mainstream exercise of public utility authority to be implied without express statutory authority. The Supreme Court would not allow that extension of a regulator's authority. In this case, the Intervenors and Board Staff are proposing much more extreme measures: damages, penalties and discretionary access to a utilities' return. Essex Powerlines is not aware of any case where the courts have recognized such an extension of authority under the name of "implied powers".

26. Finally, Board Staff and the Intervenors provide no legal authority for the extraordinary remedies they are proposing in this case. Instead, they are all premised on the view that the legal restrictions on the Board's authority to set just and reasonable rates are somehow eliminated if a utility makes an error. In other words, they suggest that the presence of the error by a utility somehow expands the Board's rate setting authority so that it has virtually unconstrained remedial powers.

27. This is clearly not the case. The Board's only authority is to set just and reasonable rates. The fact that a utility makes an error does not expand the Board's authority. When faced with an error (whether of a party's making or its own), the Board has the

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[18] See, for example, *ATCO Gas*, para. 73; *Re Broadcasting Regulatory Policy*, [2012] 3 S.C.R. 489 at para. 39 and 44; *Tetrault-Gadoury v. Canada,* [1991] 2 S.C.R. 22 at p. 33; *Westfair Foods Ltd. v. R.W.D.S.U* (1993), 15 Admin. L.R. (2d) 260 at pp, 270-271.
[18] [2006] 1 S.C.R. 140, p. 39, para. 77-80.

power to fix the mistake and put the parties in the position they would have been if the mistake were not made in the first place.

28. Board Staff stated *"that allowing the riders to continue to overcollect from RPP and undercollect from non-RPP customers until the total remaining balance is drawn down would be an absurd result."* Essex Powerlines agrees with Board Staff that it would be an absurd result for the error to be perpetuated further with customers. However, Essex Powerlines would go further and state that failing to correct the entirety of the error is of the same nature as permitting the over/under recovery to continue and would therefore also be absurd. Essex Powerlines' position has been consistent to restore customers to the position it should have been in if the error had not occurred. Energy Probe supported correcting the error[19] and noted the Essex Powerlines solution avoids the arbitrariness of a result that depends upon the timing of the discovery of the error.[20] It is respectfully submitted that this remedy is appropriate from both a legal and a fairness perspective.

29. Essex Powerlines acknowledges that an audit may provide customers with additional comfort that the error has been properly accounted for and corrected. Of course Essex Powerlines would provide the necessary access and support if the Board determines such an audit is required.

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[19] Energy Probe, Written Submissions, April 30, 2015.
[20] Energy Probe Submissions, February 23, 2015, page 3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: May 7, 2015

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