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October 4, 2019

Delivered by Email, RESS & Courier

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

Dear Ms. Walli:

**Re: OEB File No. EB-2019-0032
ENWIN Utilities Ltd. Application for Approval of Distribution Rates and
Other Charges Effective January 1, 2020
Argument-in-Chief**

Pursuant to the Procedural Order No. 4 dated September 30, 2019, please find enclosed the Argument-in-Chief for ENWIN Utilities Ltd.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A.D. Vellone

John A.D. Vellone

Encl.

cc: Paul Gleason, ENWIN Utilities Ltd.
Intervenors on record for EB-2019-0032

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended (the “Act”);

AND IN THE MATTER OF an Application by ENWIN Utilities Ltd. under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2020.

**ARGUMENT-IN-CHIEF OF
ENWIN UTILITIES LTD.**

October 4, 2019

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A. INTRODUCTION

1. ENWIN Utilities Ltd. (“**ENWIN Utilities**”) submits this written argument-in-chief in respect of an Application filed by ENWIN Utilities on April 26, 2019, as amended, under Section 78 of the *Ontario Energy Board Act, 1998* (the “**Act**”) seeking an order of the Ontario Energy Board (the “**OEB**” or “**Board**”) approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2020 (the “**Application**”). The Board assigned file number EB-2019-0032 to the Application.
2. On June 21, 2019, the OEB issued Procedural Order No. 1 approving Association of Major Power Consumers of Ontario (“**AMPCO**”), Consumers Council of Canada (“**CCC**”), School Energy Coalition (“**SEC**”), and Vulnerable Energy Consumers Coalition (“**VECC**”) as intervenors in this proceeding.
3. On August 20, 2019, the OEB issued Procedural Order No. 2 and Decision on Issues List with the final and approved issues list for the Application attached as Schedule A (the “**Issues List**”).
4. On September 24, 2019, ENWIN Utilities filed a Settlement Proposal with the OEB representing a settlement of all but one issue in this Application (the “**Settlement Proposal**”). The sole outstanding issue relates to a part of Issue 3.3 (Rate Design). The Parties were unable to agree on the following outstanding issue:

Is ENWIN Utilities’ proposal to eliminate the intermediate rate class appropriate?

5. This argument-in-chief presents ENWIN Utilities’ views on this sole unsettled issue.

B. ELIMINATION OF THE INTERMEDIATE RATE CLASS (ISSUE 3.3)

6. ENWIN Utilities has been operating with a unique tariff structure that has the following key features:

(i) overlapping rate classes; and

(ii) differential treatment between otherwise similar customers due to the inclusion

of grandfathering language in one rate classification.

7. Specifically, the most recent OEB approved Tariff of Rates and Charges for ENWIN Utilities that was approved by delegated authority in a Decision and Order dated March 28, 2019 (EB-2018-0029) provides for two different, overlapping rate classifications.¹
8. The first is the General Service 50 to 4,999 KW Service Classification, which is defined as follows (the “**GS 50-4,999 KW Class**”):

ENWIN Utilities Ltd.
TARIFF OF RATES AND CHARGES
Effective and Implementation Date May 1, 2019
This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors

EB-2018-0029

GENERAL SERVICE 50 TO 4,999 KW SERVICE CLASSIFICATION
A non-residential customer qualifies for a rate classification of General Service 50 to 4,999 kW if within the last 12 months its monthly average peak demand load has equaled or exceeded 50 kW or for a new customer is expected to equal or exceed 50 kW but be less than 5,000 kW. Class A and Class B consumers are defined in accordance with O. Reg. 429/04. Further servicing details are available in the distributor's Conditions of Service.

9. The second is the General Service 3,000 to 4,999 KW Service Classification, which is defined as follows (the “**Intermediate Class**”):

ENWIN Utilities Ltd.
TARIFF OF RATES AND CHARGES
Effective and Implementation Date May 1, 2019
This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors

EB-2018-0029

GENERAL SERVICE 3,000 TO 4,999 KW - INTERMEDIATE USE SERVICE
A customer is in this class when its individual load is equal to or over 3,000 kW but less than 5,000 kW, averaged over 12 consecutive months and was classified as Time of Use prior to market opening. The premises for this class of customer is considered a structure or structures located on a parcel of land occupied by one customer and is predominantly used for intermediate sized commercial, institutional or industrial purposes. Class A and Class B consumers are defined in accordance with O. Reg. 429/04. Further servicing details are available in the distributor's Conditions of Service.

10. With the existing ENWIN Utilities Tariff of Rates and Charges defining two overlapping rate classes, ENWIN Utilities has had to operationalize how to assign a customer to a specific rate class when the customer's average historical monthly demand exceeds 3,000

¹ EB-2018-0029 ENWIN Utilities Ltd. Decision and Rate Order dated March 28, 2019.
Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/638347/File/document>

kW but is less than 4,999 kW.

11. The answer to this question is found in the definition of the Intermediate Class which indicates that it only applies to customers whose average historical monthly demand exceeds 3,000 kW but is less than 4,999 kW **and** were “classified as Time of Use prior to market opening”.
12. The practical effect of the condition that a customer must be “classified as Time of Use prior to market opening” is to grandfather in existing Intermediate Class customers. Only those customers that meet the class definition, that were in existence prior to market opening and that were classified as Time of Use prior to market opening – can be included in the Intermediate Class. Conversely, this definition effectively excludes from the Intermediate Class the addition of new customers. For example, if a new customer was not in existence prior to market opening, they could not have met the condition that they were classified as Time of Use prior to market opening.
13. As a direct consequence of this historical anomaly, ENWIN Utilities currently has existing customers whose demands are similar in exceeding 3,000 kW but being less than 4,999 kW, but are included in either the GS 50-4,999 KW Class or in the Intermediate Class depending on whether or not they were “classified as Time of Use prior to market opening”.
14. The issue of addressing the Intermediate Class anomaly was raised in ENWIN Utilities’ last cost of service proceeding, but was deferred pending the outcome of rate design consultations that were ongoing at that time. This is evident from ENWIN Utilities’ response to Board Staff Interrogatory 47 filed January 9, 2009 in EB-2008-0227.²

[Question]

47. Ref: Exh10/Tab1/Sch11/p1

**ENWIN’s Intermediate Use class is defined by consumption larger than 3000 kW and by the fact that the customers were “classified as Time of Use prior to market opening”.
a) What is ENWIN’s longer- term intention?**

²EB-2008-0227 – ENWIN Utilities Ltd. Responses to Board Staff Interrogatories dated January 9, 2009 at page 47.
Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/100237/File/document>

- to introduce a classification based on size of consumption, eg. GS 50 – 2999 kW and GS 3000 – 4999 kW;
- to merge the two existing classes GS 50 – 4999 kW; or
- to maintain the existing classification based on the pre-market opening classification.

[Response]

EWU is awaiting the outcome of EB-2007-0031, the Board's proceeding in respect of Rate Design, prior to establishing an intention in respect of the Intermediate rate class. This "wait and see" approach is appropriate because the members of the class have different characteristics that might warrant different treatment under the new rate design regime. For example, the rate class includes both primary and secondary metered customers. Post-EB-2007-0031, the primary customer(s) might end up in a rate class with Large Use customers, while the secondary customer(s) might end up in a rate class with GS 50 – 4,999 kW customers. The "wait and see" approach reduces the likelihood of repeated rate re-design.

15. The present Application has provided the next available opportunity to address this issue, and ENWIN Utilities has proposed to do so in a manner that it feels is fair and equitable. In this Application, ENWIN Utilities seeks to remedy this historical anomaly by proposing to combine the existing GS 50-4,999 KW Class and the Intermediate Class. The evidence relevant to ENWIN Utilities' proposal can be found at:

- a. Section 7.2.2 of Exhibit 7 (found at page 3)³.

7.2.2 Elimination of Customer Class

ENWIN proposes the elimination of two rate classes: 1) the Intermediate (GS 3,000 kW to 4,999 kW) rate class; and 2) the Large Use – Ford Annex rate class.

As of December 31, 2017, the Intermediate rate class encompassed 3 customers. ENWIN proposes the elimination of this rate class, with the result that the 3 existing customers will move to the General Service > 50 kW to 4,999 kW rate class. This rate class design will provide a common large General Service rate class design moving forward for all ENWIN customers...

- b. ENWIN Utilities' responses to certain interrogatories:

³ EB-2019-0032 ENWIN Utilities Ltd., Exhibit 7 Cost Allocation Section 7.2.2, at page 3.
Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/640411/File/document>

- i. 3-OEB Staff-79 b) ii)⁴: *The specific drivers of consumption for three customers (those in the existing Intermediate class) may be different from the identified drivers of consumption among a larger group of customers (those in the existing GS > 50 class). ENWIN believes the customers in the Intermediate rate class are sufficiently similar to other customers in the existing GS > 50 rate class to warrant consolidation of the rate classes.*
 - ii. 7-OEB Staff-115 c) iii)⁵: *ENWIN proposes to merge the existing [GS 50-4,999 KW Class] and [Intermediate Class] to be consistent with GS 50-4999 kW class used by many other LDCs in the province. For those LDCs with a GS 50-4999 kW class the cost allocation model is used to determine the allocated cost for this class and the cost allocation model determines the appropriate allocation factors for the GS 50-4999 kW class. ENWIN is using the same method to determine the allocated costs for the proposed GS 50-4999 kW class and believes it to be a reasonable approach.*
 - iii. 7-OEB Staff-115 c) iv)⁶: *For the rate classes that are being merged ENWIN understands the impact on these classes will reflect the weighted average of the separate classes being merged. ENWIN believes this is an acceptable outcome considering the reduction in rate classes will be more cost effective. In addition, a comparison of the main customer allocator (i.e. number of customers) and the main demand allocator (i.e. 4 NCP) in Tab E2 of the cost allocation between the merged case and status quo case indicates there is not a material movement in the value of the allocators for the other classes. This suggests to ENWIN the merged proposal does not have adverse impacts on the allocation of costs to other customer classes.*
- c. ENWIN Utilities' responses to certain pre-settlement clarification questions filed September 24, 2019:

⁴ EB-2019-0032 ENWIN Utilities Ltd., Responses to Interrogatories from OEB Staff dated August 1, 2019. Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/648747/File/document>

⁵ Ibid.

⁶ Ibid.

- i. OEB Staff Pre-Settlement Clarification Question 16⁷: *ENWIN Utilities confirms that all three Intermediate customers have been provided the associated bill impacts related to ENWIN Utilities's proposal to combine rates classes. ENWIN Utilities will provide any feedback received upon receipt...*
 - d. ENWIN Utilities' additional evidence filed September 24, 2019:
 - i. ENWIN_2020_COS_Bill Impact Summary_Two Scenarios_Settlement_20190924 (found at page 2)⁸: Indicates that existing Intermediate customers would be estimated to have an overall total bill decrease under ENWIN Utilities' proposed rate design structure with rate class consolidation compared to their existing estimated 2019 total bills.
16. The principal advantage of combining the GS 50-4,999 KW Class and the Intermediate Class is that it would eliminate the unusual situation of grandfathering some customers into the Intermediate Class while other customers with otherwise similar cost drivers are placed into a different rate classification. Specifically, ENWIN Utilities believes that customers in the GS 50-4,999 KW Class are sufficiently similar to customers in the Intermediate Class and that from a cost causality perspective, there remains no good reason to maintain separate rate classifications, especially based upon a legacy definition that on its face dates back prior to market opening.
17. Ultimately, similarly situated customers should, and under ENWIN Utilities' proposal will, be treated similarly.

C. CONCLUSION

18. ENWIN Utilities understands that one or more of its existing customers opposes ENWIN Utilities' proposal to combine these rate classifications.

⁷ EB-2019-0032 ENWIN Utilities Ltd. Responses to Pre-Settlement Conference Clarification Questions dated September 24, 2019 at page 32.

Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/653512/File/document>

⁸ EB-2019-0032 ENWIN Utilities Ltd. 2020 COS Bill Impact Summary at page 2.

Available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/653523/File/document>

19. ENWIN Utilities understands that the basis of this opposition will be articulated during the submissions phase of this written hearing process. ENWIN Utilities looks forward to reviewing and as appropriate responding to its customer's concerns as part of this written hearing process.
20. ENWIN Utilities wishes to state at the outset that it values each of its customer relationships and that its proposal is not intended to single out or prejudice any particular customer or group of customers.
21. Rather, ENWIN Utilities is trying to simplify and streamline its Tariff of Rates and Charges in a way that ensures similarly situated customers, both new and old, are treated similarly and to better conform the ENWIN Utilities Tariff of Rates and Charges with the approved tariffs of other LDCs in Ontario.
22. Unfortunately, when two different rate classifications are combined, some rates may go up, while other rates may go down. However, in the present situation, ENWIN Utilities notes that its proposal for GS 50 – 4,999 and Intermediate Class consolidation at January 1, 2020 still results in an estimated overall total bill decrease for the impacted customers.
23. Ultimately, ENWIN Utilities is concerned that the continuation of overlapping rate classes with some customers being grandfathered into one class may not, in the views of the Ontario Energy Board, be found to be in the public interest.
24. ENWIN Utilities looks forward to reviewing the Board's decision in this regard.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF OCTOBER, 2019

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A.D. Vellone

John A. D. Vellone
Counsel to the Applicant