

John A.D. Vellone
T (416) 367-6730
F 416.367.6749
jvellone@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com



January 8, 2021

Delivered by Email (Jane.Scott@oeb.ca)

Ms. Jane Scott,
Manager, Major Rate Applications & Consolidations
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Scott:

Re: E.L.K. Energy Inc. 2022 Cost of Service Application

We are writing on behalf of E.L.K. Energy Inc. (“E.L.K. Energy”) regarding its forthcoming 2022 Cost of Service (“COS”) application (“Application”).

As noted in the OEB’s letter dated May 14, 2020¹ and December 17, 2020² (“December Letter”), the OEB intends to conduct a full review of Chapter 2 and 5 of the Filing Requirements in consultation with stakeholders with a view to identifying opportunities for regulatory efficiency that could be implemented for future cost of service rate applications.

In the December Letter, the OEB identified rate regulated distributors in Ontario that have fewer than 20,000 customers and the opportunity to improve regulatory efficiency for rate applications filed by these smaller electricity distributors while ensuring the OEB has adequate information to make decisions that continue to result in just and reasonable rates.³

E.L.K. Energy was identified as one of these smaller electricity distributors.⁴

E.L.K. Energy’s Unique Circumstances

You will recall that E.L.K. Energy last filed COS application on November 1, 2016 for an approval of its rates for five years using the Price Cap Incentive rate-setting (“IR”) option (“2017 COS Application”) (EB-2016-0066).

I believe you were directly involved in the 2017 COS Application.

¹ Ontario Energy Board, Letter Re: Updated Filing Requirements for Electricity Distribution Rate Applications, May 14, 2020.

² Ontario Energy Board, Letter Re: Consultation on Updates to Filing Requirements for Electricity Distribution Cost of Service Applications

³ Ibid, page 1.

⁴ Ibid, Appendix A.

The proceeding included a discovery process where OEB Staff and various intervenors (i.e. School Energy Coalition, Vulnerable Energy Consumers Coalition, and Association of Major Power Consumers in Ontario) filed extensive interrogatories to E.L.K. Energy. E.L.K Energy filed comprehensive responses to those interrogatories on April 21, 2017.

In addition to the interrogatories, a community meeting was held on March 2, 2017 with approximately 30 customers attending the meeting to hear presentations from OEB Staff and E.L.K. Energy about the 2017 COS Application.

A settlement conference was held from May 15 to 17, 2017. The parties reached a settlement and filed a revised settlement proposal with the OEB on October 5, 2017 (the “Revised Settlement Proposal”) wherein E.L.K. Energy agreed to withdraw its application and to use an Annual IR Index methodology to set base rates.

In addition, and as set out in the Revised Settlement Proposal, E.L.K. Energy undertook to complete a regulatory audit, an operations review and an asset condition assessment prior to bringing its next cost of service rebasing application.

E.L.K. Energy was also required to file its next cost of service rebasing application for 2022 rates, by no later than the last date the OEB would accept a COS application for 2022 as specified in the OEB’s filing requirements for that year.

The OEB accepted the Revised Settlement Proposal.

Application of Chapter 2 Filing Requirements

E.L.K. Energy is now preparing its 2022 COS Application.

As you know, for a small utility like E.L.K. Energy, preparing a full COS application requires immense resources. As mentioned above, E.L.K. Energy had previously prepared a full 2017 COS Application (with 2011 to 2015 historicals, 2016 bridge and 2017 test year information) and the evidence was tested in the interrogatory phase of the proceeding. All of the evidence for the 2017 COS Application is available on the public record under EB-2016-0066.

The unique issue here is that since the 2017 COS Application was subsequently withdrawn pursuant to the Revised Settlement Proposal, 2017 did not become an “OEB-approved test year” for E.L.K. Energy as would normally be the case.

As set out in Chapter 2 Filing Requirements⁵, data for the following years, at a minimum, must be provided:

- Test year = prospective year (calendar year during which new rate year commences)
- Bridge year = current year (or the year immediately preceding the test year)

⁵ Ontario Energy Board Filing Requirements For Electricity Distribution Rate Applications - 2020 Edition for 2021 Rate Applications - Chapter 2 Cost of Service, dated May 14, 2020.

- **Three most recent historical years (or for as many years as are necessary to provide actuals back to and including the most recent OEB-approved test year, but not less than three years)** (emphasis added)
- Most recent OEB-approved test year

Based on this requirement, E.L.K. Energy’s last OEB-approved test year would technically be 2012 (EB-2011-0099) and under normal circumstances, E.L.K. Energy would need to provide data from 2012 to 2020 as historicals and provide variance analyses on this data where required.

However, in our view the information between 2012-2016 would be redundant as E.L.K. Energy had previously provided such information in the 2017 COS Application.

The additional work required to complete historicals from 2012-2016 would, in our view, provide no added probative value in assisting the OEB with its decision on just and reasonable rates for 2022. That information is already readily available under EB-2016-0066.

Proposal Regarding this Application

Based on its unique circumstances, for the purposes of the 2022 COS Application, E.L.K. Energy requests the following:

- The evidence previously filed in the 2017 COS Application be incorporated by reference into the new 2022 COS Application, without the need to unnecessarily recreate all that data;
- The OEB treat 2017 as the last “OEB-approved test year” for E.L.K. Energy for the purposes of complying with the Ch. 2 Filing Requirements for the 2022 application; and
- Specifically, in treating 2017 as the last OEB-approved test year, E.L.K. Energy only be required to file historical data and variance analyses from 2017 onwards.

The principle purpose of the requested adjustments is to help reduce the workload and financial burden on E.L.K. Energy and reduce the significant regulatory burden associated with preparing the 2022 Application using 2012 as the last OEB-approved test year for a small utility like E.L.K. Energy and to promote regulatory efficiency. Ultimately this reduced workload and financial burden will go to benefit E.L.K. Energy ratepayers as the costs to prepare the application will be lower (and as you know application related costs are recoverable in rates).

In proposing the requested adjustments, E.L.K. Energy is cognisant that the OEB would require adequate information to make decisions that continue to result in just and reasonable rates. We submit that this proposal would still provide sufficient information to assist the OEB in making its decision with respect to the Application and would achieve the OEB’s intention of identifying opportunities for regulatory efficiency as noted in its latest proportionate review initiative.

If OEB Staff is generally supportive of this proposal, our proposed next steps would be to:

1. Notify all of the parties to the Revised Settlement Proposal of this approach and attempt to obtain their agreement; and

2. If all the parties agree, to file a letter with the Registrar with a copy to all of the parties to the Revised Settlement Proposal and to staff requesting the above noted relief.

We would be pleased to discuss these matters with you further at your convenience.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

A handwritten signature in cursive script, appearing to read "J Vellone".

John A. D. Vellone

cc: Mark Danelon, E.L.K. Energy Inc.