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Delivered by Email & RESS

Ms. Christine Long, Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: E.L.K. Energy Inc. 2022 Cost of Service Application
Ontario Energy Board File Number: EB-2021-0016

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**”) to electricity distributors and stakeholders, 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

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).

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) (collectively, the “**Intervenors**”) 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 (the “**Reviews**”) 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.

Chapter 2 Filing Requirements

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

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 historical, 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)

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.

- Bridge year = current year (or the year immediately preceding the test year)
- **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 historical data and provide variance analyses on this data where required.

However, E.L.K. Energy is of the view that the information between 2012-2015 would be redundant as E.L.K. Energy had previously provided such information in the 2017 COS Application.

The additional work required to complete historical data from 2012-2015 would, in E.L.K. Energy's 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 E.L.K. Energy's 2022 COS Application

Based on its unique circumstances, E.L.K. Energy engaged in discussion with the Intervenors of EB-2016-0066 and OEB Staff and for the purposes of the 2022 COS Application, E.L.K. Energy makes the following proposal:

- Rather than recreating all the evidence prepared for the 2017 COS Application that is already available on the public record, E.L.K. Energy would instead request that the evidence already on record for EB-2016-0066, which includes historical data from 2012 to 2015, be incorporated into the record of E.L.K. Energy's 2022 COS Application. Pursuant to Section 15.1 of the *Statutory Powers Procedure Act* the OEB has the authority to treat previously admitted evidence as if it had been admitted in a proceeding before the OEB, if the parties to the proceeding consent.⁶ E.L.K. Energy has discussed its proposal with the Intervenors in EB-2016-0066 and understands that they are willing to consent subject to the following three conditions:
 - In its 2022 COS Application, E.L.K. Energy will be explicit in terms of identifying exactly what information from the record in EB-2016-0066 reflects the correct and most current information and will include references as appropriate.
 - It appears to E.L.K. Energy that at this stage, no additional data or changes in the way E.L.K. Energy's historical data was presented in EB-2016-0066 are required based on the Reviews. However, to the extent that there is additional data or changes

⁶ Section 15.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

required, E.L.K. Energy will explicitly identify those as part of its 2022 COS Application.

- To facilitate comparison over the entire historical period and as requested by the Intervenor and to the extent that the following Chapter 2 Appendices are part of 2022 Chapter 2 Filing Requirements, E.L.K. Energy undertakes to provide these appendices with data from 2012 to 2022 (historical, bridge and test years):
 - 2-AA Capital Projects
 - 2-AB Capital Expenditures
 - 2-BA Fixed Asset Continuity Schedule
 - 2-JA OM&A Summary Analysis
 - 2-JB Recoverable OM&A Cost Drivers
 - 2-JC OM&A Programs
 - 2-K Employee Costs
 - 2-OB Debt Instruments
- E.L.K. Energy is in agreement with the above three conditions. As the previous evidence is incorporated and subject to the qualifications noted above, E.L.K. Energy will not otherwise be required to provide historical data or variance analysis of 2012 to 2015 actuals in the 2022 COS Application.

E.L.K. Energy and the Intervenor agree that this proposal is not intended to limit Intervenor or OEB Staff from asking relevant interrogatories related to information on the evidentiary record, including information pertaining to the 2012 to 2015 period. E.L.K. Energy would expect that all interrogatories comply with Section 26.02 of the OEB's Rules of Practice and Procedure.⁷

The principle purpose of the requested adjustments is to help reduce the workload and financial burden on E.L.K. Energy. 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.

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. E.L.K. Energy submits 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.

⁷⁷ OEB - Rules of Practice and Procedure on interrogatories, Revised February 17, 2021, Section 26.02

Finally, E.L.K. Energy shared a draft of this letter with the Intervenors and they have consented to E.L.K. Energy submitting this letter to the OEB as written.

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.
Parties to EB-2016-0066
Kevin Mancherjee, OEB Staff