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July 16, 2024

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Nancy Marconi, Registrar
Ontario Energy Board
PO Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Marconi

Re: Essex Powerlines Corporation (“EPLC”) – PowerShare Deferral and Variance Account
Ontario Energy Board (“OEB”) File Nos. EB-2024-0022 / EB-2024-0096
Argument in Chief (“AIC”)

Pursuant to EPLC’s letters dated July 8, 2024 and July 15, 2024, please find enclosed the AIC of EPLC. Please contact the undersigned with any questions.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Colm Boyle', is written over a light blue horizontal line.

Colm Boyle

cc. All Intervenors

ONTARIO ENERGY BOARD

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 under Section 78 of the Act to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity.

**ARGUMENT IN CHIEF OF
ESSEX POWERLINES CORPORATION**

July 16, 2024

Counsel for Essex Powerlines Corporation

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I. INTRODUCTION

1. This is the argument in chief of Essex Powerlines Corporation (“**EPLC**”) in respect of an application (“**DVA Application**”) filed on February 16, 2024 with the Ontario Energy Board (“**OEB**”) to establish a new deferral account and sub-accounts (“**PowerShare DVA**”) pursuant to section 78 of the *Ontario Energy Board Act, 1998* (the “**Act**”) that is intended to support EPLC’s successful “**PowerShare Pilot**” application to the Independent Electricity System Operator / Ontario Energy Board’s Joint Targeted Call for innovative projects focused on deriving value from distributed energy resources (“**DERs**”).
2. The PowerShare Pilot is intended to enable EPLC to perform Distribution System Operator (“**DSO**”) functions using a scalable market design for the procurement and activation of distributed energy resources (“**DERs**”) in near real-time.¹
3. On March 13, 2024, the OEB advised that it was combining EPLC’s Cost of Service application with the DVA Application, but that the OEB would establish an expedited procedural schedule to address the request for a new deferral account. On April 17, 2024, the OEB advised that the DVA Application would be held in abeyance until EPLC’s Cost of Service application is received.
4. On May 1, 2024, EPLC filed its Cost of Service application with the OEB seeking approval for changes to the rates that EPLC charges for electricity distribution, beginning January 1, 2025, and on May 15, 2024, the OEB advised that it would begin processing the DVA Application.
5. On June 24, 2024, pursuant to Procedural Order (“**PO**”) No. 1, a transcribed presentation and technical conference was held focusing on the DVA Application.
6. On June 27, 2024, the OEB issued its Decision on Issues List, approving the proposed revised Issues List submitted by OEB Staff (the “**Approved Issues List**”).
7. On July 2, 2024, EPLC filed its undertaking responses from the technical conference.
8. On July 4, 2024, a Settlement Conference was convened to address Issues 7.4 and 7.5 of the Approved Issues List in accordance with the OEB’s Rules of Practice and Procedure (the

¹ Undertaking Responses, 2 July 2024, PDF page 47; DVA Application, PDF page 2; Undertaking Response JT1.1.

“**Rules**”) and the OEB’s Practice Direction on Settlement Conferences (the “**Practice Direction**”).

9. On July 12, 2024, the EPLC and the parties that participated in the settlement filed a Partial Settlement Proposal on Issues 7.4 and 7.5 in the Approved Issues List. The Partial Settlement was intended to allow EPLC to proceed with the PowerShare Pilot over the summer of 2024 without prejudice to any party’s right to take any position on the DVA Application in submissions.

II. CONTEXT: THE OBJECTIVE AND NEEDS THE POWERSHARE PILOT SERVES

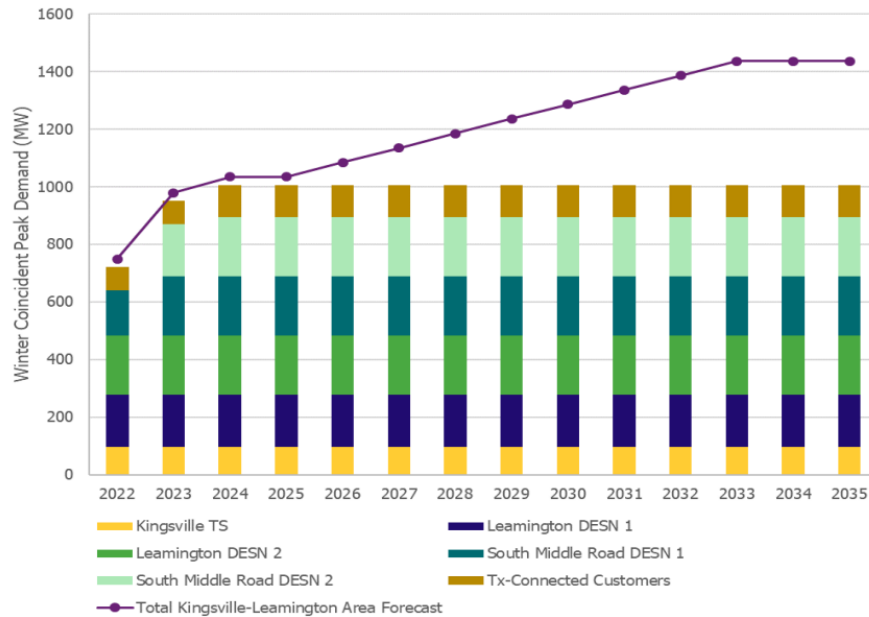
10. The objective of the PowerShare Pilot is to test the effectiveness of DERs and their ability to defer or eliminate the need for traditional electricity infrastructure, and supporting innovative activities or business models that are currently impeded by regulatory requirements.²
11. The PowerShare Pilot is focused on a part of Ontario that is currently forecasted to have an imminent need for costly upstream transmission and generation capacity reinforcements.
12. The IESO stated in 2019 that the Kingsville-Leamington area, where EPLC is located, was experiencing unprecedented demand growth. The IESO recommended a targeted call for applications through the Grid Innovation Fund to validate the performance and business case of promising new technologies, practices, and services across the province.³ The PowerShare Pilot is a result of this targeted call by the IESO.
13. In a subsequent review of the Kingsville-Leamington area in 2022, the IESO stated that a local capacity need arises in 2026 (illustrated in Figure 5 of the Feb. 10, 2022 Windsor Essex IRRP Addendum, reproduced below for ease of reference). This need is expected to be approximately 440 MW by 2035 – of which 410 MW is forecast based on distribution-level

² Windsor-Essex Integrated Regional Resource Plan Addendum, February 10, 2022, section 6.2, page 32, online: <<https://www.ieso.ca/-/media/Files/IESO/Document-Library/regional-planning/Windsor-Essex/Windsor-Essex-IRRP-Addendum-Report.pdf>>.

³ IESO, Windsor-Essex Region Integrated Regional Resource Plan, September 3, 2019, s.2.2.1, online: <https://www.ieso.ca/-/media/Files/IESO/Document-Library/regional-planning/Windsor-Essex/Windsor_Essex_IRRP_Report_20190903.pdf>

greenhouse customers awaiting connection, and the remaining 30 MW is attributed to the already overloaded Kingsville TS.⁴

Figure 5 | Kingsville-Leamington Capacity Need⁶



14. This need in the Leamington area is further evidenced by EPLC in response to Undertaking JT1.9, which shows typical overloading of the 393M27 feeder which persists for approximately 6 months of the year. As further explained at page 73 of the EPLC 2025-2029 DSP, EPLC only has access to two feeders (M24 and M27) that service the Leamington community. During high producing months (approximately 6 months of the year), the load on the M27 feeder exceeds a threshold level of 50%, which limits EPLC's ability to transfer this load to the other feeder in the event of an unexpected failure of one of these two feeders. As currently configured, EPLC would be unable to handle an n-1 contingency event on these feeders.
15. While the need is most pronounced in EPLC's Leamington service area, other similar needs exist in all of EPLC's service areas, driven by economic development and residential growth.⁵

⁴ Windsor-Essex Integrated Regional Resource Plan Addendum, February 10, 2022, section 4.1.2, page 12, online: <https://www.ieso.ca/-/media/Files/IESO/Document-Library/regional-planning/Windsor-Essex/Windsor-Essex-IRRP-Addendum-Report.pdf>

⁵ Undertaking JT1.9.

16. Finally, it is worth noting that the IESO has started a new cycle of regional planning for the Windsor-Essex region on October 23, 2022, and has to-date has completed both a needs assessment report and a scoping assessment report.⁶
17. The PowerShare Pilot is consistent with the Government of Ontario's Letter of Direction which indicates that DERs and future utility business models are "Priorities to Advance in the Near-Term". The Ministry of Energy expects the OEB to continue to work with the Ministry and the IESO toward the Ministry's stated commitment of developing and assessing local and market opportunities for DERs, including through alternative energy business models.⁷

III. ISSUE 7.4: IS THE PROPOSAL FOR A NEW ACCOUNT TO ACCRUE COMMODITY COSTS THAT EXCEED THE COST OF POWER FOR ANY KWH PROCURED BY ESSEX POWERLINES THROUGH THE DISTRIBUTOR'S POWERSHARE PROJECT (EB-2024-0096) APPROPRIATE?

18. EPLC submits that its proposal for the new PowerShare DVAs is appropriate for the reasons summarized below and as more fully set out in the DVA Application, the technical conference presentation and related Q&A, in TC undertaking responses.
19. Electricity commodity costs are pass-through costs for distributors. "Pass-through costs" are amounts that relate to certain commodity, IESO and other third party charges that electricity distributors have paid or that are payable and that are intended to be passed through to their customers without earning a profit or incurring a loss.⁸ Variance Accounts 1588 and 1589 are designed to ensure that customers ultimately pay no more and no less than what their distributor paid for the commodity, and those costs are tracked for recovery on the appropriate basis.⁹ These RSVA accounts are designed to capture the difference between Hourly Ontario Energy Price (HOEP) and Global Adjustment amounts paid to the IESO

⁶ IESO, Windsor-Essex – Key Resources, online: <<https://www.ieso.ca/en/Get-Involved/Regional-Planning/Southwest-Ontario/Windsor-Essex>>

⁷ Ontario Ministry of Energy, Letter of Direction, November 29, 2023, page 3, online: <<https://www.oeb.ca/sites/default/files/letter-of-direction-from-the-Minister-of-Energy-20231129.pdf>>

⁸ OEB, Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition, 31 October 2019, online: <<https://www.oeb.ca/sites/default/files/ltr-Retro-Ratemaking-Guidance-20191031.pdf>>

⁹ *Ibid.*

versus what is collected from LDC customers. They are intended, through the monthly settlement process, to make these costs a “pass-through cost” for LDCs.

20. As EPLC was working through the final steps to implement the pilot before its spring 2024 launch, EPLC realized that Accounts 1588 and 1589 would not work appropriately for commodity costs incurred through the PowerShare Pilot because EPLC, rather than the IESO, will be acting as a Distribution System Operator (“DSO”) to procure both capacity and energy services on behalf customers.

A. The PowerShare DVA Meets the Filing Requirements

21. In this context, EPLC promptly applied for approval of the PowerShare DVA pursuant to Section 2.9.2 of the OEB’s Chapter 2 Filing Requirements.
22. While the original DVA Application was filed in advance of the EPLC’s cost of service (for the timing reasons noted in the application), as noted above, the DVA Application and the Cost-of-Service Application were subsequently combined.
23. Section 2.9.2 of the Chapter 2 Filing Requirements sets out the three requirements EPLC must demonstrate for the establishment of the PowerShare DVA: (i) causation; (ii) materiality; and (iii) prudence.
24. With respect to causation, the forecasted amount of \$554,525 is clearly outside of the base upon which rates were derived. The PowerShare Pilot is unfunded through base rates as it was not contemplated or included in EPLC’s 2018 Cost of Service Application. The Grid Innovation Fund and OEB Sandbox did not issue the joint targeted call for research and demonstration projects until 2021. Costs that will be incurred in the PowerShare DVA will directly result from the PowerShare Pilot.¹⁰
25. With respect to materiality, at the time of the PowerShare DVA Application EPLC’s materiality threshold was \$62,126 and the annual forecast amounts will exceed this threshold in July and August 2024 alone (\$127,500),¹¹ ultimately amounting to a forecasted total of \$554,525 over the 24-month period of the PowerShare Pilot. These amounts, if not

¹⁰ PowerShare DVA Application, PDF page 3, lines 6-12.

¹¹ Partial Settlement Proposal, page 8.

recoverable, would have a significant influence over the operations of EPLC and would threaten the financial viability of EPLC.

26. With respect to prudence, the PowerShare Pilot, as noted above by the IESO, will explore local DERs potential to cost effectively mitigate needs ahead of proceeding with traditional wires solutions in the Kingsville-Leamington area and elsewhere throughout the EPLC service areas.¹² In the mid- and long-term, the PowerShare Pilot will contribute to the exploration of mitigating the constraints that are expected to materialize in diverse regions and across Ontario.¹³ The 50% funding from the IESO presents a unique opportunity for EPLC to execute the PowerShare Pilot in its service area without overburdening local ratepayers.
27. The “do-nothing” alternative to the PowerShare Pilot is, in EPLC’s view, not prudent, especially considering the Government of Ontario’s focus on DSO and the utility of the future, the financial support demonstrated by the IESO, the regulatory support from the OEB, and the need for real data on local DERs to drive prudent investment decision making in the EPLC service area.
28. Finally, EPLC is not proposing any incentive payments in connection with the PowerShare Pilot, even though this is expressly contemplated in the OEB’s *Filing Guidelines for Incentives for Electricity Distributors to Use Third-Party DERs as Non-Wires Alternatives*.

IV. ISSUE 7.5: IS THE PROPOSED EFFECTIVE DATE FOR THE NEW ACCOUNT PROPOSED IN EB-2024- 0096 APPROPRIATE

29. EPLC submits that an effective date of February 19, 2024 for the PowerShare DVA is appropriate. The DVA Application was submitted in advance of the requested effective date, the date corresponded with the launch of the PowerShare Pilot, and it was not possible for EPLC to identify the need for the PowerShare DVA until the vast majority of the PowerShare Pilot design and implementation was completed and EPLC moved to the underlying accounting entries that would be necessary to track the flow of funds.

¹² Windsor-Essex Integrated Regional Resource Plan Addendum, February 10, 2022, section 4.1.2, page 12, section 5.1.1, pages 16-18, section 6.2, page 32 online: <<https://www.ieso.ca/-/media/Files/IESO/Document-Library/regional-planning/Windsor-Essex/Windsor-Essex-IRRP-Addendum-Report.pdf>>

¹³ PowerShare DVA Application, PDF page 4, lines 8-23.

30. It is noteworthy that while EPLC brought its PowerShare Pilot to the OEB's innovation sandbox seeking regulatory guidance, OEB staff did not, at that time, identify a need for the PowerShare DVA.
31. Should the OEB fail to grant the requested effective date, it would make EPLC liable for commodity costs in a manner that is (nearly) unprecedented in Ontario law, and would serve to disincentivize EPLC and other Ontario distributors from ever attempting to pursue a DSO model or equivalent in the future.
32. Indeed, it would treat the PowerShare Pilot commodity costs in the same way the OEB has previously treated accounting errors made by distributors in respect of commodity flow through accounts. This is neither just nor reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16TH DAY OF JULY, 2024

BORDEN LADNER GERVAIS LLP

Per:



John Vellone

Counsel to the Essex Powerlines Corporation