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File No. 22164.3

August 1, 2024

BY EMAIL & RESS

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P1E4

Dear Ms. Marconi:

Re: Essex Powerlines Corporation ("EPLC") – PowerShare Deferral and Variance Account
Ontario Energy Board ("OEB") File No. EB-2024-0022 / EB-2024-0096
Reply Submission

Pursuant to Procedural Order No. 2 issued on July 17, 2024, please find enclosed the Reply Submission of EPLC.

Please contact the undersigned with any questions.

Yours truly,

BORDEN LADNER GERVAIS LLP

Colm Boyle

CB/JV

EB-2024-0022 / EB-2024-0096

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.

REPLY SUBMISSION OF ESSEX POWERLINES CORPORATION

August 1, 2024

Counsel for Essex Powerlines Corporation

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Table of Contents

Page

I. INTRODUCTION

1. On February 16, 2024, Essex Powerlines Corporation ("**EPLC**") filed an application ("**DVA Application**") 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. On July 16, 2024, EPLC filed its Argument in Chief in respect of the DVA Application (the "**DVA AIC**"). Any terms not defined herein shall have the same meaning as ascribed in the Argument in Chief.

3. On July 25, 2024, OEB Staff, the School Energy Coalition ("**SEC**"), and Vulnerable Energy Consumers Coalition ("**VECC**") filed submissions on the DVA Application.

4. This is EPLC's Reply Submission to the submissions of OEB Staff, SEC, and VECC. EPLC repeats and relies upon its submissions in the DVA AIC.

II. THE POWERSHARE PILOT IS FOR THE BENEFIT OF RATEPAYERS

5. Both the SEC and VECC submission are premised on the idea that 50% of PowerShare Pilot costs should not be paid for by EPLC ratepayers as there is little evidence that they specifically will have a commensurate benefit.[1]

6. It appears that Toronto Hydro has encountered a similar issue in relation to interveners opposing Toronto Hydro's request for approval of the Grid Innovation Fund Pilot Project that also received funding from the IESO / OEB Sandbox Joint Targeted Call.[2]

7. The submissions by SEC and VECC ignore the fact that projects submitted to and approved by the Joint Targeted Call (the "**JTC**"), such as the PowerShare Project, were specifically

[1] VECC Submission, para 21; SEC Submission, page 1.
[2] File EB-2023-0195, Toronto Hydro-Electric System Limited, OEB Staff Letter Regarding Settlement Proposal, July 4, 2024

assessed whether they would support grid reliability **and have the potential to reduce costs for ratepayers**.[3] The high-level objectives of the JTC include (**emphasis added**):

> "1. **Demonstrate the potential** for cost-effective services that DERs can provide to consumers, distribution systems and the IESO-controlled grid to unlock ratepayer cost savings.
>
> 2. **Test and demonstrate** the effectiveness of technologies, programs or other innovative strategies to further the understanding of the IESO, the OEB and the sector of the dependability of DERs to improve electricity system reliability. Specific areas of interest include real-time dispatch and compliance of various DER aggregation types, telemetry aggregation services for system visibility and forecasting, and solutions that address barriers in wholesale and distribution settlement and metering.
>
> 3. **Test the effectiveness** of DERs to defer or eliminate the need for traditional electricity infrastructure (e.g., poles and wires) while maintaining or improving reliability.
>
> 4. **Support the development of innovative arrangements** that test new activities or business models where regulatory requirements may prevent or impede those arrangements from proceeding."[4]

8. The fundamental premise of the JTC, and indeed of the PowerShare Pilot, is to evaluate the ability of DERs to reliably defer or avoid costly infrastructure investments that would ultimately be borne by the ratepayers of EPLC,[5] which could include costly upstream transmission connections.[6]

9. The OEB and IESO expect the benefits of the PowerShare Pilot to include demonstrating the ability of a local utility to act as a Distribution System Operator ("**DSO**"), demonstrating ratepayer value, testing the effectiveness of DERs to provide flexibility services to both distribution and bulk systems, and testing distribution level / IESO coordination.[7] Demonstration of services in the EPLC rate zone place EPLC ratepayers in an advantageous

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[3] OEB & IESO, Joint Targeted Call Interim Report, November 2023, page 6.
[4] Ibid.
[5] Application, page 5, lines 12-19; OEB & IESO, Joint Targeted Call Interim Report, November 2023, page 7.
[6] Distribution System Code, s.3.6; For example, see the $20.6 million capital contribution required from InnPower Corporation ratepayers by Hydro One in relation to the Barrie Area Transmission Upgrade (EB-2023-0033).
[7] Technical Conference Transcript, page 23, lines 11-18; OEB & IESO, Joint Targeted Call Interim Report, November 2023, page 11.

position relative to other Ontario ratepayers to adapt to the energy transition as the IESO expects emerging DER technologies will result in a shift to greater decentralization of the electricity grid.[8]

10. In this context, EPLC ratepayers are receiving a suite of customized local services at a 50% discount through the PowerShare Pilot, including DSO market design and coordination protocols, program participation requirements and market rules, recruitment of local DERs, integration of the NODES software platform, and targeted regulatory guidance from OEB Staff.[9] These items alone have required several years of work by EPLC. Further, the PowerShare Pilot has been created and is being executed at cost and without any financial benefit to the utility.[10] Clearly, the costs to ratepayers also follow corresponding benefits to ratepayers.

11. Contrary to the misleading submissions of SEC and VECC,[11] EPLC is contributing both operationally and financially to the PowerShare Pilot. EPLC has elected to forgo seeking approval for any financial incentive mechanisms for the PowerShare Pilot, despite being eligible to do so in the OEB's *Filing Guidelines for Incentives for Electricity Distributors to Use Third-Party DERs as Non-Wires Alternatives.* In addition, EPLC is providing its wealth of technical and energy market expertise. While SEC argues that ratepayers of EPLC are paying 1.63% of the 2025 test year revenue requirement and is disproportionate compared to other utilities,[12] this also demonstrates that the 50% funding EPLC ratepayers received from the IESO is also disproportionately higher when compared to ratepayers of other utilities. EPLC agrees with OEB Staff that the IESO's financial support through the Grid Innovation Fund as a vote of confidence in the value of the PowerShare Pilot.[13]

12. What is entirely absent from the SEC and VECC submissions is an understanding of the importance of funding the innovative pilot projects that were the focus of the JTC, and the large range of **potential** benefits that could be derived from an active market for local DERs in EPLC's service area.

[8] OEB & IESO, Joint Targeted Call Interim Report, November 2023, page 3.
[9] Please see a detailed discussion of these benefits at Undertaking Responses, Appendix B, PDF page 51, s. 1.7.B.
[10] Technical Conference Transcript, page 24 (line 28) and page 25 (line 1).
[11] VECC Submission, para 21; SEC Submission, page 3.
[12] SEC Submission, page 3.
[13] OEB Staff Submission, page 9.

13. It is not clear on what basis SEC and VECC believe that costs of the PowerShare Pilot should be recovered from EPLC or its shareholders. Neither have enumerated any benefits to EPLC or its shareholders in running the Powershare Pilot. It is particularly disappointing that VECC views EPLC's efforts as an easy way to spend and waste ratepayers' monies.[14]

III. REGULATORY BASIS FOR THE APPLICATION

14. SEC relies on the OEB's NWS Guidelines issued "effective immediately" on March 28, 2024 as the appropriate regulatory basis for the DVA Application that was filed on February 16, 2024.[15]

15. The NWS Guidelines do not state they apply retroactively, and it is unfair and improper for SEC to suggest they do. EPLC submits there is a presumption against interference with vested rights and SEC has not rebutted this presumption. The DVA Application was prepared, drafted and filed prior to the issuance of the NWS Guidelines.

16. In any event, the NWS Guidelines support the approval of the PowerShare DVA. Footnote 9 of the NWS Guidelines states that distributors may also take account of other relevant learnings from the OEB's Decision and Order establishing an Integrated Resource Planning ("**IRP**") Framework for Enbridge Gas Inc. (EB-2020-0091).[16] Similar to non-wires solutions, IRP is a planning strategy and process that considers facility alternatives and IRP alternatives (including the interplay of these options) to address the system needs of Enbridge Gas's regulated operations, and identifies and implements the alternative (or combination of alternatives) that is in the best interest of Enbridge Gas and its customers, taking into account reliability and safety, cost-effectiveness, public policy, optimized scoping, and risk management.[17]

17. IRP pilot projects were seen by the OEB as an effective approach to understand and evaluate how IRP can be implemented to avoid, delay or reduce facility projects. The use of pilot projects to better understand the development of IRP and IRPAs was generally used in other jurisdictions as well.[18] The OEB found it unnecessary to provide detailed direction on the

[14] VECC Submission, para 22.
[15] NWS Guidelines at page 4.
[16] See here: https://www.rds.oeb.ca/CMWebDrawer/Record/720232/File/document
[17] Decision and Order EB-2020-0091, page 3.
[18] Decision and Order EB-2020-0091, page 90.

pilot projects and recommended that the nature of the pilots should be responsive to the opportunities that arise.[19] The OEB directed IRP pilot project costs to be tracked in the IRP Costs deferral accounts, and recovery could be requested annually for prudently incurred costs. Enbridge Gas was encouraged to use IRP pilot projects as a testing ground.[20]

18. It is upon these same principles that EPLC filed its DVA Application and request for approval of the PowerShare DVA.

IV. REQUEST FOR NEW DEFERRAL ACCOUNT (ISSUE 7.4)

A. OEB Staff Submission

19. OEB Staff does not take issue with EPLC's request for the PowerShare DVA and agrees it meets the eligibility criteria of causation, materiality, and prudence. OEB Staff views the PowerShare Project as a means to explore local DERs potential to cost effectively mitigate needs ahead of proceeding with traditional wires solutions in the Kingsville-Leamington area and elsewhere throughout EPLC's service areas. OEB Staff also recognizes the potential benefit the PowerShare Project will contribute in the mid- and long-term to mitigating constraints that are expected to materialize throughout Ontario.[21] EPLC agrees with OEB Staff.

20. OEB Staff states that cross-subsidization may occur between EPLC customers and other customers in Ontario as the IESO is only funding 50% of the capacity and energy costs.[22] While EPLC accepts this may be a possibility, it is equally plausible that Ontario ratepayers are cross-subsidizing EPLC customers through the 50% IESO funding for the PowerShare Pilot.

21. EPLC agrees with OEB Staff that the PowerShare Pilot has value to EPLC's customers due to the potential benefits DERs may have in addressing local, regional and provincial system needs.[23] EPLC also agrees this is consistent with the intent of the OEB's *Non-Wires*

[19] Decision and Order EB-2020-0091, page 90.
[20] Decision and Order EB-2020-0091, page 91.
[21] OEB Staff Submission, pages 5, 12, and 13.
[22] OEB Staff Submission, page 5.
[23] OEB Staff Submission, pages 7-9.

Solutions Guidelines for Electricity Distributors ("**NWS Guidelines**") to enable distribution rate funding for NWSs that can avoid/defer infrastructure investments.

22. Finally, EPLC agrees with OEB Staff that the maximum to be recorded in the PowerShare DVA should be capped at an estimated maximum cost of $554,525.[24] EPLC takes no issue with OEB Staff's proposal to revise the draft Accounting Order.[25]

B. The PowerShare Pilot Project is Needed

23. SEC erroneously argues that EPLC's pre-filed evidence does not demonstrate a specific need for the PowerShare Pilot.[26] The JTC alone should be sufficient evidence to demonstrate that the PowerShare Pilot is needed for DERs to not only support local energy needs in the communities where they are located, but also contribute to broader regional and provincial needs.[27] EPLC agrees with OEB Staff that the PowerShare Pilot involves transactions for energy, these transactions are activation payments in service of a capacity need, and are therefore consistent with the use of an NWS to meet a system need and can be considered a distribution activity.[28]

24. EPLC identified two immediate capacity needs on the 393M27 and 23M24 feeders. The EPLC PowerShare Pilot project is aimed at alleviating known constraints on the distribution system in the Leamington service areas on the 393M27 and 23M24 feeders.[29] These feeders are currently overloaded at greater than the 50% threshold. This does not allow EPLC to maintain an N-1 contingency in the event of an unexpected failure of one feeder, therefore limiting EPLC's ability to transfer load to the other feeder in the event of a failure.[30]

25. A second example is the 23M24 feeder in LaSalle where feeder experienced a similar overload condition at greater than the 50% threshold on the same date.[31]

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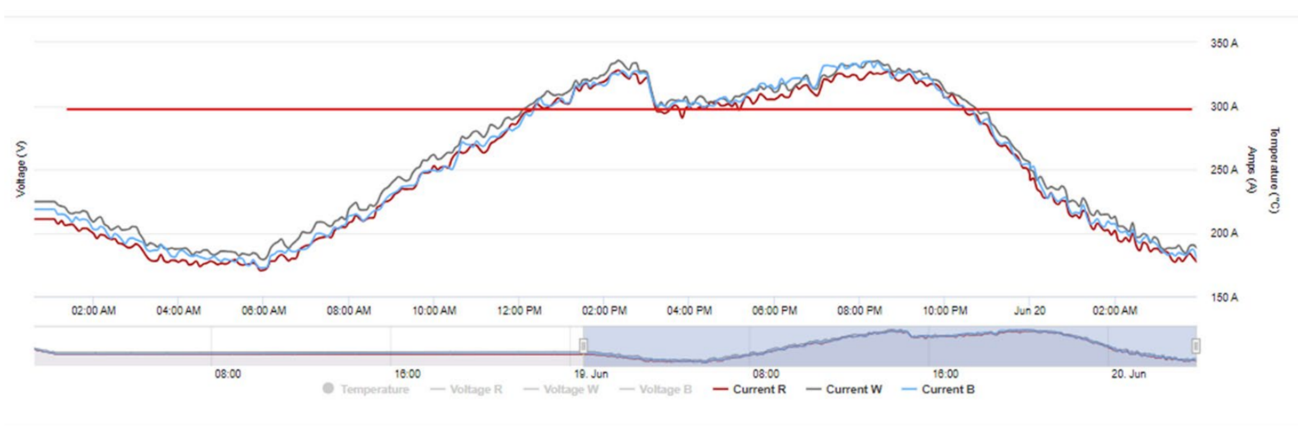
[24] OEB Staff Submission, page 14.
[25] OEB Staff Submission, page 15.
[26] SEC Submission, page 4.
[27] OEB & IESO, Joint Targeted Call Interim Report, November 2023, page 3; Technical Conference Transcript, page 9.
[28] OEB Staff Submission, page 7.
[29] Undertaking Responses, Appendix B, PDF page 51, s. 1.7.B.
[30] Undertaking Responses, Appendix B, PDF page 51, s.1.7.B.
[31] Undertaking JT1.9.



26. While these are only two examples, other similar needs exist in all of EPLC service territories, and it is anticipated that due to economic development and residential growth in the region, occurrences of these overload conditions will increase. Contrary to the submission of VECC,[32] the evidence is that learnings from the PowerShare Pilot are also expected to be widely applicable in DERs addressing current and future capacity needs of EPLC.[33]

27. The implementation of a DSO market may present an alternative option to the need for an additional feeder by providing EPLC with the ability to foresee load constraints and therefore utilize generation from participating DERs to shift loads accordingly and mitigate potential loss of supply or other failures.[34]

C. The PowerShare Pilot is Prudent

28. VECC argues that the "main deficiency" of the DVA Application is that there is "…no rigorous, or even high level, analysis which shows that even in the event that the pilot project proves to be entirely successful that it will result in any economic value to EPLC's ratepayers."[35] Similarly, SEC argues that EPLC has provided "…no evidence to demonstrate that its customers' benefits compensate for the amount they are being asked to pay, which is

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[32] VECC Submission, para 13.
[33] Undertaking JT1.9
[34] Undertaking Responses, Appendix B, PDF page 51, s.1.7.B.
[35] VECC Submission, para 15.

very significant."[36] EPLC submits that the PowerShare Pilot meets the four objectives of the JTC listed above as it demonstrates a potential ability to reduce costs for ratepayers.

29. First, the PowerShare Pilot demonstrates the potential for cost-effective services that DERs can provide. While SEC and VECC are looking for a concrete, defensible benefit-cost analysis, the market data quality to support that analysis would be very poor. The PowerShare Pilot will be the first-of-its-kind in Ontario and as such, does not have a current customer database within the Ontario jurisdiction to draw upon.[37] The old adage of "garbage in, garbage out" applies here since EPLC would need to make untested assumptions in the benefit-cost analysis. For example, EPLC would need to assume, without any market data, the market cost of capacity and energy to perform the benefit-cost analysis. Second, EPLC would also need to assume, without any market data, participation rates of DERs to see what capacity and energy is available in local markets to address overloading conditions and defer or avoid infrastructure investments. These two unvalidated assumptions alone will have a material impact on the results of the benefit-cost analysis.

30. Second, the PowerShare Pilot will test and demonstrate the effectiveness of technologies, programs or other innovative strategies. Capacity payments are not new and have been demonstrated to offer significant benefit to ratepayers by Toronto Hydro as part of their 2020-2024 Local Demand Response Program. This is not a "speculative technology".[38] For example, capacity payments to avoid load transfers at Manby TS and Horner TS resulted in a savings of $4 million to Toronto Hydro ratepayers at a cost of approximately $2 million.[39]

31. What is novel about the PowerShare Pilot is establishing local market prices for both capacity and energy payments. Neither SEC nor VECC address this unique aspect of the PowerShare Pilot in their submissions (nor is it clear that they understand the difference).

32. Third, the PowerShare Pilot will test the effectiveness of DERs to defer or eliminate the need for traditional electricity infrastructure. The submissions by SEC and VECC appear to be misguided and contrary to their own constituent's interests. In fact, it may be of greater

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[36] SEC Submission, page 5.
[37] Undertaking Responses, Appendix B, PDF page 73, s.1.8.2.C.
[38] VECC Submission, para 22.
[39] Toronto Hydro-Electric System Limited Application (EB-2023-0195), Exhibit 2B, Section E7.2 ORIGINAL, page 11 of 35

financial benefit for EPLC to continue with the status quo building more poles and wires to grow its rate base instead of deferring or avoiding those costs through local capacity and energy payments. Without intervention, EPLC ratepayers may be shortly facing a large capital investment in upstream distribution and transmission infrastructure to alleviate overloaded feeders and support commercial and residential growth.[40] The market and technical data generated by the PowerShare Pilot could be used to support a business case to defer or avoid those upstream investments by expansion of the DSO model elsewhere in the EPLC service area by tapping into underutilized / new DERs, which would be a substantial benefit to EPLC ratepayers.

33. Fourth, the PowerShare Pilot will support the development of innovative arrangements that test new activities or business models. EPLC submits it has “right-sized” the PowerShare Pilot to cost-effectively create the testing grounds to obtain the necessary market data to allow for scaling and replication of the PowerShare Pilot across the EPLC service area and other LDCs in Ontario.[41] EPLC needs this market data to quantify the potential benefit to ratepayers and identify other opportunities for ratepayer savings.

34. VECC asserts that it is the peaking demands of greenhouses in southwestern Ontario in general and the Leamington area in particular which are driving these investments.[42] However, the PowerShare Pilot is a time-limited with a money capped PowerShare DVA with the intention of demonstrating the <u>potential</u> for cost-effective services that DERs can provide to consumers.

35. VECC also asserts that the way Accounts 1588 and 1589 operate implicitly mean that “premium” costs cannot be passed through to ratepayers. EPLC notes that the OEB has broad discretion to set rates under the *Ontario Energy Board Act*. This submission by VECC demonstrates a lack of understanding of DER value stacking. Accounts 1588 and 1589 are not designed to accommodate DER value stacking. But that does not mean, de facto, that DER value stacking should not occur. In circumstances where DERs can deliver value to both the provincial transmission system (not reflected in GA or HOEP, but manifests in reduced transmission costs in the future) as well as to the local distribution system (not

[40] Undertaking JT1.9.
[41] Application at page 4, lines 11-17.
[42] VECC Submission, para 15.

reflected in GA or HOEP, but manifests in reduced distribution costs in the future) - and the economics of that value stacking provide a net benefit to ratepayers - then it should not be de facto prohibited.

V. EFFECTIVE DATE FOR THE PROPOSED ACCOUNT (ISSUE 7.5)

36. Despite the submissions by OEB Staff and SEC on the effective date, EPLC maintains it request that the effective date of February 19, 2024 remains appropriate.

37. EPLC's intention of raising its submission of the PowerShare Pilot to the OEB's Innovation Sandbox was not to ascribe blame. Rather, it was to demonstrate that many OEB, EPLC and IESO regulatory experts closely analyzed the PowerShare Pilot but did not foresee the issue described at paragraphs 19 and 20 of the DVA AIC.

38. OEB Staff and SEC have not raised any issues with the prudence of costs that have been incurred since February 19, 2024, but instead are using arbitrary dates that would effectively penalize EPLC for carrying out a novel initiative with an unforeseeable issue. Further, some of the delay was attributable to combining the DVA Application with the Cost of Service Application.

VI. CONCLUSION

39. In this context, EPLC submits that the submissions of SEC and VECC is overly conservative. No distributor would agree to undertake the PowerShare Pilot under the proposed conditions. Ratepayers, the OEB and IESO will never get market price discovery at the shareholder's expense where there is no corresponding benefit. Put simply, the costs do not follow the benefits in the case of EPLC or its shareholder.

40. If the PowerShare is not approved as requested, or on a basis that is acceptable to EPLC, there is a significant risk that EPLC may not proceed with the PowerShare Pilot. Disallowance of the PowerShare Pilot may have a chilling effect on other electricity distributors from pursuing similar initiatives.

41. Nearly all the conditions requested by SEC and VECC are not acceptable to EPLC, with the particularly problematic ones as follows:

    a) Both SEC and VECC request the OEB to assess the value of PowerShare DVA at disposition (or alternatively VECC proposes only 50% of the recorded costs be recovered from ratepayers).[43] It is not reasonable for the shareholder to accept disposition risk for a known pilot project where the claimed benefit is reducing rates for ratepayers. Moreover, the PowerShare Pilot satisfies all of the JTC criteria and has the potential to demonstrate an ability to defer or avoid infrastructure investment. It is unfair for SEC and VECC to foist the financial risk onto EPLC shareholders when it does not stand to benefit.

b) SEC's request for reporting is duplicative and unnecessary. The PowerShare Pilot is part of the JTC and it will be duplicative of the reporting already being performed by the IESO and OEB to the public. The JTC Interim Report states that a final report with results and lessons learned will be published once the projects conclude and results become available. Further reporting is not necessary or a prudent use of finite EPLC resources.

c) Regarding SEC's request to account for MRP, the MRP may not happen or happen on time. If MRP is ultimately implemented by the IESO, LMP doesn't apply to all customer types. EPLC may consider using LMP if applicable and appropriate in the circumstances but reserves its right to assess MRP at the time it happens. This condition is premature and speculative.

42. Accordingly, EPLC requests that the OEB approve the applied for relief in this DVA Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1ST DAY OF AUGUST, 2024

BORDEN LADNER GERVAIS LLP

Per:

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Colm Boyle

Counsel to the Essex Powerlines Corporation

[43] SEC Submission at pages 5-6; VECC Submission para 23.