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# DECISION AND ORDER

**EB-2024-0096/EB-2024-0022**

## ESSEX POWERLINES CORPORATION

### Application for New Deferral Account

**BEFORE:**           **Fred Cass**  
                          Presiding Commissioner

**Pankaj Sardana**  
Commissioner

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**August 29, 2024**

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# 1 OVERVIEW

Essex Powerlines Corporation (Essex Powerlines) provides electricity distribution services to approximately 34,000 mostly residential and commercial customers in the Town of Amherstburg, the Town of LaSalle, the Municipality of Leamington, and the Town of Tecumseh.

Essex Powerlines filed an application with the Ontario Energy Board on February 16, 2024, seeking approval to establish a new deferral account (PowerShare Deferral Account) to capture commodity costs that exceed the Hourly Ontario Energy Price for any kWh procured by Essex Powerlines through its PowerShare pilot project. Essex Powerlines filed a cost of service application on May 1, 2024 seeking approval for changes to the rates that Essex Powerlines charges for electricity distribution, beginning January 1, 2025. As set out in the Ontario Energy Board's March 13, 2024 letter to Essex Powerlines, it was determined that both applications would be combined into one proceeding (collectively known as the Applications) and an accelerated procedural schedule would be followed to address the request for a new deferral account and sub-accounts.

A settlement conference was held as part of this proceeding to address the request for a new deferral account. The settlement conference resulted in a Partial Settlement Proposal among the parties. This Decision addresses the Partial Settlement proposal and the remaining unsettled issues related to the Deferral Account and sub-accounts.

## 2 CONTEXT AND PROCESS

The Applications were filed pursuant to Section 78 of the *Ontario Energy Board Act, 1998* (OEB Act). The Applications were accepted by the Ontario Energy Board (OEB) as complete on May 15, 2024, and a Notice of Hearing was issued on May 24, 2024.

On June 12, 2024, the OEB issued Procedural Order No. 1 granting Hydro One Networks Inc. (HONI), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) intervenor status. On June 21, 2024, pursuant to Procedural Order No. 1, OEB staff submitted a proposed revised Issues List. On June 27, 2024, the OEB issued its Decision on the Issues List, approving the revised Issues List submitted by OEB staff (the Approved Issues List).<sup>1</sup>

On June 24, 2024, pursuant to Procedural Order No. 1, the OEB convened a transcribed presentation and technical conference specifically to address the deferral account request. Essex Powerlines filed its undertaking responses from the technical conference on July 2, 2024.

Procedural Order No. 1 prescribed a separate and expedited settlement process related to the deferral account issues (Issues 7.4 and 7.5 on the Approved Issues List). Following a settlement conference held on July 4, 2024, Essex Powerlines, VECC and SEC (collectively referred to as the Parties) reached a time-limited Partial settlement. OEB staff attended the settlement conference; however, it is not a party to the Partial Settlement Proposal.

On July 8, 2024, the OEB received a letter from Essex Powerlines on the status of the settlement discussions. Essex Powerlines noted that Parties had reached a tentative, time-limited Partial Settlement Proposal and jointly proposed an accelerated schedule for the remaining procedural steps related to the Deferral Account Application once the Partial Settlement Proposal was filed.

The Partial Settlement Proposal was filed on July 12, 2024 and Essex Powerlines' Argument-in-Chief was filed on July 16, 2024. The OEB issued Procedural Order No. 2 setting the dates for Intervenor and OEB staff submissions (July 25, 2024) and Essex Powerlines' reply submission (August 1, 2024).

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<sup>1</sup> [Approved Issues List](#)

### **3 DECISION OUTLINE**

The following issues are addressed in Section Four of this Decision and Order:

- Partial Settlement Proposal
- Issue 7.4 – Request for New Deferral Account
- Issue 7.5– Effective Date for New Deferral Account

Instructions for filing a Draft Accounting Order and subsequent procedural steps are set out in sections 5 and 6 of this Decision and Order.

## 4 DECISION ON PARTIAL SETTLEMENT PROPOSAL AND UNSETTLED ISSUES

### 4.1 Partial Settlement Proposal

Essex Powerlines filed a Partial Settlement Proposal as agreed upon by the Parties on July 12, 2024. The Parties agreed to establish a new Summer Months Deferral Account and sub-accounts to accrue amounts paid to PowerShare participants for local capacity and/or local energy, net of Independent Electricity System Operator (IESO) project funding and Hourly Ontario Energy Price (HOEP) (if applicable), over the period beginning July 1, 2024 through August 31, 2024, subject to a maximum accrual of \$127,500 (Summer Months Deferral Account).

Essex Powerlines expects the summer months of July and August to result in up to 50% of the annual capacity and energy procured as part of the PowerShare pilot project.<sup>2</sup> OEB staff supported establishing the Summer Months Deferral Account as it will allow the PowerShare pilot project to operate during the summer months while providing time for Parties to make submissions on the issues being contemplated in the Deferral Account Application. OEB staff noted that the Summer Months Deferral Account allows cost recovery risk to be shared by ratepayers and the shareholders of Essex Powerlines for the amounts paid to PowerShare pilot project participants (net of Grid Innovation Fund (GIF) funding and HOEP). The Summer months Deferral Account is further subject to a maximum accrual limit of \$127,500.<sup>3</sup>

OEB staff submitted that the Partial Settlement Proposal mitigates the risk of early cancellation of the PowerShare pilot project based on the terms of Essex Powerlines' agreement with the IESO. OEB staff had no concerns with the Draft Accounting Order submitted with the Partial Settlement Proposal.

### Findings

The Partial Settlement Proposal sets out four sample scenarios which illustrate whether the Summer Months Deferral Account or the PowerShare Deferral Account will apply for the months of July and August, 2024. One of the scenarios is that the PowerShare Deferral Account is approved with recovery for July and August equal to or above 50%,

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<sup>2</sup> EB-2024-0022/EB-2024-0096 Partial Settlement Proposal, page 8

<sup>3</sup> This amount has been determined based on estimated participation in the local energy market over July and August 2024 of up-to 850 MW (which is approximately 50% of the Phase 1 target of 1,700 MW) net of 50% project funding and not to exceed the maximum of \$300.00 per MW as budgeted in the project proposal and contribution agreement (850 MW X \$300 X 50% = \$127,500).

or greater than \$63,750. In this scenario, the Partial Settlement Proposal provides that the PowerShare Deferral Account is applicable.

In the findings below, the OEB approves the PowerShare Deferral Account, subject to a cap, such that the maximum amount of costs to be recorded in the account is \$350,000. Given that the OEB is approving the PowerShare Deferral Account with an effective date of July 1, 2024, and that the overall cap of \$350,000 allows recording in the account of costs greater than \$63,750 for the months of July and August 2024, it follows from the Partial Settlement Proposal that the PowerShare Deferral Account is applicable for those months, rather than the Summer Months Deferral Account. Accordingly, the Summer Months Deferral Account serves no purpose and it is unnecessary for the OEB to approve the Partial Settlement Proposal.

## **4.2 Request for New Deferral Account (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 pilot project (EB-2024-0096) appropriate?**

In the Deferral Account Application, Essex Powerlines sought to establish the PowerShare Deferral Account and sub-accounts related to the PowerShare pilot project. Essex Powerlines requested a start date of February 19, 2024 and an end date of March 31, 2026 for the new deferral account (PowerShare Deferral Account).

Essex Powerlines stated that the PowerShare pilot project is intended to test the concept of non-wires solutions (NWS) incentive concepts and evaluate how these may affect market outcomes, including participation levels and price discovery. Essex Powerlines stated that it planned to make payments to Distributed Energy Resource (DER) owners in two ways – for capacity and for energy. Essex Powerlines intends to contract up to 7,500 MWh of capacity [*sic*], and that capacity will be secured at approximately 14% of the maximum project budget at \$300/MWh.<sup>4</sup> When the capacity is activated, project participants will be paid for energy at a contracted rate determined by the market platform based on signals of location, quantity and price. Energy will be purchased at rates not exceeding the remaining 86% of the maximum \$300/MWh.

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<sup>4</sup> EB-2024-0096 Deferral Account Application, page 2

These payments will be offset 50% by the IESO's GIF funding, and the energy at market price, HOEP.<sup>5</sup>

Essex Powerlines stated that the PowerShare Deferral Account would record the actual costs that are greater than the cost of power as a direct result of participating in the PowerShare pilot project and which costs are not covered by IESO funding. Only amounts that are paid to project participants to procure capacity and electricity that exceed the price at which electricity could be purchased from the IESO's grid (i.e., the HOEP in the existing market) and net of the 50% IESO GIF funding will be considered for inclusion and recovery in this deferral account.

### **The PowerShare pilot project as a Distribution Activity**

OEB staff submitted that the activities Essex Powerlines plans to undertake through the PowerShare pilot project constitute distribution activities within the meaning of s. 71(1) of the OEB Act, a view consistent with earlier guidance provided by OEB staff to Essex Powerlines through the Innovation Sandbox.

OEB staff also noted that neither OEB staff's guidance provided by the Innovation Sandbox, nor the IESO's funding through the GIF, constitutes OEB approval of distribution rate funding for the PowerShare pilot project. Requests for distribution rate funding for the PowerShare pilot project are subject to OEB approval through an application to the OEB. SEC made similar submissions.

### **Commodity Pass-through Deferral Accounts and the PowerShare Deferral Account**

In its Argument-in-Chief, Essex Powerlines stated that electricity commodity costs are pass-through costs for distributors. Such pass-through costs are tracked for recovery in the OEB's commodity pass-through Accounts 1588 and 1589. However, Essex Powerlines noted that Accounts 1588 and 1589 would not work appropriately for commodity costs incurred through the PowerShare pilot project as Essex Powerlines rather than the IESO will be acting as a Distribution System Operator (DSO) to procure both capacity and energy services on behalf of the customers.<sup>6</sup>

SEC submitted that the commodity costs Essex Powerlines is seeking to record in the PowerShare Deferral Account are unlike the commodity costs that are given pass-

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<sup>5</sup> HOEP is to be replaced by the sum of the Day-ahead Market Ontario Zonal Price and the Load Forecast Deviation Charge resulting from the anticipated implementation of the IESO's Market Renewal Program (MRP).

<sup>6</sup> EB-2024-0022/EB-2024-0096 Argument-in-Chief, page 7



through treatment through Accounts 1588 and 1589 which reflect variances in amounts collected from customers for consumption and the actual costs charged to the utility from the IESO.<sup>7</sup> SEC further stated that the costs in the proposed PowerShare Deferral Account have nothing to do with customer consumption. SEC submitted that a portion of the recorded costs in the PowerShare Deferral Account may be for a commodity for which Essex Powerlines is paying DER participants, but the purpose (i.e., broader learnings, reliability and deferred need for a traditional asset) is for a distribution benefit.<sup>8</sup> SEC submitted that Accounts 1588 and 1589 record pass-through costs as “the underlying costs are the responsibility of the IESO’s various procurement and dispatch decisions, which are subject to its own oversight and approval process.”

In its submission, VECC noted that the reason the proposed costs in the PowerShare Deferral Account are not pass-through costs is that “the commodity costs in question are being incurred at a premium that would not, in the absence of the PowerStream project, be otherwise be incurred.” [*sic.*]<sup>9</sup>

OEB staff also submitted that the PowerShare Deferral Account is not a commodity pass-through account. The disposition of the PowerShare Deferral Account requires a prudence review, unlike the OEB’s mechanistically calculated pass-through variance accounts including Account 1588 and Account 1589. Additionally, the PowerShare Deferral Account could hold a significant balance of up to \$554k (based on estimated HOEP) while the variances in the pass-through commodity accounts are not expected to be material.

### **Eligibility Criteria for a New Deferral Account**

Essex Powerlines submitted that the criteria of causation, materiality and prudence are met. In its Argument-in-Chief, Essex Powerlines stated that the forecast amount of \$554,525 is outside of the base upon which rates were derived and the amounts forecast are above the materiality threshold of \$62,126 (established in its 2018 cost of service).<sup>10</sup> SEC submitted that the requirements for a new Deferral Account, as set out in Chapter 2 of the OEB’s *Filing Requirements for Electricity Distribution Rate Applications*, are not applicable, at least for the period up until January 1, 2025, as they are intended for cost of service applications. SEC submitted that the request should be assessed under the NWS Guidelines, which allow for recovery of costs of non-wires solutions outside of rebasing. SEC noted that some of the criteria are common to

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<sup>7</sup> EB-2024-0022/EB-2024-0096 SEC submission, page 5

<sup>8</sup> *Ibid.*

<sup>9</sup> EB-2024-0022/EB-2024-0096 VECC submission, page 8

<sup>10</sup> *Ibid.*

Chapter 2 Filing Requirements and the NWS Guidelines, but the NWS Guidelines provide additional guidance as to the requirements for funding of NWS, and consider need as an explicit category.

Whether framed as relevant to prudence or need, all parties made submissions on whether the PowerShare pilot project would address a system need and provide value to Essex Powerlines' customers.

Essex Powerlines stated that the PowerShare pilot project will explore the potential for DERs to mitigate the need for traditional wire solutions in the Kingsville-Leamington as well as other areas serviced by Essex Powerlines.<sup>11</sup> Essex Powerlines identified two immediate capacity needs on the 393M27 and 23M24 feeders, in addition to other similar needs across its service territories due to economic development and residential growth in the region. Essex Powerlines stated that the PowerShare pilot project, which will be the first of its kind in Ontario, will demonstrate the potential for cost-effective services that DERs can provide. Due to the lack of a current customer database within Ontario, untested assumptions would be required for a benefit-cost analysis. Essex Powerlines further stated that the unique aspect of the PowerShare pilot project is the establishment of local market prices for both capacity and energy payments. Essex Powerlines further stated that the PowerShare pilot project was designed to generate essential market data for scaling and replication across its service area and other LDCs in Ontario, aiming to quantify potential benefits and identify savings for ratepayers.

OEB staff noted that the learnings from the PowerShare pilot project will benefit Essex Powerlines, the IESO and potentially others in the sector and that there was the possibility for cross-subsidization. However, OEB staff submitted that the potential benefits of the PowerShare pilot project to Essex Powerlines justified the costs that would be borne by its customers, given Essex Powerlines' anticipated distribution system needs, and the fact that, as a result of the PowerShare pilot project, Essex Powerlines would have increased ability to make use of NWS to address these expected system needs beyond the pilot period. OEB staff noted that this aligned with the intent of the OEB's NWS Guidelines to enable distribution rate funding for NWS that could avoid or defer infrastructure investments. Essex Powerlines acknowledged that cross-subsidization may be a possibility, but submitted that it was equally plausible that Ontario ratepayers could be cross-subsidizing Essex Powerlines' customers, given the 50% IESO funding for the PowerShare pilot project.

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<sup>11</sup> EB-2024-0022/EB-2024-0096 Argument-in-Chief, page 8

SEC noted that Essex Powerlines' rationale for the value of the PowerShare pilot project relied on the growing need for upstream transmission and generation capacity, and that Essex Powerlines could not demonstrate that a specific capital investment for Essex Powerlines would be deferred by the PowerShare pilot project. SEC also submitted that Essex Powerlines had not done any analysis regarding the cost of the reliability benefits or potential savings for any future deferred assets. SEC therefore submitted that the pilot project's costs, even after the IESO contribution, appeared to be disproportionately borne by Essex Powerlines' customers. For this reason, SEC submitted that the OEB should establish an expanded expectation regarding what the prudence assessment will look like at disposition. SEC submitted that Essex Powerlines should be required to demonstrate not just that it is operating the PowerShare pilot project appropriately, but that the benefit to its customers specifically compensates for the amount of money being sought for disposition. If it cannot, then a portion of the amounts recorded should be borne by the shareholder, and not by Essex Powerlines' customers. SEC also suggested that the OEB could potentially modify this approach to reduce the cost recovery risk for Essex Powerlines, by establishing a floor on the amount of recovery, such that costs below this floor would be subject only to a standard prudence review.

VECC submitted that Essex Powerlines has not provided detailed load projections or a cost-benefit analysis, and thus, there was no way to test whether the PowerShare pilot project would result in net benefits. VECC also notes that it appeared that peaking demands of the greenhouse sector were driving the need for the PowerShare pilot project, therefore, a subsequent cost allocation modeling may support the contention that PowerShare pilot project related costs should be recovered from the cost-causing GS>50 class.<sup>12</sup>

OEB staff and VECC also noted that additional costs (outside of the deferral account) would be needed to implement the PowerShare pilot project, and that Essex Powerlines would seek recovery of those costs through its cost of service application. The total estimated cost to Essex Powerlines' customers for the PowerShare pilot project is \$1.134 million (inclusive of the maximum estimated cost of \$554,525 to be recorded in the proposed deferral account). OEB staff took these additional costs into consideration in reaching its conclusion that the potential benefits of the PowerShare pilot project to Essex Powerlines justify the costs that would be borne by its customers. VECC raised the concern that the OEB may decide in the cost of service application, based on more detailed and tested evidence with respect to related capital investments, that such

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<sup>12</sup> EB-2024-0022/EB-2024-0096 VECC submission, page 8

investments are imprudent or at least should be delayed until Essex Powerlines is able to produce a financial business case supporting PowerShare related investments.<sup>13</sup>

OEB staff submitted that the requested Deferral Account and sub-accounts met the causation, materiality, and prudence criteria for establishing new accounts.<sup>14</sup> The costs to be recorded in the PowerShare Deferral Account have not been contemplated in the established rates. The annual forecast amount of \$554k exceeds Essex Powerlines' materiality threshold in its previous and current rebasing applications. Additionally, while OEB staff submitted that the prudence criteria for establishing the PowerShare Deferral Account had been met, due to the potential benefits of the PowerShare pilot project to Essex Powerlines' customers, OEB staff noted that the prudence of costs recorded in the account will be determined when Essex Powerlines seeks the disposition of the PowerShare Deferral Account balance, through a standard prudence assessment.

### **Allowable Amount in PowerShare Deferral Account**

SEC stated that if the OEB were to approve the PowerShare Deferral Account, a maximum cap of \$554,525 should be placed on recovery to incentivize Essex Powerlines to control costs and the Accounting Order should specify an end date of March 31, 2026.<sup>15</sup> Further, SEC stated that the project milestone reports to the IESO should be made public and that at the completion of the PowerShare pilot project, a full report should be made available for the public.

VECC submitted that the OEB should allow no more than 50% of any costs recorded in the PowerShare Deferral Account to be recovered from ratepayers as "shareholders should also have skin in the game" and bear some of the risk.<sup>16</sup> VECC also noted that the method of recovery of the balances should be determined when Essex Powerlines seeks disposition.

OEB staff submitted that the maximum allowable amount to be recorded in the PowerShare Deferral Account should be capped at the estimated maximum cost of \$554,525. This cap is based on maximum capacity and ensures certainty regarding the IESO funding and the estimated HOEP, while providing sufficient limits on the potential exposure for Essex Powerlines' customers. Any additional costs should be borne by Essex Powerlines' shareholders.

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<sup>13</sup> EB-2024-0022/EB-2024-0096 VECC submission, page 8

<sup>14</sup> [Chapter 2 Filing Requirements for Electricity Distribution Rate Applications](#), December 15, 2022, S.2.9.3, p. 66-67

<sup>15</sup> EB-2024-0022/EB-2024-0096 SEC submission, page 6

<sup>16</sup> EB-2024-0022/EB-2024-0096 VECC submission, page 8

In its Reply Submission, Essex Powerlines agreed that the maximum to be recorded in the PowerShare Deferral Account should be capped at an estimated maximum cost of \$554,525.

## Findings

The OEB approves the proposed PowerShare Deferral Account, subject to: (i) a condition that the costs recorded in the account will be capped at a maximum amount of \$350,000 (see Allowable Amount in PowerShare Deferral Account, below); and (ii) conditions regarding public reports (see Other Conditions, below).

This Decision and Order is concerned with the PowerShare Deferral Account and costs proposed to be recorded in the account; it does not deal with any other costs of the PowerShare pilot project.

Under section 1 of the OEB Act, one of the objectives that guide the OEB in carrying out its responsibilities in relation to electricity is to “facilitate innovation in the electricity sector”. Another of the objectives set out in section 1 is that the OEB is to protect the interests of consumers “with respect to prices and the adequacy, reliability and quality of electricity service”.

The PowerShare pilot project has received support from the IESO as an innovative project, in that the IESO has agreed to provide financial assistance for the project from its GIF.<sup>17</sup> Essex Powerlines has provided general, qualitative but not quantitative, evidence of value to Essex Powerlines, and potential benefits to its ratepayers, associated with a pilot project of this nature.

In considering a request to establish a new deferral or variance account, the OEB considers three criteria: causation, materiality and prudence. For the reasons that follow, the OEB finds that the PowerShare Deferral Account meets these criteria.

**Causation:** The OEB’s causation requirement for the creation of a new deferral or variance account is that the forecasted expense must be clearly outside of the base upon which revenue requirement(s) were derived. The costs to be recorded in the proposed account relate to the PowerShare pilot project and are not part of the base upon which revenue requirement for Essex Powerlines was derived. The OEB finds that the causation criterion for the establishment of the PowerShare Deferral Account has been satisfied.

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<sup>17</sup> Grid Innovation Fund Contribution Agreement, page 1, Response to Undertaking JT1.4, Appendix B.

**Materiality:** The materiality criterion requires that the forecasted amounts to be recorded in the proposed account must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor. Based on approved 2018 revenue requirement, the materiality threshold for Essex Powerlines is approximately \$62,000 and, in the current cost of service application by Essex Powerlines, the materiality threshold is approximately \$92,000. While the OEB is not approving the revenue requirement in the current cost of service application at this time, the OEB accepts that the costs of the PowerShare pilot project to be recorded in the proposed account are material to Essex Powerlines and are likely to have a significant influence on the operation of Essex Powerlines. The OEB finds that the materiality criterion for the establishment of the PowerShare Deferral Account has been satisfied.

**Prudence:** The prudence criterion requires that the nature of the costs and forecasted quantum must be reasonably incurred, although the final determination of prudence will be made at the time of disposition. Given the identified capacity needs in the Essex Powerlines service territory, the OEB accepts that, subject to the OEB's findings regarding the forecasted quantum (see Allowable Amount in PowerShare Deferral Account, below), costs proposed to be recorded in the PowerShare Deferral Account will be reasonably incurred to explore the potential for DERs to mitigate the need for traditional wires-based solutions in that service area. The OEB finds that the prudence criterion for the establishment of the PowerShare Deferral Account has been satisfied.

While the OEB finds that the prudence criterion for the establishment of the proposed account has been met on the evidence in this case, the final determination of the prudence of amounts recorded in the PowerShare Deferral Account will be made at the time when the OEB considers the disposition of such amounts. The OEB is approving the creation of the proposed account, but it is making no findings at this time regarding either the prudence of amounts actually recorded in the account or the extent to which any such amounts will ultimately be passed on to customers through rates.

The OEB has reached this decision to approve the PowerShare Deferral Account in the unique circumstances of the PowerShare pilot project, which was successful in qualifying for funding through the IESO's GIF and for support from the OEB Innovation Sandbox,<sup>18</sup> and which will be of benefit to Essex Powerlines as it looks to non-wires solutions in order to create flexibility within its distribution system and to mitigate local constraints on the grid. The OEB's decision to approve the PowerShare Deferral

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<sup>18</sup> OEB Innovation Sandbox letter dated May 31, 2022, page 1.

Account should not be taken as any indication that the same, or a similar, conclusion will be reached in other cases.

**Allowable Amount in PowerShare Deferral Account:** Essex Powerlines has agreed with the submission of OEB staff that the amount to be recorded in the proposed Deferral Account be capped at \$554,525.<sup>19</sup> The sum of \$554,525 is an estimate by Essex Powerlines of the maximum costs of the PowerShare pilot project to be recorded in the proposed account.<sup>20</sup> It is not an assessment of the value of the pilot project to Essex Powerlines, nor is it an assessment of benefits to ratepayers of Essex Powerlines.

As noted above, Essex Powerlines provided general, qualitative evidence about benefits for its customers from the PowerShare pilot project. In reply argument, it referred to a large range of **potential** (emphasis in original) benefits that could be derived from an active market for local DERs in the Essex Powerlines service area.<sup>21</sup>

It does not follow, though, that if, at a general level, the PowerShare pilot project has value for Essex Powerlines and potential benefits for the ratepayers of Essex Powerlines, then it is reasonable for ratepayers to be responsible for an amount up to the estimated maximum amount of costs that will be recorded in the proposed account, whatever those estimated costs may be. Essex Powerlines has provided little or no evidence to support a conclusion that the maximum estimated costs of \$554,525 represent a reasonable amount for potential future recovery from its ratepayers when (subject to a prudence review) the balance recorded in the proposed account is cleared.

In reviewing the proposed PowerShare Deferral Account and the proposed cap of \$554,525, the OEB finds it necessary to balance the interests of ratepayers with the need to incent prudent financial management by Essex Powerlines. While the proposed cap of \$554,525 is based on forecast costs of HOEP and aims to provide a safeguard against excessive charges to customers, the OEB finds that a more conservative approach is warranted for the following reasons:

**Ratepayer Impact:** Essex Powerlines is a relatively small utility and imposing a maximum cap of \$554,525 for a pilot program may place an undue financial burden on its ratepayers. Given the size and financial capacity of the utility, the OEB finds that a

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<sup>19</sup> Reply argument, paragraph 22.

<sup>20</sup> Deferral Account Application, page 3.

<sup>21</sup> Reply argument, paragraph 12.

lower cap of \$350,000 is more appropriate to ensure that the cost impact on Essex Powerlines' customers remains manageable and reasonable.

**Incentivizing Cost Control:** The OEB believes that a reduced cap of \$350,000 will serve as a sufficiently strong incentive for Essex Powerlines to exercise rigorous cost control measures, while still enabling Essex Powerlines to procure sufficient capacity and energy to achieve the desired learnings from the pilot. Essex Powerlines will then be in a good position to build on the pilot results and determine whether to pursue additional procurement of resources to alleviate local area system constraints.

**Financial Risk Sharing:** A lower cap better reflects the need for shared financial responsibility. It will help to ensure that Essex Powerlines will adhere to greater accountability and prudent financial management in its proposed pilot project.

**Proportionality:** SEC submitted that the forecasted PowerShare Deferral Account balance, when annualized, would represent 1.63% of the proposed 2025 revenue requirement for Essex Powerlines.<sup>22</sup> The cap of \$350,000, when annualized, represents approximately 1% of the proposed 2025 revenue requirement. While 1% of revenue requirement most certainly cannot be seen as insignificant, nor as a precedent or standard for any other case, the OEB's view is that it accords with proportionality in the particular circumstances of this case. The \$350,000 cap is more proportional to the utility's size and financial capacity, and accords with the principle of ensuring that ratepayers do not bear an unreasonable burden. This cap provides a reasonable buffer while still aligning with the objective of controlling costs and maintaining regulatory oversight.

In summary, while Essex Powerlines' proposed cap of \$554,525 provides a maximum threshold, setting a lower cap of \$350,000 is a more balanced approach that considers the financial impact on ratepayers and incentivizes cost control. This approach ensures that Essex Powerlines remains accountable and that ratepayers are protected from excessive costs, while still supporting the objectives of the PowerShare pilot project.

### Other Conditions

The OEB agrees with submissions made by SEC about public disclosure of reports relating to the PowerShare pilot project. As a condition of approving the PowerShare Deferral Account, the OEB requires that Essex Powerlines make public, on its website, the milestone reports for the PowerShare pilot project that it provides to the IESO. The OEB further requires that Essex Powerlines make public, on its website, a more

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<sup>22</sup> EB-2024-0022/EB-2024-0096 SEC submission, page 3.



complete report on outcomes and learnings, especially those with potential benefits for customers of Essex Powerlines, after the completion of the PowerShare pilot project. The Final Report and DSO Pilot Assessment Report that Essex Powerlines will develop as part of the GIF Contribution Agreement may satisfy this requirement, should these reports fully address the implications and learnings relevant to customers of Essex Powerlines specifically.

### **4.3 Effective Date for New Deferral Account (issue 7.5)**

#### **Is the proposed effective date for the new account proposed in EB-2024-0096 appropriate?**

Essex Powerlines requested the effective date of February 19, 2024 for the PowerShare Deferral Account. In its Argument-in-Chief, Essex Powerlines stated that the effective date of February 19, 2024 was appropriate because it aligned with the launch of the PowerShare pilot project. Further, Essex Powerlines stated that “it was not possible...to identify the need for the PowerShare Deferral Account until the vast majority of the PowerShare Pilot design and implementation was completed and EPLC developed the appropriate accounting entries necessary to track the flow of funds.”<sup>23</sup>

SEC submitted that a more appropriate date would be May 30, 2024, the date on which it was required to publish the Notice for the application. SEC noted that the impact of the effective date is not material – as of June 24<sup>th</sup>, approximately \$3,500 had been incurred in participant costs, as stated by Essex Powerlines.<sup>24</sup>

VECC took no position on the appropriate implementation date should the account be approved in the proposed or some other form.

OEB staff submitted that, if the PowerShare Deferral Account is approved, it would be reasonable to have the effective date of the account as July 1, 2024. This aligns with the effective date of the Summer Months Deferral Account, allowing for recording of the transaction costs in the summer peak months, as outlined in the partial settlement proposal. Additionally, setting the effective date as July 1, 2024, would have no significant financial impact on Essex Powerlines, as the total costs incurred to date were minimal.

In its Reply Submission, Essex Powerlines maintained that the effective date of February 19, 2024 remained appropriate. Essex Powerlines stated that given OEB staff

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<sup>23</sup> Argument-in-Chief, page 8

<sup>24</sup> Technical Conference Transcript, page 22

and SEC had not questioned the prudence of costs incurred, using arbitrary dates would effectively penalize Essex Powerlines for undertaking a novel initiative with an unforeseeable issue and for combining the Deferral Account Application with the cost of service application.

## Findings

For a number of reasons, OEB staff submitted that the effective date for the recording of costs in the PowerShare Deferral Account should be July 1, 2024. The OEB agrees generally with the submissions of OEB staff in this regard.

Essex Powerlines argued that OEB staff had put forward an arbitrary date that would effectively penalize Essex Powerlines. However, during the Technical Conference held on June 24, 2024, Essex Powerlines was asked about timing of the PowerShare pilot project. In response to this question, the evidence was that the process of moving ahead with potential participants in the PowerShare pilot project had taken longer than was expected when Essex Powerlines filed its application in February of 2024. As at the time of the Technical Conference, Essex Powerlines said that several participants were just then ready to engage with the market and “the timing just happens to be kind of right now”.<sup>25</sup>

The Deferral Account Application filed by Essex Powerlines states that the costs to be recorded in the proposed account are “commodity costs that exceed the cost of power” for any kWh procured by Essex Powerlines through the PowerShare pilot project.<sup>26</sup> An effective date of July 1, 2024 for amounts recorded in the account is aligned with the timing of when, according to its evidence, Essex Powerlines was in a position to launch the pilot project and begin incurring such costs. The PowerShare Deferral Account will have an end-date of March 31, 2026.

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<sup>25</sup> Technical Conference transcript, pages 67-68.

<sup>26</sup> Deferral Account Application, page 2.

## 5 IMPLEMENTATION

Essex Powerlines shall file an updated Draft Accounting Order to reflect the findings in this Decision.

SEC and VECC are eligible to apply for cost awards in this combined proceeding. The OEB will make provisions for intervenors to file their cost claims at a later date.

## 6 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Essex Powerlines shall file an updated Draft Accounting Order for the PowerShare Deferral Account, by **September 5, 2024**.
2. Should SEC, VECC and OEB staff wish to comment on the Draft Accounting Order, they must do so by filing a submission with the OEB and copying Essex Powerlines by **September 12, 2024**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0096/EB-2024-0022** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Amber Goher at [amber.goher@oeb.ca](mailto:amber.goher@oeb.ca) and OEB Counsel, James Sidlofsky at [James.Sidlofsky@oeb.ca](mailto:James.Sidlofsky@oeb.ca).

**DATED** at Toronto August 29, 2024

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar