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File No. 98736.12

May 5, 2025

BY EMAIL and RESS

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th floor
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Lakeland Power Distribution Ltd. (“LPDL”)
2025 Cost of Service Application (EB-2024-0039) (“Application”)
Reply Argument**

On March 27, 2025, the Ontario Energy Board (“OEB”) issued its Partial Decision and Order accepting the settlement proposal as filed by the parties on March 18, 2025. The OEB found that “...disposition of Account 1595 (2021) and (2022) **is not part of this Application**...” and set a process for written submissions on amounts recorded in Account 1595 in 2021 and 2022. The amounts at issue recorded in Account 1595 is an under-recovery of \$345,659 for 2021 and an over-recovery of \$50,942 for 2022 from non-RPP Class B GA customers, as described in section 9.2.2 of the Application (“**Unsettled Issue**”).

On April 17, 2025 and April 21, 2025, OEB Staff and the School Energy Coalition (“SEC”) respectively filed their submissions on the Unsettled Issue. This letter constitutes the reply of LPDL to those submissions.

1) Assessing Account Entries Now is Premature

LPDL initially requested disposition of the 2021 balance for Account 1595 as part of the Application but the 2022 balance in Account 1595 was never requested for disposition. In response to interrogatory 9-Staff-80 LPDL amended the requested relief at the direction of OEB Staff to no longer request disposition of the 2021 balance of Account 1595. OEB Staff identified that the 2021 balance for Account 1595 was not yet eligible for disposition until 2026 rates due to section 2.9.1.3 of the Chapter 2 Filing Requirements, which states that distributors are expected to request disposition of residual balances in Account 1595 Sub-accounts for each vintage year once and on a final basis.

Given the withdrawal of the requested relief, LPDL did not believe it needed to file the requisite facts and evidence to support a decision on Account 1595 for 2021 or 2022 on the Unsettled Issue. It would be procedurally unfair for this OEB panel to make a decision on a matter that LPDL never had an opportunity to submit a complete evidentiary record, adjudicate relief that was not requested by LPDL, and the Unsettled Issue was not part of the issues list.

OEB Staff and SEC are asking this OEB panel to assess the prudence of amounts recorded in Account 1595 related to the Unsettled Issue, but those amounts are not being requested for disposition in this proceeding. LPDL submits that having this OEB panel assess entries into Account 1595 now and then a future OEB panel assess these same (or even potentially different) amounts when they are requested for disposition in a future proceeding is duplicative and not an efficient use of scarce OEB resources. If the OEB engages in the review of account entries here, there is a significant risk that similar requests could be made by interveners at future proceedings to unnecessarily double the administrative burden on the OEB for deferral and variance accounts.

An assessment of prudence will be made by a future OEB panel at the time Account 1595 is brought forward for disposition by LPDL. This OEB panel should not fetter the discretion of that future OEB panel, nor should it presuppose what entries into Account 1595 may be brought forward by LPDL for disposition. It is unnecessary, duplicative and premature for this OEB panel to assess isolated entries from 2021 and 2022 in Account 1595 at this time. Ontario's Ministry of Energy and Electrification expects the OEB to be efficient and effective in carrying out its role as regulator of a fast-evolving energy sector and to use public resources efficiently.¹

It is not clear to LPDL what relief could be awarded by this OEB panel. LPDL is no longer seeking any relief in this application in respect of the Unsettled Issue. Indeed, the OEB issued its Final Rate Order for the cost of service application on April 29, 2025 allowing LPDL to change its electricity distribution rates as of May 1, 2025. Intervenors agreed that rates in this Application will not be impacted by a decision of the OEB on the Unsettled Issue.

The Unsettled Issue is simply an attempt by SEC to create a new avenue to have a second kick at the can when challenging deferral and variance account balances. This proceeding is not the appropriate forum to deal with the Unsettled Issue and is an issue that should be dealt with by a future OEB panel when LPDL requests disposition of Account 1595.

2) Alternative Submission on Substantive Arguments of SEC and OEB Staff

If the OEB decides the Unsettled Issue is within the scope of this proceeding, LPDL provides the following submission in the alternative.

Reply Submission to SEC

SEC proposes that the OEB: (i) disallow 50% of the under-recovery correction of \$345,659 from ratepayers in 2021; (ii) deny recovery of interest on the 2021 under-recovery; and (iii) refund in full

¹ Letter of Direction to OEB, December 19, 2024.

the 2022 over-recovery of \$50,942. This proposal is made with a view to “send the appropriate message” that Account 1595 errors have consequences and bases this assertion on three grounds.

The first ground argued by SEC is that for Account 1595 there is no concept of retroactivity or finality in this account due to the misguided concept of “residual balances” going on year after year. This assertion is not correct.

As noted by OEB Staff, per section 2.9.1.3 of the Chapter 2 Filing Requirements, distributors become eligible to seek final disposition of residual balances in Account 1595 two years after the expiry of the rate rider. As noted below, the OEB states that the purpose of Account 1595 is to true-up between amounts approved for disposition and the amount actually disposed. LPDL may seek in a future rate application to true-up the balance in Account 1595 for 2021 and 2022 between the amounts that were approved for disposition and the amount actually disposed to ratepayers. LPDL will be using Account 1595 for its intended purpose. Disposal of Account 1595 on a final basis two years after the expiry of a rate rider does not necessarily mean that residual balances will accumulate indefinitely, as asserted by SEC.

Furthermore, section 3.2.6.3 of Chapter 3 of the Filing Requirements provides that applicants are expected to request disposition of residual balances in Account 1595 sub-accounts for each vintage year only once, on a final basis and that no further transactions are expected to flow through the Account 1595 sub-accounts once the residual balance has been disposed.

In any event, it is not clear to LDPL what retroactive ratemaking concerns exist in respect of Account 1595 when it has never been disposed, nor is it eligible to be disposed per the OEB’s Chapter 2 Filing Requirements.

The second ground argued by SEC is that, based on a series of OEB cases involving final dispositions of deferral and variance accounts, the OEB has not yet imposed a more significant disallowance as “the utility has generally been let off the hook” where intergenerational equity issues have arisen.

SEC erroneously argues that ratepayers are being required to pay after the fact for LDC errors. However, SEC does not identify any intergenerational inequity concerns in this case. There is no dispute that the customers who were underbilled previously are the exact same customers LPDL is seeking recovery from now. Customers are simply paying for what they ought to have paid, have benefitted financially from the underbilling as a result of the time value of money, and intergenerational inequity concerns do not exist.

SEC cites Newmarket-Tay’s decision EB-2023-0039 as the high-water mark for a 12.7% disallowance. This case, however, involved a situation where deferral and variance balances had been disposed on a final basis and Newmarket-Tay sought retroactive corrections. This is clearly different from LPDL’s case where the subject amounts in Account 1595 have not been disposed on either an interim or final basis, nor have the balances yet become eligible to be disposed on a final basis in this proceeding per section 2.9.1.3 of the Chapter 2 Filing Requirements. The Supreme Court of Canada

stated that “[it] is inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order.”²

A more analogous case is Decision and Order EB-2017-0056 involving Kitchener-Wilmot Hydro.³ In this case, incorrect billing determinants were used to calculate the Global Adjustment (GA) rate rider in Kitchener-Wilmot Hydro’s previous cost of service application, Kitchener-Wilmot Hydro under-collected from non-RPP customers for GA costs attributable to that customer base. The GA rate rider approved in that proceeding was in effect from May 1, 2014 until December 31, 2014.⁴ Under-collection of GA costs attributable to that customer base totaled \$917,990 plus interest. The OEB allowed the recovery of this entire amount (including carrying costs) from customers:

The OEB approves the disposition of the balance in Account 1595 (2014). **The purpose of Account 1595 is to true-up between amounts approved for disposition and the amount actually disposed.** The OEB approved an amount to be collected that was not collected due to the error in the rate rider calculation. Disposing of Account 1595 (2014) addresses this issue. [Emphasis added]

The third ground argued by SEC is that finality of rates means that LDCs should not be allowed to make corrections without any consequences. SEC argues it not just or reasonable to pay today for services that were received, and paid for, five years ago. This submission ignores two key facts: (1) Account 1595 has not been disposed on a final basis and is not yet eligible to do so; and (2) certain customers did not pay in full for services that were received five years ago. LPDL submits it is just and reasonable for the OEB to permit true-up adjustments to deferral and variance accounts that have never been disposed, regardless whether there is a credit or debit balance, to allow the utility to collect or refund balances to properly reflect the services that have been provided.

SEC has not provided any reasoning or authority to justify why it is just and reasonable for the OEB to allow corrections to account entries for refunds to customers but deny corrections to account entries for collections from customers. Respectfully, the proposed corrections have nothing to do with the rule supporting finality of rates and limiting retroactive adjustments – Account 1595 has never been disposed.

The underlying theme in SEC’s submission that the OEB needs to “send a message” to distributors or “no longer give LDCs a free pass” inappropriately imports the concept of deterrence from regulatory enforcement into fixing just and reasonable rates for LPDL. The sentencing principle of deterrence, which is used to assess the magnitude of a punitive fine, has no place in ratemaking. None of SEC’s assertions or reasoning are supported by the cited cases. Contrary to the *Ontario Energy Board Act, 1998*, allowing customers to avoid paying their bills for electricity services they received will not facilitate the maintenance of a financially viable electricity industry.⁵

² *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722

³ OEB Decision and Order EB-2017-0056, Kitchener-Wilmot Hydro Inc., March 1, 2018, pages 5-6.

⁴ OEB Staff Submission EB-2017-0056, December 18, 2017.

⁵ Ontario Energy Board Act, 1998, SO 1998, c 15, Sch B, s.1(1)(2).

Finally, it is not clear what relief SEC is seeking from the OEB. SEC believes that a 50% disallowance is appropriate, however LPDL is not seeking disposition of Account 1595 now and therefore there is no balance for the OEB to disallow.

Reply Submission to OEB Staff

OEB Staff proposes that LPDL should: (1) credit the amount of \$50,942, plus carrying charges, in Account 1595 for 2022 to customers; (2) collect the amount of \$345,659 in Account 1595 for 2021 from customers but not recover any carrying charges. Ignoring the fact that such a determination may fetter a future OEB panel's discretion on disposition, OEB Staff justifies this asymmetrical approach based on principles from deferral and variance accounts determined on a final basis.

As noted above, the OEB previously allowed the recovery of carrying charges in Decision and Order EB-2017-0056 for Account 1595 corrections. LPDL submits that an asymmetrical approach to correction of account entries undercuts the fundamental meaning of "interim", which Black's Law Dictionary defines as "Done, made, or occurring for an intervening time; **temporary or provisional**" [Emphasis added]. SEC and OEB Staff know that interim balances in deferral and variance accounts can and often will change up until final disposition.

Changes in account balances can occur up until final disposition and may result in changes to rates charged to customers. There is nothing improper or inherently unfair when LPDL corrects balances in Account 1595 to accurately reflect electrical services that were provided to customers. In fact, the OEB states the purpose of Account 1595 is to true-up between amounts approved for disposition and the amount actually disposed. LPDL is using it for this exact purpose.

Finally, it is not obvious to LPDL that any harm has been suffered by customers, especially since Chapter 2 of the Filing Requirements states Account 1595 is not yet eligible for disposition. Where there was under-recovery, those customers benefitted by being able to deploy capital investment to earn a rate of return elsewhere for the past 5 years when that money should have been used to pay for electricity service from LPDL. It is not fair for LPDL to, in effect, lend money interest free for the past 5 years so that its customers can earn higher profits by investing that money elsewhere.

In the end, there is no dispute that balances in Account 1595 are subject to change up to final disposition, certain customers underpaid for electricity service in 2021, the corrections proposed by LPDL accurately reflect the amounts that should have been paid by those customers, and the customers from 2021 are the same customers in 2025. LPDL does not see a principled or defensible reason why recovery of the proposed amounts (including carrying charges) should be denied in the circumstances. The end result to customers is consistent with the principles of just and reasonable rates if the OEB allows the adjustments as the consequences were the same as if the errors had not been made.

LPDL reserves the right to make further submissions in a future proceeding should the OEB panel accept LPDL's position on the Unsettled Issue outlined in section 1 above.

Please contact the undersigned with any questions.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in black ink, appearing to read "Colm Boyle". The signature is written in a cursive, flowing style.

Colm Boyle

CB/JV