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**File No. 17129.26**

May 13, 2025

**BY RESS and EMAIL**

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

Dear Ms. Marconi:

**Re: Windsor Canada Utilities Ltd. Phase 1 MAADs Application to Acquire E.L.K. Energy Inc. and Related Approvals**

We are counsel to the Applicant, Windsor Canada Utilities Ltd. (“**WCUL**”), and are pleased to submit this Application to the Ontario Energy Board (“**OEB**”) for leave to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. (“**E.L.K. Energy**”) from The Corporation of the Town of Essex, made pursuant to section 86(2)(a) of the *Ontario Energy Board Act, 1998*. In connection with this request, WCUL is also filing a notice of proposal under sections 80 and 81 of the *Ontario Energy Board Act, 1998* and requests that the OEB issue a letter of no review.

WCUL is an affiliate of ENWIN Utilities Ltd. (“**ENWIN Utilities**”), which is a licenced electricity distributor (ED-2002-0527) that owns and operates the electricity distribution system in Windsor, Ontario serving approximately 92,004 customers. E.L.K. Energy is also a licenced electricity distributor (ED-2003-0015) that owns and operates the electricity distribution system in Belle River, Comber, Cottam, Essex, Harrow and Kingsville, Ontario serving approximately 12,784 customers.

The proposed transaction involves two Southern Ontario utilities that operate in very similar service territories and provides an opportunity for a smaller utility to draw upon the corporate structure and resources, including in-house expertise, of a nearby larger LDC. The transaction is being proposed in two phases to allow both E.L.K. Energy and ENWIN Utilities to rebase before amalgamating in the phase 2 MAADs application. In particular, E.L.K. Energy has not performed well financially over the last few years and this trend is projected to continue without rebasing the utility.

WCUL is filing with the OEB certain information in the Application that is confidential and/or subject to the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”). WCUL is hereby requesting confidential treatment of the information in the table below pursuant to sections 9A, 10.01 and 10.02 of the OEB’s Rules of Practice and Procedure (revised March 6, 2024) and sections 5.1.1, 5.1.2, 10



and 11 of the OEB's Practice Direction on Confidential Filings (revised December 17, 2021, "**Practice Direction**").

WCUL wishes to highlight that the acquisition of E.L.K. Energy was through a competitive procurement process where there may have been other bidders for E.L.K. Energy. WCUL was ultimately the successful bidder and there is strategic bidding information that has been redacted to ensure that its competitive position and bidding strategies are protected for future negotiations. Moreover, the Purchase and Sale Agreement was executed by parties that are not subject to direct OEB oversight. WCUL and The Corporation of the Town of Essex are unregulated affiliates of ENWIN Utilities Ltd. and E.L.K. Energy.

WCUL recognizes the OEB's need to strike a balance between the general public interest in transparency and openness and the need to protect confidential information. It is for this reason that WCUL's confidentiality request is as narrow as possible, but WCUL also submits that many of the specific terms and schedules in the Purchase and Sale Agreement are not relevant to the OEB's determination in this Application.



<b>Appendix D – Purchase and Sale Agreement</b>		
<b>Evidence Reference</b>	<b>Title and Description</b>	<b>Rationale Supporting Redaction</b>
p.4 - Definitions	Deposit	The discrete redaction to this definition is not relevant to the Board’s no-harm test. In addition, the approach to certain financial settlement aspects of the transaction purchase price are commercially sensitive. The quantum of deposit paid by WCUL is a commercially sensitive term and relates to a term that may have materially influenced the outcome of the competitive procurement.
p.6 - Definitions	Governance Representation Agreement	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics of the contract are commercially sensitive and could prejudice the future competitive positions of the Parties. The redacted portion of the definition relates to confidential terms of the acquisition that would prejudice WCUL’s competitive position and relates to a term that may have materially influenced the outcome of the competitive procurement.
p.12 - Definitions	Target Working Capital	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties.
p.13 - Definitions	Termination Date	The specific termination date for closing is not relevant to the Board’s no-harm test. The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties.
p. 16 – Section 2.2	Purchase Price	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.
pp. 16-17 – Section 2.3	Delivery of the Estimated Statement and Payout Letters	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to the calculation are



		commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.
pp. 17-18 – Section 2.4	Payment of Estimated Purchase Price at Closing	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to closing are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.
pp. 18-19 – Section 2.6 a)	Closing Statement	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.
pp. 19-20 – Section 2.6 d)	Settlement of Dispute	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the references to specifics of the approach to calculating adjustments to the closing statement are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties.
p. 36 – Section 4.24	Computer Systems	The discrete redactions in this Section pertain to computer systems, the disclosure of which could impact public security or cybersecurity. In any event, this information is not relevant to the OEB’s determination on the Application.
p. 38 – Section 4.26	Employment and Labour Matters	The discrete redactions in this section pertain to labour and employment matters resulting from the application. This information is not relevant to the OEB’s determination on the Application and may be personal information about identifiable individuals. Moreover, the



		details on how employee contracts are dealt with during a specific transaction is confidential and may adversely affect future negotiations.
p. 45 – Section 4.33	Privacy and Data Security	The discrete redactions in this Section pertain to privacy and data security matters, the disclosure of which could impact public security or cybersecurity. In any event, this information is not relevant to the OEB’s determination on the Application. Moreover, this is confidential information that is not ordinarily disclosed
pp. 46 – 47 – Section 4.36	Water Heater Rental Contracts	The discrete redactions in this Section pertain to matters that are not relevant to the Board’s no-harm test, as they pertain to contracts of unregulated subsidiaries that are engaged in competitive business activities.
Pp. 49-52 – Section 6.1	Conduct of Business Prior to Closing	The discrete redactions in this section pertain to confidential commercial terms that were negotiated between the parties and may have had a material influence on the successful bid in the competitive bidding process. The restrictions on business are important pre-closing conditions that must remain confidential so that it does not prejudice future negotiations.
p. 53 – Section 6.4	Confidentiality	The discrete redactions in this Section pertain to confidentiality matters that are commercially sensitive. In particular, there is a reference to an agreement that is not relevant to the Application and is confidential.
p. 53 – Section 6.6	Employment Information for Identifiable Individual	The discrete redactions in this Section pertain to employment and contractual matters, which could be either be considered: (1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, (2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties. This information has been consistently treated as confidential by WCUL and partially relates to an unregulated affiliate.
p.54 – Section 6.7 e)	Regulatory and Other Required Consents	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties. This provision relates to potentially confidential negotiations with third parties for services or materials that are supplied to the utility.



pp.55-56 – Section 6.8	Exclusivity	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties.
p.56 – Section 6.9	Termination of Related Party Transactions	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and pertain to contractual arrangements which could prejudice the future competitive and negotiating positions of the Parties.
p. 57 - Section 6.15	Collective Agreements	The discrete redactions in this Section relate to collective agreements which are to be presumptively considered confidential by the Board under Appendix B(8) of the Practice Direction. Disclosure of this information would likely be prejudicial to current or future collective bargaining negotiations.
p. 57 – Section 7.1	Closing	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive. Public disclosure could impede or diminish the capacity of a party to fulfill existing contractual obligations if these terms are made public to competitors in the bidding process. Moreover, these terms are sensitive commercial terms that are negotiated between the parties and may prejudice future competitive positions. In any event, this information is not relevant to the no-harm test as the application may be withdrawn if the Purchase and Sale Agreement is terminated.
p. 60 – Section 8.1 m), n)	Conditions for the Benefit of Buyer	<p>The discrete redactions in this Section (m) and (n) are commercially sensitive and could impact the future competitive and negotiating positions of the Parties.</p> <p>With respect to (m), the discrete redactions in this Section relate to collective agreements which are to be presumptively considered confidential by the Board under Appendix B(8) of the Practice Direction. Disclosure of this information would likely be prejudicial to current or future collective bargaining negotiations.</p> <p>With respect to (n), the discrete redactions in this Section relate to ongoing legal proceedings that have not yet concluded. This information is presumptively confidential under Appendix B(6) as litigation privilege.</p>



pp.61 - 64 – Section 8.4	Termination	The discrete redactions relate to terms and conditions on the circumstances when termination will occur and what outcomes will result.
p.68 – Section 9.4	Employee Retention	The discrete redactions in this Section pertain to employment and contractual matters, which could be either be considered: 1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as pertaining to contractual matters which could impact the future competitive and negotiating positions of the Parties. The information is also not relevant to the Board’s no-harm test.
p.68 – Section 9.5	Advisory Committee	The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive positions of the Parties.
pp.69-70 – Section 10.3	Time Limitations	The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive and financial positions of the Parties. The terms regarding limitations on damages, and settlement of such claims, are confidential as this could be used in future negotiations against WCUL if publicly disclosed. WCUL has always treated this information as confidential.
pp.70-74 – Section 10.4, 10.6, 10.7, 10.8, & 10.10	Other Limitations on Recourse and Indemnification Obligations  Notification  Direct Claims  Third Party Claims  Payment of Indemnification	Similar to the time limitations above, the discrete redactions in this Section are commercially sensitive and could prejudice the future competitive and financial positions of the Parties. The terms regarding indemnification of damages, and settlement of such claims, are confidential as this could be used in future negotiations against WCUL if publicly disclosed. WCUL has always treated this information as confidential.
p.75 – Section 10.14	Release of Escrow	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties.



Schedule A  Schedule 1.1 a), 3.4, 4.1, 4.6 (partial), 4.7 a), 4.10, 4.11 a), 4.11 b), 4.11 c), 4.12, 4.13, 4.14, 4.17, 4.17 b), 4.21 b), 4.21 d), 4.23 a), 4.23 b), 4.25, 4.26 a), 4.26 b), 4.26 f), 4.26 h), 4.26 j), 4.26 n), 4.27 a), 4.27 c), 4.27 m), 4.28, 4.29, 4.31 a), 4.31 d), 4.31 h), 4.31 j), 4.31 o), 4.35, 4.36 a), 4.36 b), 6.1 b), 6.10, 8.1 f)	Seller Disclosure Letter	This Schedule contains disclosures by the Seller which are commercially sensitive, in addition to contractual information (including contract values) that could prejudice the future competitive positions of the Parties. It also contains information that is considered “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA) which should be protected from public disclosure. Non-public financial is also contains in this Schedule. Public disclosure of this information is not relevant to the consideration of the Board’s no-harm test.
Schedule C	Purchase Price Allocation	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties.
Exhibit A	Form of Escrow Agreement	The redactions in this section are not relevant to the Board’s no-harm test. In addition, this Exhibit contains commercially sensitive contract information which could harm the Parties if disclosed.
Exhibit B	Form of Governance Representation Agreement	The redactions in this section are not relevant to the Board’s no-harm test. In addition, this Exhibit contains commercially sensitive contract information which could harm the Parties if disclosed.
Exhibit C	Sample Statement	The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties.



Exhibit D	Form of Director and Officer Releases	The discrete redactions in this Section pertain to employment and contractual matters, which could be either be considered: 1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties.
Exhibit E	Form of Shareholder Release	The discrete redactions in this Section pertain to contractual matters, which could be considered commercially sensitive and impact the future competitive and negotiating positions of the Parties. The discrete redactions in this Section are not relevant to the Board’s no-harm test.
Exhibit F	Seller Closing Certificate	The discrete redactions in this Section pertain to contractual matters, which could be considered commercially sensitive and impact the future competitive and negotiating positions of the Parties. The discrete redactions in this Section are not relevant to the Board’s no-harm test.
Exhibit G	Buyer Closing Certificate	The discrete redactions in this Section pertain to contractual matters, which could be considered commercially sensitive and impact the future competitive and negotiating positions of the Parties. The discrete redactions in this Section are not relevant to the Board’s no-harm test.
Exhibit H	Form of Local Community Commitment Agreement	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties.
Exhibit I	Form of Contribution Agreement	The discrete redactions in this Section are not relevant to the Board’s no-harm test. In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties.
<b>Appendix E – Resolutions by Parties Approving the Proposed Transaction</b>		
<b>Evidence Reference</b>	<b>Title and Description</b>	<b>Rationale Supporting Redaction</b>
Appendix E	City of Windsor Resolution	This document has been redacted in part, as it is commercially sensitive and public disclosure could significantly prejudice the Party’s competitive position and negatively impact future



		negotiations. This document was created and circulated within a confidential municipal process and included parameters around bidding strategies and valuations that would be very harmful if disclosed. It is important that the OEB not undermine the proper functioning of in-camera sessions at municipalities. This record was created with the intention it would remain confidential.
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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



**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** an application made by Windsor Canada Utilities Ltd. for leave to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. from The Corporation of the Town of Essex, made pursuant to section 86(2)(a) of the *Ontario Energy Board Act, 1998*.

**AND IN THE MATTER OF** a Notice of Proposal made by Windsor Canada Utilities Ltd. under sections 80 and 81 of the *Ontario Energy Board Act, 1998*.

Filed: May 13, 2025



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APPENDIX E Resolutions by Parties Approving the Proposed Transaction

APPENDIX F Scorecards of ENWIN Utilities and E.L.K. Energy

APPENDIX G Audited Financial Statements



**Certification of Evidence**

As President and Chief Executive Officer of Windsor Canada Utilities Ltd. and in my capacity as an officer of that corporation and without personal liability, I hereby certify to the best of my knowledge and as at the date of this certification that the evidence in the Application is accurate, consistent and complete.

Any evidence filed in support of the application does not include any personal information unless it is filed in accordance with Rule 9A of the Ontario Energy Board's *Practice Direction on Confidential Filings*.

A handwritten signature in black ink, reading "Garry Rossi". The signature is written in a cursive, flowing style. The first name "Garry" is written with a large, stylized "G" and "R". The last name "Rossi" is written in a more standard cursive script.

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Garry Rossi, President and Chief Executive Officer



## **APPLICATION**

### **1. Administrative**

#### *1.1 Brief description of the nature of the transaction and requested OEB approvals*

Windsor Canada Utilities Ltd. (“**WCUL**” or the “**Applicant**”) is filing this application (the “**Application**”) to seek the approval of the Ontario Energy Board (the “**OEB**” or the “**Board**”) for the first phase of a two-phase transaction whereby WCUL is purchasing all of the issued and outstanding share in E.L.K. Energy Inc. (“**E.L.K. Energy**”) from The Corporation of the Town of Essex (the “**Seller**”) pursuant to section 86(2)(a) of the Ontario Energy Board Act 1998 (the “**OEB Act**”) (the “**Phase 1**” Application).

WCUL is also submitting a Notice of Proposal pursuant to sections 80 and 81 of the OEB Act, as more fully detailed in Appendix A below.

- (i) WCUL is an affiliate of distributor ENWIN Utilities Ltd. (“**ENWIN Utilities**”). WCUL is acquiring an interest in an entity (E.L.K. Energy) that owns a generation facility
- (ii) WCUL is an affiliate of ENWIN Energy Ltd., which owns a generation facility. WCUL is acquiring an interest in an entity (E.L.K. Energy) that owns a distribution system

Since E.L.K. Energy will continue to operate as a stand-alone entity under the same name for Phase 1, WCUL does not require a transfer of E.L.K. Energy’s distribution license or rate order as part of this Phase 1 Application.

The Applicant anticipates both E.L.K. Energy and ENWIN Utilities will submit rebasing applications shortly after the close of Phase 1 as currently scheduled by the OEB for rates effective May 1, 2027 and January 1, 2028, respectively. Rebasing will restore financial and operational viability of E.L.K. Energy, which the OEB stressed in Decision and Rate Order EB-2023-0013 that E.L.K. Energy “...examine all strategic options for the utility, including an early rebasing” as a result of low return on equity (“**ROE**”) in 2022 (-1.97%). E.L.K. Energy’s ROE only got worse in 2023 (-22.33%). Rebasing will also allow both utilities to file updated distribution system plans and load forecasts to more accurately reflect anticipated capital planning and load growth on a stand-alone basis. Moreover, rebasing will allow both utilities to dispose of accumulated Group 2 balances. While the Applicant acknowledges that this OEB panel cannot bind a future OEB panel that will hear these rate applications, the OEB has previously found such a proposal to be reasonable and similarly submits that the future rebasings and regulatory strategy set out in section 3.4 of this Application is also reasonable.<sup>1</sup>

WCUL is not proposing a deferred rebasing period as part of the Phase 1 application as both E.L.K. Energy and ENWIN Utilities will be operated separately and rebased as scheduled. A deferred

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<sup>1</sup> Decision and Order EB-2019-0015, North Bay (Espanola) Acquisition Inc., August 22, 2019, at page 25.



rebasement period may be proposed as part of Phase 2 for the combined utilities, however the proposed deferred rebasing period in Phase 2 will not exceed 10 years after the OEB approval of this Phase 1 application.

WCUL expects the second phase will be to file an application to amalgamate E.L.K. Energy and ENWIN Utilities, with the amalgamated entity continuing under the name ENWIN Utilities Ltd. pursuant to section 86(1)(c) of the OEB Act (“**Phase 2**”). The OEB approved a similar transaction between Espanola Regional Hydro Holdings Corporation and North Bay (Espanola) Acquisition Inc. in EB-2019-0015. This amalgamation will be the subject of a future proceeding. No approvals with respect to Phase 2 are being sought in this Application.

The “Post-Consolidation Monitoring and Reporting” and “Accounting Matters” requirements in Schedule 2 of the Board’s *Handbook to Electricity Distributor and Transmitter Consolidations* as revised on July 11, 2024 (the “**Handbook**”) do not apply to this application due to both ENWIN Utilities and E.L.K. Energy continuing to operate on a stand-alone basis and scheduled to rebase in the next two years. Specifically, Group 1 and Group 2 accounts will not be consolidated as ENWIN Utilities and E.L.K. Energy will continue to operate on a stand-alone basis following the Phase 1 transaction. This means 2.2.8 of Schedule 2 of the Handbook is not applicable. Reliability will continue to be tracked separately for ENWIN Utilities and E.L.K. Energy, as they will continue to be operated on a stand-alone basis following the transaction. This means 2.2.7 of Schedule 2 of the Handbook is not applicable.

This Application is organized to generally follow the order of requirements for consolidation applications as set out in the Handbook. The mapping of evidence provided at Appendix C pinpoints the exact location of the evidence responsive to each of the Board’s requirements set out in the *Filing Requirements for Consolidation Applications* that are appended as Schedule 2 to the Handbook. The Applicants are requesting a “short form” or written hearing.

The Application is a culmination of many months of negotiations and agreement among the Applicants, as defined below, and their shareholders. Appendix B of this Application provides a detailed description of each party’s business structure both before and after Phase 1 of the proposed transactions and identifies the applicable governing law for each legal entity.

WCUL is proposing a two-phase transaction which is customized to address the unique circumstances of this transaction while at all times conforming with the policy objectives and requirements established in the Handbook.

## *1.2 Legal Name of the Applicants and Authorized Representatives*

The legal name of the applicants and the contact information for the authorized representatives are provided below. There are no other parties to the transaction described in this Application.

Applicant 1:

Windsor Canada Utilities Ltd.  
4545 Rhodes Drive  
PO Box 1625 Station A



Windsor ON, N8W 5T1

Authorized Representative

**Garry Rossi; President & CEO**  
Telephone: 519.251.7300 ext. 5623  
Facsimile: 519.255.7423  
Email: grossi@enwin.com

Applicant 2:

E.L.K. Energy Inc.  
172 Forest Ave  
Essex ON, N8M 3E4

Authorized Representatives

**Kayla Lucier; Supervisor, Finance & Regulatory**  
Telephone: 519-776-5291 x204  
Email: klucier@elkenenergy.com  
**Farooq Hyder; Acting General Manager**  
Telephone: 519-776-5291 x213  
Email: fhyder@elkenenergy.com

*Counsel to the Applicants*

WCUL & ENWIN Utilities Legal  
Representative

**Borden Ladner Gervais LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, M5H 4E3

**John A.D. Vellone / Colm Boyle**  
Telephone: 416.367.6730 / 416.367.7273  
Facsimile: 416.367.6749  
Email: jvellone@blg.com / cboyle@blg.com

**2. Description of the Business of the Parties to the Transaction**

*2.1 Business of each of the parties to the proposed transaction*

***Windsor Canada Utilities Ltd.***

WCUL is a holding company and the sole owner of ENWIN Utilities and ENWIN Energy Ltd., as further described below.

***ENWIN Utilities Ltd.***

ENWIN Utilities is a licensed electricity distributor (ED-2002-0527) that owns and operates the electricity distribution system that provides service to approximately 92,000 electricity customers within the City of Windsor. ENWIN Utilities is a corporation incorporated pursuant to section 142 of the *Electricity Act* and the *Business Corporations Act* (Ontario) with its head office in the City of Windsor.



ENWIN Utilities is a transmission-connected distributor supplied from six (6) Hydro One owned transformer stations and five (5) ENWIN Utilities owned transformer stations. ENWIN Utilities is not a host to any other distributor.

***ENWIN Energy Ltd.***

ENWIN Energy Ltd. (“**EWE**”) is an unregulated affiliate company that aims to find unregulated opportunities in the Ontario energy market. The core business of EWE includes streetlighting and sentinel lighting.

***WaveDirect Telecommunications Corporation***

WaveDirect Telecommunications Corporation is a wholly owned subsidiary of EWE, and is a locally operated internet provider, providing high-speed internet and television services.

***ONtech Rapid Coatings***

ONtech Rapid Coatings is a 50% owned joint venture of EWE that provides corrosion control and coating solutions for the utility, automotive and aeronautics sectors across North America.

***Enertrace***

Entertrace is a 50% owned joint venture of EWE. Enertrace is a utility locate service provider, with a focus to address the increased demand for locating underground utilities within the communities of Windsor-Essex County.

***E.L.K. Energy***

E.L.K. Energy is a licensed electricity distributor (ED-2003-0015) that owns and operates the electricity distribution system that serves approximately 13,000 electricity customers within the Towns of Essex, Lakeshore and Kingsville. Within these towns, E.L.K. Energy has six (6) non-contiguous service areas, serving the communities of Belle River, Comber, Cottam, Essex, Harrow and Kingsville. E.L.K. Energy is a corporation incorporated pursuant to section 142 of the *Electricity Act* and the *Business Corporations Act* (Ontario) with its head office in the Town of Essex. E.L.K. Energy is a fully embedded distributor who receives electricity at distribution level voltages from Hydro One Networks Inc. (“**Hydro One**”). E.L.K. Energy is also a host distributor to Hydro One.

***E.L.K. Solutions Inc.***

E.L.K. Solutions Inc. (“**ESI**”) is an unregulated affiliate company that provides hot water heater rental services. ESI is jointly owned, 50% by the Corporation of the Town of Essex and 50% by E.L.K. Energy Inc.

Further details regarding the business, and corporate charts illustrating the business structures and affiliate relationships, of the parties to the proposed transaction are included in Appendix B.



2.2 *Geographic territory served by each of the parties to the proposed transaction*

***ENWIN Utilities Service Area:***

Community served:	Windsor, Ontario
Total service area:	121 sq. km
Rural service area:	0 sq. km
Distribution type:	Electricity distribution
Residential Customers Served:	approx. 82,684
Municipal population:	approx. 230,000

***E.L.K. Energy Service Area:***

Community served:	Belle River, Comber, Cottam, Essex, Harrow and Kingsville, Ontario
Total service area:	22.5 sq. km
Rural service area:	0 sq. km
Distribution type:	Electricity distribution
Residential Customers Served:	approx. 11,464
Municipal population:	approx. 22,000

***Service Area Boundaries***

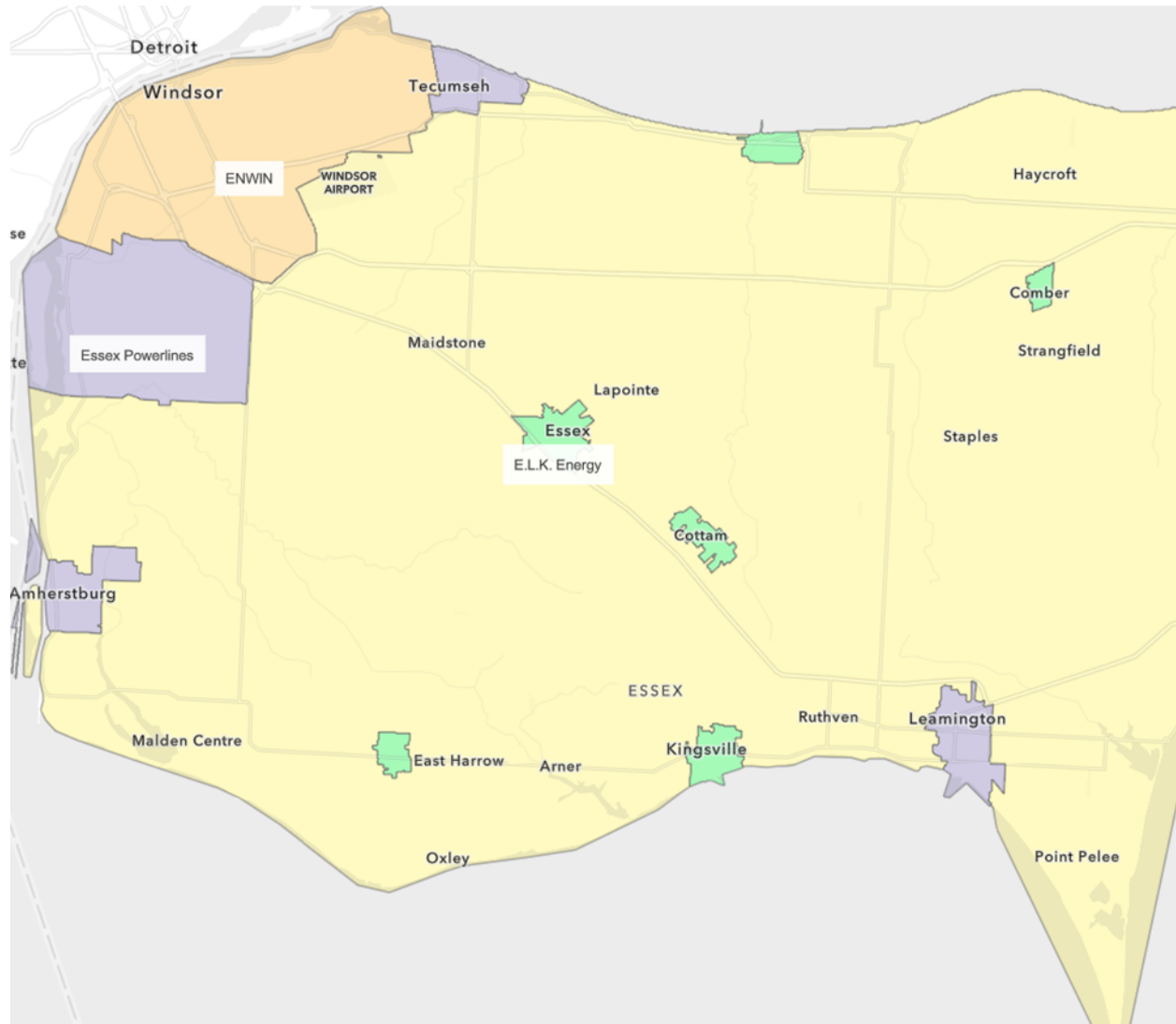
ENWIN Utilities is bounded by Essex Powerlines Corporation on its southwesterly and easterly boundaries, along with Hydro One Networks Inc. E.L.K. Energy is bounded by Hydro One Networks Inc. on all service territory boundaries.

Hydro One Networks Inc.  
483 Bay St.  
Toronto, ON M5G 1P5  
Direct Line: 416.345.5000  
Website: [www.HydroOne.com](http://www.HydroOne.com)

The service area boundaries of ENWIN Utilities and E.L.K. Energy are shown in Figure 1 below. Both utilities are in the Independent Electricity System Operator's ("IESO") Windsor-Essex regional planning area.



**Figure 1: Service Area Boundaries**



The service area boundaries of ENWIN Utilities and E.L.K. Energy are not contiguous and are approximately 13 km apart. The two utilities operate in proximity to each other in very similar geographic territories within Southwestern Ontario, and many of the service area characteristics are comparable, as both utilities serve largely developed communities with predominantly residential customers.



For example, Table 1 below provides a summary of the service territory characteristics between ENWIN Utilities and E.L.K. Energy showing the number of square kilometres for rural and urban service areas as well as kilometres of line that are overhead and underground.

**Table 1: 2024 Service Territory Characteristics**

Characteristics	ENWIN		ELK	
	sq km	%	sq km	%
Rural Service Area	0	0	0	0
Urban Service Area	121	100%	22.5	100%
Total Service Area	121		22.5	
No. of Customers / sq km	760		578	
	<b>km of line</b>	<b>%</b>	<b>km of line</b>	<b>%</b>
Overhead circuit km of line	2676	57%	89	51%
Underground circuit km of line	2045	43%	85	49%
Total circuit km of line	4721		174	
No. of Customers / km of line	19		75	

**2.3** *Description of customers, including number of customers in each class, served by each of the parties to the proposed transaction*

ENWIN Utilities and E.L.K. Energy are comparable both in the ratio of types of customer classes served by each utility and the service territories in which each operate with similar characteristics and terrain.

Table 2 below provides the number of customers/connections by rate class for 2024. Excluding the classes that are based on connections, both LDCs have a customer base that is primarily driven by the Residential class (89-90%), followed by smaller commercial businesses that make up the general service < 50 kW class (9-11%). Approximately 1% of the customer base is made up of larger customers in the general service >= 50 kW class for both LDCs.

**Table 2: 2024 Customers / Connections**



Customer Rate Classifications	2024 - No. of Customers/Connections		2024 - Percent of Customers/Connections	
Customers:	ENWIN	ELK	ENWIN	ELK
Residential	82684	11326	90%	89%
GS < 50kW	8480	1365	9%	11%
GS >= 50kW	833	93	1%	1%
Large User	7	0	0.01%	0%
<b>Total Customers</b>	<b>92004</b>	<b>12784</b>	<b>100%</b>	<b>100%</b>
Connections:				
Streetlight	25132	3155	95%	98.44%
Sentinel	470	8	2%	0.25%
Unmetered Scattered Load	749	41	3%	1.28%
Embedded Distributor	0	1	0%	0.03%
<b>Total Connections</b>	<b>26351</b>	<b>3205</b>	<b>100%</b>	<b>100%</b>

Both communities have experienced modest growth over the last several years, mainly driven by the Residential customer class as shown in Table 3 below which compares 2024 customer counts against 2020 for both ENWIN Utilities and E.L.K. Energy.

**Table 3: 2024 vs. 2020 Customers**

Customers:	ENWIN				ELK			
	2024	2020	Number	Percentage	2024	2020	Number	Percentage
Residential	82684	80952	1732	2.1%	11326	11076	250	2.3%
GS < 50kW	8480	8074	406	5.0%	1365	1436	-71	-4.9%
GS >= 50kW	833	1070	-237	-22.1%	93	99	-6	-6.1%
Large User	7	8	-1	-12.5%	0	0	0	0.0%
<b>Total Customers</b>	<b>92004</b>	<b>90104</b>	<b>1900</b>	<b>2.1%</b>	<b>12784</b>	<b>12611</b>	<b>173</b>	<b>1.4%</b>

#### 2.4 *Proposed geographic service area after completion of the proposed transaction*

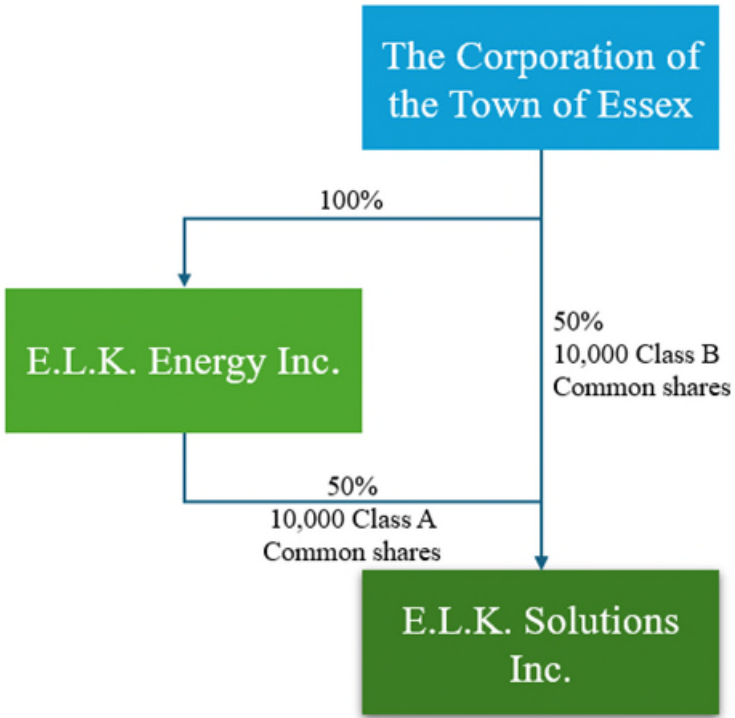
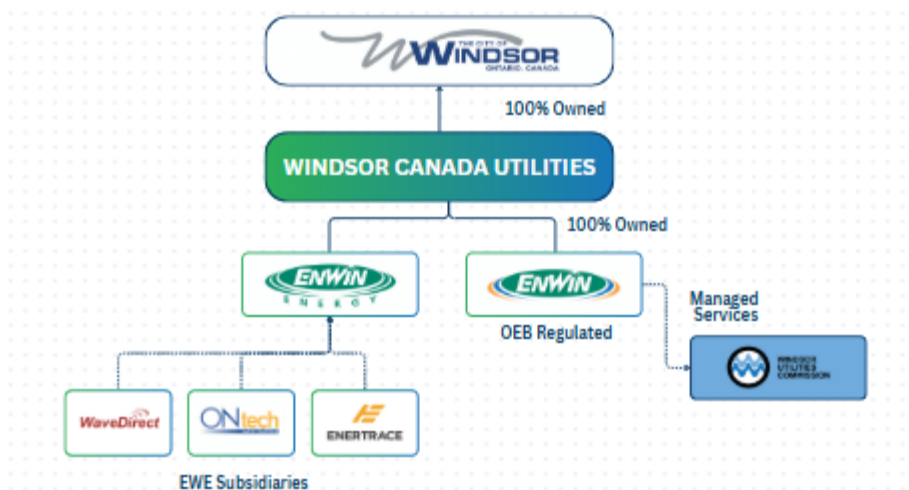
There will be no change to the respective geographic service areas after the completion of the Phase 1 Transaction.

Upon completion of the Phase 2 Transaction (as further detailed below and which will be subject to a future separate MAADs application), the service areas of ENWIN Utilities and E.L.K. Energy will be combined to be served by a single merged utility.

#### 2.5 *Corporate Structure Charts*

Below are the current corporate structure charts describing the relationship between each of the parties to the proposed Phase 1 transaction and each of their respective affiliates.





2.6 Current net metering thresholds of E.L.K. Energy and ENWIN Utilities

Based on the 2024 OEB RRR Data, the following table shows the calculated net metering thresholds for both E.L.K. Energy and ENWIN Utilities, calculated as 1% of the maximum peak demand (kW) averaged over a 3-year period between 2022-2024.



**Table 4: Net Metering Thresholds**

Distributor	kW Threshold
E.L.K. Energy	609
ENWIN Utilities	4556
Total:	5165

Following the completion of the Phase 1 Transaction, both E.L.K. Energy and ENWIN Utilities will retain their current, distinct, net metering thresholds. It is proposed that two net metering thresholds be maintained separately because the two LDCs and the two service territories are, and will continue to be, non-contiguous, separate and distinct until the completion of the Phase 2 Transaction.

### **3. Description of the Proposed Transaction**

#### *3.1 The Phase 1 Transaction*

This application to the OEB is limited to the approvals required to affect Phase 1 (the “**Phase 1 Transaction**”).

Pursuant to a purchase and sale agreement dated March 12, 2025, between WCUL and the Seller (the “**Purchase and Sale Agreement**”) attached hereto as Appendix D, subject to the parties obtaining the required approvals, the Seller has agreed to sell and WCUL has agreed to purchase:

- (i) all of the issued and outstanding shares in the capital of E.L.K. Energy owned or held by the Seller (the “**ELK Purchased Shares**”); and
- (ii) 10,000 Class B Common shares in the capital of E.L.K. Solutions Inc. (“**ESI**”) owned or held by the Seller which represents 50% of the issued and outstanding shares in the capital of ESI (the “**ESI Purchased Shares**”);

(collectively, the ELK Purchased Shares and the ESI Purchased Shares are referred to as the “**Purchased Shares**”).

The aggregate purchase price for WCUL to acquire the Purchased Shares from the Seller is set out in section 2.2 of the Purchase and Sale Agreement, subject to applicable closing and post-closing adjustments (the “**Purchase Price**”).

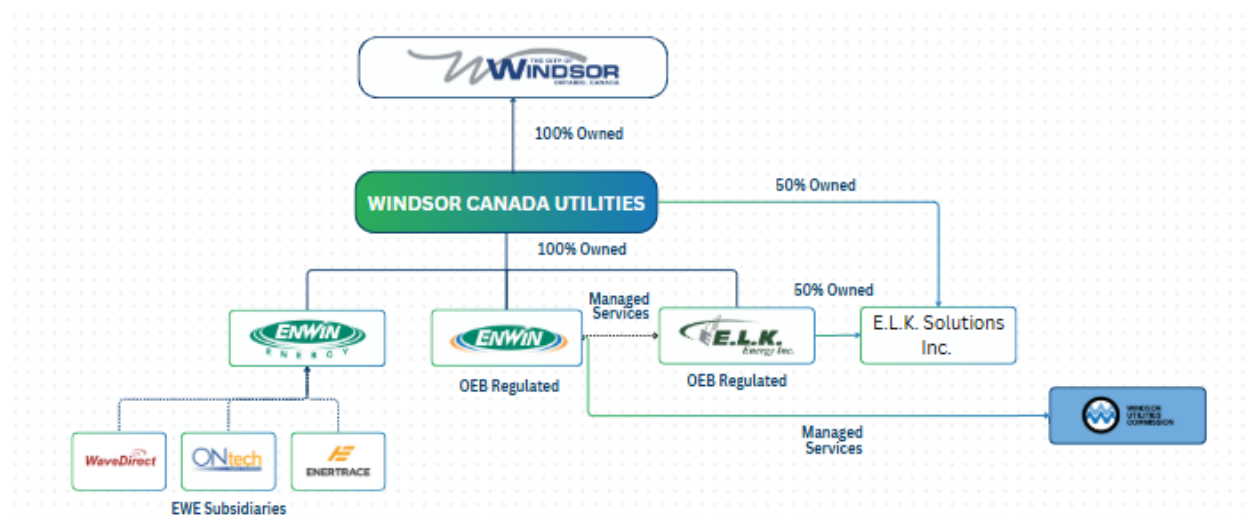
The closing of the acquisition of the Purchased Shares is conditional upon the receipt of all required approvals, including the OEB’s approval of this Application.

Once WCUL has acquired all of the Purchased Shares, WCUL will assume, *inter alia*, 100% ownership and control of E.L.K. Energy.



The following Figure 2 illustrates the corporate ownership structure upon the closing date of the Phase 1 Transaction:

**Figure 2: Phase 1 - Corporate Ownership Structure**



### 3.2 Final legal document to be used to implement the proposed transaction

The final legal document to be used to implement the transaction is the Purchase and Sale Agreement, attached hereto as Appendix D.

### 3.3 Municipal and/or Corporate Resolutions

Copies of appropriate resolutions by parties approving the proposed transaction are attached in Appendix E.

### 3.4 Future Rebasings and Regulatory Strategy

While the Applicant recognizes that the OEB has previously determined that it is consistent with the OEB's policies for one utility to acquire another utility and operate it on a stand-alone basis as it proposed in Phase 1,<sup>2</sup> the Applicant believes that a discussion of its overall regulatory rebasing strategy is informative to demonstrate that there will not be a deterioration of price, economic efficiency or cost effectiveness as a result of the transaction being broken into multiple phases.

The Applicant acknowledges that operating ENWIN Utilities and E.L.K. Energy as stand-alone utilities would mean keeping separate licences, filing and maintaining separate reporting and record-keeping requirements, keeping separate scorecards and filing separate rate applications.

On December 15, 2023, the OEB issued a letter which outlined a preliminary schedule of electricity distributors that are scheduled to file a cost of service rate application for the years 2025

<sup>2</sup> Decision and Order EB-2019-0015, North Bay (Espanola) Acquisition Inc., 22 August 2019, at page 25.



to 2028. In this letter ENWIN Utilities was scheduled to file its next cost of service rate application for rates effective January 1, 2025.

On January 12, 2024, ENWIN Utilities filed a letter requesting a 3-year deferral to reschedule its next rebasing application for rates to be effective January 1, 2028.<sup>3</sup> The OEB approved ENWIN Utilities' rebasing of its rates beyond the 2025 rate year for three years and request to extend its Price Cap IR rate setting term until rebasing on March 5, 2024. As a result, ENWIN Utilities has not been before the Board for a cost of service application in five (5) years (EB-2019-0032).

In addition, E.L.K. Energy has not performed well financially over the last few years, and this trend is projected to continue if the Board does not approve this Application. E.L.K. Energy's reported Return on Equity ("**ROE**") for 2022 and 2023 was (-1.97%) and (-22.33%), respectively, well below the Board's deemed ROE dead-band of 300 basis points.

Regulated Return on Equity (%)						
		2020	2021	2022	2023	2024
Deemed (%)	E.L.K. Energy	8.78	8.78	8.66	8.66	8.66
Achieved (%)		11.76	10.93	-1.97	-22.33	TBD*
*E.L.K. Energy Inc's 2024 ROE was not available as of the time of filing this application.						

As a result of the low ROE in 2022, in Decision and Rate Order EB-2023-0013 issued on March 21, 2024, the OEB encouraged "...E.L.K. Energy's management and Board of Directors to thoroughly examine all strategic options for the utility, including an early rebasing." E.L.K. Energy is currently scheduled to file its next cost of service rate application for rates effective May 1, 2027.

In this context, WCUL submits that deferring rebasing of ENWIN Utilities and E.L.K. Energy by another 10 years following Phase 1, as permitted by the Handbook, would not be in the public interest. As has been evident from many of the recent cost of service applications before the OEB, cost structures for electricity distributors in Ontario fundamentally changed in the wake of COVID-19, in addition to the ongoing and evolving impacts and requirements that are brought about as a result of energy transition and electrification. There may also be further disruption because of tariffs imposed by the United States.

Therefore, rather than deferring rebasing, WCUL proposes that following the Phase 1 Transaction (which includes the independent rebasing of each utility), ENWIN Utilities and E.L.K. Energy be permitted to continue to operate as independent utilities until the Phase 2 MAADs application is filed. During this time, ENWIN Utilities would provide services to E.L.K. Energy pursuant to a services agreement and E.L.K. Energy would continue to operate independently as a separate

<sup>3</sup> 2025 Cost of Service Rate Application Deferral Request EB-2024-0019, ENWIN Utilities Ltd., 12 January 2024.



utility. It is WCUL's intent at this point that a Phase 2 MAADs application would be filed in 2028, following the conclusion of ENWIN Utilities' cost of service proceeding.

ENWIN Utilities and E.L.K. Energy are scheduled to file their cost of service rebasing application for rates effective January 1, 2028, and May 1, 2027, respectively. Both utilities intend to file such applications as scheduled and prior to the Phase 2 Transaction. The rebasing application is of particular importance to E.L.K. Energy to restore financial and operational viability of the utility moving forward.

It will also address a number of regulatory issues including:

- Accounting for significant labour and material cost increases that have resulted from COVID-19 and tariffs.
- Filing a comprehensive five-year distribution system plan (“**DSP**”) for each LDC in accordance with the OEB's requirement.
- Disposing of accumulated legacy Group 2 deferral and variance accounts (“**DVAs**”), which were last disposed of:
  - For E.L.K. Energy: 2022 (EB-2019-0016).
  - For ENWIN Utilities: 2020 (EB-2019-0032), other than one Group 2 DVA (Deferred Lost Customer Distribution Revenue account) which was approved for disposition in 2025 in accordance with the direction of the Board (EB-2024-0019).
- Updating load forecasts, cost allocation and rate design to reflect more current information.
- Ensuring the cost structures and rate frameworks of the two separate utilities are independently reset prior to amalgamating, ensuring there is no undue cross-subsidization between the legacy customer groups.

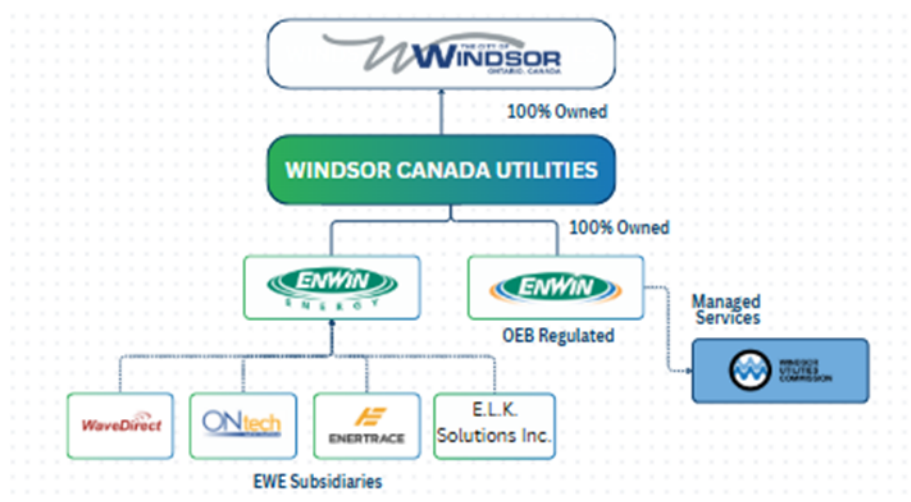
The Applicant submits that it is reasonable for the E.L.K. Energy rebasing application and the ENWIN Utilities rebasing application to be heard independently prior to Phase 2.

### 3.5 *The Phase 2 Transaction*

Upon completion of ENWIN Utilities' rebasing application, the Applicants intend to bring another application to the Board to approve Phase 2 of the transaction to allow for the amalgamation of ENWIN Utilities and E.L.K. Energy under section 86(1)(c) of the *Ontario Energy Board Act, 1998* (the “**Phase 2 Transaction**”). The following Figure 3 illustrates the currently anticipated corporate ownership structure upon the completion of the Phase 2 Transaction:



**Figure 3: Phase 2 - Corporate Ownership Structure**



The ultimate amalgamated entity will continue to operate under the name ENWIN Utilities Ltd.

#### 4. The No Harm Test

The Handbook states that “the ‘no harm’ test assesses whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the OEB’s statutory objectives.”<sup>4</sup> In applying this test, the OEB assesses and weighs both the quantitative (i.e., cost) and qualitative information (i.e., customer services) that has been provided in an application, to determine whether the proposed transaction, has a positive or a neutral effect on the matters prescribed in the objectives of the OEB (on a net basis).

The Handbook also notes that in applying the “no harm” test, the OEB generally focuses its review “on impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector.”<sup>5</sup>

As is demonstrated in this Application, the proposed transaction passes the “no harm” test as the evidence demonstrates that the transaction is expected to have a positive or neutral effect on the attainment of the OEB’s first two statutory objectives (as further detailed below). The Handbook notes that the OEB does not consider consolidations to fail the “no harm” test (i.e., have adverse impacts) with respect to the OEB’s third statutory objective (promoting electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario) or the OEB’s fourth statutory objective (facilitating innovation in the electricity sector).

There are no anticipated adverse impacts, and the Application is intended to put E.L.K. Energy on a path toward operational and financial viability moving forward, which will have a direct benefit

<sup>4</sup> Ontario Energy Board, *Handbook to Electricity Distributor and Transmitter Consolidations* (2024) at 8.

<sup>5</sup> *Ibid* at 9.



to existing E.L.K. Energy customers. As such, the Applicant submits that the proposed transaction meets the OEB's "no harm" test.

*4.1 Objective 1 – Protect consumers with respect to prices and the adequacy, reliability and quality of electricity service*

*(i) Impact with respect to prices*

WCUL is proposing a two-phase transaction that will result in the eventual amalgamation of E.L.K. Energy and ENWIN Utilities after the completion of the Phase 2 Transaction into a single amalgamated distribution company that will operate under the name ENWIN Utilities Ltd. In the OEB's most recent Pacific Economics Group Research, LLC benchmarking report from July 2024, both E.L.K. Energy and ENWIN Utilities are Group 1 companies with cost efficiency assessments in 2023 of -37.6% and -27.8%, respectively. This means that both utilities are already operating at well below expected cost.

The proposed transaction involves two Southwestern Ontario utilities that operate similar service territories and provides an opportunity for a smaller utility to draw upon the corporate structure and resources, including in-house expertise, of a near-by, larger organization.

The transition begins with the Phase 1 Transaction, which is the subject matter of this Application.

Following completion of the Phase 1 Transaction, there will be no adverse impact with respect to price or underlying costs as a result of the Phase 1 Transaction. As below, WCUL indicates modest synergies are possible.

WCUL proposes that following the Phase 1 Transaction ENWIN Utilities and E.L.K. Energy Inc. continue to operate as separate and distinct LDCs. E.L.K. Energy would receive services from ENWIN Utilities pursuant to an *Affiliate Relationships Code* compliant services agreement; ENWIN Utilities would otherwise continue to operate its business as usual. Modest synergies are possible as ENWIN Utilities is not planning to hire any additional employees to provide the managed services to E.L.K. Energy, and thereby the cost of those employees can be shared across a slightly larger customer base.

In addition, ENWIN Utilities and E.L.K. Energy intend to file their cost of service rebasing application for rates effective January 1, 2028, and May 1, 2027, respectively, as currently scheduled.

For purposes of this Application, it is critical to note that relying on historical expenditure levels to assess no harm is distorted because E.L.K. Energy's existing cost structures have proven insufficient to maintain ongoing financial and operational viability. It can reasonably be assumed that maintaining E.L.K. Energy's existing expenditure levels is unsustainable from an operational and financial perspective over the longer-term. Maintaining status quo would limit E.L.K. Energy's ability to provide new energy transition and electrification services, ensure future resiliency to climate change, provide greater defense postures in cyber security and embrace and promote other government priorities for the electricity sector.



Therefore, it must be acknowledged that historical spending levels are not the appropriate backdrop against which to assess no harm. However, since the future E.L.K. Energy spending levels will be the subject of an upcoming cost of service proceeding, the appropriate level of costs will be able to be thoroughly examined at that time.

Against this backdrop, WCUL has however determined that there are some expected synergy savings as a result of the transaction compared to what could reasonably be expected absent the transaction, which are further detailed below in the sections that outline comparative forecast revenue requirement and comparison of operations, maintenance and administrative costs.

(ii) *Impact with respect to the adequacy, reliability and quality of electricity service*

An objective of WCUL is that of a company that ensures its LDC holdings provide effective and efficient service with a focus on the communities that rely on them.

WCUL strongly believes in having a local physical presence no different than what E.L.K. Energy's customers experience today. Service levels and quality standards will continue through both the Phase 1 Transaction and the Phase 2 Transaction. WCUL is committed to maintaining and enhancing the adequacy of electricity service for its customers and to continue operating with a high degree of service, it is proposed that E.L.K. Energy continue operating as an independent utility while also being able to benefit from services provided by ENWIN Utilities pursuant to a services agreement (until a Phase 2 MAADs application is filed).

The front-line operations staff that currently respond to outages and power quality issues are expected to continue to serve the same communities. WCUL anticipates that response times will not decline. Further, throughout the Phase 1 Transaction and the Phase 2 Transaction, it is WCUL's intention to maintain the service level of both E.L.K. Energy and ENWIN Utilities through the merging of technologies, adoption of best work practices, system control, etc.

Historically E.L.K. Energy and ENWIN Utilities have maintained strong reliability measures in both System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI") metrics. SAIFI and SAIDI results for the year ending 2024 indicate that both LDCs have provided their customers with excellent reliability and both utilities have expertise in the elements and conditions which affect reliability in Southwestern Ontario. The five-year historical reliability metrics for E.L.K. Energy and ENWIN Utilities are provided in the tables below.



**Table 5: 2020-2024 Historic Service Quality Indicators of E.L.K. Energy and ENWIN Utilities (adjusted for Loss of Supply and Major Event Days)**

Service Quality Indicators - Adjusted for Loss of Supply and Major Event Days							
	2020	2021	2022	2023	2024	5-year average	OEB Target
<b>SAIDI</b>							
E.L.K.	3.34	0.65	0.32	0.71	0.02	<b>1.01</b>	1.62
ENWIN	0.86	0.86	0.63	0.94	0.86	<b>0.83</b>	0.88
<b>SAIFI</b>							
E.L.K.	1.15	0.20	0.12	0.29	0.47	<b>0.45</b>	0.55
ENWIN	2.11	1.68	1.03	1.60	1.53	<b>1.59</b>	1.90

It should be noted that actual customer reliability experience in the E.L.K. Energy service territory is not generally adjusted for Loss of Supply and Major Event Days. Unadjusted figures show a significant delta for both duration and frequency of customer outages over the 2020-2024 period:

**Table 6: 2020-2024 E.L.K. Energy Historical Reliability Performance Metrics (unadjusted for Loss of Supply and Major Event Days)**

Not Adjusted for LOS and MED						
Service Quality Indicators - Unadjusted for Loss of Supply and Major Event Days						
	2020	2021	2022	2023	2024	5-year average
<b>SAIDI</b>						
E.L.K.	5.853	2.872	6.025	21.608	0.02	<b>7.28</b>
ENWIN	0.88	0.86	1.25	4.13	0.87	<b>1.60</b>
<b>SAIFI</b>						
E.L.K.	2.334	0.91	1.597	0.655	0.72	<b>1.24</b>
ENWIN	2.23	1.68	2.15	3.35	1.61	<b>2.20</b>

There will be a large benefit to E.L.K. Energy customers through all future phases of the transaction in the form of technology enhancements in the E.L.K. Energy service territory that would otherwise not be economical or practical to implement.

These benefits include:

- The extension of the ENWIN Utilities Supervisory Control and Data Acquisition (SCADA) system to E.L.K. Energy;
- Extension of the ENWIN Utilities Geographic Information System (GIS) to include the E.L.K. Energy service area;



- Extension of the ENWIN Utilities customer website outage map to include the E.L.K. Energy service area;
- Extension of the ENWIN Utilities social media platforms (Twitter, Facebook, LinkedIn) to include E.L.K. Energy to aid in the promotion of distributor activities, engagement of customers, and communication of outage information; and
- Implementation of a stable, secure information technology backbone, aligned with current cyber security regulatory requirements, with full remote support from ENWIN Utilities.

Upon closing of Phase 1, E.L.K. Energy will greatly benefit by having access to fully resourced operations, engineering and customer service departments at ENWIN Utilities, providing a larger internal pool of resources to handle and improve all aspects of system adequacy, reliability and quality of electrical service. Of note, the E.L.K. Energy electrical system will be displayed, managed, and operated from the ENWIN Utilities 24/7/365 Control Room, an element of operation that is currently lacking at E.L.K. Energy. This change will aid in the optimization of power distribution, the issuance of work, and work protection and improve the overall operation and safety of the grid in normal and outage event situations. The larger resource pool will also aid in the ability for E.L.K. Energy to meet the requirements of an ever-changing industry and unlock the potential of technological advances and innovative projects to further promote stronger adequacy, reliability, and quality of electrical service.

The Handbook notes that in determining whether the “no harm” test has been met with respect to the adequacy, quality and reliability of electrical service, the OEB will be informed by the metrics filed by a distributor as well as its annual scorecard. The 2023 scorecards of both ENWIN Utilities and E.L.K. Energy are provided in Appendix F. Both scorecards demonstrate strong performance and trending in the areas of customer service and reliability and demonstrate a further alignment of objectives aimed at maintaining or improving service levels. The following table highlights the Customer Focus statistics:

**Table 7: 2020-2024 Customer Focus Statistics**

CUSTOMER FOCUS												
Year	New Residential/Small Business Services Connected On-Time (Target: 90%)		Scheduled Appointments Met On-Time (Target: 90%)		Telephone Calls Answered On-Time (Target: 65%)		First Contact Resolution		Billing Accuracy (Target 98%)		Customer Satisfaction Survey Results	
	E.L.K.	ENWIN	E.L.K.	ENWIN	E.L.K.	ENWIN	E.L.K.	ENWIN	E.L.K.	ENWIN	E.L.K.	ENWIN
2020	99.50	100.00	99.07	100.00	95.08	64.74	Excellent	99.10	99.95	99.95	91% Satis	88%
2021	99.59	100.00	100.00	100.00	91.20	58.90	Excellent	99.27	99.97	99.96	92.4% Satis	86%
2022	99.64	100.00	100.00	99.97	91.10	65.76	Excellent	99.18	99.93	98.49	92.4% Satis	86%
2023	100.00	100.00	100.00	100.00	91.02	78.74	88%	99.16	99.32	99.93	92.1% Satis	83%
2024	100.00	100.00	100.00	100.00	83.45	74.70	88%	99.32	99.81	99.89	92.1% Satis	84%



### ***Comparative Forecast Revenue Requirement***

The structure of this transaction is unique, in that a deferred rebasing period is not being sought as part of this Application. WCUL is simply seeking Board approval for the purchase of E.L.K. Energy shares pursuant to section 86(2)(a) of the OEB Act, and then to continue to separately run and rebase each LDC over the coming two-year period, as would have been scheduled to occur absent the transaction. Thus, the revenue requirement proposed for each LDC and requested to be recovered through distribution rates for each utility will be the subject of relatively near-term and fulsome proceedings before the OEB, despite the present Application.

However, as noted in the following section, WCUL does expect some modest O&M savings over the short-term compared to a status quo scenario absent the transaction, which would be a reduction to what the collective revenue requirement of each LDC otherwise would have been.

**Table 8: Forecasted Revenue Requirements**

<b>Revenue Requirement - No Transaction</b>										
<i>(dollars in thousands)</i>	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 5 - 2029	Year 6 - 2030	Year 7 - 2031	Year 8 - 2032	Year 9 - 2033	Year 10 - 2034
	IRM	IRM	COS	IRM	IRM	IRM	IRM	COS	IRM	IRM
E.L.K. Energy	\$ 3,983	\$ 4,063	\$ 5,485	\$ 5,594	\$ 5,706	\$ 5,820	\$ 5,937	\$ 7,124	\$ 7,267	\$ 7,412
	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 5 - 2029	Year 6 - 2030	Year 7 - 2031	Year 8 - 2032	Year 9 - 2033	Year 10 - 2034
	IRM	IRM	IRM	COS	IRM	IRM	IRM	IRM	COS	IRM
ENWIN Utilities	\$ 58,864	\$ 59,952	\$ 61,089	\$ 62,922	\$ 64,180	\$ 65,464	\$ 66,773	\$ 68,108	\$ 70,152	\$ 71,555
<b>No Transaction Total</b>	<b>\$ 62,847</b>	<b>\$ 64,015</b>	<b>\$ 66,574</b>	<b>\$ 68,516</b>	<b>\$ 69,886</b>	<b>\$ 71,284</b>	<b>\$ 72,710</b>	<b>\$ 75,232</b>	<b>\$ 77,418</b>	<b>\$ 78,967</b>
<b>Revenue Requirement - Phase 1 and Phase 2 Transaction</b>				Year 4 - 2028						
<i>(dollars in thousands)</i>	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 5 - 2029	Year 6 - 2030	Year 7 - 2031	Year 8 - 2032	Year 9 - 2033	Year 10 - 2034
	IRM	IRM	COS	IRM						
E.L.K. Energy	\$ 3,983	\$ 4,063	\$ 5,485	\$ 5,594						
	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 5 - 2029	Year 6 - 2030	Year 7 - 2031	Year 8 - 2032	Year 9 - 2033	Year 10 - 2034
	IRM	IRM	IRM	COS	IRM	IRM	IRM	IRM	IRM	IRM
ENWIN Utilities	\$ 58,864	\$ 59,952	\$ 61,089	\$ 62,922	\$ 69,886	\$ 71,284	\$ 72,710	\$ 74,164	\$ 75,647	\$ 77,160
<i>Synergies</i>		-25	-50	-50	-100	-125	-150	-200	-205	-210
<b>Phase 1/2 Transaction Total</b>	<b>\$ 62,847</b>	<b>\$ 63,990</b>	<b>\$ 66,524</b>	<b>\$ 68,466</b>	<b>\$ 69,786</b>	<b>\$ 71,159</b>	<b>\$ 72,560</b>	<b>\$ 73,964</b>	<b>\$ 75,442</b>	<b>\$ 76,950</b>
<i>Difference</i>	<b>\$ -</b>	<b>-\$ 25</b>	<b>-\$ 50</b>	<b>-\$ 50</b>	<b>-\$ 100</b>	<b>-\$ 125</b>	<b>-\$ 150</b>	<b>-\$ 1,269</b>	<b>-\$ 1,976</b>	<b>-\$ 2,016</b>

Please note that the tables above are being provided on a preliminary forecast basis and may be subject to change. WCUL cannot forecast with certainty the outcomes from the upcoming rebasing applications before the OEB or what efficiencies will be forecasted in the Phase 2 application.

### ***Comparison of the operations, maintenance and administrative (OM&A) cost per customer***

As discussed above, the structure of this transaction is unique, in that the operations, maintenance and administrative (OM&A) costs that are included in E.L.K. Energy's rates is not sustainable. Assumptions have therefore been built into the forecast that include incremental spending in IT,



cybersecurity, systems, SCADA, control room, and are partially offset by the elimination of an executive unfilled vacancy.

**Table 9: Forecasted OM&A**

OM&A Costs (dollars in thousands)	Phase 1				Phase 2	Post-Consolidation Period					
	Year 1 - 2025	Year 2 - 2026	Year 3 - 2027	Year 4 - 2028	Year 4 - 2028	Year 5 - 2029	Year 6 - 2030	Year 7 - 2031	Year 8 - 2032	Year 9 - 2033	Year 10 - 2034
			E.L.K. COS Test Year	ENWIN COS Test Year	MAADs Application						
E.L.K.	\$ 4,544	\$ 4,772	\$ 5,010	\$ 5,110	\$ 5,110						
ENWIN	\$ 33,493	\$ 33,972	\$ 34,995	\$ 36,485	\$ 36,485						
E.L.K. + ENWIN	\$ 38,037	\$ 38,744	\$ 40,005	\$ 41,595	\$ 41,595	\$ 42,872	\$ 44,388	\$ 45,471	\$ 46,580	\$ 47,717	\$ 48,671
Synergies		-\$ 25	-\$ 50	-\$ 50	-\$ 50	-\$ 100	-\$ 125	-\$ 150	-\$ 200	-\$ 205	-\$ 210
Forecast OM&A	\$ 38,037	\$ 38,719	\$ 39,955	\$ 41,545	\$ 41,545	\$ 42,772	\$ 44,263	\$ 45,321	\$ 46,380	\$ 47,512	\$ 48,461
OM&A / Customer											
E.L.K.	\$ 358.42	\$ 376.40	\$ 395.17	\$ 403.06	\$ 403.06						
ENWIN	\$ 366.13	\$ 371.37	\$ 382.55	\$ 398.84	\$ 398.84	\$ 410.65	\$ 424.97	\$ 435.13	\$ 445.29	\$ 456.16	\$ 465.28

(iii) *Describe how the distribution systems within the service areas will be operated, including whether the proposed transaction will cause a change of control*

As WCUL is acquiring E.L.K. Energy the proposed transaction will result in a change of control. All assets in E.L.K. Energy's service territory will fall under the control of WCUL in the Phase 1 Transaction and then transfer to the new ENWIN Utilities Ltd. in the Phase 2 Transaction.

Due to the importance of maintaining and/or enhancing current customer service levels, the Applicant is proposing that the current operation centres will be maintained in both territories throughout the duration of the Phase 1 Transaction. This will ensure the continuance of local focus to ensure strong community relationships and top tier customer service for both territories.

The following charts depict how distribution system operations will be managed by which entity over the two phases.

#### Phase 1

Service Territory	Operations Centre	Management Services	Control
E.L.K. Energy	Current E.L.K. Energy Office	ENWIN Utilities	WCUL
ENWIN Utilities	Current ENWIN Utilities Office	ENWIN Utilities	ENWIN Utilities



## Phase 2

Service Territory	Operations Centre	Management Services	Control
E.L.K. Energy	Current E.L.K. Energy Office	ENWIN Utilities	ENWIN Utilities
ENWIN Utilities	Current ENWIN Utilities Office	ENWIN Utilities	ENWIN Utilities

During Phase 2 and beyond, the main headquarters will be the current ENWIN Utilities office, located in Windsor, Ontario. Functions such as engineering, procurement, human resources, finance, regulatory, information technology, and customer service will be administered and delivered from the Windsor location, with each location having operations staffing similar to current resourcing levels.

Following the Phase 2 Transaction, the organization of ENWIN Utilities' operational structure will be implemented in a way that ensures E.L.K. Energy leverages the centralized functions at ENWIN Utilities that make ENWIN Utilities an efficient, effective, and compliant LDC while still ensuring a local presence exists in both service territories. It is extremely important to provide the same level of local service the communities are accustomed to. The adoption and extension of ENWIN Utilities' processes and systems by E.L.K. Energy will provide an economical approach to unlocking opportunities and levels of service that would otherwise be cost prohibitive to consider.

Although the majority of the operational benefit of the acquisition flows to the customers of E.L.K. Energy, WCUL anticipates attaining further collaboration and distribution operation experience through the retention of E.L.K. Energy staff and through the creation of a new ENWIN Utilities Ltd. in the Phase 2 Transaction. This will ensure the continuance of local focus to ensure strong community relationships and top tier customer service for both territories.

### 4.2 *Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry*

WCUL's acquisition of E.L.K. Energy eventually has the potential to create economic efficiencies and cost effectiveness; ENWIN Utilities will be able to capitalize on this potential due to its significant experience in the industry. The similarities between ENWIN Utilities and E.L.K. Energy provide value for the customers of E.L.K. Energy. ENWIN Utilities is skilled at operating a utility that services the same types of customer classes served by E.L.K. Energy as well as in a service territory with similar characteristics and terrain as E.L.K. Energy and doing so in a cost-efficient manner. This operational expertise and management philosophy will be brought over to E.L.K. Energy. Over the long-term horizon, this acquisition is anticipated to generate sustainable administrative cost savings (compared to a scenario absent the transaction) as a result of centralizing back-office functions including management, billing, customer service, finance, and



regulatory functions. The acquisition will also provide E.L.K. Energy with the benefit of being a part of a larger strategic plan that focuses on driving the LDC forward. The core strengths of ENWIN Utilities in community building, reliability, safety, operations, customer service, and solid financial performance will be leveraged by E.L.K. Energy through one integrated management team and board of directors. The anticipated savings will be passed on to customers through lower OM&A costs after Phase 2 of the transaction.

With WCUL proposing to continue E.L.K. Energy's plan to file its cost of service rebasing application for rates effective May 1, 2027, WCUL is addressing the need for E.L.K. Energy to realign rates and deal with an unsustainable ROE. It is not financially viable, prudent, or sustainable for E.L.K. Energy to continue to defer its rebasing. The rate setting process allows an electricity distributor to address its operational and infrastructure needs within the context of just and reasonable rates that take into account the impact on customers. E.L.K. Energy does not have the financial ability to continue executing its operational plans without a rate adjustment. The Phase 2 Transaction may provide for sustainable cost reductions that benefit customers over the longer term without reducing the levels of customer service and reliability that customers of E.L.K. Energy expect.

*(i) Identify all incremental costs of the proposed transaction*

Incremental one-time transaction and transition costs are expected to be approximately \$1 million. These costs will not be included in the revenue requirement of E.L.K. Energy, ENWIN Utilities, or the new ENWIN Utilities Ltd. and thus will not be funded by ratepayers.

The parties to the proposed transactions have incurred, and will continue to incur, incremental transaction costs in respect of the proposed acquisition and future consolidation. These costs include but are not limited to: due diligence on the part of all parties, the costs associated with negotiating the terms of the purchase, costs associated with all regulatory, legal and statutory reviews in order to receive necessary regulatory approvals and internal resources. Incremental transition costs that are expected as a result of the Phase 2 Transaction include information technology, legal, and professional advisory services.

*(a) Transaction Costs*

The Applicant and the Seller retained its own independent legal and financial advisors. Such costs are borne by each of the parties and will not carry into distribution rates or the new entity.

*(b) Implementation / Integration Costs*

The integration costs will be financed through the anticipated productivity savings expected from the transaction during the period after the Phase 2 Transaction. As always, there will be timing differences between expense outlays and their recovery.

OM&A incremental transitional costs are primarily related to:



- Transition planning and execution – third party and additional staff costs related to implementing the transition plan;
  - IT costs – costs associated with system integration and standardization;
  - Communication costs – development and execution of customer and other stakeholder communications at various stages of transition; and
  - Workforce training – costs associated with retraining employees on new systems, processes, and policies.
- (ii) *Provide a valuation of assets or shares that will be transferred in the proposed transaction*

The purchase price valuation will be based on a future E.L.K. Energy rate base which will be agreed upon by both the buyer and the seller as per the Purchase and Sale Agreement.

- (iii) *Details as to why purchase price will not have an adverse effect on the financial viability of the acquiring utility*

In the proposed Phase 1 transaction, the acquiring entity is WCUL, a holding company, so there will be no effect on the financial viability of a utility. For further assurance, the estimated purchase price is not expected to have a material impact on the overall financial viability of WCUL, as it only represents approximately 5% of WCUL's total assets.

- (iv) *Provide details of the financing of the proposed transaction*

The proposed transaction will be 100% financed by new term debt from the Royal Bank of Canada.

- (v) *Financial statements*

Appendix G to this Application contains ENWIN Utilities and E.L.K. Energy's audited annual financial statements for the years 2024 for ENWIN Utilities and 2023 for E.L.K. Energy. These represent the most current year available at time of filing the application.

- (vi) *Pro forma financial statements*

As the utilities are not being merged as part of the Phase 1 Transaction, the Applicant plans to provide pro forma financial statements for the new ENWIN Utilities Ltd. that will be created as part of the Phase 2 application.

## **5. Rate Considerations for Consolidation Applications**

Phase 1 of this transaction does not contemplate ENWIN Utilities or E.L.K. Energy requesting a rebasing deferral period and therefore an earnings sharing mechanism ("ESM") will not be required; the intent is to file a full cost of service applications for ENWIN Utilities and E.L.K.



Energy in order to have distribution rates adjusted. Phase 2 of this transaction may include a proposal for a rebasing deferral period. The rates in each of the two service territories will continue to be set by the Board's Price Cap IR until rebasing.

## **6. Rate Harmonization**

The Applicants will not be harmonizing rates at the time of rebasing as part of the Phase 1 Transaction. ENWIN Utilities and E.L.K. Energy would continue to operate independently as separate utilities. Rate harmonization may be addressed as part of the Phase 2 Transaction.

## **7. Inapplicability of Post-Consolidation Monitoring and Reporting**

The Applicants intend for ENWIN Utilities and E.L.K. Energy to continue to operate independently as separate utilities after the close of the Phase 1 Transaction. Reliability will continue to be reported separately for each utility. The Applicants intend to amalgamate ENWIN Utilities and E.L.K. Energy into a single utility as part of the Phase 2 Transaction soon after the rebasing of ENWIN Utilities and any post-consolidation report created for the Phase 1 Transaction will quickly become obsolete. In any event, many of the requirements of the post-consolidation report may be addressed by Distribution System Plans filed by ENWIN Utilities and E.L.K. Energy.

For these reasons, the post-consolidation monitoring and reporting requirements are not applicable for Phase 1.

## **8. Inapplicability of Accounting Matters**

Both ENWIN Utilities and E.L.K. Energy will continue to operate on a stand-alone basis until Phase 2. This means that each of ENWIN Utilities and E.L.K. Energy will continue to maintain separate reporting and record keeping, rate applications and tracking of deferral and variance accounts. Group 1 and Group 2 accounts will be tracked on a stand-alone basis until a proposal for deferral and variance account proposal is filed with the Phase 2 application when the utilities are merged.

With respect to timing of Group 2 disposition, both ENWIN Utilities and E.L.K. Energy will be filing rebasing applications as scheduled. There will be no impacts to intergenerational inequity because of this Phase 1 application as ENWIN Utilities and E.L.K. Energy will be maintaining the same disposition schedule for these accounts.

For these reasons, the accounting matters listed in section 2.2.8 of the Handbook are not applicable for Phase 1.



**9. Other Related Matters**

*9.1 Implementation of new or the extension of existing rate riders*

No new rate riders are proposed by the Applicant as a result of the proposed transaction and this Application.

*9.2 Transfer of rate order and licence / Licence amendment and cancellation*

Not required for the Phase 1 Transaction.

*9.3 Approval to continue to track costs to the deferral and variance accounts currently approved by the OEB*

The Applicants request the Board's approval to continue to track costs in the deferral and variance accounts currently approved by the Board separately.

*9.4 Approval to use different accounting standards for financial reporting following the closing of the proposed transaction*

The Applicant does not propose the use of any different accounting standards. ENWIN Utilities adopted International Financial Reporting Standards ("IFRS") on January 1, 2012 and utilizes MIFRS for regulatory reporting purposes. E.L.K. Energy adopted IFRS on January 1, 2015 and utilizes MFIRS for regulatory reporting purposes.



**APPENDIX A**

**Notice of Proposal under Sections 80 and 81 of the *Ontario Energy Board Act, 1998***



**Ontario Energy Board**  
**Preliminary Filing Requirements**  
**For a Notice of Proposal under Sections 80 and 81**  
**Of the *Ontario Energy Board Act, 1998***

**INSTRUCTIONS:**

This form applies to all applicants who are providing a Notice of Proposal to the Ontario Energy Board (the "Board") under sections 80 and 81 of the *Ontario Energy Board Act, 1998* (the "Act"), including parties who are also, as part of the same transaction or project, applying for other orders of the Board such as orders under sections 86 and 92 of the Act.

The Board has established this form under section 13 of the Act. Please note that the Board may require information that is additional or supplementary to the information filed in this form and that the filing of the form does not preclude the applicant from filing additional or supplementary information.

**PART I: GENERAL MINIMUM FILING REQUIREMENTS**

All applicants must complete and file the information requested in Part I.

**1.1 Identification of the Parties**

**1.1.1 Applicant**

Name of Applicant <b>Windsor Canada Utilities Ltd.</b>	File No: (Board Use Only)	
Address of Head Office <b>4545 Rhodes Drive PO Box 1625 Station A Windsor ON, N8W 5T1</b>	Telephone Number <b>519 251 7300</b>	
	Facsimile Number <b>519 255 7423</b>	
	E-mail Address <a href="mailto:regulatory@enwin.com">regulatory@enwin.com</a>	
Name of Individual to Contact <b>Garry Rossi President &amp; CEO</b>	Telephone Number <b>519 251 7300 ext. 5623</b>	
	Facsimile Number <b>519 255 7423</b>	
	E-mail Address <a href="mailto:grossi@enwin.com">grossi@enwin.com</a>	



### 1.1.2 Other Parties to the Transaction or Project

Name of Other Party <b>E.L.K. Energy Inc.</b>	Board Use Only	
Address of Head Office <b>172 Forest Ave Essex ON, N8M 3E4</b>	Telephone Number <b>519 776 5291</b>	
	Facsimile Number <b>N/A</b>	
	E-mail Address <a href="mailto:customer.service@elkenenergy.com">customer.service@elkenenergy.com</a>	
Name of Individual to Contact <b>Kayla Lucier Supervisor, Finance &amp; Regulatory Farooq Hyder Acting General Manager</b>	Telephone Number <b>519 776 5291 x 204 519 776 5291 x 213</b>	
	Facsimile Number <b>N/A</b>	
	E-mail Address <a href="mailto:klucier@elkenenergy.com">klucier@elkenenergy.com</a> <a href="mailto:fhhyder@elkenenergy.com">fhhyder@elkenenergy.com</a>	

### 1.2 Relationship between Parties to the Transaction or Project

1.2.1	<p>Attach a list of the officers, directors and shareholders of each of the parties to the proposed transaction or project.</p> <p><b><u>Windsor Canada Utilities Ltd.</u></b></p> <p><u>Officers</u></p> <p>Garry Rossi; Matthew Carlini; Paul Gleason; Kris Taylor</p> <p><u>Directors</u></p> <p>Drew Dilkens; Jo-Anne Gignac; Kevin Laforet; Ed Sleiman; Jim Morrison; Jerry Udell</p> <p><u>Shareholder</u></p> <p>The Corporation of the City of Windsor</p>	
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	<p><b><u>E.L.K. Energy Inc.</u></b></p> <p><u>Officers</u></p> <p>Sherry Bondy; Robbie Shepley</p> <p><u>Directors</u></p> <p>Sherry Bondy; Robbie Shepley; Kimberly Deyong; Kate Giurissevich; John Kerr; Joseph Malandrucolo; Darren Jeff Scott; Doug Sweet</p> <p><u>Shareholder</u></p> <p>The Corporation of the Town of Essex</p>	
1.2.2	<p>Attach a corporate chart describing the relationship between each of the parties to the proposed transaction or project and each of their respective affiliates.</p> <p><b>Please see Appendix B of the attached MAADs Application.</b></p>	

### 1.3 Description of the Businesses of Each of the Parties

1.3.1	<p>Attach a description of the business of each of the parties to the proposed transaction or project, including each of their affiliates licenced under the OEB Act to operate in Ontario for the generation, transmission, distribution, wholesaling or retailing of electricity or providing goods and services to companies licenced under the OEB Act in Ontario ("Electricity Sector Affiliates").</p> <p><b>Please see section 2.1 and Appendix B of the attached MAADs Application.</b></p>	
1.3.2	<p>Attach a description of the geographic territory served by each of the parties to the proposed transaction or project, including each of their Electricity Sector Affiliates, if applicable, and the geographic location of all existing generation facilities.</p> <p><b>Please see section 2.2 of the attached MAADs Application.</b></p>	



1.3.3	<p>Attach a breakdown of the annual sales (in C\$, and in MWh) as of the most recent fiscal year end of the existing generation output among the IESO Administered Markets ("IAM"), bilateral contracts, and local distribution companies.</p> <p><b>In 2024, E.L.K. Energy Inc. had annual revenue from generation of approximately \$5,130 pursuant to a microFIT contract and gross energy output of approximately 9,614 kWh. The generated electricity was supplied to the E.L.K. Energy Inc. distribution system.</b></p> <p><b>In 2024, ENWIN Energy Ltd. had annual gross energy output of 1,141,468 kWh pursuant to a net-metering arrangement behind-the-meter.</b></p>	
1.3.4	<p>Attach a list identifying all relevant Board licences and approvals held by the parties to the proposed transaction or project and each of their Electricity Sector Affiliates, and any applications currently before the Board, or forthcoming. Please include all Board file numbers.</p> <p><b>ENWIN Utilities Ltd.</b></p> <ul style="list-style-type: none"> <li>• <b>Electricity Distribution Licence: ED-2002-0527</b></li> </ul> <p><b>ENWIN Energy Ltd.</b></p> <ul style="list-style-type: none"> <li>• <b>Unit Sub-metering Licence: ES-2021-0206</b></li> </ul> <p><b>E.L.K. Energy Inc.</b></p> <ul style="list-style-type: none"> <li>• <b>Electricity Distribution Licence: ED-2003-0015</b></li> <li>• <b>2025 IRM Rate Application: EB-2024-0015</b></li> </ul>	

#### 1.4 Current Competitive Characteristics of the Market

1.4.1	<p>Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to the completion of the proposed transaction or project.</p> <ul style="list-style-type: none"> <li>• <b>E.L.K. Energy Inc. owns solar panels with a combined installed output capacity of 10 kW.</b></li> <li>• <b>ENWIN Energy Ltd. owns solar panels with a combined installed output capacity of 988 kW.</b></li> </ul>	
1.4.2	<p>Describe the generation market share based on actual MWh production as a percent of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to completion of the proposed transaction or project.</p> <p><b>According to the IESO, in 2024, the total annual Ontario energy demand was 140.4 TWh<sup>1</sup> (or 140,400,000 MWh).</b></p> <p><b>The actual MWh production of the above facilities in 2024 was 1,151 MWh. This represents 0.00082% of the total annual Ontario energy demand.</b></p>	

<sup>1</sup> <https://www.ieso.ca/power-data/demand-overview/historical-demand>



## 1.5 Description of the Proposed Transaction or Project and Impact on Competition - General

1.5.1	<p>Attach a detailed description of the proposed transaction or project, including geographic locations of proposed new transmission or distribution systems, or new generation facilities.</p> <p><b>Please see section 1 of the attached the MAADs Application.</b></p>	
1.5.2	<p>Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.</p> <p><b>The combined generation capacity will remain unchanged after completion of the proposed transaction.</b></p>	
1.5.3	<p>Describe the generation market share based on anticipated MWh production as a percentage of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.</p> <p><b>The generation market share will remain unchanged after completion of the proposed transaction.</b></p>	
1.5.4	<p>Attach a short description of the impact, if any, of the proposed transaction or project on competition. If there will be no impact on competition, please state the reasons. Cite specifically the impacts of the proposal on customer choice regarding generation, energy wholesalers, and energy retailers.</p> <p><b>The proposed transaction will not impact competition. The proposed transaction is aimed at the eventual (after Phase 2) amalgamation of two southwestern Ontario electricity distributors - ENWIN Utilities Ltd. and E.L.K. Energy Inc. The OEB has acknowledged that consolidation enables distributors to address challenges in an evolving electricity industry. The two distributors at the centre of the proposed transaction happen to own, or have affiliates that own, modest generation facilities, requiring this Notice of Proposal to be filed.</b></p>	
1.5.5	<p>Provide confirmation that the proposed transaction or project will have no impact on open access to the transmission or distribution system of the parties or their affiliates. If open access will be affected explain how and why.</p> <p><b>The proposed transaction will have no impact on open access to the transmission or distribution system of the parties or their affiliates.</b></p>	

## 1.6 Other Information

1.6.1	<p>Attach confirmation that the parties to the proposed transaction or project are in compliance with all licence and code requirements, and will continue to be in compliance after completion of the proposed transaction or project.</p> <p><b>To the best of the Applicant's knowledge, the parties to the proposed transaction are in compliance with all licence and code requirements, and will continue to be in compliance after completion of the proposed transaction or project.</b></p>	
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**PART II: SECTION 80 OF THE ACT—TRANSMITTERS AND DISTRIBUTORS ACQUIRING AN INTEREST IN GENERATORS OR CONSTRUCTING A GENERATION FACILITY**

All applicants filing a Notice of Proposal under section 80 of the Act must complete and file the information requested in Part II.

**2.1 Effect on Competition**

2.1.2	Describe whether the proposed generation output will be primarily offered into the IAM, sold via bilateral contracts, or for own use.  <b>The generation output from E.L.K. Energy Inc. generation facility is offered into E.L.K. Energy distribution system via a microFIT contract.</b>	
2.1.3	Provide a description of the generation including fuel source, technology used, maximum capacity output, typical number of hours of operation in a year, and peaking versus base-load character.  <b>Fuel Source: Solar</b> <b>Technology Used: Solar PV Ground Mounted Dual Axis Tracking System</b> <b>Maximum Capacity Output: 10 kW</b> <b>Typical Number of Hours of Operation: Approximately 4,467</b> <b>Peak Output: 8.4 kW</b> <b>Base Load Output: 2.6 kW</b>	
2.1.4	Provide details on whether the generation facility is expected to sign a “must run” contract with the IESO.  <b>The generation facility does not, and is not expected to, sign a “must run” contract with the IESO.</b>	
2.1.5	Provide details of whether the generation facility is expected to serve a “load pocket”, or, is likely to be “constrained on” due to transmission constraints.  <b>The generation facility is not expected to serve a “load pocket”, and is not likely to be “constrained on” due to transmission constraints.</b>	

**2.2 System Reliability**

Section 2.2 must be completed by applicants who are claiming that the proposed transaction or project is required for system reliability under section 82(2)(b) of the Act.

**Not Applicable.**

2.2.1	Provide reasons why the proposal is required to maintain the reliability of the transmission or distribution system. Provide supporting studies.	
2.2.2	Discuss the effect of the proposal on the adequacy (ability of supply to meet demand) of supply in the relevant control area or distribution region, citing effects on capacity plus reserve levels in comparison to load forecasts.	
2.2.3	Discuss the effect of the proposal on the security (ability of supply to respond to system contingencies) of supply.	
2.2.4	Provide a copy of the IESO Preliminary System Impact Assessment Report, if completed, and the IESO Final System Impact Assessment Report, if completed. If the IESO is not conducting a System Impact Assessment Report, please explain.	



**PART III: SECTION 81 OF THE ACT—GENERATORS ACQUIRING AN INTEREST IN OR CONSTRUCTING A TRANSMISSION OR DISTRIBUTION SYSTEM**

All applicants filing a Notice of Proposal under section 81 of the Act must complete and file the information requested in Part III.

**3.1 Effect on Competition**

3.1.1	Provide a description of the transmission or distribution system being acquired or constructed. <b>Please see section 2 of the attached MAADs application.</b>	
3.1.2	Provide details on whether the generation facilities owned by the acquiring company are or will be directly connected to the transmission or distribution system being acquired or constructed. <b>The generation facility owned by ENWIN Energy Ltd. will not be directly connected to the E.L.K. Energy Inc. distribution system, which is being acquired Windsor Canada Utilities Ltd.</b>	
3.1.3	Provide details of whether the generation facility is expected to serve a “load pocket”, or is likely to be “constrained on” due to transmission constraints. <b>The generation facility is not expected to serve a “load pocket”, and is not likely to be “constrained on” due to transmission constraints.</b>	
3.1.4	Provide details on whether the generation facilities are expected to sign a “must run” contract with the IESO. <b>The generation facility does not, and is not expected to, sign a “must run” contract with the IESO.</b>	



**How to Contact the Ontario Energy Board**

The Ontario Energy Board is located at:

P.O. Box 2319  
2300 Yonge Street, Suite 2701  
Toronto, Ontario  
M4P 1E4

Telephone:	416-481-1967
Toll Free Number:	1-888-632-6273
Fax:	416-440-7656
Website:	<a href="http://www.oeb.gov.on.ca">http://www.oeb.gov.on.ca</a>
Board Secretary's e-mail address:	<a href="mailto:boardsec@oeb.gov.on.ca">boardsec@oeb.gov.on.ca</a>



## **APPENDIX B**

### **Details regarding the corporate structures of the parties both before and after Phase 1 of the proposed transaction, and applicable governing laws**

WCUL is a corporation incorporated under the laws of the Province of Ontario. WCUL acts as a holding company and is a wholly owned subsidiary of the Corporation of the City of Windsor. The Corporation of the City of Windsor is a municipal corporation governed by the laws of Ontario. WCUL is also the sole owner of ENWIN Energy Ltd. and ENWIN Utilities.

The Seller is a municipal corporation governed by the laws of Ontario. The Seller is the legal and beneficial owner of: (i) all the issued and outstanding shares of E.L.K. Energy, a corporation incorporated pursuant to section 142 of the *Electricity Act* and the *Business Corporations Act* (Ontario), and (ii) 50% of the issued and outstanding shares in the capital of ESI, a corporation incorporated under the laws of the Province of Ontario.

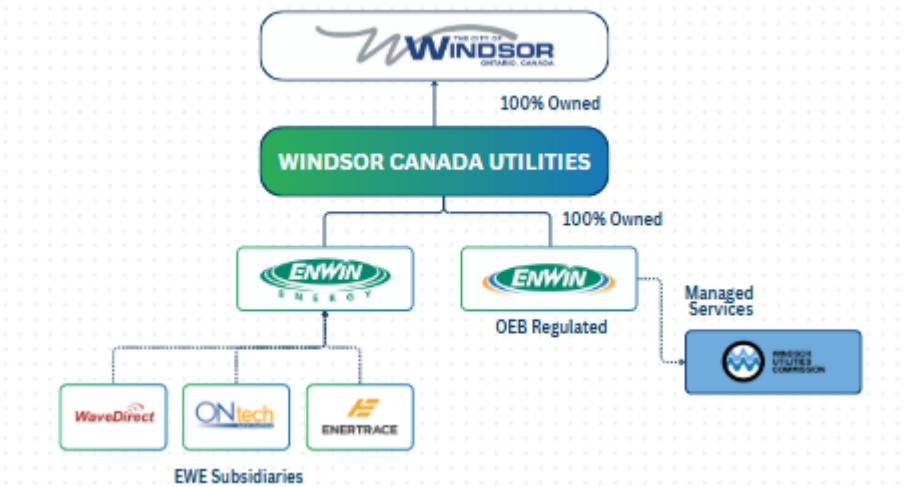
Pursuant to the Purchase and Sale Agreement, as further described herein, and subject to the parties obtaining the required approvals, the Seller has agreed to sell and WCUL has agreed to purchase, the following: (i) all of the issued and outstanding shares in the capital of E.L.K. Energy owned or held by the Seller, and (ii) all of the issued and outstanding shares in the capital of ESI owned or held by the Seller. Once WCUL has acquired all of the shares of E.L.K. Energy, WCUL will assume 100% ownership and control of E.L.K. Energy.

In the Phase 2 Transaction, E.L.K. Energy will amalgamate with ENWIN Utilities and form a new ENWIN Utilities Ltd.

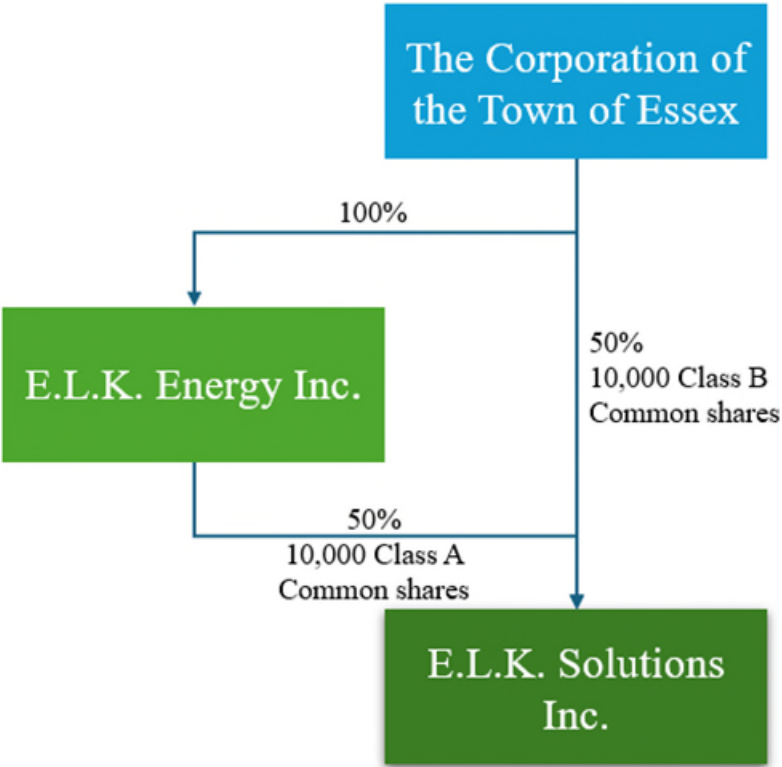
The diagrams below illustrate the Existing Windsor Canada Utilities Ltd. Ownership Structure, the Existing E.L.K. Energy Inc. Ownership Structure, the Phase 1 Transaction Structure, and the Phase 2 Transaction Structure.



Existing Windsor Canada Utilities Ltd. Ownership Structure

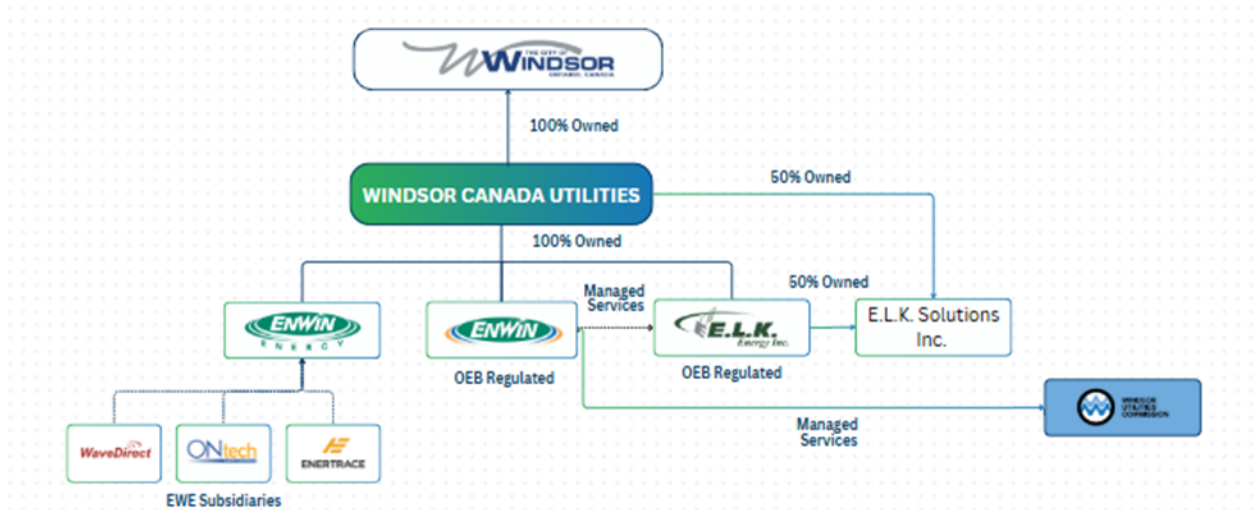


Existing E.L.K. Energy Inc. Ownership Structure

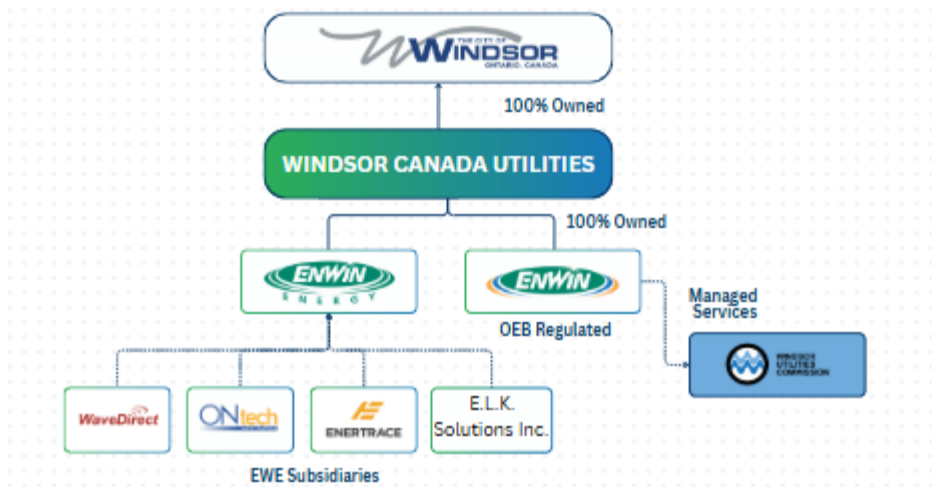




## The Phase 1 Transaction Structure



## The Phase 2 Transaction Structure





**APPENDIX C**  
**Mapping of Application to Filing Requirements**

<b>Reference to the Handbook</b>	<b>Filing Requirements</b>	<b>Reference</b>
1.2 Certification of Evidence	Certification of Evidence	Page 5
1.6 Certification Regarding Personal Information	Certification Regarding Personal Information	Page 5
2.1 Exhibit A: The Index	Index	Pages 2-3
2.2 The Application		
2.2.1 Administrative		
	Legal name of the applicant or applicants	Section 1.1 – Section 1.2
	Details of the authorized representative of the applicants, including the name, phone and fax numbers, and email and delivery addresses	Section 1.2
	Legal name of the other party or parties to the transaction, if not an applicant	Section 1.1 – Section 1.2; Section 2.1; Appendix B
	Details of the authorized representative of the other party or parties to the transaction, including the name, phone and fax numbers, and email and delivery addresses	Section 1.2
	Brief description of the nature of the transaction for which approval of the OEB is sought by the applicant or applicants	Section 1.1; Section 2; Section 3; Appendix B



Reference to the Handbook	Filing Requirements	Reference
2.2.2 Description of the Business of the Parties to the Transaction		
	Describe the business of each of the parties to the proposed transaction, including each of their electricity sector affiliates engaged in, or providing goods or services to anyone engaged in, the generation, transmission, distribution or retailing of electricity.	Section 2.1; Appendix B
	Describe the geographic territory served by each of the parties to the proposed transaction, including each of their affiliates, if applicable, noting whether service area boundaries are contiguous or, if not, the relative distance between service boundaries.	Section 2.2
	Describe the customers, including the number of customers in each class, served by each of the parties to the proposed transaction.	Section 2.3
	Describe the proposed geographic service area of each of the parties after completion of the proposed transaction.	Section 2.4
	Provide a corporate chart describing the relationship between each of the parties to the proposed transaction and each of their respective affiliates.	Section 2.5; Section 3.1; Section 3.5; Appendix B
	If the proposed transaction involves the consolidation of two or more distributors, please indicate the maximum peak load (kW) for each distributor's service area that is used to calculate the distributor's maximum "cumulative generation capacity from net metered generators".	Section 2.6
2.2.3 Description of the Proposed Transaction		



Reference to the Handbook	Filing Requirements	Reference
	Provide a detailed description of the proposed transaction.	Section 3.1; Section 3.5
	Provide a clear statement on the leave being sought by the applicant, referencing the particular section or sections of the <i>Ontario Energy Board Act, 1998</i> .	Section 1.1
	Provide details of the consideration (e.g. cash, assets, shares) to be given and received by each of the parties to the proposed transaction.	Section 3.1
	Provide all final legal documents to be used to implement the proposed transaction.	Section 3.2 – Section 3.3; Appendix D; Appendix E
	Provide a copy of appropriate resolutions by parties such as parent companies, municipal council/s, or any other entities that are required to approve a proposed transaction confirming that all these parties have approved the proposed transaction.	Section 3.3; Appendix E
2.2.4 Impact of the Proposed Transaction		
<i>Objective 1 – Protect Consumers with respect to prices and the adequacy, reliability and quality of electrical service</i>		
	Indicate the impact the proposed transaction will have on all consumers with respect to prices and the adequacy, reliability and quality of electricity service.	Section 4.1(i) – Section 4.1(ii)
	Provide a year-over-year comparative forecast revenue requirement analysis for the proposed transaction, comparing the costs of the utilities post-	Section 4.1(ii)



Reference to the Handbook	Filing Requirements	Reference
	transaction on a consolidated basis and the costs of the utilities in the absence of the transaction.	
	Provide a statement confirming that at the time of the post-consolidation rebasing application, the consolidated entity will produce an updated analysis comparing the revenue requirement (under both the consolidated scenario and the status quo) but based on information available on a reasonable efforts basis. Further, provide a statement confirming that this will be supplemented with a comparison and discussion of the consolidation application forecasts versus those filed in the post-consolidation rebasing application.	Section 4.1(ii)
	Provide a comparison of the operations, maintenance and administrative (OM&A) cost per customer per year between the consolidating utilities.	Section 4.1(ii)
	Confirm whether the proposed transaction will cause a change of control of any of the transmission or distribution system assets, at any time, during or by the end of the transaction.	Section 4.1(iii)
	Describe how the distribution or transmission systems within the service areas will be operated.	Section 4.1(iii)
<i>Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry</i>		
	Indicate the impact that the proposed transaction will have on economic efficiency and cost effectiveness (in the distribution or transmission of electricity), identifying the various aspects of utility operations where the applicant expects sustained operational efficiencies (both quantitative and qualitative).	Section 4.2



Reference to the Handbook	Filing Requirements	Reference
	Identify all incremental costs that the parties to the proposed transaction expect to incur which may include incremental transaction costs (e.g. legal, regulatory), incremental transition costs (e.g. employee severances), and incremental on-going costs (e.g. purchase and maintenance of new IT systems). Explain how the consolidated entity intends to finance these costs.	Section 4.2(i)
	Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.	Section 4.2(ii)
	If the price paid as part of the proposed transaction is more than the book value of the assets of the selling utility, provide details as to why this price will not have an adverse effect on the financial viability of the acquiring utility.	Section 4.2(iii)
	Provide details of the financing of the proposed transaction.	Section 4.2(iv)
	Provide financial statements (including balance sheet, income statement, and cash flow statement) of the parties to the proposed transaction for the past two most recent years.	Section 4.2(v); Appendix G
	Provide pro forma financial statements for the consolidated entity for the first full year following the completion of the proposed transaction, including the assumptions/explanations used in the pro forma financials, as well as the methodology used to forecast amounts.	Section 4.2(vi)
2.2.5 Rate considerations for consolidation applications		
	Indicate a specific deferred rate rebasing period that has been chosen.	Section 5
	Identify the rate year and effective date for rebased rates at the end of the elected deferred rebasing period.	Section 5
	For deferred rebasing periods greater than five years.	N/A



Reference to the Handbook	Filing Requirements	Reference
	If applicable, for a proposed consolidation between one consolidated utility in a deferred rebasing period (as a result of a previously approved consolidation) merging or acquiring another utility not in a deferred rebasing period.	N/A
2.2.6 Rate Harmonization	Rate Harmonization	Section 6
2.2.7 Post-Consolidation Monitoring and Reporting	Post-Consolidation Monitoring and Reporting	Section 7
2.2.8 Accounting Matters	Accounting Matters	Section 8
2.2.9 Other		
	Implementation of new or the extension of existing rate riders	Section 9.1
	Transfer of rate order and licence / Licence amendment and cancellation	Section 9.2
	Approval to continue to track costs to the deferral and variance accounts currently approved by the OEB	Section 9.3
	Approval to use different accounting standards for financial reporting following the closing of the proposed transaction	Section 9.4



**APPENDIX D**  
**Purchase and Sale Agreement dated March 12, 2025, between Windsor Canada Utilities**  
**Limited and The Corporation of the Town of Essex**



**WINDSOR CANADA UTILITIES LTD.  
AS BUYER**

**- and -**

**THE CORPORATION OF THE TOWN OF ESSEX  
AS SELLER**

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**PURCHASE AND SALE AGREEMENT**

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**Dated as of March 12, 2025**



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## PURCHASE AND SALE AGREEMENT

Purchase and Sale Agreement dated March 12, 2025, among **Windsor Canada Utilities Limited**, a corporation formed under the laws of the Province of Ontario (“**Buyer**”) and **The Corporation of the Town of Essex**, a corporation formed under the laws of the Province of Ontario (the “**Seller**”).

**WHEREAS** Seller owns 100% of the issued and outstanding shares of E.L.K. Energy Inc. (such entity, “**ELK**”);

**AND WHEREAS** Seller owns 10,000 Class B Common shares in the capital of E.L.K. Solutions Inc. (such entity, “**ESI**” and, together with ELK, the “**Group Entities**”), which represents 50% of the issued and outstanding shares in the capital of ESI;

**AND WHEREAS** ELK owns 10,000 Class A Common shares in the capital of ESI, representing 50% of the issued and outstanding shares in the capital of ESI (the “**Indirect ESI Shares**”);

**AND WHEREAS** the Group Entities operate the business of developing, constructing, owning and operating an electricity distribution system, the renting of water heaters and the replacing of streetlights as required (the “**Business**”);

**AND WHEREAS** Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller the Purchased Shares upon the terms and subject to the conditions set forth in this Agreement;

**AND WHEREAS** prior to the entering into of this Agreement, Seller passed a council resolution duly authorizing the entering into of this Agreement and the completion of the Transactions and such resolution and authorization remain in full force and effect;

**AND WHEREAS** following the date of this Agreement, Buyer and ELK may enter into the Management Contract;

**AND WHEREAS** Buyer has paid the Deposit in respect of the Transaction;

**NOW THEREFORE**, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, the Parties hereby agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

“**Accounts Receivable**” means the accounts receivable, including any sales Tax receivable, arising out of the sale of goods or the provision of services by the Group Entities.

“**Adjustment Escrow Amount**” has the meaning ascribed thereto in Section 2.4(a)(i).

“**Affiliate**” means, with respect to any Person, any other Person which, directly or indirectly, through one or more intermediaries: (a) Controls the first Person; (b) is Controlled by the first Person; or (c) is under common Control with the first Person.



**“Agreement”** means this purchase and sale agreement together with the schedules and exhibits attached hereto, including the Seller Disclosure Letter.

**“Ancillary Agreements”** means: (a) the Contribution Agreement, (b) the Governance Representation Agreement, (c) Shareholder Releases, (d) the Director and Officer Releases, (e) the Local Community Commitment Agreement, (f) the Escrow Agreement and (g) and all other agreements required to be delivered hereunder.

**“Anti-Corruption Laws”** has the meaning ascribed thereto in Section 4.15.

**“Authorization”** means, with respect to any Person, licenses, permits, authorizations, Orders, registrations, certificates, variances, approvals, consents and franchises of any Governmental Authority having jurisdiction over the Person or its business or assets and any pending applications related to any of the foregoing.

**“Balance Sheet Date”** means December 31, 2023.

**“Benefit Plan”** has the meaning ascribed thereto in Section 4.27(a).

**“Books and Records”** means all books and records of the Group Entities, including all statements, budgets, books of account, Tax and financial records, Tax Returns, work papers and letters from accountants, ledgers, journals, sales and purchase records, customer and supplier lists, business reports and plans, minute books and other corporate records, share certificates, central securities registers (or equivalents), Contracts, deeds, permits, environmental studies and plans, whether in writing or electronic form.

**“Business”** has the meaning ascribed thereto in the Recitals.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which the main branches of principal commercial banks in Windsor, Ontario are not open for business during normal business hours.

**“Buyer”** has the meaning ascribed thereto in the Preamble.

**“Buyer Closing Certificate”** has the meaning ascribed thereto in Section 8.2(b).

**“Buyer Indemnified Party”** means each of Buyer and each of the Group Entities and their respective Affiliates, Representatives, successors and permitted assigns.

**“Capital Program Budget”** means the capital program budget of ELK attached hereto as Schedule “B”.

**“Closing”** means the completion of the transaction contemplated by this Agreement.

**“Closing Date”** means either (a) the last Business Day of the month where both of the following are true: (i) such Business Day is not less than five (5) Business Days after the date on which all of the Closing conditions set out in Article 8 have been satisfied or waived (other than those Closing conditions which by their nature are to be satisfied at and as part of the Closing), and (ii) on such Business Day, all of the Closing conditions set out in Article 8 have been satisfied or waived; or (b) such earlier or later date as may be agreed to in writing by Buyer and Seller.

**“Closing Date Working Capital”** means the Working Capital as at the Closing as set out in the Closing Statement. For the avoidance of doubt, “Closing Date Working Capital” will not include any amounts reflected in Closing Indebtedness or Closing Transaction Expenses.



**“Closing Indebtedness”** means the aggregate Indebtedness of the Group Entities as at the Closing as set out in the Closing Statement.

**“Closing Rate Base”** means the Rate Base as at the Closing as set out in the Closing Statement.

**“Closing Statement”** has the meaning ascribed thereto in Section 2.6(a).

**“Closing Transaction Expenses”** means the aggregate Transaction Expenses of the Group Entities as at the Closing as set out in the Closing Statement.

**“Collective Agreement”** means any collective agreement, letter of understanding, memorandum of agreement, letter of intent, voluntary recognition agreement, or legally binding commitment or other communication with any labour union or employee association that is governing, or that is intended to at any time govern, the terms and conditions of employment of any Employees.

**“Competing Transaction”** has the meaning ascribed thereto in Section 6.8.

**“Compulsory Payment”** has the meaning ascribed thereto in Section 9.2(e).

**“Computer Systems”** means the computer or IT systems, including hardware, software, algorithms, codes, firmware, middleware, equipment, electronic device, computers, laptops, mobile devices, platforms, servers, workstations, routers, hubs, switches, interfaces, data, databases, data communication lines, network and telecommunications equipment, websites and internet-related information technology infrastructure, wide area network and other data communications or information technology equipment, or computer processors, peripheral equipment, computer programs, and technical and other documentation used by any Group Entity, and data entered into or created by any Group Entity using the foregoing.

**“Confidentiality Provisions”** has the meaning ascribed thereto in Section 6.4.

**“Consent”** means any consent, approval, authorization, waiver or notice which is required to be obtained or given pursuant to any Authorization or Contract.

**“Contractor”** means any Person who is party to a services Contract with any Group Entity (including an independent contractor or consultant) and who is not an Employee or director of any Group Entity.

**“Contracts”** means any contract, agreement, commitment, undertaking, indenture, note, bond, mortgage, lease, joint venture or similar arrangement, in each case, whether written or oral.

**“Contribution Agreement”** means the contribution agreement among Seller and Buyer to be entered into at Closing and substantially in the form attached hereto as Exhibit “I”.

**“Control”** (and any derivatives thereof, including **“Controlled”**) means, with respect to any Person, the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or ownership interests, by contract or otherwise.

**“Copyrights”** has the meaning ascribed thereto in Section 4.23(a)(iii).

**“Damages”** means any cost, loss, Liability, claim, damage, expense, fine, penalty or interest (whether or not involving a Third Party Claim), assessment, damages available at law or equity, Taxes or other amounts, including all costs and all amounts paid or payable in investigating, defending, preparing or settling any



claim (including all reasonable costs, fees and expenses of legal counsel and other advisors and experts incurred in connection with investigating, defending, preparing or settling any claim).

**“Data Security Incident”** means any confirmed or suspected (a) loss, theft or damage of, (b) other unauthorized or unlawful access to, or use, disclosure or other processing of, Personal Information; or (c) any other data security incident requiring notification to any Persons (including pursuant to Laws or Contracts) or regulators.

**“Data Security Requirements”** means all of the following, to the extent relating to privacy or data security and applicable to the Group Entities: (a) all of the Group Entities own privacy and data security policies, rules and procedures of the Group Entities; (b) all applicable Laws, including Privacy and Data Security Laws; (c) all applicable Laws governing spam, commercial electronic communications, telephone and other telecommunications, or similar subject matter, as applicable, including *Canada’s Anti-Spam Legislation*; (d) industry standards applicable to the industry in which the Group Entities operate, including the *Payment Card Industry Data Security Standards*; and (e) contractual obligations with respect to privacy, data security or the Processing of Personal Information binding on the Group Entities.

**“Deposit”** means an amount equal to \$ [REDACTED] paid by Buyer to Seller’s legal counsel, in trust, prior to the date of this Agreement.

**“Direct Claim”** means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Party to make a claim for indemnification under this Agreement.

**“Director and Officer Releases”** has the meaning ascribed thereto in Section 6.6(a).

**“Disclosure Requirements”** has the meaning ascribed thereto in Section 9.2(i).

**“Disputed Items”** has the meaning ascribed thereto in Section 2.6(d).

**“Domain Names”** has the meaning ascribed thereto in Section 4.23(a)(iv).

**“Draft Closing Statement”** has the meaning ascribed thereto in Section 2.6(a).

**“Due Diligence Period”** means the period of time commencing on the signing of this Agreement and 12:00 p.m. (Windsor local time) on March 26, 2025.

**“Easement Lands”** means all real property being subject to any Easement.

**“Easements”** means all rights of way, licenses, rights of occupation, easements (including any unregistered easements) or other similar non-possessory rights in real property, other than rights in fee simple owned by the Group Entities, as are required for or in connection with the conduct of the Business.

**“Electricity Act”** means the *Electricity Act*, 1998 (Ontario).

**“ELK”** has the meaning ascribed thereto in the Recitals.

**“ELK Purchased Shares”** means all of the issued and outstanding shares in the capital of ELK owned or held by Seller.

**“Employee”** means an individual employed by any Group Entity, whether on a full time, part time or temporary basis and including those temporarily laid off or on vacation, short-term disability, long-term



disability, workers compensation leave, pregnancy, maternity, paternity, parental or sick leave or any other statutory or approved leave of absence.

**“Enforcement Limitation”** when used in the context of “enforceable in accordance with its terms” means that such enforceability is subject to any limitation on enforcement under applicable Laws relating to: (a) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors’ rights; or (b) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.

**“Environmental Laws”** means all applicable Laws relating to public health and safety, Hazardous Materials (including contamination and pollution) or the protection of the environment and all Authorizations issued pursuant to such Laws.

**“Equity Interest”** means, in respect of any Person: (a) any and all shares or other equity or ownership interests (including common shares, preferred shares, capital stock, partnership interests, trust interests, limited liability company interests and limited liability partnership interests) in such Person; (b) all rights to purchase, warrants, options, conversion privileges, exchange rights, calls, puts, securities convertible into or exchangeable for, participations, subscriptions, receipts, purchases or other equivalents of or interests in such shares or other equity or ownership interests (whether or not currently exercisable, exchangeable or convertible) in such Person and (c) any stock appreciation right, phantom stock right, profit participation, derivative of an equity security or other similar right in such Person.

**“Escrow Agent”** means McTague Law Firm LLP.

**“Escrow Agreement”** means the escrow agreement among Seller, Buyer and the Escrow Agent to be entered into at Closing and substantially in the form attached hereto as Exhibit “A”.

**“ESI”** has the meaning ascribed thereto in the Recitals.

**“ESI Purchased Shares”** means all of the issued and outstanding shares in the capital of ESI owned or held by Seller.

**“Estimated Closing Date Working Capital”** has the meaning ascribed thereto in Section 2.3(a)(iii).

**“Estimated Closing Indebtedness”** has the meaning ascribed thereto in Section 2.3(a)(ii).

**“Estimated Closing Transaction Expenses”** has the meaning ascribed thereto in Section 2.3(a)(iv).

**“Estimated Purchase Price”** has the meaning ascribed thereto in Section 2.3(a)(vi).

**“Estimated Statement”** has the meaning ascribed thereto in Section 2.3(a).

**“ETA”** means the *Excise Tax Act* (Canada) and analogous Laws of a province of Canada.

**“EWU”** means ENWIN Utilities Inc., a corporation formed under the laws of the Province of Ontario.

**“Financial Statements”** means the consolidated audited financial statements for the Group Entities for the fiscal years ended December 31, 2022 and December 31, 2023, each consisting of a balance sheet, statement of operations and retained earnings.

**“Fundamental Representations”** means the representations and warranties of Seller set out in Sections 3.1 (Formation and Power), 3.2 (No Conflict), 3.3 (Required Authorizations), 3.5 (Execution and Binding



Obligation), 3.6 (Title to Purchased Shares), 3.7 (No Other Agreement to Purchase), 3.9 (No Brokers), 3.10 (Resident of Canada), 4.1 (Formation and Power), 4.2 (Execution and Binding Obligation), 4.3 (No Conflict), 4.4 (Required Authorizations), 4.7 (Capitalization of the Group Entities), 4.8 (Other Interests), 4.15 (Ethical Practices), 4.16 (Title to and Sufficiency of Assets), 4.19 (Easements), 4.28 (Related Party Transactions), 4.32 (Competition Act), and 4.34 (No Brokers).

**“Governance Representation Agreement”** means an agreement between Buyer and Seller pursuant to which Seller has [REDACTED] substantially in the form attached hereto as Exhibit “B”.

**“Governing Documents”** means, with respect to any Person: (a) if a corporation or company, its articles and any by-laws; (b) if a partnership, the partnership agreement and any declaration or statement of partnership required to be filed with any Governmental Authority in order to form the partnership or maintain the limited liability of any partners; (c) if a limited liability company, the articles of organization and operating agreement; (d) if a trust, the trust deed and declaration of trust; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all shareholders’ or equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of such Person or relating to the rights, duties and obligations of such Person’s equity holders; and (g) any amendment or supplement to any of the foregoing.

**“Governmental Authority”** means: (a) any multinational, federal, state, provincial, municipal, regional, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitrator, arbitral body, commission, commissioner, minister, governor-in-counsel, cabinet, board, bureau, agency, tribunal or instrumentality domestic or foreign; (b) any subdivision or authority of any of the foregoing; and (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental or private body, which exercises any regulatory, administrative, expropriation or taxing authority under or for the account of any such authority or body and for which its determinations have the force of Law.

**“Group Entities”** has the meaning ascribed thereto in the Recitals.

**“GST/HST”** means the goods and services tax and/or harmonized sales tax levied under the ETA and any similar Tax imposed by any province.

**“Guarantee”** means, as to any Person, any obligation of such Person guaranteeing or otherwise supporting any Liability (“primary obligation”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such Person to: (a) purchase or repurchase any such primary obligation; (b) advance or supply funds for the purchase or payment of any such primary obligation; (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) protect the beneficiary of such arrangement from loss; or (e) indemnify the owner of such primary obligation against loss in respect thereof.

**“Hazardous Materials”** means any waste or other substance or phenomenon that is prohibited, listed, defined, designated, regulated or classified as, or otherwise determined to be, dangerous, hazardous, radioactive, explosive or toxic or a pollutant or a contaminant under or pursuant to, or is otherwise regulated by, any Environmental Laws, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.



“**IFRS**” means at any time, the International Financial Reporting Standards as used in Canada, developed by the International Accounting Standards Board and applied on a consistent basis for the relevant period.

“**Indebtedness**” means, as to any Group Entity, as of any time, without duplication, any Liabilities of such Group Entity arising under, in respect of, for or related to: (a) any indebtedness for borrowed money (including overdraft facilities), whether short term or long term (including the outstanding principal amount of, accrued and unpaid interest on, and other Liabilities or obligations of such Group Entity (including any prepayment premiums, breakage or make-whole fees, expenses or penalties related thereto, and any other fees and expenses required to be paid upon repayment thereof and payable as a result of the consummation of the Transaction) related thereto); (b) capitalized leases, leases recorded as a liability on a balance sheet or statement of financial position, conditional sales contracts and other similar title retention instruments; (c) all Liabilities secured by any Lien on any property or assets; (d) all Liabilities under any foreign exchange contract, interest rate swap or other similar interest rate or foreign exchange or other hedging agreement; (e) any notes (including promissory notes issued in connection with the acquisition or disposition of assets or securities), bonds, debentures or similar Contracts; (f) the deferred purchase price of property, goods or services other than trade payables or accruals incurred in the Ordinary Course and less than 90 days past due and included in Working Capital; (g) any obligation in respect of letters of credit and bankers’ acceptances; (h) any amounts owing to current or former holders of Equity Interests in such Group Entity with respect to unpaid dividends or distributions; (i) accrued Taxes, (j) without duplication, any deferred payroll Taxes to the extent not otherwise included in trade payables, (k) other post-employment benefits, including any reflected on any balance sheet or statement of financial position of any Group Entity, and (l) all monetary obligations of such Group Entity in the nature of Guarantees of the Indebtedness described in clauses (a) through (k) above of any other Person.

“**Indemnified Party**” means a Person with indemnification rights or benefits under this Agreement.

“**Indemnifying Party**” means a Party which may have a Liability for indemnification under this Agreement.

“**Indemnity Escrow Amount**” has the meaning ascribed thereto in Section 2.4(a)(ii).

“**Indemnity Escrow Release Date**” has the meaning ascribed thereto in Section 10.14.

“**Indigenous Claim**” means any claim, Proceeding, assertion or demand, whether proven or unproven, made by any Indigenous Group, in respect of any of the following: (a) title to all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; (b) rights (including any treaty rights), benefits or interests stated to relate or apply to all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; (c) treaty land entitlement claims respecting all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; or (d) failure to be consulted and/or accommodated, or other alleged breach or violation of any right of any Indigenous Group, with respect to any Authorization or any use, development or improvement of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity and/or any business of any Group Entity.

“**Indigenous Group**” means a band as that term is defined in the *Indian Act* (Canada), or a community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982* (Canada), any Person, council, government or other entity that is authorized to act on behalf of any of the foregoing and any other Person, entity or group that asserts that it has Indigenous rights.

“**Indirect ESI Shares**” has the meaning ascribed thereto in the Recitals.



**“Information Security Program”** has the meaning ascribed thereto in Section 4.33(e).

**“Intellectual Property Rights”** means all rights in and to: (a) Patents, Patent applications and Patent disclosures (whether utility or design), together with all reissuances, divisions, continuations, renewals, continuations-in-part, revisions, extensions and re-examinations thereof; (b) Trademarks, service marks, trade dress, logos, Domain Names, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; (c) Copyrights, Software, Domain Names, social media accounts, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith; and (d) all inventions (whether patentable or not), invention disclosures, trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals).

**“Interim Period”** means the period between the close of business on the date hereof and the earlier of: (a) the Closing Date; and (b) the date of termination of this Agreement in accordance with Article 8.

**“knowledge of Seller”** has the meaning ascribed thereto in Section 1.6.

**“Laws”** means any and all: (a) laws, constitutions, treaties, statutes, codes, ordinances, Orders, decrees, rules, principles of common law and equity, regulations, by-laws, pronouncements, or other requirement having the force of law; (b) Orders, decisions and directives of any Governmental Authority; and (c) policies, codes, practices, standards, guidelines, notices and industry regulations and protocols to the extent that they have the force of law.

**“Liability”** means all indebtedness, liabilities, obligations or commitments of any nature whatsoever, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether matured or unmatured, whether determined or determinable, whether liquidated or unliquidated, and whether due or to become due, including those arising under any Law, Proceeding, Governmental Authority, Contract, agreement, arrangement, commitment or undertaking.

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), option, adverse claim, assignment, title retention agreement or arrangement or other encumbrance which affects the right, title or interest in or to any particular property and/or secures payment or performance of a Liability.

**“Local Community Commitment Agreement”** means the local community commitment agreement among Seller and Buyer to be entered into at Closing and substantially in the form attached hereto as Exhibit “H”.

**“Management Contract”** means the management contract that may be entered into by Buyer and ELK following the date of this Agreement pursuant to which the Buyer would provide management services to ELK during a portion of the Interim Period.

**“Market Rules”** means the market rules for the Ontario electricity market, as amended from time to time, made by the Independent Electricity System Operator pursuant to Section 32 of the Electricity Act.

**“Material Adverse Effect”** means any event, fact, circumstance, condition or change (each an “effect”) that, which, when considered either individually or in the aggregate together with all such effects, has or could reasonably be expected to have, a material adverse effect upon the business, results of operations,



condition (financial or otherwise), assets, properties, Liabilities or prospects of the Group Entities, taken as a whole, or that materially impairs the ability of Seller or Group Entities to complete the Transaction.

**“Material Contracts”** means any Contract to which any Group Entity is a party or by which any Group Entity or any of its assets or properties may be bound of the type described in Section 4.12(a)(i) through Section 4.12(a)(xxii) inclusive.

**“Municipal Easement Lands”** has the meaning attributed thereto in Section 4.19(d).

**“Non-Party Affiliates”** has the meaning ascribed thereto in Section 11.5.

**“Notice”** has the meaning ascribed thereto in Section 11.1.

**“Notice of Objection”** has the meaning ascribed thereto in Section 2.6(c).

**“OEB”** means the Ontario Energy Board.

**“OEB Act”** means the Ontario Energy Board Act, 1998.

**“OEB APH”** means the Ontario Energy Board’s Accounting Procedures Handbook For Electricity Distributors issued in December 2011 and effective as of January 1, 2012, as amended from time to time and as supplemented by the FAQs and associated guidance set forth on the Ontario Energy Board’s webpage.

**“OEB Approval”** means the OEB’s approval of the Transaction pursuant to Section 86(2) of the OEB Act, together with, if Buyer in its sole discretion determines to be necessary, (a) the OEB’s approval pursuant to Section 78 of the OEB Act of a rate framework under which ELK and ENWIN Utilities Inc. are each permitted to rebase their distribution rates following Closing but prior to requesting approval in a future application to amalgamate pursuant to Section 86(1)(c) of the OEB Act, and (b) the OEB’s decision in response to a notice of proposal pursuant to Section 80 of the OEB Act, either not to review or to approve under Section 82 of the OEB Act the purchase by Buyer, as an affiliate of a distributor, of shares of a corporation that owns a generation facility in Ontario.

**“OMERS Plan”** means the Ontario Municipal Employees Retirement System defined pension plan of which the Employees of ELK and ESI are entitled to participate.

**“Order”** means any settlement, stipulation, order, writ, judgment, injunction, ruling, legally enforceable determination, award or decree of any Governmental Authority.

**“Ordinary Course”** means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.

**“Owned Real Property”** has the meaning ascribed thereto in Section 4.17.

**“Parties”** means the parties to this Agreement being, collectively, Buyer and Seller, and **“Party”** means either one of them.

**“Patents”** has the meaning ascribed thereto in Section 4.23(a)(ii).

**“Payment Direction”** has the meaning ascribed thereto in Section 2.4(b).



**“Payout Letters”** means, with respect to the Closing Indebtedness of any Group Entity, letters from the holders of such Indebtedness to such Group Entity, in form and substance satisfactory to Buyer, acting reasonably, which, among other things: (a) set forth the full outstanding amount of such Indebtedness as at the Closing Date, including any interest, break fees, and related costs; (b) specify the wire transfer details for the payment of such amount; (c) confirm that upon receipt of such amount, all Liens and related guarantees in favour of such holder shall be released and discharged and all obligations of such Group Entity in respect of such Indebtedness shall be satisfied and fully released; and (d) authorize Buyer and its Representatives to file discharges of any registration in respect of any Liens, as the case may be.

**“Permitted Liens”** means:

- (a) liens for Taxes which are not yet due and delinquent or that are being contested in good faith by proper legal Proceedings and for which adequate accruals or reserves have been included in the Financial Statements and there is no requirement under applicable Law that such Taxes be paid or secured notwithstanding such contest;
- (b) undetermined or inchoate liens and other liens or encumbrances imposed by Law, such as carrier’s, warehousemen’s, mechanics’, construction and materialmen’s liens, incurred in good faith in the Ordinary Course provided that such liens or encumbrances are related to obligations not yet due or delinquent or are being contested in good faith by proper legal Proceedings and are not registered against title to any of the assets held for use or used in connection with the Business, and provided that appropriate security has been posted or adequate accruals or reserves maintained;
- (c) subsisting reservations, limitations, provisos, conditions or exceptions (including royalties) contained in any original grant of the land or any portion thereof or interest therein from the Crown;
- (d) encumbrances, easements, rights of way, rights, covenants, conditions and restrictions, encroachments, land use or other restrictions, development agreements, subdivision agreements, site plan agreements, restrictive covenants and other restrictions on real property, in each case provided same is registered on title to the Owned Real Property and does not affect the use of or the operations currently conducted at the Owned Real Property and provided that all of the foregoing are complied with; and
- (e) the Liens listed in Schedule 1.1(a) of the Seller Disclosure Letter.

**“Person”** means any individual, partnership, company, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority.

**“Personal Information”** means information about an identifiable individual or as defined in the applicable Privacy and Data Security Laws.

**“Post-Closing Tax Period”** means a taxation year or period that begins on or after the time of Closing and, with respect to a Straddle Period, the portion of such taxation year or period beginning at the time of Closing.

**“Pre-Closing Tax Period”** means a taxation year or period that begins before and ends on or before the time of Closing and, with respect to a Straddle Period, the portion of such taxation year or period ending immediately before the time of Closing.



**“Pre-Closing Taxes”** means (a) any and all Taxes of each of the Group Entities relating to a Pre-Closing Tax Period (for greater certainty, including the portion of any Straddle Period ending immediately before the time of Closing); (b) any and all Taxes of each of the Group Entities arising or that will be payable in a Post-Closing Tax Period in respect of unearned revenue received by it prior to the time of Closing; (c) any and all Taxes relating to a Pre-Closing Tax Period that either of the Group Entities is liable for (i) as a result of being a transferee or successor under applicable Law, or (ii) pursuant to any tax sharing, tax indemnification, tax allocation agreement or other similar agreement; (d) any and all withholding, payroll, social security, unemployment or similar Taxes of either of the Group Entities attributable to any payments that are contingent upon or payable pursuant to this Agreement (to the extent that any deduction in respect of such payments is accounted for in a Pre-Closing Tax Period); and (e) any and all Taxes of either of the Group Entities as a result of the arrangements and transactions contemplated in Section 6.9, in each case except to the extent such Taxes are reflected in the final determination of Closing Date Working Capital for purposes of determining the Purchase Price.

**“Privacy and Data Security Laws”** means any Laws applicable to the Processing of any Personal Information under the control of the Group Entities or to Data Security Requirements, including the *Personal Information Protection and Electronic Documents Act* (Canada).

**“Proceeding”** means any action, arbitration, audit, hearing, grievance, claim, complaint, investigation, litigation or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

**“Processed”** or **“Processing”** means the access, acquisition, collection, use, recording, alteration, retention, transfer, disclosure, destruction, disposal or any other processing (as defined by applicable Privacy and Data Security Laws) of any Personal Information, sensitive information, or confidential information (whether in electronic or any other form or medium).

**“Prudential Support”** means prudential support in respect of the Group Entities pursuant to the Market Rules in the form of guarantees, letters of credit or other financial assurances or security as required by the Independent Electricity System Operator.

**“Purchase Price”** has the meaning ascribed thereto in Section 2.2.

**“Purchased Shares”** means the ELK Purchased Shares and the ESI Purchased Shares.

**“Rate Base”** means the rate base of ELK, calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement.

**“Related Party”** means, in respect of any Person, (a) any Affiliate of such Person (b) any shareholder, director, officer or employee of such Person or any Affiliate of such Person and (c) any other Person not dealing at arm’s length (within the meaning of the Tax Act) with such Person or any Affiliate of such Person.

**“Related Party Transactions”** has the meaning ascribed thereto in Section 4.28.

**“Release”** means any spilling, leaking, pumping, injection, disposal, emitting, discharging, depositing, escaping, leaching, dumping, migration or other releasing into or through the environment whether intentional or unintentional, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.



**“Representative”** means, with respect to any Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, financial advisors and strategic and management consultants.

**“Required Regulatory Approvals”** means the OEB Approval and any other approvals from any Governmental Authority identified by Buyer.

**“Sample Statement”** means the statement and sample calculation of Working Capital, Indebtedness, Rate Base and Target Working Capital as at the Balance Sheet Date, which has been prepared in accordance with the methodologies and accounting policies and practices set forth in such statement, and attached hereto as Exhibit “C”.

**“Seller”** has the meaning ascribed thereto in the Preamble.

**“Seller Closing Certificate”** has the meaning ascribed thereto in Section 8.1(c).

**“Seller Disclosure Letter”** means the disclosure letter dated the date hereof, attached hereto as Schedule “A”.

**“Seller Indemnified Party”** means Seller and its Affiliates, successors and permitted assigns.

**“Settlement Date”** has the meaning ascribed thereto in Section 2.6(e)(i).

**“Shareholder Releases”** has the meaning ascribed thereto in Section 6.6(b).

**“Software”** has the meaning ascribed thereto in Section 4.23(a)(v).

**“Straddle Period”** means any Tax period that begins before and ends after the time of Closing. For the purposes of allocating Taxes in respect of any Straddle Period, the amount of Taxes allocable to the portion of the Straddle Period ending immediately before the time of Closing shall be deemed to be: (a) in the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of days in the entire relevant Straddle Period; and (b) in the case of Taxes not described in clause (a) above (such as franchise Taxes, withholding Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)), the amount of any such Taxes shall be determined as if such taxable period ended immediately before the time of Closing.

**“Subsidiary”** means, with respect to any Person, any other Person which, directly or indirectly, through one or more intermediaries, is Controlled by the first Person.

**“Target Working Capital”** means an amount equal to [REDACTED] calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement.

**“Tax Act”** means the *Income Tax Act* (Canada), including as made applicable for purposes of the Electricity Act.



“**Tax Contest**” has the meaning ascribed thereto in Section 9.2(c).

“**Tax Returns**” means all returns (including any withholding Tax returns and information return), declarations, reports, elections, designations, filings, statements, schedules, notices, elections, forms or other documents or information (whether in tangible or intangible form and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto), filed or required to be filed in respect of the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of any legal requirement relating to any Tax.

“**Taxes**” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and any similar charges or assessments, or other tax of any kind whatsoever, whether disputed or not, imposed by any Governmental Authority, including the payments contemplated under Part VI of the Electricity Act and all supranational, national, federal, provincial, state, local or other taxes whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to income, branch, earnings, profits, capital gains, gross receipts, windfall profits, value added, severance, ad valorem, property, capital, capital stock, disability and registration, net worth, production, sales, use, goods and services, harmonized sales, value added, license, franchise, environmental, transfer, withholding or similar, payroll, employment, employer health, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp, occupation, premium, alternative or add-on minimum, and transfer, gift, production, real or personal property, import or export and customs duties, (ii) any installments in respect thereof, (iii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority, and (iv) any Liability for any of the foregoing as a transferee, successor, guarantor, or by Contract, operation of law or otherwise.

“**Termination Date**” means [REDACTED] or such other date as agreed to by Buyer and Seller in writing.

“**Third Party Accountants**” means a nationally recognized accounting firm agreed to by Seller and Buyer, acting reasonably.

“**Third Party Claim**” means any Proceeding that is instituted or asserted by a third party, including a Governmental Authority, against an Indemnified Party, which entitles such Indemnified Party to make a claim for indemnification under this Agreement.

“**Trademarks**” has the meaning ascribed thereto in Section 4.23(a)(i).

“**Transaction**” means the transactions contemplated by this Agreement and the Ancillary Agreements.

“**Transaction Expenses**” means all fees, costs, expenses or other amounts paid or payable by or on behalf of the Group Entities to any Person in connection with the negotiation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transaction and the process undertaken by Seller, the Group Entities and their respective Representatives leading up thereto, including:

- (a) all advisory and legal fees, costs and expenses, including all costs, fees and expenses of investment bankers, legal counsel, accountants, consultants and other advisors;
- (b) any Transaction-related, success, change of control, “stay”, “deal”, parachute, severance, retention, commission or discretionary bonus or other payments made or to be made pursuant to any Contract payable directly or indirectly as a result of or in connection with the Transaction, whether accruing or payable prior to, on or following Closing;



- (c) any payments to be made pursuant to or upon the termination of any Related Party Transactions;
- (d) any fees and expenses incurred by the Group Entities (or by Seller, to the extent payable by the Group Entities) in connection with obtaining waivers, consents or approvals of any Governmental Authority or third parties on behalf of the Group Entities in connection with the consummation of the Transactions but excluding any fees and expenses for which Buyer is responsible under Section 6.7(g);
- (e) fifty percent (50%) of all fees, cost and expenses in connection with the Escrow Agreement; and
- (f) all brokers and finders fees,

in each of the foregoing cases, if applicable, that have not been paid in full prior to the Closing, including any Taxes payable in connection with any of the foregoing.

**“Transfer Taxes”** has the meaning ascribed thereto in Section 9.2(k).

**“Unresolved Claim”** means a Direct Claim or Third Party Claim for which a Buyer Indemnified Party delivered a notification pursuant to Section 10.6 prior to the Indemnity Escrow Release Date and such claim remains unresolved as of such date.

**“Water Heater Rental Contract”** has the meaning ascribed thereto in Section 4.36(a).

**“Working Capital”** means the working capital of the Group Entities, calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement. For greater certainty Working Capital shall not include any amounts included in Closing Transaction Expenses or Closing Indebtedness.

## **1.2 Headings, etc.**

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Agreement.

## **1.3 Currency.**

All references in this Agreement to dollars, unless otherwise specifically indicated, are expressed in Canadian dollars.

## **1.4 Time Reference.**

Unless otherwise indicated, all references in this Agreement to times of the day are to local time in Windsor, Ontario and all references to a “day” are to a calendar day. Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends. Where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end.



## 1.5 Certain Expressions, Etc.

In this Agreement: (a) the words “includes”, “including” and similar expressions mean “include (or including) without limitation”; (b) the phrases the “aggregate of”, the “total of”, the “sum of” and similar expressions mean the “aggregate (or total or sum), without duplication, of”; (c) the phrase “made available” or “delivered”, when used in reference to a document, means that the document was made available for viewing in the electronic data room known as Firmex hosted by Doane Grant Thornton LLP, as that site existed as of 5:00 p.m. (Eastern time) on the date that is three (3) Business Days immediately prior to the date of this Agreement; (d) pronouns in one gender include the other gender, unless the context clearly indicates otherwise; (e) definitions in the singular include the plural, and vice versa; (f) the words “hereof”, “herein”, “hereunder”, “hereto” and similar expressions refer to this Agreement as a whole and the words “Article”, “Section”, “Exhibit” or “Schedule” refer to an Article of, Section of, Exhibit to or Schedule to, this Agreement, unless specified otherwise; (g) any reference to a Person includes its heirs, administrators, executors, legal personal representatives, successors and permitted assigns; (h) the word “or” is not exclusive; (i) the term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this purchase and sale agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated and includes all Exhibits or Schedules to it; (j) any reference to a statute includes all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute (or regulations promulgated thereunder) thereto; (k) the word “will” has the same meaning as the word “shall”; (l) the words “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; and (m) when calculating the period of time within which or following which any act is to be done or any step taken, the date which is the reference date for starting the calculation of such period shall be excluded; if the last day of such period is not a Business Day, the period shall end on the next ensuing Business Day. Any reference herein to a particular provision or part of any statute will include a reference to that provision or part as it may be renumbered or amended from time to time and any successor provision or part or any renumbering or amendment thereof. All references to the Tax Act, including as made applicable for purposes of the Electricity Act, shall be deemed to include a reference to the equivalent, corresponding or analogous Tax legislation of a Province or Territory of Canada, including as made applicable for purposes of the Electricity Act. All references to a provision of the Tax Act, including as made applicable for purposes of the Electricity Act, shall be deemed to include a reference to any equivalent, corresponding or analogous provision under the applicable Tax legislation of a Province or Territory of Canada, including as made applicable for purposes of the Electricity Act.

## 1.6 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “**knowledge of Seller**”, it shall be deemed to refer to the actual knowledge, after reasonable inquiry, of the Seller’s Director of Legal and Legislative Service, the Seller’s Director of Corporate Services and ELK’s General Manager (or interim or acting General Manager).

## 1.7 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with IFRS and all determinations of an accounting nature in respect of any of the Group Entities shall be made in a manner consistent with IFRS, applied on a consistent basis with the methodology employed in connection with the preparation of the most recently audited Financial Statements of the Group Entities.



**ARTICLE 2**  
**PURCHASED SHARES AND PURCHASE PRICE**

**2.1 Purchase and Sale.**

In accordance with and subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Purchased Shares, free and clear of all Liens.

**2.2 Purchase Price.**

The aggregate purchase price (the “**Purchase Price**”) payable by Buyer to Seller for the Purchased Shares shall be equal to:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**2.3 Delivery of the Estimated Statement and Payout Letters.**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



■ [REDACTED]

■ [REDACTED]

**2.4 Payment of Estimated Purchase Price at Closing.**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



[REDACTED]

[REDACTED]

**2.5 Satisfaction of Estimated Closing Indebtedness and Estimated Transaction Expenses.**

- (a) On Closing, Buyer shall advance to the applicable Group Entity, by way of loan, the applicable portion of the Estimated Closing Indebtedness set forth in the Payout Letters and such Group Entity shall pay and discharge such Estimated Closing Indebtedness on Closing. Such payments will be paid by Buyer, at the direction of the applicable Group Entity, by wire transfer of immediately available funds, in accordance with the payment instructions designated in the Payout Letters.
- (b) On Closing, Buyer shall advance to the applicable Group Entity, by way of loan, the applicable portion of the Estimated Closing Transaction Expenses and such Group Entity shall pay such Estimated Closing Transaction Expenses on Closing. Such payments will be paid by Buyer, at the direction of the appropriate Group Entity, by wire transfer or immediately available funds to one or more bank accounts designated in such direction.
- (c) For the avoidance of doubt, the loans referenced in this Section 2.5 shall not be included in the calculation of Closing Indebtedness or Closing Date Working Capital. Such loans shall be used solely for the purposes contemplated by this Section 2.5, and at Closing, Seller shall cause the applicable Group Entities to direct Buyer to pay such amounts to the applicable parties on behalf of the applicable Group Entities as contemplated by Section 2.5.

**2.6 Closing Statement.**

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- (b) **Cooperation.** Upon reasonable request: (i) Seller shall cooperate with Buyer to the extent reasonably required to prepare the Draft Closing Statement; and (ii) during the sixty (60) days following the delivery of the Draft Closing Statement, Buyer shall provide to Seller access to all work papers of the Group Entities and their respective accounting and financial Books and Records to verify the accuracy, presentation and other matters relating to the preparation of the Draft Closing Statement during normal business hours and provided that such access is not unduly disruptive to the Business.
- (c) **Objection Period.** Within sixty (60) days following delivery of the Draft Closing Statement, Seller shall notify Buyer in writing if Seller has any objections to the Draft Closing Statement (the “**Notice of Objection**”). The Notice of Objection must state in reasonable detail the basis of each objection and the approximate amounts in dispute. Seller shall be deemed to have accepted the Draft Closing Statement to be the Closing Statement if Seller does not notify Buyer of any objection within such period of sixty (60) days.
- (d) **Settlement of Dispute.** If Seller sends a Notice of Objection in accordance with Section 2.6(c), then Buyer and Seller shall work expeditiously and in good faith to resolve any item in the Draft Closing Statement that has been specifically identified in the Notice of Objection within a further period of forty-five (45) days after the date of the delivery of the Notice of Objection, failing which, only the items that remain in dispute (the “**Disputed Items**”) may be submitted by Seller or Buyer for final determination to the Third Party Accountants. Buyer and Seller shall use commercially reasonable efforts to cause the Third Party Accountants to complete their work within sixty (60) days of their engagement. While the Third Party Accountants are performing their engagement, the Parties shall not communicate with the Third Party Accountants on the subject matter of their work, except by joint conference call, joint meeting or letter with copy simultaneously delivered to the other Party. The Third Party Accountants shall allow Buyer and Seller to present their respective positions regarding the [REDACTED] and each of Buyer and Seller shall have the right to present additional documents, materials and other information, and make an oral presentation to the Third Party Accountants regarding the Disputed Items. The Third Party Accountants shall consider such additional documents, materials and other information and such oral presentations and the Third Party Accountants shall make their determination solely based on presentations by Seller and Buyer and not by independent review, and any determination shall be made in accordance with the methodologies and accounting policies and practices consistent with the preparation of the [REDACTED]
- [REDACTED] Any such other documents, materials or other information must be copied to Buyer and Seller and each of Buyer and Seller shall be entitled to attend any such oral presentation, and to reply thereto. With respect to each Disputed Item, the Third Party Accountants shall adopt a position that is either equal to Buyer’s proposed position, equal to Seller’s proposed position, or between (but not necessarily the “mid-point” of) the positions proposed by Seller and Buyer. The
- [REDACTED]



determination of the Third Party Accountants shall be final and binding upon the Parties and shall not be subject to appeal, absent manifest error. The Third Party Accountants shall be acting as experts and not as arbitrators. The Parties agree that the procedures set forth in this Section 2.6 for resolving disputes with respect to the Closing Statement shall be the sole and exclusive method for resolving any such disputes; provided that this provision shall not prohibit Buyer or its Representatives from instituting litigation, in any court or other tribunal of competent jurisdiction, to enforce any final determination of the Purchase Price by the Third Party Accountants or to compel any Party to submit any dispute arising in connection with this Section 2.6 to the Third Party Accountants pursuant to and in accordance with the terms and conditions of this Section 2.6.

(e) **Final Settlement.**

(i) On the later of the tenth (10<sup>th</sup>) Business Day following: (x) the date on which Seller and Buyer agree to the Closing Statement (or are deemed to have agreed to the Closing Statement pursuant to Section 2.6(c)); and (y) the date on which a determination in respect of a Notice of Objection is made by the Third Party Accountants pursuant to Section 2.6(d) (such date, the “**Settlement Date**”):

(A) if the Purchase Price is greater than the Estimated Purchase Price, then (x) Buyer shall pay to Seller, by wire transfer of immediately available funds on the Settlement Date to an account or accounts directed by Seller in a Payment Direction (which Payment Direction Seller shall deliver to Buyer at least five (5) Business Days prior to the Settlement Date), an aggregate amount of cash equal to the amount by which the Purchase Price is greater than the Estimated Purchase Price and (y) Buyer and Seller shall provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of the Adjustment Escrow Amount to Seller; or

(B) if the Purchase Price is less than the Estimated Purchase Price, then, subject to and in accordance with Section 2.6(e)(ii), Seller shall pay to Buyer an aggregate amount of cash equal to the amount by which the Estimated Purchase Price is greater than the Purchase Price.

(ii) Any payment by Seller pursuant to Section 2.6(e)(i)(B) shall be satisfied by the distribution to Buyer (or as Buyer may direct) of that portion of the Adjustment Escrow Amount equal to such amount (and Buyer and Seller shall give a joint notice and direction to the Escrow Agent to make such distribution); provided that, if the Adjustment Escrow Amount is insufficient to satisfy such amount, Seller shall pay any such remaining amount directly to Buyer (or as Buyer may direct) by wire transfer of immediately available funds on the Settlement Date. If there is any Adjustment Escrow Amount remaining after payment of the amount owed by Seller, Buyer and Seller shall provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of such remaining amount to Seller.

(f) **Fees and Expenses.** Seller and Buyer shall each bear the fees and expenses of their respective auditors, lawyers, accountants and other professional advisors in preparing, reviewing or settling, as the case may be, the Draft Closing Statement. Where the Third Party Accountants have been retained to resolve a dispute, the fees and expenses of the



Third Party Accountants will be borne by Seller and Buyer in inverse proportion as they may prevail on matters resolved by the Third Party Accountants, which proportionate allocations will also be determined by the Third Party Accountants at the time the determination of the Third Party Accountants is rendered on the Draft Closing Statement. For example, should the disputed items total in amount to \$1,000 and the Third Party Accountants award \$600 in favour of Buyer's position, 60% of the costs of the Third Party Accountants' review would be borne by Seller and 40% of the costs would be borne by Buyer.

## **2.7 Purchase Price Allocation.**

The Purchase Price shall be allocated amongst Purchased Shares in accordance with Schedule "C". Buyer and Seller shall report the purchase and sale of the Purchased Shares in any Tax Returns in accordance with Schedule "C".

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer, on the date hereof and on the Closing Date, as follows and acknowledges and confirms that Buyer is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

### **3.1 Formation and Power.**

Seller is a corporation incorporated under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party. Seller is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation and is duly licensed, qualified and authorized to own, lease and operate its assets and carry on its business. No Proceedings have been taken or authorized by Seller or by any other Person with respect to the bankruptcy, insolvency, liquidation or winding up of Seller.

### **3.2 No Conflict.**

Except for the Required Regulatory Approvals and the Consents set forth on Schedules 3.4 and 4.5 of the Seller Disclosure Letter, the execution, delivery and performance by Seller of this Agreement and any Ancillary Agreement to which Seller is a party and the completion of the Transactions:

- (a) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) the Seller's Governing Documents, or (ii) any Contract to which Seller is a party; and
- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Authorization.

### **3.3 Required Authorizations.**

Except for the Required Regulatory Approvals, no filing with, notice to, consent, approval or Authorization of, any Governmental Authority is required by Seller as a condition to the lawful completion of the Transaction.



### **3.4 Required Consents.**

Except as set forth in Schedule 3.4 of the Seller Disclosure Letter, there is no Consent required by Seller in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the completion of the Transaction.

### **3.5 Execution and Binding Obligation.**

This Agreement has been, and each Ancillary Agreement to which Seller is a party will prior to the Closing be, duly executed and delivered by Seller and duly authorized by all necessary corporate action, by-laws, ordinances, municipal action or actions required under Seller's Governing Documents and applicable Laws, and constitutes, or will constitute, as applicable, a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

### **3.6 Title to Purchased Shares.**

Seller is the registered and beneficial owner of the Purchased Shares, with good, valid and marketable title thereto, as applicable, free and clear of all Liens. At Closing, Seller shall transfer to Buyer good, valid and marketable title to the entire legal and beneficial interest in the Purchased Shares free and clear of all Liens.

### **3.7 No Other Agreement to Purchase.**

Except for Buyer's rights under this Agreement, no Person has any written or oral Contract, option or warrant or any right or privilege (whether by Law, pre-emptive, contractual or otherwise) capable of becoming such for the purchase of any of the Purchased Shares.

### **3.8 Litigation.**

There is no Proceeding pending or, to the knowledge of Seller, threatened which would in any manner affect, prohibit, restrain or make illegal Seller's ownership of the Purchased Shares or Seller's ability to consummate the Transaction. Seller is not subject to any outstanding Order which would in any manner affect Seller's ownership of the Purchased Shares or affect, prohibit, restrain or make illegal the Transaction.

### **3.9 No Brokers.**

No broker, finder or investment banker or other Person is directly or indirectly entitled to receive from it any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the Transaction.

### **3.10 Resident of Canada.**

Seller is not a non-resident of Canada for purposes of the Tax Act and is either (i) not a partnership or (ii) is a "Canadian Partnership" within the meaning of the Tax Act.



## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES AS TO THE GROUP ENTITIES**

Seller represents and warrants to Buyer, on the date hereof and on the Closing Date, as follows and acknowledges and confirms that Buyer is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

#### **4.1 Formation and Power.**

Each Group Entity is duly formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has the requisite power and authority and is duly licensed, qualified and authorized to own, lease and operate its assets and properties and to conduct the Business as now being conducted by it and to perform all of its obligations under this Agreement and the Ancillary Agreements to which it is a party. Each Group Entity is registered, licensed or qualified to carry on the Business and is in good standing in each jurisdiction in which the Business as now being conducted by it makes such registration, licensing or qualification necessary (which jurisdictions are listed in 4.1 of the Seller Disclosure Letter). No Proceedings have been taken or authorized by a Group Entity or by any other Person with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of a Group Entity. Seller has made available to Buyer true, complete and correct copies of the Governing Documents of each Group Entity as in effect on the date of this Agreement. No Group Entity is in default under or in violation of any provision of their respective Governing Documents.

#### **4.2 Execution and Binding Obligation.**

Each Ancillary Agreement to which a Group Entity is a party will be duly executed and delivered by such Group Entity and duly authorized by all necessary corporate action on the part of such Group Entity, and will constitute a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

#### **4.3 No Conflict.**

Except for the Required Regulatory Approvals and the Consents set forth on Schedules, 3.4 and 4.5 of the Seller Disclosure Letter, the execution, delivery and performance by Seller of this Agreement, and the execution, delivery and performance by Seller and the Group Entities of any Ancillary Agreement to which Seller or any Group Entity is a party, and completion of the Transactions:

- (a) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) such Group Entity's Governing Documents and applicable Laws or (ii) any Contract to which such Group Entity is a party;
- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Authorization; and
- (c) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the creation or imposition of any Lien on any properties, assets or rights of any Group Entity.



#### **4.4 Required Authorizations.**

Other than the Required Regulatory Approvals, no filing with, notice to, consent, approval or Authorization of any Governmental Authority is required of any Group Entity in connection with the completion of the Transactions.

#### **4.5 Required Consents.**

Except as set forth in Schedule 4.5 of the Seller Disclosure Letter, there is no Consent required by any Group Entity in connection with the completion of the Transactions.

#### **4.6 Authorizations.**

The Group Entities hold all Authorizations required to carry on or required in connection with the Business. Each such Authorization is set forth on Schedule 4.6 of the Seller Disclosure Letter. Each such Authorization held by the Group Entities is valid and in full force and effect and the Group Entities are not in default in any material respect under any such Authorization. No event has occurred that, with or without notice or lapse of time or both, could reasonably be expected to result in the revocation, suspension, lapse or limitation of any such Authorization.

#### **4.7 Capitalization of the Group Entities.**

- (a) The authorized and issued capital of the Group Entities and the names of the registered and beneficial owners of the issued Equity Interests of each Group Entity and the number of and type of Equity Interests held by each such securityholder is as set out in Schedule 4.7(a) of the Seller Disclosure Letter.
- (b) Seller owns all of the Purchased Shares with good, valid and marketable title thereto, free and clear of all Liens and preemptive rights or other similar contractual rights. The Purchased Shares have been duly authorized and validly issued as fully paid and non-assessable in compliance with all applicable Laws and ELK's and ESI's Governing Documents.
- (c) The ELK Purchased Shares collectively constitute all (but not less than all) of the issued and outstanding shares and other securities in the capital of ELK and were not issued in violation of any pre-emptive or other contractual right.
- (d) ELK owns all of the Indirect ESI Shares with good, valid and marketable title thereto, free and clear of all Liens and preemptive rights or other similar contractual rights and such Indirect ESI Shares have been duly authorized and validly issued as fully paid and non-assessable in compliance with all applicable Laws and ESI's Governing Documents.
- (e) The ESI Purchased Shares and the Indirect ESI Shares collectively constitute all (but not less than all) of the issued and outstanding shares and other securities in the capital of ESI and were not issued in violation of any pre-emptive or other contractual right.
- (f) Other than the issued and outstanding shares of each Group Entity set out in Schedule 4.7(a) of the Seller Disclosure Letter, (i) there are no outstanding Equity Interests of any Group Entity or any rights, options, securities, debentures, loans or notes held by any Person convertible or exchangeable for any Equity Interest of any Group Entity and



- (ii) no Person other than Buyer has any written or oral agreement, right or privilege for the purchase, subscription, allotment or issuance of any Equity Interest of any Group Entity.
- (g) There are no bonds, debentures, notes or other indebtedness of any Group Entity having the right to vote or consent (or convertible into or exchangeable for securities of such Group Entity having the right to vote or consent) on any matters on which holders of the Equity Interests of such Group Entity may vote.
- (h) No Proceeding is pending or, to the knowledge of Seller, threatened against any Group Entity or Seller asserting that any Person is the holder or beneficial owner of, or has the right to acquire beneficial ownership of, any Equity Interests, or any other voting, equity or ownership interest in such Group Entity. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in or form the basis of any such Proceeding.
- (i) Except as set forth on Schedule 4.7(i) of the Seller Disclosure Letter, no Group Entity is currently subject to any shareholders agreements or other Contracts or understandings with respect to the conduct of the business of any Group Entity or the voting or transfer of any of the Equity Interests of any Group Entity, including any right of first refusal, right of first offer, proxy, voting agreement, voting trust, registration rights agreement or security holders agreement.
- (j) The names and titles of each of the current duly appointed directors and officers of each Group Entity are set forth on Schedule 4.7(j) of the Seller Disclosure Letter.

#### **4.8 Other Interests.**

No Group Entity owns or holds, directly or indirectly, any Equity Interest in any Person other than in a Group Entity.

#### **4.9 Financial Statements.**

- (a) The Financial Statements have been prepared in accordance with IFRS and each presents fairly, in all material respects: (i) the financial position of the Group Entities as at the respective dates of the relevant Financial Statements; and (ii) the results of the operations and the cash flows of the Group Entities for the periods covered by the relevant Financial Statements. The Financial Statements were derived from the Books and Records. The financial Books and Records have been maintained in accordance with customary business practices and fairly and accurately reflect, in all material respects, on a basis consistent with past periods and throughout the periods involved (A) all Liabilities of the Group Entities that are recorded in books and records in accordance with IFRS and (B) all transactions of the Group Entities including all transactions between the Group Entities, on the one hand, and any Seller on the other hand.
- (b) The Group Entities have not received any written advice or written notification from its independent accountants that it has used any improper accounting practice that would have the effect of either not reflecting or incorrectly reflecting any material properties, assets, Liabilities, revenues, expenses, equity accounts or other accounts in the Books and Records. The system of internal controls over financial reporting of the Group Entities is sufficient to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements in accordance with IFRS, (ii) that transactions



are executed only in accordance with the authorization of management and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of any material assets of the Group Entities.

- (c) All Accounts Receivable reflected on the Financial Statements reflect bona fide obligations arising from sales actually made or services actually performed in the Ordinary Course and have been properly recorded and reserved against consistent with IFRS and reasonable provision has been made for collection losses and contractual discounts. None of the Accounts Receivable reflected on the Financial Statements are subject to any right of setoff or counter-claim.
- (d) The accounts payable of the Group Entities reflected on the Financial Statements arose from bona fide transactions in the Ordinary Course, and all such accounts payable have either been paid, are not yet due and payable in the Ordinary Course, or are being contested by the Group Entities in good faith.
- (e) A true, complete and correct copy of the Financial Statements has been made available to Buyer.

#### **4.10 Conduct of Business.**

Except as set out in Schedule 4.10 of the Seller Disclosure Letter, since the Balance Sheet Date (a) there has not been a Material Adverse Effect, (b) the Group Entities have conducted the Business in the Ordinary Course and (c) no Group Entity has:

- (i) (A) issued, sold, pledged, disposed of, encumbered, agreed or offered to issue, sell, pledge or dispose of or encumber any additional share of, or any options, warrants, calls, conversion privileges or rights of any kind to acquire any Equity Interests of a Group Entity; (B) amended or proposed to amend its Governing Documents or form any Subsidiary; (C) split, combined or reclassified the Equity Interests in its capital or declared, set aside or paid any non-cash dividend or other non-cash distribution payable in stock, property or otherwise with respect to the Equity Interests in its capital; or (D) redeemed, purchased or offered to purchase any Equity Interests in the capital or other securities of a Group Entity;
- (ii) changed its auditors or accountants or received a notice of resignation from any auditor or accountant;
- (iii) reduced the stated capital of any Group Entity;
- (iv) opened any bank account or granted any power of attorney to any Person outside of the Ordinary Course;
- (v) created, incurred, assumed or Guaranteed any Indebtedness or created any Liens upon any of its properties, assets or rights or Guaranteed or otherwise become liable for the Liabilities of any other Person or made any loans or advances to any Person, except in each case, in the Ordinary Course or for Permitted Liens;
- (vi) granted any increase in the rate of wages, salaries, bonuses, compensation or other remuneration of any director, officer, Employee or Contractor except (A) as



required by Contract in effect on the date hereof or (B) pursuant to any Benefit Plan in effect on the date hereof;

- (vii) entered into, adopted, amended, modified or terminated any Contract with any current or former Employee, officer, director, securityholder or Contractor providing for a change of control, retention, transaction-related or similar bonus;
- (viii) terminated or hired any executive officers or members of senior management entitled to annual compensation of more than \$100,000 per year;
- (ix) entered into, amended, assigned, subleased, granted any waiver under, exercised any option under, surrendered or terminated any Material Contract;
- (x) entered into, adopted, amended or renewed any Collective Agreement or entered into negotiations in connection therewith, except as required under applicable Law;
- (xi) adopted, amended, modified or terminated any Benefit Plan, or increased the benefits to which any directors, officers, Employees, Contractors or other service providers of any Group Entity are entitled under any Benefit Plan, other than such adoptions, amendments, modifications or terminations which were required pursuant to applicable Laws or renewals made in the Ordinary Course;
- (xii) taken any action to accelerate any payment, right to payment or benefit, vesting of any right to payment of benefit or the funding of any payment, right to payment or benefit, in each case, payable or to become payable to any director, officer, Employee or Contractor of any Group Entity;
- (xiii) terminated, released or waived any non-competition, non-solicitation, no-hire, non-disclosure, confidentiality, non-disparagement, or other restrictive covenant agreement or obligation of any director, officer, Employee or Contractor or other service provider of any Group Entity;
- (xiv) except where such material properties or assets have become obsolete, sold, leased, assigned, transferred or otherwise disposed of any of its material properties or material assets;
- (xv) acquired (by merger, consolidation, acquisition of stock or assets or otherwise) any Person or enterprise or assets and properties with an aggregate value in excess of \$100,000;
- (xvi) except as set out in the Capital Program Budget as previously provided to the Buyer, made any capital expenditures or commitments therefor in excess of \$50,000 in the aggregate;
- (xvii) initiated, compromised or settled any Proceeding;
- (xviii) entered into any Contract with a Related Party;
- (xix) made any material change in its accounting principles and practices which was not required by IFRS;



- (xx) cancelled any insurance policy or reduced the types and levels of insurance in effect in respect of any of its properties or assets (including the Easement Lands and the Owned Real Property) that would reasonably be expected to be material to the Business;
- (xxi) launched any new line of business or exited any line of business;
- (xxii) adopted a plan of complete or partial liquidation, dissolution, merger, consolidation or recapitalization;
- (xxiii) taken any action or failed to take any action which action or failure to act would result in the change, loss, expiration or surrender of, or the loss of any benefit under, or reasonably be expected to cause any Governmental Authority to institute any Proceeding for the suspension, revocation or limitation of rights under, any Authorization necessary to conduct its business as now conducted;
- (xxiv) made or rescinded any material express or deemed election, information schedule, return or designation relating to Taxes, or filed any amended Tax Returns;
- (xxv) made a request for a Tax ruling or voluntary disclosure or entered into any agreement with any Governmental Authority with respect to Taxes;
- (xxvi) settled or compromised any claim, assessment, reassessment, Liability, action, suit, litigation, Proceeding, arbitration, investigation, audit or controversy relating to a material amount of Taxes;
- (xxvii) surrendered any right to claim Tax abatement, reduction, deduction, exemption, credit or refund;
- (xxviii) changed any annual Tax accounting period;
- (xxix) taken any action with respect to the computation of Taxes or the preparation of Tax Returns that is in any material respect inconsistent with past practice;
- (xxx) made any changes to methods, principles, policies or practices of reporting income, deductions or accounting for Tax purposes (with respect to those employed prior to the date of this Agreement), except as required under applicable Laws;
- (xxxi) consented to the extension or waiver of the limitation period applicable to any material Tax matter; or
- (xxxii) agreed in writing to do anything prohibited by this Section 4.10.

#### **4.11 No Undisclosed Liabilities.**

- (a) Except as set forth in Schedule 4.11(a) of the Seller Disclosure Letter, neither Group Entity has any Liabilities, whether or not of the type to be reflected in financial statements prepared in accordance with IFRS, other than (i) Liabilities reflected or reserved against in the Financial Statements and (ii) current Liabilities incurred in the Ordinary Course since the Balance Sheet Date, which did not result from any default, tort or breach of Contract, and which will be included in the Closing Statement.



- (b) The Group Entities have no Indebtedness of any type (whether accrued, absolute, contingent, matured, unmatured or other and whether or not required to be reflected in financial statements prepared in accordance with IFRS) other than Indebtedness set out on Schedule 4.11(b) of the Seller Disclosure Letter. With respect to each item of Indebtedness, other than as set forth in Schedule 4.11(b) of the Seller Disclosure Letter under the heading “Defaults”, the applicable Group Entity is not in default, no material payments are past due, and no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, could constitute a default by such Group Entity under any item of Indebtedness. Neither Group Entity has received any notice of a default, alleged failure to perform or any offset or counterclaim with respect to any item of Indebtedness that has not been fully remedied and withdrawn.
- (c) Other than as reflected in Schedule 4.11(c) of the Seller Disclosure Letter, the consummation of the Transactions will not cause a default, breach or an acceleration, automatic or otherwise, of any conditions, covenants or any other terms of any item of Indebtedness.

#### **4.12 Material Contracts.**

- (a) Schedule 4.12 of the Seller Disclosure Letter sets out a true, complete and correct list of the following Contracts to which any Group Entity is a party or by which any Group Entity or any of its assets or properties may be bound:
  - (i) any Contract for the acquisition, disposition, lease, sublease, use or occupation of any real property;
  - (ii) any Contract mortgaging, pledging or otherwise placing a Lien on any portion of the assets of any Group Entity;
  - (iii) any Contract for the purchase of materials, supplies, goods, services, equipment or other assets or for, or requiring capital expenditures, buildings or other improvements or infrastructure, in each case providing for either (A) annual payments by any Group Entity of \$50,000 or more or (B) payments by any Group Entity of \$250,000 or more over the term of the Contract;
  - (iv) any distribution, sales or other similar Contract providing for the sale by any Group Entity of materials, supplies, goods, services, equipment or other assets that provides for either (A) annual payments to a Group Entity of \$50,000 or more, calculated based on any Group Entity’s most recently completed fiscal year or (B) payments to a Group Entity of \$250,000 or more over the term of the Contract;
  - (v) any partnership, joint venture, co-ownership, declaration of bare trust, franchise, management or other similar Contract;
  - (vi) any Contract relating to Indebtedness or the deferred purchase price of real or personal property (in either case, whether incurred, assumed, Guaranteed or secured by any asset), in each case, for an amount in excess of \$250,000;
  - (vii) any Contract for the lease of personal property by any Group Entity, anticipated to involve annual payments by such Group Entity in excess of \$25,000;



- (viii) any employment or services agreements involving annual base salary or wage payments or annual fee payments (including bonuses and commissions) by any Group Entity to any Employee or Contractor in excess of \$100,000;
- (ix) any Contract for deferred compensation, termination, severance, bonus, retirement or change of control payments;
- (x) any Contract in respect of Intellectual Property Rights, other than in respect of commercially available off-the-shelf software or software as a service;
- (xi) any Contracts pursuant to which Seller or the Group Entities are required to give any notice to or obtain any approval or consent from, or make any filing with, any Person in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the consummation or performance of any part of the Transaction;
- (xii) any Contract that: (A) limits the freedom of any Group Entity to compete in any line of business or with any Person or in any geographic area or to solicit, hire, retain or attempt to solicit, hire or retain any employee, customer or supplier of any Person; or (B) provides for "Most Favored Nations" terms or establishes an exclusive sale or purchase obligation with respect to any product or any geographic area;
- (xiii) any Contract with Seller or any Related Party;
- (xiv) any Contract that requires a commitment by any Group Entity to make a capital expenditure or to purchase a capital asset requiring payments in excess of \$100,000;
- (xv) any Contract that (A) contains any indemnification rights or obligations on behalf of any Group Entity other than any such rights incurred in the Ordinary Course or (B) obligates any Group Entity to make contingent payments under any purchase price adjustment, earn-out or similar provisions;
- (xvi) any Contract granting any Person a first-refusal, first-offer or similar preferential right to purchase or acquire any material right, asset or property, or any Equity Interests of any Group Entity;
- (xvii) any Collective Agreement;
- (xviii) any Contract with a Governmental Authority;
- (xix) any connection agreement, interconnection agreement or similar type agreement, including any such agreement with Hydro One Networks Inc.;
- (xx) any Contract with an Indigenous Group;
- (xxi) any Contract under which any Group Entity has granted any power of attorney; or
- (xxii) any Contract relating to the (A) disposition or acquisition since January 1, 2022; or (B) future disposition or acquisition, in each case, by or to any Group Entity of



any business, business segment, division, product line, assets, properties or Person (whether by merger, consolidation or other business combination, sale or purchase of securities, sale or purchase of assets or otherwise), excluding, in each case, dispositions or acquisitions of inventory in the Ordinary Course.

- (b) No party to a Material Contract is in breach or violation of, or default (in each case, with or without the giving of notice, the lapse of time, or both, or the happening of any other event or condition) under, any Material Contract. No Group Entity has received or been given any notice of breach or default under any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute a breach of or default under any Material Contract or result in or permit or cause any loss other than change of any rights or benefits under any Material Contract.
- (c) Each Material Contract is in full force and effect, constitutes a legal, valid and binding obligation of the parties thereto, and is enforceable in accordance with its terms against the parties thereto, in accordance with its terms, subject only to the Enforcement Limitation.
- (d) No party to any Material Contract has given any written notice of termination or cancellation of any Material Contract or that it intends to seek to terminate or cancel any Material Contract (whether as a result of the Transaction or otherwise).
- (e) Complete and accurate copies of all of the Material Contracts (and, in the case of an oral Material Contract, a written description of the material terms of such contract) have been made available to Buyer.

#### **4.13 Litigation.**

Except as set out in Schedule 4.13 of the Seller Disclosure Letter, there are no Proceedings or investigations pending or, to the knowledge of Seller, threatened against or involving any Group Entity or before or by any Governmental Authority. No Group Entity is subject to any Order. No event has occurred, and, to the knowledge of Seller, no circumstance exists, which could reasonably be expected to constitute or result in (with or without the lapse of time) any Proceeding or Order.

#### **4.14 Compliance with Laws.**

Except as disclosed on Schedule 4.14 of the Seller Disclosure Letter, (i) the Group Entities are complying, and have been in material compliance with all applicable Laws; and (ii) the Group Entities are and have been in material compliance with all applicable Orders .

#### **4.15 Ethical Practices.**

None of the Group Entities, nor to the knowledge of Seller, any Representative of the Group Entities: (a) has violated or is violating in any material respect any anti-corruption or anti-bribery Law applicable to the Group Entities, including Laws governing commercial bribery (the “**Anti-Corruption Laws**”); (b) has, directly or indirectly, made, offered, paid, authorized, facilitated, or promised any payment, contribution, gift, entertainment, bribe, rebate, kickback, financial or other advantage, or anything else of value, regardless of form or amount, to any: (i) official or employee of a Governmental Authority; (ii) official or employee of an enterprise that is owned or controlled by a Governmental Authority; (iii) political party, political official, or candidate for political office; (iv) official or employee of a public international organization; or (v) other Person acting in an official capacity for or on behalf of any such Governmental Authority, enterprise, party, or organization, in each case (i) – (v) that violates the Anti-



Corruption Laws; (c) is, or has been, under administrative, civil, or criminal investigation, indictment, suspension, debarment or audit by any Governmental Authority, in connection with alleged or possible violations of the Anti-Corruption Law or (d) has received written notice from, or made a voluntary disclosure to, any Governmental Authority regarding alleged or possible violations of the Anti-Corruption Laws.

#### **4.16 Title to and Sufficiency of Assets.**

- (a) The Group Entities, own and have good and valid title to, or a valid leasehold interest in, or a valid license in, as applicable, all of the properties and assets used in the conduct of the Business (including (i) all properties and assets reflected as owned, leased or licensed by the Group Entities in the Financial Statements and Closing Statement and (ii) the Owned Real Property and Easement Lands), free and clear of all Liens, other than Permitted Liens. Any Permitted Lien on such properties, rights or assets does not materially interfere with the current use of any such property, right or asset or materially detract from the value of such property, right or asset.
- (b) No Person other than the Group Entities, owns any property, right or assets which are material to the Business, except for the licensors of the Intellectual Property Rights licensed to one or more Group Entities for use in the Business. No Person has by Contract, option, right or privilege for the purchase or acquisition of any property, assets or rights of any Group Entity.
- (c) The property and assets of the Group Entities are in sufficient operating condition and repair having regard to their age and use for the continuation of the Business in the Ordinary Course, and are adequate for the uses to which they are being put, and none of such property or assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs. The property and assets of the Group Entities are sufficient for the continued conduct of the Business after Closing in substantially the same manner as conducted prior to the Closing and constitute all of the property and assets necessary to carry on the Business in substantially the same manner as conducted prior to the Closing.
- (d) The Group Entities do not otherwise conduct any business, have any operations or hold any assets that do not form part of the Business or the activities incidental thereto as of the date hereof.
- (e) The Group Entities own or have the necessary rights to all equipment and infrastructure necessary for their distribution of electricity to customers in accordance with all applicable Laws, all Authorizations and all Material Contracts.

#### **4.17 Owned Real Property.**

Schedule 4.17 of the Seller Disclosure Letter sets forth a complete list of all real property owned by a Group Entity (“**Owned Real Property**”). With respect to each parcel of Owned Real Property:

- (a) the identified Group Entity has valid title to such property, free and clear of all Liens other than Permitted Liens;
- (b) except as set forth in Schedule 4.17(b) of the Seller Disclosure Letter, there are no leases or subleases granting to any Person the right of use or occupancy of any portion of the parcels of the Owned Real Property;



- (c) there are no outstanding options to purchase, lease or use, or rights of first refusal to purchase any of the Owned Real Property, or any portions thereof or interests therein or Contracts relating to the right to receive any portion of the income or profits from the sale, operation or development thereof;
- (d) the Owned Real Property and its current use, occupancy and operation do not constitute a non-conforming use in any material respects under any applicable building, zoning, subdivision or other land use or similar Laws; and
- (e) the Owned Real Property and each part thereof is in good condition and repair having regard for age and use, and free from material defects reasonable wear and tear excepted.

#### **4.18 Leased Real Property.**

No Group Entity is a party to, or under any agreement to become a party to, any lease with respect to real property.

#### **4.19 Easements**

- (a) To the Seller's knowledge, the Group Entities hold all Easements required for the conduct of the Business of the Group Entities as currently conducted.
- (b) To the Seller's knowledge, all such Easements are valid, enforceable and in good standing and each Group Entity has full right of access and use thereunder to allow the Group Entities to operate their Business in the manner currently conducted.
- (c) To the Seller's knowledge, no Group Entity has defaulted or breached any of its obligations to be performed under any of the Easements, including obligations of payment thereunder, and, to the knowledge of the Seller, no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, could constitute a default under any Easement.
- (d) With respect to those Easements situated on Easement Lands which are owned by a municipality, including, but not limited to, all Easement Lands which form part of a public highway or public right-of-way (collectively, the "**Municipal Easement Lands**"), the locations of all structures, equipment or facilities required for the conduct of the Business of the Group Entities as currently conducted and which are constructed or installed on such Municipal Easement Lands have been agreed upon and approved in all respects by the applicable municipality.

#### **4.20 Expropriation and Condemnation.**

None of the assets, properties and rights of the Group Entities (including all Owned Real Property and Easement Lands) or used in the Business are subject to any expropriation, condemnation or eminent domain proceeding, nor has any Group Entity received any notice of pending or threatened expropriation or condemnation. To the knowledge of Seller, no Governmental Authority or other Person intends to expropriate or condemn all or any part of any such assets, properties or rights, or to alter its land use by-law or official community plan or its road or traffic plans so as to materially adversely affect the operation of the Business or access to or egress from the Owned Real Property or the Easement Lands. There is and



has been no material damage, destruction or loss to, or any other casualty event in respect of, any of the assets or properties of the Group Entities, whether or not covered by insurance.

#### **4.21 Environmental Matters.**

- (a) The Group Entities and the operation of the Business are and have been in material compliance with applicable Environmental Laws.
- (b) Except as set out in Schedule 4.21(b) of the Seller Disclosure Letter, there are no Hazardous Materials located at, in, on or under, or migrating to or from, any of the Easement Lands or Owned Real Properties resulting from the operation of the Business or for which any Group Entity may be liable under any applicable Environmental Law. True, complete and correct copies of all environmental reports listed on 4.21(b) of the Seller Disclosure Letter have been made available to Buyer.
- (c) The Group Entities have not caused or permitted the generation, manufacturing, refining, treatment, transportation, storage, handling, Release, disposal of, transfer, production or processing of any Hazardous Material, except in compliance in all material respects with all, and for which the Group Entities do not have Liability under any, applicable Environmental Laws.
- (d) Except as set out in Schedule 4.21(d) of the Seller Disclosure Letter, the Group Entities have not been required by any Governmental Authority or Environmental Laws to (i) file any notice or information with any Governmental Authority relating to any potential or actual contamination of, or Release, migration or management of Hazardous Material at, any of the Owned Real Properties or Easement Lands any other property; or (ii) perform any environmental closure, decommissioning, rehabilitation, restoration, containment or post-remedial investigation or monitoring or other remediation or response action on, about or in connection with the Owned Real Properties or Easement Lands or any other property.
- (e) True, complete and correct copies of all material reports and documents relating to environmental, health or safety matters affecting or that may be affecting the Group Entities or any of the Owned Real Properties or the Easement Lands prepared in the previous three (3) years which are in the possession or under the control of the Group Entities have been made available to Buyer.

#### **4.22 Indigenous Matters**

- (a) None of the assets, properties and rights of the Group Entities (including all Owned Real Property and Easement Lands) are located on any real property whose use and benefit is set apart as a reserve, as that term is defined in the *Indian Act* (Canada).
- (b) No Indigenous Group has alleged that any Group Entity or the operation of the Business (including the issuance of any Authorization and their use of the Owned Real Property and the Easement Lands) is not in material compliance with any applicable Laws.
- (c) No Proceeding is in process, pending or, to the knowledge of Seller, threatened in writing against any of the Group Entities by or on behalf of any Indigenous Group.
- (d) No Group Entity has received notice of, nor, to the knowledge of Seller, is there any Indigenous Claim made or threatened by any Indigenous Group which would affect in any



material respect any Owned Real Property, Easement Lands, Group Entity and/or operation of the Business. To the knowledge of Seller, no Indigenous Group has opposed the operation and/or business of any Group Entity, including by (i) blockading and/or occupying the Owned Real Property or the Easement Lands, (ii) objecting to any Authorization sought or otherwise, applied for by any Group Entity or related to any operation or business conducted by any Group Entity, or (iii) protesting against any Group Entity.

- (e) None of the Group Entities has engaged in any discussions or negotiations in respect of any written or oral agreements with any Indigenous Group to provide benefits, pecuniary or otherwise, with respect to the Business, any Owned Real Property and/or any Easement Lands.

#### **4.23 Intellectual Property.**

- (a) Except as set out in Schedule 4.23(a) of the Seller Disclosure Letter, the Group Entities do not own, hold or license any:
  - (i) registrations and pending applications for trademarks and trade names (the **“Trademarks”**);
  - (ii) registrations and pending applications for patents (whether utility or design) (**“Patents”**);
  - (iii) registrations and pending applications for copyrights (**“Copyrights”**);
  - (iv) Internet addresses, registered domain names (the **“Domain Names”**), social media accounts, websites and web pages; and
  - (v) software other than commercially available off-the-shelf software or software as a service (the **“Software”**).
- (b) Except as set out in Schedule 4.23(b) of the Seller Disclosure Letter, there are no Trademarks, Patents, Copyrights, Domain Names and Software owned by, licensed to or used by Seller that are used in the conduct of the Business. The consummation of the Transaction will not alter or impair the Group Entities’ right in and to any Intellectual Property Rights used by the Group Entities.
- (c) The Group Entities own (free and clear of all Liens other than Permitted Liens), or have the licensed rights to use, all Intellectual Property Rights used in the conduct of the Business.
- (d) There is no Proceeding pending or, to the knowledge of Seller, threatened, against the Group Entities challenging the validity, enforceability or scope of any Trademarks, Patents, Copyrights or Domain Names or the Group Entities’ rights thereto.
- (e) There is no Proceeding pending or, to the knowledge of Seller, threatened, against the Group Entities to the effect that the Group Entities infringe or infringed, or misappropriate or misappropriated, any Intellectual Property Rights of any third party.



- (f) To the knowledge of Seller, there is no infringement or misappropriation by third parties of any Intellectual Property Rights owned by the Group Entities.
- (g) The conduct of the Business by Group Entities does not infringe or misappropriate, and since January 1, 2022, has not infringed or misappropriated, any Intellectual Property Rights of any Person.

#### **4.24 Computer Systems.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **4.25 Insurance.**

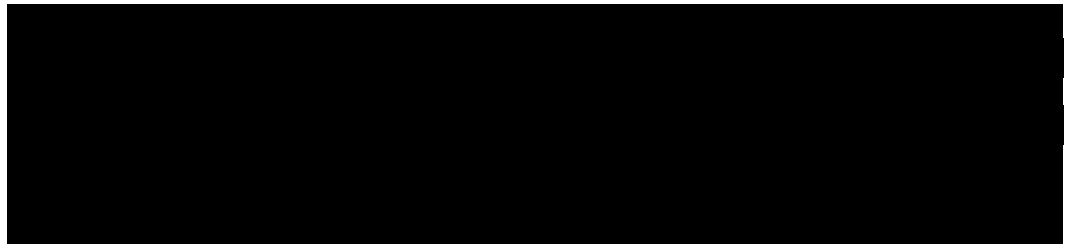
Schedule 4.25 of the Seller Disclosure Letter sets out a list of all insurance policies which are maintained by the Group Entities. All such policies are in full force and effect and, to the knowledge of Seller, no event has occurred which, with notice or lapse of time or both, would constitute a material breach, default, or permit termination, modification or exclusion under any such policy. Since January 1, 2022, the Group Entities have not received any written notice or threat of cancellation, termination or modification or material premium increase of any such material insurance policies, nor has, since January 1, 2022, been refused any material coverage pursuant thereto. The Group Entities are not in default with respect to any such policies, nor have the Group Entities failed to give any notice or to present any material claim under



any such policy in a timely fashion. No written notice or threat of cancellation, termination or material premium increase has been received by the Group Entities. True, complete and correct copies of each of the insurance policies set forth in Schedule 4.25 of the Seller Disclosure Letter, together with all amendments, extensions and additions thereto, have been delivered to Buyer for review. Schedule 4.25 of the Seller Disclosure Letter sets out all material pending claims made under any insurance policy by any Group Entity since January 1, 2022.

#### **4.26 Employment and Labour Matters.**

- (a) Schedule 4.26(a) of the Seller Disclosure Letter sets forth a complete and accurate list as of the close of business on the date hereof of all full time Employees, and each of their positions, annual salary or hourly wage rates, and incentive targets (where applicable). Schedule 4.26(a) of the Seller Disclosure Letter also lists, as of the date hereof, with respect to full time Employees in the position of vice president or above, each of their hire date and active or inactive status (including last date of active employment, type of leave and the expected date of return (if known)). Attached to Schedule 4.26(a) of the Seller Disclosure Letter is a copy of the most recent payroll list in respect of part time Employees.
- (b) Schedule 4.26(b) of the Seller Disclosure Letter sets forth complete and accurate information as of the close of business on the date hereof as to each Contractor engaged by the Group Entities and their fees, incentive targets (where applicable), length of engagement with the Group Entities, location of services, and whether they are subject to a written Contract. Each Contractor who is disclosed in the Seller Disclosure Letter has been properly classified as an independent contractor and none of the Group Entities has received any notice from any Governmental Authority disputing such classification.
- (c) To the knowledge of the Seller, the Group Entities do not have any direct or indirect material Liability with respect to the misclassification of any person as an independent contractor rather than as an employee, or as eligible or not eligible for overtime pay, or for participation in or exclusion from any Benefit Plan, or with respect to any temporary employees, and, to the knowledge of Seller, there exists no state of facts which could reasonably be expected to give rise to any such material Liability.
- (d) The Group Entities have delivered to Buyer complete and accurate copies of all current employee manuals, handbooks, and other material written policies relating to the employment of the current Employees (including any policies relating to severance or termination pay).
- (e) The Group Entities have delivered to Buyer complete and accurate copies of the forms of Contracts used in respect of all Employees whose Contracts are not captured by Section 4.12(a)(viii), and the Contracts of all such Employees are substantially in the forms of the Contracts provided to Buyer and do not materially deviate therefrom.





[REDACTED]

- (g) The Group Entities are and have been in material compliance with all Laws respecting employment, employment practices and labour, including pay equity, wages, hours of work, overtime, human rights, discrimination, harassment, hostile work environment, retaliation, workers' compensation or workplace safety and insurance, occupational health and safety and immigration. There are no pending or, to the knowledge of Seller, threatened claims, complaints, investigations, Orders or other Proceedings under any Laws respecting employment, employment practices and labour, nor, to the knowledge of Seller, is there a basis for any such claim, complaint, investigation, Order or other Proceeding under any such Laws.

[REDACTED]

[REDACTED]

[REDACTED]

- (k) There are no material outstanding and unresolved or pending, inspections, reports, Orders or charges made under any occupational health and safety Law against any Group Entity. Since August 31, 2018, the Group Entities have each complied in all material respects with any Order issued under any occupational health and safety Law and, to the knowledge of Seller, there are no appeals of any Order under any occupational health and safety Law currently outstanding. Since January 1, 2022, there have been no fatal or critical accidents involving any Employees where a Group Entity is in violation of any occupational health and safety Law in any respect. Buyer has been provided true and correct copies of all orders, inspection reports and charges made against any Group Entity or otherwise related to the Business under applicable occupational health and safety Law since January 1, 2022.

- (l) There are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety and insurance legislation or



workers' compensation legislation. None of the Group Entities have been assessed or reassessed in any material respect under such legislation during the past four (4) years and, to the knowledge of Seller, no audit of any Group Entity is currently being performed by the Ontario Workplace Safety and Insurance Board or any other applicable Governmental Authority pursuant to any applicable workplace safety and insurance legislation or any applicable workers' compensation legislation. There are no claims or, to the knowledge of Seller, potential claims which may materially adversely affect the accident cost experience in respect of the Business.

- (m) All amounts due or accrued for all salary, wages, fees, incentive compensation (including bonuses and commissions), vacation with pay, sick days, benefits and other direct compensation for services in respect of each Employee and Contractor have either been paid or are accurately reflected in the Books and Records of the Group Entities. None of the Group Entities are (i) delinquent with respect to payments or the provision of compensation and benefits to any of its Employees or Contractors (or former employees, independent contractors or consultants) for any salaries, wages, fees, incentive compensation (including bonuses and commissions), vacation with pay or other direct compensation for any services performed by them or amounts required to be reimbursed to such Persons, or (ii) liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment or workers' compensation benefits, or social security (other than immaterial routine payments to be made pursuant to claims in the Ordinary Course of Business or as required by applicable Law).



#### 4.27 **Benefit Plans.**

- (a) Schedule 4.27(a) of the Seller Disclosure Letter lists, as of the date hereof, all material employee benefit, fringe benefit, supplemental unemployment benefit, incentive (including bonus and commission), change of control, retention, severance, termination, pension, retirement and retirement savings, equity incentive, stock option, stock purchase, stock appreciation, profit sharing, deferred compensation, health, welfare, medical, dental, disability, life insurance and any other or similar plans, agreements, policies, programs, arrangements or practices relating to any current or former director, officer, Employee or Contractor of any of the Group Entities (or any dependent, survivor, beneficiary or estate thereof) maintained and sponsored by any of the Group Entities, or with respect to which any of the Group Entities contribute or are required to contribute or have any Liability (contingent or otherwise), whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered, other than a benefit plan required to be maintained or contributed to by statute (each such plan, agreement, policy, program, arrangement or practice, a "**Benefit Plan**").
- (b) Seller has available to Buyer true, complete and correct copies of all the Benefit Plans as amended as of the date hereof (or if oral, summaries thereof), together with all material related documentation including, without limitation, funding agreements, summary plan descriptions, the most recent actuarial reports (if applicable) and all material correspondence with all Governmental Authorities or other relevant Persons related to the Benefit Plans. The employee booklets and summary plan descriptions prepared for and



issued concerning each Benefit Plan, accurately and fairly describe the benefits provided under each Benefit Plan.

- (c) Each Benefit Plan has been and is established, registered, sponsored, maintained, funded and administered in all material respects according to its terms and applicable Laws and there are no material outstanding violations or defaults thereunder nor any Proceeding current or pending or, to the knowledge of Seller, threatened with respect to any Benefit Plan (other than routine claims for payment of benefits), nor have there been any since January 1, 2022. Except as set out in Schedule 4.27(c) of the Seller Disclosure Letter, to the knowledge of Seller, there exists no state of facts which could reasonably be expected to give rise to any such Proceeding in respect of any Benefit Plan.
- (d) Subject to the requirements of applicable Laws and the terms of any applicable Collective Agreement, no promise or commitment to increase benefits under any Benefit Plan or to adopt any additional Benefit Plan has been made.
- (e) The Group Entities have paid all contributions and premiums in respect of each Benefit Plan in a timely fashion in accordance with the terms of each Benefit Plan, Collective Agreement and applicable Laws, and all Benefit Plans are and have been funded in accordance with applicable Laws and, as of the date hereof, there are no current unfunded obligations with respect to any Benefit Plan.
- (f) No event has occurred and no condition or circumstance exists that has resulted in or could reasonably be expected to result in any Benefit Plans being ordered, or required to be, terminated or wound up in whole or in part, having its registration under applicable Laws refused or revoked, being placed under the administration of any trustee or receiver or Governmental Authority or being required to pay any material taxes, penalties, payments or levies under applicable Laws.
- (g) Except for the plans listed on Schedule 4.27(a) of the Seller Disclosure Letter, the Group Entities do not provide post-employment or post-retirement benefits for any current or former Employees, directors or officers of the Group Entities, or any dependent, survivor, beneficiary or estate thereof, except for benefits required to be provided after termination of employment without cause pursuant to applicable Laws relating to employment standards
- (h) Other than the OMERS Plan, no Benefit Plan is (i) a “registered pension plan” within the meaning of subsection 248(1) of the Tax Act, or is otherwise subject to applicable minimum pension standards legislation in Canada; (ii) a “retirement compensation arrangement” within the meaning of subsection 248(1) of the Tax Act; or (iii) a “salary deferral arrangement” within the meaning of subsection 248(1) of the Tax Act. Other than the OMERS Plan, no Benefit Plan is a “multi-employer plan” within the meaning of subsection 147.1(1) of the Tax Act or a “multi-employer pension plan” within the meaning of subsection 1(1) of the *Pension Benefits Act* (Ontario) or as such similar terms are defined in similar pension standards legislation of Canada or any province of Canada.
- (i) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated herein will or may (i) increase or accelerate vesting of any entitlement, or provide any additional rights or benefits, under any Benefit Plan, including any change of control, retention, golden parachute, bonus or similar payment, (ii) result in any severance, termination pay or other payment or benefits becoming due, or increase the



amount of any compensation or benefits due, to any current or former Employee, officer, director or Contractor, or (iii) subject to applicable Laws and the terms of the applicable Benefit Plan, limit or restrict the ability of Buyer or its Affiliates to merge, amend or terminate any Benefit Plan.

- (j) All benefits under the Benefit Plans have been properly accrued in the Financial Statements in accordance with generally accepted accounting principles.
- (k) No insurance policy or any other agreement affecting any Benefit Plan requires or permits a retroactive increase in contributions, premiums or other payments due under such insurance policy or agreement. The level of reserves under each Benefit Plan which provides group benefits and contemplates the holding of such reserves is reasonable and sufficient to provide for all incurred but unreported claims.
- (l) All data necessary to administer each Benefit Plan is in the possession of the Group Entities or their service providers and is in a form which is sufficient for the proper administration of such Benefit Plan in accordance with its terms and all applicable Laws and, to the knowledge of Seller, such data is complete and correct.
- (m) Except as set forth in Schedule 4.27(m) of the Seller Disclosure Letter, (i) only Employees, directors, former employees and former directors, in each case, of the Group Entities (or any spouses, dependents, survivors or beneficiaries of any such Persons) participate in the Benefit Plans and no entity other than the Group Entities are a participating employer under any Benefit Plan, and (ii) all Benefit Plans are sponsored only by the Group Entities.

#### **4.28 Related Party Transactions.**

Schedule 4.28 of the Seller Disclosure Letter sets forth a true, complete and correct list of all balances, transactions, arrangements and/or Contracts between the Group Entities, on the one hand, and a Related Party to the Group Entities, on the other hand (all such transactions set forth or required to be set forth thereon, the “**Related Party Transactions**”).

#### **4.29 Bank Accounts and Powers of Attorney.**

Schedule 4.29 of the Seller Disclosure Letter sets forth a true, complete and correct list, as of the date hereof, of (a) the name and address of each bank with which the Group Entities have an account or safety-deposit box, (b) the name of each Person authorized to draw thereon or have access thereto, (c) the account number of each bank account of the Group Entities and (d) all powers of attorney granted by the Group Entities to any Person, copies of which have been delivered to Buyer.

#### **4.30 Books and Records.**

The Books and Records have been maintained, in all material respects, in accordance with all applicable Laws, and are complete and accurate in all material respects. The corporate minute books of the Group Entities contain complete and accurate minutes of all meetings and other proceedings of the directors (or any committee thereof) and shareholders of the Group Entities held since January 1, 2022, and all such meetings were duly called and held and the share certificate books, central securities register (or equivalent) and registers of directors and officers (as the case may be) of the Group Entities are complete and accurate in all material respects.



#### 4.31 Tax Matters.

- (a) Except as set forth in Schedule 4.31(a) of the Seller Disclosure Letter, each Group Entity has filed or caused to be filed, on a timely basis with the appropriate Governmental Authority, in the manner prescribed by applicable Law, all Tax Returns which are required to be filed by or with respect to it. The information contained in such Tax Returns is correct and complete in all material respects, and were prepared in substantial compliance with all applicable Laws and regulations.
- (b) Each Group Entity has paid all Taxes which are due and payable as required by applicable Law (whether or not shown on any Tax Return or assessed or reassessed by any Governmental Authority), and has paid all assessments and reassessments it has received in respect of Taxes. Each Group Entity has paid all installments on account of Taxes for the current taxation year. Each Group Entity has made adequate provision in the Books and Records and the Financial Statements for all Taxes for the period covered thereby. Since the Interim Balance Sheet Date, each Group Entity has only incurred Tax Liabilities in the Ordinary Course. Neither Group Entity has any Liability for any Taxes other than those provided for in the Financial Statements and those arising in the Ordinary Course since the date of the Financial Statements.
- (c) There are no outstanding agreements, arrangements, waivers or objections extending the statutory limitations period or providing for an extension of time with respect to the assessment or reassessment of Taxes of either Group Entity or the filing of any Tax Return by, or any payment of Taxes by, either Group Entity, nor is there any outstanding request for any such agreement, waiver, objection or arrangement. Neither Group Entity has made any elections, designations or similar filings with respect to Taxes or entered into any agreement in respect of Taxes or Tax Returns, in either case in the previous three (3) years, that have an effect for any period ending after the Closing Date except as delivered to Buyer. Neither Group Entity has requested, received or entered into any advance Tax rulings or advance pricing agreements from or with any Governmental Authority.
- (d) Except as set forth in Schedule 4.31(d) of the Seller Disclosure Letter, no material deficiencies or assessments or reassessments for any Taxes have been proposed, asserted or assessed in writing by any Governmental Authority against either Group Entity that are still pending. To the knowledge of Seller, there are no matters (including any Tax Return filed by either Group Entity) under discussion with or by any Governmental Authority in respect of Taxes. There are no proceedings, claims, demands, audits, investigations, or actions now pending or, to the knowledge of Seller, threatened against either Group Entity, in each case in respect of Taxes. There are no liens for Taxes on the assets of either Group Entity except for Permitted Liens.
- (e) Each Group Entity has duly and timely withheld all amounts required by applicable Law to be withheld by it on account of Taxes (including Taxes and other amounts required to be withheld by it in respect of any amount paid or credited by it to or for the account or benefit of any Person, including any of its past and present shareholders, directors, officers, Employees and agents and any Person who is a non-resident in Canada for purposes of the Tax Act) and have duly remitted to the appropriate Governmental Authority within the time prescribed under any applicable Law all such amounts and other amounts required to be remitted by it. Without limiting the generality of the foregoing, each Group Entity has remitted all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it in



respect of its Employees to the proper Governmental Authority within the time required under applicable Law.

- (f) Each Group Entity has collected from its past and present customers (or other Persons paying amounts to either Group Entity) the amount of all Taxes required to be collected and has paid and remitted such Taxes when due, in the form required under applicable Laws. Without limiting the generality of the foregoing, each Group Entity has charged, collected and remitted on a timely basis all Taxes as required under applicable Law on any sale, supply or delivery whatsoever, made by it.
- (g) Neither Group Entity has received an amount, and no amount has been reflected in Estimated Closing Date Working Capital or Estimated Closing Indebtedness, for a tax credit, refund, rebate, overpayment or similar adjustment of Taxes to which it is not entitled, and each Group Entity has retained all documentation prescribed by applicable Laws and in accordance with applicable Laws to support any claims for such amounts.
- (h) Each Group Entity is a registrant for purposes of any Taxes imposed under Part IX of the ETA, and its registration number is as set out opposite such Group Entity's name on such Schedule 4.31(h). Each Group Entity has complied with all registration, reporting, payment, collection and remittance requirements in respect of GST/HST, provincial sales tax or harmonized tax legislation and any other sales and use Taxes. A complete list of all elections currently in effect made by each of the Group Entities under the ETA is set forth in Schedule 4.31(h) of the Seller Disclosure Letter.
- (i) Neither Group Entity is a party to, bound by, or has any obligation under, any Tax allocation or sharing agreement or similar contract or arrangement or any agreement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person. Neither Group Entity has acquired property in circumstances which could be subject to a liability under section 160 of the Tax Act (including having regard to Tax proposals announced by the Minister of Finance (Canada) on August 12, 2024). Neither Group Entity has acquired property from a Person not dealing at arm's length (for purposes of the Tax Act) with it for an amount in excess of the fair market value (for purposes of the Tax Act) at the time of its acquisition. Neither Group Entity has entered into any agreement with, or provided any undertaking to, any Person pursuant to which it has assumed liability for the payment of Taxes owing by such Person.
- (j) Except as set forth in Schedule 4.31(j) of the Seller Disclosure Letter, each Group Entity has delivered to Buyer a true copy of all Tax Returns filed by it and all material correspondence with any Governmental Authority relating to Taxes, including all notices of assessment or reassessment, for any taxation periods that remain open for assessment or reassessment as of the date hereof.
- (k) Neither Group Entity has at any time been engaged (nor has it been treated as having been engaged due to its status as a partner in a partnership or member of a limited liability company) in a trade or business in any country other than the country in which it is formed or organized, or is otherwise required to file an income Tax Return in any jurisdiction outside of such country. No claim has ever been made by a Governmental Authority in a jurisdiction where a Group Entity does not file Tax Returns that it is or may be subject to the imposition of any Tax by, or required to file Tax Returns in, that jurisdiction.



- (l) Neither Group Entity is required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period as a result of any (i) change in accounting method for any Pre-Closing Tax Period, (ii) installment sale made on or prior to the Closing Date, (iii) prepaid amount received on or prior to the Closing Date, or is otherwise required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period attributable to income that accrued, or that was required to be reported for financial accounting purposes, in a prior taxable or fiscal period but that was not included in taxable income for that or another prior taxable or fiscal period, or (iv) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date. Neither Group Entity has claimed any reserves (other than an allowance for doubtful accounts or unearned revenue that is reflected as a reduction in Working Capital in Closing Date Working Capital) for purposes of the Tax Act (or any other applicable Law) for the most recent Tax or fiscal period ended prior to the date of this Agreement or for any Tax period ending as a result of the completion of the Transaction other than in accordance with standard business practices consistently applied by it in all Pre-Closing Tax Periods.
- (m) There are no circumstances which exist and could result in, or have existed and resulted in, the application of any of sections 17, 79, 79.1 or 80 to 80.04, inclusive, of the Tax Act (or any similar provision under any applicable Law) to either Group Entity, and, for greater certainty, the cost amount to each Group Entity of each debt obligation owed to it (taking into account the assumptions in paragraphs 80.01(4)(a) and (b) and subparagraphs 80.01(4)(c)(i) and (ii)) is equal to the principal amount of such debt obligation plus any accrued and unpaid interest.
- (n) Neither Group Entity has incurred any deductible outlay or expense owing to a Person not dealing at arm's length for purposes of the Tax Act with it the amount of which would, assuming there is no agreement filed under paragraph 78(1)(b) of the Tax Act, be included in its income for Canadian income tax purposes for any taxation year or fiscal period beginning on or after the Closing Date under paragraph 78(1)(a) of the Tax Act.
- (o) Except as set forth in Schedule 4.31(o) of the Seller Disclosure Letter, no Person or group of Persons has ever acquired, or had the right to acquire, control of either Group Entity for purposes of the Tax Act and there has been no "loss restriction event", as defined in the Tax Act, in respect of either Group Entity (or any similar provision under any applicable Law), other than Buyer in accordance with this Agreement.
- (p) Each Group Entity has complied with subsection 89(14) of the Tax Act in respect of any dividend designated by it as an eligible dividend for the purposes of the Tax Act at the time of designation and payment of such a dividend, and neither Group Entity has any liability for any Taxes under Section 185.1 of the Tax Act.
- (q) Neither Group Entity has elected to treat a dividend as a "capital dividend" in circumstances where the full amount of such dividend is not deemed to be a capital dividend under 83(2) of the Tax Act and neither Group Entity is subject to any tax under Part III of the Tax Act.
- (r) Neither Group Entity has undertaken (i) any "reportable transaction" as defined in subsection 237.3(1) of the Tax Act or (ii) any "notifiable transaction" as defined in subsection 437.4(1) of the Tax Act.



- (s) Neither Group Entity has filed any returns related to a “reportable transaction”, “notifiable transaction”, or a “reportable uncertain tax treatment” as defined in sections 237.3, 237.4, and 237.5 of the Tax Act or any similar Canadian federal or provincial Tax Laws.
- (t) Each of the Group Entities has kept and keeps its books and records in compliance with section 230 of the Tax Act and all similar provisions of any law in respect of Taxes and each of the Group Entities has in its possession or under its control all books and records in respect of Taxes that are required to be maintained and preserved under all Laws.

#### **4.32 Competition Act.**

The aggregate value of the assets in Canada that are owned by the Group Entities, including entities controlled by the Group Entities, and the gross revenues from sales in, from or into Canada generated from all the assets proposed to be acquired, all as determined in accordance with Part IX of the *Competition Act* (Canada) and the Notifiable Transactions Regulations thereunder, do not exceed \$93 million.

#### **4.33 Privacy and Data Security.**

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



[REDACTED]

■

[REDACTED]

■

[REDACTED]

**4.34 No Brokers.**

No broker, finder or investment banker or other person is directly or indirectly entitled to receive from any Group Entity any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the Transaction.

**4.35 Prudential Support.**

The Group Entities have been provided and maintain in good standing all Prudential Support required pursuant to the Market Rules. Descriptions of all Prudential Support arrangements in place are described in Schedule 4.35 of the Seller Disclosure Letter.

**4.36 Water Heater Rental Contracts.**

■

[REDACTED]



■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows on the date hereof and on the Closing Date and acknowledges and confirms that Seller is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

#### **5.1 Formation and Power.**

Buyer is incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party.

#### **5.2 No Conflict.**

The execution, delivery and performance by it of this Agreement and any Ancillary Agreement to which Buyer is a Party and the completion of the transactions contemplated herein:

- (a) have been authorized by all necessary corporate action or actions required under its Governing Documents;
- (b) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) its Governing Documents, or (ii) any material Contract to which Buyer is a party; and
- (c) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Order.



### **5.3 Required Authorizations.**

Other than the Required Regulatory Approvals no filing with, notice to, consent, approval or Authorization of, any Governmental Authority is required by it as a condition to the lawful completion of the Transaction.

### **5.4 Required Consents.**

There is no requirement to obtain any consent, approval, authorization or waiver of a party, or to provide a notice to any party, under any Contract to which Buyer is a party in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the completion of the Transaction.

### **5.5 Execution and Binding Obligation.**

This Agreement has been, and each Ancillary Agreement to which it is a party will be, duly executed and delivered by Buyer, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

### **5.6 Litigation.**

There are no Proceedings in progress, pending, or to the knowledge of Buyer, threatened against it, which prohibit, restrict or seek to enjoin the Transaction. Buyer is not subject to any outstanding Order which would in any manner affect, prohibit, restrain or make illegal the Transaction.

### **5.7 No Brokers.**

No broker, finder or investment banker or other person engaged by it is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the Transaction.

### **5.8 Investigation; No Additional Representations; No Reliance, etc.**

Buyer acknowledges and agrees that neither the Seller nor any of the Group Entities have made nor shall they be deemed to have made (and Buyer hereby disclaims reliance on) any representation or warranty, express or implied, with respect to Seller, any of the Group Entities or the Transaction, other than those explicitly and expressly set forth in this Agreement and the Ancillary Agreements. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that neither the Seller nor any Group Entity makes any representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations, future cash flows or future financial conditions of any Group Entity or the future business and operations of the Group Entities, except those explicitly set forth in this Agreement (as qualified by the Seller Disclosure Letter) and the Ancillary Agreements, or (b) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the Group Entities, except those explicitly set forth in this Agreement (as qualified by the Seller Disclosure Letter) and the Ancillary Agreements. Buyer acknowledges and agrees that it has made its own inquiry and investigation into, and based thereon has formed an independent judgment concerning, each of the Group Entities. Notwithstanding anything to the contrary set forth herein, the foregoing statements in this Section 5.8 assume the absence of fraud, willful misconduct, gross negligence or criminal activity on the part of any of the Seller, Group Entities or their respective directors, managers, officers, employees, shareholders, representatives or advisors, and Buyer is relying upon such absence of fraud, willful misconduct, gross negligence or criminal activity and nothing set forth in this



Section 5.8 shall in any way limit any claim that Buyer may have with respect to fraud willful misconduct, gross negligence or criminal activity.

## **ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES**

### **6.1 Conduct of Business Prior to Closing.**

- (a) Except: (i) as expressly required and contemplated by this Agreement, or (ii) with the prior written consent of Buyer, during the Interim Period, Seller shall cause each Group Entity to (A) conduct the Business in the Ordinary Course in compliance with all applicable Laws, (B) not take or omit to take any action within its control which action or omission would reasonably be expected to result in a Material Adverse Effect, (C) use commercially reasonable efforts to (x) preserve substantially intact its business organization and (y) preserve in all material respects the present commercial relationships with key Persons with whom it has material business dealings (including its commercial, employment and regulatory relationships) and (D) without limiting the generality of the foregoing:
  - (i) maintain in effect all of its material Authorizations;
  - (ii) maintain all of its properties in a manner consistent with past practice, reasonable wear and tear excepted, and maintain the types and levels of insurance currently in effect in respect of its assets, including the Owned Real Properties, in each case, in all material respects;
  - (iii) not to take any action or omit to take any action within its control, as a result of which any of the representations and warranties in Section 4.10 (Conduct of Business) would become untrue in any material respect;
  - (iv) duly and on a timely basis file all Tax Returns required to be filed by it on or after the date hereof which Tax Returns will be true, complete and correct in all material respects;
  - (v) timely pay in full all Taxes shown on such Tax Returns or on subsequent assessments with respect thereto; and
  - (vi) cause the Group Entities to meet the Prudential Support requirements required pursuant to the Market Rules.
- (b) Except (i) as set out on Schedule 6.1(b) to the Seller Disclosure Letter, (ii) as expressly required and contemplated by this Agreement, or (iii) with the prior consent of Buyer, during the Interim Period, Seller shall cause each Group Entity not to:





( [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]









## **6.2 Access**

- (a) During the Interim Period and (i) following the expiration of the Due Diligence Period and (ii) either (A) prior to the Buyer and ELK entering into the Management Contract or (B) following any expiration or termination of the Management Contract, Seller shall cause the Group Entities to afford to Buyer and its Representatives during normal business hours reasonable access (without undue interference to the conduct of the Business) to their affairs and properties, including its Books and Records, Contracts, personnel, accountants and other Representatives and the Owned Real Property and the Easement Lands for the purposes of ensuring Seller's compliance with the terms of this Agreement, confirming the satisfaction of the conditions set out in this Agreement (including those in Article 8) and to permit Buyer to undertake necessary planning for intended integration activities to be implemented by the Buyer after Closing. All requests by Buyer or its Representatives for such access shall be made upon reasonable written notice in advance of such access. Buyer may not conduct any invasive environmental testing or assessments without the prior written consent of Seller provided that Seller shall not unreasonably withhold or delay such consent.
- (b) Without limiting Section 6.2(a), during the Due Diligence Period, Seller shall cause the Group Entities to afford to Buyer and its Representatives during normal business hours reasonable access (without undue interference to the conduct of the Business) to their affairs and properties, including its Books and Records, Contracts, personnel, accountants and other Representatives and the Owned Real Property and the Easement Lands to permit Buyer to complete its due diligence. All requests by Buyer or its Representatives for such access shall be made upon reasonable written notice in advance of such access. Buyer may not conduct any invasive environmental testing or assessments without the prior written consent of Seller provided that Seller shall not unreasonably withhold or delay such consent. Seller shall, and shall cause the Group Entities to, provide prompt, full and true responses to all diligence questions submitted by Buyer prior to and during the Due Diligence Period (and Seller shall commit sufficient resources to ensure compliance with the foregoing).

## **6.3 Notice of Developments.**

- (a) Seller shall promptly notify Buyer in writing of any:
  - (i) material development affecting the assets, Liabilities, Business, condition (financial or otherwise), operations or prospects of the Group Entities;
  - (ii) fact circumstance, event or action, the existence, occurrence or taking of which (A) has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct in any material respect, or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 8.1 to be satisfied;



- (iii) notice or other communication from any Person in connection with or related to the Transaction; and
  - (iv) Proceedings commenced or threatened in writing against, relating to or involving or otherwise affecting Seller or any Group Entity that, if pending on the date of this Agreement, would have been required to have been disclosed under Section 4.13 or that relates to the consummation of the Transaction.
- (b) Buyer's receipt of any information under this Section 6.3 will not (i) operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller or (ii) be deemed to prevent or cure any such breach of, or inaccuracy in, amend or supplement any Section of the Seller Disclosure Letter, or otherwise disclose any exception to, any of the representations and warranties set forth in this Agreement.

#### 6.4 Confidentiality.

Buyer acknowledges and agrees that the terms of [REDACTED] (the "Confidentiality Provisions") between EWU and Seller are hereby incorporated herein by reference and shall continue in full force and effect notwithstanding any announcement of this Agreement until the Closing, at which time such Confidentiality Provisions and the obligations of each of the parties under the Confidentiality Provisions shall terminate. If this Agreement is, for any reason, terminated prior to Closing, the Confidentiality Provisions shall continue in full force and effect in accordance with its terms. Notwithstanding the foregoing, Seller hereby consents to the disclosure by Buyer to its lenders and debenture holders (including the debenture trustee) of the existence and terms of the Transactions and this Agreement, and of all other information reasonably requested thereby in connection with any consent or notice requirements related to the Transactions.

#### 6.5 Satisfaction of Conditions.

Subject to this Article 6:

- (a) Buyer shall use all its commercially reasonable efforts to satisfy, or cause the satisfaction of, the conditions set out in Section 8.2 that are for the benefit of Seller; and
- (b) Seller shall use all its commercially reasonable efforts to satisfy, or cause the satisfaction of, the conditions set out in Section 8.1 that are for the benefit of Buyer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## 6.7 Regulatory and Other Required Consents.

- (a) Subject to Article 6, including this Section 6.7, the Parties shall use commercially reasonable efforts to cooperate in good faith with each other and their respective advisors and Representatives in connection with any steps or consents required to be taken or obtained as part of their respective obligations under this Agreement or otherwise required to consummate the Transaction.
- (b) Seller shall, and shall cause the Group Entities to use all commercially reasonable efforts to obtain and deliver all Consents required by Seller and the Group Entities on terms and conditions acceptable to Buyer and Seller, each acting reasonably. All costs and expenses incurred in connection with seeking, obtaining and delivering all such Consents shall be borne by Seller.
- (c) Promptly following the execution of this Agreement, the Parties shall proceed to prepare and file with the appropriate Governmental Authorities such Consents from or to Governmental Authorities that are necessary in order to consummate the Transactions, including in respect of the Required Regulatory Approvals other than the OEB Approval, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such matters. Promptly following the execution of this Agreement, Buyer shall proceed to prepare and file with the Ontario Energy Board an application for OEB Approval, and Seller shall fully, diligently and expeditiously cooperate with Buyer (including to provide Buyer with all information necessary for the OEB Approval application in respect of the Seller and the Group Entities required therefor, and with all other information in the possession of or otherwise attainable by Seller required therefor) in the prosecution of the OEB Approval.
- (d) Each Party shall provide the other Parties (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) with reasonable opportunity to review and comment on any applications, filings and submissions made with the appropriate Governmental Authorities and each of the other Parties shall use its commercially reasonable efforts to cooperate with and assist such Party in the preparation and making of all such applications, filings and submissions and the obtaining or making of all Consents from or to Governmental Authorities required to be obtained or made by such Party (including participating and appearing in any proceedings before any agency, court or tribunal).



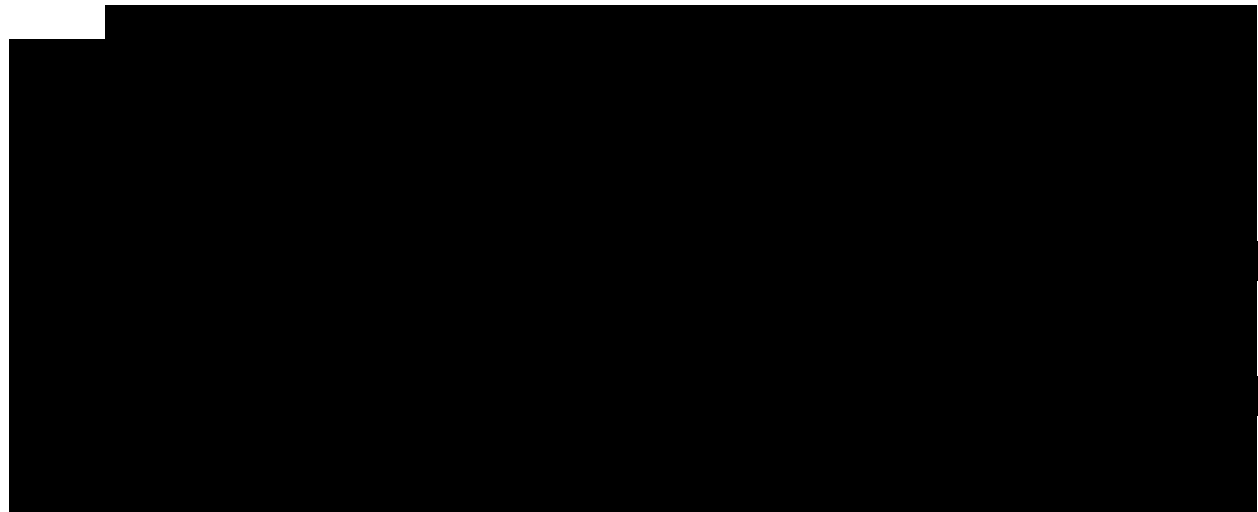
- (f) Seller and Buyer will cooperate in connection with any investigation or litigation by, or negotiations with, any Governmental Authority or other Person relating to the Transaction or regulatory filings in respect of the Required Regulatory Approvals. Without limiting the



foregoing and subject to applicable legal limitations and the instructions of any Governmental Authority, Seller and Buyer agree to:

- (i) cooperate and consult with each other;
  - (ii) file, and cause their respective Affiliates to file, as soon as practicable, any additional information reasonably requested by any Governmental Authority;
  - (iii) keep each other reasonably apprised of the status of matters relating to the completion of the Transaction, including promptly furnishing the other with copies of notices or other communications received by such Party from, or given by such Party to, any third party or any Governmental Authority with respect to the Transaction;
  - (iv) use its commercially reasonable efforts to respond to any inquiries or requests received from a Governmental Authority at the earliest practicable date;
  - (v) not participate in any meeting or discussion, either in person or by telephone, with any Governmental Authority in connection with this Agreement or the Transaction unless, to the extent not prohibited by such Governmental Authority, it gives the other the opportunity to attend and observe.
- (g) Buyer shall pay its own costs related to the OEB Approval and shall reimburse Seller and the Group Entities for all reasonable, out-of-pocket and documented third-party expenses arising directly from Buyer's express written request of Seller or any Group Entity to provide information for, to complete any portion of the application in respect of, or to provide other similar assistance in respect of, the prosecution of the OEB Approval. Upon incurring any such expenses, Seller shall, or shall cause the applicable Group Entity to, provide Buyer the applicable invoice along with receipts and other supporting documentation reasonably requested by Buyer. Notwithstanding the foregoing, Seller acknowledges and agrees that any additional costs incurred by Seller or the Group Entities in respect of the prosecution of the OEB Approval shall be for the account of the Seller or the applicable Group Entity and shall not be subject to reimbursement by Buyer.

## **6.8 Exclusivity.**





**6.9 Termination of Related Party Transactions.**

**6.10 Liens.**

If, at any time prior to the Closing, there are any Liens (other than Permitted Liens) on, against or in respect of any of the assets or properties of any of the Group Entities (including the Owned Real Property and the Easement Lands) or any Liens on, against or in respect of the Purchased Shares, Seller shall cause such Liens to be released, validly discharged, waived or otherwise dealt with to the satisfaction of Buyer, acting reasonably, at or prior to the Closing. The Seller shall cause all Permitted Liens listed on Schedule 1.1(a) of the Seller Disclosure Letter denoted with an asterisk (\*) to be released, validly discharged, waived or otherwise dealt with to the satisfaction of Buyer, acting reasonably, at or prior to the Closing.

**6.11 Corporate Action.**

At or prior to the Closing, Seller shall take, and shall cause the Group Entities to take, all necessary corporate action for the purposes of approving the transfer of the Purchased Shares to Buyer at the Closing.

**6.12 Interim Financial Statements.**

During the Interim Period, Seller shall deliver to Buyer the quarterly unaudited non-consolidated financial statements of the Group Entities, consisting of a consolidated balance sheet and the accompanying consolidated statements of income and expenses as soon as reasonably practicable, and in any case within sixty (60) days, following the completion of each quarter-end which occurs during the Interim Period.

**6.13 By-Laws and Ordinances.**

- (a) On or before April 30, 2025, Seller shall pass a by-law to authorize and ratify this Agreement and the Transactions. Such by-law shall expressly reference the ratification of this Agreement and the Transactions.
- (b) Seller shall not (i) other than the passing of the by-law contemplated by Section 6.13(a), pass, approve, adopt or permit the adoption of, or amend, modify, terminate, cancel, revoke or suspend any existing by-laws or ordinances that could affect, or be reasonably expected to affect, Seller's ability to consummate the Transactions or (ii) amend, modify, terminate, cancel, revoke or suspend any town council, other resolutions or by-laws related to the Transactions.



#### **6.14 Cooperation.**

Prior to the Closing, Seller shall, and shall cause the Group Entities to, complete any rectifications to the Books and Records as may be reasonably requested by Buyer.

#### **6.15 Collective Agreements.**

■ [REDACTED]

■ [REDACTED]

### **ARTICLE 7 CLOSING**

#### **7.1 Closing.**

The Closing shall take place by way of virtual closing hosted by [REDACTED] (Toronto time) on the Closing Date, or at such other time on the Closing Date or such other place as may be agreed in writing by the Parties.

#### **7.2 Closing Deliveries by Seller and the Group Entities.**

At or prior to Closing, Seller shall, and shall cause the Group Entities to, as applicable, deliver, or cause to be delivered to Buyer (or as Buyer may direct) the following, duly executed by Seller, the Group Entities or such other Persons party thereto, as and where applicable, substantially in the forms of the Exhibits hereto, where applicable, and otherwise in form and content satisfactory to Buyer, acting reasonably:

- (a) certificates representing the Purchased Shares duly endorsed in blank for transfer by Seller or accompanied by irrevocable stock transfer powers duly executed by Seller, together with evidence that Buyer has been entered upon the books of (i) ELK as the holder of the ELK Purchased Shares and (ii) ESI as the holder of the ESI Purchased Shares, and such other evidence as Buyer may reasonably request to the effect that, immediately following the Closing, Buyer is the sole registered and beneficial owner of all of the Purchased Shares;
- (b) the Books and Records of each Group Entity;
- (c) evidence reasonably satisfactory to Buyer of the release and valid discharge of (i) all Liens (other than Permitted Liens) on, against or in respect of any of the assets or properties of any of the Group Entities (including the Owned Real Property and the Easement Lands) and (ii) all Liens on, against or in respect of the Purchased Shares;
- (d) certified copies of: (i) the Governing Documents of Seller and each Group Entity; (ii) a town council resolution of Seller and the resolutions of the board of directors of each Group Entity in each case approving the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Seller or such Group Entity is a party; (iii) the resolutions of the board of directors of ELK authorizing the transfer of the ELK Purchased



Shares to Buyer; (iv) the resolutions of the board of directors of ESI authorizing the transfer of the ESI Purchased Shares to Buyer; and (v) incumbency certificate setting out the names and signatures of the officers and directors of Seller and each Group Entity authorized to sign this Agreement and the Ancillary Agreements;

- (e) a certificate of status, compliance, good standing or like certificate with respect to Seller and each Group Entity issued by appropriate government officials of their respective jurisdictions of formation dated within one Business Day of the Closing Date;
- (f) the Payout Letters;
- (g) the Seller Closing Certificate;
- (h) the Contribution Agreement;
- (i) the Local Community Commitment Agreement;
- (j) the Governance Representation Agreement;
- (k) Shareholder Releases;
- (l) the Director and Officer Releases;
- (m) the Escrow Agreement;
- (n) evidence reasonably satisfactory to Buyer that all Consents set forth on Schedule 8.1(f) of the Seller Disclosure Letter have been obtained in accordance with Section 8.1(f);
- (o) evidence satisfactory to Buyer of the termination of Related Party Transactions in accordance with Section 6.9;
- (p) evidence satisfactory to Buyer of the termination of all shareholders' agreements, shareholder declarations and similar agreements of each Group Entity; and
- (q) without limitation to the foregoing, all other documents or instruments as Buyer has reasonably requested and are reasonably necessary to consummate the Transaction.

### **7.3 Closing Deliveries by Buyer.**

At or prior to Closing, Buyer shall deliver or cause to be delivered to Seller the following, duly executed by Buyer, substantially in the forms of the Exhibits hereto, where applicable, and otherwise in form and content satisfactory to Seller, acting reasonably:

- (a) the Estimated Purchase Price delivered in the manner set forth in Section 2.4;
- (b) certified copies of: (i) the Governing Documents of Buyer; (ii) the resolutions of the board of directors of each of Buyer approving the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer is a party; and (iii) incumbency certificate setting out the names and signatures of the officers and directors of Buyer authorized to sign this Agreement and the Ancillary Agreements;



- (c) a certificate of status, compliance, good standing or like certificate with respect to Buyer issued by appropriate government officials of its jurisdiction of formation dated within one Business Day of the Closing Date;
- (d) the Buyer Closing Certificate;
- (e) the Contribution Agreement;
- (f) the Local Community Commitment Agreement;
- (g) the Governance Representation Agreement;
- (h) Shareholder Releases;
- (i) the Escrow Agreement; and
- (j) without limitation to the foregoing, all other documents or instruments as Seller has reasonably requested and are reasonably necessary to consummate the Transaction.

## **ARTICLE 8**

### **CONDITIONS OF CLOSING; TERMINATION**

#### **8.1 Conditions for the Benefit of Buyer.**

The obligation of Buyer to complete the purchase of the Purchased Shares is subject to the following conditions to be satisfied or performed prior to the Closing, which conditions are for the exclusive benefit of Buyer and may be waived, in whole or in part, by Buyer in its sole discretion:

- (a) **Accuracy of Representations and Warranties; Performance of Covenants.** Each of:
  - (i) the representations and warranties of Seller shall be true and accurate in all respects on the date hereof and on the Closing Date; and
  - (ii) the covenants and obligations contained in this Agreement to be performed by Seller on or before the Closing Date shall have been performed in all material respects.
- (b) **No Material Adverse Effect.** There shall not have occurred a Material Adverse Effect.
- (c) **Seller Closing Certificate.** Seller shall have delivered to Buyer at the Closing a certificate, substantially in the form attached as Exhibit “F”, of an officer or other authorized Representative of Seller dated as of the Closing Date, as to the matters set forth in Section 8.1(a) and Section 8.1(b) (the “**Seller Closing Certificate**”).
- (d) **Closing Deliverables.** Each of the closing deliverables set out in Section 7.2 shall have been executed and delivered to Buyer.
- (e) **Termination of Related Party Transactions.** The Related Party Transactions (other than Contracts solely between two Group Entities) shall have been terminated, and all Liabilities thereunder shall have been satisfied in full, in each case on terms acceptable to Buyer acting reasonably, and Seller shall have provided reasonable evidence thereof to Buyer.



- (f) **Required Consents.** Each of the Consents set forth on Schedule 8.1(f) of the Seller Disclosure Letter, and the consent of Buyer's debenture trustee, shall have been received and shall be in full force and effect on terms acceptable to Buyer, acting reasonably.
- (g) **Required Regulatory Approvals.** The Required Regulatory Approvals shall have been obtained on terms acceptable to Buyer, acting reasonably, and shall be in full force and effect.
- (h) **No Law or Order.** No enforceable Law, Order or claim enjoining, restricting or prohibiting any of the Transaction shall have been rendered, instituted or be pending.
- (i) **No Proceeding.** No Proceeding shall be pending or, to the knowledge of Seller threatened, by any Person to restrain or prohibit:
  - (i) the completion of the Transactions; or
  - (ii) the Group Entities from carrying on the Business as the Business is being carried on in all material respects at the date hereof.
- (j) **Discharge of Liens.** Buyer shall have received evidence reasonably satisfactory to it of the release and valid discharge of:
  - (i) all Liens on, against or in respect of the securities, assets or properties (including the Owned Real Property and the Easement Lands) of each Group Entity, other than Permitted Liens;
  - (ii) all Liens on, against or in respect of the Purchased Shares; and
  - (iii) all Permitted Liens listed on Schedule 1.1(a) of the Seller Disclosure Letter denoted with an asterisk (\*).
- (k) **Termination of Management Contract.** To the extent entered into, the Management Contract shall have been terminated, and all Liabilities thereunder shall have been satisfied in full, in each case on terms acceptable to Buyer acting reasonably, and Seller shall have provided reasonable evidence thereof to Buyer.
- (l) **Completion of Due Diligence.** The Buyer shall have completed its due diligence in respect of the Transaction prior to the expiration of the Due Diligence Period, the results of which are satisfactory to Buyer in its sole discretion.

■

[REDACTED]

■

[REDACTED]



## 8.2 Conditions for the Benefit of Seller.

The obligation of Seller to complete the sale of the Purchased Shares is subject to the following conditions to be satisfied or performed prior to the Closing, which conditions are for the exclusive benefit of Seller and may be waived, in whole or in part, by Seller, in its sole discretion:

- (a) **Accuracy of Representations and Warranties; Performance of Covenants.** Each of:
  - (i) the representations and warranties of Buyer made pursuant to this Agreement shall be true and correct in all material respects on the Closing Date;
  - (ii) the covenants and obligations contained in this Agreement to be performed by Buyer on or before the Closing Date shall have been performed in all material respects.
- (b) **Buyer Closing Certificate.** Buyer shall have delivered to Seller at the Closing a certificate, substantially in the form attached as Exhibit “G”, of an officer or other authorized Representative of Buyer dated as of the Closing Date, as to the matters set forth in Section 8.2(a) (the “**Buyer Closing Certificate**”).
- (c) **Closing Deliverables.** All closing deliverables set out in Section 7.3 shall have been executed and delivered.
- (d) **Required Regulatory Approvals.** The Required Regulatory Approvals shall have been obtained and shall be in full force and effect.
- (e) **No Law or Order.** No enforceable Law, Order or claim enjoining, restricting or prohibiting any of the Transaction shall have been rendered, instituted or be pending.
- (f) **No Proceeding.** No Proceeding (other than any Proceeding commenced by or at the direction of Buyer) shall be pending or threatened by any Person to restrain or prohibit:
  - (i) the purchase and sale of the Purchased Shares hereunder; or
  - (ii) the Group Entities from carrying on the Business as the Business is being carried on in all material respects at the date hereof.

## 8.3 Termination.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

#### **8.4 Effect of Termination.**

- [REDACTED]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]





## **8.5 Management Contract.**

- (a) Buyer and Seller may enter into the Management Contract in form and substance satisfactory to each Party, acting reasonably, following the date of this Agreement. Each Party acknowledges and agrees that neither Party is obligated to enter into the Management Contract.
- (b) Seller acknowledges and agrees that the existence of the Management Contract and the Buyer or an Affiliate of a Buyer's performance under or in connection with the Management Contract does not in any way (a) amend, modify, limit, affect or vitiate the representations and warranties, covenants and other agreements of Seller under this Agreement or the Ancillary Agreements, (b) limit Buyer's ability and right to rely on such representations and warranties, covenants and other agreements or (c) constitute or deem any waiver of a condition in favour of Buyer under Section 8.1 or limit Buyer's ability and right to rely on any such condition.
- (c) In the event that during the Interim Period Buyer, in its capacity as manager under the Management Contract, becomes aware of a breach of representation, warranty or covenant of the Seller or the Group Entities under this Agreement, or of circumstances that may cause a Material Adverse Effect prior to the Closing Date, the Buyer agrees to provide the Seller with notice and details of such breach or circumstances to permit Seller an opportunity to remedy the same prior to Buyer delivering a notice of termination pursuant to Section 8.3(b)(i) (it being acknowledged that Seller has a period cure period provided for in Section 8.3(b)(i) and accordingly a notice of termination would not be delivered prior to such cure period expiring), where, solely in the circumstances described by this Section 8.5(c), for the purposes of the cure period in Section 8.3(b)(i) the words "sixty (60) days" shall be replaced with "ninety (90) days". This Section 8.5(c) shall not, and shall not be deemed to, impair, modify or restrict any of Buyer's rights under this Agreement or at Law.

## **ARTICLE 9 POST-CLOSING COVENANTS**

### **9.1 Further Assurances.**

Each Party, upon the request of the other, whether at or after the Closing, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased Shares to Buyer and carry out the intent of this Agreement.



## 9.2 Tax Matters.

- (a) **Filing of Tax Returns for Interim Periods.** Seller shall cause the Group Entities to prepare and file all income Tax Returns for the Group Entities that are due after the Closing Date in respect of periods ending on or before the Closing Date (other than in respect of any Straddle Period), which Tax Returns must be prepared and filed on a timely basis consistent with each Group Entity's existing procedures for preparing Tax Returns and in a manner consistent with prior practice with respect to treatment of specific items on the Tax Returns, except to the extent different procedures or treatment is required by applicable Law. Seller shall provide Buyer with a draft of such Tax Returns fifteen (15) days prior to the due date for filing the Tax Returns with the appropriate taxing authorities. Buyer shall have the right to review the draft of the Tax Returns provided to it by Seller and Seller shall make all reasonable changes provided by Buyer. With respect to the preparation of such Tax Returns, Buyer and Seller agree that Transaction Expenses incurred by the Group Entities and reflected in the final determination of the Purchase Price will be treated as allocable to periods ending on or before the Closing Date to the extent deductible in such period. Seller shall cause the Group Entities to prepare and file all income Tax Returns for the Group Entities for all Straddle Periods.
- (b) **Election.** Buyer or Seller shall have the right to cause an election under subsection 256(9) of the Tax Act to be made with respect to the Tax period of the Group Entity ending as a result of the Transaction.
- (c) **Co-operation.** Buyer and Seller shall (i) provide each other with such assistance as may be reasonably requested in connection with the review of any Tax Return, and (ii) cooperate fully, as and to the extent reasonably requested by any other Party, in connection with any audit, litigation or other proceeding with respect to Taxes (a "**Tax Contest**") (such cooperation shall include the retention and (upon the other Party's reasonable request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees and advisors available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder). Group Entities shall retain all records and information relevant to such Tax Returns.
- (d) **Conduct of Tax Contests.** Subject to Section 9.2(e), Seller shall have carriage of any Tax Contest for any Pre-Closing Taxes (other than with respect to a Straddle Period) to the extent Seller is liable to indemnify such Taxes under this Agreement. With respect to any Tax Contest for which Seller has carriage, (i) Seller shall keep Buyer fully informed regarding the status of such Tax Contest and Buyer shall be provided copies of any correspondence relating to such Tax Contest; (ii) Seller shall consult in good faith with Buyer regarding the defense of such Tax Contest, and Seller will provide Buyer a reasonable opportunity to comment on any representations or submissions proposed to be made to a Governmental Authority in respect of such Tax Contest and to attend any meeting with any such Governmental Authority with respect to such matters; and (iii) Seller shall not resolve or abandon such Tax Contest without the prior written consent of Buyer which shall be provided within thirty (30) days of a written request from the Seller and which shall not be unreasonably withheld, provided, however, that Buyer shall have the right not to consent to the settlement or compromise of any Tax Contest where such settlement or compromise would result in an increase in the Tax Liabilities or would otherwise adversely affect any Group Entity or its Affiliates in any Post-Closing Tax



Period. This Section 9.2(d) shall apply, *mutatis mutandis*, with respect to Buyer's carriage of any Tax Contest in respect of a Straddle Period.

- (e) **Payment.** If any Governmental Authority is entitled to take collection action in respect of Pre-Closing Taxes over which Seller would be liable to indemnify Buyer (or its Affiliates) under this Agreement, notwithstanding the defense relating thereto, or to the extent a payment is required to be made to pursue a Tax Contest, Seller shall pay or cause to be paid to Buyer an aggregate amount equal to such amount that is subject to such collection action or that is required to be paid to pursue the Tax Contest to the relevant Governmental Authority within the time required by Law before it shall be entitled to take carriage of such Tax Contest (each such amount being a “**Compulsory Payment**”).
- (f) **Tax Filings.** Buyer, on the one hand, and Seller, on the other hand, shall, for all Canadian and foreign Tax purposes, report the purchase and sale hereunder and the Transaction, in accordance with their form as set out herein, and none of them shall make any available Tax election inconsistent therewith.
- (g) **Excess Election.** In the event that either or both of subsection 184(2) and subsection 185.1(1) of the Tax Act would otherwise apply at any time to all or any part of any dividend or other amount paid by any Group Entity before the time of Closing, such Group Entity or any successors thereof will file an election or elections under either or both of subsection 184(3) and subsection 185.1(2) of the Tax Act in a timely manner with the appropriate Governmental Authority such that no tax is payable by such Group Entity or any successor thereof, as the case may be, under either of Part III and III.1 of the Tax Act in connection with the declaration and payment of such dividend. Seller will give Buyer, such Group Entity, and any successor thereof, all such cooperation and assistance as may be necessary to ensure that such election or elections are duly filed in a timely manner with the appropriate Governmental Authority. Seller agrees that Seller shall concur or shall cause the recipient of the relevant dividend to concur, as applicable, in the making of any election under either or both of subsection 184(3) and subsection 185.1(2) of the Tax Act.
- (h) **Refunds and Credits.** Unless otherwise included as a current asset in Working Capital, the amount of any refunds or credits actually utilized to offset Taxes payable by the same Group Entity entitled to the credit of Taxes (including any interest paid with respect thereto but net of any Taxes payable by any Group Entity in respect of such refund or interest or that would have been payable in the absence of use of a loss or credit from a tax period that is not a Pre-Closing Tax Period) of, or with respect to, the Group Entities for any Pre-Closing Tax Period (but excluding any such refund or credit arising from the use of a loss or credit or other tax attribute from a tax period that is not a Pre-Closing Tax Period), will be treated as additional purchase price for the Purchased Shares. Buyer shall pay an amount equal to the net amount of any such refunds or credits (net of the exceptions described in the previous sentence) to Seller within thirty (30) calendar days following the date such refunds or credits were paid or credited by the relevant Governmental Authority to the applicable Group Entity. Seller agrees to repay any such amount should any Governmental Authority reverse the refund the credit.
- (i) **Mandatory Reporting.** The Parties agree to reasonably cooperate in good faith to determine whether any transaction set out in this Agreement, or any transaction that may be considered to be part of the same series of transactions as the transactions set out in this Agreement is a “reportable transaction” (as defined in section 237.3 of the Tax Act), is a “notifiable transaction” (as defined in section 237.4 of the Tax Act) or is otherwise required



to be reported to any applicable Governmental Authority under any analogous provision of any comparable Law of any province or territory of Canada (the “**Disclosure Requirements**”). Notwithstanding the foregoing, no Party shall be under any obligation not to report a transaction under the Disclosure Requirements that it determines, acting reasonably, to be subject to a reporting requirement pursuant to the Tax Act or other applicable Law. If, at any time, a Party determines, or becomes aware that an “advisor” (as is or may be defined for purposes of section 237.3 or proposed section 237.4 of the Tax Act) has determined, that the transactions contemplated by this Agreement, or any transaction that may be considered to be part of the same series of transactions as the transactions set out in this Agreement, are or would be subject to the Disclosure Requirements, such Party will inform the other Party of its intent, or its advisor’s intent, to comply with the Disclosure Requirements and the Parties will cooperate with respect to preparing and filing the applicable information returns and/or notifications.

- (j) **Inconsistency.** To the extent that there is an inconsistency between this Section 9.2 and Section 10.8 as it relates to any Tax Contest, the provisions of this Section 9.2 shall govern.
- (k) **Transfer Taxes.** Seller will pay, or cause to be paid, all stamp tax, transfer tax, land transfer tax or other similar Tax imposed in connection with the purchase and sale hereunder and the Transaction (collectively, “**Transfer Taxes**”). Seller agrees to cooperate with Buyer in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession that is reasonably necessary to complete such returns and the payment of such amounts due under this Section 9.2(k). For greater certainty, Seller will be exclusively liable for any liability under Section 94 of the Electricity Act in respect of the purchase and sale hereunder and the Transaction.

### **9.3 Post-Closing Confidentiality.**

From and after the Closing, the Parties acknowledge and agree that (a) the terms and conditions of this Agreement and any information, written or oral, related to the negotiation hereof shall be maintained in confidence except as may be disclosed (i) to a Party’s Representative for a legitimate business purpose and/or (ii) pursuant to applicable Law or to enforce a Party’s rights hereunder and (b) Seller shall, and shall cause their respective Affiliates and Representatives, as applicable, to maintain in strictest confidence all confidential and proprietary information concerning the Group Entities and the Business, including information relating to the Transaction or the Group Entities’ financial statements, clients, customers, potential clients or customers, Employees, suppliers, equipment designs, drawings, programs, strategies, analyses, profit margins, sales, methods of operation, products, materials, trade secrets, strategies, prospects or other proprietary information and shall not disclose any of the foregoing to any other Person except where required by applicable Law or as permitted by this Section 9.3; provided that the limitations set out herein shall not apply to information that (i) was known to the public prior to its disclosure or (ii) becomes generally known to the public absent any such disclosure. For further clarity, the Parties acknowledge and agree that the records described in this section may include information exempt from disclosure pursuant to the Municipal Freedom of Information and Protection of Privacy Act, and nothing in this Agreement constitutes consent of either Party to disclose such information, and the Parties shall cooperate to review and apply any applicable exemptions upon either Party receiving any such request. The Parties further acknowledge and agree that any draft by-law (as contemplated by Section 6.13) and related communications may be exempt from disclosure pursuant to the Municipal Freedom of Information and Protection of Privacy Act, and nothing in this Agreement constitutes consent of either Party to disclose such information.



**9.4 Employee Retention.**

[REDACTED]

**9.5 Advisory Committee.**

[REDACTED]

**ARTICLE 10  
INDEMNIFICATION**

**10.1 Indemnification in Favour of Buyer.**

- (a) From and after the Closing, subject to the limitations set out in Sections 10.3, 10.4 and 10.9, Seller shall indemnify and save each Buyer Indemnified Party harmless for, from and against any Damages suffered by or imposed upon any Buyer Indemnified Party as a result of, in respect of, in connection with, or arising out of, under, or pursuant to:
  - (i) any failure of Seller to perform or satisfy any of its respective covenants or obligations under this Agreement;
  - (ii) any breach or inaccuracy of any representation or warranty (other than the Fundamental Representations) given by Seller contained in this Agreement or any certificate delivered hereunder;
  - (iii) any breach or inaccuracy of any Fundamental Representations given by Seller contained in this Agreement or any certificate delivered hereunder;
  - (iv) any amounts in respect of Closing Indebtedness or Closing Transaction Expenses which are not reflected in the final calculation of the Purchase Price;
  - (v) any Liabilities for Taxes of the Group Entities arising with respect to any Pre-Closing Taxes that are not otherwise reflected in the final calculation of Closing Date Working Capital; and



- (vi) any fraud or intentional misrepresentation by Seller.
- (b) If Closing occurs and a Buyer Indemnified Party makes a claim against Seller for Damages, then Seller shall not be entitled to, and waives any right to, make any claim against any Group Entity in respect of any such Damages by contribution, warranty or otherwise, or require that any Group Entity be a party to the principal claim.

## **10.2 Indemnification in Favour of Seller.**

Subject to the limitations set out in Sections 10.3, 10.4 and 10.9, Buyer shall indemnify and save each Seller Indemnified Party harmless for, from and against any Damages suffered by, imposed upon or asserted against any Seller Indemnified Party as a result of, in respect of, in connection with, or arising out of, under or pursuant to:

- (a) any failure of Buyer to perform or satisfy any of its covenants or obligations under this Agreement; and
- (b) any breach or inaccuracy of any representation or warranty given by a Buyer contained in this Agreement or any certificate delivered hereunder.

## **10.3 Time Limitations.**

- (a) Unless otherwise expressly set out in this Section 10.3, Buyer may make any claim for Damages under Section 10.1 and Seller may make any claim for damages under Section 10.2, as the case may be, without limitation of time, other than by such limitations as are imposed by Law.
- (b) Notwithstanding Section 10.3(a), Buyer Indemnified Parties shall not be entitled to recover Damages from Seller pursuant to:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

#### **10.4 Other Limitations on Recourse and Indemnification Obligations.**

In addition to the time limitations set out in Section 10.3 above, the obligations of indemnification of Seller set out in Section 10.1 and the obligations of indemnification of Buyer set out in Section 10.2, as the case may be, shall be limited as follows:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **10.5 Other Indemnification Matters.**

- (a) The remedies provided in this Article 10 shall be the exclusive remedies (other than specific performance to enforce any payment or performance due hereunder pursuant to Section 10.12 and other than in the case of fraud or intentional misrepresentation) of the Parties from and after the Closing in connection with any breach of any representation, warranty or covenant under this Agreement.
- (b) Notwithstanding anything in this Agreement to the contrary, for purposes of Seller's indemnification obligations in this Agreement, the representations and warranties of Seller in this Agreement that are qualified as to "Material Adverse Effect" or to "material" shall be deemed to have been made without any such qualification for purposes of determining (i) whether a breach of any such representation or warranty has occurred and (ii) the amount of any Damages resulting from or arising out of any breach of any such representation or warranty.
- (c) The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party or by reason of the fact that the Indemnified Party knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Article 8.

#### **10.6 Notification.**

[REDACTED]



[REDACTED]

■

[REDACTED]

■

[REDACTED]

**10.7 Direct Claims.**

■

[REDACTED]

■

[REDACTED]

**10.8 Third Party Claims.**

■

[REDACTED]

■

[REDACTED]



■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



■ [REDACTED]

**10.9 Duty to Mitigate.**

Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any Damage which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty or covenant of the Indemnifying Party under this Agreement.

**10.10 Payment of Indemnification.**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**10.11 Adjustment to Purchase Price.**

Any payment made to a Buyer Indemnified Party pursuant to this Article 10 shall constitute a dollar for dollar decrease of the Purchase Price and any payment made to a Seller Indemnified Party pursuant to this Article 10 shall constitute a dollar for dollar increase of the Purchase Price.



#### **10.12 Specific Performance.**

The Parties expressly acknowledge that the failure by a Party to perform or comply with a covenant contained in this Agreement prior to Closing may give rise to irreparable injury to the other Party which may be inadequately compensable in Damages and nothing in this Agreement shall limit any Party's right to seek and obtain an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of this Agreement.

#### **10.13 Benefit to Indemnified Parties.**

- (a) Seller hereby constitutes Buyer as trustee for each of Buyer Indemnified Parties of the covenants of Seller under this Article 10 with respect to such Buyer Indemnified Parties and Buyer accepts such trust and agree to hold and enforce such covenants on behalf of Buyer Indemnified Parties.
- (b) Buyer hereby constitutes Seller as trustee for each of Seller Indemnified Parties of the covenants of Buyer under this Article 10 with respect to such Seller Indemnified Parties and Seller accepts such trust and agrees to hold and enforce such covenants on behalf of Seller Indemnified Parties.

#### **10.14 Release of Escrow.**



### **ARTICLE 11 MISCELLANEOUS**

#### **11.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a "**Notice**") must be in writing, sent by personal delivery, courier, or electronic mail and addressed:

- (a) to Buyer at:

c/o ENWIN Utilities Ltd.  
4545 Rhodes Drive  
P.O. Box 1625 Station A  
Windsor, Ontario  
N8W 5T1

Attention: Corporate Secretary  
Email: secretary@enwin.com



with a copy to:

Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario  
M5K 1N2

Attention: Huw Evans  
Email: hevans@torys.com

(b) if to Seller:

The Corporation of the Town of Essex  
33 Talbot Street South  
Essex, Ontario  
N8M 1A8

Attention: Joe Malandrucolo  
Email: jmalandrucolo@essex.ca

with a copy to:

McTague Law Firm LLP  
455 Pelissier Street  
Windsor, Ontario  
N9A 6Z9

Attention: Brian Chillman and Jeffrey MacKinnon  
Email: bchillman@mctague.law jmackinnon@mctague.law

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in place of receipt) and otherwise on the next Business Day provided that if a Notice is given by email the sender has not received an electronic notice to the effect that such Notice was not delivered or received by the Person to whom it was addressed, or (ii) if sent by overnight courier, on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

## **11.2 Time of the Essence.**

Time shall be of the essence of this Agreement.



### **11.3 Announcements.**

Unless required by Law or by a Governmental Authority, no press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated herein may be made except with the prior written consent and joint approval of Seller and Buyer. Where the public disclosure is required by Law or by a Governmental Authority, the Party required to make the public disclosure will use its commercially reasonable efforts to obtain the approval of the other Parties as to the form, nature and extent of the disclosure, which approval shall not be unreasonably withheld, conditioned or delayed.

### **11.4 Third Party Beneficiaries.**

Except as otherwise provided in Section 11.5 and for the Indemnified Parties, the Parties intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties and no Person, including any Non-Party Affiliate (as defined below), other than the Parties to this Agreement shall be entitled to rely on the provisions of this Agreement in any Proceeding, hearing or other forum.

### **11.5 Non-Recourse.**

All claims or causes of action (whether in contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement or the other Ancillary Agreements, or the negotiation, execution or performance of this Agreement or the other Ancillary Agreements (including any representation or warranty made in or in connection with this Agreement or the other Ancillary Agreements or as an inducement to enter into this Agreement or the other Ancillary Agreements), may be made only against the entities that are expressly identified as parties hereto and thereto. No Person who is not a named party to this Agreement or the Ancillary Agreements, including any past, present or future director, officer, employee, incorporator, member, partner, shareholder, Affiliate, agent, lawyer or Representative of any named party to this agreement or the Ancillary Agreements (“**Non-Party Affiliates**”), shall have any Liability for any obligations or Liabilities arising under, in connection with or related to this Agreement or such Ancillary Agreements (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or such other Ancillary Agreements (as the case may be) or the negotiation or execution hereof or thereof; and each Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third party beneficiaries of this provision of this Agreement.

### **11.6 Expenses.**

Except as otherwise expressly provided in this Agreement, Buyer shall pay for its own costs and expenses and Seller shall pay for its own costs and expenses, in each case, incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the Transaction. Seller shall be responsible for, and shall pay or reimburse the Group Entities for, any Transaction Expenses to the extent not included in the Closing Statement.

### **11.7 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by each of the Parties.



#### **11.8 Waiver.**

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver. No failure or delay on the part of any Party to exercise any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

#### **11.9 Non-Merger.**

Except for the conditions in Article 8 and as otherwise expressly provided in this Agreement, the covenants, representations and warranties in this Agreement or any certificate delivered hereunder shall not merge on and shall survive the Closing.

#### **11.10 Independent Legal Advice.**

Each Party acknowledges that it has been given the opportunity to obtain independent legal advice, with respect to the terms of this Agreement prior to its execution, and each of the Parties further acknowledges and agrees that each of them understands the terms, and their respective rights and obligations, hereunder and under any Ancillary Agreement to which it is a party.

#### **11.11 Entire Agreement.**

This Agreement together with the Seller Disclosure Letter and the Ancillary Agreements referred to herein and certificates delivered hereunder and all Schedules, Exhibits and the Confidentiality Provisions constitute the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and neither Party has relied or is relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

#### **11.12 Exhibits and Schedules.**

The Exhibits and Schedules attached to this Agreement, including the Seller Disclosure Letter, shall, for all purposes of this Agreement, form an integral part of it.

#### **11.13 Successors and Assigns.**

This Agreement shall become effective when executed and delivered by the Parties and after that time shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

#### **11.14 Assignment.**

Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by any Party without the prior written consent of the other Parties, except that Buyer may, without such consent assign any or all of its rights, interests and/or obligations hereunder to an Affiliate; provided that, no such assignment by Buyer to an Affiliate shall relieve Buyer of its obligations hereunder.



**11.15 Severability.**

If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

**11.16 Governing Law.**

This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. Each Party irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario situated in the City of Windsor and waives objection to the venue of any Proceeding in such court or that such court provides an inconvenient forum.

**11.17 Counterparts.**

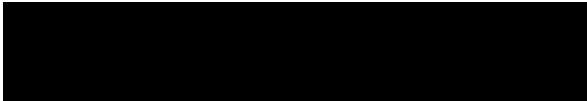
This Agreement may be executed in any number of counterparts (including counterparts by facsimile, PDF email or other electronic transmission) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above mentioned.

**WINDSOR CANADA UTILITIES LTD.**



Name: Garry Rossi  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: Matthew Carlini  
Title: Authorized Signatory

**THE CORPORATION OF THE TOWN  
OF ESSEX**

By: \_\_\_\_\_  
Name: Sherry Bondy  
Title: Mayor

By: \_\_\_\_\_  
Name: Joseph Malandrucolo  
Title: Clerk



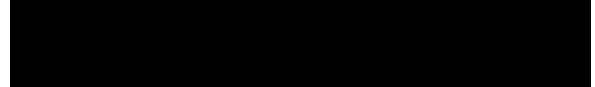
**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above mentioned.

**WINDSOR CANADA UTILITIES LTD.**

By: \_\_\_\_\_

Name: Garry Rossi

Title: Authorized Signatory



Name: Matthew Carlini

Title: Authorized Signatory

**THE CORPORATION OF THE TOWN  
OF ESSEX**

By: \_\_\_\_\_

Name: Sherry Bondy

Title: Mayor

By: \_\_\_\_\_

Name: Joseph Malandrucolo

Title: Clerk

[Purchase and Sale Agreement]



**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above mentioned.

**WINDSOR CANADA UTILITIES LTD.**

By: \_\_\_\_\_

Name: Garry Rossi

Title: Authorized Signatory

By: \_\_\_\_\_

Name: Matthew Carlini

Title: Authorized Signatory

**THE CORPORATION OF THE TOWN  
OF ESSEX**



Name: Sherry Bondy

Title: Mayor

By: \_\_\_\_\_

Name: Joseph Malandrucolo

Title: Clerk

[Purchase and Sale Agreement]



**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above mentioned.

**WINDSOR CANADA UTILITIES LTD.**

By: \_\_\_\_\_

Name: Garry Rossi

Title: Authorized Signatory

By: \_\_\_\_\_

Name: Matthew Carlini


Title: Authorized Signatory

**THE CORPORATION OF THE TOWN  
OF ESSEX**

By: \_\_\_\_\_

Name: Sherry Bondy

Title: Mayor

  
Name: Joseph Marandruccolo

Title: Clerk

[Purchase and Sale Agreement]



**SCHEDULE "A"**  
**SELLER DISCLOSURE LETTER**

See attached.



Seller Disclosure Letter  
Schedule 1.1 (a) – Permitted Liens

I [REDACTED]

I [REDACTED]



Schedule 3.4 – Third Party Consents

1	
2	



Schedule 4.1 – Business Jurisdictions





## Schedule 4.5 – Group Entity Consents

### 1. The OEB Approval



Schedule 4.6 - Authorizations

1. E.L.K. Energy Inc. – Electricity Distribution License, ED-2003-0015, Valid until March 20, 2043.



3. OEB Rate Order EB-2022-0023



Schedule 4.7(a) - Authorized and Issued Capital

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[REDACTED]	



Schedule 4.7(j) – Shareholder Agreements

1. Shareholder Declaration, dated March 6, 2009
2. Shareholder Declaration, dated November 23, 2009
3. Shareholder Declaration, dated February 21, 2023
4. Shareholder Declaration, dated January 15, 2024
5. Shareholder Declaration, dated May 8, 2024



Schedule 4.7 (k) - Officers and Directors

**E.L.K. Energy Inc.:**

Officers:

Sherry Bondy, Chair

Robbie Shepley, Vice-Chair

Directors:

Sherry Bondy

Robbie Shepley

Kimberly Deyong

Kate Giurissevich

John Kerr

Joseph Malandrucolo

Darren Jeff Scott

Doug Sweet

**E.L.K. Solutions Inc.:**

Officer:

Darren Jeff Scott, Chair

Director:

Darren Jeff Scott



Schedule 4.10 – Conduct of Business

[REDACTED]

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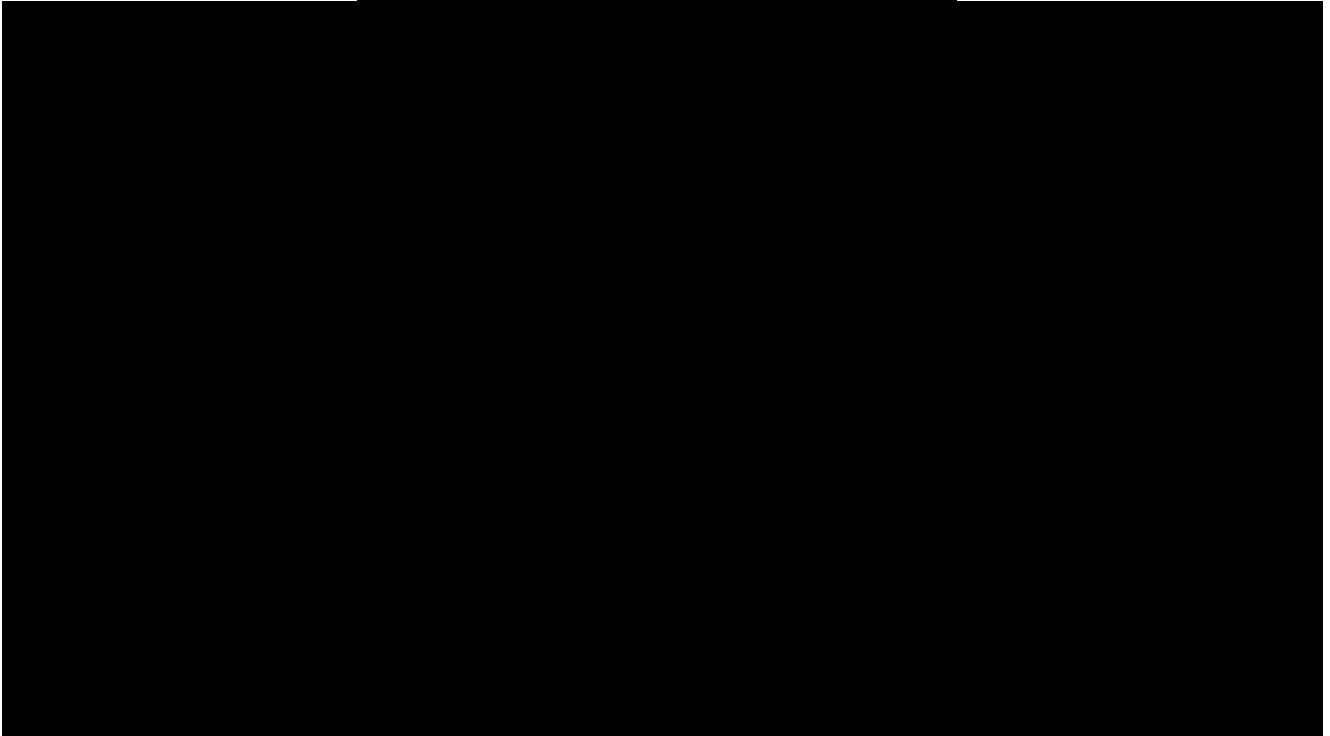


Schedule 4.11(a) – Undisclosed Liabilities





Schedule 4.11(b) – Undisclosed Indebtedness





Schedule 4.11(c) – Breach of Indebtedness Agreements





[REDACTED]

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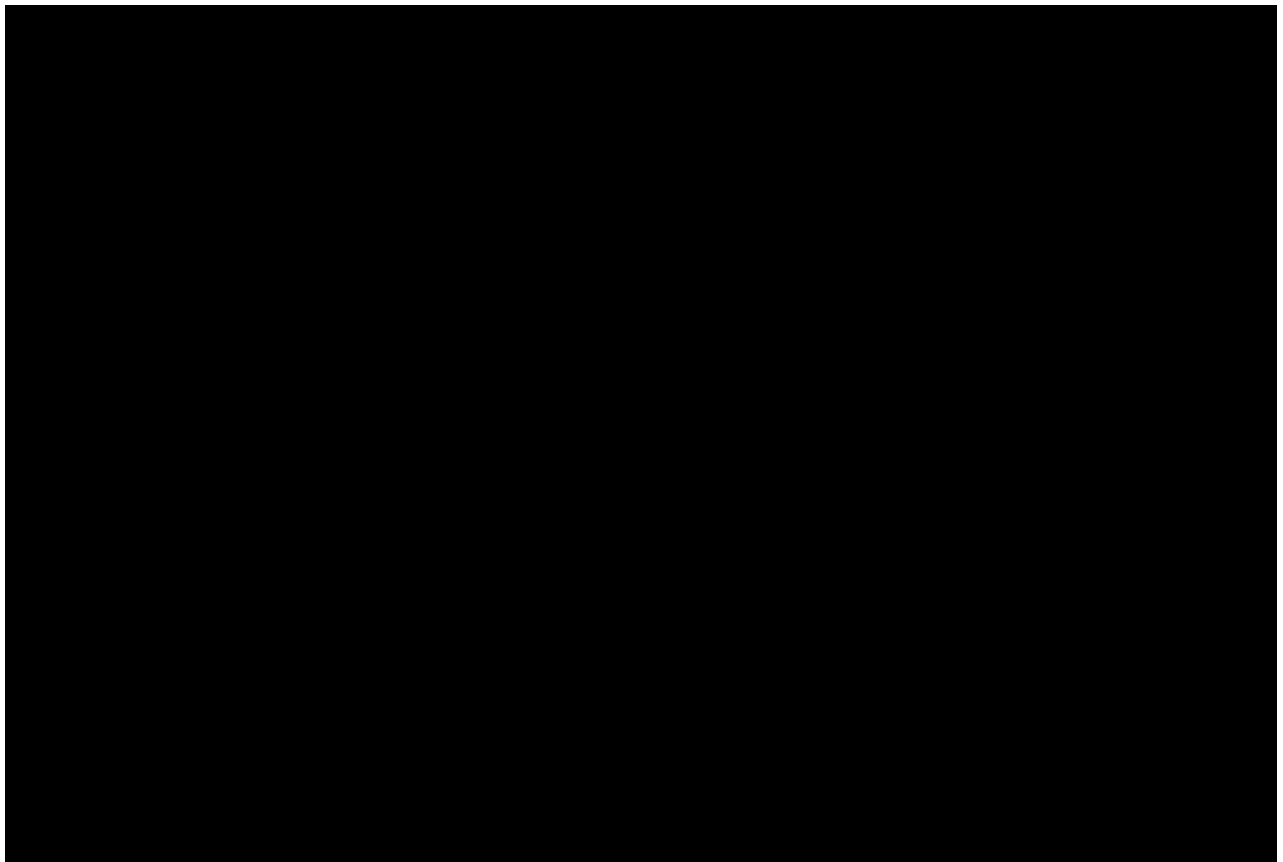
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Schedule 4.13 - Proceedings

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Schedule 4.14 – Compliance with Laws





Schedule 4.17 – Owned Real Property

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Schedule 4.17 (b) – Leases of Owned Real Property





Schedule 4.21(b) – Hazardous Materials





Schedule 4.21(d) – Hazardous Materials Remediation Notice





Schedule 4.23(a) - Intellectual Property

[REDACTED]

[REDACTED]

[REDACTED]



Schedule 4.23(b) – Owned Intellectual Property





Schedule 4.25 – Insurance Policies

[REDACTED]

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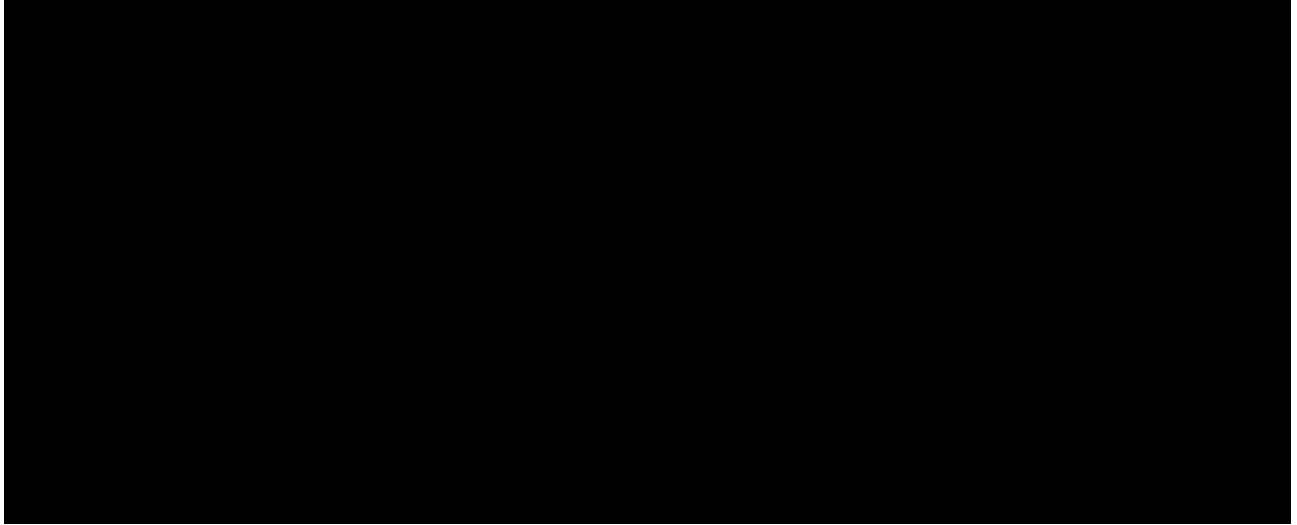
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Schedule 4.26(b) – Independent Contractors





Schedule 4.26(f) – Severance Entitlement Employee Contracts





Schedule 4.26(h) – Collective Agreements

1	
2	
3	



Schedule 4.26(j) – Notices of Employment Termination





Schedule 4.26(n) - Employees on layoff etc.





Schedule 4.27(a) – Benefit Plans

[REDACTED]

[REDACTED]























































































































































































































































































Schedule 4.27(c) – Benefit Plan Proceedings





Schedule 4.27(m) – Third Party Benefit Plan Members





Schedule 4.28 - Related Party Transactions

█ [REDACTED]

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Schedule 4.31(a) – Unfiled Tax Returns





Schedule 4.31(d) – Material Tax Deficiencies





Schedule 4.31(h) – Tax Elections

[REDACTED]

[REDACTED]



Schedule 4.31(j)- Undelivered Tax Returns





Schedule 4.31 (o) – Loss Restriction Event





Schedule 4.35 – Prudential Support





Schedule 4.36(a) – Water Heater Contract

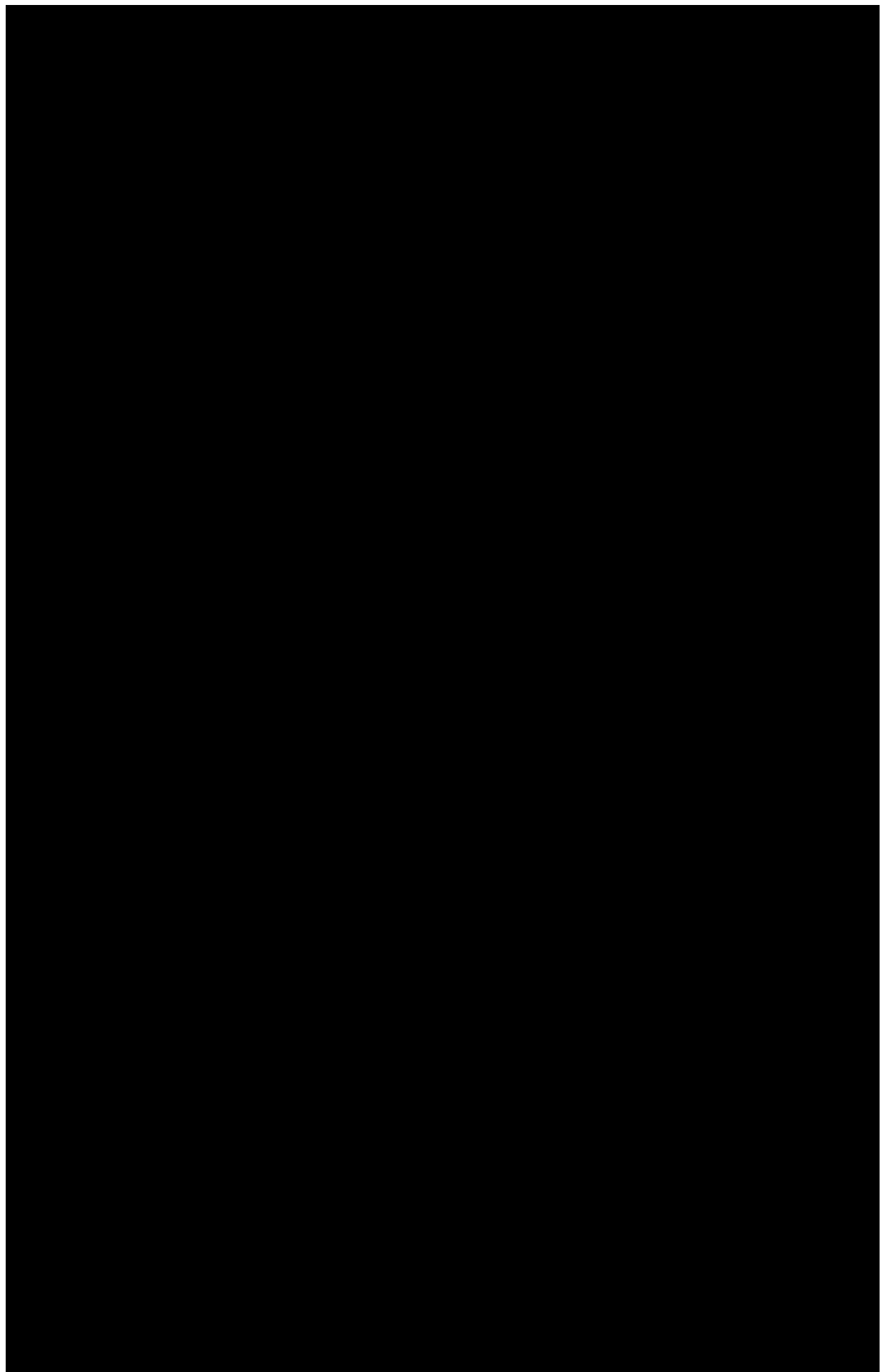




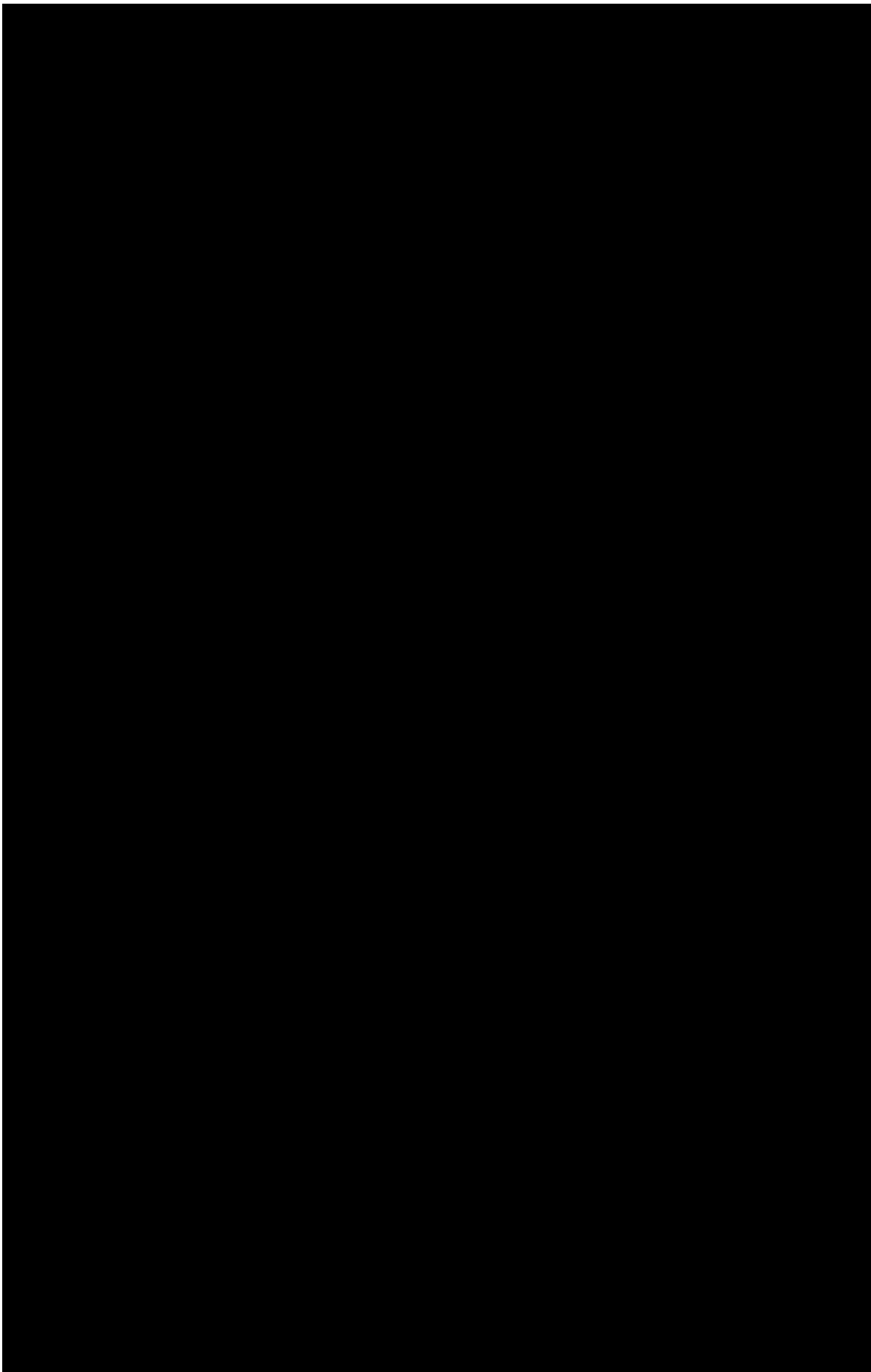
Schedule 4.36(b) - Water Heater Rebates



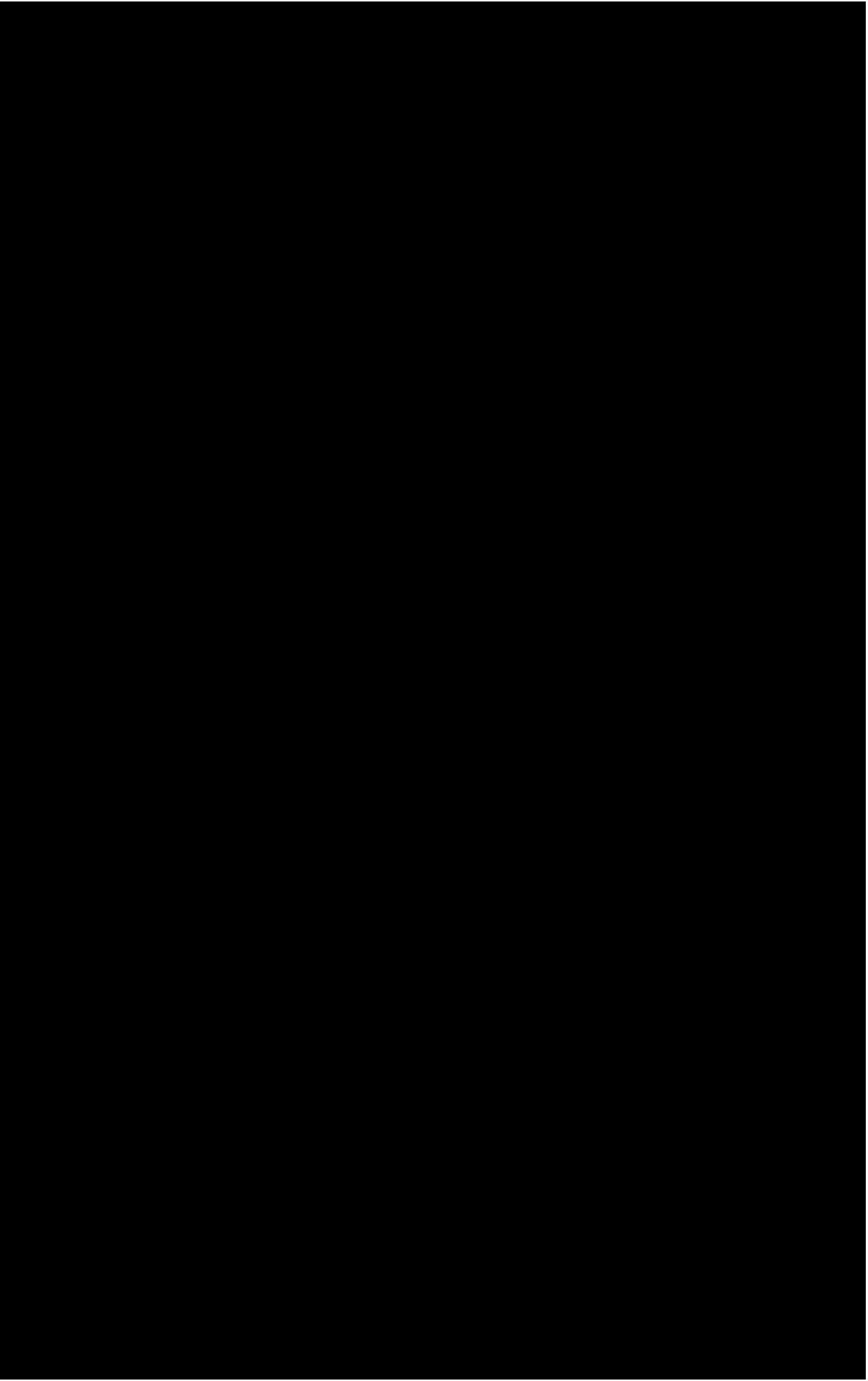




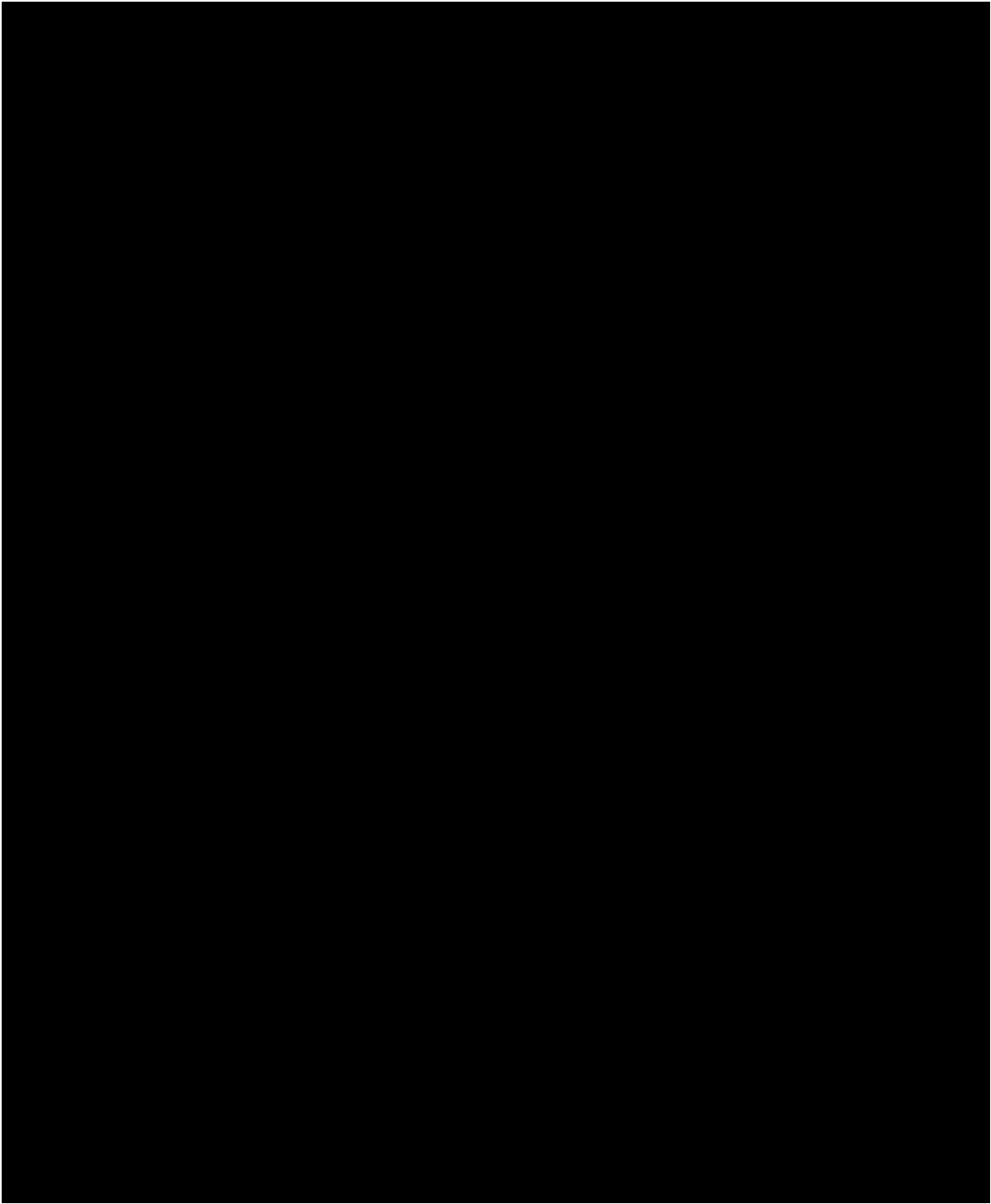








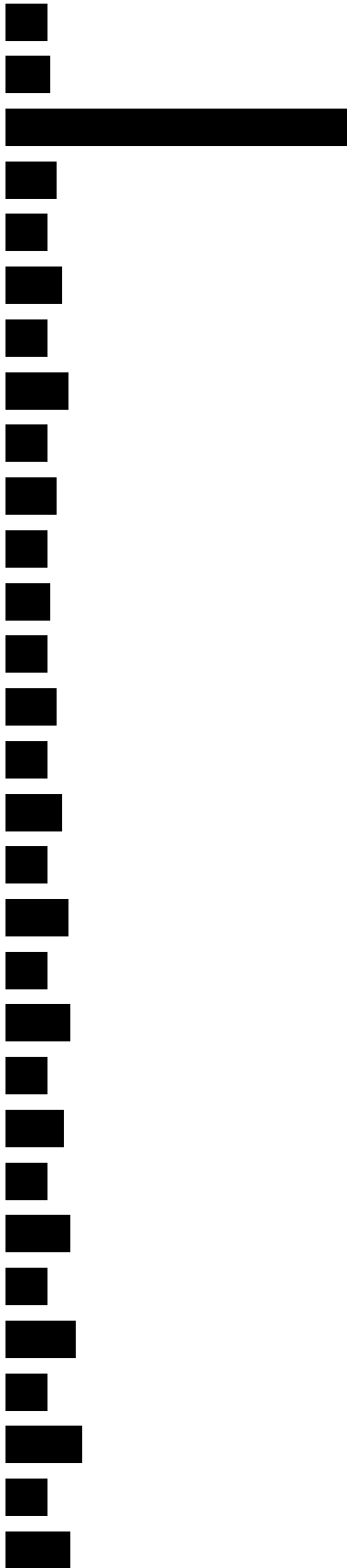


















Schedule 6.10 – Continuing Related Party Transactions





Schedule 8.1(f)



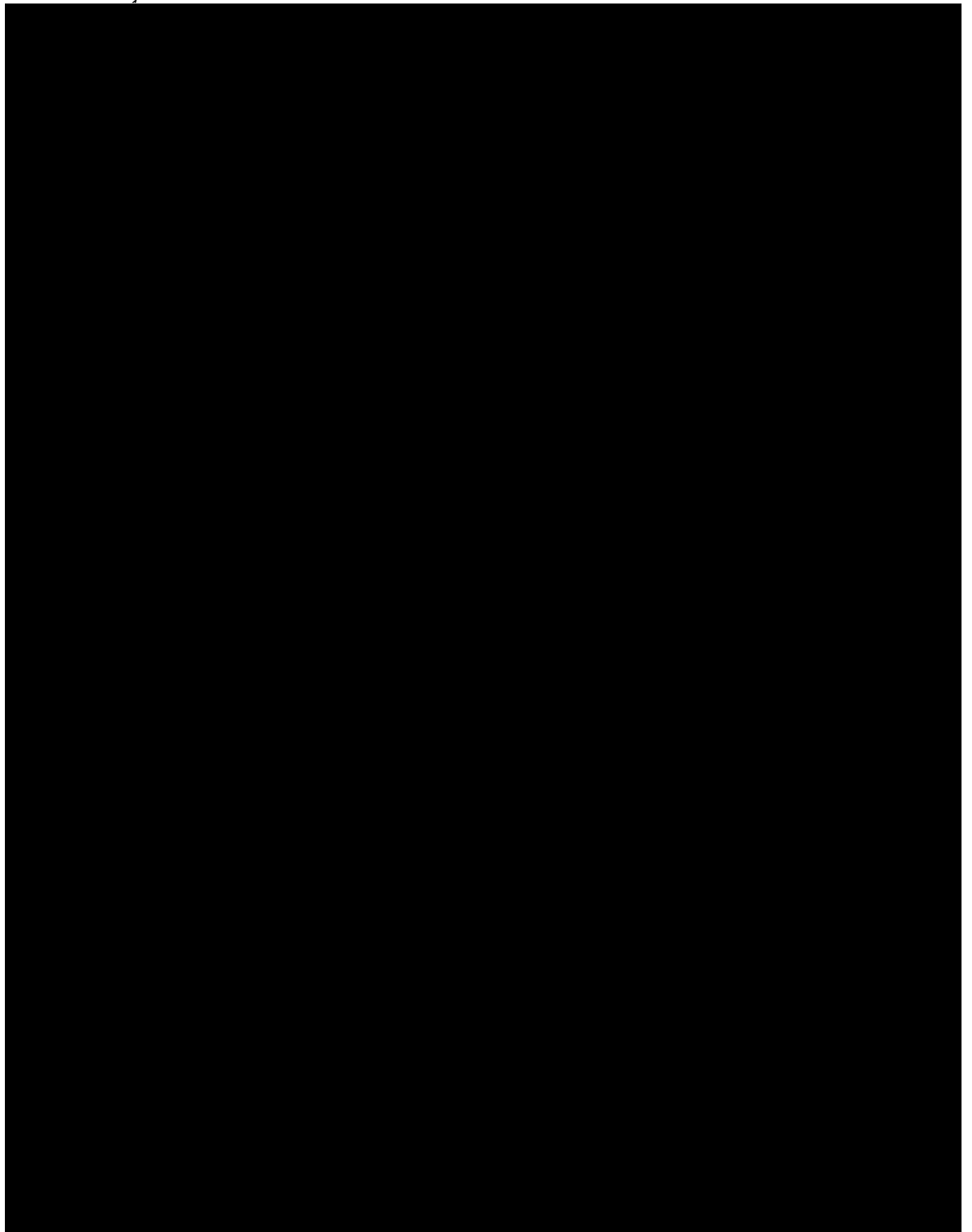


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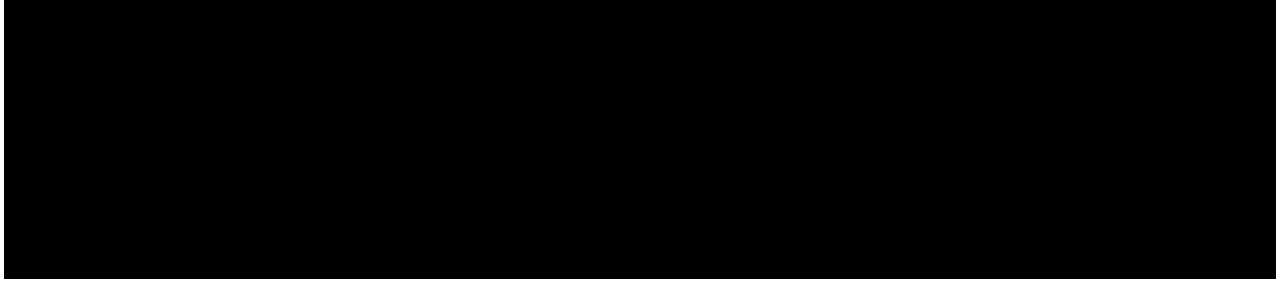


**SCHEDULE "C"**  
**PURCHASE PRICE ALLOCATION**





**Schedule “C”**  
**Purchase Price Allocation**





**EXHIBIT “A”**

**FORM OF ESCROW AGREEMENT**





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**EXHIBIT “B”**

**FORM OF GOVERNANCE REPRESENTATION AGREEMENT**





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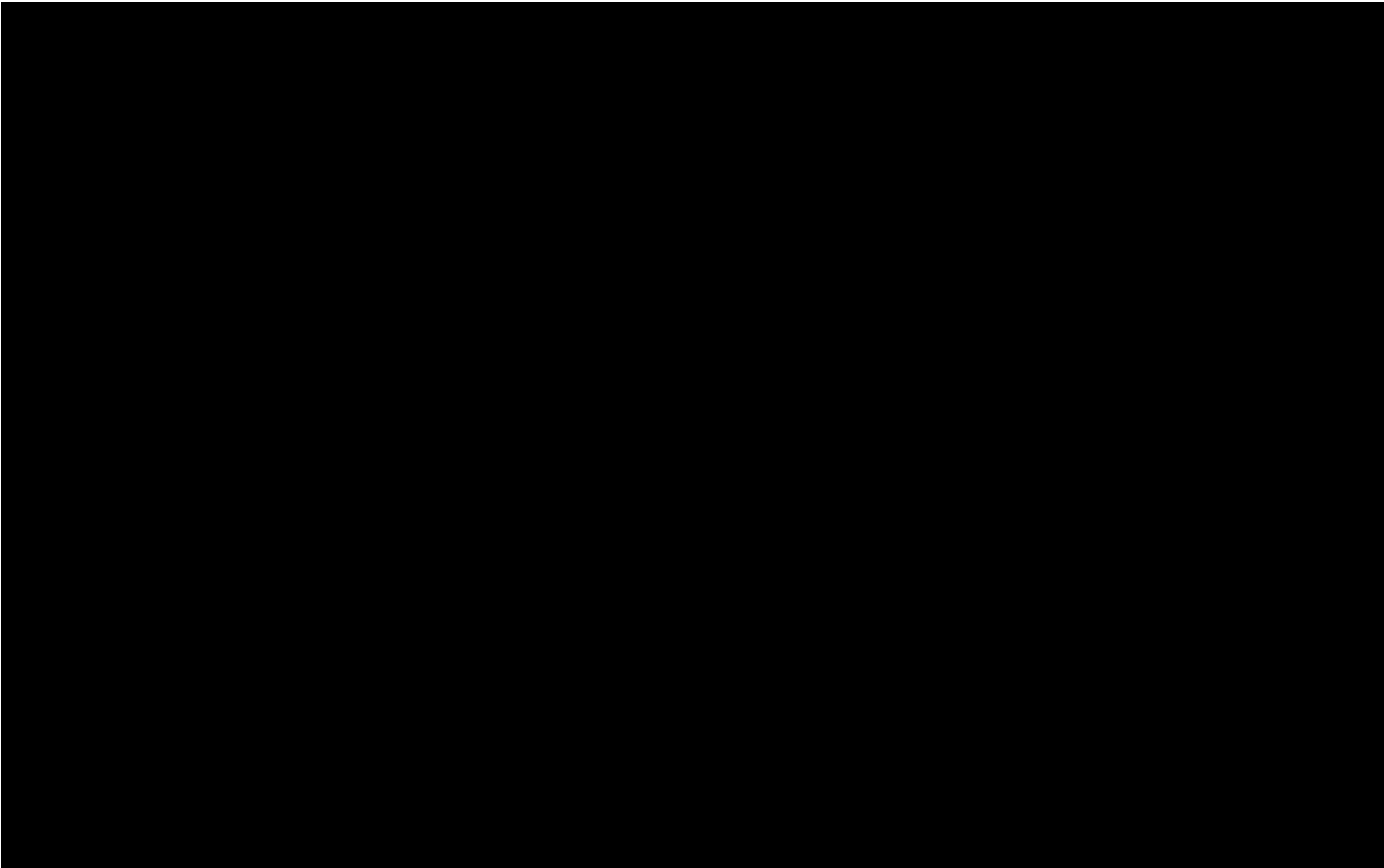


**EXHIBIT “C”**

**SAMPLE STATEMENT**









**EXHIBIT “D”**

**FORM OF DIRECTOR AND OFFICER RELEASES**





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**EXHIBIT “E”**

**FORM OF SHAREHOLDER RELEASE**





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**EXHIBIT “F”**

**SELLER CLOSING CERTIFICATE**





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**EXHIBIT “G”**

**BUYER CLOSING CERTIFICATE**





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**EXHIBIT “H”**

**FORM OF LOCAL COMMUNITY COMMITMENT AGREEMENT**





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**EXHIBIT “I”**

**FORM OF CONTRIBUTION AGREEMENT**





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**APPENDIX E**  
**Resolutions by Parties Approving the Proposed Transaction**



**The Corporation of the Town of Essex**

**By-Law Number 2444**

Being a by-law to Enter into an Agreement to sell  
all of the Shares of E.L.K. Energy Inc. and E.L.K.  
Solutions Inc.

**WHEREAS** during a Closed Meeting of Council at 4:00 PM on March 3, 2025, Council approved the sale by The Corporation of the Town of Essex to Windsor Canada Utilities Ltd. of all of the shares of E.L.K. Energy Inc. and E.L.K. Solutions Inc. in accordance with the Letter of Intent entered into by the Town and Enwin Utilities Ltd. on December 6, 2024, and directed the Mayor and Clerk of the Town, with the assistance of Administration, to sign all documents and do all things required to effect the transactions contemplated by such Letter of Intent.

**NOW THEREFORE** be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. **That** Council formally approve the sale by The Corporation of the Town of Essex to Windsor Canada Utilities Ltd. of all of the shares of E.L.K. Energy Inc. and E.L.K. Solutions Inc. in accordance with the Letter of Intent entered into by the Town and Enwin Utilities Ltd. on December 6, 2024; and
2. **That** Council formally direct the Mayor and Clerk of the Town, with the assistance of Administration, to sign all documents and do all things required to effect the transactions contemplated by such Letter of Intent; and
3. **That** this By-Law shall come into full force and effect upon the final passing thereof.

**Read a first, a second and a third time and finally passed on May 5, 2025.**

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk



**COUNCIL SERVICES DEPARTMENT**

IN REPLY, PLEASE REFER  
TO OUR FILE NO. \_\_\_\_\_

October 30, 2024

Ms. Claire Bebbington  
Director Regulatory Affairs  
ENWIN Utilities Ltd.  
4545 Rhodes Drive  
P.O. Box 1625 Station A  
Windsor, Ontario  
N8W 5T1

**CONFIDENTIAL**

Dear Ms. Bebbington,

Windsor City Council, at its *in camera* meeting of October 28, 2024 adopted the following:

**Resolutions of the Sole Shareholder of Windsor Canada Utilities Ltd.**


NOW, THEREFORE, BE IT RESOLVED that the Sole Shareholder of Windsor Canada Utilities Ltd. hereby consents to, approves and adopts the following:

**The Shareholder Resolves:**

THAT pursuant to s. 17. b) of the Shareholder Direction, Windsor Canada Utilities Ltd. or its Subsidiary Corporations BE AUTHORIZED to finalize a purchase transaction to acquire the shares and assets of E.L.K. Energy Inc. as well as its non-regulated affiliate, E.L.K. Solutions Inc., subject to satisfactory completion of due diligence prior to the execution of a definitive Acquisition Agreement;

OR THAT pursuant to s. 17. b) of the Shareholder Direction, Windsor Canada Utilities Ltd. or its Subsidiary Corporations BE AUTHORIZED to finalize a merger transaction with E.L.K. Energy Inc., subject to satisfactory completion of due diligence prior to the execution of a definitive Merger Agreement;






AND THAT, the officers of Windsor Canada Utilities Ltd. or its Subsidiary Corporations BE AUTHORIZED to negotiate, execute, deliver and carry out on behalf of the corporations an Acquisition Agreement or a Merger Agreement with the Corporation of the Town of Essex [the Shareholder of E.L.K. Energy Inc.], substantially consistent with the forementioned resolutions, but with such changes and additions as such officers may deem to be in the best interests of Windsor Canada Utilities Ltd. or its Subsidiary Corporations (such determination that a change or addition is in the best interests of the corporations to be conclusively evidenced by such officer's execution of the Agreement);

AND THAT, that the officers of Windsor Canada Utilities Ltd. or its Subsidiary Corporations are, and each acting alone is, HEREBY AUTHORIZED to do and perform any and all such acts, including execution of any and all documents and certificates, as said officers shall deem necessary or advisable, to carry out the purposes of the foregoing resolutions;

AND THAT, that any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of the corporations.

Carried.

Sincerely,



Steve Vlachodimos  
City Clerk  
Corporation of the City of Windsor



## APPENDIX F

### Scorecards of ENWIN Utilities and E.L.K. Energy

Scorecard - ENWIN Utilities Ltd.

9/12/2024

Performance Outcomes	Performance Categories	Measures	2019	2020	2021	2022	2023	Trend	Target	
									Industry	Distributor
Customer Focus Services are provided in a manner that responds to identified customer preferences.	Service Quality	New Residential/Small Business Services Connected on Time	100.00%	100.00%	100.00%	100.00%	100.00%	↗	90.00%	
		Scheduled Appointments Met On Time	99.94%	100.00%	100.00%	99.97%	100.00%	↗	90.00%	
	Customer Satisfaction	Telephone Calls Answered On Time	77.19%	64.74%	58.90%	65.76%	78.74%	↗	65.00%	
		First Contact Resolution	98.74%	99.10%	99.27%	99.18%	99.16%	↗		
		Billing Accuracy	99.97%	99.95%	99.96%	98.49%	99.93%	↘	98.00%	
Operational Effectiveness Continuous improvement in productivity and cost performance is achieved; and distributors deliver on system reliability and quality objectives.	Safety	Customer Satisfaction Survey Results	88%	88%	86%	86%	83%	↘		
		Level of Public Awareness	82.00%	82.00%	81.00%	81.00%	82.00%	↗		
		Level of Compliance with Ontario Regulation 22/04 <sup>1</sup>	C	C	C	C	C	↗		C
		Serious Electrical Incident Index	1	1	0	0	0	↗		0
	System Reliability	Number of General Public Incidents Rate per 10, 100, 1000 km of line	0.214	0.213	0.000	0.000	0.000	↗		0.060
		Average Number of Hours that Power to a Customer is Interrupted <sup>2</sup>	0.88	0.86	0.86	0.63	0.94	↘		0.88
		Average Number of Times that Power to a Customer is Interrupted <sup>2</sup>	2.23	2.11	1.68	1.03	1.60	↘		1.90
	Asset Management	Distribution System Plan Implementation Progress	100.4%	85.6%	76.8%	107.1%	109.4%	↗		
		Efficiency Assessment	3	3	2	2	1	↗		
	Cost Control	Total Cost per Customer <sup>3</sup>	\$709	\$692	\$675	\$717	\$817	↗		
		Total Cost per Km of Line <sup>3</sup>	\$13,539	\$13,236	\$12,989	\$13,854	\$15,817	↗		
Public Policy Responsiveness Distributors deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board).	Connection of Renewable Generation	New Micro-embedded Generation Facilities Connected On Time	100.00%	100.00%	100.00%	100.00%	100.00%	↗	90.00%	
Financial Performance Financial viability is maintained; and savings from operational effectiveness are sustainable.	Financial Ratios	Liquidity: Current Ratio (Current Assets/Current Liabilities)	2.13	2.07	2.18	2.03	1.92	↘		
		Leverage: Total Debt (includes short-term and long-term debt) to Equity Ratio	0.75	0.76	0.69	0.57	0.55	↘		
		Profitability: Regulatory Return on Equity	8.01%	8.52%	8.52%	8.52%	8.52%	↗		

1. Compliance with Ontario Regulation 22/04 assessed: Compliant (C); Needs Improvement (NI); or Non-Compliant (NC).

2. An upward arrow indicates decreasing reliability while downward indicates improving reliability.

3. A benchmarking analysis determines the total cost figures from the distributor's reported information.

Legend:

5-year trend  
 ↗ up  
 ↘ down  
 ↔ flat  
 Current year  
 ● target met  
 ● target not met

Scorecard - E.L.K. Energy Inc.

9/12/2024

Performance Outcomes	Performance Categories	Measures	2019	2020	2021	2022	2023	Trend	Target	
									Industry	Distributor
Customer Focus Services are provided in a manner that responds to identified customer preferences.	Service Quality	New Residential/Small Business Services Connected on Time	99.34%	99.50%	99.59%	99.64%	100.00%	↗	90.00%	
		Scheduled Appointments Met On Time	100.00%	99.07%	100.00%	100.00%	100.00%	↗	90.00%	
	Customer Satisfaction	Telephone Calls Answered On Time	97.69%	95.08%	91.20%	91.10%	91.02%	↘	65.00%	
		First Contact Resolution	Excellent	Excellent	Excellent	Excellent	88%	↗		
		Billing Accuracy	99.96%	99.95%	99.97%	99.93%	99.32%	↘	98.00%	
Operational Effectiveness Continuous improvement in productivity and cost performance is achieved; and distributors deliver on system reliability and quality objectives.	Safety	Customer Satisfaction Survey Results	91% Satis	91% Satis	92.4 Satis	92.4 Satis	92.1% Satis	↗		
		Level of Public Awareness	83.00%	83.00%	99.50%	99.50%	88.00%	↗		
		Level of Compliance with Ontario Regulation 22/04 <sup>1</sup>	C	C	C	C	C	↗		C
		Serious Electrical Incident Index	0	0	0	0	0	↗		0
	System Reliability	Number of General Public Incidents Rate per 10, 100, 1000 km of line	0.000	0.000	0.000	0.000	0.000	↗		0.000
		Average Number of Hours that Power to a Customer is Interrupted <sup>2</sup>	1.85	3.34	0.65	0.32	0.71	↘		1.62
		Average Number of Times that Power to a Customer is Interrupted <sup>2</sup>	0.72	1.15	0.20	0.12	0.29	↘		0.55
	Asset Management	Distribution System Plan Implementation Progress	In progress	In Progress	In Progress	In Progress	In Progress	↗		
		Efficiency Assessment	1	1	1	1	1	↗		
	Cost Control	Total Cost per Customer <sup>3</sup>	\$418	\$380	\$437	\$559	\$593	↗		
		Total Cost per Km of Line <sup>3</sup>	\$31,613	\$28,537	\$31,789	\$39,944	\$43,176	↗		
Public Policy Responsiveness Distributors deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board).	Connection of Renewable Generation	New Micro-embedded Generation Facilities Connected On Time						↗	90.00%	
Financial Performance Financial viability is maintained; and savings from operational effectiveness are sustainable.	Financial Ratios	Liquidity: Current Ratio (Current Assets/Current Liabilities)	2.95	2.67	3.64	3.98	3.79	↘		
		Leverage: Total Debt (includes short-term and long-term debt) to Equity Ratio	0.28	0.21	0.16	0.15	0.13	↘		
		Profitability: Regulatory Return on Equity	8.78%	8.78%	8.78%	8.66%	8.66%	↗		

1. Compliance with Ontario Regulation 22/04 assessed: Compliant (C); Needs Improvement (NI); or Non-Compliant (NC).

2. An upward arrow indicates decreasing reliability while downward indicates improving reliability.

3. A benchmarking analysis determines the total cost figures from the distributor's reported information.

Legend:

5-year trend  
 ↗ up  
 ↘ down  
 ↔ flat  
 Current year  
 ● target met  
 ● target not met



**APPENDIX G**  
**Audited Financial Statements**



Non-Consolidated Financial Statements of

**E.L.K. ENERGY INC.**

And Independent Auditor's Report thereon

Year ended December 31, 2023





**KPMG LLP**

618 Greenwood Centre  
3200 Deziel Drive  
Windsor, ON N8W 5K8  
Canada  
Telephone 519 251 3500  
Fax 519 251 3530

## **INDEPENDENT AUDITOR'S REPORT**

To the Shareholder of E.L.K. Energy Inc.

### ***Opinion***

We have audited the non-consolidated financial statements of E.L.K. Energy Inc. (the Entity), which comprise:

- the non-consolidated statement of financial position as at December 31, 2023
- the non-consolidated statement of comprehensive income for the year then ended
- the non-consolidated statement of changes in equity for the year then ended
- the non-consolidated statement of cash flows for the year then ended
- and notes to the non-consolidated financial statements, including a summary of material accounting policies

(Hereinafter referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the non-consolidated financial position of the Entity as at December 31, 2023, and its non-consolidated financial performance and its non-consolidated cash flows for the year then ended in accordance with IFRS Accounting Standards (IFRS).

### ***Basis for Opinion***

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the **"Auditor's Responsibilities for the Audit of the Financial Statements"** section of our auditor's report.

We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada and we have fulfilled our other ethical responsibilities in accordance with these requirements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.





## ***Responsibilities of Management and Those Charged with Governance for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with IFRS Accounting Standards (IFRS), and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Entity's financial reporting process.

## ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with International Financial Reporting Standards, we exercise professional judgment and maintain professional skepticism throughout the audit.

We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.





Page 3

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

A handwritten signature in black ink that reads 'KPMG LLP'. The signature is written in a cursive, stylized font and is underlined with a single horizontal stroke.

Chartered Professional Accountants, Licensed Public Accountants

Windsor, Canada

May 29, 2024



# E.L.K. ENERGY INC.

## Non-Consolidated Statement of Financial Position

Year ended December 31, 2023, with comparative information for 2022

	Note	2023	2022
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	5	\$ 3,810,528	\$ 4,886,571
Accounts receivable	6	4,220,637	5,692,330
Due from related parties	22	110,735	60,580
Income taxes receivable		359,366	384,098
Unbilled revenue		2,917,841	2,416,757
Inventory	7	462,196	524,449
Prepaid expenses		181,455	393,321
<b>Total current assets</b>		<b>12,062,758</b>	<b>14,358,106</b>
<b>Non-current assets</b>			
Investments	8	84,203	92,868
Intangible assets		65,492	-
Property, plant and equipment	9	15,524,782	13,735,638
<b>Total non-current assets</b>		<b>15,674,477</b>	<b>13,828,506</b>
<b>Total assets</b>		<b>27,737,235</b>	<b>28,186,612</b>
Regulatory balances	11	3,428,723	10,504,646
<b>Total assets and regulatory balances</b>		<b>\$ 31,165,958</b>	<b>\$ 38,691,258</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Accounts payable and accrued liabilities	12	\$ 3,435,187	\$ 4,215,700
Due to related parties	22	774,887	1,288,491
Customer deposits		2,081,263	2,179,635
Deferred revenue		2,194,321	2,433,996
Bank debt	13	1,487,619	1,986,053
<b>Total current liabilities</b>		<b>9,973,277</b>	<b>12,103,875</b>
<b>Non-current liabilities</b>			
Post-employment benefits	14	359,006	378,981
Deferred tax liabilities	10	146,958	356,684
<b>Total non-current liabilities</b>		<b>505,964</b>	<b>735,665</b>
<b>Total liabilities</b>		<b>10,479,241</b>	<b>12,839,540</b>
<b>Equity</b>			
Share capital	15	2,000,100	2,000,100
Contributed surplus		4,402,375	4,402,375
Retained earnings		5,117,401	6,222,347
Accumulated other comprehensive income		197,111	195,943
<b>Total equity</b>		<b>11,716,987</b>	<b>12,820,765</b>
<b>Total liabilities and equity</b>		<b>22,196,228</b>	<b>25,660,305</b>
Regulatory balances	11	8,969,730	13,030,953
Commitments and contingencies	21		
<b>Total liabilities, equity and regulatory balances</b>		<b>\$ 31,165,958</b>	<b>\$ 38,691,258</b>

See accompanying notes to the non-consolidated financial statements.

On behalf of the Board:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director



# E.L.K. ENERGY INC.

## Non-Consolidated Statement of Comprehensive Income

Year ended December 31, 2023, with comparative information for 2022

	Notes	2023	2022
<b>Revenue</b>			
Sale of energy		\$ 24,074,549	\$ 32,489,344
Distribution revenue	16	3,846,793	3,724,438
Other	17	1,011,642	984,397
		<b>28,932,984</b>	<b>37,198,179</b>
<b>Other expenses</b>			
Cost of power purchased		22,178,152	29,643,076
Administration expenses		3,424,625	3,100,519
Distribution expenses	19	1,789,328	1,487,594
Depreciation and amortization		813,265	710,775
		<b>28,205,370</b>	<b>34,941,964</b>
<b>Income from operating activities</b>		<b>727,614</b>	<b>2,256,215</b>
Net finance income	20	242,777	227,735
<b>Income before income taxes</b>		<b>970,391</b>	<b>2,483,950</b>
Income tax recovery	10	(305,779)	(30,971)
<b>Net income for the year</b>		<b>1,276,170</b>	<b>2,514,921</b>
Net movement in regulatory balances, net of tax	11	(2,381,116)	(2,493,808)
<b>Net income (loss) for the year and net movement in regulatory balances</b>		<b>(1,104,946)</b>	<b>21,113</b>
<b>Other comprehensive income (loss)</b>			
Items that will not be reclassified to profit or loss			
Remeasurement of post-employment benefits	14	1,589	116,218
Tax on remeasurement	10	(421)	(30,798)
<b>Other comprehensive income for the year</b>		<b>1,168</b>	<b>85,420</b>
<b>Total comprehensive income (loss) for the year</b>		<b>\$ (1,103,778)</b>	<b>\$ 106,533</b>

See accompanying notes to the non-consolidated financial statements.



# E.L.K. ENERGY INC.

## Non-Consolidated Statement of Changes in Equity

Year ended December 31, 2023, with comparative information for 2022

	Share Capital	Contributed Surplus	Retained Earnings	Accumulated other comprehensive income	Total
<b>Balance at January 1, 2022</b>	\$ 2,000,100	\$ 4,402,375	\$ 6,401,334	\$ 110,523	\$ 12,914,332
Net income and net movement					
in regulatory balances	-	-	21,113	-	21,113
Other comprehensive income	-	-	-	85,420	85,420
Dividends	-	-	(200,100)	-	(200,100)
<b>Balance at December 31, 2022</b>	\$ 2,000,100	\$ 4,402,375	\$ 6,222,347	\$ 195,943	\$ 12,820,765
<b>Balance at January 1, 2023</b>	\$ 2,000,100	\$ 4,402,375	\$ 6,222,347	\$ 195,943	\$ 12,820,765
Net loss and net movement					
in regulatory balances	-	-	(1,104,946)	-	(1,104,946)
Other comprehensive income	-	-	-	1,168	1,168
<b>Balance at December 31, 2023</b>	\$ 2,000,100	\$ 4,402,375	\$ 5,117,401	\$ 197,111	\$ 11,716,987

See accompanying notes to the non-consolidated financial statements.



# E.L.K. ENERGY INC.

## Non-Consolidated Statement of Cash Flows

Year ended December 31, 2023, with comparative information for 2022

	2023	2022
<b>Operating activities</b>		
Net income (loss)	\$ (1,104,946)	\$ 21,113
Adjustments for:		
Depreciation and amortization	813,265	710,775
Amortization of deferred revenue	(430,434)	(402,398)
Post-employment benefits	(18,807)	(22,376)
Gain on sale of property, plant and equipment	-	(22,124)
Unrealized loss on investments	8,665	11,159
Income tax expense	(305,779)	(30,971)
	(1,038,036)	265,178
Changes in non-cash operating working capital:		
Accounts receivable	1,471,693	(2,010,047)
Due to/from related parties	(563,759)	734,373
Unbilled revenue	(501,084)	107,338
Inventory	62,253	6,943
Prepaid expenses	211,866	(133,741)
Accounts payable and accrued liabilities	(780,513)	824,080
Customer deposits	(98,372)	278,869
	(197,916)	(192,185)
Regulatory balances	3,014,700	438,103
Income tax paid	120,785	(82,888)
<b>Net cash from operating activities</b>	<b>1,899,533</b>	<b>428,208</b>
<b>Investing activities</b>		
Purchase of property, plant and equipment, net	(2,602,409)	(2,295,305)
Purchase of intangible assets	(65,492)	-
Proceeds on disposition of property, plant and equipment	-	22,124
Contributions received from customers	190,759	1,211,036
<b>Net cash used by investing activities</b>	<b>(2,477,142)</b>	<b>(1,062,145)</b>
<b>Financing activities</b>		
Dividends paid	-	(200,100)
Repayment of bank debt	(498,434)	(213,947)
<b>Net cash used by financing activities</b>	<b>(498,434)</b>	<b>(414,047)</b>
Change in cash and cash equivalents	(1,076,043)	(1,047,984)
Cash and cash equivalents, beginning of year	4,886,571	5,934,555
<b>Cash and cash equivalents, end of year</b>	<b>\$ 3,810,528</b>	<b>\$ 4,886,571</b>

See accompanying notes to the non-consolidated financial statements.



# E.L.K. ENERGY INC.

## Notes to Non-Consolidated Financial Statements

Year ended December 31, 2023

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### 1. Reporting entity:

E.L.K. Energy Inc. (the "Corporation") is a rate regulated, municipally owned hydro distribution company incorporated under the laws of Ontario, Canada. The Corporation is located in the Town of Essex. The address of the Corporation's registered office is 172 Forest Avenue, Essex, Ontario.

The Corporation delivers electricity and related energy services to residential and commercial customers in Essex, Harrow, Belle River, Comber, Kingsville and Cottam. The Corporation is wholly owned by the Municipality of the Town of Essex ("Town").

The financial statements are for the Corporation as at and for the year ended December 31, 2023.

### 2. Basis of preparation:

#### (a) Statement of compliance:

The Corporation's financial statements have been prepared in accordance with IFRS Accounting Standards ("IFRS").

#### (b) Approval of the financial statements:

The financial statements were approved by the Board of Directors on May 29, 2024.

#### (c) Basis of measurement:

These financial statements have been prepared on the historical cost basis, unless otherwise stated.

#### (d) Functional and presentation currency:

These financial statements are presented in Canadian dollars, which is the Corporation's functional currency. All financial information presented in Canadian dollars has been rounded to the nearest thousand.

#### (e) Use of estimates and judgements:

##### (i) Assumptions and estimation uncertainty:

The preparation of financial statements in conformity with IFRS requires management to make judgments, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses and disclosure of contingent assets and liabilities. Actual results may differ from those estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the year in which the estimates are revised and in any future years affected.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## 2. Basis of preparation (continued):

### (e) Use of estimates and judgements:

#### (i) Assumptions and estimation uncertainty:

Information about assumptions and estimation uncertainties that have a significant risk of resulting in material adjustment is included in the following notes:

- (i) Note 3 (b) – measurement of unbilled revenue
- (ii) Note 9 – estimation of useful lives of its property, plant and equipment
- (iii) Note 11 – recognition and measurement of regulatory balances
- (iv) Note 14 – measurement of defined benefit obligations: key actuarial assumptions
- (v) Note 21 – recognition and measurement of provisions and contingencies

### (f) Rate regulation:

The Corporation is regulated by the Ontario Energy Board (“OEB”), under the authority granted by the *Ontario Energy Board Act, 1998*. Among other things, the OEB has the power and responsibility to approve or set rates for the transmission and distribution of electricity, providing continued rate protection for electricity consumers in Ontario, and ensuring that transmission and distribution companies fulfill obligations to connect and service customers. The OEB may also prescribe license requirements and conditions of service to local distribution companies (“LDCs”), such as the Corporation, which may include, and among other things, record keeping, regulatory accounting principles, separation of accounts for distinct businesses, and filing and process requirements for rate setting purposes.

#### (i) Rate setting:

The electricity distribution rates and other regulated charges of the Corporation are determined by the OEB. This regulated rate-setting provides LDCs with the opportunity to recover the revenue requirement associated with owning and operating the LDC. The revenue requirement represents the forecasted prudent costs, including the cost of capital that will be reasonably necessary for the LDC to invest in the electricity grid, and serve customers in its licenced service area.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## 2. Basis of preparation (continued):

### (f) Rate regulation (continued):

#### (ii) Rate applications:

As set out in the OEB's Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, dated October 18, 2012, the OEB performs its rate-setting function using a combination of incentive rate-setting and cost of service rate-setting. Both rate-setting techniques are based on applications made by LDC's to the OEB. Provided an LDC meets OEB-specified performance parameters, the LDC can select from one of three rate-setting streams: 4th Generation Incentive Rate-setting, Custom Incentive Rate-setting, or Annual Incentive Rate-setting Index. Each of these streams entails different rate-setting schedules and substantive filing requirements. For all streams, the revenue requirement is established through a cost of service rate-setting application. The selection of stream determines the number of years that cost of service rate-setting application pertains to, and the number of years thereafter that the LDC is expected to file incentive rate-setting applications.

Cost of service rate-setting applications recalculate the revenue requirement through a comprehensive review of an LDC's forecasted prudently incurred costs. Incentive rate-setting applications mechanistically adjust the revenue requirement using an OEB-prescribed formula. That formula was established on November 21, 2013, in the OEB's Report of the Board on Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors.

For the distribution revenue included in sale of energy, the Corporation files a "Cost of Service" ("COS") rate application with the OEB every five years where rates are determined through a review of the forecasted annual amount of operating and capital expenditures, debt and shareholder's equity required to support the Corporation's business. The Corporation estimates electricity usage and the costs to service each customer class to determine the appropriate rates to be charged to each customer class. The COS application is reviewed by the OEB and interveners and rates are approved based upon this review, including any revisions resulting from that review.

In the intervening years an Incentive Rate Mechanism application ("IRM") is filed. An IRM application results in a formulaic adjustment to distribution rates that were set under the last COS application. The previous year's rates are adjusted for the annual change in the Gross Domestic Product Implicit Price Inflator for Final Domestic Demand ("GDP IPI-FDD") net of a productivity factor and a "stretch factor" determined by the relative efficiency of an electricity distributor.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## 2. Basis of preparation (continued):

### (f) Rate regulation (continued):

#### (ii) Rate applications (continued):

The Corporation last filed a COS application in 2022 for rates effective July 1, 2022. On October 11, 2023, the Corporation submitted an IRM Application to the OEB requesting approval to change distribution rates effective May 1, 2024. The IRM Application, which provided a mechanistic and formulaic adjustment to distribution rates and charges, was approved by the OEB on March 21, 2024. The GDP IPI-FDD for 2023 is 4.80%, the Corporation's productivity and stretch factors were 0.00%, resulting in a net adjustment of 4.80% to the previous year's rates.

#### (iii) Electricity rates:

The OEB sets electricity prices for low-volume consumers twice each year based on an estimate of how much it will cost to supply the province with electricity for the next year. In 2017, the OEB set new lower Regulated Price Plan (RPP) prices established under the *Ontario Fair Hydro Act, 2017*.

On May 9, 2019, the Government of Ontario enacted Bill 87, the *Fixing the Hydro Mess Act, 2019*. The legislation amended the *Ontario Rebate for Electricity Consumers Act, 2016* and the *Ontario Fair Hydro Plan Act, 2017*. Effective November 1, 2019, the OEB set electricity prices under the RPP based on the estimated cost to supply the province with electricity. The Ministry of Energy, Northern Development and Mines set the amount of the rebate under the *Ontario Rebate for Electricity Consumers Act, 2016* such that the monthly bill for a typical customer increased by the rate of inflation.

All remaining consumers pay the market price for electricity. The Corporation is billed for the cost of the electricity that its customers use and passes this cost on to the customer at cost without a mark-up.

## 3. Material accounting policies:

The accounting policies set out below have been applied consistently in all years presented in these financial statements.

In addition, the Corporation adopted *Disclosure of Accounting Policies (Amendments to IAS 1 and IFRS Practice Statement 2)* from January 1, 2023. The amendments require the disclosure of "material", rather than "significant", accounting policies. Although the amendment did not result in a change to the accounting policies themselves, they impacted the accounting policy information disclosed in Note 3 in certain instances.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (a) Financial instruments:

All financial assets and liabilities of the Corporation are classified into one of the following categories: amortized cost, fair value through other comprehensive income, or fair value through profit or loss.

The Corporation has classified its financial instruments as follows:

Cash and cash equivalents	Amortized cost
Accounts receivable	Amortized cost
Due from related parties	Amortized cost
Investment	Fair value through profit or loss
Accounts payable and accruals	Amortized cost
Due to related parties	Amortized cost
Long-term borrowings	Amortized cost

The Corporation does not enter into derivative instruments.

Hedge accounting has not been used in the preparation of these financial statements.

Cash equivalents include short-term investments with maturities of three months or less when purchased.

#### (b) Revenue recognition:

The performance obligations for the sale and distribution of electricity are recognized over time using an output method to measure the satisfaction of the performance obligation. The value of the electricity services transferred to the customer is determined on the basis of cyclical meter readings plus estimated customer usage since the last meter reading date to the end of the year and represents the amount that the Corporation has the right to bill. Revenue includes the cost of electricity supplied, distribution, and any other regulatory charges. The related cost of power is recorded on the basis of power used.

For customer billings related to electricity generated by third parties and the related costs of providing electricity service, such as transmission services and other services provided by third parties, the Corporation has determined that it is acting as a principal for these electricity charges and, therefore, has presented electricity revenue on a gross basis.

Revenue for the Corporation is recognized when the Corporation satisfies the performance obligations within the contract(s) for conditions of service, which is when the distribution and delivery of electricity is achieved or specific services are performed.

Revenue includes an estimate of unbilled revenue. Unbilled revenue represents an estimate of electricity consumed by customers since the date of each customer's last meter reading. Actual electricity usage could differ from those estimates.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (b) Revenue recognition (continued):

Revenue is measured at the fair value of the consideration received or receivable, net of any taxes which may be applicable.

Other income for work orders is recorded on a net basis as the Corporation is acting as an agent for this revenue stream. All other amounts in other income are recorded on a gross basis and are recognized when services are rendered.

Certain customers and developers are required to contribute towards the capital cost of construction of distribution assets in order to provide ongoing service. Cash contributions are recorded as deferred revenue. When an asset other than cash is received as a capital contribution, the asset is initially recognized at its fair value, with a corresponding amount recognized as deferred revenue. The deferred revenue, which represents the Corporation's obligation to continue to provide the customers access to the supply of electricity, is amortized to income on a straight-line basis over the useful life of the related asset.

Government grants and the related performance incentive payments under CDM programs are recognized as revenue in the year when there is reasonable assurance that the program conditions have been satisfied and the payment will be received.

#### (c) Materials and supplies:

Materials and supplies, the majority of which is consumed by the Corporation in the provision of its services, is valued at the lower of cost and net realizable value, with cost being determined on a first-in, first-out cost basis, and includes expenditures incurred in acquiring the materials and supplies and other costs incurred in bringing them to their existing location and condition.

#### (d) Property, plant and equipment:

Items of property, plant and equipment ("PP&E") used in rate-regulated activities and acquired prior to January 1, 2014 are measured at deemed cost established on the transition date, less accumulated depreciation. All other items of PP&E are measured at cost, or, where the item is contributed by customers, its fair value, less accumulated depreciation.

Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes contracted services, materials and transportation costs, direct labour, overhead costs, borrowing costs and any other costs directly attributable to bringing the asset to a working condition for its intended use.

Borrowing costs on qualifying assets are capitalized as part of the cost of the asset based upon the weighted average cost of debt incurred on the Corporation's borrowings. Qualifying assets are considered to be those that take in excess of nine months to construct.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (d) Property, plant and equipment (continued):

When parts of an item of PP&E have different useful lives, they are accounted for as separate items (major components) of PP&E.

When items of PP&E are retired or otherwise disposed of, a gain or loss on disposal is determined by comparing the proceeds from disposal, if any, with the carrying amount of the item and is included in profit or loss.

Major spare parts and standby equipment are recognized as items of PP&E.

The cost of replacing a part of an item of PP&E is recognized in the net book value of the item if it is probable that the future economic benefits embodied within the part will flow to the Corporation and its cost can be measured reliably. In this event, the replaced part of PP&E is written off, and the related gain or loss is included in profit or loss. The costs of the day-to-day servicing of PP&E are recognized in profit or loss as incurred.

The need to estimate the decommissioning costs at the end of the useful lives of certain assets is reviewed periodically. The Corporation has concluded it does not have any legal or constructive obligation to remove PP&E.

Depreciation is calculated to write off the cost of items of PP&E using the straight-line method over their estimated useful lives, and is generally recognized in profit or loss. Depreciation methods, useful lives, and residual values are reviewed at each reporting date and adjusted prospectively if appropriate. Land is not depreciated. Construction-in-progress assets are not depreciated until the project is complete and the asset is available for use.

The estimated useful lives are as follows:

	Years
Buildings	50
Distribution and metering equipment	10 - 60
Other assets	5 – 15

#### (e) Impairment:

##### (i) Financial assets measured at amortized cost:

A financial asset is assessed at each reporting date to determine whether there is any objective evidence that it is impaired. A financial asset is considered to be impaired if objective evidence indicates that one or more events have had a negative effect on the estimated future cash flows of that asset.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (e) Impairment (continued):

##### (i) Financial assets measured at amortized cost (continued):

An impairment loss is calculated as the difference between an asset's carrying amount and the present value of the estimated future cash flows discounted at the original effective interest rate. Interest on the impaired assets continues to be recognized through the unwinding of the discount. Losses are recognized in profit or loss. An impairment loss is reversed through profit or loss if the reversal can be related objectively to an event occurring after the impairment loss was recognized.

##### (ii) Non-financial assets:

The carrying amounts of the Corporation's non-financial assets, other than materials and supplies and deferred tax assets, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

For the purpose of impairment testing, assets are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU"). The recoverable amount of an asset or CGU is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset.

An impairment loss is recognized if the carrying amount of an asset or its CGU exceeds its estimated recoverable amount. Impairment losses are recognized in profit or loss.

For other assets, an impairment loss is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation or amortization, if no impairment loss had been recognized.

#### (f) Customer deposits:

Customer deposits represent cash deposits from electricity distribution customers and retailers to guarantee the payment of energy bills. Interest is paid on customer deposits.

Deposits are refundable to customers who demonstrate an acceptable level of credit risk as determined by the Corporation in accordance with policies set out by the OEB or upon termination of their electricity distribution service.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (g) Provisions:

A provision is recognized if, as a result of a past event, the Corporation has a present legal or constructive obligation that can be estimated reliably, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

#### (h) Regulatory balances:

Regulatory deferral account debit balances represent costs incurred in excess of amounts billed to the customer at OEB approved rates. Regulatory deferral account credit balances represent amounts billed to the customer at OEB approved rates in excess of costs incurred by the Corporation.

Regulatory deferral account debit balances are recognized if it is probable that future billings in an amount at least equal to the deferred cost will result from inclusion of that cost in allowable costs for rate-making purposes. The offsetting amount is recognized in net movement in regulatory balances in profit or loss or OCI. When the customer is billed at rates approved by the OEB for the recovery of the deferred costs, the customer billings are recognized in revenue. The regulatory debit balance is reduced by the amount of these customer billings with the offset to net movement in regulatory balances in profit or loss or OCI.

The probability of recovery of the regulatory deferral account debit balances is assessed annually based upon the likelihood that the OEB will approve the change in rates to recover the balance. The assessment of likelihood of recovery is based upon previous decisions made by the OEB for similar circumstances, policies or guidelines issued by the OEB, etc. Any resulting impairment loss is recognized in profit or loss in the year incurred.

When the Corporation is required to refund amounts to ratepayers in the future, the Corporation recognizes a regulatory deferral account credit balance. The offsetting amount is recognized in net movement in regulatory balances in profit or loss or OCI. The amounts returned to the customers are recognized as a reduction of revenue. The credit balance is reduced by the amount of these customer repayments with the offset to net movement in regulatory balances in profit or loss or OCI.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (i) Post-employment benefits:

##### (i) Pension plan:

The Corporation provides a pension plan for all its full-time employees through Ontario Municipal Employees Retirement System ("OMERS"). OMERS is a multi-employer pension plan which operates as the Ontario Municipal Employees Retirement Fund ("the Fund"), and provides pensions for employees of Ontario municipalities, local boards and public utilities. The Fund is a contributory defined benefit pension plan, which is financed by equal contributions from participating employers and employees, and by the investment earnings of the Fund. To the extent that the Fund finds itself in an under-funded position, additional contribution rates may be assessed to participating employers and members.

OMERS is a defined benefit plan. However, as OMERS does not segregate its pension asset and liability information by individual employers, there is insufficient information available to enable the Corporation to directly account for the plan. Consequently, the plan has been accounted for as a defined contribution plan. The Corporation is not responsible for any other contractual obligations other than the contributions. Obligations for contributions to defined contribution pension plans are recognized as an employee benefit expense in profit or loss when they are due.

##### (ii) Post-employment benefits, other than pension:

The Corporation provides its retired employees with life insurance and medical benefits.

The obligations for these post-employment benefit plans are actuarially determined by applying the projected unit credit method and reflect management's best estimate of certain underlying assumptions. Remeasurements of the net defined benefit obligations, including actuarial gains and losses and the return on plan assets (excluding interest), are recognized immediately in other comprehensive income.

When the benefits of a plan are improved, the portion of the increased benefit relating to past service by employees is recognized immediately in profit or loss.

#### (j) Finance income and finance costs:

Finance income is recognized as it accrues in profit or loss, using the effective interest method. Finance income comprises interest earned on cash and cash equivalents and dividend income.

Finance costs comprise interest expense on borrowings, unwinding of the discount on provisions, net interest expense on post-employment benefits and impairment losses on financial assets. Finance costs are recognized in profit or loss unless they are capitalized as part of the cost of qualifying assets.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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### 3. Material accounting policies (continued):

#### (k) Income taxes:

The income tax expense comprises current and deferred tax. Income tax expense is recognized in profit or loss except to the extent that it relates to items recognized directly in equity, in which case, it is recognized in equity.

The Corporation is currently exempt from taxes under the Income Tax Act (Canada) and the Ontario Corporations Tax Act (collectively the "Tax Acts"). Under the *Electricity Act*, 1998, the Corporation makes payments in lieu of corporate taxes to the Ontario Electricity Financial Corporation ("OEFC"). These payments are calculated in accordance with the rules for computing taxable income and taxable capital and other relevant amounts contained in the Tax Acts as modified by the *Electricity Act*, 1998, and related regulations. Prior to October 1, 2001, the Corporation was not subject to income or capital taxes. Payments in lieu of taxes are referred to as income taxes.

Current tax comprises the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years.

Deferred tax is recognized in respect of temporary differences between the tax basis of assets and liabilities and their carrying amounts for accounting purposes. Deferred tax assets are recognized for unused tax losses, unused tax credits and deductible temporary differences to the extent that it is probable that future taxable profits will be available against which they can be used. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, using tax rates enacted or substantively enacted, at the reporting date.

#### (l) Investments:

The Corporation has designated its investment in the common shares of Sun Life Financial as fair value through the profit and loss and these instruments are recorded at market value as determined by quoted market prices. Realized and unrealized gains and losses as a result of disposition of shares and changes in fair value are recorded in the non-consolidated statement of comprehensive income in net finance income.

The investments in ELK Solutions Inc. and Gosfield North Communications are measured at cost.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## 4. Standards issued but not yet adopted:

The following standards, which are not yet effective for the year ended December 31, 2023, have not been applied in preparing these financial statements.

i) Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)

The amendments to IAS 1 clarify that the classification of liabilities as current or non-current is based on rights that are in existence at the end of the reporting period, specify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability, explain that rights are in existence if covenants are complied with at the end of the reporting period, and introduce a definition of 'settlement' to make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. The amendments are applied retrospectively for annual periods beginning on or after January 1, 2024, with early application permitted.

ii) Non-Current Liabilities with Covenants (Amendments to IAS 1)

The amendments specify that only covenants that an entity is required to comply with on or before the end of the reporting period affect the entity's right to defer settlement of a liability for at least twelve months after the reporting date (and therefore must be considered in assessing the classification of the liability as current or noncurrent). Such covenants affect whether the right exists at the end of the reporting period, even if compliance with the covenant is assessed only after the reporting date (e.g., a covenant based on the entity's financial position at the reporting date that is assessed for compliance only after the reporting date). The amendments are applied retrospectively for annual periods beginning on or after January 1, 2024, with early application permitted.

iii) Supplier Finance Arrangements (Amendments to IAS 7 and IFRS 7)

The amendments add a disclosure objective to IAS 7 stating that an entity is required to disclose information about its supplier finance arrangements that enables users of financial statements to assess the effects of those arrangements on the entity's liabilities and cash flows. In addition, IFRS 7 was amended to add supplier finance arrangements as an example within the requirements to disclose information about an entity's exposure to concentration of liquidity risk. The amendments are applicable for annual periods beginning on or after January 1, 2024, with early application permitted.

iv) Lease Liability in a Sale and Leaseback (Amendments to IFRS 16)

The amendments to IFRS 16 add subsequent measurement requirements for sale and leaseback transactions that satisfy the requirements in IFRS 15 to be accounted for as a sale. The amendments require the seller-lessee to determine 'lease payments' or 'revised lease payments' such that the seller-lessee does not recognize a gain or loss that relates to the right of use retained by the seller-lessee, after the commencement date. The amendments are effective for annual periods beginning on or after January 1, 2024, with early application permitted.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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#### 4. Standards issued but not yet adopted (continued):

The Corporation has assessed the potential impacts on its financial statements, and determined that the future pronouncements will not have a material impact on the Corporation.

#### 5. Cash and cash equivalents:

	2023	2022
Bank balances - unrestricted	\$ 989,319	\$ 2,570,995
Bank balance - restricted	2,821,209	2,315,576
Cash and cash equivalents in the statements of cash flows	\$ 3,810,528	\$ 4,886,571

Restricted cash relates to customer security deposits.

#### 6. Accounts receivable:

	2023	2022
Trade receivables	\$ 4,600,140	\$ 5,808,281
Other trade receivables	170,434	448,531
Allowance for doubtful accounts	(549,937)	(564,482)
	\$ 4,220,637	\$ 5,692,330

#### 7. Inventory:

Inventory consists of parts and supplies acquired for capital, internal construction, maintenance or recoverable work.

The amount of inventory consumed by the Corporation during 2023 was \$390,454 (2022 - \$403,078).

Amounts written down due to obsolescence in 2023 was \$nil (2022 - \$nil).



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 8. Investments:

	2023	2022
Investment in the Class A common shares of E.L.K. Solutions Inc., at cost	\$ 100	\$ 100
Investment in Gosfield North Communications, at cost	1	1
Investment in the common shares of Sun Life Financial, at market	84,102	92,767
	\$ 84,203	\$ 92,868

## 9. Property, plant and equipment:

		Land and buildings		Distribution equipment		Other fixed assets		Total
<i>Cost or deemed cost</i>								
Balance at January 1, 2023	\$	193,581	\$	17,229,117	\$	1,951,196	\$	19,373,894
Additions		48,606		1,714,802		839,001		2,602,409
Disposals		—		—		—		—
Balance at December 31, 2023	\$	242,187	\$	18,943,919	\$	2,790,197	\$	21,976,303
Balance at January 1, 2022	\$	180,492	\$	15,134,325	\$	1,785,896	\$	17,100,713
Additions		13,089		2,094,792		187,424		2,295,305
Disposals		—		—		(22,124)		(22,124)
Balance at December 31, 2022	\$	193,581	\$	17,229,117	\$	1,951,196	\$	19,373,894
<i>Accumulated depreciation</i>								
Balance at January 1, 2023	\$	71,648	\$	4,777,818	\$	788,790	\$	5,638,256
Depreciation		13,166		599,331		200,768		813,265
Disposals		—		—		—		—
Balance at December 31, 2023	\$	84,814	\$	5,377,149	\$	989,558	\$	6,451,521
Balance at January 1, 2022	\$	59,099	\$	4,220,171	\$	670,335	\$	4,949,605
Depreciation		12,549		557,647		140,579		710,775
Disposals		—		—		(22,124)		(22,124)
Balance at December 31, 2022	\$	71,648	\$	4,777,818	\$	788,790	\$	5,638,256
<i>Carrying amounts</i>								
At December 31, 2023	\$	157,373	\$	13,566,770	\$	1,800,639	\$	15,524,782
At December 31, 2022	\$	121,933	\$	12,451,299	\$	1,162,406	\$	13,735,638



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 10. Income tax expense:

Current year tax expense:

	2023	2022
Current year	\$ (305,779)	\$ (30,971)
	\$ (305,779)	\$ (30,971)

Significant components of the Corporation's deferred tax balances are as follows:

	2023	2022
Deferred tax assets (liabilities):		
Property, plant and equipment	\$ (1,421,139)	\$ (1,134,121)
Cumulative eligible capital	25,890	46,500
Non-capital losses	512,286	—
Post-employment benefits	95,137	100,430
Deferred revenue	581,495	645,009
Other	59,373	(14,502)
	\$ (146,958)	\$ (356,684)

## 11. Regulatory balances:

Reconciliation of the carrying amount for each class of regulatory balances

Regulatory deferral account debit balances	January 1, 2023	Additions	Recovery/ reversal	December 31, 2023
Group 1 deferred accounts	\$ 8,740,764	\$ 3,250,200	\$(11,071,084)	\$ 919,880
Other regulatory account	777,683	572,302	(38,161)	1,311,824
Regulatory transition to IFRS	21,602	—	(21,602)	—
Regulatory settlement account	369,542	442,148	—	811,690
Income tax	595,055	—	(209,726)	385,329
	\$10,504,646	\$ 4,264,650	\$(11,340,573)	\$ 3,428,723

Regulatory deferral account debit balances	January 1, 2022	Additions	Recovery/ reversal	December 31, 2022
Group 1 deferred accounts	\$ 5,746,730	\$12,594,757	\$(9,600,723)	\$ 8,740,764
Other regulatory account	214,827	563,729	(873)	777,683
Regulatory transition to IFRS	39,587	—	(17,985)	21,602
Regulatory settlement account	410,262	—	(40,720)	369,542
Income tax	292,733	302,322	—	595,055
	\$ 6,704,139	\$13,460,808	\$(9,660,301)	\$ 10,504,646



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 11. Regulatory balances (continued):

Regulatory deferral account credit balances	January 1, 2023	Additions	Recovery/ reversal	December 31, 2023
Group 1 deferred accounts	\$ 11,126,471	\$ 2,783,164	\$ (6,730,437)	\$ 7,179,198
Other regulatory account	181,112	—	(21,602)	159,510
Income tax	343,249	—	—	343,249
Regulatory settlement account	1,380,121	76,827	(169,175)	1,287,773
	\$ 13,030,953	\$ 2,859,991	\$ (6,921,214)	\$ 8,969,730

Regulatory deferral account credit balances	January 1, 2022	Additions	Recovery/ reversal	December 31, 2022
Group 1 deferred accounts	\$ 7,755,485	\$ 22,484,698	\$ (19,113,712)	\$ 11,126,471
Other regulatory account	176,405	40,665	(35,958)	181,112
Income tax	343,249	—	—	343,249
Regulatory settlement account	517,204	1,371,775	(508,858)	1,380,121
	\$ 8,792,343	\$ 23,897,138	\$ (19,658,528)	\$ 13,030,953

The regulatory balances are recovered or settled through rates approved by the OEB which are determined using estimates of future consumption of electricity by its customers. Future consumption is impacted by various factors including the economy and weather. The Corporation has received approval from the OEB to establish its regulatory balances.

Settlement of the Group 1 deferral accounts is done on an annual basis through application to the OEB. The OEB requires the Corporation to estimate its income taxes when it files a COS application to set its rates. As a result, the Corporation has recognized a regulatory deferral account for the amount of deferred taxes that will ultimately be recovered from/paid back to its customers. This balance will fluctuate as the Corporation's deferred tax balance fluctuates.

Regulatory balances attract interest at OEB prescribed rates, which are based on Bankers' Acceptances three-month rate plus a spread of 25 basis points. In 2023, the rate was 4.73% in the first quarter, 4.98% in the second quarter, 4.98% in the third quarter, and 5.49% in the fourth quarter (in 2022, 0.57% in the first quarter, 1.02% in the second quarter, 2.20% in the third quarter, and 3.87% in the fourth quarter).



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 12. Accounts payable and accrued liabilities:

	2023	2022
Trade payables	\$ 2,215,321	\$ 2,750,523
Accrued expenses	1,219,866	1,465,177
	<u>\$ 3,435,187</u>	<u>\$ 4,215,700</u>

## 13. Bank debt:

(a) Bank debt consists of:

	2023	2022
Four year term loan with interest rate of 5.091% (2022 – 1.13%) repayable in full on or before maturity of July 2026, secured by a general security agreement	\$ 1,487,619	\$ 1,986,053

(b) Reconciliation of movements of liabilities to cash flows arising from financing activities:

	2023	2022
Bank debt, balance at January 1	\$ 1,986,053	\$ 2,200,000
Repayment of borrowings	498,434	213,947
Balance, December 31	<u>\$ 1,487,619</u>	<u>\$ 1,986,053</u>

## 14. Post-employment benefits:

(a) OMERS pension plan:

The Corporation provides a pension plan for its employees through OMERS. The plan is a multi-employer, contributory defined pension plan with equal contributions by the employer and its employees. In 2023, the Corporation made employer contributions of \$215,257 to OMERS (2022 - \$189,505).

As at December 31, 2023, OMERS had over 612,000 members, of whom 22 are current employees of the Corporation. The most recently available OMERS annual report is for the year ended December 31, 2023, which reported that the plan was 97% funded (2022 - 97%).



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 14. Post-employment benefits (continued):

### (b) Post-employment benefits other than pension:

The Corporation pays certain medical and life insurance benefits on behalf of some of its retired employees. The Corporation recognizes these post-employment benefits in the year in which employees' services were rendered. The Corporation is recovering its post-employment benefits in rates based on the expense and measurements recognized for post-employment benefit plans. The most recent valuation was completed December 31, 2021 and extrapolated to December 31, 2023.

Reconciliation of the obligation	2023	2022
Defined benefit obligation, beginning of year	\$ 378,981	\$ 517,575
Included in profit or loss		
Current service cost	2,276	2,627
Interest cost	18,038	12,503
	20,314	15,130
Included in OCI		
Actuarial gain arising from: changes in demographic and financial assumptions	(1,589)	(116,218)
Benefit payments	(38,700)	(37,506)
Defined benefit obligation, end of year	\$ 359,006	\$ 378,981

Actuarial assumptions	2023	2022
General inflation	2.25%	2.25%
Discount (interest) rate	4.50%	5.00%
Medical costs	6.50%	6.50%
Dental costs	4.00%	4.00%

A 1% increase in the assumed medical trend rate would result in the defined benefit obligation increasing by \$14,000. A 1% decrease in the assumed medical trend rate would result in the defined benefits obligation decreasing by \$14,000.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 15. Share capital:

	2023	2022
Authorized:		
Unlimited number of common shares		
Issued:		
30,000 common shares	\$ 2,000,100	\$ 2,000,100

## 16. Distribution revenue:

The Corporation generates revenue primarily from the sale and distribution of electricity to its customers. Other revenue consists of services provided to related parties and other income. Additional information is provided in note 17 with components of other income.

In the following table, distribution revenue is disaggregated by type of customer:

	2023	2022
Residential	\$ 2,531,773	\$ 2,512,097
Commercial	489,615	469,411
Large users	715,973	648,386
Other	109,432	94,544
Total distribution revenue	\$ 3,846,793	\$ 3,724,438

## 17. Other revenue:

	2023	2022
Rendering of services	\$ 547,476	\$ 497,122
Contributions received from customers	430,434	402,398
Government grants & incentives under CDM programs	—	36,595
Rental income	33,732	48,282
	\$ 1,011,642	\$ 984,397



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 18. Employee salaries and benefits:

	2023	2022
Salaries, wages and benefits	\$ 2,239,332	\$ 1,925,180
CPP and EI remittances	75,415	78,476
Contributions to OMERS	215,257	189,505
Post-employment benefit plans	30,273	27,007
	<u>\$ 2,560,277</u>	<u>\$ 2,220,168</u>

## 19. Distribution expenses:

	2023	2022
Labour	\$ 350,245	\$ 381,485
Materials, supplies, maintenance	1,286,029	963,132
Other	153,054	142,977
	<u>\$ 1,789,328</u>	<u>\$ 1,487,594</u>

## 20. Finance income and costs:

	2023	2022
Finance income		
Late payment charges	\$ 42,139	\$ 116,640
Interest income on bank deposits	319,728	170,122
Interest income on regulatory debit balances	79,684	171,698
	<u>441,551</u>	<u>458,460</u>
Finance cost		
Interest expense on bank debt	94,514	29,013
Interest expense on regulatory credit balances	75,622	186,179
Unrealized loss on investments	8,664	11,159
Other	19,974	4,374
	<u>198,774</u>	<u>230,725</u>
Net finance income recognized in profit or loss	<u>\$ 242,777</u>	<u>\$ 227,735</u>



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 21. Commitments and contingencies:

General:

From time to time, the Corporation is involved in various litigation matters arising in the ordinary course of its business. The Corporation has no reason to believe that the disposition of any such current matter could reasonably be expected to have a materially adverse impact on the Corporation's financial position, results of operations or its ability to carry on any of its business activities.

General Liability Insurance:

The Corporation is a member of the Municipal Electric Association Reciprocal Insurance Exchange (MEARIE). MEARIE is a pooling of public liability insurance risks of many of the LDCs in Ontario. All members of the pool are subjected to assessment for losses experienced by the pool for the years in which they were members, on a pro-rata basis based on the total of their respective service revenues. As at December 31, 2023, no assessments have been made.

## 22. Related party transactions:

(a) Parent and ultimate controlling party:

The sole shareholder of the Corporation is the Municipality of the Town of Essex. The Town produces consolidated financial statements that are available for public use.

(b) Outstanding balances due from (due to) with related parties:

	2023	2022
Subsidiary, included in accounts receivable	\$ 110,735	\$ 60,580
Parent company payables	\$ (774,887)	\$ (1,288,491)

(c) Transactions with parent:

During the year, the Corporation provided services in the normal course of business to its parent in the amount of \$405,994 (2022 - \$396,409).

The Corporation delivers electricity to the Town throughout the year for the electricity needs of the Town and its related organizations. Electricity delivery charges are at prices and under terms approved by the OEB. The Corporation also provides additional services to the Town, including streetlight maintenance services, sentinel lights and water and waste water billing and customer care services.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

## 22. Related party transactions (continued):

### (d) Transactions with entity with significant influence:

In the ordinary course of business, the Corporation delivers electricity to the Town of Essex. Electricity is billed to the Town at prices and under terms approved by the OEB, if applicable.

### (e) Key management personnel:

The key management personnel of the Corporation have been defined as members of its board of directors and executive management team members. The compensation paid or payable is as follows:

	2023	2022
Directors' fees	\$ 19,887	\$ 20,623
Salaries and other short-term benefits	442,291	459,796
Post-employment benefits	-	3,631
	<u>\$ 462,178</u>	<u>\$ 484,050</u>

## 23. Financial instruments and risk management:

### Fair value disclosure:

The carrying values of cash and cash equivalents, accounts receivable, unbilled revenue, due from/to related parties and accounts payable and accrued liabilities approximate fair value because of the short maturity of these instruments. The carrying value of the customer deposits and bank loan approximates fair value because the amounts are payable on demand.

### Financial risks:

The Corporation understands the risks inherent in its business and defines them broadly as anything that could impact its ability to achieve its strategic objectives. The Corporation's exposure to a variety of risks such as credit risk, interest rate risk, and liquidity risk, as well as related mitigation strategies are discussed below.

#### (a) Credit risk:

Financial assets carry credit risk that a counterparty will fail to discharge an obligation which could result in a financial loss. Financial assets held by the Corporation, such as accounts receivable, expose it to credit risk. The Corporation earns its revenue from a broad base of customers located in the Town of Essex, Lakeshore and Kingsville. No single customer accounts for a balance in excess of 1% of total accounts receivable.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## 23. Financial instruments and risk management (continued):

### (a) Credit risk (continued):

The carrying amount of accounts receivable is reduced through the use of an allowance for impairment and the amount of the related impairment loss is recognized in profit or loss. Subsequent recoveries of receivables previously provisioned are credited to profit or loss. The balance of the allowance for impairment at December 31, 2023 is \$549,937 (2022 - \$564,482). An impairment reversal of \$14,545 (2022 – loss of \$187,351) was recognized during the year.

The Corporation's credit risk associated with accounts receivable is primarily related to payments from distribution customers. As a result of the COVID-19 pandemic, certain of the Corporation's customers have experienced loss of employment, business shut-downs and other disruptions. The extension of the OEB's winter disconnection ban negatively impacted the Corporation's ability to exercise the full extent of its collection tools to manage the credit risk. To support residential and small business customers struggling to pay their energy bills, the Government of Ontario provided funding for the COVID-19 Energy Assistance Program ("CEAP"). The Corporation was allocated a portion of this funding and actively participated in the program. As at December 31, 2023, approximately \$756,000 (2022 - \$1,048,800) is considered 60 days past due. The Corporation has over 12,300 customers, the majority of whom are residential. Credit risk is managed through collection of security deposits from customers in accordance with directions provided by the OEB. As at December 31, 2023, the Corporation holds security deposits in the amount of \$2,821,209 (2022 - \$2,179,634).

### (b) Market risk:

Market risks primarily refer to the risk of loss resulting from changes in commodity prices, foreign exchange rates, and interest rates. The Corporation currently does not have any material commodity or foreign exchange risk. The Corporation is exposed to fluctuations in interest rates as the regulated rate of return for the Corporation's distribution business is derived using a complex formulaic approach which is in part based on the forecast for long-term Government of Canada bond yields. This rate of return is approved by the OEB as part of the approval of distribution rates.

A 1% increase in the interest rate at December 31, 2023 would have increased interest expense on the long-term debt by approximately \$17,000 (2022 - \$20,000), assuming all other variables remain constant. A 1% decrease in the interest rate would have an equal but opposite effect.



# E.L.K. ENERGY INC.

Notes to Non-Consolidated Financial Statements (continued)

Year ended December 31, 2023

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## **23. Financial instruments and risk management (continued):**

### **(c) Liquidity risk:**

The Corporation monitors its liquidity risk to ensure access to sufficient funds to meet operational and investing requirements. The Corporation's objective is to ensure that sufficient liquidity is on hand to meet obligations as they fall due while minimizing interest exposure. The Corporation has access to a \$3.6 million credit facility and monitors cash balances daily to ensure that a sufficient level of liquidity is on hand to meet financial commitments as they become due.

The majority of accounts payable, as reported on the statement of financial position, are due within 30 – 60 days.

### **(d) Capital disclosures:**

The main objectives of the Corporation, when managing capital, are to ensure ongoing access to funding to maintain and improve the electricity distribution system, compliance with covenants related to its credit facilities, prudent management of its capital structure with regard for recoveries of financing charges permitted by the OEB on its regulated electricity distribution business, and to deliver the appropriate financial returns.

The Corporation's definition of capital includes shareholder's equity. As at December 31, 2023, shareholder's equity amounts to \$11,716,987 (2022 - \$12,820,765).



Financial Statements of

**ENWIN UTILITIES LTD.**

And Independent Auditor's Report thereon

Year ended December 31, 2024





**KPMG LLP**

618 Greenwood Centre  
3200 Deziel Drive  
Windsor, ON N8W 5K8  
Canada  
Telephone 519 251 3500  
Fax 519 251 3530

## **INDEPENDENT AUDITOR'S REPORT**

To the Shareholder of ENWIN Utilities Ltd.

### ***Opinion***

We have audited the financial statements of ENWIN Utilities Ltd. (the Entity), which comprise:

- the balance sheet as at December 31, 2024
- the statement of income for the year then ended
- the statement of comprehensive income for the year then ended
- the statement of changes in equity for the year then ended
- the statement of cash flows for the year then ended
- and notes to the financial statements, including a summary of significant accounting policies

(Hereinafter referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Entity as at December 31, 2024, and its financial performance and its cash flows for the year then ended in accordance with IFRS Accounting Standards.

### ***Basis for Opinion***

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the **"Auditor's Responsibilities for the Audit of the Financial Statements"** section of our auditor's report.

We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada and we have fulfilled our other ethical responsibilities in accordance with these requirements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.





## ***Responsibilities of Management and Those Charged with Governance for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with IFRS Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Entity's financial reporting process.

## ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit.

We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.





Page 3

- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

A handwritten signature in black ink that reads 'KPMG LLP'. The signature is written in a cursive, stylized font and is underlined with a single horizontal stroke.

Chartered Professional Accountants, Licensed Public Accountants

Windsor, Canada

April 23, 2025



# ENWIN UTILITIES LTD.

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Year ended December 31, 2024

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# ENWIN UTILITIES LTD.

Balance Sheet

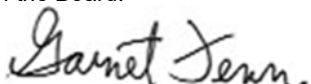
(In thousands of Canadian dollars)

December 31, 2024, with comparative information for 2023

	Notes	2024	2023
<b>Assets</b>			
<b>Current assets:</b>			
Cash and cash equivalents	4	\$ 11,118	\$ 19,824
Accounts receivable	5	57,445	48,614
Due from related parties	21	6,954	7,800
Inventory	6	7,791	8,500
Other assets		1,931	1,732
		<b>85,239</b>	<b>86,470</b>
<b>Non-current assets:</b>			
Property, plant and equipment	7	271,358	259,279
Intangible assets	8	1,402	1,228
Deferred income taxes	14	1,343	2,627
		<b>274,103</b>	<b>263,134</b>
<b>Total assets</b>		<b>\$ 359,342</b>	<b>\$ 349,604</b>
<b>Liabilities</b>			
<b>Current liabilities:</b>			
Accounts payable and accruals	9	\$ 31,611	\$ 29,844
Payments in lieu of income taxes payable	14	2,910	799
Due to related parties	21	10,787	9,391
Current portion of customer deposits	10	1,591	1,107
Deferred revenue		-	4,118
		<b>46,899</b>	<b>45,259</b>
<b>Non-current liabilities:</b>			
Customer deposits	10	6,855	5,926
Due to related party - promissory note	21	28,421	28,550
Deferred revenue - customer contributions	11	21,109	19,375
Due to related party - revolving credit agreement	21	50,558	50,542
Employee future benefits	12	48,876	48,299
		<b>155,819</b>	<b>152,692</b>
<b>Total liabilities</b>		<b>202,718</b>	<b>197,951</b>
<b>Equity</b>			
Common shares	15	31,008	31,008
Contributed surplus		516	516
Retained earnings		110,125	105,356
Accumulated other comprehensive income		14,975	14,773
		<b>156,624</b>	<b>151,653</b>
Commitments and contingencies	23		
<b>Total liabilities and equity</b>		<b>\$ 359,342</b>	<b>\$ 349,604</b>

The accompanying notes are an integral part of these financial statements.

On behalf of the Board:

  
Director

  
Director



# ENWIN UTILITIES LTD.

Statement of Income  
(In thousands of Canadian dollars)

Year ended December 31, 2024, with comparative information for 2023

	Notes	2024	2023
<b>Revenue from sale of electricity:</b>			
Sale of electricity		\$ 252,515	\$ 223,670
Distribution revenue	16	56,378	53,314
		308,893	276,984
Cost of electricity purchased		253,408	227,931
<b>Gross profit</b>		<b>55,485</b>	<b>49,053</b>
<b>Other revenue:</b>			
Services provided to Windsor Utilities Commission	21	20,752	20,745
Services provided to other related parties	21	947	872
Other income	17	4,598	3,382
		<b>26,297</b>	<b>24,999</b>
<b>Operating expenses:</b>			
Operating and distribution expenses	18	36,625	36,665
Billing, collecting and administration expenses	18	18,579	15,181
Depreciation and amortization	7,8	12,510	11,971
		<b>67,714</b>	<b>63,817</b>
<b>Income from operating activities</b>		<b>14,068</b>	<b>10,235</b>
<b>Finance expense (income):</b>			
Finance income	19	(1,489)	(1,540)
Finance expense	19	3,389	3,647
		<b>1,900</b>	<b>2,107</b>
<b>Income before tax</b>		<b>12,168</b>	<b>8,128</b>
<b>Income taxes:</b>			
Provision for payments in lieu of corporate taxes	14	2,189	1,133
Deferred income taxes	14	1,210	1,026
		<b>3,399</b>	<b>2,159</b>
<b>Income for the year</b>		<b>\$ 8,769</b>	<b>\$ 5,969</b>

The accompanying notes are an integral part of these financial statements.



# ENWIN UTILITIES LTD.

Statement of Comprehensive Income  
(In thousands of Canadian dollars)

Year ended December 31, 2024, with comparative information for 2023

	Notes	2024	2023
<b>Income for the year</b>		<b>\$ 8,769</b>	<b>\$ 5,969</b>
<b>Other comprehensive income (loss):</b>			
Items that will not be reclassified to the statement of income:			
Remeasurement of employee future benefits income (loss)	12	275	(3,651)
Related tax	14	(73)	967
<b>Other comprehensive income (loss)</b>		<b>202</b>	<b>(2,684)</b>
<b>Total comprehensive income for the year</b>		<b>\$ 8,971</b>	<b>\$ 3,285</b>

The accompanying notes are an integral part of these financial statements.



# ENWIN UTILITIES LTD.

Statement of Changes in Equity  
(In thousands of Canadian dollars)

Year ended December 31, 2024, with comparative information for 2023

	Share capital	Contributed surplus	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance at January 1, 2023	\$ 31,008	\$ 516	\$ 103,387	\$ 17,457	\$ 152,368
Income for the year	-	-	5,969	-	5,969
Dividends declared	-	-	(4,000)	-	(4,000)
Other comprehensive loss	-	-	-	(2,684)	(2,684)
Balance at December 31, 2023	\$ 31,008	\$ 516	\$ 105,356	\$ 14,773	\$ 151,653
Income for the year	-	-	8,769	-	8,769
Dividends declared	-	-	(4,000)	-	(4,000)
Other comprehensive income	-	-	-	202	202
Balance at December 31, 2024	\$ 31,008	\$ 516	\$ 110,125	\$ 14,975	\$ 156,624

The accompanying notes are an integral part of these financial statements.



# ENWIN UTILITIES LTD.

Statement of Cash Flows  
(In thousands of Canadian dollars)

December 31, 2024, with comparative information for 2023

	Notes	2024	2023
<b>Operating activities:</b>			
Total comprehensive income for the year		\$ 8,971	\$ 3,285
Adjustments for:			
Depreciation and amortization	7,8	12,510	11,971
Amortization of deferred revenue customer contributions	11	(565)	(549)
Amortization of debt issuance costs	21	16	16
Remeasurement of employee future benefits	12	(275)	3,651
Loss on sale of property, plant and equipment	17	670	1,507
Income tax expense	14	2,189	1,133
Changes in non-cash operating working capital	20	(2,378)	(292)
Interest paid		(3,373)	(3,631)
Interest received		1,489	1,540
Income taxes paid		(697)	(899)
		<b>18,557</b>	<b>17,732</b>
<b>Investing activities:</b>			
Acquisition of property, plant and equipment and intangible assets	7,8	(26,250)	(20,704)
Deferred revenue - customer contributions	11	2,527	690
Gain on investments		-	(538)
Proceeds on disposition of investment		-	11,661
Proceeds on sale of property, plant and equipment		589	866
		<b>(23,134)</b>	<b>(8,025)</b>
<b>Financing activities:</b>			
Decrease in due to related party - promissory note	21	(129)	(124)
Dividends paid		(4,000)	(4,000)
		<b>(4,129)</b>	<b>(4,124)</b>
<b>Net change in cash and cash equivalents</b>		<b>(8,706)</b>	<b>5,583</b>
Cash and cash equivalents at January 1		19,824	14,241
<b>Cash and cash equivalents at December 31</b>		<b>\$ 11,118</b>	<b>\$ 19,824</b>

The accompanying notes are an integral part of these financial statements.



# ENWIN UTILITIES LTD.

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Year ended December 31, 2024

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# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 1. Reporting entity:

ENWIN Utilities Ltd. (the “Corporation”) is a local distribution company (“LDC”) that owns and operates the electricity distribution grid in the City of Windsor. In accordance with the Electricity Act, 1998, the Corporation was incorporated in December of 1999 under the Business Corporations Act (Ontario). The address of the Corporation’s registered office is 4545 Rhodes Drive, Windsor, Ontario, Canada. The Corporation is 100% owned by Windsor Canada Utilities Ltd. (“WCUL”), which is in turn 100% owned by the Corporation of the City of Windsor (the “City”).

On November 6, 2012, the Corporation and the Windsor Utilities Commission (the “Commission”) entered into a Water System Operating Agreement (“WSOA”), whereby the Corporation agreed to provide services to the Commission with respect to operating the water treatment and distribution system. The services include: management, administrative services, construction operations, and maintenance services. The Corporation is responsible for providing all personnel required to operate the water system. Pursuant to the terms of the WSOA and the associated Employee Arrangement Agreement, also dated November 6, 2012, the Commission transferred all non-unionized employees and all unionized employees of the Commission to the Corporation. The Commission is a local board of the City.

The Corporation provides billing, credit, financial, customer service and other support services on behalf of the City in relation to waste water.

The Corporation also provides billing, credit, financial, customer service and other support services on behalf of ENWIN Energy Ltd. (“Energy”) in relation to sentinel lighting and street light maintenance.

The Corporation also provides financial and other administrative services on behalf of WCUL.

The Corporation’s arrangements with these affiliates are subject to the Ontario Energy Board’s (“OEB”) Affiliate Relationships Code, which is a code prescribed by and issued pursuant to the Ontario Energy Board Act, 1998.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 2. Basis of preparation:

(a) Statement of compliance:

The Corporation's financial statements have been prepared in accordance with IFRS Accounting Standards ("IFRS") as adopted by the International Accounting Standards Board ("IASB") and interpretations as issued by the International Financial Reporting Interpretations Committee ("IFRIC") of the IASB.

(b) Approval of the financial statements:

The financial statements were approved by the Board of Directors on April 23, 2025.

(c) Basis of measurement:

The financial statements have been prepared on the historical cost basis except for the following:

- (i) Where held, financial instruments at fair value through profit or loss, are measured at fair value.
- (ii) The accrued benefit related to the Corporation's unfunded defined benefit plan is actuarially determined and is measured at the present value of the defined benefit obligation.

(d) Functional and presentation currency:

These financial statements are presented in Canadian dollars, which is the Corporation's functional currency. All financial information presented in Canadian dollars has been rounded to the nearest thousand dollars.

(e) Use of estimates and judgements:

The preparation of financial statements in conformity with IFRS requires management to make judgements, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses and disclosure of contingent assets and liabilities. Actual results may differ from those estimates.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 2. Basis of preparation (continued):

### (e) Use of estimates and judgements (continued):

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the year in which the estimates are revised and in any future periods affected.

In particular, significant areas where upon estimation was required that have the most significant effect on the amounts recognized in these financial statements, include:

- (i) Note 3(i) – Deferred revenue: determination of the performance obligation for contributions from customers and the related amortization period;
- (ii) Note 5 – Trade accounts receivables: allowance for impairment. Unbilled revenue: measurement of revenues not yet billed;
- (iii) Note 7 – Property, plant and equipment: useful lives and the identification of significant components of property, plant and equipment;
- (iv) Note 12 – Employee future benefits: measurement of the defined benefit obligation;
- (v) Note 22 – Financial instruments and risk management: valuation of financial instruments.

Information about critical judgements in applying accounting policies that have the most significant effect on the amounts recognized in the financial statements, include:

- (i) The Corporation's determination that they are acting as a principal for electricity distribution and therefore have presented the electricity revenues on a gross basis.
- (f) Rate regulation:

The Corporation is regulated by the OEB, under the authority granted by the Ontario Energy Board Act, 1998. Among other things, the OEB has the power and responsibility to approve or set rates for the transmission and distribution of electricity, providing continued rate protection for electricity customers in Ontario, and ensuring that transmission and distribution companies fulfill obligations to connect and service customers. The OEB may also prescribe license requirements and conditions of service to LDCs, such as the Corporation, which may include, among other things, record keeping, regulatory accounting principles, separation of accounts for distinct businesses, and filing and process requirements for rate setting purposes.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 2. Basis of preparation (continued):

### (f) Rate regulation (continued):

In its capacity to approve or set rates, the OEB has the authority to specify regulatory accounting treatments that differ from IFRS. The OEB's regulatory accounting treatments require the recognition of regulatory assets and liabilities which do not meet the definition of an asset or liability under IFRS and, as a result, these regulatory assets and liabilities have not been recorded in these IFRS financial statements.

### (i) Rate setting:

The electricity distribution rates and other regulated charges of the Corporation are determined by the OEB. This regulated rate-setting provides LDCs with the opportunity to recover the revenue requirement associated with owning and operating the LDC. The revenue requirement represents the forecasted prudent costs, including the cost of capital, that will be reasonably necessary for the LDC to invest in the electricity grid, operate the electricity grid, and serve customers in its licenced service area.

### (ii) Rate applications:

When the Corporation files a "Cost of Service" ("COS") rate application, the OEB establishes the revenues required to recover the forecasted operating costs, including amortization and income taxes, of providing the regulated electricity distribution service and providing a fair return on the Corporation's rate base. The Corporation estimates electricity usage and the costs to service each customer class in order to determine the appropriate rates to be charged to each customer class. The COS application is reviewed by the OEB and any registered intervenors. Rates are approved based upon the review of evidence and information, including any revisions resulting from that review. On April 26, 2019, the Corporation submitted a COS rate application to the OEB to change distribution rates effective January 1, 2020. The application was approved by the OEB on December 5, 2019.

In the intervening years between a COS, an Incentive Regulation Mechanism ("IRM") is filed. An IRM application results in a formulaic adjustment to distribution rates that were set under the last COS application. The previous year's rates are adjusted for the annual change in the Gross Domestic Product Implicit Price Inflator for Final Domestic Demand net of a productivity factor set by the OEB and a stretch factor determined by the relative efficiency of an electricity distributor. On August 17, 2023, the Corporation submitted an IRM rate application to the OEB to change distribution rates effective January 1, 2024. The application was approved by the OEB on December 14, 2023.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies:

The Corporation has consistently applied the following accounting policies to all periods presented in these financial statements, except if mentioned otherwise.

### (a) Cash and cash equivalents:

Cash and cash equivalents consist of balances with banks and investments with a maturity of approximately three months or less at the date of purchase, unless they are held for investment rather than liquidity purposes, in which case they are classified as an investment.

### (b) Financial instruments:

All financial assets and liabilities of the Corporation are classified into one of the following categories: amortized cost; fair value through other comprehensive income; or fair value through income or loss.

The Corporation has classified its financial instruments as follows:

Cash and cash equivalents	Amortized cost
Accounts receivable	Amortized cost
Due from related parties	Amortized cost
Accounts payable and accruals	Amortized cost
Due to related parties	Amortized cost

Financial instruments are recognized initially at amortized cost plus any directly attributable transaction costs.

Subsequent to initial recognition, financial instruments classified as fair value through income and loss are measured at fair value. The Corporation does not use derivative instruments.

The Corporation derecognizes a financial asset when the contractual rights to the cash flows from the asset expire, or it transfers the rights to receive the contractual cash flows in a transaction in which substantially all of the risks and rewards of ownership of the financial asset are transferred.

The Corporation derecognizes a financial liability when its contractual obligations are discharged, cancelled or expire.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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### 3. Material accounting policies (continued):

(c) Fair value:

Fair values are categorized into different levels in a fair value hierarchy based on inputs used in the valuation techniques as follows:

Level 1: unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2: inputs other than quoted prices included in Level 1 that are observable for the asset, either directly or indirectly; and

Level 3: inputs for assets and liabilities that are based on observable market data.

(d) Inventory:

Inventory is measured at the lower of cost and net realizable value. The cost of inventory is determined on a weighted average basis. Net realizable value is determined on a replacement cost basis.

(e) Property, plant and equipment:

(i) Recognition and measurement:

Items of property, plant and equipment are measured at cost less accumulated depreciation and accumulated impairment losses.

Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labour, any other costs directly attributable to bringing the asset to a working condition for its intended use, the costs of dismantling and removing the items and restoring the site on which they are located and capitalized borrowing costs. Borrowing costs on qualifying assets are capitalized as part of the cost of the asset and are based on the Corporation's average cost of borrowing.

When parts of an item of property, plant and equipment have different useful lives, they are accounted for as separate items (major components).



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (e) Property, plant and equipment (continued):

#### (ii) Subsequent costs:

The cost of replacing part of an item of property, plant and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Corporation and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day servicing of property, plant and equipment are recognized in the statement of income as incurred.

#### (iii) Depreciation:

Depreciation is recognized in the statement of income on a straight-line basis over the estimated useful life of each part or component of an item of property, plant and equipment. Land is not depreciated.

The estimated useful lives for the current and comparative years are as follows:

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Buildings	10 – 50 years
Distribution and metering equipment	8 – 80 years
Other assets	5 – 20 years

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Gains and losses on disposal of an item of property, plant and equipment are determined by comparing the proceeds from disposal with the carrying amount of property, plant and equipment and are recognized within other income in the statement of income.

Depreciation methods, useful lives and residual values are reviewed at each reporting date.

### (f) Intangible assets:

#### (i) Computer software:

Computer software that is acquired or developed by the Corporation, including software that is not integral to the functionality of equipment purchased, which have finite useful lives, are measured at cost less accumulated amortization and accumulated impairment losses.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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### 3. Material accounting policies (continued):

(f) Intangible assets (continued):

(ii) Amortization:

Amortization is recognized in the statement of income on a straight-line basis over the estimated useful lives of the intangible assets, from the date that they are available for use. The estimated useful lives for the current and comparative years are:

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Computer software	5 - 10 years
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Amortization methods and useful lives are reviewed at each reporting date.

(g) Impairment:

(i) Financial assets:

A financial asset is assessed at each reporting date to determine whether there is any objective evidence that it is impaired. A financial asset is considered to be impaired if objective evidence indicates that one or more events have had a negative effect on the estimated future cash flows of that asset.

A loss allowance for expected credit losses on financial assets measured at amortized cost is recognized at the reporting date. The loss allowance is measured at an amount equal to the lifetime expected credit losses for the asset.

All impairment losses are recognized in the statement of income. An impairment loss is reversed if the reversal can be related objectively to an event occurring after the impairment loss was recognized. For financial assets measured at amortized cost, the reversal is recognized in the statement of income.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (g) Impairment (continued):

#### (ii) Non-financial assets:

The carrying amounts of the Corporation's non-financial assets, other than inventory, work-in-progress and deferred tax assets, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

Impairment losses recognized in prior periods are assessed at each reporting date for any indications that the loss has decreased or no longer exists. An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount. An impairment loss is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation or amortization, if no impairment loss had been recognized.

For the purpose of impairment testing, assets are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit"). The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset.

An impairment loss is recognized if the carrying amount of an asset or its cash-generating unit exceeds its estimated recoverable amount. Impairment losses are recognized in the statement of income and are allocated to reduce the carrying amount of the assets in the cash-generating unit on a pro-rata basis.

### (h) Employee future benefits:

#### (i) Pension plan:

The Corporation provides a pension plan for all its full-time employees through Ontario Municipal Employees Retirement System ("OMERS"). OMERS is a multi-employer, contributory, defined benefit pension plan established in 1962 by the Province of Ontario for employees of municipalities, local boards and school boards in Ontario. Both participating employers and employees are required to make plan contributions based on participating employees' contributory earnings.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (h) Employee future benefits (continued):

#### (i) Pension plan (continued):

As OMERS does not segregate its pension assets and liabilities information by individual employer, there is not sufficient information to enable the Corporation to account for the plan as a defined benefit plan. The plan has been accounted for as a defined contribution plan. Obligations for contributions to defined contribution pension plans are recognized as an employee benefit expense in income when they are due. At December 31, 2024, the OMERS plan is in a deficit position.

#### (ii) Employee future benefits:

The Corporation pays certain health, dental and life insurance benefits, under unfunded defined benefit plans, on behalf of its retired employees. These benefits are provided through a group defined benefit plan. The Corporation is the legal sponsor of the plan. There is a policy in place to allocate the net defined benefit cost to the entities participating in the group plan. The allocation is based on the obligation attributable to the plan participants. The Corporation has reflected its share of the defined benefit costs and related liabilities, as calculated by the actuary, in these financial statements.

The Corporation accrues the cost of these employee future benefits over the periods in which the employees earn the benefits. The accrued benefit obligations and the current service costs are actuarially determined by applying the projected unit credit method and reflect management's best estimate of certain underlying assumptions. The current service cost for a period is equal to the actuarial present value of benefits attributed to that period in which employees rendered their services.

Remeasurements of the net defined benefit liability, which comprise actuarial gains and losses, are recognized immediately in other comprehensive income. The Corporation determines the net interest expense on the net defined benefit liability for the period by applying the discount rate used to measure the defined benefit liability at the beginning of the annual period, taking into account any changes in the net benefit liability during the period as a result of benefit payments. Net interest expense and other expenses related to defined benefit plans are recognized in the statement of income.

Gains and losses on account of curtailment or settlement of these employee future benefits are recognized immediately in income.

In accordance with the WSOA and Employee Arrangement Agreement between the Commission and the Corporation, the Plan was amended such that all active Commission management and union employees were included as part of the Plan, and have their coverage sponsored by the Corporation. A date of December 31, 2012 was assumed by the actuary to reflect this event in the Plan.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (i) Deferred revenue:

Certain customers are also required to contribute towards the capital cost of construction of distribution assets in order to provide ongoing service. These contributions fall within the scope of IFRS 15 *Revenue from Contracts with Customers*. The contributions are received to obtain a connection to the distribution system in order to receive ongoing access to electricity. The Corporation has concluded that the performance obligation is the supply of electricity over the life of the relationship with the customer which is satisfied over time as the customer receives and consumes the electricity. Revenue is recognized on a straight-line basis over the useful life of the related asset.

### (j) Customer deposits:

Customer deposits include cash collections from customers, which are applied against any unpaid portion of individual customer accounts. Effective January 1, 2011, the OEB required that a customer's deposit be applied to the customer's account prior to the severance process commencing. OEB rules also specify that customer deposits in excess of unpaid account balances must be refunded to customers. Customer deposits are also refundable at the Corporation's discretion when a customer demonstrates an acceptable level of credit risk. The Corporation only retains commercial deposits. Customer deposits also include monies received from developers and distribution customers for services that are recorded as construction in progress and, once the assets are put into service, will be accounted for through a capital contribution.

### (k) Revenue recognition:

IFRS 15 *Revenue from Contracts with Customers* establishes a comprehensive framework for determining whether, how much and when revenue is recognized.

The performance obligations for the sale and distribution of electricity are recognized over time using an output method to measure the satisfaction of the performance obligation. The value of the electricity services transferred to the customer is determined on the basis of cyclical meter readings plus estimated customer usage since the last meter reading date to the end of the year and represents the amount that the Corporation has the right to bill. Revenue includes the cost of electricity supplied, distribution, and any other regulatory charges. The related cost of power is recorded on the basis of power used.

For customer billings related to electricity generated by third parties and the related costs of providing electricity service, such as transmission services and other services provided by third parties, the Corporation has determined that it is acting as a principal for these electricity charges and, therefore, has presented electricity revenue on a gross basis.

Revenue for the Corporation is recognized when the Corporation satisfies the performance obligations within the contract(s) for conditions of service, which is when the distribution and delivery of electricity is achieved or specific services are performed.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (k) Revenue recognition (continued):

Revenue includes an estimate of unbilled revenue. Unbilled revenue represents an estimate of electricity consumed by customers since the date of each customer's last meter reading. Actual electricity usage could differ from those estimates.

Revenue is measured at the fair value of the consideration received or receivable, net of any taxes which may be applicable.

Other income for work orders is recorded on a net basis as the Corporation is acting as an agent for this revenue stream. All other amounts in other income are recorded on a gross basis and are recognized when services are rendered.

### (l) Finance costs:

Finance costs comprise interest expense on borrowings and unwinding of the discount rate on provisions.

### (m) Income taxes:

The income tax expense comprises current and deferred tax. Income tax expense is recognized in the statement of income except to the extent that it relates to items recognized directly in equity, in which case, it is recognized in equity.

Under the Electricity Act 1998, the Corporation makes payments in lieu of corporate taxes to Ontario Electricity Financial Corporation. These payments are calculated in accordance with the rules for computing taxable income and taxable capital and other relevant amounts contained in the Income Tax Act (Canada) and the Corporation Tax Act (Ontario) as modified by the Electricity Act, 1998 and related regulations. Payments in lieu of taxes ("PILS") are referred to as income taxes.

Current tax is the expected PILs payable on the taxable income for the year, using tax rates enacted or substantively enacted at the reporting date and any adjustment to tax payable in respect of previous years.

Deferred tax is recognized using the balance sheet method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax assets and liabilities are measured using enacted or substantively enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the statement of income in the year that includes the date of enactment or substantive enactment.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (n) Set-off and reporting on a net basis:

Assets and liabilities and income and expenses are not offset and reported on a net basis unless required or permitted by IFRS. For financial assets and financial liabilities, offsetting is permitted when, and only when, the Corporation has a legally enforceable right to set-off and intends either to settle on a net basis, or to realize the asset and settle the liability simultaneously.

### (o) New standards and interpretations not yet adopted:

The following standards which are not yet effective for the year ended December 31, 2024, have not been applied in preparing these financial statements.

#### **Lack of exchangeability – Amendments to IAS 21**

On August 15, 2023, the IASB issued amendments to IAS 21. *The Effects of Changes in Foreign Exchange Rates* to clarify when a currency is exchangeable into another currency and how a company estimates a spot rate when a currency lacks exchangeability.

The amendments apply for annual reporting periods beginning on or after January 1, 2025.

#### **Classification and Measurement of Financial Instruments – Amendments to IFRS 9 and IFRS 7**

On May 30, 2024, the IASB issued amendments to the classification and measurement requirements in IFRS 9 *Financial Instruments*. The amendments will address diversity in accounting practice by making the requirements more understandable and consistent. The IASB has also amended IFRS 7 *Financial Instruments – Disclosures*. Companies will now be required to provide additional disclosures on financial assets and financial liabilities that have certain contingent features.

The amendments apply for annual reporting periods beginning on or after January 1, 2026.

#### **Improvements to IFRS Accounting Standards – Amendments to IFRS 1, IFRS 7, IFRS 9, IFRS 10, and IAS 7**

On July 18, 2024, the IASB issued minor amendments to IFRS Accounting Standards and accompanying guidance as part of its regular maintenance of the Standards.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 3. Material accounting policies (continued):

### (o) New standards and interpretations not yet adopted (continued):

These amendments, published in a single document *Annual Improvements to IFRS Accounting Standards – Volume 11*, include clarifications, simplifications, corrections and changes aimed at improving the consistency of several IFRS Accounting Standards.

These amendments apply for annual reporting periods beginning on or after January 1, 2026.

#### **Contracts Referencing Nature-dependent Electricity – Amendments to IFRS 9 and IFRS 7**

On December 18, 2024, the IASB issued targeted amendments to help companies better report the financial effects of nature-dependent electricity contracts, which are often structured as power purchase agreements.

The amendments apply for annual reporting periods beginning on or after January 1, 2026.

#### **Presentation and Disclosure in Financial Statements – New Standard (IFRS 18)**

On April 9, 2024, the IASB issued a new standard IFRS 18, *Presentation and Disclosure in Financial Statements*. The new requirements introduced in IFRS 18 will help to achieve comparability of the financial performance of similar entities, especially related to how 'operating profit or loss' is defined. The new disclosures required for some management-defined performance measures will also enhance transparency.

The amendments apply for annual reporting periods beginning on or after January 1, 2027.

#### **Subsidiaries without Public Accountability – New Standard (IFRS 19)**

On May 9, 2024, the IASB issued a new standard IFRS 19 *Subsidiaries without Public Accountability: Disclosures* which permits eligible subsidiaries to use IFRS Accounting Standards with reduced disclosures. Applying IFRS 19 will reduce the costs of preparing subsidiaries' financial statements while maintaining the usefulness of the information for users of their financial statements.

The amendments apply for annual reporting periods beginning on or after January 1, 2027.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 3. Material accounting policies (continued):

The Corporation has assessed the potential impacts on its financial statements, and determined that the future pronouncements will not have a material impact on the Corporation.

## 4. Cash and cash equivalents:

	2024	2023
Cash and cash equivalents	\$ 11,118	\$ 19,824
Cash and cash equivalents	\$ 11,118	\$ 19,824

The Corporation and WCUL have a loan agreement with a Canadian chartered bank providing up to \$75,000 (2023 - \$75,000) bearing interest at prime minus 0.25% or Canadian Overnight Repo Rate Average (CORRA) plus 1.125%, based on current S&P rating for WCUL, with interest accruing daily. All borrowings under this agreement are repayable by August 31, 2027. This agreement restricts the availability of the Corporation to lien assets. As of December 31, 2024, the outstanding balance in the loan was \$nil (2023 - \$nil).

## 5. Accounts receivable:

	2024	2023
Trade receivables	\$ 36,001	\$ 28,356
Unbilled revenue	23,567	22,303
Allowance for doubtful accounts	(2,123)	(2,045)
Accounts receivable	\$ 57,445	\$ 48,614

The Company's exposure to credit risk and impairment losses related to trade receivables is disclosed in Note 22.

## 6. Inventory:

Inventory consists of parts and supplies acquired for capital, internal construction, maintenance or recoverable work. The amount of inventory consumed by the Corporation during 2024 was \$6,915 (2023 - \$5,954).



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 7. Property, plant and equipment:

### (a) Cost:

	Land and buildings	Distribution and metering equipment	Other assets	Construction -in- progress	Total
Balance at January 1, 2023	\$ 25,949	\$ 295,299	\$ 34,115	\$ 5,591	\$ 360,954
Additions	958	16,952	3,239	(895)	20,254
Disposals/retirements/transfers	(64)	(1,590)	(41)	(1,352)	(3,047)
Balance at December 31, 2023	\$ 26,843	\$ 310,661	\$ 37,313	\$ 3,344	\$ 378,161
Balance at January 1, 2024	\$ 26,843	\$ 310,661	\$ 37,313	\$ 3,344	\$ 378,161
Additions	211	17,360	2,996	4,957	25,524
Disposals/retirements/transfers	(14)	(1,591)	(663)	–	(2,268)
Balance at December 31, 2024	\$ 27,040	\$ 326,430	\$ 39,646	\$ 8,301	\$ 401,417

### (b) Accumulated depreciation:

	Land and buildings	Distribution and metering equipment	Other assets	Construction -in- progress	Total
Balance at January 1, 2023	\$ 9,695	\$ 75,463	\$ 22,884	\$ –	\$ 108,042
Depreciation charge for the year	776	8,340	2,331	–	11,447
Disposals/retirements/transfers	(5)	(568)	(34)	–	(607)
Balance at December 31, 2023	\$ 10,466	\$ 83,235	\$ 25,181	\$ –	\$ 118,882
Balance at January 1, 2024	\$ 10,466	\$ 83,235	\$ 25,181	\$ –	\$ 118,882
Depreciation charge for the year	801	8,635	2,522	–	11,958
Disposals/retirements/transfers	–	(468)	(313)	–	(781)
Balance at December 31, 2024	\$ 11,267	\$ 91,402	\$ 27,390	\$ –	\$ 130,059

### (c) Carrying amounts:

	Land and buildings	Distribution and metering equipment	Other assets	Construction -in- progress	Total
December 31, 2023	\$ 16,377	\$ 227,426	\$ 12,132	\$ 3,344	\$ 259,279
December 31, 2024	\$ 15,773	\$ 235,028	\$ 12,256	\$ 8,301	\$ 271,358



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 8. Intangible assets:

### (a) Cost or deemed cost:

	Computer software
Balance at January 1, 2023	\$ 32,258
Additions	450
Balance at December 31, 2023	\$ 32,708
Balance at January 1, 2024	\$ 32,708
Additions	726
Balance at December 31, 2024	\$ 33,434

### (b) Accumulated amortization:

	Computer software
Balance at January 1, 2023	\$ 30,956
Amortization charge for the year	524
Balance at December 31, 2023	\$ 31,480
Balance at January 1, 2024	\$ 31,480
Amortization charge for the year	552
Balance at December 31, 2024	\$ 32,032

### (c) Carrying amounts:

	Computer software
December 31, 2023	\$ 1,228
December 31, 2024	\$ 1,402



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 9. Accounts payable and accruals:

	2024	2023
Trade payables	\$ 21,597	\$ 22,170
Accrued expenses	10,014	7,674
	<u>\$ 31,611</u>	<u>\$ 29,844</u>

Information about the Corporation's exposure to currency and liquidity risk is included in Note 22.

## 10. Customer deposits:

Customer deposits represent cash deposits from electricity distribution commercial customers and construction deposits.

Customer deposits comprise:

	2024	2023
Customer deposits	\$ 4,353	\$ 3,298
Construction deposits	4,093	3,735
	<u>8,446</u>	<u>7,033</u>
Less: current portion	(1,591)	(1,107)
	<u>\$ 6,855</u>	<u>\$ 5,926</u>

## 11. Deferred revenue – customer contributions:

Deferred revenue relates to the capital contributions received from customers and others. The amount of deferred revenue received from customers is \$21,109 (2023 - \$19,375). Deferred revenue is recognized as revenue on a straight-line basis over the life of the asset for which the contribution was received.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 12. Employee future benefits:

The Corporation pays certain health, dental and life insurance benefits on behalf of its retired employees. Significant assumptions underlying the actuarial valuation include management's best estimate of the interest (discount) rate, mortality decrement, the average retirement age of employees, employee turnover and expected health and dental care costs.

The plan was amended such that all active Commission management and union employees covered under the Commission collective agreement from July 1, 2012, would be included as part of the Plan and have their coverage sponsored by the Corporation. The December 31, 2012, date was chosen to reflect this event in the Plan. Reference Note 1 for further information.

The Corporation measures its accrued benefit liability for accounting purposes as at December 31 each year. A valuation date of October 31, 2022, with extrapolation to December 31, 2024, has been used to calculate the current obligation.

The Corporation's employee future benefit liability consists of the following:

	2024	2023
Defined benefit liability	\$ 48,876	\$ 48,299
Employee future benefits, end of year	\$ 48,876	\$ 48,299

Information about the Corporation's unfunded defined benefit plan is as follows:

Changes in the present value of the defined benefit obligation:

	2024	2023
Defined benefit liability, beginning of year	\$ 48,299	\$ 43,729
Defined benefit expense	3,105	3,020
Actuarial (gain)/loss on liability recognized in other comprehensive income	(275)	3,651
Benefits paid for the year	(2,253)	(2,101)
Defined benefit liability, end of year	\$ 48,876	\$ 48,299



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 12. Employee future benefits (continued):

Components of defined benefit expense recognized are as follows:

	2024	2023
Current service cost	\$ 776	\$ 703
Past service cost	130	125
Interest cost	2,199	2,192
Defined benefit expense	\$ 3,105	\$ 3,020

The defined benefit expense for the year is recognized as administrative expense on the statement of income.

The main actuarial assumptions underlying the valuation are as follows:

(a) Health care cost trend rates:

The health care cost trend for prescription drugs is estimated to increase at 5.9% in 2025 grading down to 4.0% by 2041. Other health expenses are estimated to increase at 4.76% in 2025 grading down to 4.0% by 2041. Dental expenses are estimated to increase at 4.0% per year.

(b) Discount rate:

The liabilities at the period end and the present value of future liabilities were determined using a discount rate of 4.7% (2023 - 4.6%) representing an estimate of the yield on high quality corporate bonds as at the valuation date.

(c) Mortality decrement:

The rates applicable to public sector retirees in the 2014 Canadian Pensioners Mortality table produced by the Canadian Institute of Actuaries were used as the basis of these assumptions.

A 1% or one-year change in actuarial assumptions, assuming all other factors remain constant, has the following impact on the defined benefit liability carrying amount:

	2024		2023	
	Increase	Decrease	Increase	Decrease
Health care trend rate (1% change) \$	7,482	\$ (6,013)	\$ 7,041	\$ (5,752)
Discount rate (1% change)	(6,168)	7,771	(6,273)	7,821
Mortality (1 year)	1,890	(1,752)	1,762	(1,720)



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 13. Pension plan:

The Corporation participates in OMERS, a multi-employer plan, on behalf of its employees. The plan has been accounted for as a defined contribution plan. Contributions during the year were 9.0% (2023 - 9.0%) for employee earnings below the year's maximum pensionable earnings and 14.6% (2023 - 14.6%) thereafter. During 2024, the Corporation expensed contributions totalling \$3,295 (2023 - \$3,108) made to OMERS in respect of the employer's required contributions to the plan. Estimated contributions for 2025 are \$3,574.

## 14. Income taxes (provision for payment in lieu of corporate taxes):

	2024	2023
Current provisions for payments in lieu of corporate tax expense:		
Current year	\$ 2,197	\$ 1,133
Adjustments for prior years	(8)	-
Deferred income tax expense:		
Origination and reversal of temporary differences	763	37
Adjustments for prior years	520	22
Tax related to remeasurement of employee future benefits	(73)	967
<b>Total income taxes expense</b>	<b>\$ 3,399</b>	<b>\$ 2,159</b>

The provision for income taxes varies from amounts which would be computed by applying the Corporation's combined statutory income tax rate as follows:

	2024	2023
Basic rate applied to total comprehensive income before income tax	26.50%	26.50%
Change in income tax resulting from:		
Adjustments for prior years	3.91%	0.22%
Items not deductible for tax purposes and other	(0.52%)	0.34%
<b>Effective rate applied to comprehensive income before income taxes</b>	<b>29.89%</b>	<b>27.06%</b>



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 14. Income taxes (provision for payment in lieu of corporate taxes) (continued):

The components of the deferred income tax assets and liabilities are summarized as follows:

	2024	2023
Deferred tax assets:		
Employee benefits	\$ 7,179	\$ 7,026
Regulatory assets	2,059	2,593
Other	263	307
Deferred tax liabilities:		
Property, plant and equipment	(8,092)	(7,219)
Other	(66)	(80)
Net deferred income tax asset	\$ 1,343	\$ 2,627

At December 31, 2024, a deferred tax asset of \$1,343 (2023 - \$2,627) has been recorded. The utilization of this tax asset is dependent on future taxable income in excess of income arising from the reversal of existing taxable temporary differences. The Corporation believes that this asset should be recognized as it will be recovered through future rates.

## 15. Share capital:

	2024	2023
Authorized:		
Unlimited common shares		
Issued:		
11,000 common shares	\$ 31,008	\$ 31,008



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 16. Distribution revenue:

The Corporation generates revenue primarily from the sale and distribution of electricity to its customers. Other revenue consists of services provided to related parties and other income. Additional information is provided in Note 17 with components of other income.

In the following table, distribution revenue is disaggregated by type of customer:

	2024	2023
Residential	\$ 29,791	\$ 28,329
General service - small distribution	20,261	18,994
General service - large distribution	4,523	4,278
Street lighting distribution	1,803	1,713
Total distribution revenue	\$ 56,378	\$ 53,314

## 17. Other income:

Other income comprises:

	2024	2023
Change in occupancy	\$ 337	\$ 333
Late payment and collection charges	512	433
Other operating revenues	133	119
Loss on disposal of property, plant and equipment	(670)	(1,507)
Pole attachment revenue	1,438	1,352
Sale of scrap	234	132
Sewer surcharge billing and collecting	2,614	2,520
Total other income	\$ 4,598	\$ 3,382



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 18. Employee benefits:

Employee benefit amounts are allocated between Operating and distribution expenses and Billing, collecting and administration expenses.

	Note	2024	2023
Salaries and benefits		\$ 40,369	\$ 37,941
Contributions to multi-employer plan	13	3,295	3,108
Expenses related to defined benefit plans	12	3,105	3,020
		\$ 46,769	\$ 44,069

## 19. Finance expense (income):

	2024	2023
Finance income:		
Interest income on bank balances	\$ (1,489)	\$ (1,002)
Interest income on investments	-	(538)
	(1,489)	(1,540)
Finance expense:		
Interest expense on due to related party		
- revolving credit agreement	2,108	2,108
Interest expense on due to related party - promissory note	1,071	1,076
Interest expense on customer and security deposits	193	192
Interest expense other	1	255
Amortization of debt issuance costs	16	16
	3,389	3,647
Net finance expense	\$ 1,900	\$ 2,107



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 20. Changes in non-cash operating working capital:

Changes in non-cash operating working capital comprises:

	2024	2023
Net finance expense	\$ 1,884	\$ 2,091
Accounts receivable	(8,831)	(2,650)
Due from related parties	846	(2,316)
Inventory	709	(2,370)
Other assets	(199)	467
Deferred income taxes	1,284	174
Accounts payable and accruals	1,767	1,919
PIL of income taxes	619	(809)
Due to related parties	1,396	1,540
Deferred revenue	(4,118)	29
Customer deposits	1,413	714
Employee future benefits	852	919
Total changes in non-cash operating working capital	\$ (2,378)	\$ (292)

## 21. Related party transactions:

### (a) Parent and ultimate controlling party:

The parent is WCUL. The parent of WCUL and the ultimate controlling party of the Corporation is the City. WCUL and the City produce financial statements that are available for public use.

### (b) Key management personnel:

The key management personnel of the Corporation has been defined as members of its board of directors and executive management team members.

Key management compensation:

	2024	2023
Salaries and other short-term benefits	\$ 1,083	\$ 921
Employee future benefits	17	16
	\$ 1,100	\$ 937



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 21. Related party transactions (continued):

### (c) Transactions with parent and ultimate controlling party:

The Corporation provides waste water billing and related services for the City, for which the Corporation charges a fee. The total amount charged to the City for the year ended December 31, 2024, was \$2,614 (2023 - \$2,520). The fee charged for the waste water billing and related services is recognized as other income from operations on the statement of income.

The Corporation collects and remits the waste water billing amounts on behalf of the City. The total amount owing to the City at December 31, 2024 was \$10,787 (2023 - \$9,391).

The Corporation has issued a standby letter of credit to the City in the amount of \$300 (2023 - \$300) as an indemnity deposit for municipal consent permits. There was no amount owing on this facility at December 31, 2024.

Under a Management Services Agreement effective October 10, 2017, the Corporation provides certain finance, administration, management and other support services to its parent, WCUL. The total amount charged to WCUL for the year ended December 31, 2024, was \$220 (2023 - \$88).

### (d) Transactions with entities under common control:

On November 6, 2012, the Corporation and the Commission entered into a WSOA, whereby the Corporation agreed to provide services to the Commission with respect to the operation of the Commission's water system. The total amount charged to the Commission for the year ended December 31, 2024, was \$20,752 (2023 - \$20,745).

Under a Management Services Agreement effective January 1, 2000, the Corporation provides certain finance, administration, human resources, management and other support services to its affiliate, Energy. The total amount charged to Energy for the year ended December 31, 2024, was \$727 (2023 - \$784).

### (e) Amounts due from (to) related parties:

The current amounts due from related parties consist of:

	2024	2023
Due from companies under common control:		
Due from Windsor Utilities Commission	\$ 3,218	\$ 4,660
Due from ENWIN Energy Ltd.	459	1,080
Due from Windsor Canada Utilities Ltd.	3,277	2,060
	<u>\$ 6,954</u>	<u>\$ 7,800</u>



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 21. Related party transactions (continued):

(e) Amounts due from (to) related parties (continued):

The amounts due from the Commission, Energy and WCUL are due on demand and are non-interest bearing. These amounts have no specified repayment terms.

The current amount due to related parties consists of:

	2024	2023
Due to ultimate parent:		
Due to the Corporation of the City of Windsor	\$ 10,787	\$ 9,391
	\$ 10,787	\$ 9,391

The amount due to the City is unsecured and non-interest bearing.

The non-current amount due to related party - promissory note consists of:

	2024	2023
Due to parent:		
Promissory note payable to Windsor Canada Utilities Ltd.	\$ 28,421	\$ 28,550
	\$ 28,421	\$ 28,550

The promissory note payable to WCUL is unsecured, due on the earlier of 375 days from the date of demand or December 31, 2028. This note had an initial interest rate of 4.16%, but is adjustable to the OEB's deemed long-term debt rate in effect for the Corporation at the time of the COS, which is 3.82%. This note has no specified repayment terms.

The non-current amount due to related party - revolving credit agreement consists of:

	2024	2023
Due to parent:		
Revolving loan payable to Windsor Canada Utilities Ltd.	\$ 51,000	\$ 51,000
Less: debt issuance costs	(442)	(458)
	\$ 50,558	\$ 50,542



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 21. Related party transactions (continued):

(e) Amounts due from (to) related parties (continued):

On November 12, 2012 WCUL issued a \$103,000 debenture from which proceeds of \$51,000 were advanced to the Corporation under this loan agreement. The loan has terms consistent with the WCUL debenture including a maturity date of November 6, 2042, and bears interest at a rate of 4.134% per annum. Interest is payable in equal semi-annual instalments of \$1,054, in arrears, on May 6 and November 6 each year commencing May 6, 2013. In order to put the debt in place, the Corporation incurred debt issuance costs in the amount of \$601.

The Corporation incurred interest expense in respect of this revolving credit agreement of \$2,108 (2023 - \$2,108), which is included in finance expense on the statement of income.

## 22. Financial instruments and risk management:

The carrying values of cash and cash equivalents, accounts receivable, amounts due from (to) related parties, accounts payable and accruals approximate fair values because of the short maturity of these instruments. All fair values are categorized as Level 2 in the fair value hierarchy. No transfers have occurred during the year between levels of the fair value hierarchy.

The Corporation's activities provide for a variety of financial risks, particularly credit risk, market risk and liquidity risk.

(i) Credit risk:

The aging of accounts receivables at the reporting date was:

	2024	2023
Not past due	\$ 45,793	\$ 44,546
Past due 0 - 30 days	8,075	1,924
Past due 31 - 60 days	1,710	997
Greater than 60 days	3,990	3,192
	\$ 59,568	\$ 50,659

Financial assets carry credit risk that a counter-party will fail to discharge an obligation which would result in a financial loss. Financial assets held by the Corporation, such as accounts receivable, expose it to credit risk. The Corporation earns its revenue from a broad base of customers located in the City of Windsor. No single customer accounts for greater than 5.7% (2023 - 5.4%) of revenues.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 22. Financial instruments and risk management (continued):

### (i) Credit risk (continued):

The carrying amount of accounts receivable is reduced through the use of an allowance for impairment and the amount of the related impairment loss is recognized in the statement of income. Subsequent recoveries of receivables previously provisioned are credited to the statement of income. The balance of the allowance for impairment at December 31, 2024, is \$2,123 (2023 - \$2,045).

A continuity of the allowance for doubtful accounts is as follows:

	2024	2023
Balance, beginning of year	\$ 2,045	\$ 1,911
Accounts receivable balances written off	(820)	(827)
Change in provisions for doubtful accounts	898	961
Balance, end of year	\$ 2,123	\$ 2,045

The Corporation's credit risk associated with accounts receivable is primarily related to payments from customers. At December 31, 2024, approximately \$3,990 (2023 - \$3,192) is considered 60 days past due. Credit risk is managed through collection of security deposits from customers in accordance with OEB regulation. As of December 31, 2024, the Corporation holds security deposits in the amount of \$4,353 (2023 - \$3,298).



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 22. Financial instruments and risk management (continued):

### (ii) Liquidity risk:

Liquidity risk is the risk that the Corporation will not be able to meet its obligations associated with financial liabilities. The Corporation monitors its liquidity risk to ensure access to sufficient funds to meet operational and investing requirements. The Corporation's objective is to ensure that sufficient liquidity is on hand to meet obligations as they fall due while minimizing interest expense. The Corporation has access to a line of credit and monitors cash balances to ensure that sufficient levels of liquidity are on hand to meet financial commitments as they come due.

The following are the contractual maturities of financial liabilities:

		6 Months or less	6-12 Months	1-2 years	More than 2 years	Other non cash adjustments	Carrying amount
2024							
Accounts payable and accruals	\$	31,611	\$ —	\$ —	\$ —	\$ —	\$ 31,611
Due to related parties		10,787	—	—	28,421	—	39,208
Customer deposits		795	796	1,591	5,264	—	8,446
Due to related party - revolving credit agreement		—	—	—	51,000	(442)	50,558
	\$	43,193	\$ 796	\$ 1,591	\$ 84,685	\$ (442)	\$ 129,823

		6 Months or less	6-12 Months	1-2 years	More than 2 years	Other non cash adjustments	Carrying amount
2023							
Accounts payable and accruals	\$	29,844	\$ —	\$ —	\$ —	\$ —	\$ 29,844
Due to related parties		9,391	—	—	28,550	—	37,941
Customer deposits		553	554	1,107	4,819	—	7,033
Due to related party - revolving credit agreement		—	—	—	51,000	(458)	50,542
	\$	39,788	\$ 554	\$ 1,107	\$ 84,369	\$ (458)	\$ 125,360



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

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## 22. Financial instruments and risk management (continued):

### (iii) Market risk:

Market risk primarily refers to the risks of loss that result from changes in commodity prices, foreign exchange rates, and interest rates. The Corporation does have bank accounts that would be sensitive to market risk, however the exposure is minimal.

### (iv) Capital disclosures:

The main objectives of the Corporation when managing capital are to ensure ongoing access to funding to maintain and improve the electricity distribution system, compliance with covenants related to its credit facilities, prudent management of its capital structure with regard for recoveries of financing charges permitted by the OEB on its regulated electricity distribution business, and to deliver the appropriate financial returns.

The Corporation's definition of capital includes shareholder's equity and long-term debt. As at December 31, 2024, shareholder's equity amounts to \$156,624 (2023 - \$151,653) and long-term debt amounts to \$50,558 (2023 - \$50,542).

Through rate-setting, the OEB determines the prudent costs of capital that are recoverable by the Corporation in relation to the distribution business. These costs of capital are the interest on debt and return on equity. The OEB permits recovery on the basis of a deemed capital structure of 60% debt and 40% equity. The actual capital structure for the Corporation may differ from the OEB deemed structure.

The Corporation has customary covenants typically associated with long-term debt. The Corporation is in compliance with all credit agreement covenants and limitations associated with its long-term debt.

### (v) Interest rate risk:

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Corporation has addressed this risk by entering into fixed interest rates on debts.

### (vi) Currency risk:

Currency risk is the risk that the fair value or future cash flow of a financial instrument will fluctuate due to changes in foreign exchange rates. The Corporation is exposed to currency risk through its foreign currency denominated bank accounts. A weakening or strengthening of the Canadian dollar can affect the cash flows. This risk is monitored by investment managers and the exposure is limited to these accounts. For sensitivity purposes, a 1% change in the Canadian dollar would result in a change of \$nil (2023 - \$nil) on the balance sheet and statement of income.



# ENWIN UTILITIES LTD.

Notes to the Financial Statements (continued)  
(in thousands of Canadian dollars)

Year ended December 31, 2024

## 23. Commitments and contingencies:

### Contingencies

#### *General*

From time to time, the Corporation is involved in various litigation matters arising in the ordinary course of its business. The Corporation has no reason to believe that the disposition of any such current matter could reasonably be expected to have a materially adverse impact on the Corporation's financial position, results of operations or its ability to carry on any of its business activities.

#### *General liability insurance*

The Corporation is a member of the Municipal Electrical Association Reciprocal Insurance Exchange ("MEARIE"), a self-insurance plan that pools the liability risks of all the Municipal Electric Utilities in Ontario. Members of MEARIE would be assessed on a pro-rata basis should losses be experienced by MEARIE for the years in which the Corporation was a member.

To December 31, 2024, the Corporation has not been made aware of any additional assessments that have not been accrued.

## 24. Regulatory balances:

Under IFRS, there is no recognition of regulatory assets or liabilities, and therefore, the impacts of these transactions are reflected on the statement of income, as applicable. As a result of not recognizing rate-regulated assets and liabilities, the effect was to decrease comprehensive income as follows:

	2024	2023
Gross income:		
Retail settlement variance	\$ (1,701)	\$ (1,598)
Expenses:		
Property, plant and equipment (MIST Meters)	(4,505)	(4,295)
Future PILS	(1,210)	(1,025)
Regulatory adjustment for IFRS conversion	3,252	3,104
Disposition and recovery of regulatory balances	2,089	(1,426)
Pole attachment revenue	(248)	(307)
Interest expense (net of interest revenue)	(29)	(260)
Incremental cloud computing arrangement implementation	(1,588)	—
Low-income Energy Assistance Program (LEAP)	(70)	—
Other	5	4
Decrease in comprehensive income	\$ (4,005)	\$ (5,803)