



Windsor Canada Utilities Ltd.

**Application for approval for Windsor Canada Utilities Ltd.
to acquire E.L.K. Energy from The Corporation of the
Town of Essex.**

**PROCEDURAL ORDER NO. 1
June 27, 2025**

Windsor Canada Utilities Ltd. (Windsor Canada Utilities) and E.L.K. Energy Inc. (E.L.K. Energy) (Applicants) applied to the Ontario Energy Board (OEB) on May 13, 2025, under section 86 (2) of the *Ontario Energy Board Act, 1998*, for approval for Windsor Canada Utilities to acquire 100% of the issued and outstanding shares of E.L.K. Energy from The Corporation of the Town of Essex. Following the acquisition, E.L.K. Energy will continue to operate as a stand-alone entity under the same name.

The application will be heard by commissioners Robert Dodds (presiding), Allison Duff, and Anthony Zlahtic.

A Notice of Hearing was issued on June 2, 2025. Each of School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) applied for intervenor status and cost eligibility.

No objection was received from the Applicants.

SEC and VECC are approved as intervenors. The list of parties in this proceeding is attached as Schedule A to this Procedural Order. SEC and VECC are eligible to apply for an award of costs under the OEB's [Practice Direction on Cost Awards](#).

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party unless a compelling reason is provided when cost claims are filed.

Individuals that represent their own interests should carefully review the OEB's [Practice Direction on Cost Awards](#) for information about the types of costs and disbursements that an individual may claim. For example, while wage or salary losses incurred as a

result of participating in an OEB hearing may be claimed, fees are not generally permitted to be claimed by individuals under the OEB's Cost Award Tariff.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of a hearing.

Confidentiality

The Applicants requested confidential treatment for certain information in the application pursuant to the OEB's Rules of Practice and Procedure and the OEB's *Practice Direction on Confidential Filings* (Practice Direction)¹, and pursuant to the *Freedom of Information and Protection of Privacy Act*. The Applicants stated that the information for which confidential treatment is requested is contained in the Purchase and Sale Agreement and Resolutions by Parties Approving the Proposed Transaction.

1. Appendix C: Purchase and Sale Agreement

- Article 1 (Interpretation) Subsection 1.1– Defined Terms
 - Deposit
 - Governance Representation Agreement (partial)
 - Target Working Capital (partial)
 - Termination Date (partial)
- Article 2 (Purchased Shares and Purchase Price)
 - 2.2 – Purchase Price
 - 2.3 – Delivery of the Estimated Statement and Payout Letters
 - 2.6 – Closing Statement (partial)
- Article 4 (Representations and Warranties as to the Group Entities)
 - 4.26 – Employment and Labour Matters (partial)
 - 4.36 – Water Heater Rental Contracts
- Article 6 (Pre-Closing Covenants of the Parties)
 - 6.1 – Conduct of Business Prior to Closing (partial)
 - 6.6 – Shareholder and Directors; Release
 - 6.9 – Termination of Related Party Transactions
 - 6.15 – Collective Agreements
- Article 8 (Conditions of Closing; Termination)
 - 8.1 – Conditions for the Benefit of Buyer (partial)
- Article 9 (Post-Closing Covenants)
 - 9.4 – Employee Retention
 - 9.5 – Advisory Committee

¹ Parties should refer to the revised OEB Practice Direction on Confidential Filings dated December 17, 2021 (Revised Practice Direction).

- Article 10 (Indemnification)
 - 10.3 – Time Limitations (partial)
 - 10.4 – Other Limitations on Recourse and Indemnification Obligations (partial)
 - 10.6 – Notification
 - 10.7 – Direct Claims
 - 10.8 – Third Party Claims
 - 10.10 – Payment of Indemnification
 - Schedule A (Seller Disclosure Letter)
 - Schedule 1.1(a) – Permitted Liens
 - Schedule 3.4 – Third Party Consents
 - Schedule 4.6 – Authorizations (partial)
 - Schedule 4.10 – Conduct of Business
 - Schedule 4.11(b) – Undisclosed Indebtedness
 - Schedule 4.12 – Material Contracts
 - Schedule 4.13 – Proceedings
 - Schedule 4.23(a) – Intellectual Property
 - Schedule 4.25 – Insurance Policies
 - Schedule 4.26(a) – Employee Listing
 - Schedule 4.26(b) – Independent Contractors
 - Schedule 4.27(a) – Benefit Plans (partial)
 - Schedule 4.29 – Bank Accounts
 - Schedule 4.35 – Prudential Support
 - Schedule 4.36(a) – Water Heater Contract
 - Schedule 6.1(b) – Future Obligations
 - Schedule C (Purchase Price Allocation)
 - Exhibit A (Form of Escrow Agreement)
 - Schedule C – Escrow Agent Wire Instructions
 - Schedule D – Approved Banks
 - Exhibit B (Form of Governance Representation Agreement)
 - Exhibit C (Sample Statement)
 - Exhibit D (Form of Director and Officer Releases)
 - Exhibit E (Form of Shareholder Release)
 - Exhibit H (Form of Local Community Commitment Agreement)
 - Exhibit I (Form of Contribution Agreement)
2. Appendix E: Resolutions by Parties Approving the Proposed Transaction (partial)

In accordance with the Practice Direction, Windsor Canada Utilities provided reasons for the redactions requested, which include requests due to personal information², relevance and commercial sensitivity of the information.

At this time, the OEB will make provision for the filing of submissions on the Applicant's confidentiality requests. Parties that wish to file submissions and reply submissions should refer to the timelines set out in the Order section below. Parties will also be provided access to the confidential documents in accordance with the process outlined in Part 6 of the Practice Direction.

Confidentiality Declaration and Undertaking

The Applicants submitted, as part of the Application, the redacted information in *Appendix E – Resolutions by Parties Approving the Proposed Transaction* should not made available to parties that sign a Confidentiality Declaration and Undertaking. The OEB finds the explanation provided in support of this request to be insufficient, and directs the Applicants to provide a more detailed explanation as to why the requirements set out in the Confidentiality Declaration and Undertaking are not sufficient to allow for intervenors to have access to this material.

Notice of Proposal

As part of the application, the Applicants also submitted a Notice of Proposal under Section 80 and 81 of the *Ontario Energy Board Act, 1998* in relation to Windsor Canada Utilities' proposed acquisition of an interest in E.L.K Energy, which owns a generation facility and distribution system.

By letter dated May 27, 2025, the OEB determined that it will process the Notice of Proposal separately under the file number of EB-2025-0173.

Interrogatories

At this time, provision is being made for written interrogatories. Parties should not engage in detailed exploration of items that do not appear to be relevant and material to the OEB's review of a consolidation application. In developing interrogatories, parties should refer to the OEB's *Handbook to Electricity Distributor and Transmitter Consolidations*, for what the OEB considers in its review. In making its decision on cost

² Appendix C: Purchase and Sale Agreement pages 37-38, page 53, page 68, Schedule A Sub-schedule 4.10, 4.26(a), 4.26(b), 4.27(a), 6.1(b), Exhibit D .

awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's [Rules of Practice and Procedure](#) regarding required naming and numbering conventions and other matters related to interrogatories.

The OEB is making provision for the following related to this proceeding. Further procedural orders may be issued by the OEB.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Applicants shall file further information with the OEB, copying all parties, explaining why intervenors who are prepared to sign the Confidentiality Declaration and Undertaking should not have access to certain information redacted from Appendix E by no later than **June 30, 2025**.

Intervenors that wish to review unredacted versions of the confidential information are required to sign and file the OEB's Confidentiality Declaration and Undertaking form by no later than **June 30, 2025**. The signed Declaration and Undertaking shall be filed with the OEB and a copy shall be delivered to the Applicants.

2. The Applicants shall provide unredacted versions to intervenors who signed the OEB's Confidentiality Declaration and Undertaking by no later than **July 2, 2025**. These unredacted versions should still include redactions for (i) any information which the Applicants claim is personal information; and (ii) certain information redacted from Appendix E for which the Applicants object to providing intervenors access.
3. If OEB staff and intervenors have any objections to the Applicants' request for confidentiality, they may make submissions with the OEB and deliver them to all parties on or before **July 7, 2025**.
4. If the Applicants wish to respond to the submissions on confidentiality, they may file a written reply submission with the OEB and serve it on all parties by, **July 14, 2025**.
5. OEB staff and intervenors shall request any relevant information and material from the Applicants that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by, **July 21, 2025**.

6. The Applicants shall file with the OEB complete written responses to all interrogatories and serve them on intervenors by, **July 28, 2025**.

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

Please quote file number, **EB-2025-0172** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

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

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

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Amber Goher, Advisor, at 416-440-7717 or Amber.Goher@oeb.ca. and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **June 27, 2025**

ONTARIO ENERGY BOARD

By delegation, before: Ritchie Murray

Ritchie Murray
Acting Registrar

SCHEDULE A

LIST OF APPLICANTS AND INTERVENORS

WINDSOR CANADA UTILITIES LTD

PROCEDURAL ORDER NO. 1

DATED JUNE 27, 2025

**Windsor Canada Utilities Ltd.
EB-2025-0172**

APPLICANT & LIST OF INTERVENORS

June 27, 2025

APPLICANT

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**Windsor Canada Utilities Ltd.
EB-2025-0172**

APPLICANT & LIST OF INTERVENORS

June 27, 2025

INTERVENORS

Rep. and Contact Information for Service

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