



**BY EMAIL and RESS**

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July 10, 2025  
Our File: EB20240015

**Attn: Ritchie Murray, Acting Registrar**

Dear Mr. Murray,

**Re: EB-2024-0015 – E.L.K. Energy Inc 2025 – SEC Submissions**

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 5, these are SEC's submissions on the outstanding matters in the application by E.L.K. Energy Inc. ("E.L.K.") for 2025 rates that the OEB has determined will be heard at this juncture. SEC notes that it only intervened with respect to the proposal to dispose of various deferral and variance accounts affected by errors, and is therefore only making submissions related to Accounts 1550, 1551, 1580, 1584, and 1586.

***Account 1550-1586***

As SEC understands it, as part of a DVA audit, E.L.K. discovered that between 2016 and 2020, it made a number of errors in recording balances in Account 1550 (Low Voltage), 1551 (SME Charge VA), 1580 (WMS VA), 1584 (RSVA - Retail Transmission Network Charge), and 1586 (RSVA - Retail Transmission Connection Charge).<sup>1</sup>

The most significant error from a regulatory perspective is that E.L.K. improperly recorded, and later disposed of, amounts that should have been recorded in Account 1550. Specifically, it recorded \$321,388 in host distributor low voltage purchases as wholesale power purchases.<sup>2</sup> While Account 1588 has not been cleared on a final basis for that period, and the erroneous entry can still be corrected, the same is not true for Account 1550. The OEB cleared Account 1550 for that period on a final basis as part of E.L.K.'s 2022 cost of service application.<sup>3</sup>

The OEB's policy regarding error correction on pass-through accounts cleared on a final basis is that it will "determine on a case-by-case basis whether to make a retroactive adjustment based on the

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<sup>1</sup> Application, p.19-21

<sup>2</sup> Application, p.21

<sup>3</sup> Application, p.21

particular circumstances of each case.”<sup>4</sup> This policy permits retroactive adjustments, which departs from the fundamental principle against retroactive ratemaking. As the Board has previously stated, “the principles of certainty and finality are a necessary component of effective rate regulation”<sup>5</sup>, and that there may be circumstances that warrant approving adjustments in an asymmetrical fashion in favor of customers.<sup>6</sup>

SEC submits that the OEB should not allow E.L.K. to make this specific adjustment to Account 1550. E.L.K. has a significant history of problematic accounting, recordkeeping, and operational practices. This is evidenced not only by the results of the broader DVA audit and the number of corrections it seeks in this application, but also by previous rate applications where the OEB approved Settlement Proposals, that included not just the need for significant third-party reviews<sup>7</sup>, but also unique protocols regarding how the company operates.<sup>8</sup>

The evidence with respect to these specific errors is striking. E.L.K. readily admits that the issues all stem from “higher-order issues of staff training and leadership oversight”.<sup>9</sup> The errors are clearly inconsistent with OEB accounting guidance, and SEC is not aware of any other distributor that has made this specific mistake. SEC submits that if the OEB does not disallow a retroactive adjustment in this case, it is unclear when it ever would.

SEC acknowledges that E.L.K. has made significant changes since the errors occurred. These include entering into a management services agreement with a more experienced distributor (Entegrus), who led the review, and has separately implemented changes to internal processes.<sup>10</sup> However, those changes do not excuse what were clearly deeply flawed accounting practices under previous management.

### **Summary**

The OEB should reject the specific proposed adjustment to Account 1550 to hold E.L.K. accountable for significant past accounting errors.

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<sup>4</sup> [OEB Letter: Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition \(October 31, 2019\)](#), p.2

<sup>5</sup> [Decision and Rate Order \(EB-2013-0119\), March 13, 2014](#), p.8; [Decision and Order \(EB-2013-0022\), April 25, 2013](#), p.10

<sup>6</sup> [OEB Letter: Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition \(October 31, 2019\)](#), p.2; See also [Partial Decision and Procedural Order No. 3 \(EB-2014-0301/0072\), March 25, 2015](#), p.7

<sup>7</sup> [Decision and Rate Order \(EB-2016-0066\), November 2, 2017](#), p. 4-5; [Schedule A, Revised Settlement Proposal, p.8-9](#). As part of the Decision and Rate Order, E.L.K. was required to undertake, among other matters, “[a] detailed regulatory audit to ensure that E.L.K. Energy has proper accounting procedures and practices”, “[a] detailed operational review (including, business planning, management oversight, data security, human and financial resources, and comparison with industry’s best practices) with an explanation on how the findings and recommendations will inform E.L.K. Energy’s business plan going forward.”. Schedule B to the Decision and Rate Order also outlines a number of accuracy and consistency issues with the underlying application data in the evidence.

<sup>8</sup> [Decision and Order \(EB-2021-0016, June 30, 2022, Settlement Proposal\)](#). Among other aspects of the approved Settlement Proposal, the OEB approved creation of a variance account that would record the variance between actual O&M costs and those included in rates (p.18). The Settlement Proposal also required a minimum spending on reactive and pro-active tree trimming (p.18), and the creation of a formal asset inspection procedure document (p.16).

<sup>9</sup> Interrogatory Response Staff-14

<sup>10</sup> Application, p.12-13; Interrogatory Response SEC-1



Yours very truly,  
**Shepherd Rubenstein P.C.**

Mark Rubenstein

cc: Brian McKay, SEC (by email)  
Applicant and intervenors (by email)