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BY EMAIL & RESS
registrar@oeb.ca

Mr. Ritchie Murray
Ontario Energy Board
2300 Yonge Street, 27th floor
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Mr. Murray:

Re: E.L.K. Energy Inc. (“E.L.K. Energy”) – Application for 2025 Rates (EB-2024-0015)
(“Application”)
Reply Submission

On June 26, 2025, the Ontario Energy Board (“OEB”) issued Procedural Order No. 5 (“**PO5**”) that bifurcated this proceeding to separate out matters related to Accounts 1588 and 1589. The bifurcation would allow the remainder of its application to be adjudicated by the OEB while E.L.K. Energy continues its investigation into these accounts. The OEB provided an opportunity for written submissions on the Application by the parties, in particular:

1. A Price Cap IR adjustment
2. Updated Retail Transmission and Service Rates and Uniform Transmission Rates
3. Disposition of Group 1 Deferral and Variance Account balances, as of December 31, 2023 – excluding Accounts 1588 and 1589
4. An effective date for rates of May 1, 2025

On July 10, 2025, OEB Staff and the School Energy Coalition (“**SEC**”) filed written submissions. In accordance with PO5, the following are the written reply submissions of E.L.K. Energy. OEB Staff and SEC did not raise concerns with E.L.K. Energy’s Price Cap IR adjustment or Retail Transmission and Service Rates and Uniform Transmission Rates.¹

¹ OEB Staff Submission at pgs 1-2.

1. Context of the Application

Both OEB Staff and SEC ignore one key aspect of the Application in their submissions: the objective in the *Ontario Energy Board Act, 1998* that the OEB must facilitate the maintenance of a financially viable electricity industry. In Decision and Rate Order EB-2023-0013, the OEB expressed concerns about the potential for E.L.K. Energy's financial and operational challenges to persist despite management's best efforts to mitigate them, which could continue to adversely impact the utility's financial performance. 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.²

In the most recent version of Electricity Reporting & Record Keeping Requirements, E.L.K. Energy's achieved return on equity for 2022 and 2023 were -1.97% and -22.33%, respectively, with 2023 income being a net loss of \$1.1 million.³ The return in 2023 was over 3,000 basis points below deemed return on equity. E.L.K. Energy is a Group 1 electricity distributor and rates will further decrease even if Account 1550 adjustments are included for amounts prior to 2021.⁴

Despite this serious threat to the financial viability of E.L.K. Energy, both OEB Staff and SEC seek further disallowances and rate reductions for ratepayers that are already paying among the lowest, if not the lowest, electricity distribution rates in Ontario. The practical result of accepting the submissions of OEB Staff on effective date and SEC on disallowing Account 1550 will only make a bad financial situation worse. It is also not clear what a disallowance will achieve since there is no profit in E.L.K. Energy currently and the disallowance will need to come from planned OM&A or capital expenditures. This is not appropriate in the circumstances as E.L.K. Energy made significant changes to internal accounting processes, as acknowledged by SEC,⁵ to reflect what ratepayers ought to have paid.

2. Effective Date

OEB Staff submits that E.L.K. Energy's rates should become effective the date they are implemented, not May 1, 2025. OEB Staff appears to suggest that the delay in this proceeding was solely due to the actions of E.L.K. Energy. This assertion should not be accepted by the OEB panel.

There were a multitude of factors, including those out of the control of E.L.K. Energy, that contributed to a decision not being issued by the OEB in time for E.L.K. Energy to implement rates by the effective date of May 1, 2025. There are other factors contributing to delay that were not highlighted by OEB Staff, including:

1. The OEB waiting over 5 months for the settlement process to conclude on two narrow corrections to the Settlement Proposal in EB-2021-0016 before issuing Procedural Order No. 2 to begin processing the substantive issues in the Application.

² Decision and Rate Order EB-2023-0013, E.L.K. Energy Inc., March 21, 2024, at pg 21, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/845575/File/document>

³ Electricity Reporting & Record Keeping Requirements (RRR): Section 2.1.5.6 Regulated Return on Equity (ROE).

⁴ IR Response Staff-14(d).

⁵ SEC Submission at pg 2.

2. OEB Staff asking an interrogatory of a third party, Hydro One, not participating in the proceeding on the same issue E.L.K. Energy attempted to obtain a response from Hydro One on several occasions before filing the application.
3. The discovery of new facts from Hydro One during the proceeding in respect of Accounts 1588 and 1589.
4. The OEB issuing a notice of hearing 22 days after the application was filed despite a typical performance standard of 10 days.
5. The OEB set an irregular process that included two rounds of interrogatories.
6. Both E.L.K. Energy and interveners agreed to an extension of the filing date for the settlement proposal.

E.L.K. Energy is not casting blame on any one party for the cause of delay in this proceeding, rather the above factors highlight that E.L.K. Energy was not the sole source of delay. E.L.K. Energy submits that the extended timeline of this proceeding has primarily resulted from the complexity of this non-routine IRM application that seeks to resolve accounting matters from the past decade. Accordingly, E.L.K. Energy maintains that an effective date of May 1, 2025 is appropriate.

3. Disposition of Group 1 DVAs

(a) Updates to 2025 Rate Generator Model & 48 Month Disposition Period

OEB staff submitted that E.L.K. Energy should file an updated 2025 Rate Generator Model with the appropriate information for the Class A customer as part of its reply submission.⁶ OEB Staff also believes that the originally proposed 48-month disposition period should be shortened as this disposition will only relate to the Group 1 DVAs, excluding Accounts 1550, 1588 and 1589 and asked E.L.K. Energy to propose a reasonable disposition period in its reply submission.⁷

Please see the attached 2025 Rate Generator Model with a disposition period of 12 months and updates for the Class A customer, excluding Accounts 1550, 1588 and 1589. Given that the model was password protected, in order to represent the abeyance of 1550, 1588 and 1589 E.L.K. Energy was required to make entries into Tab 3 – Continuity Schedule of the IRM Model as though E.L.K. Energy had disposed of the entire balances in 1550, 1588 and 1589. This is a temporary measure to provide bill impacts associated with the current request, and will be updated with the assistance of OEB Staff prior to implementation of rates.

(b) Account 1550 – Deferral of Disposition

OEB staff submits that the disposition of Account 1550 should be considered in conjunction with Accounts 1588 and 1589, given the interrelated nature of the proposed retroactive adjustments, which are reflected in the balances of these accounts. OEB staff cannot foreclose the possibility that the

⁶ OEB Staff Submission at pg 7.

⁷ OEB Staff Submission at pg 6.

results of the ongoing investigation into Accounts 1588 and 1589 may have implications for the requested disposition of Account 1550.⁸

While E.L.K. Energy disagrees with some of the submissions of OEB Staff on the balances in Account 1550, E.L.K. Energy agrees with OEB Staff that Account 1550 should be considered in conjunction with Accounts 1588 and 1589.

(c) Account 1550 – SEC Requested Disallowance for 2016-2020

Should the OEB not decide to consider the disposition of Account 1550 in conjunction with Accounts 1588 and 1589, E.L.K. Energy is responding in the alternative to the substantive submissions of SEC on the retroactive recovery of balances in Account 1550 from 2016-2020.

SEC requests that the OEB reject the specific proposed adjustment to Account 1550 to hold E.L.K. Energy accountable for significant past accounting errors, resulting in a disallowance of \$321,388 for amounts that were accumulated between 2016 and 2020.⁹ E.L.K. Energy does not agree this is appropriate and sends the wrong message to a utility that is working diligently to improve its processes. OEB staff suggested that E.L.K. Energy provide updated comments on the four factors outlined in the OEB's October 31, 2019 guidance letter in its reply submission or confirm that the original comments are still applicable.¹⁰

As summarized in OEB Staff's submission, E.L.K. Energy is seeking a retroactive adjustment for low voltage purchases between 2016 and 2020 in the amount of \$321,388 given that Account 1550 was approved for final disposition in the 2022 Cost of Service Proceeding. Should the OEB have concerns about intergenerational inequity, E.L.K. Energy reviewed its customer lists and confirms an average annual account turnover of approximately 5% between 2016 and 2025. This means that approximately 95% of customers are identical between 2024 and 2025, 90% of customers are identical between 2023 and 2025, and so on.¹¹

SEC takes an extreme position that "...if the OEB does not disallow a retroactive adjustment in this case, it is unclear when it ever would."¹² SEC's submission is misguided in suggesting that E.L.K. Energy be "held accountable" for "problematic accounting, recordkeeping, and operational practices." E.L.K. Energy submits that SEC failed to provide sufficient reasoning to distinguish why the OEB should not take the approach established in prior cases to retroactive adjustments that appear to be concerned with intergenerational inequity, such as Newmarket-Tay Power Distribution Ltd. (EB-2023-0106) and Synergy North Corporation (EB-2023-0039). E.L.K. Energy brought forward the retroactive corrections as soon as possible, management has been diligent in prioritizing the investigation, consulted with Hydro One and the IESO on numerous occasions and hired external consultants to accelerate the work (i.e., Entegrus).

⁸ OEB Staff Submission at pg 7.

⁹ SEC Submission at pgs 1-2.

¹⁰ OEB Staff Submission at pg 7.

¹¹ See the approach of the OEB in Decision and Order EB-2023-0039, Newmarket-Tay Power Distribution Ltd., May 7, 2024, at pgs 16-17.

¹² SEC Submission at pg 2.

E.L.K. Energy confirms its original comments on the four factors for justifying the retroactive adjustment. E.L.K. Energy will file an updated 2025 Rate Generator Model including Account 1550 and updates for the Class A customer, but excluding Accounts 1588 and 1589, should this be directed by the OEB during the implementation of rates.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in black ink, appearing to read "Colm Boyle". The signature is fluid and cursive, with the first name "Colm" and last name "Boyle" clearly distinguishable.

Colm Boyle

CB/JV