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Windsor Canada Utilities Ltd. (WCUL)

EB-2025-0172

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

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

September 15, 2025

Vulnerable Energy Consumers Coalition

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Overview

1. In May of 2025 Windsor Canada Utilities Ltd, or WCUL filed an application to acquire E.L.K. Energy Inc (ELK). WCUL stated this application is the first of two applications contemplated. The second application contemplated is with respect to the policy guidelines set out at sections 2.2.5 and 2.2.8 of the Handbook to Electricity Distributors and Transmitter Consolidations[1] which establish the ability for consolidating utilities to defer rate rebasing (section 2.2.5) and to consolidate deferral and variance accounts of the combining entities (section 2.2.8). The need for the Applicant to seek these policy waivers is because WCUL is simply a vehicle for the ultimate transaction which is the amalgamation of ENWIN Utilities Ltd. (ENWIN) and ELK. WCUL is a holding company of ENWIN Utilities but is itself not a rate regulated utility nor is it currently subject the jurisdiction of the OEB.

2. WCUL is in turn 100% owned by the Corporation of the City of Windsor. The principal business of WCUL is to provide strategic direction and financing to the operations of ENWIN Utilities Ltd. and ENWIN Energy Ltd. a non-regulated service company[2].

3. The Applicant's proposal is that following regulatory approval of this application ELK and ENWIN will file separate rebasing applications for rates effective May 1, 2027 and January 1, 2028 respectively. Subsequent to the resolution of these applications the two regulated utilities ELK-WCUL and ENWIN would apply to be amalgamated. The timing of this subsequent, "Phase 2, is undetermined.

4. The primary purpose of this application is to determine whether the transaction meets the requirements of the "no harm test." The Board has described this test as follows:

   While the OEB has broad statutory objectives, in applying the "no harm" test, the OEB has primarily focused 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. The OEB considers this to be an appropriate approach, given the performance-based regulatory framework under which all regulated distributors are required to operate and the OEB's existing performance monitoring framework[3].

[1] Handbook, July 11, 2024
[2] Consolidated Financial Statements WCUL December 31, 2017 EB-2019-0032 Exhibit 1, Attachment 1-L
[3] Handbook, page 9

5. The Board is only being asked to approve a share purchase. The only physical change occurring at ELK is at the senior management level .[4] WCUL states "[T}*here are no plans for a reduction in the number of E.L.K. front line operations*.[5] Furthermore WCUL "*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*."[6]

6. The Applicant also states that incremental one-time transaction and transition costs are expected to be approximately $1 million and that these costs will not be included in the revenue requirement of ELK or ENWIN.[7]

7. With respect to financing the transaction a comprehensive capital and debt review is being undertaken by WCUL, part of which will encompass a formal financing structure related to this transaction. However, in the short term, a portion of WCUL/ENWIN's existing $75 million credit facility will be utilized for the transaction.[8]

8. As to the ability of this financial vehicle to include the acquisition of ELK we observe that the credit agreement is in the name of both WCUL and ENWIN. Further ENWIN is in a position of overearning as shown below[9]

Regulated Return on Equity (%)						
		2020	2021	2022	2023	2024
Deemed (%)	ENWIN Utilities Ltd.	8.52%	8.52%	8.52%	8.52%	8.52%
Achieved (%)		5.25%	9.38%	10.78%	9.75%	10.33%

9. Given that WCUL is already the sole shareholder of the much larger ENWIN Utility it would be difficult to conclude that it lacks sufficient governance and oversight capabilities to be the sole shareholder of the smaller ELK. Furthermore, nothing in the approval of this application predetermines any outcome of future cost of service applications or whether the "no harm" test is met as part of a future utility MAADs application.

[4] WCUL AIC , par 30, page 6
[5] Staff-5
[6] Application page 16
[7] Application page 27, Staff-1
[8] Staff-2 Attachment-1
[9] SEC-1

10. In fact, on the face of it an amalgamation of the two Utilities would not meet the "no harm" test as evidenced by a comparison of their respective current rates[10]

Rate Class	Usage/ Demand	ENWIN (Current Rates from EB-2024-0019)				E.L.K (Proposed Rates from EB-2024-0015)				
		Fixed Service Charge	*Volumetric Distribution*	*RTSR*	*Total*	*Fixed Service Charge*	*Volumetric Distribution*	*Low Voltage Service Charge*	*RTSR*	*Total*
Residential (kWh)	750	$30.93	$0.0000	$0.0225	$48.33	$20.44	$0.0000	$0.0035	$0.0195	$38.30
GS<50 (kWh)	2,000	$32.16	$0.0202	$0.0210	$115.87	$20.01	$0.0068	$0.0031	$0.0171	$75.44
GS>50 (kW)	200	$127.17	$5.6626	$7.1194	$2,683.57	$202.46	$1.8122	$1.1966	$7.0675	$2,217.72

Excludes rate riders, smart meter entity charge, regulatory and commodity charges, HST and OER

*****RTSRs billed on loss-adjusted usage for Residential and GS<50 customers***

11. But this is not an application to merge two Utilities. Nor is it an application of one Utility to acquire another. WCUL has stated that it proposes to continue to operate ELK and ENWIN as separate and distinct LDCs. ELK may receive services from ENWIN pursuant to an Affiliate Relationships Code, but would otherwise continue to operate its business as usual. A new services agreement between EWIN or WCUL has not yet been drafted pending closing of the transaction.[11]

12. The Applicant also makes this claim[12]:

"*ENWIN is not currently providing management services to E.L.K. WCUL has offered to provide advisory and consulting services to E.L.K on an as and when requested basis until the closing date or termination of the Purchase and Sale Agreement*."

13. VECC has been in the past, and is currently, a party in ELK applications before the Board. In the ongoing application EB-2024-0015 problematic record keeping and rate applications are apparent. In its last cost of service rates case EB-2023-0013 ELK agreed to address a number of items concerning the intervening parties and the Board ordered these to be completed. These include:[13]

• *Address the data gaps identified in the Asset Condition Assessment and include the data in an asset registry*
• *Create a formal asset inspection procedure to be filed with the OEB*
• *Track outages at a sub-code level for defective equipment and tree contacts*
• *Install, at a minimum, the fault indicators planned in the DSP*

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[10] VECC-6, *The table includes ENWIN's approved 2025 rates (EB-2024-0019), and E.L.K.'s proposed 2025 rates (EB-2024-0015).*
[11] Application page 15 & 20
[12] VECC-1
[13] Decision and Rate Order, EB-2021-0016, E.L.K. Energy Inc., June 30, 2022, page 3

• *Report information on momentary outages and how to reduce them in the next rebasing application.*
• *Create a Reliability Commitment Account for E.L.K. Energy's annual SAIDI and SAIFI targets*
• *Maintain an O&M variance account beginning in the test year and credit to customers the difference between the actual and proposed amount*
• *Update the load profiles and review the billing and collecting weighting factors*
• *Spend a minimum of $80,000 per year on reactive and proactive tree trimming. The OEB commends this initiative given that tree contacts are a major and persistent source of outages, property damage and safety concerns*.

14. Should the Board approve this transaction we think it worth reminding WCUL that ELK's commitments arising out of EB-2021-0016 remain regulatory requirements. We also think that it important to reiterate that both Utilities are required to adhere to the Affiliate Relationship Code and that all intercorporate transactions must be recorded and presented as part of the Shared Service sections of any future cost of service application(s).

Post Application Plans

15. WCUL has laid out a plan in which ENWIN and ELK file their cost of service rebasing application for rates effective January 1, 2028, and May 1, 2027, respectively after which a third application to amalgamate the Utilities is contemplated.

16. We submit the Board should make clear that no finding is being made with respect to these future plans.

17. We would also note that it is within the Board's purview to require either Utility to file for new cost of service rates at any time. In this regard we note that when ENWIN sought rate rebasing deferral it provided information only on overearning up until 2022. The Utility has continued to overearn in every year since that time. It is not clear to us why the Board holds that allowing an overearning utility to avoid a cost of service review results in just and reasonable rates. We have never been asked. That the Board does not think it necessary to consult with ratepayers before such extensions might be granted is disappointing.

18. In any event, given the Board is content to allow Utilities to overearn it is not immediately apparent to us why the Board might not also consider deferring the rebasing for underearning utilities like ELK. No claims of utility viability are being raised or examined in this proceeding.

19. In any event, it is arguable that three distinct applications are not an efficient way to proceed. It is not clear that a fourth application would also be required. After the two cost of service and one amalgamation applications contemplated one might – think a fourth is required to then harmonize franchises and rate structures.

20. It seems to us a more efficient process if the desired end result is a singular utility would be one application with new cost allocation that supports that outcome. In considering this it might be remembered that ratepayers currently pay for costly regulatory processes even if they are primarily designed for the ease and benefit of the shareholder and utility management.

21. The OEB need not sit on its hands and be reactive. WCUL has laid out a process which on the face of it may not lead to the lowest regulatory costs or the lowest rates. It is certainly open to the Board to suggest a different path or to establish that certain regulatory costs may be visited upon the shareholder under its particular proposal.

22. The Board might also consider how ratepayers are being informed in the interim and how their interests are being represented going forward. One suggestion would be to undertake a combined cost of service filing for both utilities for the earlier of the dates, that is for 2027 or 2028 rates for both utilities at the same time.

These are our submissions

VECC submits that it has acted responsibly and efficiently during this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED