

**BY EMAIL**

September 15, 2025

Ritchie Murray  
Acting Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4

Dear Mr. Murray:

**Re: Application under section 86(2)(a) of the Ontario Energy Board Act, 1998  
for the acquisition of 100% of the shares of E.L.K. Energy Inc. by Windsor  
Canada Utilities Ltd. from the Corporation of the Town of Essex  
Ontario Energy Board File Number: EB-2025-0172**

In accordance with Procedural Order No. 2, please find attached OEB staff's submission in this proceeding.

Yours truly,

*Original Signed By*

Amber Goher  
Advisor – Electricity Distribution Rates

cc: All parties in EB-2025-0172  
Attach.

# **ONTARIO ENERGY BOARD**

**Application by Windsor Canada Utilities Ltd. to  
acquire 100% for the shares of E.L.K. Energy Inc.**

**EB-2025-0172**

**OEB Staff Submission**

**September 15, 2025**

# 1 INTRODUCTION

Windsor Canada Utilities Ltd (Windsor Canada Utilities), an affiliate of ENWIN Utilities Ltd. (ENWIN Utilities), filed a Merger, Acquisition, Amalgamation and Divestitures (MAADs) application with the Ontario Energy Board (OEB) on May 13, 2025, under section 86(2)(a) of the *Ontario Energy Board Act, 1998* (OEB Act). E.L.K. Energy Inc. (E.L.K. Energy) and Windsor Canada Utilities (collectively, the Applicants) seek approval for Windsor Canada Utilities to acquire 100% of the shares of E.L.K. Energy from the Corporation of the Town of Essex as part of the first phase (Phase 1) of a two-phase transaction (the Application).

A deferred rebasing period is not being sought as part of this Application. Following Phase 1, ENWIN Utilities and E.L.K. Energy plan to operate as separate electricity distributors with each rebasing its distribution rates over the coming two-year period, as would have been scheduled to occur absent the transaction. E.L.K. Energy plans to submit its rebasing application shortly after the close of the Phase 1 transaction, for rates to be effective May 1, 2027. ENWIN Utilities rebasing application will be for rates effective January 1, 2028. Since E.L.K. Energy will continue to operate as a stand-alone entity under the same name following Phase 1, Windsor Canada Utilities does not require a transfer of E.L.K. Energy's distribution license or rate order as part of this Phase 1 Application.

As part of the second phase of the transaction, Windsor Canada Utilities intends file an application for OEB approval under s. 86(1)(c) of the OEB Act to amalgamate E.L.K. Energy and ENWIN Utilities and form a new ENWIN Utilities Ltd. ("Phase 2 Transaction"). A deferred rebasing 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's approval of this Phase 1 application.

Until Phase 2, 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 disposal is filed with the Phase 2 application when the utilities are merged.

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

## 2 OEB STAFF SUBMISSIONS

In its review of the Application, OEB staff has considered the requirements described in *The Handbook to Electricity Distributor and Transmitter Consolidations* (MAADs Handbook) and other applicable OEB policy<sup>1</sup> as described herein.

### 2.1 “No Harm” Test

The OEB applies the “no harm” test when assessing applications that seek approval for regulated entities to consolidate. As described in the MAADs Handbook,<sup>2</sup> the “no harm” test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives.<sup>3</sup> If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the consolidation.<sup>4</sup>

In assessing “no harm”, the OEB assesses both quantitative (e.g., cost) and qualitative information (e.g., customer services) included in the application.<sup>5</sup> Qualitative and quantitative forecasts of expected efficiencies and savings provided in a consolidation application offer context to measure what a consolidated entity believes can be achieved as a result of a transaction.<sup>6</sup>

#### 2.1.1 Impact on Price, Economic Efficiency and Cost Effectiveness

The MAADs Handbook states that in order to assess the “no harm” test, applicants are to provide year-over-year comparative cost structure analysis for the proposed transaction, comparing the costs of the utilities post-transaction and in absence of the transaction.<sup>7</sup>

The Applicants stated 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

---

<sup>1</sup> [Handbook for Utility Rate Applications](#) (Rate Handbook) and [Accounting Procedures Handbook](#)

<sup>2</sup> [OEB Handbook to Electricity Distributor and Transmitter Consolidations](#) (MAADs Handbook), issued June 18, 2024, p.6

<sup>3</sup> *Ontario Energy Board Act, 1998*, Section 1

<sup>4</sup> MAADs Handbook, July 2024, p. 7

<sup>5</sup> MAADs Handbook, July 2024, p.8

<sup>6</sup> Ibid

<sup>7</sup> MAADs Handbook, July 2024, p.9

that maintaining E.L.K. Energy's existing expenditure levels is unsustainable from an operational and financial perspective over the longer term. The Applicants asserted that 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. The Applicants further stated that E.L.K. Energy has not performed well financially over the last few years, and this trend is projected to continue if the OEB 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. As a result of the low ROE in 2022, in the 2024 IRM application decision, 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."<sup>8</sup>

The Applicants stated that 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, suggesting that both utilities are already operating at well below expected cost.

Moreover, the Applicants stated that 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. E.L.K. Energy would receive services from ENWIN Utilities pursuant to an Affiliate Relationships Code compliant services agreement and ENWIN Utilities would otherwise continue to operate its business as usual. The Applicants stated that 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. Hence, the cost of those existing employees can be shared across a slightly larger customer base.

The revenue requirement proposed for each local distribution company (LDC) and requested to be recovered through distribution rates for each utility will be the subject of separate applications in the next two years. The Applicants 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 revenue requirement of each LDC otherwise would have been.

---

<sup>8</sup> EB-2023-0013, Decision and Rate Order, March 21, 2024

Table 1 shows the forecasted revenue requirements for the two LDCs in two circumstances: (i) no Phase 1 consolidation; and (ii) the Phase 1 and Phase 2 consolidations are approved.

**Table 1: Forecasted Revenue Requirement**

Revenue Requirement - No Transaction										
(dollars in thousands)	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>
Revenue Requirement - Phase 1 and Phase 2 Transaction										
(dollars in thousands)	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
Synergies		-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>
<b>Difference</b>	<b>\$ -</b>	<b>\$ -25</b>	<b>\$ -50</b>	<b>\$ -50</b>	<b>\$ -100</b>	<b>\$ -125</b>	<b>\$ -150</b>	<b>\$ -200</b>	<b>\$ -205</b>	<b>\$ -210</b>

Table 2 shows the OM&A for the two LDCs in two circumstances: (i) no Phase 1 consolidation; and (ii) the Phase 1 and Phase 2 consolidations are approved.

**Table 2: 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
<b>Forecast OM&amp;A</b>	<b>\$ 38,037</b>	<b>\$ 38,719</b>	<b>\$ 39,955</b>	<b>\$ 41,545</b>	<b>\$ 41,545</b>	<b>\$ 42,772</b>	<b>\$ 44,263</b>	<b>\$ 45,321</b>	<b>\$ 46,380</b>	<b>\$ 47,512</b>	<b>\$ 48,461</b>
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

In interrogatory responses, the Applicants stated that they have not forecasted any capital savings as E.L.K. Energy and ENWIN Utilities will operate as separate entities with independent DSPs over the short to medium term. The Applicants further stated

that any future capital savings that do arise will be encompassed within the capital expenditure forecasts and DSPs as part of future rate applications.<sup>9</sup>

### **Submission**

As part of its review of consolidation proposals, the OEB examines the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor's current and projected costs, it is important for the OEB to consider the impact of a transaction on the cost structure of consolidating entities both now and in the future, particularly if there appear to be significant differences in the size or demographics of consolidating distributors.<sup>10</sup> OEB staff notes that the revenue requirement comparison in Table 1 above suggests overall cost reductions if the Phase 1 and Phase 2 transactions were approved compared to a status quo scenario.

The Applicants stated that integration costs will be financed through anticipated productivity savings expected from the transaction during the period after the Phase 2 Transaction. In an interrogatory response, the Applicants submitted that the exact quantum of integration costs unknown at this time and will be related to transition planning, I.T., communications and workforce training.<sup>11</sup> However, since they will be incurred in 2026, they should not impact the 2027 cost of service application for E.L.K. Energy and will not be reflected in rates. In an interrogatory response, the Applicants stated that productivity savings are expected due to senior executive positions (such as CEO and CFO) at E.L.K. Energy remaining vacant and no longer needing to be backfilled.<sup>12</sup> The responsibilities of those positions are anticipated to be held at ENWIN Utilities and cost allocations will be used to apply a portion of the costs to E.L.K. Energy resulting in lower OM&A costs compared to status quo. OEB staff notes that since E.L.K. Energy will be able to draw on the resources of a larger utility, operating in a similar service territory, significant opportunities for economies of scale and cost efficiencies exist.

In an interrogatory response, the Applicants also stated that upon amalgamation of the utilities, additional opportunities may arise to build off the benefits conferred in Phase 1, such as further centralization and rationalization of certain functions and activities, and additional economies of scale.<sup>13</sup> This includes benefits associated with operating as a

---

<sup>9</sup> EB-2025-0172, Interrogatory response, OEB Staff 9c

<sup>10</sup> MAADs Handbook, July 2024, p. 29

<sup>11</sup> EB-2025-0172, Interrogatory response, OEB Staff 7a

<sup>12</sup> EB-2025-0172, Interrogatory response, OEB Staff 7b

<sup>13</sup> EB-2025-0172, Interrogatory response, SEC 4

single entity under a common corporate structure, creating the potential for some efficiencies in governance/oversight costs, and reduced corporate costs resultant from removing some of the need to maintain separate records and reporting requirements for independent entities.<sup>14</sup> OEB staff anticipates that in the Phase 2 application, the Applicants will demonstrate the savings and efficiencies that have resulted from Phase 1 of the transaction. OEB staff also expects that modest synergies from Phase 1 will be reflected in rates during the rebasing applications for E.L.K. Energy and ENWIN Utilities.

Based on the evidence on the record, OEB staff is satisfied that the Phase 1 transaction will not result in the customers of E.L.K. Energy experiencing negative price implications.

### **2.1.2 Adequacy, Reliability and Quality of Electricity Service**

The MAADs Handbook requires utilities to indicate the impact that the proposed transaction will have on customers with respect to reliability and quality of electricity service. The MAADs Handbook also provides that in considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the “no harm” test has been met, the OEB will be informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.<sup>15</sup> The Applicants stated that 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. 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.

The Applicants stated that E.L.K. Energy customers will benefit through all future phases of the transaction in the form of technology enhancements 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.

---

<sup>14</sup> Ibid

<sup>15</sup> MAADs Handbook, page 12



- 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.
- Implementation of a stable, secure information technology backbone, aligned with current cyber security regulatory requirements, with full remote support from ENWIN Utilities.f

Furthermore, the Applicants stated that upon closing of Phase 1, E.L.K. Energy will have 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. The Applicants stated 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.

### ***Submission***

Based on the evidence provided by the Applicants, OEB staff submits that E.L.K. Energy and ENWIN Utilities can reasonably be expected to not only maintain but may enhance the service quality and reliability standards currently provided by each of the utilities. The basis of OEB staff's position is that there are no anticipated reductions to operations staff and the existing operations centers for each service area will remain unchanged. The Application notes that response times will not decline. Further, after the Phase 1 transaction the service levels of both E.L.K. Energy and ENWIN Utilities will be maintained through the merging of technologies, adoption of best work practices, system control, etc. E.L.K. Energy will 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 approved).

In addition, OEB staff accepts the Applicant's assertions that customers may see benefits as 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. As the Application notes, 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.<sup>16</sup>

### 2.1.3 Impact on Financial Viability

The MAADs Handbook provides that the impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger, will be assessed. The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction<sup>17</sup>

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 integration costs will be financed through the anticipated productivity savings expected from the transaction during the period after the Phase 2 Transaction. 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.
- Workforce training – costs associated with retraining employees on new systems, processes, and policies.

The Applicants stated that 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

---

<sup>16</sup> EB-2025-0172, MAADs Application, p. 23

<sup>17</sup> MAADs Handbook, p. 13

Purchase and Sale Agreement. The estimated purchase price is not expected to have a material impact on the overall financial viability of Windsor Canada Utilities, as it only represents approximately 5% of Windsor Canada Utilities total assets.

### **Submission**

With respect to the purchase price, the Applicants indicated that it will be based on a future E.L.K. Energy rate base and since the acquiring entity is a holding company, there will be no effect on the financial viability of a utility. The Applicants noted that the purchase price will be calculated as follows:

- i. the amount obtained by multiplying by 1.6 by the greater of (i) the Closing Rate Base and (ii) \$14,559,905.00;
- ii. minus the amount, if any, of Closing Indebtedness;
- iii. minus the amount, if any, by which the Target Working Capital is greater than the Closing Date Working Capital;
- iv. plus the amount, if any, by which the Closing Date Working Capital is greater than the Target Working Capital;
- v. minus the amount, if any, of Closing Transaction Expenses.<sup>18</sup>

In an interrogatory response, the Applicants stated that using audited December 31, 2024 values, rate base is estimated at \$20.6M and the potential purchase price will be \$22.5M. The determination of final working capital and regulatory adjustments will be contingent on E.L.K. Energy's 2025 IRM rate application.<sup>19</sup> OEB staff notes that the purchase price is approximately 1.6 x net book value (NBV). The multiple of 1.6 x NBV is similar to the purchase price valuation in some other recent MAADs applications where the purchase price is based on the NBV of the utility's assets.<sup>20</sup>

The Applicants also confirmed that the transaction will be 100% financed by new term debt from the Royal Bank of Canada and this financing arrangement is not contingent upon a future approval to amalgamate E.L.K. Energy and ENWIN Utilities.<sup>21</sup> In an interrogatory response, the Applicants stated that Windsor Canada Utilities has sufficient borrowing capacity within its existing structure and a credit agreement with

<sup>18</sup> EB-2025-0172, MAADs Application, Appendix D, p. 16

<sup>19</sup> EB-2025-0172, Interrogatory response, OEB staff 6 c

<sup>20</sup> Similar valuation can be found in EB-2019-0015, MAADs Application p.9 (purchase price is 1.3 x NBV) and EB-2014-0244, Exhibit A, Tab 3, Schedule 1, p.9 (purchase price was 1.4 x NBV).

<sup>21</sup> EB-2025-0172, Interrogatory response, OEB staff 2d

the Royal Bank of Canada is already in place, a portion of which will be used on a short term basis to finance this transaction.<sup>22</sup>

With respect to transaction and transition costs, these will not be funded by ratepayers. The integration costs will be financed through the anticipated productivity savings expected from the transaction during the period after the Phase 2 Transaction. In response to Interrogatories, the Applicants stated that productivity savings are related to not backfilling senior executive positions at E.L.K. Energy such as the vacant CEO and CFO positions.<sup>23</sup>

Considering the above, in OEB staff's opinion, the Phase 1 transaction will not negatively impact the financial viability of the Applicants.

## **2.2 Other Matters**

### **2.2.1 Earnings Shared Mechanism**

The Applicants have not proposed an Earnings Shared Mechanism (ESM) as deferred rebasing is not being proposed in this Application and both E.L.K. Energy and ENWIN Utilities will be rebased separately. The Applicants stated that 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.

#### ***Submission***

OEB staff agrees that consideration of an ESM to project against potential overearnings would best be considered by a future panel hearing the cost of service and/or Phase 2 applications.

### **2.2.2 Proposed Phased Approach**

The Applicants are not proposing a deferred rebasing as part of the Phase 1 Application as both E.L.K. Energy and ENWIN Utilities will be operated separately. The Application stated that Phase 2 of this transaction may include a proposal for a rebasing deferral period, however the proposed deferred rebasing period in Phase 2 will not exceed 10

---

<sup>22</sup> EB-2025-0172, Interrogatory response, OEB staff 2

<sup>23</sup> EB-2025-0172, Interrogatory response, OEB staff 7

years after the OEB approval of this Phase 1 Application. The rates in each of the two service territories will continue to be set by the OEB's Price Cap IR until rebasing.

In an interrogatory response, the Applicants justify their proposed approach to rebase E.L.K. Energy and ENWIN Utilities separately before the Phase 2 transaction. The Applicants stated that there is a pressing need to rebase E.L.K. Energy rates given its recent financial performance since its last Cost of Service application (2022), achieving a negative ROE in each year 2022 – 2024, and significant net losses in excess of \$1 million in each of 2023 and 2024.<sup>24</sup> The OEB in its Decision and Rate Order EB-2023-0013 noted that E.L.K. Energy should "...examine all strategic options for the utility, including an early rebasing".

In the Argument in Chief, the Applicants requested exemption from the requirements of section 2.2.5 to 2.2.8 of the MAADs Handbook until the Phase 2 Application is filed. These requirements are related to rate considerations (deferred rebasing) and rate harmonization.<sup>25</sup> The Applicants stated that E.L.K. Energy is not being amalgamated as part of the Phase 1 Transaction, thus these provisions of the MAADs Handbook relating to amalgamating entities would not apply here.<sup>26</sup>

### **Submission**

OEB staff believes that the main purpose of the Proposed Rate Framework is to allow E.L.K. Energy and ENWIN Utilities to rebase independently prior to their formal amalgamation in the future Phase 2 application. As described by the Applicants, once the amalgamation is complete, assuming the Phase 2 application is approved, the consolidated utility (ENWIN Utilities Ltd.) may consider deferred rebasing. Although the Applicants have not requested approval of Phase 2 in the Application, it is nonetheless important to consider as the requested approval of the Proposed Rate Framework has implications for both the Phase 1 and Phase 2 transactions.

Through Interrogatories, OEB staff explored alternate options to the Applicants proposed phased approach. In response to Interrogatories, the Applicants explained that an earlier E.L.K. Energy rebasing and a single consolidation application was not feasible as it was not possible to file a rebasing application any sooner than one year.<sup>27</sup> The current approach is targeting August 2026 to file E.L.K. Energy's cost of service for

---

<sup>24</sup> EB-2025-0172, Interrogatory response, VECC-5

<sup>25</sup> MAADs Handbook, p. 11-13

<sup>26</sup> EB-2025-0172, Argument in Chief, September 2, 2025

<sup>27</sup> EB-2025-0172, Interrogatory responses, OEB Staff – 4c

May 1, 2027 rates. OEB staff accepts that an early rebasing for E.L.K. Energy was not feasible.

The Applicants also explained that a consolidation application and then a rebasing application for ENWIN Utilities Ltd. was also not tenable in light of the urgent need to rebase E.L.K. Energy rates based on its recent financial performance.<sup>28</sup> The Applicants claimed that merging first would perpetuate the existing viability challenges at E.L.K. Energy as the timeline needed to prepare the first cost of service application for the amalgamated entity would be much more extensive than preparing a cost of service for a single, existing utility.<sup>29</sup>

The Phase 1 transaction, which is the subject of the current Application does not, on its own, appear to offer any significant benefits to ratepayers of either E.L.K. Energy or ENWIN Utilities. OEB staff supports this Application because it also appears to cause no harm, which is the OEB's test for a MAADs application. Phase 2 of the process, assuming it is filed as described, would appear to offer benefits to both ratepayers and the shareholder. However, Phase 2 is not currently before the OEB for approval.

OEB staff notes that the Proposed Rate Framework can possibly address some elements of E.L.K. Energy's financial performance as the cost of service application can assist in ensuring that rates are more reflective of its current circumstances. In the Argument in Chief, the Applicants note that the independent rebasing of each LDC allows comprehensive review of cost structures, resolves concerns regarding E.L.K. Energy's historical investment levels, reinforces compliance with safety and service obligations, and ensures the utilities are positioned to respond effectively to the challenges of a rapidly evolving energy sector.<sup>30</sup> However, OEB staff further notes that there is no guarantee that the OEB will treat the cost of service applications filed by both E.L.K. Energy and ENWIN Utilities in an isolated context (i.e., as if they do not have a common owner). As such, there is no guarantee as to whether E.L.K. Energy and ENWIN Utilities rates will not be adjusted to reflect synergies in response to developments such as, but not necessarily limited to, updated evidence that may support the existence of savings due to the change in ownership.

---

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> EB-2025-0172, Argument in Chief, p. 6

In the Argument in Chief, the Applicants state that together the Phase 1 and Phase 2 transactions are anticipated to provide the platform to generate sustainable administrative cost efficiencies as a result of centralizing back-office functions including management, billing, customer service, finance and regulatory functions.<sup>31</sup> Although the OEB can approve the proposed Phase 1 transaction, and it can acknowledge that both utilities intend to file cost of service applications prior to the Phase 2 application, OEB staff submits that this approval is granted in the absence of knowing the outcome of those rate applications. The rebasing applications will be filed with the OEB and will be considered on their merits by the OEB panels assigned to them.

OEB staff notes that a similar phased approach was also utilized in the North Bay Hydro and Espanola Hydro MAADs application.<sup>32</sup> In the North Bay Hydro and Espanola case, OEB staff proposed that certain mechanisms could be put in place to remedy potential overearnings resulting from both utilities rebasing their rates prior to the Phase 2 transaction, such as an ESM similar to that in the amalgamation application<sup>33</sup> between Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (Enbridge). In the Union and Enbridge amalgamation application, the OEB approved an asymmetrical ESM that shared earnings on a 50/50 basis between the amalgamated entity and its customers for all earnings in excess of 150 basis points from the OEB-approved ROE. The ESM was put in effect from year one of the deferred rebasing period, rather than beginning in year six of a ten-year deferred rebasing period, as is standard.

In the North Bay Hydro and Espanola Hydro decision and order, the OEB determined that an ESM will not be established as part of the Phase 1 transaction and that the issue is best considered by the OEB panel hearing future cost of service rate applications.<sup>34</sup> The decision and order further stated, “it is consistent with the OEB’s policies for one utility to acquire another utility and operate it on a stand-alone basis.”<sup>35</sup> Following Phase 2 of the transaction, the OEB approved an asymmetric ESM, commencing year 6 of the deferred rebasing, with over earnings 300 basis points above the allowed ROE to be shared 50/50 between the New North Bay Hydro ratepayers and shareholders.<sup>36</sup> OEB staff submits that similar mechanisms could be considered in this case to address potential overearnings, however, would be best considered by the OEB panel hearing the future rebasing and/or Phase 2 applications.

---

<sup>31</sup> EB-2025-0172, Argument in Chief, p. 8

<sup>32</sup> EB-2019-0015

<sup>33</sup> EB-2017-0306/EB-2017-0307

<sup>34</sup> EB-2019-0015, Decision and Order, p. 25

<sup>35</sup> Ibid

<sup>36</sup> EB-2021-0312, Decision and Order, p. 17

OEB staff supports the proposed phased approach and has considered two previous MAADs cases that have been outlined above and their relevance to the current Application. Further, any benefits and synergies arising from Phase 1 transaction should be accounted for when the OEB considers these rebasing applications. Given the issues in Phase 1 transaction are limited in scope, OEB staff takes no issue with the requested exemption from the requirements of section 2.2.5 to 2.2.8 of the MAADs Handbook until the Phase 2 Application is filed.

### **2.2.3 Group 1 and 2 Deferral and Variance Accounts**

The Applicants plan that E.L.K. Energy and ENWIN Utilities will continue to track costs to the existing regulatory and deferral and variance accounts (DVAs) currently approved by the OEB.

Group 1 and Group 2 accounts will be tracked on a stand-alone basis until a proposal for DVAs is filed with the Phase 2 application when the utilities are merged. The Applicants anticipate both E.L.K. Energy and ENWIN Utilities will submit rebasing applications shortly after the close of Phase 1 for rates effective May 1, 2027 and January 1, 2028, respectively.<sup>37</sup> The disposition of Group 2 balances will be addressed as a matter of those proceedings.<sup>38</sup>

E.L.K. Energy has an outstanding issue related to the disposition of Accounts 1550, 1588 and 1589 that is currently before the OEB in its 2025 IRM application.<sup>39</sup>

#### **Submission**

OEB staff supports the Applicants' proposal that E.L.K. Energy and ENWIN Utilities will continue to track existing Group 1 DVAs separately. OEB staff submits that this approach is appropriate and consistent with past MAADs decisions, including Brantford Power/Energy Plus and North Bay Hydro/Espanola Hydro where the OEB directed those applicants to maintain separate tracking of DVA balances until rebasing.<sup>40</sup> OEB staff submits that no consolidation of Group 1 accounts should occur until the issues in E.L.K. Energy's 2025 IRM applications are fully resolved.

Regarding Group 2 accounts, the MAADs Handbook states that though legacy Group 2 accounts should generally be tracked separately on a rate zone basis, there could also

---

<sup>37</sup> MAADs application, p 6

<sup>38</sup> MAADs Application, p 29

<sup>39</sup> EB-2025-0015

<sup>40</sup> EB-2021-0312, [Decision and Order](#); EB-2019-0019, [Decision and Order](#)



be some accounts where tracking on a rate zone basis is not warranted.<sup>41</sup> Therefore, utilities are required to provide a proposal in their MAADs applications on which legacy or new Group 2 accounts are to be tracked on a rate zone basis or consolidated basis going forward, with supporting rationale.

OEB staff agrees with the Applicants proposal for maintaining Group 2 accounts on a standalone basis as both utilities will operate as separate entities. OEB staff submits that it would be appropriate for the Applicants to submit a proposal for consolidation of Group 1 and Group 2 balances and discuss any implications in doing so as part of its Phase 2 application.

## **2.2.4 Accounting Policy Changes**

ENWIN Utilities adopted International Financial Reporting Standards (IFRS) on January 1, 2012 and E.L.K. Energy adopted IFRS on January 1, 2015 for financial reporting purposes. Both utilities have previously rebased under the Modified IFRS for regulatory reporting purposes. The Applicants do not propose the use of any different accounting standards.

E.L.K. Energy and ENWIN Utilities recognize regulatory balances within their audited IFRS financial statements. ENWIN Utilities adopted IFRS early and did not have the option to elect to recognize regulatory balances on the balance sheet. E.L.K. Energy adopted IFRS later and is therefore able to recognize those regulatory balances on the balance sheet. The Applicants stated that this will not create an issue in the short term as both entities will continue to report separately until post amalgamation, or after the second phase transaction is complete.<sup>42</sup>

In response to interrogatories, the Applicants noted a full accounting procedures review will be encompassed as part of future integration planning activities and any changes outlined in the future amalgamation application, or second phase application.<sup>43</sup>

### **Submission**

Unlike E.L.K. Energy, ENWIN Utilities was unable to recognize regulatory balances on its financial statements due to its early adoption of IFRS. OEB staff does not have concerns currently about the non-recognition of the regulatory balances for ENWIN Utilities as this constitutes a difference in financial statement presentation only and has

---

<sup>41</sup> [MAADs Handbook](#), July 11, 2024, p 31-32

<sup>42</sup> interrogatory response, Staff-11

<sup>43</sup> Ibid

no impact on the DVAs balances filed with the OEB. Both ENWIN Utilities and E.L.K. Energy continue to track their DVAs in accordance with OEB accounting guidance.

Under IFRS, when two separate entities amalgamate, the accounting policies for the company purchased should align with the acquirer's accounting policies. In this case, when the amalgamated entity is formed, in all likelihood, ENWIN Utilities would be deemed the acquirer and E.L.K. Energy would be the acquired entity.

OEB staff submits that the situation is similar to the North Bay Hydro and Espanola Hydro MAADs proceeding where the MAADs transaction was divided into two phases.<sup>44</sup> The OEB allowed the applicant to complete a full analysis of its accounting policies and bring forward a detailed proposal as part of second phase application.<sup>45</sup>

OEB staff supports the Applicant's proposal to complete a full accounting policy comparison between E.L.K. Energy and ENWIN Utilities, identify and quantify any differences (e.g. depreciation, capitalization, or other relevant accounting treatments) and bring forward a proposal as part of its Phase 2 application to address those differences.

All of which is respectfully submitted

---

<sup>44</sup> EB-2019-0015

<sup>45</sup> EB-2019-0015, [Decision and Order](#), p 26-27