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File No. 17129.26

September 22, 2025

BY EMAIL & RESS

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

Dear Mr. Murray,

**Re: Windsor Canada Utilities Ltd. (“WCUL”) Phase 1 MAADs Application to Acquire E.L.K. Energy Inc. (“E.L.K. Energy”) and Related Approvals (“Application”) (EB-2025-0172)
Reply Argument**

On August 25, 2025, the Ontario Energy Board (“OEB”) issued Decision on Confidentiality and Procedural Order No. 2 (“**Decision**”) directing the Applicants to file reply argument with the OEB and serve it on all intervenors by September 22, 2025. Please find enclosed WCUL’s reply argument.

Please contact the undersigned with any questions.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in black ink that reads 'Colm Boyle'.

Colm Boyle

CB/JV

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Windsor Canada Utilities Ltd. for leave to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. from The Corporation of the Town of Essex, made pursuant to section 86(2)(a) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF a Notice of Proposal made by Windsor Canada Utilities Ltd. under sections 80 and 81 of the Ontario Energy Board Act, 1998.

WINDSOR CANADA UTILITIES LTD.
REPLY ARGUMENT

FILED: September 22, 2025

Board File No. EB-2025-0172

WINDSOR CANADA UTILITIES LTD.

REPLY ARGUMENT

1. On September 2, 2025, Windsor Canada Utilities Ltd. (“**WCUL**”) filed its Argument in Chief in the Merger, Acquisition, Amalgamation and Divestitures (“**MAADs**”) application (the “**Application**”) with the Ontario Energy Board (“**OEB**”), under section 86(2)(a) of the *Ontario Energy Board Act, 1998* (“**OEB Act**”) to purchase all of the issued and outstanding shares in E.L.K. Energy Inc. (“**E.L.K. Energy**”) from The Corporation of the Town of Essex (the “**Seller**”) (the “**Transaction**”).
2. On September 15, 2025, the School Energy Coalition (“**SEC**”), Vulnerable Energy Consumers Coalition (“**VECC**”), and OEB Staff filed their submissions on the Application. Enclosed are the reply submissions of WCUL.
3. SEC and OEB Staff support approval of the Application and that the Transaction meets the “no harm” test. VECC also did not oppose approval of the Application. SEC also supports the requested exemptions from sections 2.2.5 to 2.2.8 of the MAADs Handbook.¹ OEB Staff takes no issue with: (i) consideration of an earnings sharing mechanism to protect against potential overearnings would best be considered by a future panel hearing the cost of service and/or Phase 2 applications; (ii) 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; (iii) maintaining Group 1 and Group 2 accounts on a standalone basis while the utilities operate as separate entities; and (iv) WCUL’s proposal to complete a full accounting policy comparison between E.L.K. Energy and ENWIN Utilities and to bring forward a proposal as part of its Phase 2 Application to address any differences.²
4. WCUL agrees that the proposed Transaction meets the “no harm” test based on the anticipated impacts on price, reliability and quality of electricity service to customers, and that the Transaction is consistent with the legislative objectives of the OEB Act. WCUL agrees that the requested relief is appropriate in the circumstances.
5. WCUL agrees with OEB Staff that the Transaction involves two Southwestern Ontario utilities operating in similar service territories, and it provides an opportunity for the smaller utility to draw upon the corporate structure and resources, including in-house expertise, of a nearby, larger organization.
6. No party has taken the position that the relief requested in the Application, including the requested MAADs Handbook exemptions, should not be approved. Although there is consensus among WCUL, SEC, and OEB Staff that the OEB ought to approve the Transaction (and VECC does not explicitly oppose), some obiter comments in the submissions warrant a response from WCUL.

¹ SEC Submission at pgs 5-6.

² OEB Staff Submission at pgs 10-16.

7. WCUL will briefly respond to these matters to ensure its positions and the record are clear, but reiterates that the requested approvals in this proceeding are solely related to the acquisition of the shares of E.L.K. Energy and related approvals, which are not opposed by any party.
8. WCUL's silence on any aspect of SEC's, VECC's, or OEB Staff's submissions should not be interpreted as agreement with those positions.

I. CHARACTERIZATION OF E.L.K. ENERGY

9. SEC characterizes E.L.K. Energy as a "problem utility" that has been "harvesting the assets". SEC further submits, based on hearsay, that other utilities were "kicking the tires and then walking away" because the infrastructure was in such poor shape that no-one wanted the challenge of turning it around.
10. SEC's comments neither enhance the OEB's understanding of the issues in this proceeding nor are they appropriate. These comments also denigrate the significant efforts of current employees of E.L.K. Energy and the Seller that were recognized by the OEB in Decision and Rate Order EB-2023-0013:

"The OEB appreciates E.L.K. Energy's detailed explanation of its recent financial performance and management changes, and its plan to remedy its challenges. However, the OEB remains concerned 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 encourages E.L.K. Energy's management and Board of Directors to thoroughly examine all strategic options for the utility, including an early rebasing. [Emphasis added]"

11. WCUL submits that none of SEC's aspersions should be attributed to any particular employee, director, or to the Seller. Such comments are irrelevant to the Application and the Transaction.
12. However, while acknowledging E.L.K. Energy's best efforts, WCUL does not agree with VECC's or SEC's characterization that E.L.K. Energy appears "to be in solid financial condition".³ These submissions ignore E.L.K. Energy's low return on equity ("**ROE**") in 2022 (-1.97%), which only got worse in 2023 (-22.33%) and 2024.⁴ As explained in interrogatory response OEB Staff-4, should significant annual financial losses in excess of \$1 million continue to occur, they will threaten E.L.K. Energy's ongoing financial viability, increasing debt and reducing remaining retained equity. E.L.K. Energy's current financial trajectory is unsustainable and must be remedied.
13. Approval of the present Application will allow E.L.K. Energy to start down a renewed path to financial viability.

³ SEC Submission at pg 5; VECC Submission pg 5.

⁴ WCUL Argument in Chief at para 16.

II. PHASED APPROACH TO THE TRANSACTION

14. OEB staff supports the proposed phased approach to further phases of the Transaction and considered two previous MAADs cases that were relevant where similar approaches were permitted.⁵ WCUL agrees with OEB Staff that a phased approach is appropriate and completely consistent with OEB policy and past precedent, but acknowledges that issues that are not part of the scope of relief requested in the present Application are more appropriate for consideration in a future proceeding.
15. However, the OEB can opine, as they did in its EB-2019-0015 Decision and Order, that this intended approach is consistent with the OEB's policies for one utility to acquire another utility and operate it on a stand-alone basis, and that the approach to file separate cost of service rate applications prior to amalgamation is reasonable.
16. SEC and VECC stated that no findings should be made with respect to WCUL's future plans in this proceeding.
17. Specifically, WCUL cannot resolve the apparent contradiction in VECC's submissions on this matter. Initially, VECC submits that "the Board should make clear that no finding is being made with respect to these future plans" in the present proceeding.⁶ However later, when commenting on WCUL's future plans, VECC states that "WCUL has laid out a process" and it is "open to the [OEB] to suggest a different path or to establish that certain regulatory costs may be visited upon the shareholder under its particular proposal".⁷ Clearly, VECC cannot credibly have this both ways.
18. The urgent need to rebase E.L.K. Energy was set out in detail in interrogatory response VECC-5. WCUL was also clear why other alternative, hypothetical transactions structures would not be feasible in interrogatory response OEB Staff-4. This is the catalyst for the intended phased approach to the Transaction, whereby both utilities will have their rates rebased in near-term comprehensive proceedings, which intervenors will have the opportunity to participate in.
19. SEC also raises concerns about phased MAADs applications becoming a standard in all MAADs transactions, stating that such approaches "remove" the benefit from customers, but keep the benefits for shareholders.⁸ WCUL does not agree with the position of SEC on this matter.
20. As noted above, the OEB encouraged E.L.K. Energy to examine all strategic options for the utility. The Transaction is one of the strategic options that ultimately materialized, however E.L.K. Energy would be required to urgently rebase regardless of whether or not the Transaction had occurred. SEC's analysis fails to account for the broader benefits accruing to E.L.K. Energy ratepayers that this Transaction will bestow, which are consistent with the no harm test, considering all of the OEB's statutory objectives under section 1 of the OEB Act. For example, E.L.K. Energy customers may expect further improvements to reliability and

⁵ OEB Staff Submission at pgs. 13-14.

⁶ VECC Submission at pg 5.

⁷ VECC Submission at pg 6.

⁸ SEC Submission at pgs 3-4.

quality of service because of the Transaction and will benefit from the services agreement with ENWIN Utilities.⁹

21. The cost of service applications after Phase 1 approval will more accurately reflect the cost to serve both E.L.K. Energy and ENWIN Utilities before amalgamation of the utilities. Both utilities are simply rebasing as scheduled prior to this further phase occurring.
22. SEC has not provided any reasoning to distinguish the phased merger of North Bay Hydro and Espanola Hydro from the present Transaction, nor has it provided any compelling policy reasoning to depart from prior OEB precedent and existing policy. The phased structure proposed in this Application accords with OEB policy and follows a model that has already received OEB approval in prior cases.
23. The Application ensures alignment between customer and shareholder interests. Ratepayers will be paying rates that accurately reflect the cost to serve their respective service areas and will not be prejudiced by the phased approach.
24. In any event, this Application does not seek specific approval of the future phases of the transaction structure. WCUL detailed in interrogatory response VECC-8 its rationale for the intended approach, which has been fully outlined in the Application. While the Decision in this Application should not bind future OEB panels, WCUL should likewise not be restricted from bringing forward future applications that are in compliance with OEB directives, policies and prior decisions.

III. OTHER MATTERS

25. VECC asserts that on the face of it, a future amalgamation of E.L.K. Energy and ENWIN Utilities would not meet the “no harm” test as evidenced by a comparison of their respective current rates.¹⁰ While the future combination of utilities is not part of this Application or the subject of this proceeding, WCUL does not agree with VECC. Based on OEB policy, a comparison of future revenue requirements is the appropriate basis to assess no harm, rather than a simple comparison of current rates, and WCUL reserves the right to fully address this submission in a future proceeding when the OEB has a fulsome record of evidence to support the amalgamation of E.L.K. Energy and ENWIN Utilities.
26. Finally, on September 15, 2025, WCUL filed a Motion to Review the Decision on Confidentiality and Procedural Order No. 2 in EB-2025-0172 dated August 25, 2025 (“**Motion**”). While WCUL appreciates a timely resolution of this matter, it submits that a decision on the Motion does not need to be issued prior to the OEB’s determination on the Application. The Application and Motion are mutually exclusive processes.

IV. CONCLUSION

27. The Applicants submit that the OEB should approve the Transaction on the basis that it meets the “no harm” test regarding the impact of the proposed Transaction, on price, reliability and

⁹ WCUL Argument in Chief at para 38.

¹⁰ VECC Submission at pg 4.

quality of electricity service to customers, and that the Transaction is consistent with the legislative objectives of the OEB Act.

All of which is respectfully submitted this 22nd day of September, 2025.

A handwritten signature in cursive script, appearing to read "Colm Boyle".

Colm Boyle / John Vellone
Counsel to Windsor Canada Utilities Ltd.