



DECISION AND ORDER

EB-2025-0172

WINDSOR CANADA UTILITIES LTD. AND E.L.K. ENERGY INC.

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

BEFORE: Robert Dodds
Presiding Commissioner

Allison Duff
Commissioner

Anthony Zlahtic
Commissioner

October 21, 2025

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1 OVERVIEW

Windsor Canada Utilities Ltd. (WCUL) and E.L.K. Energy Inc. (E.L.K. Energy) (collectively, the Applicants) filed an application on May 13, 2025 with the OEB to seek approval for the first phase of a multi-phase transaction. In the first phase, WCUL is seeking to purchase all of the issued and outstanding shares of E.L.K. Energy from the Corporation of the Town of Essex pursuant to section 86(2)(a) of the *Ontario Energy Board Act, 1998* (OEB Act) (Phase 1).

The OEB approves the acquisition of the shares of E.L.K. Energy by WCUL. The OEB finds the proposed transaction meets the “no harm” test regarding the impact of the proposed transaction on price, reliability and quality of electricity service to customers, and that the transaction is consistent with the OEB’s legislative objectives in the *OEB Act*.

This Decision addresses the approvals sought by the Applicants in Phase 1. The Applicants proposed a multi-phase transaction to complete an amalgamation of E.L.K. Energy and ENWIN Utilities Ltd. (ENWIN Utilities), referred to as Phase 2. However, no specific approvals for Phase 2 have been requested and such approvals are not the subject of this proceeding.

2 CONTEXT AND PROCESS

2.1 The Applicants

WCUL is a holding company and the sole owner of ENWIN Utilities and ENWIN Energy Ltd. (an unregulated affiliate company). ENWIN Utilities is a licensed electricity distributor¹ that owns and operates the electricity distribution system that provides service to approximately 92,000 electricity customers within the City of Windsor.

E.L.K. Energy is a licensed electricity distributor² that owns and operates the electricity distribution system that serves approximately 13,000 electricity customers within the Towns of Essex, Lakeshore and Kingsville. Within these towns, E.L.K. Energy has six non-contiguous service areas, serving the communities of Belle River, Comber, Cottam, Essex, Harrow and Kingsville. E.L.K. Energy is a fully embedded distributor which receives electricity at distribution level voltages from Hydro One. E.L.K. Energy is also a host distributor to Hydro One.

2.2 The Application

WCUL and E.L.K. Energy filed an application on May 13, 2025 with the OEB to seek approval for the first phase of a two-phase transaction. In Phase 1, WCUL is seeking to purchase all the issued and outstanding shares in E.L.K. Energy from the Corporation of the Town of Essex pursuant to section 86(2)(a) of the OEB Act.

The Applicants are seeking approval for Phase 1 of a two-phase transaction. The application indicated that the approvals for Phase 2 will be requested in a separate application filed later, at which time ENWIN Utilities would seek approval to amalgamate with E.L.K. Energy and form a new ENWIN Utilities. Following the Phase 1 transaction, E.L.K. Energy and ENWIN Utilities will be separate companies owned by WCUL.

WCUL will continue to separately run ENWIN Utilities and E.L.K Energy and rebase each utility over the coming two-year period, as would have been scheduled to occur absent the Phase 1 transaction. Thus, the revenue requirements proposed for each utility and requested to be recovered through distribution rates for each utility are expected to be the subject of subsequent applications and proceedings before the OEB.

E.L.K. Energy and ENWIN Utilities are expected to submit rebasing cost of service applications after the close of the Phase 1 transaction, as currently scheduled by the

¹ ED-2002-0527

² ED-2003-0015

OEB for rates effective May 1, 2027, and January 1, 2028, respectively. Since E.L.K. Energy will continue to operate as a stand-alone entity under the same name following Phase 1, WCUL did not request a transfer of E.L.K. Energy's distribution license or rate order as part of this Phase 1 application.

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 is approved to merge the utilities. No new rate riders are proposed as a result of the Phase 1 transaction and this application. A deferred rebasing period may be proposed as part of Phase 2 for the combined utilities, however the Applicants stated that the proposed deferred rebasing period in Phase 2 will not exceed 10 years after the OEB's approval of this Phase 1 application.

In the argument in chief, the Applicants requested an exemption from the requirements of section 2.2.5 to 2.2.8 of the [OEB Handbook to Electricity Distributor and Transmitter Consolidations](#) (MAADs Handbook) until the Phase 2 application is filed. These requirements are related to rate considerations (deferred rebasing), post consolidation monitoring and reporting, accounting matters and rate harmonization.³ 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.⁴

2.3 The Process

The OEB issued a Notice of Hearing on June 2, 2025, inviting interested parties to apply to become intervenors or file a letter of comment with the OEB. As part of the application, the Applicants also submitted a Notice of Proposal under Section 80 and 81 of the OEB Act in relation to WCUL's proposed acquisition of an interest in E.L.K. Energy, which owns a generation facility and distribution system. By letter dated May 27, 2025, the OEB determined that it will process the Notice of Proposal separately under the file number of EB-2025-0173.

On June 27, 2025, the OEB issued Procedural Order No. 1, in which it approved the Vulnerable Energy Consumers Coalition (VECC) and School Energy Coalition (SEC) as

³ MAADs Handbook, July 2024, p. 11-13

⁴ EB-2025-0172, Argument in Chief, p.3

intervenors and set out a schedule for a discovery process and submissions on the Applicants' confidentiality request.

The Applicants requested confidential treatment for certain information in the application pursuant to the OEB's Rules of Practice and Procedure and the OEB's Practice Direction on Confidential Filings (Practice Direction), and pursuant to *the Freedom of Information and Protection of Privacy Act*. The Applicants stated that the information for which confidential treatment is requested is contained in the Purchase and Sale Agreement and Resolutions by Parties Approving the Proposed Transaction.

Intervenor and OEB staff submissions on the confidentiality requests were filed on July 7, 2025, and the Applicants' reply submission on the confidentiality requests was filed on July 14, 2025. OEB staff and intervenor interrogatories were due by July 21, 2025. The Applicants responses to interrogatories were due by July 28, 2025. All parties filed their interrogatories, responses and submissions by the deadlines set out in Procedural Order No. 1.

On August 25, 2025, the OEB issued a decision on confidentiality and Procedural Order No. 2, setting dates for the filing of a written argument in chief and submissions on the application. On September 15, 2025, the Applicants filed a motion to review certain aspects of the OEB's decision on confidentiality and Procedural Order No. 2. The OEB has assigned file number EB-2025-0274 to hear the review motion in a separate proceeding.

3 DECISION ON THE ISSUES

3.1 The “No Harm” Test

The OEB applies the “no harm” test in its assessment of merger, acquisition, amalgamation and divestiture (MAAD) or “consolidation” applications.⁵ The OEB considers whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives set out in the OEB Act.⁶ If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.⁷

In assessing “no harm”, the OEB assesses both quantitative (e.g., cost) and qualitative information (e.g., customer services) included in the application.⁸ 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.⁹

While the OEB has broad statutory objectives, in applying the “no harm” test the OEB’s focus is on the objectives that are most directly relevant to the impact of the proposed transaction. In the subsections that follow the OEB has assessed the effect of the Phase 1 transaction on attaining the following applicable OEB statutory objectives:

- Price, Economic Efficiency and Cost Effectiveness
- Adequacy, Reliability and Quality of Electricity Service
- Financial Viability

In addition, the OEB addresses other items related to the application – namely the proposed phased approach of the transaction and applications, deferral and variance accounts, and accounting policies.

⁵ The OEB adopted the “no harm” test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under Section 86 of the OEB Act and it has been subsequently applied in applications for consolidation. As set out in the OEB’s *Handbook to Electricity Distributor and Transmitter Consolidations*, the OEB has, and will continue to apply its “no harm” test in reviewing consolidation transactions.

⁶ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 Schedule B, section 1

⁷ , MAADs Handbook, July 11, 2024, p.8

⁸ MAADs Handbook, July 2024, p.8

⁹ Ibid

3.1.1 Price, Economic Efficiency and Cost Effectiveness

The MAADs Handbook requires applicants to provide year-over-year comparative cost structure analysis for the proposed transaction, comparing the costs of the utilities post-transaction and in the absence of the transaction.¹⁰ To demonstrate “no harm”, the applicants must demonstrate based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been.¹¹ In its review of consolidation proposals, the OEB assesses the underlying cost structures of the consolidating utilities, both now and in the future.¹²

To address OEB requirements related to cost structures, 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. The Applicants asserted that maintaining the status quo would limit E.L.K. Energy’s ability to provide new energy transition and electrification services, ensure future resilience to climate change, provide greater defense postures in cyber security and embrace and promote other government priorities for the electricity sector. The Applicants stated that 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, 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” as part of its decision and rate order in E.L.K. Energy’s 2024 IRM application.¹³

The Applicants stated that the proposed transaction involves two Southwestern Ontario utilities that operate in 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. In an interrogatory response, the Applicants stated that

¹⁰ MAADs Handbook, Filing Requirements for Consolidation Applications, July 2024, p.9

¹¹ MAADs Handbook, July 2024, p.10

¹² Ibid

¹³ EB-2023-0013, Decision and Rate Order, March 21, 2024

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.¹⁴

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.¹⁵ This includes benefits associated with operating as a 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.¹⁶

OEB staff submitted that the revenue requirement comparison provided by the Applicants suggested overall cost reductions if the Phase 1 and Phase 2 transactions were approved, compared to a status quo scenario.¹⁷ OEB staff noted that modest synergies from Phase 1 should be reflected in rates during the rebasing applications for E.L.K. Energy and ENWIN Utilities.¹⁸ OEB staff also noted 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.¹⁹ OEB staff commented that in the Phase 2 application, the Applicants should demonstrate the savings and efficiencies that have resulted from Phase 1 of the transaction.

SEC noted that E.L.K. Energy has the lowest distribution revenue per customer of all local distribution companies (LDCs) in the province (\$22 per customer), stating that the “acquisition of E.L.K. by a larger LDC with more resources” may be one way to address this.²⁰ SEC also commented that the application does not propose to alter rates for either E.L.K. Energy or ENWIN Utilities and any future alteration of rates will be the subject of future rebasing applications.²¹ SEC noted that while it is likely true that costs for E.L.K. Energy will have to increase, it is expected that they will be offset in part by synergies, and all of that is the subject of future applications.²² Therefore, SEC submitted that, for the limited approval sought in this application, there is nothing in the

¹⁴ EB-2025-0172, Interrogatory response, OEB Staff 7b

¹⁵ EB-2025-0172, Interrogatory response, SEC 4

¹⁶ Ibid

¹⁷ EB-2025-0172, OEB staff submission, p. 5

¹⁸ EB-2025-0172, OEB staff submission, p. 6

¹⁹ EB-2025-0172, OEB staff submission, p. 5,

²⁰ EB-2025-0172, SEC submission, p.3

²¹ EB-2025-0172, SEC submission, p.5

²² Ibid

acquisition of shares by WCUL that will harm the ratepayers with respect to price, economic efficiency, or cost effectiveness.²³

Findings

The OEB is satisfied that the acquisition of the shares of E.L.K. Energy by WCUL will not harm the customers of E.L.K. Energy and ENWIN Utilities with respect to price, economic efficiency, or cost effectiveness. There is no request for an increase in rates at this time resulting from approval of the Phase 1 transaction. Also, there is no evidence to suggest a decrease in economic efficiency or cost effectiveness could result from the Phase 1 transaction.

The OEB's MAADs requirements include an assessment of harm based on a forecast of cost structures of the underlying utilities and a comparison to historical expenditure levels. The Applicants did not file such comparisons in evidence. The OEB finds this acceptable because there is no "consolidation of utilities" in this application. The OEB agrees with the Applicants that cost comparisons would be distorted because E.L.K. Energy's existing cost structures have proven insufficient to maintain ongoing financial and operational viability. Given E.L.K. Energy's actual 2023 return on equity of -22.33% and its \$22 distribution revenue per customer, the OEB finds that the assessment of harm must be unique to the circumstances within which this utility is currently operating. Based on the evidence, the OEB finds that the Phase 1 transaction meets the "no harm" test for E.L.K. Energy's customers with respect to price, economic efficiency and cost effectiveness.

The evidence indicates that benefits to customers may begin with the approval of the Phase 1 transaction. For instance, productivity savings were referenced in response to Staff 7b, as senior executive positions (such as CEO and CFO) at E.L.K. Energy will not need to be backfilled and may remain vacant, as E.L.K. Energy may draw upon services of ENWIN Utilities' senior management.²⁴ In addition, response to VECC-1 indicated that WCUL has offered to provide advisory and consulting services to E.L.K. Energy when requested.²⁵

As indicated in response to SEC 4, the Phase 2 transaction could identify opportunities such as further centralization and rationalization of certain functions and activities, and additional economies of scale.²⁶ This includes benefits associated with operating as a

²³ Ibid

²⁴ EB-2025-0172, Interrogatory response, OEB Staff 7b

²⁵ EB-2025-0172, Interrogatory response, VECC 1

²⁶ EB-2025-0172, Interrogatory response, SEC 4

single entity under a common corporate structure, creating the potential for some efficiencies in operations, governance/oversight costs, and reduced corporate costs resulting from removing some of the need to maintain separate records and reporting requirements for independent entities.

3.1.2 Adequacy, Reliability and Quality of Electricity Service

The MAADs Handbook requires consolidating utilities to indicate the impact that a proposed transaction will have on customers with respect to the quality and reliability of electricity service. In considering the impact and whether the “no harm” test has been met, the OEB is informed by, among other things, the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.²⁷

According to the MAADs Handbook, continuous improvement will be demonstrated by a distributor’s ability to deliver improved reliability performance without an increase in costs or to maintain the same level of performance at a reduced cost.²⁸

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 Phase 1 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 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
- Extension of ENWIN Utilities’ customer website outage map to include the E.L.K. Energy service area
- Extension of 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

²⁷ MAADs Handbook, July 2024, p.12

²⁸ Ibid

- Implementation of a stable, secure information technology backbone, aligned with current cyber security regulatory requirements, with full remote support from ENWIN Utilities²⁹

The application noted that upon closing of the Phase 1 transaction, 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. E.L.K. Energy's 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.³⁰

OEB staff and SEC did not express any concerns about the reliability and quality of service as a result of the Phase 1 transaction. OEB staff submitted that there are no anticipated reductions to operations staff and the existing operations centers for each service area will remain unchanged.³¹ The application noted 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 and system control.

VECC submitted that should the OEB approve this Phase 1 transaction, WCUL should treat E.L.K. Energy's commitments arising out of the EB-2021-0016 decision as regulatory requirements.³² These commitments are related to reliability tracking and asset condition assessments.

Findings

The OEB is satisfied that E.L.K. Energy can reasonably be expected to not only maintain but enhance the service quality and reliability currently provided to customers upon approval of the Phase 1 transaction.

The OEB understands that there are no anticipated reductions to operations staff, the existing operations centers for each service area will remain unchanged and that the response times will not decline. E.L.K. Energy will continue to operate as an

²⁹ EB-2025-0172, MAADs Application, p. 21

³⁰ Ibid

³¹ EB-2025-0172, OEB staff submission, p. 7

³² EB-2025-0172, VECC Submission, p. 4,

independent utility while also being able to benefit from services provided by ENWIN Utilities pursuant to a planned services agreement. The application indicates that the accounting for those services would be aligned with the OEB's Affiliate Relationship Code.

Additionally, the OEB accepts the Applicants' 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 evidence indicates, 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.

The OEB has considered VECC's submission regarding the continuation of commitments made prior to the Phase 1 transaction. The OEB agrees with VECC and expects WCUL to regard E.L.K. Energy's commitments arising out of EB-2021-0016 decision as regulatory requirements that continue for the independent utility. These commitments include:³³

- Addressing the data gaps identified in the Asset Condition Assessment and include the data in an asset registry
- Creating a formal asset inspection procedure to be filed with the OEB
- Tracking outages at a sub-code level for defective equipment and tree contacts
- Installing, at a minimum, the fault indicators planned in the DSP
- Reporting information on momentary outages and how to reduce them in the next rebasing application
- Creating a Reliability Commitment Account for E.L.K. Energy's annual SAIDI and SAIFI targets
- Maintaining an Operations & Maintenance variance account beginning in the test year and credit to customers the difference between the actual and proposed amount
- Updating the load profiles and review the billing and collecting weighting factors
- Spending a minimum of \$80,000 per year on reactive and proactive tree trimming

³³ EB-2021-0016, Decision and Rate Order, June 30, 2022, p.3

3.1.3 Financial Viability

The MAADs Handbook indicates that the impact of a proposed transaction on the acquiring utility's financial viability (in the case of an acquisition) or on the consolidated entity's financial viability (in the case of a merger) will be assessed.³⁴ 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

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 amalgamated ENWIN Utilities post the Phase 2 transaction and thus will not be funded by ratepayers.

The integration costs will be financed through the anticipated productivity savings expected after the Phase 2 transaction. There will be timing differences between expense outlays and their recovery. Operations, Maintenance and Administration 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 Purchase and Sale Agreement. The Applicants submitted that estimated purchase price

³⁴ MAADs Handbook, July 2024, p.12

is not expected to have a material impact on the overall financial viability of WCUL (a holding company), as it only represents approximately 5% of WCUL's total assets.³⁵

In an interrogatory response, the Applicants stated that the potential purchase price could be \$22.5M based on certain assumptions. OEB staff submitted that the purchase price is approximately 1.6 x net book value (NBV).³⁶ 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.³⁷ SEC commented that there is no reason to believe that the acquisition of E.L.K. Energy by WCUL will undermine the financial viability of WCUL, ENWIN Utilities or E.L.K. Energy.³⁸

The Applicants also confirmed that the Phase 1 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.³⁹ In an interrogatory response, the Applicants stated that WCUL has sufficient borrowing capacity within its existing structure and a credit agreement with the Royal Bank of Canada is already in place, a portion of which will be used on a short term basis to finance this Phase 1 transaction.⁴⁰

Findings

The OEB is satisfied that the Phase 1 transaction will not negatively impact the financial viability of WCUL. This finding is based on the following considerations:

- E.L.K. Energy will represent only 5% of WCUL's assets
- The purchase price is approximately 1.6 x NBV of E.L.K. Energy's rate base. The multiple of 1.6 x NBV is similar to the purchase price valuation in some other approved MAADs applications where the purchase price was based on the NBV of the utility's assets
- The Phase 1 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

³⁵ EB-2025-0172, Application, p. 28

³⁶ EB-2025-0172, OEB staff submission, p.9

³⁷ 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).

³⁸ EB-2025-0172, SEC submission, p. 5, September 15, 2025

³⁹ EB-2025-0172, Interrogatory response, OEB staff 2d

⁴⁰ EB-2025-0172, Interrogatory response, OEB staff 2

- WCUL has sufficient borrowing capacity to finance this acquisition of shares within its existing structure and with its credit agreement with the Royal Bank of Canada which is already in place, a portion of which will be used on a short-term basis
- Customers will not pay for incremental transaction or transition costs
- The integration costs will be financed through the anticipated productivity savings expected after the Phase 2 transaction

3.2 Proposed Phased Approach

The application indicated a multi-phased approach to eventual amalgamation of the two utilities. Phase 1 involves the purchase of E.L.K. Energy shares by WCUL. In this phase, both E.L.K. Energy and ENWIN Utilities will be operated as separately licensed utilities. ENWIN Utilities and E.L.K. Energy will separately file cost of service rebasing applications for rates effective January 1, 2028, and May 1, 2027, respectively. Following the determination of those rebasing applications, a Phase 2 application to amalgamate the two distribution utilities is contemplated.

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 to set rates in 2022, achieving a negative ROE in 2022, and significant net losses in excess of \$1 million in each of 2023 and 2024.⁴¹

In the argument in chief, the Applicants noted that the independent rebasing of each utility 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.⁴²

In the argument in chief, the Applicants requested an 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.⁴³ The Applicants stated that E.L.K. Energy is not being amalgamated as

⁴¹ EB-2025-0172, Interrogatory response, VECC-5

⁴² EB-2025-0172, Argument in Chief, p. 6

⁴³ MAADs Handbook, p. 11-13

part of the Phase 1 transaction, thus these provisions of the MAADs Handbook relating to amalgamating entities would not apply here.⁴⁴ OEB staff and SEC took no issue with the requested exemptions.

OEB staff explored alternate options to the proposed phased approach. OEB staff noted that the proposed phased approach 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.⁴⁵ The Applicants explained that earlier rebasing applications and a single consolidation application was not feasible as it was not possible to accelerate filing E.L.K. Energy and ENWIN Utilities rebasing applications for rates effective May 1, 2027 and January 1, 2028, respectively and the planned consolidation application in 2028.⁴⁶ OEB staff accepted the Applicants argument that an early rebasing for E.L.K. Energy was not feasible.⁴⁷

OEB staff noted that a similar phased approach was utilized in the North Bay Hydro and Espanola Hydro MAADs application. The OEB's decision stated, "it is consistent with the OEB's policies for one utility to acquire another utility and operate it on a stand-alone basis."⁴⁸

SEC submitted that the transaction is in fact three phases: the acquisition, the cost of service rebasing applications, and the amalgamation. SEC submitted that a multi-staged MAADs transaction is not a unique proposal for the OEB to consider. SEC cautioned the OEB to avoid commenting on approvals not sought in this Phase 1 application. SEC submitted that this application alters the expected rate freeze that is part of the "bargain" of the MAADs policy. SEC argued that the proposed phased approach takes away from the benefit customers are offered in a consolidation proposal in that their rates are not increased more than inflation for five to ten years.⁴⁹

VECC submitted that three distinct applications are not an efficient way to proceed and does not rule out the possibility of a fourth application required to harmonize franchises and rate structures.⁵⁰ VECC noted that if the desired end result is a singular utility, a more efficient process would be one application with new cost allocation that

⁴⁴ EB-2025-0172, Argument in Chief, p.3

⁴⁵ EB-2025-0172, OEB staff submission, p.12

⁴⁶ EB-2025-0172, Interrogatory responses, OEB Staff – 4c

⁴⁷ EB-2025-0172, OEB staff submission, p.11

⁴⁸ Ibid

⁴⁹ EB-2025-0172, SEC submission, p. 4

⁵⁰ EB-2025-0172, VECC submission, p.6

supports that outcome.⁵¹ VECC suggested that a combined cost of service proceeding for both utilities for 2027 or 2028 rates, would address regulatory efficiency.⁵²

In reply submission, the Applicants stated that customers in both distribution utilities will not be prejudiced by the phased approach as they will be paying rates that accurately reflect the cost to serve their respective services areas.⁵³ Further, the Applicants confirmed that this application does not seek specific approval of the future phases of the proposed transaction.⁵⁴

Findings

The OEB approves the proposed Phase 1 transaction.

Alternative options to the Applicants' proposed phased approach were examined and the OEB accepts the Applicants' argument that merging first would perpetuate the existing viability challenges at E.L.K. Energy. The OEB agrees with the Applicants that 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 application for the contemplated merged utility.

The OEB notes that both distribution utilities intend to file cost of service applications prior to the Phase 2 application. The OEB regards the subsequent cost of service applications as part of the proposed multi-phased transaction. The OEB recognizes that this approval of Phase 1 is granted in the absence of knowing the outcome of those rate applications.

The OEB agrees that this two-phase approach is not "unique" as claimed by the Applicants. A similar approach or structure was proposed and accepted by the OEB with the acquisition by North Bay Hydro of the shares of Espanola Hydro.⁵⁵

The OEB approves 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. The OEB agrees with the Applicants that these requirements are related to rate considerations and rate harmonization that are not applicable to this Phase 1 Application. Rate considerations such as deferred rebasing and rate harmonization

⁵¹ Ibid.

⁵² Ibid.

⁵³ EB-2025-0172, Reply submission, p. 5

⁵⁴ EB-2025-0172, Reply submission, p. 5

⁵⁵ EB-2019-0015

should be addressed in the subsequent cost of service and/or amalgamation applications.

The OEB expects that the cost of service applications that will be filed with the OEB will include evidence that identifies any savings due to the change in ownership and governance.

3.3 Group 1 and 2 Deferral and Variance Accounts

The Applicants proposed 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.⁵⁶ The disposition of Group 2 balances will be addressed as a matter in those proceedings.⁵⁷ OEB staff submitted 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.⁵⁸

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.⁵⁹ OEB staff submitted that no consolidation of Group 1 accounts should occur until the issues in E.L.K. Energy's 2025 IRM applications are fully resolved.⁶⁰

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 be some accounts where tracking on a rate zone basis is not warranted.⁶¹ 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.

⁵⁶ MAADs application, p 6

⁵⁷ MAADs Application, p 29

⁵⁸ EB-2021-0312, [Decision and Order](#); EB-2019-0019, [Decision and Order](#)

⁵⁹ EB-2025-0015

⁶⁰ EB-2025-0172, OEB staff submission, p.14

⁶¹ [MAADs Handbook](#), July 11, 2024, p 31-32

OEB staff agreed with the Applicants' proposal for maintaining Group 2 accounts on a standalone basis as both utilities operate as separate entities.⁶² OEB staff submitted 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.⁶³ VECC and SEC did not comment on the Applicants' intended approach to DVAs.

Findings

The OEB approves the Applicants' proposal that E.L.K. Energy and ENWIN Utilities continue to track existing Group 1 and 2 DVAs separately as both utilities will operate as separate entities potentially until a future amalgamation application is heard and decided. The OEB considers this approach to be appropriate and consistent with past MAADs decisions⁶⁴, where the OEB directed those applicants to maintain separate tracking of DVA balances until rebasing.

The OEB finds it appropriate to defer consideration of consolidating Group 1 and Group 2 accounts of the two distributors until a Phase 2 application is filed. Proposals and options may be assessed at that time. The OEB further agrees with OEB staff's submission that no consolidation of Group 1 accounts should occur until the issues in E.L.K. Energy's 2025 IRM application are fully resolved.⁶⁵

3.4 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

⁶² EB-2025-0172, OEB staff submission, p.14

⁶³ Ibid.

⁶⁴ EB-2021-0312, [Decision and Order](#); EB-2019-0019, [Decision and Order](#)

⁶⁵ EB-2025-0172, OEB staff submission, p. 14

as both entities will continue to report separately until post amalgamation, or after the Phase 2 transaction is complete.⁶⁶

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.⁶⁷ OEB staff supported the Applicants' 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.⁶⁸

Findings

The OEB acknowledges the Applicants' proposals 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
- Both ENWIN Utilities and E.L.K. Energy will continue to track their DVAs in accordance with OEB accounting guidance

⁶⁶ EB-2025-0172, Interrogatory response, Staff-11

⁶⁷ Ibid

⁶⁸ EB-2025-0172, OEB staff submission, p.16

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Windsor Canada Utilities Ltd. is granted leave to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. from The Corporation of the Town of Essex.
2. The leave granted in paragraph 1 shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application will be required for the transaction to proceed.
3. Windsor Canada Utilities Ltd. shall notify the OEB of the completion of the transaction referred to in paragraph 1 above.
4. SEC and VECC shall file with the OEB and forward to Windsor Canada Utilities Ltd. and E.L.K. Energy Inc. their respective cost claims no later than **November 4, 2025**.
5. Windsor Canada Utilities Ltd. and E.L.K. Energy Inc. shall file with the OEB and forward to SEC and VECC any objections to the claimed costs by **November 11, 2025**.
6. SEC and VECC shall file with the OEB and forward to Windsor Canada Utilities Ltd. and E.L.K. Energy Inc. any responses to any objections to their respective cost claims by **November 18, 2025**.
7. Windsor Canada Utilities Ltd. and E.L.K. Energy Inc. shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2025-0172** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.

- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Amber Goher at amber.goher@oeb.ca and OEB Counsel, Lawren Murray at lawren.murray@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, October 21, 2025

ONTARIO ENERGY BOARD

Ritchie Murray
Acting Registrar