



BY EMAIL and RESS

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Ontario Energy Board
2300 Yonge Street
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November 5, 2025
Our File: EB20240015

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray,

Re: EB-2024-0015 – E.L.K. Energy Inc 2025 – SEC Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 7, these are SEC's submissions on the outstanding deferral and variance accounts ("DVAs") sought for disposition in the application by E.L.K. Energy Inc. ("E.L.K.") for 2025 rates.

Account 1588-1589

E.L.K. seeks to return to customers a principal balance of \$5,950,298 (\$7,074,897 including interest up to October 30, 2025)¹ resulting from an overcollection from customers dating back to 2016. Despite a very significant investigation, aided by external auditors and the highly capable services of Entegrus Inc. under a Management Services Agreement ("MSA"), E.L.K. has not been able to determine the cause of the error.² While this is surprising and raises questions about past accounting and oversight practices, it is not a reason to delay returning the money to customers.

E.L.K. proposes to dispose of the balance through a rate rider applied over a four-year period. Given the size of the balance for a distributor of its size, SEC does not object to the proposal.

Account 1550

E.L.K. seeks to recover \$1,102,392 (\$1,251,617 including interest up to October 30, 2025) related to errors discovered in Account 1550 (Low Voltage).³ The OEB did not decide on this matter as part of its Partial Decision.⁴

The most significant error from a regulatory perspective is that E.L.K. improperly recorded, and later disposed of, amounts that should have been recorded in Account 1550. Specifically, it recorded

¹ Interrogatory Response, SEC-2(a) (Updated October 6, 2025)

² E.L.K. Letter, dated October 9, 2025, p.2

³ Interrogatory Response, SEC-2(a) (Updated October 6, 2025)

⁴ [Partial Decision and Order \(EB-2024-0015\), August 28, 2025](#), p.12

\$381,388 in host distributor low voltage purchases as wholesale power purchases.⁵ While Account 1588 and 1589 has not been cleared on a final basis for that period, and the erroneous entry can still be corrected, the same is not true for Account 1550. The OEB cleared Account 1550 for that period on a final basis as part of E.L.K.'s 2022 cost of service application.⁶

The OEB's policy regarding error correction on pass-through accounts cleared on a final basis is that it will "determine on a case-by-case basis whether to make a retroactive adjustment based on the particular circumstances of each case."⁷ This policy permits retroactive adjustments, which departs from the fundamental principle against retroactive ratemaking. As the Board has previously stated, "the principles of certainty and finality are a necessary component of effective rate regulation"⁸ and that there may be circumstances that warrant approving adjustments in an asymmetrical fashion in favor of customers.⁹

SEC submits that the OEB should not allow E.L.K. to make this specific adjustment to Account 1550. E.L.K. has a significant history of problematic accounting, recordkeeping, and operational practices. This is evidenced not only by the results of the broader DVA audit and the number of corrections it seeks in this application, but also by previous rate applications where the OEB approved Settlement Proposals, that included not just the need for significant third-party reviews¹⁰, but also unique protocols regarding how the company operates.¹¹ Just last week, the OEB accepted an Assurance of Voluntary Compliance with E.L.K. Energy regarding the misallocation of OESP credits to non-regulated charges.¹² This is its fourth Assurance of Voluntary Compliance in just the past 5 years.¹³

The evidence with respect to these specific errors is striking. E.L.K. readily admits that the issues all stem from "higher-order issues of staff training and leadership oversight".¹⁴ The errors are clearly inconsistent with OEB accounting guidance, and SEC is not aware of any other distributor that has

⁵ Application, p.21

⁶ Application, p.21

⁷ [OEB Letter: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition \(October 31, 2019\)](#), p.2

⁸ [Decision and Rate Order \(EB-2013-0119\), March 13, 2014](#), p.8; [Decision and Order \(EB-2013-0022\), April 25, 2013](#), p.10

⁹ [OEB Letter: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition \(October 31, 2019\)](#), p.2; See also [Partial Decision and Procedural Order No. 3 \(EB-2014-0301/0072\), March 25, 2015](#), p.7

¹⁰ [Decision and Rate Order \(EB-2016-0066\), November 2, 2017, p. 4-5; Schedule A, Revised Settlement Proposal, p.8-9](#). As part of the Decision and Rate Order, E.L.K. was required to undertake, among other matters, "[a] detailed regulatory audit to ensure that E.L.K. Energy has proper accounting procedures and practices", "[a] detailed operational review (including, business planning, management oversight, data security, human and financial resources, and comparison with industry's best practices) with an explanation on how the findings and recommendations will inform E.L.K. Energy's business plan going forward.". Schedule B to the Decision and Rate Order also outlines a number of accuracy and consistency issues with the underlying application data in the evidence.

¹¹ [Decision and Order \(EB-2021-0016, June 30, 2022, Settlement Proposal](#), Among other aspects of the approved Settlement Proposal, the OEB approved creation of a variance account that would record the variance between actual O&M costs and those included in rates (p.18). The Settlement Proposal also required a minimum spending on reactive and pro-active tree trimming (p.18), and the creation of a formal asset inspection procedure document (p.16).

¹² [Assurance of Voluntary of Compliance, E.L.K. Energy Inc. \(EB-2025-0288\), October 24, 2025](#)

¹³ [Assurance of Voluntary of Compliance, E.L.K. Energy Inc. \(EB-2023-0284\), November 3, 2023; Assurance of Voluntary of Compliance, E.L.K. Energy Inc. \(EB-2022-0078\), March 4, 2022; Assurance of Voluntary of Compliance, E.L.K. Energy Inc. \(EB-2020-0170\), November 11, 2020](#)

¹⁴ Interrogatory Response Staff-11



made this specific mistake. SEC submits that if the OEB does not disallow a retroactive adjustment in this case, it is unclear when it ever would.

SEC acknowledges that E.L.K. has made significant changes since the errors occurred. These include entering into a MSA with Entegrus Inc., who led the review, and has separately implemented changes to internal processes.¹⁵ However, those changes do not excuse what were clearly deeply flawed accounting practices under previous management and the lack of diligence to try to correct the errors of the current management.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

¹⁵ Application, p.12-13; Interrogatory Response SEC-1