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File No. 17001.13

November 19, 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: E.L.K. Energy Inc. 2025 Incentive Regulation Mechanism (“IRM”)
Distribution Rate Application Interrogatory Responses (EB-2024-0015)
Reply Argument**

We are counsel to E.L.K. Energy in the above captioned matter. Please find enclosed an electronic copy of the Reply Argument.

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 the *Ontario Energy Board Act, 1998*, being Schedule B to the Energy Competition Act, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an application by E.L.K. Energy Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2025.

E.L.K. ENERGY INC.
REPLY ARGUMENT

FILED: November 19, 2025

Board File No. EB-2024-0015

E.L.K. ENERGY INC.

REPLY ARGUMENT

1. On October 28, 2024, E.L.K Energy Inc. (“**E.L.K. Energy**”) filed an application seeking:
 - a. an incentive rate-setting mechanism (“**IRM**”) application with the Ontario Energy Board (“**OEB**”) under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to its electricity distribution rates to be effective May 1, 2025 (“**IRM Application**”);
 - b. disposition of its Group 1 balances from 2016 to 2023 (“**DVA Application**”); and
 - c. correction to issues that related to E.L.K. Energy’s 2022 cost of service application. Specifically, E.L.K. Energy identified and sought to correct two issues that were subject to the settlement proposal approved by the OEB in the 2022 cost of service application (“**COS 2022 Corrections**”).

(the “**Application**”)
2. On June 26, 2025, the OEB bifurcated the hearing of issues in this proceeding in Procedural Order No. 5. Specifically, the OEB created a Phase 2 proceeding where the OEB would consider a portion of the DVA Application in relation to Account 1588 and 1589 balances.
3. On August 28, 2025, the OEB issued a Partial Decision and Order on the Application (“**Partial Decision**”). The Partial Decision approved the Settlement Proposal on the COS 2022 Corrections and the IRM Application. The Partial Decision also granted partial approval of the DVA Application, excluding Account 1550, which was to be addressed in Phase 2 in conjunction with the balances for Accounts 1588 and 1589 (“**Phase 2 DVAs**”).
4. On November 5, 2025, OEB Staff, the School Energy Coalition (“**SEC**”) and the Vulnerable Energy Consumers Coalition (“**VECC**”) filed submissions on the DVA Application. This is E.L.K. Energy’s response to those submissions.
5. At the outset of the reply submission E.L.K. Energy would like to raise two important factors that should be considered by the OEB in its decision. The first is the financial viability of E.L.K. Energy. One of the mandatory objectives guiding the OEB's decision-making is ensuring the financial viability of the electricity industry.¹ In its reply submission on July 24, 2025, E.L.K. Energy highlighted the serious threat to the financial viability of the utility, which is reflected in the negative return on equity and net loss of \$1.1 million in 2023. E.L.K. Energy repeats and relies upon those submissions here.²

¹ Section 1(1)(2) of the *Ontario Energy Board Act, 1998*.

² EB-2024-0015, E.L.K. Energy Reply Submission, July 24, 2025, at pg. 2.

6. The second consideration is how a decision on the Phase 2 DVAs might affect Windsor Canada Utilities Ltd.'s acquisition of E.L.K. Energy.³ While the OEB approved this transaction, Windsor Canada Utilities Ltd. has not yet notified the OEB of the completion of the transaction. One of the conditions in the Purchase and Sale Agreement is satisfactory resolution of this proceeding.⁴ An unsatisfactory resolution in this proceeding could undermine completion of this transaction. This is not in the interest of ratepayers.

I. FORGONE REVENUE, EFFECTIVE DATE AND IMPLEMENTATION DATE

7. OEB Staff states E.L.K. Energy is requesting approval to recover the forgone revenue from May 1, 2025 (when E.L.K. Energy's 2024 rates became interim) and the implementation date of October 1, 2025 as approved by the OEB on August 28, 2025. OEB staff does not object to E.L.K. Energy's request for approval to recover forgone distribution revenue as its existing rates were declared interim by the OEB, effective May 1, 2025.⁵
8. To clarify, E.L.K. Energy is not 'seeking approval' to recover foregone revenue as the Partial Decision already authorizes this with an effective date of May 1, 2025. The Partial Decision states:

The OEB approves the collection of forgone revenues from May 1, 2025 to the implementation date for 2025 rates (October 1, 2025).

9. The problem is that although the Partial Decision approved an effective date of May 1, 2025, the Draft Rate Order submitted by E.L.K. Energy on September 5, 2025, to implement rates by October 1, 2025, has not yet been approved. OEB Staff did not raise comments with E.L.K. Energy regarding its Draft Rate Order and accompanying IRM Model until the October 2, 2025 issues day, provided verbally, after which E.L.K. Energy promptly filed a revised IRM Model on October 9, 2025.
10. Under section 78(2) of the *Ontario Energy Board Act, 1998*, E.L.K. Energy is not allowed to charge for the distribution of electricity except in accordance with an order of the OEB. Therefore, E.L.K. Energy believed it could not amend its distribution rates according to the Draft Rate Order until it received approval from the OEB.
11. In light of this course of events, E.L.K. Energy requests approval of revised foregone revenue riders, calculated in an updated model and implemented in an updated IRM model (both of which are attached to this submission), which recover foregone revenue from May 1, 2025 to December 31, 2025. Forgone revenue would be recovered over a 12-month period from the revised implementation date of January 1, 2026, as proposed by OEB Staff.
12. E.L.K. Energy submits it would be inappropriate for the OEB to approve recovery of forgone revenue from May 1 to September 30 but disallow recovery from October 1 to December 31. E.L.K. Energy complied with the directives of the OEB and OEB Staff in a timely manner.

³ EB-2025-0172.

⁴ EB-2025-0172, Purchase and Sale Agreement, s.8.1(n), August 27, 2025.

⁵ OEB Staff Submission at pgs. 1-2; EB-2024-0015, Interim Rate Order, April 25, 2025.

13. Finally, E.L.K. Energy agrees with OEB Staff that it would be appropriate to use an implementation date of January 1, 2026 of rates approved by the OEB in this proceeding.
14. E.L.K. Energy notes that OEB Staff supports the disposition period of 48 months for the Phase 2 DVAs.⁶ SEC and VECC did not take a position on this disposition period.

II. ACCOUNT 1550

15. SEC opposes the disposition of Account 1550 adjustments for amounts that were approved on a final basis prior to 2021. E.L.K. Energy will of course remove the adjustment to Account 1550 at the direction of the OEB, however E.L.K. Energy believes that SEC likely misunderstands the nature of the proposed adjustment to Account 1550.
16. As correctly set out by OEB Staff, the retroactive adjustment to Account 1550 results in a refund to ratepayers in the amount of \$381,033.⁷
17. The source of this misunderstanding could arise from the fact that E.L.K. Energy's initial Application stated that the retroactive adjustment to Account 1550 resulted in a debit to customers of \$381,388.⁸ During interrogatories E.L.K. Energy subsequently corrected, and restated in its compendium for the Issues Day,⁹ that Account 1550 adjustments for 2016 to 2020 were in fact a credit of \$381,388 owed to ratepayers.¹⁰

III. SETTLEMENT ADJUSTMENTS WITH THE IESO

A. Regulated Price Plan ("RPP") and Feed-in Tariff ("FIT") True Up Adjustments

18. On October 27, 2025, the IESO filed a letter with the OEB confirming that the IESO does not apply the two-year limitation period to either the RPP (O. Reg. 95/05) or the FIT programs (subsection 25.33(2.1) of the *Electricity Act, 1998*).¹¹ Consistent with this approach, OEB Staff agrees that neither the RPP true-up adjustment nor the FIT adjustment is subject to the limitation period set out in Ontario Regulation 153/23. OEB staff is of the view that E.L.K. Energy should proceed to settle the adjustments with the IESO as soon as possible, in accordance with the IESO settlement process.¹²
19. E.L.K. Energy does not object to the conclusions reached by the IESO and OEB Staff in respect of the application of the two-year limitation period in this proceeding. In light of the IESO letter and OEB Staff's submissions, and the fact that no party disagreed, E.L.K. has proceeded to settle the RPP true-up adjustment and the FIT Contract adjustment amounts with the IESO.

⁶ OEB Staff Submission at pg. 4.

⁷ OEB Staff Submission at pg. 6.

⁸ EB-2024-0015, Application, at pg. 21, October 8, 2024.

⁹ EB-2024-0015, E.L.K. Energy Compendium for Issues Day, October 1, 2025, page 7

¹⁰ EB-2024-0015, Supplemental Interrogatory Responses, at Staff-6(d), May 2, 2025.

¹¹ EB-2024-0015, IESO – Application of the Two-Year Limitation Period, October 27, 2025.

¹² OEB Staff Submission at pg. 9.

20. E.L.K. Energy does not agree with OEB Staff's position that the liability/entitlement for amounts under Feed-in-Tariff ("FIT") contracts for E.L.K. Energy derives from the contract itself not a statute or regulation.¹³ OEB Staff has not pointed to the specific contract(s) it is referencing. E.L.K. Energy does not believe there would be privity of contract as it is unlikely a distributor would be a party to a FIT contract between a renewable generator and the IESO. Distributors are only used to settle the contracts, as set out in the Retail Settlement Code and its Electricity Distribution Licence ED-2003-0015:¹⁴

Notwithstanding any other provision of this Code, where an embedded retail generator has a contract with the Ontario Power Authority under which the Ontario Power Authority is purchasing output from the embedded generation facility, a distributor shall settle all applicable payments or charges associated with the contract, and shall do so in accordance with the pricing provisions of the contract and with such rules as may be determined by the Board.

B. Class A Volumes Adjustments

21. OEB Staff does not endorse E.L.K. Energy's request for an exemption from the two-year limitation period under O. Reg. 153/23 regarding the proposed Class A adjustments, which involve a \$0.2 million under-recovery to be collected from the IESO. OEB Staff is of the view the four principles listed in the 2019 letter pertaining to retroactive adjustments generally weighs against granting E.L.K. Energy's requested relief.¹⁵ E.L.K. Energy does not agree with OEB Staff.
22. OEB Staff relies upon the Decision and Order EB-2024-0007 where the OEB rejected a retroactive adjustment for Algoma Power Inc. This decision is clearly distinguishable as the key factor was that it took Algoma Power three years to investigate the error. E.L.K. Energy only became aware of the Class A volume adjustments following the extensive reperformance of the DVA accounts for the 2016-2023 period by the external Review Team (as defined in the Application). E.L.K. Energy did not wait for several years to address the issue and acted promptly.
23. OEB Staff incorrectly asserts that exceptional circumstances are not present here. E.L.K. Energy's reported ROE for 2022 and 2023 was -1.97% and -22.33%, respectively, with a net loss of \$1.1 million in 2023.¹⁶ Given E.L.K.'s current financial state, the OEB has even encouraged "...E.L.K. Energy's management and Board of Directors to thoroughly examine all strategic options for the utility, including an early rebasing."¹⁷
24. E.L.K. Energy is asking for the OEB to correct the windfall that was received by IESO market participants from an error that volumes submitted to the IESO were based on billed amounts in a month, as opposed to volumes consumed in that month. A \$0.2 million correction is

¹³ OEB Staff Submission at pg. 9.

¹⁴ Retail Settlement Code, s. 3.2.

¹⁵ OEB Staff Submission at pgs. 9 & 11.

¹⁶ Supplementary IR Responses, Staff-5(d)

¹⁷ Decision and Rate Order EB-2023-0013, March 21, 2024.

significant for a utility of E.L.K. Energy's size, but will have an immaterial impact on IESO market participants.

25. E.L.K. has already set out its position on the retroactive adjustments for this amount in its reply submission dated July 24, 2025 and in interrogatory responses Staff-11(f) and Staff-14(c). Should the OEB have concerns about intergenerational inequity, E.L.K. Energy reviewed its customer lists and confirms an average annual account turnover of approximately 5% between 2016 and 2025. This means that approximately 95% of customers are identical between 2024 and 2025, 90% of customers are identical between 2023 and 2025, and so on.¹⁸

IV. OTHER MATTERS

26. E.L.K. Energy would like to address the comments made by VECC and SEC regarding “punitive measures”, deeply flawed accounting practices under previous management, and the lack of diligence to try to correct the errors of the current management.
27. With the benefit of hindsight, SEC and VECC are critical of E.L.K. Energy's current management, but fail to acknowledge the significant challenges faced and overcome by the utility's present leadership. E.L.K. Energy's exhaustive efforts were highlighted in its letter on October 9, 2025:

E.L.K. Energy believes it is important to highlight to the OEB the exhaustive efforts it undertook to reconcile the differences in the 1588, 1589, and 1550 balances. As set out in detail in the “Compendium for Issues Day” filed on October 1, 2025, E.L.K. Energy conducted a third party audit by KPMG, received assistance from Entegrus Inc. under a Management Services Agreement (~2000 hours), liaised for weeks with Hydro One and the IESO, retained legal counsel and expert consultants, and internal staff spent countless hours analyzing and compiling data.

28. Correcting accounting issues from the past decade is a complicated exercise requiring significant time, expertise, and ready access to historical records which are not always readily accessible. Current E.L.K. Energy management should be commended for their persistent efforts, which represent an immediate-term step in the longer-term course correction through the planned sale of the utility.
29. This is not an appropriate situation for the OEB to impose “punitive measures”, as doing so will send the wrong signal to utilities and potentially further undermine E.L.K. Energy's financial viability, as well as the acquisition of E.L.K. Energy by Windsor Canada Utilities Ltd. In any event, it is not clear the OEB has the ability to levy “punitive measures” during a rates hearing.

¹⁸ See the approach of the OEB in Decision and Order EB-2023-0039, Newmarket-Tay Power Distribution Ltd., May 7, 2024, at pgs 16-17.

All of which is respectfully submitted this 19th day of November, 2025.

A handwritten signature in black ink that reads "Colm Boyle". The signature is written in a cursive, slightly slanted style.

Colm Boyle
Counsel to E.L.K. Energy Inc.