



DECISION AND ORDER

EB-2026-0089

E.L.K. ENERGY INC. AND ENWIN UTILITIES LTD.

Application for temporary exemptions from section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters

BY DELEGATION, BEFORE: Ceiran Bishop
Director,
Performance Analytics and Compliance

April 22, 2026

DECISION AND ORDER

INTRODUCTION

This is a Decision and Order of the Ontario Energy Board (OEB) on a combined application filed on February 5, 2026, under section 74 of the *Ontario Energy Board Act, 1998* (OEB Act). The application was filed by E.L.K. Energy Inc. (E.L.K.), and ENWIN Utilities Ltd. (ENWIN) seeking amendments to their respective electricity distribution licences to provide for temporary exemptions from section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters (ARC) until the earlier of December 31, 2028 and the closing of E.L.K.'s amalgamation with ENWIN (the Application).

This Decision and Order is being issued under delegated authority without a hearing pursuant to section 6(4) of the OEB Act. The application was supported by pre-filed written evidence and supplemented with answers to questions from OEB staff. For the reasons set out below, the OEB amends E.L.K.'s and ENWIN's electricity distribution licences, temporarily exempting each of the utilities from section 2.1.2 of the ARC.

BACKGROUND

On October 21, 2025, the OEB issued a [Decision and Order](#) approving Windsor Canada Utilities Ltd.'s (WCUL) application to purchase all of the issued and outstanding shares of E.L.K. from the Corporation of the Town of Essex.

WCUL also owns ENWIN, the licensed electricity distributor serving the Windsor area, as well as non-regulated affiliates and their subsidiaries.

According to the Application, and consistent with steps described in the 2025 application described above, WCUL's purchase of the shares of E.L.K. is the first of a two-phase process. The second phase contemplates seeking OEB approval for the two utilities to amalgamate.

Before completion of the second phase, WCUL will maintain separate operations for E.L.K. and ENWIN for approximately two years, during which E.L.K. and ENWIN will each complete their scheduled rebasing. The amalgamation application is expected to follow.

Because E.L.K. and ENWIN are distinct utilities under common ownership by WCUL, E.L.K. and ENWIN are currently affiliates of each other.

THE APPLICATION

In February 2026, E.L.K. and ENWIN filed an application to amend their respective licences. The filing seeks a temporary exemption from a provision of the ARC that requires a utility to ensure that at least one-third of its board of directors is independent from any affiliate (2.1.2). The applicants seek an exemption until the earlier of December 31, 2028 and the closing of ENWIN's amalgamation with E.L.K.

The applicants have requested the exemption in the Application in order to permit ENWIN's board of directors also to serve as the board of directors for E.L.K., thereby enabling the expertise of the ENWIN board to be leveraged for the benefit of E.L.K. The applicants report that one focus of the E.L.K. board will be the utility's business plan as an input into E.L.K.'s rebasing application, expected to be filed in late summer 2026.

According to the applicants, the use of ENWIN's board is the preferred approach to providing governance oversight of the two utilities. ENWIN applied a skills-based approach to recruiting and selecting its board members; its members are experienced, and the period during which E.L.K. requires its own board is limited. The applicant notes that, upon the conclusion of amalgamation, there will be only one local distribution company within the WCUL holdings. No further exemptions to s. 2.1.2 of the ARC would therefore be necessary.

According to the applicants, ENWIN's board comprises eight directors, six of whom, including the chair, are identified as independent from affiliates other than E.L.K.

The applicants explained that, in their view,

the primary purpose for section 2.1.2 of the ARC is to protect against conflicts of interest that arise when regulated utilities are part of corporate groups that include unregulated affiliates, including by ensuring that the utility's decision-making is independent and aligned with regulatory objectives. As such, where the affiliates are both regulated utilities, there is no harm to ratepayers in exempting the utilities from this requirement.

DECISION

The OEB grants E.L.K. and ENWIN's application for amendments to their respective licences, temporarily exempting the utilities from section 2.1.2 of the ARC.

Licensed electricity distributors are required to comply with all of the OEB's codes as a condition of their licence. As such, exemptions from codes are processed as licence amendments. Section 74(1) of the OEB Act permits the OEB to amend a licence if it is in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998* (Electricity Act).

Section 2.1.2 of the ARC requires that a "utility shall ensure that at least one-third of its Board of Directors is independent from any affiliate". As the OEB notes in a 2018 [report](#),¹ "director independence is generally defined as independence from the company, shareholder and any affiliate". The report further notes that independent directors support the objective of ensuring that utility decision-making is in the best interest of the utility, with due regard for the interests of customers.

The request for an exemption from any requirement requires consideration of the specific circumstances in which it is made. In this case, ENWIN and E.L.K. are in the midst of a process which, if it proceeds as expected, will extinguish the affiliate relationship that currently obtains between them; they will become one utility. The applicants' proposal for the governance of E.L.K. until the amalgamation is completed is to use the same governance body that oversees ENWIN today.

It appears reasonable that ENWIN's board of directors is well placed to provide oversight of E.L.K in the period prior to amalgamation without undue risk to the utility or its customers, while supporting a process that is expected to lead to efficiencies through consolidation. E.L.K. and ENWIN carry out the same fundamental business; their obligations, priorities, business conditions and strategic challenges are necessarily similar if not, in some cases, identical. Their current common ownership and the prospect of amalgamation in the relatively near term also means that what is in the best interest of these two utilities is likely also to be substantially similar, and would be expected to remain aligned as these entities approach amalgamation.

A further consideration is that the consequences of any board of directors' strategic decisions regarding utility planning, operations and associated impacts on costs and

¹ Report of the OEB - "Best Practices regarding Governance of OEB Rate-Regulated Utilities" (December 20, 2018)

rates will be able to be reviewed as part of the ensuing rebasing application proceedings. In the normal course, these types of applications are decided through proceedings that include the opportunity for intervention by interested parties, who, along with OEB staff, would have the opportunity to assess the basis upon which the utility's rate proposals are made.

Another consideration in favour of granting the exemption is that the relief sought is temporary only. If the amalgamation does not proceed on its expected schedule, the exemption will expire. Similarly, after the expected amalgamation, the remaining utility would be required to meet ARC's requirements for independent directors.

Accordingly, the OEB finds it in the public interest to grant the ARC exemptions to E.L.K. and ENWIN until the earlier of December 31, 2028 and the closing of E.L.K.'s amalgamation with ENWIN. The OEB expects both utilities to comply with all other requirements in the ARC and the conditions in their respective electricity distribution licences.

IT IS ORDERED THAT:

1. Schedule 3, "List of Code Exemptions", of E.L.K. Energy Inc.'s Electricity Distribution Licence ED-2003-0015 is amended by adding the following paragraph:

"1. The Licensee is exempt from section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters as per the Ontario Energy Board's Decision and Order in EB-2026-0089. This exemption expires on December 31, 2028 or on the date of closing of the Licensee's amalgamation with ENWIN Utilities Ltd., whichever is earlier."

2. Schedule 3, "List of Code Exemptions", of ENWIN Utilities Ltd.'s Electricity Distribution Licence ED-2002-0527 is amended as below:

"1. The Licensee is exempt from section 2.1.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters as per the Ontario Energy Board's Decision and Order in EB-2026-0089. This exemption expires on December 31, 2028 or on the date of closing of the Licensee's amalgamation with E.L.K. Energy Inc., whichever is earlier."

DATED at Toronto April 22, 2026

ONTARIO ENERGY BOARD

Ceiran Bishop
Director, Performance Analytics and Compliance