John A.D. Vellone
T (416) 367-6730
F 416.367.6749
jvellone@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com

Borden Ladner Gervais

March 2, 2017

Delivered by Email, RESS & Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: E.L.K. Energy Inc. ("E.L.K.")
OEB File No.: EB-2016-0155
Reply Submissions

Please find enclosed E.L.K.'s Reply Submissions.

Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by Jessica-Ann Buchta per John A.D. Vellone

John A.D. Vellone

Encl.

Cc: Mr. Pasquale Catalano, Hydro One Networks Inc.
Mr. Ken Thoman, Project Manager, Sellick Equipment Limited

E.L.K. Energy Inc.

Reply Submissions

1. Introduction

E.L.K. Energy Inc. ("**E.L.K.**") files this written reply to the final submissions (the "**Final Submissions**") of Hydro One Networks Inc. ("**Hydro One**") contesting E.L.K.'s application (the "**Application**") to the Ontario Energy Board (the "**OEB**" or the "**Board**") filed April 12, 2016, as amended and restated, to amend its licensed service area pursuant to Section 74 of the *Ontario Energy Board Act, 1998* to include a parcel of land owned by Sellick Equipment Ltd. (the "**Customer**").

Hydro One has vigorously opposed this Application at every stage of this lengthy service area amendment process. The final submissions are no exception.

In this reply, E.L.K. will address Hydro One's submissions as they relate to:

1. Rate impacts;
2. Pole relocation costs;
3. Other alleged negative impacts (stranded assets, contiguous borders, and LTLTs).

2. Rate Impacts

Hydro One argues that, among other things, "[t]o assess economic efficiency for this Application, the Board must look at the impact on rates on the Applicant LDC's existing customers […]".[1]

This is incorrect. In RP-2003-0044, when discussing the factors that the Board will assess when looking at economic efficiency, the Board determined:

> "*The Board does not believe that significant weight should be put on differences in current distribution rates even though current rates may be a significant factor in determining customer preference. In fact current rates, insofar as they are not a predictor of future rates, may misinform customer preference. As Dr. Yatchew indicated, an applicant demonstrating that its rates are lower than the rate of the incumbent utility would not be a satisfactory demonstration that its costs to serve the amendment area will be lower on a sustainable basis.*"[2]

However, in addition to assessing the economic efficiency of the competing proposals, the Board will also assess whether there will be any negative impacts arising from the proposed amendment. This is where Hydro One's concerns related to rate impacts would fall in the Board's analysis.

Hydro One's rates argument centres on three themes.

a) Mr. Bacon's Total Bill Analysis

First, Hydro One argues that the Board should not rely on Mr. Bacon's total bill analysis found at Tab 3 of Exhibit K1.1 because it is "simplistic", "incorrect", and "critically flawed". To support this, Hydro One cites one concern - the inclusion of the Debt Retirement Charge in the total bill calculation - to support this assertion.

[1] Hydro One Final Submissions at pg. 2.
[2] RP-2003-0044 at para. 86.

Even if E.L.K. concedes that Tab 3 of Exhibit K1.1 could be improved by removing the Debt Retirement Charge line item, the solution would be to remove that single line item from the analysis and then re-calculate the total bill impacts. For the Board's information, this is show in Table 1 below.

Table 1: Updated Total Bill Impacts (Removing DRC)[3]

		E.L.K.	**Hydro One**
(1)	Total Bill Impact	$49,165.22	$50,104.71
(2)	Debt Retirement Charge plus HST	$2,078.75	$2,099.54
(1)-(2)	Adjusted Total Bill Impact	$47,086.47	$48,005.17

The solution should not be to throw the baby out with the bath water.

Hydro One's approach purposefully ignores, and by extension Hydro One is asking the Board to ignore, the fact that E.L.K. will recover incremental distribution revenue from Sellick of **$36,252.25** per year,[4] which greatly exceeds its incremental costs of serving Sellick of **$3,998.18** per year.[5]

Mr. Andre, under questioning from the Board panel, conceded that E.L.K. will recover distribution revenues in-excess of costs:

> "*MR. ANDRE: These would be revenues collected from Sellick that would go towards offsetting the costs to all other GS 50 to 5,000 kilowatt customer class customers associated with E.L.K.'s distribution system assets.*"[6]

For these reasons, E.L.K. submits that Mr. Bacon's total bill assessment continues to be the best approach.

From a total bill perspective, the Customer will be paying the full cost of service regardless of whether E.L.K. or Hydro One ultimately serves the Customer.[7]

b) Low Voltage and Retail Transmission Service Rate Impacts

Second, Hydro One argues that the Board should instead focus attention on two specific bill items: (i) the $546.60/month to be charged by E.L.K. to Sellick for the Low Voltage charge;[8] and (ii) the $4,791.31 per month to be charged by E.L.K. to Sellick for the Retail Transmission Service Rates (Network, Line and Transformation).[9] Hydro One refers to these amounts to argue that other E.L.K. ratepayers will be harmed if E.L.K. provides service to Sellick because E.L.K. will not recover the incremental sub-transmission charges or RTSR charges levied by Hydro One directly from Sellick.

[3] All numbers pulled from Tab 3 of Exhibit K1.1.

[4] The sum of the monthly Service Charge ($187.07), Common ST – Distribution Volumetric ($1,899.24), ELK Rate Rider Disposition of Deferral Variance ($ -2,427.60) and ELK Rate Rider Disposition of GA ($3,014.76) from Tab 3 of Exhibit K1.1, then annualized by multiplying by 12 plus HST.

[5] The sum of the annual incremental OM&A costs for E.L.K. to connect Sellick of $2,842 (found at page 12 of 31 of ELK's final Offer to Connect, filed on Oct. 6, 2016) plus the revenue requirement impact (at 8%) of the total incremental capital costs of $8,702.67, equalling $696.21 plus HST.

[6] Transcript Feb. 9, 2017 at page 131, lines 8-11.

[7] Transcript Feb. 9, 2017, page 38, lines 17-26.

[8] Hydro One Final Submissions at Section 2.1.2.1.

[9] Hydro One Final Submissions at Section 2.1.3.

What Hydro One ignores is that E.L.K. ratepayers will be equally harmed if Hydro One provides services to Sellick because E.L.K. will not recover the incremental sub-transmission charges or RTSR charges from Hydro One either.

This was canvassed during the oral hearing. Mr. Andre first conceded that Hydro One would charge the exact same incremental sub-transmission and RTSR charges to E.L.K. regardless of whether Hydro One or E.L.K. provides service to Sellick.[10]

Mr. Andre then confirmed[11] that E.L.K. would recover the exact same amounts for Low Voltage charges and Retail Transmission Service Rates (Network, Line and Transformation) from Hydro One if Hydro One provides service to Sellick. That is: E.L.K. would charge both Sellick and Hydro One the exact same $546.60/month for the Low Voltage charge;[12] and (ii) the $4,791.31/month for the Retail Transmission Service Rates (Network, Line and Transformation).[13]

If the question is whether E.L.K.'s ratepayers will be "held harmless" from the proposed SAA, the answer is yes.

Regardless of which LDC provides service to Sellick, E.L.K. will pay the same amounts to Hydro One for incremental ST and RTSR charges and E.L.K. will recover the same amounts for Low Voltage and RTSR charges (from Hydro One if Hydro One provides service to Sellick; or from Sellick if E.L.K. provides service to Sellick).

Put another way, if Hydro One provides service to Sellick, E.L.K. ratepayers will suffer the exact same shortfall in respect of the ST charges and RTSR charges due to Hydro One underpaying on LV and RSTR rates.

However, if E.L.K. provides service to Sellick, other E.L.K. ratepayers would also gain the benefit of the incremental distribution revenues (discussed in part (a) above) to help make up the difference.

c) *Total Customer Rate Impact*

Third, Hydro One relies on their response to Undertaking J1.1 as evidence to suggest that other E.L.K. ratepayers will need to pay $52,000 to cover the incremental costs associated with serving Sellick.

E.L.K. submits the Board should greatly reduce the weight it places on Undertaking J1.1 for three reasons.

First, the evidence filed as Undertaking J1.1 is new evidence, which has not been properly tested by E.L.K., and is not at all responsive to the undertaking which Hydro One volunteered during the oral hearing. Specifically, during the oral hearing, Board Staff and the Board itself asked numerous questions about the Hydro One calculations shown in Table 1 of Tab 2 of Exhibit K1.2.[14] The Hydro One witnesses were struggling to provide an explanation, so Hydro One's counsel volunteered an undertaking to give Hydro One another opportunity to explain the calculations shown in Table 1 of Tab 2 of Exhibit K1.2.[15] However, rather than explaining Table 1, Hydro One has used its undertaking response to introduce net new calculations and analysis that were not tested by any party during the oral hearing and, frankly, serve to complicate matters further.

---

[10] Transcript Feb. 9, 2017 at page 115, line 22 to page 116, line 4.
[11] Transcript Feb. 9, 2017 at page 116, line 12 to page 119, line 4.
[12] Tab 3 of Exhibit K1.1. It is the same "Low Voltage" rate in both the "ELK" and "Embedded Distributor" columns.
[13] Tab 3 of Exhibit K1.1. It is the same "Transmission Network Service" and "Transmission Line Connection" and "Transmission Transformation Connection" rates in both the "ELK" and "Embedded Distributor" columns.
[14] Transcript Feb. 9, 2017 at page 91, line 1-23; page 123, line 1 to page 127, line 16; and page 152, line 1 to page 157, line 13.
[15] Transcript Feb. 9, 2017 at page 132, lines 6-27.

Second, the calculations in Undertaking J1.1 ignore the facts described in part (b) above that, regardless of which LDC serves Sellick, E.L.K. pays the same ST and RTSR charges to Hydro One and E.L.K. recovers the same LV and RTSR charges, whether from either Hydro One or Sellick. Using Hydro One's methodology in Undertaking J1.1, E.L.K. will face the exact same "revenue shortfall" regardless of whether Hydro One or E.L.K. serves Sellick.

Third, the calculations in Undertaking J1.1 ignore the facts described in part (a) above that E.L.K. will recover **$32,254.07** per year in distribution revenue from Sellick more than what it costs to serve Sellick only if E.L.K. serves Sellick directly.

3. Pole Relocation Costs

Hydro One argues that the Board should include E.L.K.'s pole relocation costs of $8,432 in the "total costs of connection" for E.L.K. Once these costs are included, Hydro One argues "there is essentially no difference between the two distributors' upfront cost to connect."[16]

E.L.K. disagrees with Hydro One's suggestion that the pole relocation costs in question should be included in the "total costs of connection" for the same reasons as described in E.L.K.'s Argument in Chief. We will not repeat those reasons again here.

Hydro One alleges that E.L.K. moved the pole to where it did "with the explicit intent of acquiring the Sellick site by presuming that the Board would rule favourably for E.L.K. in an SAA" and "E.L.K.'s intent was to provide an economically-efficient solution for one customer, Sellick." Hydro One cites no evidence to support these allegations. This is because nothing could be further from the truth.

The evidence is that E.L.K. would've cited the pole where it did, regardless of which utility ultimately provides service to Sellick.[17] The reasons why E.L.K. cited the pole where it did were canvassed in detail during the oral hearing.[18] In short, E.L.K. had two major barriers to citing the pole in its own service territory. E.L.K. does not have slack-span engineering standards and E.L.K. did not have access rights over private property located on its side of the street (an easement would've been necessary). E.L.K. needed the pole to support the tension on the existing Clark Street line. The citing for the pole was determined in consultation with the municipality, since it would be in the municipal right of way, and the municipality would be paying the relocation costs.

Hydro One argues that the inclusion of the pole relocation costs would be "analogous to the inclusion of contestable costs in SAA fully-loaded connection costs". E.L.K. respectfully disagrees. Contestable costs are directly attributable to a specific customer connection request, which is why they are included in the fully-loaded connection costs. The pole relocation costs are due to a third-party (the municipality) and are not attributable to Sellick.

4. Other alleged negative impacts

For the first time in this process, and without raising these issues at any other time in this proceeding, Hydro One's Final Submissions now allege three new negative impacts that might arise from the proposed service area amendment – stranded assets, contiguous borders and new LTLT.

First, Hydro One implies in its argument that the existing E.L.K. pole would be "stranded" or "become redundant." E.L.K. does not agree. The evidence of Mr. McAulay is that the existing pole is needed by E.L.K. to support the

[16] Hydro One Final Submissions at page 8.
[17] Transcript Feb. 9, 2017, page 15, lines 20-24.
[18] Transcript Feb. 9, 2017 at page 69, line 5 to page 71, line 15.

tension from the existing E.L.K. line eastward along Clark Street in E.L.K.'s service territory.[19] Mr. Siebert of Hydro One agreed that this pole is both used and useful as well.[20] No stranded assets will be created, regardless of which utility provides service to Sellick.

Hydro One argues the Board should require E.L.K. to transfer ownership of the E.L.K. pole to Hydro One. E.L.K. would dispute this, since the pole is needed to serve existing E.L.K. customers on Clark Street. Hydro One has failed to specify the legal basis upon which the Board could even make this type of order. It is not in scope of the Application filed by E.L.K. If Hydro One wishes to pursue this remedy, it should formulate the legal basis for the relief it is seeking and bring an appropriate application to the Board.

Second, Hydro One argues that the existing "smooth" border between Hydro One and E.L.K. will be now have a once-customer "dent". One would hope that both Hydro One and E.L.K. have sufficiently sophisticated operations, maintenance and administration functions that they could handle such a discrete and well defined change to the existing service area boundaries. The only other entity affected by the change is Sellick Equipment, the very customer requesting service from E.L.K. A customer that has received service from E.L.K. or its predecessor companies for the past 45 years.

Third, Hydro One argues that approving the service area amendment will create a new long-term load transfer, contrary to the provisions of the Distribution System Code. Hydro One argues this on the basis of an unproven assertion that "Hydro One will remain the physical distributor" if E.L.K. provides service. This is not true. The evidence is that E.L.K. will supply power to Sellick from E.L.K's existing distribution feeder that is currently used to serve E.L.K. customers eastward along Clark Street.[21] If the Board grants the Application, E.L.K. will be both the physical and geographic distributor.

E.L.K. is considered both the physical and geographic distributor for all the other customers serviced by this same feeder eastward along Clark Street. It is true that this feeder is supplied via Hydro One's M7 line. Contrary to the assertions of Hydro One, the fact that Hydro One supplies power upstream to an embedded distributor does not, in and of itself, make Hydro One the "physical distributor" nor does it make all the embedded distributor's customers LTLTs.

5. Conclusion

This is a straight forward service area amendment application.

The customer in question has a clear preference to receive distribution services from the applicant, E.L.K.

E.L.K.'s proposed connection is more economic than what is proposed by Hydro One, due in large part to the presence of an existing E.L.K. pole located proximate to the northeast corner of the Sellick equipment lot connecting to an existing distribution feeder that is running eastward along Clark Street serving E.L.K.'s existing customers.

Both proposals are comparable in terms of system planning, safety and reliability, there are no stranding issues, the proposals are demonstrably neutral in terms of rates and price impacts on customers, and there are no new long term load transfers created.

[19] Transcript Feb. 9, 2017, page 71, line 2-15.
[20] Ibid. at page 144, line 2-18; and page 133, line 7 to page 134, line 19.
[21] Section 7.1.4(f) of the Application. E.L.K.'s response to OEB Staff Interrogatory #1.

However, Hydro One has tirelessly tried to complicate and confuse the evidentiary record in this Application. The Hydro One Final Submissions and Undertaking J1.1 are the two latest examples of this behaviour.

E.L.K. submits that Hydro One has failed to comply with its obligations as set out in the Board's decision in RP-2003-0044 at para. 200:

> *"At the same time, the Board expects incumbent distributors to give proper consideration to rational and efficient service area realignment, even where it results in the loss of some territory. Amendments should not be resisted where the proponent is clearly the most efficient service provider for the affected customer. The distributors affected by a proposed amendment should evaluate a proposal in light of the principles in this decision, and respond in a reasonable fashion."*

E.L.K. is confident that the Board can see through Hydro One's aggressive litigation tactics.

However, E.L.K. has another concern as well.

Through its behaviour, Hydro One is sending a signal to E.L.K and other small utilities: "*Do not bring a contested service area amendment against Hydro One. We will throw resources at it, complicate it, confuse it, and make you pay for it – in time and money."*

E.L.K. has had to incur substantial unforecasted costs to retain external legal counsel and an external rate consultant to address the numerous complications introduced by Hydro One. These costs that should not have been necessary given the straight forward nature of this Application.

Because of this, E.L.K. submits that the Board should order costs be awarded to E.L.K. against Hydro One.

In E.L.K.'s submissions, Hydro One's failure to comply with the responsibilities of an incumbent distributor set out in RP-2003-0044 constitutes exactly the type of "special circumstances" in which the Board should find that E.L.K. is eligible for a cost award pursuant to Section 3.07 of the Practice Direction on Cost Awards. Incumbent distributors should be incented to comply with their obligations in the future.

In this regard, E.L.K. submits that Hydro One:

- failed to contribute to a better understanding by the Board of one or more of the issues in the process;
- engaged in conduct that tended to lengthen the process unnecessarily; and
- engaged in oppressive conduct which is inappropriate and irresponsible.

All of which is respectfully submitted this 2nd day of March, 2017.

Original signed by Jessica-Ann Buchta per John A.D. Vellone

John Vellone