



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND PROCEDURAL ORDER NO. 4

EB-2016-0066

E.L.K. ENERGY INC.

**Application for electricity distribution rates and other charges
beginning May 1, 2017**

BEFORE: Emad Elsayed
Presiding Member

Victoria Christie
Member

August 24, 2017

TABLE OF CONTENTS

1	INTRODUCTION AND SUMMARY.....	1
2	THE PROCESS	3
3	DECISION ON THE ISSUES	4
3.1	OPERATIONAL CONCERNS.....	4
3.2	DEFERRAL AND VARIANCE ACCOUNTS	5
3.3	PROPOSED ANNUAL IR INDEX APPLICATION	6
3.4	RETAIL TRANSMISSION SERVICE RATES AND LOW VOLTAGE SERVICE RATES	7
4	IMPLEMENTATION.....	8
5	ORDER	9
	SCHEDULE A: SETTLEMENT PROPOSAL.....	10

1 INTRODUCTION AND SUMMARY

E.L.K. Energy Inc. (E.L.K. Energy) filed an application with the Ontario Energy Board (OEB) to change its electricity distribution rates effective May 1, 2017 (the application). Under section 78 of the *Ontario Energy Board Act, 1998* (OEB Act)¹, a distributor must apply to the OEB to change the rates it charges its customers.

E.L.K Energy provides electricity distribution services to approximately 11,700 customers in the communities of Belle River, Comber, Cottam, Essex, Harrow, and Kingsville.

The OEB's "*Handbook for Utility Rate Applications*"² provides the distributors with performance-based rate application options that support the cost-effective planning and efficient operation of a distribution network. This framework provides an appropriate alignment between a sustainable, financially viable electricity sector and the expectations of customers for reliable service at a reasonable price.

E.L.K. Energy asked the OEB to approve its rates for five years using the Price-Cap Incentive rate-setting (IR) cost of service option. With an approved base year, E.L.K. Energy can apply to have its 2017 rates adjusted mechanistically in each of the next four years based on inflation and the OEB's assessment of E.L.K. Energy's efficiency.

A settlement conference was held from May 15, 2017 to May 17, 2017, which was attended by E.L.K. Energy Inc. and the OEB-approved intervenors in this proceeding, namely: the Association of Major Power Consumers in Ontario (AMPCO); the School Energy Coalition (SEC); and the Vulnerable Energy Consumers Coalition (VECC) (collectively, the parties). OEB staff also attended the conference. The parties reached a partial settlement and filed a settlement proposal with the OEB on June 29, 2017.

This was a unique settlement proposal in that E.L.K. Energy agreed to withdraw their Application, with the exception of the request for disposition of Account 1595 which the parties agreed should proceed to a hearing, and to instead use an Annual IR Index methodology to set base rates. E.L.K. Energy also agreed to undertake a regulatory audit, an operational review, and an asset condition assessment prior to its next cost of service application.

The OEB will not accept the settlement proposal, which is in essence a new application using a different rate setting methodology than originally filed, for the following reasons:

¹ *Ontario Energy Board Act, 1998* S.O. 1998, c. 15, Sched. B (OEB Act).

² *Handbook for Utility Rate Applications* (October 13, 2016)

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- The settlement proposal does not shed much light on the details of some concerns brought forward during the settlement conference about E.L.K. Energy's operation. This is addressed under Section 3.1
 - The new evidence regarding Account 1595 has not been tested. This is addressed under Section 3.2.
 - The rate model and supporting information provided to underpin the Annual IR Index application have not yet been validated by OEB staff as is normally the case in such applications. This is addressed under Section 3.3.

The OEB directs the parties to make best efforts to revise the settlement proposal to address the first two items listed above and to submit the revised proposal within 30 calendar days from the date of this Decision and Procedural Order.

Regarding the third item, the OEB directs OEB staff to consult with E.L.K. Energy during the same 30 day period to validate the rate model and information provided to support the Annual IR Index application. OEB staff shall provide a summary of its findings to the OEB no later than 7 calendar days following the submission of the revised settlement proposal.

In the meantime, E.L.K. Energy's current rates will remain interim as declared by the OEB in Procedural Order No. 2.

2 THE PROCESS

The OEB expects utilities to file applications for May 1, 2017 rates by the end of August of the previous year. E.L.K. Energy filed a letter to the OEB stating that despite its best efforts it was unable to meet the August deadline and subsequently filed an application on November 1, 2016 for 2017 rates. The OEB issued a Notice of application on February 6, 2017, inviting parties to apply for intervenor status. AMPCO, SEC, and VECC applied for, and were granted, intervenor status and cost eligibility. OEB staff also participated in this proceeding.

A community meeting was held on March 2, 2017 in Essex, Ontario, where the OEB staff and E.L.K. Energy made presentations to customers describing the rate setting process and the application. Customers were given the opportunity to ask questions and provide comments, which were summarized and recorded as part of the proceeding. These comments were taken into consideration during the evaluation of the application by the OEB.

The OEB issued Procedural Order No.1 on March 9, 2017. This order established, among other things, the timetable for a written interrogatory discovery process and a settlement conference. E.L.K. Energy responded to the interrogatories and follow-up questions submitted by the OEB staff and the intervenors. The OEB issued its approved Issues List on May 4, 2017.

The settlement conference took place from May 15, 2017 to May 17, 2017. E.L.K. Energy and the intervenors filed a settlement proposal with the OEB on June 29, 2017 (see Schedule A attached). The time lag between the settlement conference and proposal submission was due to E.L.K Energy's requests for three deadline extensions.

3 DECISION ON THE ISSUES

The settlement proposal is unique in that E.L.K. Energy agreed to withdraw the Price-Cap IR cost of service application, except for the disposition of Account 1595, and to instead set rates using the OEB's Annual IR Index methodology. The following sections address four key issues associated with the settlement proposal, namely: operational concerns; deferral and variance accounts including Account 1595; Annual IR Index application model validation; and Retail Transmission Service Rates (RTSRs) and Low Voltage (LV) Service Rates.

3.1 Operational Concerns

Due to concerns raised by the parties about E.L.K. Energy's evidence, E.L.K. Energy agreed to complete the following three undertakings prior to its next cost of service application:

- 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.
- An asset condition assessment, which will provide input into an asset registry and provide input into E.L.K. Energy's Distribution System Plan.

While OEB staff supported the withdrawal of E.L.K. Energy's 2017 cost of service application, and the proposal that E.L.K. Energy move to an Annual IR Index methodology until it files its next cost of service application, OEB staff did not support the requirement for the three undertakings in the settlement proposal. OEB staff shared the parties' concerns regarding the lack of E.L.K. Energy's asset information, and the accuracy and consistency of its evidence and resource requirements. OEB staff, did however, submit that the proposed undertakings should be treated as recommendations rather than filing requirements for two reasons. First, the proposed regulatory audit and operational review should be coordinated between the OEB and E.L.K. Energy without the constraint of a legally binding agreement. Second, the scope and related budget requirements of such reviews are as yet undetermined. OEB staff argued that the OEB would need to consider these requirements prior to making a commitment to such reviews.

OEB staff further recommended that these reviews be conducted through the OEB's Consumer Protection and Industry Performance Division.

Findings

The OEB finds that the information provided in the settlement proposal to withdraw the initial Price-Cap IR cost of service application and replace it with an Annual IR Index application is not sufficient to allow for an informed decision by the OEB at this time. The settlement proposal identifies a number of concerns regarding E.L.K. Energy's internal processes and procedures and proposes that E.L.K. Energy address these concerns in an incremental fashion to align with the RRFE outcomes prior to its next cost of service application. These concerns were in the following general areas:

- The accuracy and consistency of certain underlying data in the evidence.
- The lack of detailed plans to address E.L.K. Energy's resourcing requirements.
- The lack of information about E.L.K. Energy's assets.

E.L.K has agreed to undertake a detailed regulatory audit, an operational review and an asset condition assessment, respectively, to address the three concerns. However, the OEB finds that the settlement proposal does not provide sufficient information on the reasons that these concerns were raised.

The OEB directs the parties to make best efforts to revise the settlement proposal to provide more information on the nature of these operational concerns, supported by examples where applicable, and an overview of the plans to address them. These details will inform the OEB's decision regarding the proposal to withdraw the initial application and replace it with the Annual IR Index application.

The revised proposal is to be submitted within 30 calendar days from the date of this Decision and Procedural Order.

3.2 Deferral and Variance Accounts

E.L.K. Energy applied for approval for disposition of its Group 1 Deferral and Variance accounts as at December 31, 2015 and the forecasted interest through April 30, 2017. These accounts included Account 1595, which has a residual balance of \$2.8M. This residual balance is due to two errors on E.L.K. Energy's part. First, the Global Adjustment (GA) rate rider was incorrectly charged to only a subset of non-regulated price plan customers leading to a shortfall in the total recovery amount. Second, the GA rate rider calculation was incorrect because it included the embedded distributor rate

class which does not contribute to the GA variance. Although the rate rider was calculated for the embedded distributor rate class it was not actually collected from them and therefore the allocated amount is still part of Account 1595.

The settlement proposal also states that, due to concerns regarding the accuracy of the amounts recorded in Accounts 1588 and 1589, they should be included in the proposed regulatory audit prior to disposition. OEB staff agreed with this proposal.

In the settlement proposal, the parties were likewise unable to agree to the request for disposition and recovery/refund of regulatory balances in Account 1595. The parties have proposed a further round of written discovery so that they and OEB staff have an opportunity to fully test and clarify the issues and evidence related to Account 1595.

OEB staff submitted that further review of Account 1595 disposition should include both a written discovery process and an oral hearing to provide the OEB with an opportunity to better understand the issues. OEB staff cautioned that that the level of detailed review required would match that of an audit and offered that the matter could alternatively be deferred to the regulatory audit discussed above.

Findings

The OEB will defer its findings on this issue to its final decision regarding E.L.K. Energy's application. However, the OEB directs the parties, as part of the revised settlement proposal requested in Section 3.1, to make best efforts to resolve all issues associated with Account 1595 based on E.L.K. Energy's new evidence.

3.3 Proposed Annual IR Index Application

The settlement proposal included the withdrawal of the initial Price-Cap IR cost of service application and submission of an Annual IR Index application. The settlement proposal noted that most of the issues in the OEB-approved Issues List were not addressed as they were not relevant to an Annual IR Index application. The Annual IR Index application details, including the 2017 Annual IR Index model and supporting spreadsheets, were included in an appendix to the settlement proposal.

OEB staff supported the withdrawal of E.L.K. Energy's 2017 cost of service application, and the proposal that E.L.K. Energy move to an Annual IR Index methodology until it files its next cost of service application,

Findings

In Annual IR Index applications, the model details and other supporting information are typically validated through an informal direct exchange of information between OEB staff and the applicant. The OEB directs OEB staff to consult with E.L.K. Energy to validate the rate model and other pertinent information supporting the Annual IR Index application. OEB staff shall provide a summary of its findings to the OEB no later than 7 calendar days following the submission of the revised settlement proposal.

3.4 Retail Transmission Service Rates and Low Voltage Service Rates

The parties agreed that the RTSRs should be updated to reflect the 2017 Hydro One rates, if available at the time of a final rate order. The parties further agreed that the LV Service Rates are not relevant when setting rates with the Annual IR Index methodology.

OEB staff supported the proposal that the RTSRs should be updated to reflect 2017 Hydro One rates, if available.

Findings

The OEB will defer its findings on these issues to its final decision regarding E.L.K. Energy's application.

4 IMPLEMENTATION

E.L.K. Energy shall file a revised settlement proposal within 30 calendar days from the date of this Decision and Procedural Order. The proposal shall provide more details regarding the operational concerns identified in the initial settlement proposal including the nature of these concerns, supported by examples where applicable, and an overview of the plans to address them. The revised settlement proposal shall also provide the results of the parties' best efforts to address all the issues associated with Account 1595 based on E.L.K. Energy's new evidence.

OEB staff shall review the Annual IR index application, and coordinate with E.L.K. Energy to validate the rate model and other supporting information. OEB Staff shall provide a summary of its findings no later than 7 calendar days following the submission of the revised settlement proposal.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. E.L.K. Energy shall submit the revised settlement proposal to the OEB no later than **30 calendar days** from the issuance of this Decision and Procedural Order.
2. OEB staff shall file a submission on the revised settlement proposal with the OEB and serve it on all parties no later than **7 calendar days** following the submission of the revised settlement proposal.
3. OEB staff shall file its findings regarding the Annual IR Index application and serve it on all parties no later than **7 calendar days** following the submission of the revised settlement proposal.

DATED at Toronto August 24, 2017

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

**SCHEDULE A: SETTLEMENT PROPOSAL
DECISION AND PROCEDURAL ORDER NO. 4**

E.L.K. ENERGY INC.

EB-2016-0066

AUGUST 24, 2017

EB-2016-0066

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by E.L.K.
Energy Inc. for an order approving just and reasonable rates
and other charges for electricity distribution to be effective
May 1, 2017.

**E.L.K. ENERGY INC.
SETTLEMENT PROPOSAL**

June 29, 2017

E.L.K. Energy Inc.

EB-2016-0066

Settlement Proposal

Table of Contents

SUMMARY..... 8

1. PLANNING 11

1.1 Capital11

1.2 OM&A11

2. REVENUE REQUIREMENT..... 12

2.1 Are all elements of the revenue requirement reasonable, and have they been appropriately determined in accordance with OEB policies and practices?12

2.2 Has the revenue requirement been accurately determined based on these elements?12

3. LOAD FORECAST, COST ALLOCATION AND RATE DESIGN..... 12

3.1 Are the proposed load and customer forecast, loss factors, CDM adjustments and resulting billing determinants appropriate, and, to the extent applicable, are they an appropriate reflection of the energy and demand requirements of the E.L.K. Energy's customers?12

3.2 Is the proposed cost allocation methodology, and are the allocations and revenue-to-cost ratios appropriate?12

3.3 Are E.L.K. Energy's proposals for rate design appropriate?12

3.4 Are the proposed Retail Transmission Service Rates and Low Voltage service rates appropriate?13

4. ACCOUNTING 13

4.1 Have all impacts of any changes in accounting standards, policies, estimates and adjustments been properly identified and recorded, and is the rate-making treatment of each of these impacts appropriate?13

4.2 Are E.L.K. Energy's proposals for deferral and variance accounts, including the balances in the existing accounts and their disposition, requests for new accounts and the continuation of existing accounts, appropriate?14

5. OTHER..... 15

5.1 Is the proposed adjustment to the specific service charge for service call - customer owned equipment appropriate?15

5.2 What is the appropriate effective date for 2017 rates?15

APPENDICIES

Appendix A – 2017 Annual IR Index Model for E.L.K. Energy.

LIVE EXCEL MODELS

In addition to the Appendices listed above, the following live excel models have been filed together with and form an integral part of this Settlement Proposal:

- 2017 Annual IR Index Model for E.L.K. Energy.

ADDITIONAL EVIDENCE

Concurrently with the filing of this Settlement Proposal, E.L.K. Energy is filing its responses to the pre-ADR interrogatory questions together with additional evidence on the remaining issue in dispute (being the request for disposition of amounts included in Account 1595).

The Parties agree this material should be added to the evidentiary record, subject to the OEB allowing a further round of written discovery to give the Intervenors and OEB staff an opportunity to fully test and clarify the additional evidence and issues related to Account 1595.

E.L.K. Energy Inc.

EB-2016-0066

Settlement Proposal

Filed with OEB: June 22, 2017

E.L.K. Energy Inc. (the “Applicant” or “E.L.K. Energy”) filed a complete cost of service application with the Ontario Energy Board (the “OEB”) on November 1, 2016 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the “Act”), seeking approval for changes to the rates that E.L.K. Energy charges for electricity distribution and other charges for 2016, with such rates and charges to be effective May 1, 2017 (OEB Docket Number EB-2016-0066) (the “Application”).

The OEB issued and published a Notice of Hearing dated February 6, 2017, and Procedural Order No. 1 on March 9, 2017, the latter of which required the parties to the proceeding to develop a draft issues list and attend a Settlement Conference. The OEB later issued Procedural Order No. 2 on March 31, 2017 which established the Settlement Conference dates to be May 15, 2017 to May 17, 2017 and a deadline of May 5, 2017 was set for the draft issues list to be filed by Ontario Energy Board staff (“OEB staff”).

E.L.K. Energy filed its interrogatory responses with the OEB on April 21, 2017. On May 3, 2017, OEB staff filed a proposed issues list which was agreed to by all parties. On May 4, 2017, the OEB issued its decision on the proposed issues list, approving the list submitted by OEB staff (the “Issues List”). This Settlement Proposal is filed with the OEB in connection with the Application and is organized in accordance with the Issues List.

Further to the OEB’s Procedural Order No. 2, a settlement conference was convened on May 15, 2017, in accordance with the OEB’s *Rules of Practice and Procedure* (the “Rules”) and the OEB’s *Practice Direction on Settlement Conferences* (the “Practice Direction”). Chris Haussmann acted as facilitator for the settlement conference which lasted three days.

E.L.K. Energy and the following intervenors (the “Intervenors”), participated in the settlement conference:

Association of Major Power Consumers in Ontario (“AMPCO”)
School Energy Coalition (“SEC”); and
Vulnerable Energy Consumers Coalition (“VECC”).

E.L.K. Energy and the Intervenors are collectively referred to below as the “Parties”.

OEB staff also participated in the settlement conference. The role adopted by OEB staff is set out in page 5 of the Practice Direction. Although OEB staff is not a party to this Settlement Proposal, as noted in the Practice Direction, OEB staff who did participate in the settlement conference are bound by the same confidentiality requirements that apply to the Parties to the proceeding.

This document is called a “Settlement Proposal” because it is a proposal by the Parties to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB’s approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms. As set forth later in this Preamble, this agreement is subject to a condition subsequent, that if it is not accepted by the OEB in its entirety, then unless amended by the Parties it is null and void and of no further effect. In entering into this agreement, the Parties understand and agree that, pursuant to the Act, the OEB has exclusive jurisdiction with respect to the interpretation and enforcement of the terms hereof.

The Parties acknowledge that this settlement proceeding is confidential in accordance with the Practice Direction. The Parties understand that confidentiality in that context does not have the same meaning as confidentiality in the OEB’s Practice Direction on Confidential Filings, and the rules of that latter document do not apply. Instead, in this settlement conference, and in this Agreement, the Parties have interpreted “confidential” to mean that the documents and other information provided during the course of the settlement proceeding, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the settlement conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal. Further, the Parties shall not disclose those documents or other information to persons who were not attendees at the settlement conference. However, the Parties agree that “attendees” is deemed to include, in this context, persons who were not physically in attendance at the settlement conference but were a) any persons or entities that the Parties engage to assist them with the settlement conference, and b) any persons or entities from whom they seek instructions with respect to the negotiations; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions.

This Settlement Proposal provides a brief description of each of the settled and partially settled issues, as applicable, together with references to the evidence. The Parties agree that references to the “evidence” in this Settlement Proposal shall, unless the context otherwise requires, include (a) additional information included by the Parties in this Settlement Proposal, and (b) the Appendices to this document. The supporting Parties for each settled and partially settled issue, as applicable, agree that the evidence in respect of that settled or partially settled issue, as applicable, is sufficient in the context of the overall settlement to support the proposed settlement, and the sum of the evidence in this proceeding provides an appropriate evidentiary record to support acceptance by the OEB of this Settlement Proposal.

There are Appendices to this Settlement Proposal which provide further support for the proposed settlement. The Parties acknowledge that the Appendices were prepared by E.L.K Energy. While the Intervenors have reviewed the Appendices, the Intervenors are relying on the accuracy of the underlying evidence in entering into this Settlement Proposal.

Outlined below are the final positions of the Parties following the settlement conference.

This Settlement Proposal differs from other settlements. Specifically, this Settlement Proposal is premised, in part, on an agreement among the Parties that rates should be established for the test year using the “Annual IR Index” methodology as defined in the Report of the Board titled *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* dated October 18, 2012. Because of the use of the Annual IR Index to set rates for the test year, many of the issues in the Issues List (which assume that a cost of service methodology will be used) are no longer relevant. The Parties have reflected this in this Settlement Proposal by adding an additional category of “Not Relevant”, as further described below.

The Parties are pleased to advise the OEB that they have reached a partial agreement with respect to the settlement of the issues in this proceeding. Specifically:

<p>“Complete Settlement” means an issue for which complete settlement was reached by all Parties, and if this Settlement Proposal is accepted by the OEB, the Parties will not adduce any evidence or argument during the oral hearing in respect of these issues.</p>	<p># issues settled: 1</p>
<p>“Partial Settlement” means an issue for which there is partial settlement, as E.L.K. Energy and the Intervenors who take any position on the issue were able to agree on some, but not all, aspects of the particular issue. If this Settlement Proposal is accepted by the OEB, the Parties who take any position on the issue will only adduce evidence and argument during the hearing on those portions of the issues not addressed in this Settlement Proposal.</p>	<p># issues partially settled: 2</p>
<p>“Not Relevant” means an issue which the Parties agree is no longer relevant if this Settlement Proposal is accepted by the OEB. If this Settlement Proposal is accepted by the OEB, the Parties will not adduce any evidence or argument during the oral hearing in respect of these issues.</p>	<p># issues not relevant: 9</p>
<p>“No Settlement” means an issue for which no settlement was reached. E.L.K. Energy and the Intervenors who take a position on the issue will adduce evidence and/or argument at the hearing on the issue.</p>	<p># issues not settled: None</p>

According to the Practice Direction (p. 3), the Parties must consider whether a Settlement Proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. These adjustments are specifically set out in the text of the Settlement Proposal.

The Parties have settled the issues as a package, and none of the parts of this Settlement Proposal are severable. If the OEB does not accept this Settlement Proposal in its entirety, then there is no settlement (unless the Parties agree in writing that any part(s) of this Settlement Proposal that the

OEB does accept may continue as a valid settlement without inclusion of any part(s) that the OEB does not accept).

In the event that the OEB directs the Parties to make reasonable efforts to revise the Settlement Proposal, the Parties agree to use reasonable efforts to discuss any potential revisions, but no Party will be obligated to accept any proposed revision. The Parties agree that all of the Parties who took on a position on a particular issue must agree with any revised Settlement Proposal as it relates to that issue prior to its resubmission to the OEB.

Unless stated otherwise, the settlement of any particular issue in this proceeding and the positions of the Parties in this Settlement Proposal are without prejudice to the rights of Parties to raise the same issue and/or to take any position thereon in any other proceeding, whether or not E.L.K. Energy is a party to such proceeding.

Where in this Agreement, the Parties “Accept” the evidence of E.L.K. Energy, or the Parties or any of them “agree” to a revised term or condition, including a revised budget or forecast, then unless the Agreement expressly states to the contrary, the words “for the purpose of settlement of the issues herein” shall be deemed to qualify that acceptance or agreement.

SUMMARY

In reaching this partial settlement, the Parties have been guided by the Report of the Board titled *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* dated October 18, 2012, the Filing Requirements for 2017 rates, the approved Issues List attached as Schedule A to the OEB's Issues List Decision of May 4, 2017.

This Settlement Proposal reflects a partial settlement.

E.L.K. Energy takes pride in having the second lowest distribution rates in the Province of Ontario and in being a Group 1 utility in the OEB's benchmarking of utility cost performance, however, this does not represent the condition of the distribution system. This Settlement Proposal reflects a unique plan created jointly by the Parties to leverage this record of good cost performance with a focus on improving incrementally the internal processes and procedures of E.L.K. Energy to better align with RRFE outcomes. The Parties do not believe that setting rates on a cost of service basis, based on E.L.K. Energy's evidence in this proceeding, would be the best way to achieve this objective. In particular:

- due to concerns regarding the accuracy and consistency of certain underlying data in the evidence, as described below, E.L.K. Energy is willing to undertake to complete a detailed regulatory audit to satisfy such concerns going forward and as discussed further below, as part of an operational review, ensuring that E.L.K. Energy has proper accounting procedures and practices;
- due to concerns regarding E.L.K. Energy's resourcing requirements, as described below, E.L.K. Energy is willing to undertake a detailed operational review to help create a plan to address those requirements going forward; and
- due to concerns regarding E.L.K. Energy's lack of information about its assets, as described below, E.L.K. Energy is willing to undertake a formal independent asset condition assessment.

Instead, in addition to the three undertakings outlined above and further described below, E.L.K. Energy agrees to withdraw the Application (except for the request for disposition of Account 1595, as further described in issue 4.2 below) and the Parties agree that rates for the test year should be established using the OEB's Annual IR Index methodology rather than a standard 4th Generation forward test-year cost of service basis. Going forward, rates will be set using the OEB's Annual IR Index in a manner consistent with the RRFE until such time as E.L.K. Energy brings forward a new forward test-year cost of service rebasing application.

E.L.K. Energy agrees that this will generate sufficient revenue to allow E.L.K. Energy to operate its business over the near term. The intervenors encourage E.L.K. Energy to bring in a new cost of service rebasing application as soon as is practical after E.L.K. Energy completes the three requirements identified below.

Unless the OEB requests that E.L.K. Energy apply for cost of service rates earlier than 2022, prior to bringing its next cost of service rebasing application, the Parties agree that E.L.K. Energy will undertake to:

- a. **Regulatory Audit:** cooperate with and participate in an audit of its regulatory and accounting practices. The scope of the audit will be determined with the assistance of OEB staff, in their sole and absolute discretion. OEB staff's assistance with the scoping of the audit will not in any way limit the OEB from undertaking a new or different audit pursuant to their statutory mandate and powers, which shall remain in the sole and absolute discretion of the OEB. If OEB staff choose not to perform the audit, E.L.K. will retain a qualified, independent third-party auditor to complete the audit. Upon conclusion of the audit, E.L.K. Energy will prepare a reporting letter, attaching a copy of the audit report, which will be delivered to the Parties and to the OEB under this EB-2016-0066 file number. A further reporting letter will be delivered to Parties and filed after all recommended changes have been implemented.
- b. **Operations Review:** undertake an independent third-party review and risk assessment of its operations, which will comprise an examination of E.L.K. Energy's:
 - (i) accounting procedures and practices;
 - (ii) budgeting processes, business planning processes, and management oversight;
 - (iii) distribution system planning information, processes and procedures;
 - (iv) information technology systems, data control, and privacy and security procedures; and
 - (v) human, fleet and financial resources compared to an organization of its size and revenue requirement.

The review will include a comparison of E.L.K. Energy's data and records, practices and procedures against industry best practices, and recommendations for improvements where possible. Upon conclusion of the operational review, E.L.K. Energy will prepare a reporting letter attaching copies of the aforementioned reviews which will be delivered to the Parties and to the OEB under this EB-2016-0066 file number. The letter will include an explanation from management about how the findings and recommendations of these reviews will inform the E.L.K. Energy business plan going forward.

This requirement may be satisfied if the OEB elects to undertake or direct itself, a substantially similar review and assessment as described above, pursuant to its statutory powers and functions as part of its public interest mandate.

- c. **Asset Condition Assessment:** undertake an independent third-party asset condition assessment of its distribution system infrastructure, which will form an input into E.L.K. Energy's distributions system plan, and for the purposes of building an asset registry. The Parties agree that E.L.K. Energy staff may be utilized to collect information and data to inform the asset condition assessment. E.L.K. Energy will file this independent asset condition assessment when completed and delivered to the Parties and the OEB under EB-2016-0066 file number.

This requirement may be satisfied if the OEB elects to undertake or direct itself an asset condition assessment pursuant to its statutory powers and functions undertaken as part of its public interest mandate.

Finally, E.L.K. Energy will be required to file its next cost of service rebasing application for rates for 2022 rates, by no later than the last date the OEB would accept a cost of service application for 2022 as specified in the OEB's filing requirements for that year. A cost of service rebasing application may be filed by E.L.K. Energy at any time prior to this deadline, provided the conditions in (a)-(c) above are satisfied prior to filing the application.

The requirement to file a cost of service application for 2022 rates at the latest, in no way restricts the OEB's ability to require on its own initiative, as in the normal course, for E.L.K. Energy to file an early application.

In addition, the Parties agree that nothing in this Settlement Proposal will in any way bind, limit or restrict the OEB in any way from exercising its public interest mandate in accordance with the *Ontario Energy Board Act, 1998*. For greater clarity, and without limiting the generality of the foregoing, the completion of the regulatory audit as contemplated in paragraph (a), the operational assessment as contemplated in paragraph (b), or the asset condition assessment as contemplated in paragraph (c) will not in any way bind, limit or restrict the OEB from undertaking a new or different audit or assessment pursuant to its statutory powers and functions.

E.L.K. Energy will perform conditions agreed to in this Settlement Proposal in a way that is commensurate with an organization of its size and revenue requirement. The Parties agree that if due to an unforeseen change in circumstances, E.L.K. Energy is unable, or it becomes unreasonable, to meet any of the conditions agreed to in this Settlement Proposal, it may bring a motion pursuant to Rule 40 of the *OEB Rules of Practice Procedure*, on notice to the Intervenors, to request the Board vary the Settlement Proposal. Intervenors are free to take any position they deem appropriate regarding the appropriateness of any such required relief. If an Intervenor chooses not to participate in such a motion, after being adequate notice (as determined by the OEB) and afforded full procedural rights to participate, including cost eligibility, it shall be deemed to take no position on the requested relief.

Based on the foregoing, and the evidence and rationale provided below, the parties agree that this Settlement Proposal is appropriate and recommend its acceptance by the OEB. Please refer to Appendix A for the completed Annual IR Index model, including a schedule of draft tariffs resulting if this settlement is accepted by the OEB.

1. Planning

1.1 Capital

Is the level of planned capital expenditures appropriate and is the rationale for planning and pacing choices appropriate and adequately explained, giving due consideration to:

- *customer feedback and preferences;*
- *productivity;*
- *compatibility with historical expenditures;*
- *compatibility with applicable benchmarks;*
- *reliability and service quality;*
- *impact on distribution rates;*
- *trade-offs with OM&A spending;*
- *government-mandated obligations;*
- *the objectives of E.L.K. Energy and its customers; and*
- *distribution system plan.*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

1.2 OM&A

Is the level of planned OM&A expenditures appropriate and is the rationale for planning choices appropriate and adequately explained, giving due consideration to:

- *customer feedback and preferences;*
- *productivity;*
- *compatibility with historical expenditures;*
- *compatibility with applicable benchmarks;*
- *reliability and service quality;*
- *impact on distribution rates;*
- *trade-offs with capital spending;*
- *government-mandated obligations; and*
- *the objectives of E.L.K. Energy and its customers.*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

2. Revenue Requirement

- 2.1 *Are all elements of the revenue requirement reasonable, and have they been appropriately determined in accordance with OEB policies and practices?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

- 2.2 *Has the revenue requirement been accurately determined based on these elements?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

3. Load Forecast, Cost Allocation and Rate Design

- 3.1 *Are the proposed load and customer forecast, loss factors, CDM adjustments and resulting billing determinants appropriate, and, to the extent applicable, are they an appropriate reflection of the energy and demand requirements of E.L.K Energy's customers?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

- 3.2 *Is the proposed cost allocation methodology, and are the allocations, and revenue-to-cost ratios appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

- 3.3 *Are E.L.K. Energy's proposals for rate design appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology. For greater clarity, rate

design has been addressed in a manner consistent with the Annual IR Index methodology, as further detailed in Appendix A.

Evidence: Not applicable.

Supporting Parties: All

3.4 *Are the proposed Retail Transmission Service Rates and Low Voltage Service Rates appropriate?*

Partial Settlement: The Parties agree that the Retail Transmission Service Rates should be updated to reflect 2017 Hydro One rates, if available at the time of a final rate order.

The Parties agree that the question of whether the proposed Low Voltage Service Rates are appropriate is not relevant in light of the Parties agreement to set rates using the Annual IR Index methodology. Low Voltage Service Rates are not traditionally updated under the OEB's Annual IR Index methodology.

Evidence:

Application: Exhibit 8

IRRs: None applicable

Appendices to this Settlement Proposal: Appendix A

Settlement Models: 2017 Annual IR Index Model for E.L.K. Energy Inc.

Supporting Parties: All

4. Accounting

4.1 *Have all impacts of any changes in accounting standards, policies, estimates and adjustments been properly identified and recorded, and is the rate-making treatment of each of these impacts appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

In addition, as described in the Summary section above, E.L.K. Energy has agreed to undertake to, *inter alia*, cooperate with and participate in an audit of E.L.K. Energy's regulatory accounting practices..

Evidence: Not applicable.

Supporting Parties: All

4.2 *Are E.L.K. Energy's proposals for deferral and variance accounts, including the balances in the existing accounts and their disposition, requests for new accounts and the continuation of existing accounts, appropriate?*

Partial Settlement: E.L.K. Energy applied for approval for disposition of its Group 1 deferral and variance account balances as at December 31, 2015 and the forecasted interest through April 30, 2017. Table 9-1 of Exhibit 9-1 contains the account balances from E.L.K. Energy's 2015 audited financial statements as at December 31, 2015. Exhibit 9 further provides an explanation of any variances between Table 9-1 balances and E.L.K. Energy's E2.1.7 RRR trial balance filed as of April 30, 2016.

As explained further in the response to 9-Staff-54 (accompanying this Settlement Proposal), E.L.K. Energy is seeking recovery of \$2,785,175 from account 1595, which E.L.K. Energy is proposing to dispose of over a two year period. This removes the interest after the sunset date. The Parties do not agree to E.L.K. Energy's request for disposition and recovery/refund of regulatory balances in Account 1595. E.L.K. Energy's acceptance of this settlement is based upon OEB staff's position at the time of the settlement conference that they are supportive in principle of disposition of 1595, although they said they required further information to determine the exact amount and the disposition methodology. The Parties have agreed that the question for consideration by the OEB as it relates to account 1595 included as follows:

Should the OEB permit E.L.K. Energy's request for disposition and recovery/refund of regulatory balances in Account 1595 in view of:

- *The OEB's rules regarding billing errors, if applicable;*
- *Any material adverse effects on E.L.K. Energy should the OEB disallow recovery of these amounts as further evidenced by E.L.K. Energy in the additional evidence submitted concurrently with this settlement proposal;*
- *E.L.K. Energy's view that an error was made when 1595 balances were attributed to the Embedded Distributor customer class as further evidenced by the additional evidence submitted concurrently with this settlement proposal;*
- *The proper amount that should be included in Account 1595 for disposition and methodology for recovery or refund, which is further evidenced by E.L.K. Energy in the additional evidence submitted concurrently with this settlement proposal; and*
- *Any other factor that a Party may include in their final submissions?*

The Parties agree that a further round of written discovery would be appropriate to give the Intervenor and OEB staff an opportunity to fully test and clarify the issues and evidence related to Account 1595.

The Parties agree with E.L.K. Energy's request for approval for disposition of the balance of its Group 1 deferral and variance accounts with the exception of (i) account 1595 (as noted above), and (ii) accounts 1588 and 1589. These later 2 accounts (being accounts 1588 and 1589) will be included as part of the regulatory audit discussed in the Summary above prior to disposition.

The Parties note that this agreement is consistent with the Annual IR Index methodology.

Evidence:

Application: Exhibit 9

IRRs: 9-Staff-39 to 9-Staff-49

Appendices to this Settlement Proposal: Appendix B

Supporting Parties: All

5. Other

5.1 *Is the proposed adjustment to the specific service charge for service call – customer owned equipment appropriate?*

Not Relevant: The Parties agree that this issue is not relevant in light of the Parties' agreement to set rates using the Annual IR Index methodology.

Evidence: Not applicable.

Supporting Parties: All

5.2 *What is the appropriate effective date for 2017 rates?*

Complete Settlement: The Parties agree that the appropriate effective date for 2017 rates is the date that E.L.K. Energy can first implement those rates following the OEB's final decision and order in respect of this Application.

Evidence: Not Applicable.

Supporting Parties: All

Appendix A
2017 Annual IR Index model for E.L.K. Energy

Please see attached.