Shepherd Rubenstein

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

BY EMAIL and RESS

July 25, 2024
Our File: EB20240096

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

<u>Attn: Nancy Marconi, Registrar</u>

Dear Ms. Marconi:

Re: EB-2024-0096 – EPLC DVA Application – SEC Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 2, these are SEC's submissions on the request by Essex Powerlines Corporation ("EPLC") for approval to establish a new deferral account to capture costs incurred to pay program participants as part of its PowerShare pilot project ("PowerShare DA").

SEC is supportive of utility innovation, which may include undertaking pilot projects. The PowerShare project is an interesting pilot to better understand the viability of a local energy market. The issue with the proposed PowerShare DA is that it asks EPLC customers to bear a significant amount of costs, where there is little evidence that they specifically will have a commensurate benefit. SEC proposes that the OEB approve the establishment of the proposed account to record costs, but at disposition, require EPLC to not just demonstrate prudence in operating the program, but also demonstrate that the benefits its customers have received justify the costs they would be asked to pay.

Background

In 2021, the Independent Electricity System Operator ("IESO") and the Ontario Energy Board ("OEB") issued what they called a Joint Targeted Call for innovative projects focused on distributed energy resources ("DERs"). Successful applications would have up to 50% of project costs paid for by the IESO (through the Grid Innovation Fund), and the OEB was there to provide regulatory guidance through its Sandbox initiative.[1]

EPLC was one of the successful applicants with its Distribution System Operation ("DSO") Pilot Project, later named PowerShare. The pilot project would last 24 months (later reduced to 21 months), and would enable EPLC to act as a DSO for activation of DER flexibility in real-time. DER owners in the Leamington area of EPLC's service territory could participate in the pilot market, which would support grid resilience, allow them to monetize their investments by adding flexibility to the grid as a

[1] EPLC Application for a New Deferral Account ["DVA Application"], p.1-2

non-wires alternative ("NWA"), and test the coordination of a DSO market with the IESO wholesale market.[2] The project received Sandbox guidance, which focused on questions EPLC raised regarding if the operating of a DSO as proposed was considered a distribution activity.[3] No question was ever asked regarding cost recovery.

Approximately two years after being successful with its application, on February 16, 2024, EPLC brought a stand-alone application for the PowerShare DA to record amounts from its repayments to program participants, net of funding from the IESO (50%) and HOEP.[4] Program participants would be paid an amount for making their capacity available and an energy payment when they produce electricity or curtail their demand when activated.[5]

The evidence is that EPLC was focused on the technical aspects of the application, and not the regulatory compliance and financial arrangements.[6] At the Technical Conference, EPLC explained that it thought it could recover these costs through RSVA Accounts1588 and 1589.[7]

After it filed its application, the OEB determined that since it was close to filing its cost-of-service application for rates beginning January 1, 2025, it would be more efficient to combine the applications, albeit with an expedited schedule to address the proposed PowerShare DA.[8]

EPLC estimates that the total costs that would be recorded in the DVA, over the 21 months of the pilot project, and thus eligible for recovery from ratepayers, would be $554,525[9], an annualized amount of $316,870.[10] This represents approximately five times its annual materiality threshold.[11]

Until this application was brought forward, there was no mention that EPLC was going to seek additional funding from its ratepayers for the project. It was not raised by EPLC in its project funding application, the OEB's Sandbox, or with customers as part of its cost-of-service customer engagement survey.[12] SEC wonders what would have happened if this issue had been raised initially with the IESO, OEB, or customers.

To put the relative size of the PowerShare pilot project costs in perspective, Toronto Hydro has proposed an Innovation Fund as part of its Custom IR application to fund the design and execution of innovative pilots, which would cost customers 0.3% of its approved revenue requirement.[13] Enbridge Gas as part of its on-going re-basing application, has proposed its version of an innovation fund called the Energy Transition Technology Fund[14] that would cost customers approximately 0.08% of the

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[2] Undertaking Responses, Appendix B, GIF Contribution Agreement, Schedule "C" Project Proposal, p.3; DVA Application, p.3
[3] See OEB Staff Letter, Re: OEB Innovation Sandbox Guidance for Essex Powerlines Corporation on the Essex Powerlines DSO Pilot Project, March 31, 2022; Technical Conference Transcript. p.26
[4] DVA Application, p.6-7
[5] DVA Application, p.6-7
[6] Undertaking Responses, Appendix C, EPLC Milestone 1 Report, p.22
[7] Technical Conference Transcript, p.26, 64
[8] OEB Letter, re: Essex Powerlines Corporation (EPLC) Application for New Deferral Account, March 13, 2014
[9] DVA Application, p.4
[10] Technical Conference Transcript, p.18
[11] Technical Conference Transcript, p.19
[12] EB-2024-0022, Pre-filed Evidence, Attachment 1-H
[13] EB-2023-0195, Exhibit 1B, Tab 4, Schedule 2, p.1, 5
[14] EB-2024-0111, Exhibit 1, Tab 10, Schedule 7

approved revenue requirement.[15] In contrast, EPLC forecasts the PowerShare DA balance annualized would represent 1.63% of its proposed 2025 test year revenue requirement.[16] This amount does not even include a number of other costs for the PowerShare project that it is seeking to include as part of base rates.[17] EPLC's total costs for the project, net of IESO funding, are forecast to be $1,134,209.[18] EPLC confirmed that its shareholder is not contributing any of that amount, meaning it will be entirely paid for by its customers.[19]

Regulatory Basis for the Application

It is critical as a starting point for the OEB to identify the regulatory basis for the proposed deferral account, if any. The OEB's rate-setting approaches and the various mechanisms are interrelated and involve different considerations and criteria.

Until January 1, 2025, EPLC rates are set through an Incentive Rate-setting Mechanism ("IRM"), and with defined exceptions, there is no basis to approve additional funding, which is what a deferral account is meant to do. Those defined exceptions for additional funding during the IRM period are by way of a Z-Factor claim[20], Advanced/Incremental Capital Module[21], the Non-Wires Solutions Guidelines for Electricity Distributors ("NWS Guidelines")[22], and the Framework for Energy Innovation: Setting a Path Forward for DER Integration.[23] EPLC is not requesting relief through any of these mechanisms.[24]

EPLC relies on the requirements for a new Deferral/Variance Account ("DVA") set out in the Chapter 2 filing requirements, but the Chapter 2 filing requirements are not applicable to EPLC, at least for the period up until January 1, 2025. Chapter 2 is for cost-of-service applications, not for the IRM period. There is no similar provision in the applicable Chapter 3 filing requirements for a request for a new DVA (or similar accounting order).[25] At the Technical Conference, EPLC relies on the fact that the OEB combined the proceeding with the cost-of-service application, presumably as a reason why it can seek recovery of these amounts in 2024. The OEB combined the proceeding for efficiency due to the timing of the relevant filings; it was not incorporating the DVA proceeding into the cost-of-service application.

NWS Guidelines Are Appropriate Basis

SEC submits that the appropriate regulatory basis for the application is the NWS Guidelines. The NWS Guidelines, and previous Conservation and Demand Management Guidelines, allow for recovery of

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[15] EB-2024-0111, Interrogatory Response 1.10-TFG/M-1, p.2

[16] PowerShare DVA Annualized Amount ($316,871) / EPLC Proposed 2025 Test Year DVA ($19,494,342)

[17] EPLC is seeking to add to its test year rate base capital costs of $260,000 (2023), $372,000 (2024), and $150,000 (2025) (See EB-2024-0022, Exhibit 2, DSP, Appendix A, p.91). There are likely operating costs included in its proposed OM&A budget.

[18] Undertaking Responses, Appendix B, GIF Contribution Agreement, Schedule "A" Specific Projects Requirements, etc. Financial Commitments (Non-IESO).

[19] Technical Conference Transcript, p.28

[20] Filing Requirements For Electricity Distribution Rate Applications, Chapter 3 – Incentive Rate-Setting Applications, p.22

[21] Filing Requirements For Electricity Distribution Rate Applications, Chapter 3 – Incentive Rate-Setting Applications, p.24

[22] Non-Wires Solutions Guidelines for Electricity Distributors (March 28, 2024), p.15

[23] Filing Guidelines for Incentives for Electricity Distributors to Use Third-Party DERs as Non-Wires Alternatives, p.3

[24] Transcript Conference Transcript, p.21

[25] Filing Requirements For Electricity Distribution Rate Applications, Chapter 3 – Incentive Rate-Setting Applications

costs for non-wires solutions outside of rebasing.[26] Additionally, they provide the appropriate guidance regarding the requirements for funding of NWS solutions, which is how EPLC has framed the purpose of the PowerShare project.

While some of the criteria for a new DVA[27] are common to Chapter 2 filing requirements and the NWS Guidelines[28] for funding outside of rebasing (materiality and prudence), there are differences. For example, the NWS Guidelines criteria look at need as an explicit category, as opposed to being arguably subsumed within the prudence criteria.

Need and Prudence

SEC recognizes that without, at least, some assurance of cost recovery of participant costs after the expiry of the Summer PowerShare DA approved as part of the Settlement Proposal, it may jeopardize the pilot project. In that sense, EPLC needs funding. But that does not mean that the project itself is needed, or that it is prudent.

EPLC's pre-filed evidence does not demonstrate a specific need for the project, outside of generally learning from understanding local energy markets, which could then be applied later to benefit-cost analysis of non-wires alternatives meant to support potential distribution and transmission constraints.[29] At the Technical Conference, EPLC witnesses confirmed that "it's fair to characterize it as learnings," and agreed that there was no specific capital investment being deferred as a result.[30]

The NWS Guidelines require that a distributor show that the NWS addresses a distribution system need.[31] In Undertaking JT1.9, as a result of discussions at the Technical Conference, EPLC explained a potential reliability benefit that could accrue to customers by the possibility of alleviating load on two feeders, where presently, under certain circumstances, they exceed a threshold that would allow it to maintain an N-1 contingency in case of an unexpected failure.[32] Yet, there is no information on whether the PowerShare project will actually address the issue, for example, by way of the location of the participants and the necessary uptake.

In its Argument-in-Chief, EPLC relies on the growing need for transmission and generation capacity in the Kingsville-Leamington area as had been identified in the IESO's Windsor-Essex Integrated Regional Resource Plan ("IRRP")[33] SEC agrees that there is an upstream capacity need that distribution level DERs can help alleviate, but that does not mean that EPLC customers should bear an unfair portion of the cost, even to fund a pilot project that could be part of the solution.

This is consistent with the NWS Guidelines, which discuss that where an NWS meets regional needs, which is what the upstream needs identified in the Windsor-Essex IRRP are, the applicant(s) for

[26] Non-Wires Solutions Guidelines for Electricity Distributors (March 28, 2024), p.15; Conservation and Demand Management Guidelines For Electricity Distributors (December 20, 2021), p.12
[27] Filing Requirements For Electricity Distribution Rate Applications, Chapter 2 – Cost of Service, p.66
[28] Non-Wires Solutions Guidelines for Electricity Distributors, p.13
[29] DVA Application, p.5
[30] Technical Conference Transcript, p.23-24
[31] Non-Wires Solutions Guidelines for Electricity Distributors, p.12
[32] Undertaking JT1.9
[33] EPLC Argument-in-Chief, p.3-4

funding will need to address appropriate cost allocation between multiple distributors, and potentially even the relevent transmitter.[34]

Value Should Be Assessed At Disposition

PowerShare is a pilot project where EPLC will test the benefit of a DSO local energy market for all Ontario customers and share them with the IESO and others, including other LDCs.[35] The problem is that the costs of the project, even after the IESO contribution, appear to be disproportionately borne by EPLC's customers.

EPLC has provided no evidence to demonstrate that its customers' benefits compensate for the amount they are being asked to pay, which is very significant. EPLC has not done any analysis regarding the cost of the supposed reliability benefits to the two feeders, or the potential savings for any future deferred assets. Those amounts would have to be very significant for it to be a cost-effective option for its customers. No benefit-cost analysis was undertaken, not even a rudimentary one.

SEC submits that the OEB should approve the PowerShare DA, but with an expanded expectation regarding what the prudence assessment will look like at disposition. EPLC should be required to demonstrate not just that it is operating the PowerShare project appropriately (e.g., dispatching resources during peak periods), but that the benefit to its customers specifically compensates for the amount of money being sought for disposition. If it cannot, then a portion of the amounts recorded should be borne by its shareholder, and not its customers.

EPLC appears to suggest that these costs are no different in type from other commodity costs that are given pass-through treatment through an RSVA (1588 and 1589) and should be rejected.[36] Those pass-through RSVA commodity costs reflect variances in amounts collected from customers for consumption and the actual costs charged for it from the IESO. The costs in the proposed PowerShare DA have nothing to do with customer consumption. While a portion of it may be for a commodity EPLC is paying participants, the purpose, either directly or indirectly (i.e., broader learnings), is for a distribution benefit (reliability or deferred need for a traditional asset). The assessment of the reasonableness of the costs is to be compared against a benefit. RSVA costs are presumed to be reasonable and can be treated as pass-through, as the underlying costs are the responsibility of the IESO's various procurement and dispatch decisions, which are subject to its own oversight and approval process.

In approving just and reasonable rates to be paid by EPLC's customers, it is not sufficient for the company to demonstrate that the project will have general benefits. EPLC must demonstrate that its customers will benefit in a way that is commensurate with the amount they would be asked to pay. As EPLC has not conducted this analysis upfront, it must be required to do so at the time of disposition to justify any amount approved for collection. The fact that the PowerShare project was granted IESO funding, even through a process involving the OEB's Sandbox, does not alleviate the statutory

[34] Non-Wires Solutions Guidelines for Electricity Distributors (March 28, 2024), p.18

[35] See for example, Undertaking Responses, Appendix B, GIF Contribution Agreement, Schedule "C" Project Proposal, p.29-30,52; Undertaking Responses, Appendix C, EPLC Milestone 1 Report, p.15,21

[36] EPLC Argument-in-Chief, para. 19-20

requirements under section 78 of the Ontario Energy Board for a panel of Commissioners of the OEB to assess the reasonableness of the costs that EPLC will seek to recover from its customers.[37]

If the OEB believes that this may result in too much risk being placed on EPLC that may put the project at risk, one option is to put a floor on the amount of recovery, subject to a standard prudence review, similar to what was agreed upon as part of the partial settlement for July and August 2024.[38] In that agreement, the parties agreed that, subject to a standard prudence review, EPLC would be able to recover up to 50% of actual costs, capped at a reasonable level, notwithstanding the OEB's ultimate decision on the Powershare DA.[39] This alternative approach recognizes that the project will have some benefit for EPLC's customers, but defers consideration of whether it is sufficient to allow recovery of the full amount expected to be recorded in the account.

Conditions On Approval

SEC submits that if the OEB is to approve the proposed PowerShare DA, it implements the following conditions and requirements:

- ***Cap on Recovery.*** The OEB should cap the recovery at the forecast maximum costs of $554,525.[40] This will ensure that EPLC has an increased incentive to control costs of this pilot project.

- ***Time-Limited Nature of the Account.*** The OEB should require the Accounting Order to include the end date of the pilot project, which is March 31, 2026.[41] EPLC's application references this date as the end date of the account, but it is not included in the Draft Accounting Order that is included in Undertaking JT1.6. The end date is also important as it would require the company to justify any extension or expansion of the account. Although the pilot project has a defined end date, EPLC's cost-of-service application forecasts further capital spending on the PowerShare pilot project through to the end of 2029, which would suggest that it may be considering an extension or expansion already.[42]

- ***Reporting.*** EPLC is required to provide project milestone reports to the IESO that discuss ongoing project updates and learnings. The first of these was provided in response to Undertaking JT1.7. EPLC should be required to file those milestone reports on its website, subject to reasonable redactions for sensitive information[43], so the public can understand the project's progress and so other energy stakeholders can benefit from the project as soon as possible. A more complete report, including all technical details, should be produced after the completion of the pilot project and made public.

- ***MRP.*** As of May 1, 2025, HOEP will be replaced when the IESO's Market Renewal Program (MRP) is implemented. The Draft Accounting Order only references HOEP, and so should also

[37] *Ontario Energy Board Act*, section 78(3)
[38] Partial Settlement Proposal, July 12, 2024, p.8-9
[39] Partial Settlement Proposal, July 12, 2024, p.8-9
[40] DVA Application, p.4
[41] DVA Application, p.2
[42] See EB-2024-0022, Exhibit 2, DSP, Appendix A, p.91
[43] For example, it would be reasonable to redact information that would reveal individual participants, their load, or specific payments, as well as information which would reasonably harm the PowerShare market.

include its successors, Ontario Zonal Price and Load Forecast Deviation Charge, when applicable.[44]

Effective Date

EPLC seeks approval of an effective date of February 19, 2024. While a retroactive effective date may be legally permissible since EPLC brought the application beforehand, SEC submits that a more appropriate date would be May 30, 2024, the date on which it was required to publish the Notice for the application. The difference is not material, as of June 24th, EPLC has said they had only incurred approximately $3,500 in participant costs related to some early testing.[45]

Summary

The OEB should establish the proposed PowerShare DA, but require EPLC to provide specific evidence at the time of disposition, to justify that the proposed balance it seeks recovery of is commensurate with the benefits that will accrue to its own customers, as opposed to Ontario customers as a whole. If it cannot, then the appropriate portion of the recorded costs should be borne by its shareholders.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

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

[44] OEB Letter, Re: Draft Accounting Guidance related to Accounts 1588 RSVA Power and 1589 RSVA Global Adjustment resulting from the IESO's Market Renewal Program (June 12, 2024), p.2
[45] Technical Conference Transcript, p.22