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File No. 24011.5

March 27, 2025

DELIVERED BY EMAIL
Registrar@oeb.ca

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

Dear Ms. Marconi:

Re: ERTH Power Corporation (“ERTH Power”) Incentive Rate-Setting Mechanism (“IRM”) Application for 2025 Rates and Incremental Capital Module (“ICM”) funding (“Application”) Ontario Energy Board (“OEB”) File Number: EB-2024-0021

We are counsel to ERTH Power in the above noted matter. We write with respect to two matters:

1. To request an order for interim rates if no decision on the IRM portion of the Application is issued by May 1, 2025, and
2. To provide submissions pursuant to OEB Procedural Order No. 5 regarding which Application issues shall be heard in writing, and for which issues the OEB should hold an oral hearing.

1. Request for Interim Rates

On October 11, 2024, ERTH Power filed an IRM Application for approval of distribution rates effective May 1, 2025. The Application includes an ICM request.

ERTH Power respectfully requests an order for interim rates if no decision is issued regarding the IRM portion of the Application prior to May 1, 2025.

2. Written Hearing is the Most Efficient Process

On February 27, 2025, the OEB issued Procedural Order No. 5 requesting that the parties file submissions on which Application issues shall be heard in writing, and for which issues the OEB

should hold an oral hearing. ERTH Power submits that the Application should be heard in writing. OEB staff have advised that they do not object to the Application being heard in writing. Intervenors, who are intervening on the issue of the ICM, have also advised that they do not object to the ICM portion of the Application being heard in writing.

The appropriate standard in deciding whether an oral hearing is necessary is the completeness of the record and whether additional discovery is required.¹ The evidentiary record in this proceeding is complete. The parties have undertaken a comprehensive discovery and settlement process to render an oral hearing unnecessary, including:

- a) Interrogatories from intervenors and OEB staff with responses from ERTH Power filed on January 7, 2025,
- b) An oral transcribed technical conference to take place over February 6 and 7, 2025. ERTH Power's witness panel responded to questioning by intervenors and OEB staff. The second day of the technical conference was not required,
- c) Written responses from ERTH Power to undertakings provided at the technical conference filed on February 14, 2025, and
- d) The parties participated in a settlement conference on March 20 and 21, 2025.

A written hearing is the most efficient process to address the Application without imposing the additional time and resource burdens of an oral hearing. As well, proceeding by a written hearing aligns with the OEB's established approach in respect of prior ICM requests.² All parties will have an opportunity to be heard in the written hearing process. Convening a written hearing will not violate the rules of natural justice or prevent the OEB from reaching a fair and just outcome. Given the comprehensive evidentiary record and discovery and settlement processes, ERTH Power respectfully requests that the OEB proceed with a written hearing

Sincerely,

BORDEN LADNER GERVAIS LLP



Zoë Thoms

¹ [EB-2019-0166](#), Lagasco Inc., Procedural Order No. 3, September 23, 2020 at pg. 2. [RP-2003-0203/EB-2004-0468](#), Enbridge Gas Distribution Inc. Decision with Reasons, November 24, 2004 at line 17.

² [EB-2019-0059](#), Oakville Hydro Electricity Distribution Inc., Procedural Order No. 3, December 17, 2019 at pg. 2. [EB-2017-0024](#), Alectra Utilities Corporation (“**Alectra**”), Procedural Order No. 3, November 17, 2017 at pg 9. [EB-2018-0016](#), Alectra, Procedural Order No. 3, November 8, 2018 at pg. 2. [EB-2020-0002](#), Alectra, Procedural Order No. 2, November 6, 2020 at page 3. [EB-2021-0015](#), Elexicon Energy Inc., Procedural Order No. 2, Revised November 17, 2021, at pg. 2.