

July 20, 2018

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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2018-0014 – Alectra Utilities Corporation and Guelph Hydro Electric Systems Inc. – Application for Approval of Consolidation under Section 86 of the *Ontario Energy Board Act, 1998* and related relief – Applicants’ Reply to Intervenor’s Submissions on Confidential Treatment of Interrogatory Responses

We are legal counsel to Alectra Utilities Corporation (“Alectra”) in the above referenced matter. In accordance with the Ontario Energy Board’s (the “Board”) Procedural Order No. 2 dated July 12, 2018, Alectra and Guelph Hydro Electric Systems Inc. (“Guelph Hydro”) (collectively, the “Applicants”) hereby submit the Applicants’ reply to the submissions of the Power Workers’ Union (“PWU”) and the International Brotherhood of Electrical Workers, Local 636 (“IBEW”)¹ regarding the confidential treatment of certain interrogatory responses.

Both unions similarly assert that the information at issue (relating to functional areas from which synergy savings may stem post-amalgamation) is not confidential in relation to the unions, arguing that the Applicants have a legal obligation under labour law to disclose such information to the unions during collective bargaining. As discussed below, this position ignores the important distinction between the scope of this MAADs proceeding versus that of a collective bargaining process or Ontario Labour Relations Board adjudication:

- The purpose of this EB-2018-0014 proceeding is to consider the Applicants’ request for Board approval of the proposed Alectra-Guelph Hydro amalgamation. The issue before the Board is to assess the impact of the transaction on ratepayer interests through the lens of the “no harm” test. Unlike the labour relations context in which the unions’ argument is rooted, this MAADs proceeding is not intended to enable or facilitate a collective bargaining exercise between the Applicants and their unions.
- Subject to the Board’s approval of this application, any future relationship between the post-merger employer and its labour union or labour unions will be based on collective

¹ IBEW submissions dated July 17, 2018; and PWU submissions dated July 16, 2018.

agreement requirements and/or negotiations undertaken in a process separate from this MAADs proceeding to reach an acceptable agreement between the parties. The information in question may be subject to disclosure in that process and its disclosure could be subject to a determination made under the governing labour relations statutory regime. The question as to whether the information is public and not confidential is the consideration of that regime and is beyond the scope of this MAADs proceeding. In this MAADs proceeding, the OEB cannot and should not rule as to what is or is not public in the labour relations context; doing so could prejudice Alectra's rights and position in that latter process. As such, the information should remain confidential and redacted on the public record.

- The Board's interrogatory process is not about ensuring the unions' preparedness for current or future negotiations. Issues in that regard should be left to the labour relations statutory regime. The PWU has relied on precedent from the Ontario Labour Relations Board. However, that ruling is not applicable in the current context, as it relates to disclosure of information that might impact the employees in the bargaining unit that was the subject of collective bargaining that was current and ongoing. That is not the case here. In the current circumstance, the transaction is proposed and is not yet approved. Alectra is not yet the employer and PWU is not yet the applicable union in relation to the Guelph Hydro employees. Therefore, the precedent noted is not applicable in respect to the information disclosure. Furthermore, as currently contemplated, the proposed consolidation has no impact on the current Alectra employees that are subject to PWU representation.
- Upon completion of the transaction, Alectra is committed to engaging with the applicable labour union or labour unions to share information regarding any consolidation plan, as appropriate, in that process. However, for the reasons identified above, such information should remain confidential. The Applicants submit that the unions' argument about legally required information disclosure in collective bargaining is more appropriately addressed through the applicable labour relations regime, outside of this MAADs application.

In any event, as a good faith effort to resolve the issue while protecting the Applicants' legitimate interests, the Applicants have proposed a compromise solution below to provide PWU and IBEW with access to the information in question, in alignment with the Board's past approach in similar circumstances.

The Applicants are prepared to share the confidential portions of their interrogatory responses with PWU's and IBEW's counsel upon the filing of a Confidentiality Declaration and Undertaking, provided such individuals (i) are external to and at arms-length from PWU or IBEW, as applicable, and (ii) are not and will not be involved in any collective bargaining-related activities on their behalf, whether current or future. This approach would allow the unions to access the information at issue for purposes of their intervention in the MAADs application, while preventing prejudice to the Applicants' bargaining position and undue advantage to the unions in future negotiations.

In its submissions, PWU argues that the Board-mandated Declaration and Undertaking would suffice to protect the Applicants' interest, and calls it an unwarranted assumption that "PWU counsel's undertaking is unworthy of credit". In response, the Applicants identify that the Board previously accepted a similar compromise solution regarding the treatment of Ontario Power

Generation's ("OPG") labour-related confidential information in OPG's 2017-2022 Payment Amounts Application (EB-2016-0152). In that case, the Board required PWU representatives (including counsel) to provide a Declaration and Undertaking as well as an affidavit affirming the satisfaction of certain requirements comparable to conditions (i) and (ii), above. In doing so, the Board clarified that the intent is to "give ratepayers the highest degree of confidence in the OEB's processes and treatment of highly sensitive information", and not to question "[PWU counsel's] integrity or to suggest that [he has] not complied with previous undertakings".²

The Applicants believe that the above approach would balance the need of PWU and IBEW to access information in this proceeding and the Applicants' legitimate interests in protecting against the potential impact of disclosure of sensitive information on future labour relations negotiations.

Yours truly,


for Charles Keizer

cc: Indy J. Butany-DeSouza, Vice President, Regulatory Affairs, Alectra
Cristina Birceanu, Vice President, Regulatory Affairs, Customer Care and Billing, Guelph Hydro

² EB-2016-0152, OEB Letter re: Power workers' Union objections regarding filing of affidavit (January 31, 2017), p. 5.