

BY EMAIL

August 26, 2019

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Alectra Utilities Corporation (Alectra Utilities)
Application for 2020 Electricity Distribution Rates
OEB Staff Submission
Ontario Energy Board File Number: EB-2019-0018**

In accordance with Procedural Order No. 2, please find attached OEB staff's submission in the above proceeding.

Yours truly,

Original Signed By

Katherine Wang
Advisor
Incentive Rate-setting and Accounting

Encl.

ONTARIO ENERGY BOARD

STAFF SUBMISSION ON CONFIDENTIALITY

2020 ELECTRICITY DISTRIBUTION RATES

Alectra Utilities Corporation

EB-2019-0018

August 26, 2019

INTRODUCTION

Alectra Utilities Corporation (Alectra Utilities) filed its Price Cap Incentive Rate-setting rate application with the Ontario Energy Board (OEB) on May 28, 2019 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Alectra Utilities charges for electricity distribution, to be effective January 1, 2020.

In Procedural Order (PO) No. 1, dated July 9, 2019, the OEB set out a timetable for three streams of the application, namely the Incentive Rate-setting Mechanism (IRM), M-factor and capitalization policy.

Alectra Utilities filed its interrogatories responses on the IRM elements of the application on August 16, 2019. By a letter (the letter) filed on August 16, 2019 and pursuant to OEB's *Rules of Practice and Procedure* (OEB Rules) and the OEB's *Practice Direction on Confidential Filings*¹ (Practice Direction), Alectra Utilities requested confidential treatment for the following portions of Alectra Utilities' Conservation First Framework Wind Down Cost Estimate, which is provided in Attachment 2 to its response to interrogatory G-Staff-5 (Wind Down Cost Estimate):

1. Contractors' Unit Pricing Information (pages 3, 4 and 6 of the Wind Down Cost Estimate)
2. Personal Information (pages 4, 5 and 7 of the Wind Down Cost Estimate)

In the letter, Alectra Utilities stated that pages 3, 4 and 6 of the Wind Down Cost Estimate contain unit pricing information related to certain amounts paid by Alectra Utilities to its contractors for their services; and pages 4, 5 and 7 of the Wind Down Cost Estimate contain severance payment information for Alectra Utilities' former Conservation and Demand Management (CDM) employees.

The OEB issued PO No. 2 on August 20, 2019 that set a schedule for submissions on the confidentiality request. OEB staff's submission on the confidentiality requests are set out below.

STAFF SUBMISSION

On pages 3, 4 and 6 of the Wind Down Cost Estimate, Alectra Utilities redacted some information contained in the columns: Third Party Cost, Marketing Spend, Other, Expense Total, and Comments. Alectra Utilities noted in the letter that in some instances, the Wind Down Cost Estimate identifies contractors' names and the

¹ Practice Direction on Confidential Filings, October 28, 2016

corresponding unit pricing. For other instances where the contractor name is not included, Alectra Utilities stated that “there are very few providers for the relevant services and that the specific contractors used by Alectra Utilities for these services is well known in the industry. Consequently, if this information is disclosed, unit pricing information for the contractors will be reasonably identifiable.”² Alectra Utilities argued that “[t]his type of information is commercially sensitive and its disclosure can significantly impact the competitive position of its contractors.”³

OEB staff supports the confidentiality claim for the unit pricing information due to its commercial sensitivity. OEB staff further notes in this context that the Practice Direction includes vendor pricing information among the types of information that have previously been held as confidential by the OEB.⁴

With respect to the personal information, on pages 4, 5 and 7 of the Wind Down Cost Estimate, Alectra Utilities redacted multiple time periods in the columns, “Anticipated Invoice Period” and “Anticipated Reporting Period”. Alectra Utilities noted in the letter that the information redacted relates to the termination dates that correspond to the severance amounts paid to former CDM employees. Alectra Utilities noted that there was a small number of terminations on each of the listed dates and “if this information is disclosed, current or former employees of Alectra Utilities could reasonably be able to identify the individual employees to whom the specific listed severance amounts were paid or will be paid...”.⁵ Alectra Utilities stated that this information constitutes personal information as that phrase is defined in *Freedom of Information and Protection of Privacy Act* (FIPPA). Alectra Utilities is of the view that, in accordance with section 4.3 of the Practice Direction, “such personal information shall not be disclosed to any party in the proceeding, including a person from whom the OEB has accepted a Declaration and Undertaking.”⁶

OEB staff agrees with Alectra Utilities’ submission that, given the small number of terminations, individuals could likely be identified if this information was to be disclosed. OEB staff further submits that termination dates in combination with severance amounts

² Letter from Alectra Utilities – Request for Confidential Treatment of Interrogatory Response, EB-2019-0018, August 16, 2019, page 1

³ Letter from Alectra Utilities – Request for Confidential Treatment of Interrogatory Response, EB-2019-0018, August 16, 2019, page 1

⁴ OEB’s *Practice Direction on Confidential Filings*, Revised October 28, 2016, Appendix B, Number 5.

⁵ Letter from Alectra Utilities – Request for Confidential Treatment of Interrogatory Response, EB-2019-0018, August 16, 2019, page 2

⁶ Letter from Alectra Utilities – Request for Confidential Treatment of Interrogatory Response, EB-2019-0018, August 16, 2019, page 2

for identifiable individuals qualifies as “personal information” as defined in FIPPA.⁷ Appendix A of the Practice Direction states that among other factors, the OEB will consider whether the information is personal information. OEB staff agrees with Alectra Utilities that this personal information should remain confidential and not be disclosed to any party in the proceeding.

All of which is respectfully submitted

⁷ This is consistent with numerous rulings of the Information and Privacy Commissioner’s office. See, for example, *Ontario (Management Board Secretariat)(Re)*, 1997 Canlii 11866 (ON IPC).