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September 19, 2019

Reply To: Thomas Brett
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Our File No. 192964

VIA RESS, EMAIL AND COURIER

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

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: EB-2019-0018: Alectra Utilities, 2020 Electricity Distribution Rates Application

Please find enclosed herewith BOMA's Submissions on Confidentiality.

Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in blue ink, appearing to read "Tom Brett".

Thomas Brett
TB/dd

cc: All Parties (*via email*)

ONTARIO ENERGY BOARD

Alectra Utilities Corporation

**Application for electricity distribution rates and other
charges effective January 1, 2020**

**Submission on Confidentiality of
Building Owners and Managers Association, Greater Toronto ("BOMA")**

September 19, 2019

**Tom Brett
Fogler, Rubinoff LLP
77 King Street West, Suite 3000
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Counsel for BOMA

Submission on Confidentiality of BOMA

BOMA makes the following submissions on the requests of Alectra Utilities Corporation ("Alectra") for confidentiality treatment for the price information provided by three of its experts: Innovative Research Group ("Innovative"), Vanry & Associates Inc. ("Vanry"), and Kinectrics Inc. ("Kinectrics"), contained in five consulting contracts (three for Innovative), one each for Vanry and Kinectrics. These submissions are made pursuant to Procedural Order No. 3, dated September 17, 2019. The data was provided in response to IRs 14 and 15 of MANA.

In Procedural Order No. 3, the Board notes at pp1-2 that:

"Alectra Utilities stated that the redacted information consists of commercially sensitive pricing terms agreed upon by Alectra Utilities and each of its consultants through commercial negotiations. Alectra Utilities further indicated that it had been advised by the consultants that disclosing the redacted information could prejudice the competitive positions of the consultants in their future negotiations to provide similar services to Alectra Utilities or other potential clients."

The Board's general policy, as set out at p1 of Ontario Energy Board, Practice Direction on Confidential Filings, is that:

"... all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible. The Board therefore generally places materials it receives in the course of the exercise of its authority under the Ontario Energy Board Act, 1998 and other legislation on the public record so that all interested parties can have equal access to those materials."

The Board goes on to state that:

"The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case."

BOMA is of the view that Alectra has not discharged the onus outlined above in this instance, for three reasons.

First, the fact that the amounts were agreed upon in commercial negotiations is not as such a reason to withhold the prices negotiated from the public record. The negotiations were completed months ago, and the work is completed. Disclosure at this point in time did not interfere with the negotiations.

Second, the price information in two of the three Innovative contracts are estimates only. Those two agreements make clear that:

"Questionnaire length will impact the final pricing", and that "Costs above are based on project estimates. Final invoice will reflect actual number of hours spent on project, as well as final expenses."

Third, contrary to what Alectra has advised the Board, the five contracts with consultants do not require Alectra to keep the pricing information confidential, which leads to the inference that the consultants consented to the release of the entire contracts. The decision to remove the pricing information was made by Alectra. Moreover, the Vanry and Kinectrics contracts are virtually identical, which indicates that Alectra used its own standard form contract to retain the two consultants. The only provisions for confidentiality in those five contracts pertain to the consultants' obligation to keep information provided by Alectra confidential. Those confidentiality provisions protect Alectra, not the consultants (our emphasis).

As a general matter, disclosure of pricing information, including the breakdown of all component parts of the work, assist the Board and parties to better understand the nature and scope of the work to be provided by each consultant, for Alectra, and the significance of such work for

Alectra's case. Placing the entire contracts on the public record is, in BOMA's view, in the public interest.

~All of which is respectfully submitted~