

September 30, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Alectra Utilities Corporation (“Alectra Utilities”)
Incentive Regulation Mechanism (“IRM”) Application for 2020 Electricity
Distribution Rates and Charges (OEB File No. EB-2019-0018)
M-Factor Interrogatory Responses – Reply Submission on Confidentiality
Request**

We are counsel to Alectra Utilities in the above-referenced proceeding. Further to Procedural Order No. 3, the following are Alectra Utilities’ Reply Submissions on its confidentiality requests.

Background

Alectra Utilities filed its interrogatory responses relating to the M-Factor on September 13, 2019. Concurrently, Alectra Utilities requested the confidential treatment of certain vendor pricing information contained in third party consultant retainer agreements with Innovative Research Group, Vanry & Associates Inc., and Kinectrics Inc. (“**Consultant Retainers**”).¹ Alectra Utilities submitted that the pricing information in the Consultant Retainers is commercially sensitive because the disclosure of this information could prejudice the competitive positions of the consultants in their future negotiations to provide similar services to Alectra Utilities and other potential clients. Submissions were filed by OEB staff, Building Owners and Managers Association (“**BOMA**”) and the School Energy Coalition (“**SEC**”).

Submissions

OEB staff fully supports Alectra Utilities’ confidentiality requests, noting that this type of information has previously been held as confidential by the OEB. OEB staff specifically referenced the fact that the OEB recently approved the confidential treatment of similar vendor pricing information in Hydro One’s transmission rate application (EB-2019-0082).

¹ The Consultants Retainers were filed as Attachments 1-3 to interrogatory response, 14-MANA-39 and Attachments 1 & 2 to interrogatory response, 15-MANA-15.

BOMA and SEC argue that the vendor pricing information should not be afforded confidential treatment. For the reasons that follow, the OEB should reject each of the BOMA and SEC submissions and approve Alectra Utilities' request.

At the outset of its submissions, BOMA provides two excerpts from page 1 of the OEB's *Practice Direction on Confidential Filings* (the "**Practice Direction**"). However, in doing so, BOMA has omitted two key sentences, one of which follows immediately after the first excerpt and the other which immediately precedes the second excerpt. These sentences from the Practice Direction speak to the important balance that the OEB, through the Practice Direction, seeks to achieve, and which BOMA has chosen to ignore, as follows:

. . . That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential . . .

BOMA suggests that Alectra Utilities is relying on the potential interference with ongoing negotiations as a basis for its confidentiality request. This is not correct and was not cited in Alectra Utilities' submissions. Alectra Utilities' request for confidentiality is made on the basis that the vendor pricing information is commercially sensitive because its disclosure could prejudice the competitive positions of the consultants "in their future negotiations to provide similar services to Alectra Utilities or other potential clients".

BOMA comments that the pricing information in two of the Innovative retainer agreements are estimates. Although BOMA offers no explanation as to why this comment offers a reason to deny the confidentiality request, Alectra Utilities notes that the redacted information clearly reflects the vendor's pricing for the services that are described therein. The fact that there is potential variability in the pricing to reflect factors such as a need for more survey questions than was assumed in setting the project cost or the actual number of hours spent or final expenses does not mean the disclosure of the pricing information for which confidential treatment has been sought would not prejudice this vendor's competitive position.

BOMA argues that because the contract terms do not expressly address the confidentiality of vendor information the vendor pricing information should not be treated confidentially. Whether or not the parties addressed the possibility of disclosure in an OEB proceeding when entering into their agreements is not the relevant question for the OEB. Rather, the question is whether the information at issue is considered by the third party to be commercially sensitive and whether public disclosure of the information reasonably has the potential to prejudice that third party's competitive position. As indicated in Alectra Utilities' confidentiality request, it has been advised by each of the consultants that disclosing their respective pricing information could prejudice their competitive positions. Moreover, the OEB has regularly found, consistent with the Practice Direction, that such information should be afforded confidential treatment.

BOMA further argues that disclosure of the pricing information is needed to "assist the OEB and parties to better understand the nature and scope of the work to be provided by each consultant". This argument is flawed. Alectra Utilities has not sought to redact any information

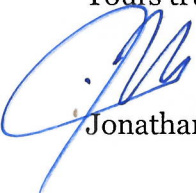
on the nature or scope of work, only the pricing information. Moreover, Alectra Utilities is not withholding the pricing information from the OEB or parties. So long as those parties sign a Declaration and Undertaking, they may access the confidential vendor pricing information.

SEC starts off by acknowledging that the OEB has previously determined that vendor pricing information should be kept confidential, but then argues that the amounts utilities pay to consultants "should not be a secret" or "protected from public scrutiny." SEC's submissions are contrary to the Practice Direction. In particular, section 5.1.9 of the Practice Direction states that "(a)n illustrative list of the types of information that the Board has previously assessed or maintained as confidential is set out in Appendix B, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course." One of the types of information listed in Appendix B is "Third party information as described in section 17(1) of FIPPA, including vendor pricing information."

While SEC tries to paint Alectra Utilities (and indeed all regulated entities) as secretive and actively trying to hide information from public scrutiny because of a fear about what the public might think of the costs incurred for these services, this is not the case and is not what is prompting the confidentiality request. The vendor pricing information is subject to scrutiny from public interest intervenors, such as SEC, whose representatives sign Declarations and Undertakings. Confidential treatment is sought only to protect the competitive positions of the third-party vendors. The OEB has repeatedly found that the protection of such information from public disclosure for this purpose is consistent with the aforementioned "balance" that the OEB is trying to achieve in the Practice Direction.

Based on the foregoing, Alectra Utilities submits that the OEB should grant confidential treatment for the vendor pricing information contained in the identified portions of the Consultants Retainers.

Yours truly,



Jonathan Myers

cc: Indy Butany-DeSouza, Alectra Utilities
Charles Keizer, Torys LLP
All Parties