

Alectra Utilities Corporation

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

DECISION ON CONFIDENTIALITY

October 7, 2019

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

Alectra Utilities filed its interrogatory responses on the M-Factor elements of the application on September 13, 2019. As part of these responses, Alectra Utilities publicly filed redacted responses to Attachments 1-3 of 14-MANA-39 and Attachments 1 and 2 of 15-MANA-15. Certain portions within the attachments contain third-party vendor pricing information from Innovative Research Group, Vanry & Associates Inc. and Kinectrics Inc. (collectively, the vendors). Alectra Utilities also filed unredacted copies of these documents with the OEB and requested that the unredacted portions of the attachments be maintained in confidence pursuant to Rule 10.01 of the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings* (Practice Direction). Alectra Utilities argued that the vendor pricing information is commercially sensitive and if disclosed, could prejudice the competitive positions of the vendors and any future negotiations about providing similar services to Alectra Utilities or to its competitors.

The OEB issued Procedural Order No. 3 on September 17, 2019, which established deadlines for intervenors and OEB staff to file submissions on Alectra Utilities' confidentiality requests, and for Alectra Utilities to file reply submissions.

The OEB received submissions from OEB staff, the Building Owners and Managers Association, Greater Toronto (BOMA) and the School Energy Coalition (SEC).

OEB staff supported the confidentiality request by Alectra Utilities and submitted the information is similar to the types of information the OEB has previously held as confidential in its Practice Direction¹ and also noted the OEB recently approved a similar request in Hydro One Networks Inc.'s (Hydro One Networks) application for electricity transmission rates.²

SEC and BOMA opposed confidential treatment for the vendor pricing information.

SEC acknowledged that, as noted by OEB staff, previous OEB decisions have held that consultant information can remain confidential. However, SEC outlined its concern over the non-disclosure of financial compensation that utilities pay for the work of consultants that support the utilities' request for an increase in rates. SEC argued that only in exceptional cases should the arrangements utilities make using customers' money be kept secret from the public and protected from public scrutiny.

BOMA argued in its submission that Alectra Utilities did not demonstrate that vendor pricing information warrants confidential treatment due to the following:

- Commercial negotiations and the work involved have since been completed. Disclosure of the information at this point in time did not interfere with the negotiations.
- Pricing information contained in two of the Innovative contracts are estimates only and, based on the agreements, the final invoice will reflect actual number of hours spent on project and final expenses.
- The contractual agreements do not require Alectra Utilities to keep pricing information confidential and that the Vanry and Kinectrics contracts are identical, which in BOMA's view is considered as standard form contracts.

Alectra Utilities reiterated in its reply submission that the confidential request is consistent with the Practice Direction and types of information that has previously been held as confidential.

Alectra Utilities objected to BOMA's assertions that the company is, "...relying on the potential interference with ongoing negotiations as a basis for its confidentiality request."³ In response, Alectra Utilities stated that this was not the case and no reference was made to that in its submission. The confidential request is made on the premise that the vendor pricing information could prejudice the competitive positions of

¹ Appendix B, item 5 (Third Party Information under FIPPA), page 20

² EB-2019-0082

³ Reply submission dated September 30, 2019, page 2

the vendors. With respect to the pricing information contained in the Innovative contracts, Alectra Utilities submitted that BOMA did not indicate any reasons why the confidentiality request should be denied. Alectra Utilities reiterated that the company has been advised by each of the vendors that disclosing such information could prejudice their competitive positions. Alectra Utilities further noted that it is not withholding the pricing information from the OEB or intervenors. So long as the parties sign a Declaration and Undertaking, they may access the confidential vendor pricing information.

Findings

After considering the submissions of parties and OEB staff, the OEB grants the confidentiality request for the vendor pricing information. The OEB notes that the confidentiality request is for pricing information (e.g. unit costs) and not for the entire agreements or the actual total cost claimed for the work. The OEB finds that the information is commercially sensitive because its disclosure could negatively impact the competitive position of the vendors in future negotiations. The OEB further notes that the Practice Direction⁴ identifies third-party information including vendor pricing as a type of information for which confidential treatment is warranted. Moreover, consistent with the Practice Direction, the OEB has designated similar information as confidential in other proceedings.

DATED at Toronto, **October 7, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary

⁴ Appendix B, item 5 (Third Party Information under FIPPA), page 20