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**File No. 17129.26**

June 30, 2025

**BY RESS and EMAIL**

Mr. Ritchie Murray  
Ontario Energy Board  
2300 Yonge Street, 27th floor  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Mr. Murray:

**Re: Windsor Canada Utilities Ltd. (“WCUL”) Phase 1 MAADs Application to Acquire E.L.K. Energy Inc. and Related Approvals (“Application”)**

The Applicants filed cover letters with the Ontario Energy Board (“OEB”) for the Application on May 13 and 27 and June 20, 2025 setting out in detailed reasons its requests for confidentiality. After continued discussions with OEB Staff since the June 20<sup>th</sup> filing, the Applicants are filing this further letter to: 1) provide additional information on the nature of its confidentiality requests in respect of personal information, at the request of OEB Staff, and; 2) provide additional information on its confidentiality request related to Appendix E, in accordance with Procedural Order No. 1.

The entire table from the June 20<sup>th</sup> letter has been reproduced in full for completeness, however only the following entries were edited to provide additional information as outlined above:

- Section 4.26 (f), (h), (i), (j), (n) – Employment and Labour Matters
- Section 6.6 – Shareholder and Directors; Release
- Section 9.4 – Employee Retention
- Schedule A, Sections 4.10, 4.26(a), 4.26(b), 4.27(a), 6.1(b)
- Exhibit D
- Appendix E
- Target Working Capital – this change was unrelated to personal information, rather changed from “Presumptively Confidential” to “Confidential”.

WCUL has attempted throughout to provide as much detail as possible without compromising the integrity of the confidential information itself. WCUL submits that the table below, along with unredacted versions of the documents, is sufficient for the OEB panel to make a ruling on the confidentiality request without any further delay. WCUL reiterates its comments from its June 20<sup>th</sup> letter, in that since most of redaction requests have been made on multiple grounds, an initial assessment should be completed to assess whether the material requested for redaction is relevant to the Application, and only further assessments on confidentiality conducted where the redacted information is determined to be relevant.

Consideration was made to the definition of “personal information” and section 21 of the *Freedom of Information and Protection of Privacy Act* for confidentiality claims on the basis of personal information. Unless specified otherwise, the “personal information” relates to information about the employment history or financial transactions of an identifiable individual. As noted under section 21(3) of the *Freedom of Information and Protection of Privacy Act*, there is a presumed invasion of privacy where the personal information would disclose employment history, income, liabilities, financial history or financial activities.

Appendix C – Purchase and Sale Agreement		
Evidence Reference	Title and Description	Rationale Supporting Redaction
p.4 - Definitions	Deposit	<p><b><u>Not Relevant</u></b></p> <p>The discrete redaction to this definition is not relevant to the Board’s no-harm test. The quantum of deposit paid by WCUL to the seller is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act. In addition, only the impact of the total purchase price on the financial viability of the acquirer is required to be considered by the Board.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the approach to certain financial settlement aspects of the transaction purchase price are commercially sensitive. The quantum of deposit paid by WCUL is a commercially sensitive term and relates to a term that may have materially influenced the outcome of the competitive procurement, which has not yet closed.</p>
p.6 - Definitions	Governance Representation Agreement	<p><b><u>Not Relevant</u></b></p> <p>The discrete redaction to this definition is not relevant to the Board’s no-harm test. This specific contractual term of the sale is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act.</p> <p><b><u>Confidential</u></b></p> <p>This specific contractual element is commercially sensitive and could prejudice the future competitive positions of the Parties. The redacted portion of the definition relates to a term of the acquisition that would prejudice WCUL’s competitive position and relates to a term that may have materially influenced the outcome of the competitive procurement, which has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of negotiating strategies employed and provide an advantage to other Parties.</p>

p.12 - Definitions	Target Working Capital	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test. Only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight.</p> <p><b><u>Confidential</u></b></p> <p>The specifics of the approach to the purchase price determination, and the components thereof, are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. Disclosure also has the potential to inform unsuccessful bidders of bidding strategies employed and provide an advantage to other Parties.</p>
p.13 – Definitions	Termination Date	<p><b><u>Not Relevant</u></b></p> <p>The discrete redaction to this definition is not relevant to the Board’s no-harm test. Specific details on the termination date are not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act.</p> <p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. Disclosure also has the potential to inform unsuccessful bidders of potential termination provisions and provide an advantage to other Parties. They also relate to terms and conditions on the circumstance when termination will occur and what outcomes will result. The transaction has not closed and disclosure of this key commercial terms at this stage could cause harm to potential future competitive positions and negotiations of the Parties.</p>

p. 16 – Section 2.2	Purchase Price	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight. The impact of the Purchase Price on the financial viability of the acquirer is outlined in Section 4.2 iii) of the Application and Evidence. As noted above, the OEB has previously opined that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company as any premium paid in excess of the book value of assets is not normally recoverable through rates.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics of the approach to the calculation of the purchase price, and the components thereof, are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties, as the transaction has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of the considerations factored into the purchase price determination and provide an advantage to other Parties, including disclosing bidding strategies used in a competitive procurement. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential. The purchase price paid by WCUL, a third party that is unregulated, should remain confidential.</p>
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pp. 16-17 – Section 2.3	Delivery of the Estimated Statement and Payout Letters	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight. The impact of the Purchase Price on the financial viability of the acquirer is outlined in Section 4.2 iii) of the Application and Evidence.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics of the approach to the calculation of the purchase price, and the components thereof, are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties, as the transaction has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of the considerations factored into the purchase price determination and provide an advantage to other Parties, including disclosing bidding strategies used in a competitive procurement. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.</p>
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pp. 18-19 – Section 2.6 a)	Closing Statement	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight. The impact of the Purchase Price on the financial viability of the acquirer is outlined in Section 4.2 iii) of the Application and Evidence.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics of the approach to the calculation of the purchase price, and the components thereof, are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties, as the transaction has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of the considerations factored into the purchase price determination and provide an advantage to other Parties, including disclosing bidding strategies used in a competitive procurement. In EB-2022-0006, the OEB has previously held that valuations and calculation of adjustments were allowed to remain confidential.</p>
pp. 19-20 – Section 2.6 d)	Settlement of Dispute	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight. The impact of the Purchase Price on the financial viability of the acquirer is outlined in Section 4.2 iii) of the Application and Evidence.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the references to specifics of the approach to calculating adjustments to the closing statement are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties, as the transaction has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of the considerations factored into the purchase price determination and provide an advantage to other Parties, including disclosing bidding strategies used in a competitive procurement..</p>

<p>p. 38 – Section 4.26 f), h), i), j), n)</p>	<p>Employment and Labour Matters</p>	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this section pertain to labour and employment matters resulting from the transaction. The information is not relevant to the OEB’s determination on the Application. The redacted information does not have an impact on ratepayers in the assessment of the no-harm test.</p> <p><b><u>Personal Information</u></b></p> <p>Contractual terms relating to employment and labour matters, including current and former employees’ status of employment and potential income, in the context of the transaction is personal information about identifiable individuals as that term is defined in section 2 of FIPPA. These provisions are applicable to several identifiable individuals.</p> <p><b><u>Confidential</u></b></p> <p>Details on how employee contracts are dealt with and compensation / collective bargaining matters in the context of a specific transaction are confidential and may adversely affect future negotiations, causing harm to the Parties, considering the transaction has not yet closed. Disclosure of the terms provide sufficient information that could adversely affect the bargaining positions of the Applicants and its employees. The transaction is not closed and the information could relate to existing employees.</p> <p>This section addresses certain employment-related matters. Public disclosure, and disclosure of the material to which it relates, can reasonably be expected to prejudice the bargaining positions of the Applicants and its employees. This information has previously been found to be confidential information in EB-2016-0025.<sup>1</sup></p> <p>Additionally, Appendix B of the OEB’s Practice Direction on Confidential Filings states that information pertaining to current or future collective bargaining negotiations is presumptively confidential.</p>
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<sup>1</sup> EB-2016-0025, Decision on Confidentiality Request and Procedural Order No. 3, August 12, 2016



pp. 46 – 47 – Section 4.36	Water Heater Rental Contracts	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section pertain to matters that are not relevant to the Board’s no-harm test, as they pertain to contracts of unregulated subsidiaries that are engaged in competitive business activities.</p> <p><b><u>Confidential</u></b></p> <p>In EB-2016-0351, the OEB found that financial details regarding contracts with persons who are not parties to the Application were commercially sensitive.</p>
pp. 49-52 – Section 6.1(b)	Conduct of Business Prior to Closing	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section pertain to matters that are not relevant to the Board’s no-harm test. The restrictions on the Buyer’s actions prior to the closing date are not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act. These terms are temporary in nature during the Interim Period and will not persist beyond closing.</p> <p><b><u>Confidential</u></b></p> <p>The redactions relate to terms and conditions that were negotiated between two parties that are not regulated by the OEB, and are also related to business activities of each Group Entity during the Interim Period. These terms may have had a material influence on the successful bid in the competitive process. These are confidential terms that were negotiated through a confidential competitive procurement process. The restrictions on business are important pre-closing conditions that must remain confidential so that it does not prejudice future negotiations or negatively impact the Group Entity’s ability to conduct business during the Interim Period should such restrictions become public knowledge.</p>

p. 53 – Section 6.6	Shareholder and Directors; Release	<p><b><u>Not Relevant</u></b></p> <p>The contractual terms associated with directors of E.L.K. Energy and the impacts resulting from the transaction are not relevant to the OEB’s determination in this proceeding. This information does not have a potential impact on ratepayers.</p> <p><b><u>Confidential Information</u></b></p> <p>The discrete redactions in this Section are commercially sensitive and could impact the future competitive and negotiating positions of the Parties, as the transaction has not closed. This information has been consistently treated as confidential by WCUL and partially relates to an unregulated affiliate. This confidential information relates to employment history and income of identifiable individuals that could impact future negotiations and is not sufficiently aggregated to allow for disclosure.</p>
p.56 – Section 6.9	Termination of Related Party Transactions	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test. How the parties intend to deal with existing contracts to conduct day to day business is not relevant to the no-harm test.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics are commercially sensitive and pertain to contractual arrangements which could prejudice the future competitive and negotiating positions of the Parties. This provision relates to potentially confidential negotiations with third parties for services or materials that are supplied to the utility. In EB-2016-0351, the OEB found that financial details regarding contracts with persons who are not parties to the Application were commercially sensitive.</p>
p. 57 - Section 6.15	Collective Agreements	<p><b><u>Presumptively Confidential</u></b></p> <p>The discrete redactions in this Section relate to collective agreements which are to be presumptively considered confidential by the Board under Appendix B(8) of the Practice Direction. The information also relates to ongoing negotiations and the parameters within the seller can operate. Disclosure of this strategic information would likely be prejudicial to current or future collective bargaining negotiations.</p>

p. 60 – Section 8.1 m), n)	Conditions for the Benefit of Buyer	<p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section (m) and (n) are commercially sensitive and could impact the future competitive and negotiating positions of the Parties.</p> <p>With respect to (m), the discrete redactions in this Section relate to collective agreements which are to be presumptively considered confidential by the Board under Appendix B(8) of the Practice Direction. Disclosure of this information would likely be prejudicial to current or future collective bargaining negotiations.</p> <p>With respect to (n), the discrete redactions in this Section relate to ongoing legal proceedings that have not yet concluded. This information is presumptively confidential under Appendix B(6) as litigation privilege.</p> <p>The discrete redactions above also relate to core conditions which must be satisfied in order for the transaction to close and not customary for this type of transaction, the disclosure of which at this stage could negatively and irreparably harm the Parties to the transaction, and offer an advantage to other third parties, potentially parties involved in the achievement of said conditions, or unsuccessful bidders.</p>
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p.68 – Section 9.4	Employee Retention	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section about employee retention are not relevant to the Board’s no-harm test, as they are not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act.</p> <p><b><u>Personal Information</u></b></p> <p>The discrete redactions in this Section pertain to employment and contractual matters, which could be considered as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i>. The terms of employee retention are a highly confidential matter for current employees, especially since the transaction has not yet closed. Publicly disclosing of this type of information could be discovered by anyone, including existing employees, and could impact the provision of necessary services.</p> <p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section are also commercially sensitive and could prejudice the future competitive and negotiating positions of the Parties, as the transaction has not yet closed. The disclosure of a key commercial term at this stage may offer a competitive advantage to other third parties, potentially unsuccessful bidders, including disclosing negotiating strategies used in a competitive procurement.</p>
p.68 – Section 9.5	Advisory Committee	<p><b><u>Not Relevant</u></b></p> <p>The term and scope of an advisory committee has no bearing on the OEB’s statutory objectives under section 1 of the OEB Act.</p> <p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive positions of the Parties or negotiations for the acquisition of other LDCs. The scope and term of an advisory committee is a commercially sensitive term. The disclosure of a key commercial term at this stage may offer a competitive advantage to other third parties, potentially unsuccessful bidders, and impact the future negotiating positions of the Parties.</p>

pp.69-70 – Section 10.3(b), (c), (d), (e)	Time Limitations	<p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section are commercially sensitive and could prejudice the future competitive and financial positions of the Parties. The terms regarding limitations on damages, and settlement of such claims, are confidential as this could be used in future negotiations against The Corporation of the Town of Essex or WCUL if publicly disclosed. The Parties have always treated this information as confidential.</p>
pp.70-72 – Section 10.4, 10.6, 10.7, 10.8, & 10.10	<p>Other Limitations on Recourse and Indemnification Obligations</p> <p>Notification</p> <p>Direct Claims</p> <p>Third Party Claims</p> <p>Payment of Indemnification</p>	<p><b><u>Confidential</u></b></p> <p>Similar to the time limitations section above, the discrete redactions in this Section are commercially sensitive and could prejudice the future competitive and financial positions of the Parties. The terms regarding indemnification of damages, and settlement of such claims, are confidential as this could be used in future negotiations against WCUL if publicly disclosed. The Parties have always treated this information as confidential.</p>

<p>Schedule A</p> <p>Schedule 1.1 a), 3.4, 4.6 (partial), 4.10, 4.11 b), 4.12, 4.13, 4.23 a), 4.25, 4.26 a), 4.26 b), 4.27 a), 4.29, 4.35, 4.36 a), 6.1 b)</p>	<p>Seller Disclosure Letter</p>	<p><b><u>Confidential / Personal Information</u></b></p> <p>This Schedule contains disclosures by the Seller which are commercially sensitive, in addition to contractual information (including contract values) that could prejudice the future competitive positions of the Parties. The details provided in these particular schedules are confidential and have been consistently treated as such by WCUL. Disclosure of this information has the potential for a significant loss for WCUL and potentially a significant gain for other third parties, particularly unsuccessful bidders. It also contains information that is considered “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA) which should be protected from public disclosure. Non-public financial information is also contained in this Schedule. Public disclosure of this information is not relevant to the consideration of the Board’s no-harm test.</p> <p>The specifics of each request are outlined below:</p> <p>Schedule 1.1 (a) – Permitted Liens</p> <ul style="list-style-type: none"> <li>• Not Relevant - The discrete redactions in this Section are not relevant to the Board’s no-harm test, as they are not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act.</li> <li>• Confidential – The disclosure of permitted liens are commercially sensitive and could negatively impact the future negotiating position of the Seller, particularly as the transaction has not yet closed.</li> </ul> <p>Schedule 3.4 – Third Party Consents</p> <ul style="list-style-type: none"> <li>• Confidential – The disclosure of third party consents required are commercially sensitive and could negatively impact the future negotiating position of the Seller, particularly as the transaction has not yet closed.</li> </ul> <p>Schedule 4.6 – Authorizations (partial)</p> <ul style="list-style-type: none"> <li>• Not Relevant - The discrete redactions in this Section are not relevant to the Board’s no-harm test, as they pertain to the business operations of an unregulated affiliate.</li> </ul>
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		<p>has the potential to give an unfair advantage to other third party benefit providers about the terms of benefits that are provided, which were negotiated in confidence.</p> <ul style="list-style-type: none"> <li>• Personal Information – This is also personal information as employment and financial information that forms the basis for compensation and benefits of employees at the utility. This information is routinely treated as confidential across multiple industries and is not made publicly available.</li> </ul> <p>Schedule 4.29 – Bank Accounts</p> <ul style="list-style-type: none"> <li>• Confidential - The discrete redactions in this Section pertain to banking details, which is commercially sensitive and could cause significant harm to the Parties if disclosed.</li> </ul> <p>Schedule 4.35 – Prudential Support</p> <ul style="list-style-type: none"> <li>• Confidential - The discrete redactions in this Section pertain to prudential support on file with a third party, which is commercially sensitive and could cause harm to the Parties if disclosed.</li> </ul> <p>Schedule 4.36(a) – Water Heater Contract</p> <ul style="list-style-type: none"> <li>• Not Relevant - The discrete redactions in this Section pertain to matters that are not relevant to the Board’s no-harm test, as they pertain to contracts of unregulated subsidiaries that are engaged in competitive business activities.</li> <li>• Confidential - In EB-2016-0351, the OEB found that financial details regarding contracts with persons who are not parties to the Application were commercially sensitive.</li> </ul> <p>Schedule 6.1(b) – Future Obligations</p> <ul style="list-style-type: none"> <li>• Please also refer to the reasons provided in response to section 6.1(b) above regarding the Conduct of Business Prior to Closing</li> <li>• Confidential - The discrete redactions in this Section pertain to future obligations, which is commercially sensitive and could cause harm to the Parties if disclosed.</li> </ul>
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		<ul style="list-style-type: none"> <li>Personal information – Some of the discrete redactions in this Section pertain to financial, employment history and contractual matters of specific named, identifiable individuals, which could be considered as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i>.</li> </ul>
Schedule C	Purchase Price Allocation	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. How the purchase price is allocated between the share purchases is not relevant to the OEB’s determination in this proceeding.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics of the approach to the calculation are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties. The approach to the valuation of the shares an unregulated affiliate is commercially sensitive and should remain confidential. This information provides third parties insight into valuations of the entities that were purchased by WCUL, which information was always intended to remain confidential between WCUL and the Corporation of the Town of Essex.</p>
Exhibit A - Sub-Schedule C  Exhibit A - Sub-Schedule D	Escrow Agent Wire Instructions  Approved Banks	<p><b><u>Not Relevant</u></b></p> <p>The redactions in this section are not relevant to the Board’s no-harm test. The details on the mechanics of escrow are not relevant, especially when it is with a third party agent not party to the transaction itself. How the transaction will be executed by the parties is not relevant to the OEB’s no-harm test.</p> <p><b><u>Confidential</u></b></p> <p>In addition, this Exhibit contains commercially sensitive contract and banking information which could harm the Parties if disclosed. The timing and manner of payment was negotiated in confidence between the parties. In EB-2016-0351, the OEB found that financial details regarding contracts with persons who are not parties to the Application were commercially sensitive.</p>

Exhibit B	Form of Governance Representation Agreement	<p><b><u>Not Relevant</u></b></p> <p>The redactions in this section are not relevant to the Board’s no-harm test. This information is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act.</p> <p><b><u>Confidential</u></b></p> <p>This specific contractual element is commercially sensitive and could prejudice the future competitive positions of the Parties. The redacted portion of the document relates to a term of the acquisition that would prejudice WCUL’s competitive position and relates to a term that may have materially influenced the outcome of the competitive procurement, which has not yet closed, including disclosing negotiating strategies used in a competitive procurement.</p>
Exhibit C	Sample Statement	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test, as only the impact of the total purchase price on the financial viability of the acquirer is to be considered by the Board. WCUL is not a distributor or transmitter under the OEB Act and therefore not subject to OEB oversight.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics of the approach to the calculation of the purchase price, and the components thereof, are commercially sensitive and could prejudice the future competitive positions and negotiations of the Parties , as the transaction has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of the considerations factored into the purchase price determination and provide an advantage to other Parties, including disclosing bidding strategies used in a competitive procurement.</p>

Exhibit D	Form of Director and Officer Releases	<p><b><u>Not Relevant</u></b></p> <p>The legal form of Director and Officer Releases are not relevant to the matters considered in the Board’s no-harm test. This information is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act. In addition, the contractual terms associated with directors of E.L.K. Energy and the impacts resulting from the transaction are not relevant to the OEB’s determination in this proceeding. This information does not have a potential impact on ratepayers.</p> <p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section pertain to commercially sensitive information which could impact the future competitive and negotiating positions of the Parties. Specific terms, liabilities and obligations negotiated between directors and the entity they serve is confidential information that should not be disclosed. Additionally, terms of releases are routinely treated as confidential, under the purview of Settlement Privilege, by parties to settle matters outside of litigation and presumptively confidential under Appendix B(6) of the Practice Direction.</p>
Exhibit E	Form of Shareholder Release	<p><b><u>Not Relevant</u></b></p> <p>The discrete redactions in this Section are not relevant to the Board’s no-harm test. The form of shareholder release does not have any bearing on the OEB’s considerations under section 1 of the OEB Act.</p> <p><b><u>Confidential</u></b></p> <p>The discrete redactions in this Section pertain to contractual matters, which could be considered commercially sensitive and impact the future competitive and negotiating positions of the Parties. The scope of a mutual release between the parties is confidential information. Allocation of liability has previously been held to be confidential in EB-2016-0351.</p>

Exhibit H	Form of Local Community Commitment Agreement	<p><b><u>Not Relevant</u></b></p> <p>The form of Local Community Commitment Agreement is not relevant to the Board’s no-harm test. This information is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act. The terms of a contract between parties that are not regulated by the OEB, and specifically WCUL’s commitments to the Corporation of the Town of Essex, are not relevant.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties. The redacted portion of the document relates to a material term of the acquisition that would prejudice the Parties competitive position and relates to a term that may have materially influenced the outcome of the competitive procurement, which has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of negotiating strategies employed and provide an advantage to other Parties.</p>
Exhibit I	Form of Contribution Agreement	<p><b><u>Not Relevant</u></b></p> <p>The form of Form of Contribution Agreement is not relevant to the Board’s no-harm test. This information is not relevant to any of the statutory objectives under section 1 of the OEB Act. The “no harm” test only considers whether the proposed transaction is expected to have an adverse effect on the matters prescribed in the statutory objectives, as set out in section 1 of the OEB Act. The terms of a contract between parties that are not regulated by the OEB are not relevant.</p> <p><b><u>Confidential</u></b></p> <p>In addition, the specifics are commercially sensitive and could prejudice the future competitive positions of the Parties. The redacted portion of the document relates to a material term of the acquisition that would prejudice the Parties competitive positions and relates to a term that may have materially influenced the outcome of the competitive procurement, which has not yet closed. Disclosure also has the potential to inform unsuccessful bidders of negotiating strategies employed and provide an advantage to other Parties.</p>

Appendix E – Resolutions by Parties Approving the Proposed Transaction		
Evidence Reference	Title and Description	Rationale Supporting Redaction
Appendix E	City of Windsor Resolution	<p><b><u>Not Relevant / Confidential</u></b></p> <p>This document has been redacted in part, as it is commercially sensitive and public disclosure could significantly prejudice the Party’s competitive position and negatively impact future negotiations. This document was created and circulated within a confidential municipal process and included parameters around bidding strategies and valuations that would be very harmful if disclosed. It is important that the OEB not undermine the proper functioning of in-camera sessions at municipalities. This record was clearly created with the intention it would remain confidential.</p> <p>WCUL submits that this document remain redacted and <u>not available</u> to parties that sign a confidentiality undertaking – what WCUL’s bidding strategies during the confidential competitive procurement are not relevant to the no-harm test, or have any bearing on the ultimate agreement reached on the transaction. Specifically, it provided directions to WCUL on what parameters could be negotiated to acquire the shares E.L.K. Energy, including the maximum negotiated price, alternative acquisition structures, and acceptable outcomes for the future relationship between E.L.K. Energy and its former shareholders. The negotiating position of WCUL in the discussions leading up to the execution of a definitive agreement with E.L.K. Energy is not relevant and highly confidential. The MAADs Handbook specifically states that it is not the OEB’s role to determine whether another transaction, whether real or potential, [could] have a more positive effect than the transaction that has been placed before the OEB. Accordingly, the OEB will not consider, whether a purchasing, selling, or amalgamating utility could have achieved a better transaction than that being put forward for approval in the application.<sup>2</sup></p> <p>WCUL’s concern relates to disclosure of this information in the transactional marketplace for the acquisition of utilities. Disclosure of this information would inform on the bidding strategies used by WCUL, and matters leading up to the ultimate transaction put forward in the present application, or other potential hypothetical transactions, are explicitly stated as not being relevant per the MAADs Handbook.</p> <p>WCUL submits that this document should remain redacted given the concerns above, and the lack of relevance of the document to the present application.</p>

<sup>2</sup> Handbook to Electricity Distributor and Transmitter Consolidations, pp. 14-15.

Please contact the undersigned with any questions.

Yours truly,

**BORDEN LADNER GERVAIS LLP**

A handwritten signature in black ink, appearing to read "Colm Boyle". The signature is written in a cursive, flowing style.

Colm Boyle

CB/JV