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**File No. 17129.26**

June 20, 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, 2025 setting out in detailed reasons its requests for the confidentiality. After further discussions with OEB Staff, the Applicants are filing this further amended cover letter to provide additional information on the confidentiality request and further narrow the request for confidential treatment in respect of the Purchase and Sale Agreement.

**Confidentiality Request**

For the reasons in the table below and contained in this cover letter, WCUL is requesting that the OEB redact certain information filed in relation to the Application. In terms of process, WCUL submits that the OEB should first assess whether the material requested for redaction is relevant to the Application and only assess confidentiality where the redacted information is determined to be relevant.

WCUL is filing with the OEB certain information in the Application that is confidential and/or subject to the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”). WCUL is hereby requesting confidential treatment of the information in the table below pursuant to sections 9A, 10.01 and 10.02 of the OEB’s Rules of Practice and Procedure (revised March 6, 2024) and sections 5.1.1, 5.1.2, 10 and 11 of the OEB’s Practice Direction on Confidential Filings (revised December 17, 2021, “**Practice Direction**”).

### **Relevance of the Redactions to the No Harm Test**

WCUL acknowledges that the OEB expects only relevant information will be filed in a proceeding,<sup>1</sup> but there are cases where a party may need to file a document that contains some information that is relevant and other information that is not relevant to a particular proceeding. WCUL submits that specific commercial terms agreed to by parties that are not regulated by the OEB are not relevant to whether the proposed transaction satisfies the No Harm Test as documented in the Handbook to Electricity Distributor and Transmitter Consolidations (“**MAADs Handbook**”). 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.<sup>2</sup>

In the MAADs Handbook, it is only the impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger that will be assessed. Neither of these situations apply in the first phase. WCUL is not a utility and E.L.K. Energy is not being consolidated in this application. Rather, E.L.K. Energy will continue to operate as an independent distribution utility following the OEB's approval of this Application.

While it was not clear to WCUL what relevance confidential commercial terms agreed to by two parties that are not regulated by the OEB are to the No Harm Test, to satisfy the filing requirement in section 2.2.3 of Schedule 2 of the MAADs Handbook WCUL disclosed as much as possible of the final legal documents, bylaws and resolutions used to implement the proposed transaction to minimize controversy and expedite a determination on the Application.

### **Context of the Request**

WCUL wishes to highlight four key facts that are salient to the request for non-relevance and confidentiality:

1. The acquisition of E.L.K. Energy by WCUL was through a confidential competitive procurement process where there may have been other bidders for E.L.K. Energy.
2. The transaction between E.L.K. Energy and WCUL has not yet closed and disclosure of a confidential agreement arrived at through a confidential competitive process could reasonably be expected to prejudice the economic interests of both parties and potentially disclose employment information post-closing.
3. Should the transaction not close for whatever reason, the Corporation of the Town of Essex may consider re-marketing E.L.K. Energy to bidders through a competitive process. Disclosure of terms reached between the Corporation of the Town of Essex and WCUL would significantly impair the competitiveness of that future process.

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<sup>1</sup> Decision on Confidentiality, EB-2023-0013, February 27, 2024

<sup>2</sup> Combined Proceeding Decision - OEB File No. RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

4. The Corporation of the Town of Essex, E.L.K. Energy and WCUL agree that the redacted information is not relevant to the OEB's determination or, in the alternative, is confidential.

WCUL was ultimately the successful bidder in a confidential competitive bidding process and included strategic bidding direction in a resolution from its shareholder has been redacted to ensure that its competitive position and bidding strategies are protected for future negotiations. Redacted records relating to the substance of deliberations of a meeting by municipal councillors in the absence of the public that resulted in a draft of a by-law, resolution or legislation around the parameters of a bid submission should similarly never be disclosed by the OEB. Doing so would undermine the proper functioning of municipal bodies.

The Purchase and Sale Agreement was executed by parties that are not subject to direct OEB oversight and contains many ancillary forms of agreement and financial details that are not relevant to the OEB's determination. Moreover, WCUL and The Corporation of the Town of Essex are unregulated affiliates of ENWIN Utilities Ltd. and E.L.K. Energy. Harm can reasonably be expected to result from disclosure of confidential information of these unregulated third parties, as particularized in the table below. Disclosure, especially before a deal has closed, could significantly impair the competitive, negotiating or financial positions or result in undue loss to both the Corporation of the Town of Essex and WCUL. Public disclosure may also result in future MAADs applicants being reluctant to supply confidential transactional information to the OEB as doing so may result in public disclosure of such information.

WCUL anticipates that arguments will be raised about information that has been disclosed by applicants in other MAADs applications. Respectfully, what other MAADs applicants choose to disclose in their application has limited relevance. Confidentiality is a right held by those applicants and confidentiality can be waived by those parties. Given the lack of relevance of the redacted information, WCUL does not expect the redactions to materially impact the proceeding schedule.

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>Presumptively 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. 38 – Section 4.26 f), h), i), j), n)	Employment and Labour Matters	<p><b><u>Not Relevant / Personal Information / Confidential</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 and may be personal information about identifiable individuals. Moreover, the 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. Consideration on whether information pertains to current or future collective bargaining negotiations is a specific consideration listed in Appendix B of the OEB’s Practice Direction on Confidential Filings.</p>
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	Employment Information for Identifiable Individual	<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.</p> <p><b><u>Personal Information</u></b></p> <p>The discrete redactions in this Section pertain to future employment and contractual matters, which could be either be considered: (1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, (2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties. This information has been consistently treated as confidential by WCUL and partially relates to an unregulated affiliate. This confidential information relates to employment 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 either be considered: 1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as pertaining to contractual matters which could impact the future competitive and negotiating positions of the Parties.</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 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>
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		<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> <li>• Confidential – The discrete redactions contain details of specific commercial matters of an unregulated affiliate, that 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 4.10 – Conduct of Business</p> <ul style="list-style-type: none"> <li>• Personal Information / Confidential – The discrete redactions in this section pertain to compensation, employment and contractual matters, which could be either be considered: (1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, (2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties.</li> </ul> <p>Schedule 4.11(b) – Undisclosed Indebtedness</p> <ul style="list-style-type: none"> <li>• Confidential – The discrete redactions in this section pertain to undisclosed indebtedness, which is commercially sensitive and could negatively impact the future negotiating position of the Seller, particularly as the transaction has not yet closed. The Financial Statements of E.L.K. Energy Inc. have been filed with the Application and Evidence.</li> </ul> <p>Schedule 4.12 – Material Contracts</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 specific value of commercial contracts with certain vendors. 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 discrete redactions in this section pertain to contractual matters, including specific vendor / customer / employee names and expected contract values, which are commercially sensitive and could negatively impact the future negotiating position of the Parties, particularly as the transaction has not yet closed. The disclosure of this information</li> </ul>
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		<p>may also negatively impact the listed third parties, and in some instances disclose information related to their energy usage and billing information, which is a specific consideration listed in Appendix B of the OEB’s Practice Direction on Confidential Filings. The disclosure of this information may also offer an advantage to other third parties by disclosing insight into the unit / pricing / bidding rates of third parties, which is a is a specific consideration listed in Appendix B of the OEB’s Practice Direction on Confidential Filings.</p> <p>Schedule 4.13 – Proceedings</p> <ul style="list-style-type: none"> <li>• Confidential – 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.</li> </ul> <p>Schedule 4.23(a) - Intellectual Property</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 existence of specific intellectual property. 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.</li> <li>• Confidential – The discrete redactions in this section pertain to the existence of specific intellectual property, which is commercially sensitive and the disclosure of which could negatively impact the Seller, particularly as the transaction has not yet closed.</li> </ul> <p>Schedule 4.25 – Insurance Policies</p> <ul style="list-style-type: none"> <li>• Confidential – 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.</li> </ul> <p>Schedule 4.26(a) - Employee Listing</p> <ul style="list-style-type: none"> <li>• Personal Information / Confidential - The discrete redactions in this Section pertain to compensation, employment and contractual matters, which could be either be considered: 1)</li> </ul>
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		<p>as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties.</p> <p>Schedule 4.26(b) – Independent Contractors</p> <ul style="list-style-type: none"> <li>Confidential - The discrete redactions in this Section pertain to employment and contractual matters, which could be either be considered: 1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties. Alternatively, this information contains unit pricing and billing rates of a third party and is presumptively confidential under Appendix B of the Practice Direction.</li> </ul> <p>Schedule 4.27(a) – Benefit Plans</p> <ul style="list-style-type: none"> <li>Personal Information / Confidential - The discrete redactions in this Section pertain to contractual matters, specifically the unit pricing of a third party, which is a specific consideration listed in Appendix B of the OEB’s Practice Direction on Confidential Filings. This is also personal information as it 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>
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		<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>• Confidential - The discrete redactions in this Section pertain to future obligations, which is commercially sensitive and could cause harm to the Parties if disclosed. Some of 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> (FIPPA).</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>Personal Information</u></b></p> <p>The discrete redactions in this Section pertain to employment and contractual matters, which could be either be considered: 1) as “personal information” under the <i>Freedom of Information and Protection of Privacy Act</i> (FIPPA); or, 2) as commercially sensitive which could impact the future competitive and negotiating positions of the Parties.</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>
<b>Appendix E – Resolutions by Parties Approving the Proposed Transaction</b>		
<b>Evidence Reference</b>	<b>Title and Description</b>	<b>Rationale Supporting Redaction</b>
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. 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.</p>

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