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BY EMAIL

July 7, 2025

Ritchie Murray
Acting Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Mr. Murray:

**Re: Ontario Energy Board (OEB) Staff Submission
Application for the Acquisition of Windsor Canada Utilities Ltd. (Windsor
Canada Utilities) to acquire 100% of the shares of E.L.K. Energy Inc. (E.L.K.
Energy) from the Corporation of the Town of Essex
OEB File Number: EB-2025-0172**

Please find attached OEB staff's submission in the above referenced proceeding,
pursuant to Procedural Order No. 1.

Yours truly,

Original Signed By

Amber Goher
Advisor, Electricity Distribution Rates

Encl.

cc: All parties in EB-2025-0172



ONTARIO ENERGY BOARD

OEB Staff Submission on Confidentiality

Windsor Canada Utilities Ltd. and

E.L.K. Energy Inc. (the Applicants)

**Application for Application for the Acquisition of Windsor Canada Utilities Ltd.
of E.L.K. Energy Inc. Shares**

EB-2025-0172

July 7, 2025

**Windsor Canada Utilities Ltd. & E.L.K. Energy Inc.
OEB Staff Submission on Request for Confidentiality**

Introduction

Windsor Canada Utilities Ltd, (Windsor Canada Utilities), an affiliate of ENWIN Utilities Ltd. (ENWIN Utilities) filed a Merger, Acquisition, Amalgamation and Divestitures (MAADs) application with the Ontario Energy Board (OEB) on May 13, 2025, under section 86(2)(a) of the *Ontario Energy Board Act, 1998*. The Applicants seeks approval for the first phase of a two-phase transaction to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. (E.L.K. Energy) from the Corporation of the Town of Essex as part of the first phase (“Phase 1”) of the transaction (the Application).

The Applicants seek confidential treatment for more than 45 pieces of information pursuant to the OEB’s Practice Direction on Confidential Filings (Practice Direction).¹ The confidentiality requests relate to the following:

1. Appendix D: Purchase and Sale Agreement (Document 1)
 - Determination of Purchase Price Information
 - Article 1, Section 1.1, “Deposit”
 - Article 1, Section 1.1, “Target Working Capital”
 - Article 2, Section 2.2 “Purchase Price”
 - Article 2, Section 2.3 “Delivery of Estimated Statement and Payout Letters”
 - Article 2, Section 2.6, (a) “Closing Statement”
 - Schedule A, Sub Schedule 4.11(b) “Undisclosed Indebtedness”
 - Schedule A, Sub Schedule 4.35 “Prudential Support”
 - Schedule C “Purchase Price Allocation”
 - Exhibit C “Sample Statement”
 - Company Structure, Shareholders and Governance Information
 - Article 1, Section 1.1, “Governance Representation Agreement”
 - Article 6, Section 6.6 “Shareholder and Directors; Release”
 - Article 9, Section 9.5 “Advisory Committee”
 - Exhibit B “Form of Governance Representation”
 - Exhibit D “Form of Director and Officer Release”
 - Exhibit E “Form of Shareholder Release”
 - Labour and Employment Information
 - Article 4, Section 4.26, (f), (h), (i), (j), (n) “Employment and Labour Matters”

¹ Ontario Energy Board, Practice Direction on Confidential Filings, December 17, 2021

- Article 6, Section 6.15 “Collective Agreements”
- Article 8, Section 8.1, (m) “Conditions for the Benefit of the Buyer”
- Article 9, Section 9.4 “Employee Retention”
- Schedule A, Sub Schedule 4.10 “Conduct of Business”
- Schedule A, Sub Schedule 4.26(a) “Employee Listing”
- Schedule A, Sub Schedule 4.27(a) “Benefits Plans”
- Bank Account Information
 - Schedule A, Sub Schedule 4.29 “Bank Accounts”
 - Exhibit A, Schedule C “Escrow Agent Wire Instructions”
 - Exhibit A, Schedule D “Approved Banks”
- Non-Regulated Business and Third-Party Information
 - Article 4, Section 4.36 “Water Heater Rental Contracts”
 - Schedule A, Sub Schedule 1.1(a) “Permitted Liens”
 - Schedule A, Sub Schedule 3.4 “Third Party Consents”
 - Schedule A, Sub Schedule 4.6 “Authorizations”
 - Schedule A, Sub Schedule 4.12 “Material Contracts”
 - Schedule A, Sub Schedule 4.26(b) “Independent Contractors”
 - Schedule A, Sub Schedule 4.36(a)* “Water Heater Contract”
 - Exhibit H “Form of Local Community Agreement”
 - Exhibit I “Form of Contribution Agreement”
- Settlement and Indemnification
 - Article 2, Section 2.6, (d) “Settlement of Dispute”
 - Article 10, Section 10.3, (b), (c), (d), (e) “Time Limitations”
 - Article 10, Section 10.4 “Other Limitations on Recourse and Indemnification Obligations”
 - Article 10, Section 10.6 “Notification”
 - Article 10, Section 10.7 “Direct Claims”
 - Article 10, Section 10.8 “Third Party Claims”
 - Article 10, Section 10.10 “Payment of Indemnification”
- Transaction Conditions and Disclosures
 - Article 1, Section 1.1, “Termination Date”
 - Article 6, Section 6.1(b) “Conduct of Business Prior to Closing”
 - Article 6, Section 6.9 “Termination of Related Party Transactions”
 - Article 8, Section 8.1, (n) “Conditions for the Benefit of the Buyer”
 - Schedule A, Sub Schedule 4.13 “Proceedings”
 - Schedule A, Sub Schedule 4.23(a) “Intellectual Property”
 - Schedule A, Sub Schedule 4.25 “Insurance Policies”

- Schedule A, Sub Schedule 6.1(b) “Future Obligations”

2. Appendix E: Resolution by Parties Approving the Proposed Transaction (Document 2)

The Applicants refused to provide intervenors that sign a Confidentiality Declaration and Undertaking with access to Document 2. They assert that Document 2 was created as part of a confidential municipal process and should not be provided to intervenors.

In Procedural Order 1, issued on June 27, 2025, the OEB found the Applicants’ explanation as to why intervenors cannot have access to Document 2 insufficient. The Applicants were directed to provide a more detailed explanation as to why the requirements set out in the Declaration and Undertaking are not sufficient to allow intervenors to have access to this material.

The Applicants provided their response on June 30, 2025², further asserting that the document contains highly confidential information, including bidding strategies, maximum negotiated price, alternative acquisition structures, and acceptable outcomes for the future relationship between E.L.K. Energy and its former shareholders. The Applicants claim that such details are not relevant to the OEB’s review and are explicitly excluded in the Handbook to Electricity Distributor and Transmitter Consolidations (MAAD’s Handbook)³, which states that the OEB will not consider whether another transaction, whether real or potential, could have a more positive effect than the proposed transaction being put forward for approval.

The Applicants submitted that certain information redacted in Document 1 is personal information as defined in the *Freedom of Information and Protection Privacy Act (FIPPA)*. The redacted information pertains to employee names, compensation, contractor names and information, and employment and labour information.

In accordance with Part 10 of the Practice Direction, OEB staff reviewed the redactions requested by the Applicants on the basis that the information includes personal information. Following the review, OEB staff contacted the Applicants to file further explanation as to how certain information qualifies as personal information as that term is defined under FIPPA, including (i) how the information reveals information about an “identifiable individual”; (ii) which specific subsection of the definition of “personal

² EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

³ [Handbook to Electricity Distributor and Transmitter Consolidations, July 11, 2024](#)

information” applies to the information, and (iii) how the information does not fit within the business identity information exception in section 2(3) of FIPPA.

The responses provided by the Applicants on how certain information qualifies as “personal information” are, in OEB staff’s view, inadequate.⁴

OEB Staff Submission

OEB staff does not object to the proposed redaction of the following sections of Document 1:

- Article 10, Section 10.3 “Time Limitations”
- Article 10, Section 10.4 “Other Limitations on Recourse and Indemnification Obligations”
- Schedule A, sub schedule 4.10,(vi), (viii) “Conduct of Business”
- Schedule A, sub schedule 4.12 (viii) “Material Contracts”
- Schedule A, sub schedule 4.13 (partial) “Proceedings”
- Schedule A, sub schedule 4.25 “Insurance Policies”
- Schedule A, sub schedule 4.26(a) “Employee Listing”
- Schedule A, sub schedule 4.26(b) (partial) “Independent Contractors”
- Schedule A, sub schedule 4.27(a) (partial) “Benefits Plans”
- Schedule A, sub schedule 4.29 “Bank Accounts”
- Schedule A, sub schedule 6.1(b) (x) “Future Obligations”
- Exhibit A, Schedule C “Escrow Agent Wire Instructions”

However, OEB staff does not support the Applicants’ remaining redaction requests, as explained in the sections below. The sheer volume of requested redactions in this application is both unprecedented and unnecessary.

The placing of materials on the public record is the rule, and redactions for confidentiality are the exception.⁵ The Applicants bears the onus of demonstrating that confidential treatment is warranted.⁶ For most of their confidentiality requests, the Applicants have failed to do so. In particular, OEB staff submits that bald assertions that information is “commercially sensitive” or “could prejudice the future competitive

⁴ These were provided as updated confidentiality filing by the Applicants on June 30, 2025.

⁵ Ontario Energy Board, Practice Direction on Confidential Filings, December 17, 2021, p. 1

⁶ Ontario Energy Board, Practice Direction on Confidential Filings, December 17, 2021, p. 1

positions of the Parties” are insufficient – especially when considering the actual information that has been redacted.

Moreover, as set out in the Practice Direction, the OEB’s expectation is that “parties will not claim confidentiality where the same type of information has been put on the public record in previous proceedings, absent a compelling reason why confidential treatment is warranted in the current proceeding.”⁷ Despite that clear direction, the Applicants have sought more than a dozen redactions where (i) the same type of information has been put on the public record in previous proceedings or (ii) similar information is already in the public domain. OEB staff is concerned that the Applicants did not make the OEB aware of that reality. Nor did the Applicants provide any sort of compelling reason as to why confidential treatment is warranted here. The only real explanation provided by the Applicants is that the transaction has not yet closed – which would also apply in other MAADs applications where the same types of information were produced on the public record.

OEB staff also wishes to address the Applicants’ argument that numerous redactions are for non-relevance. Widespread redactions for non-relevance are not appropriate in this case. Documents 1 and 2 are required to be filed as part of this application as they are “final legal documents to be used to implement the proposed transaction”.⁸ While it may be that certain isolated segments in those documents are unlikely to be the focus of this application, the OEB would be setting a problematic precedent in allowing for dozens of redactions for non-relevance in a document that is part of the OEB’s Filing Requirements.

Redactions for non-relevance were added to the Practice Direction as part of broader set of amendments adopted by the OEB in December 2021. In the [cover letter](#) adopting these changes, the OEB’s Chief Commissioner stated that “[t]here is, however, no requirement to redact out non-relevant information from a document that also contains relevant information and generally the OEB would not expect parties to do so absent a particular concern about the non-relevant information being made public.” Similarly, the OEB’s Filing Requirements for Consolidation Applications state “the OEB expects that distributors will minimize, to the extent possible, requests for confidential information.”⁹ OEB staff submits that the Applicants have failed to follow the OEB’s directions.

⁷ Ontario Energy Board, Practice Direction on Confidential Filings, December 17, 2021, p. 5

⁸ MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.8

⁹ MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.5

Appendix D: Purchase and Sale Agreement

Determination of Purchase Price Information Redactions

The Applicants requested confidential treatment for financial information and information related to the determination of the purchase price in the Purchase and Sale Agreement. The Applicants stated that the redacted information is confidential and commercially sensitive, and disclosure of this information could prejudice its competitive position and future negotiations, given that the transaction has not yet closed. The Applicants stated that the acquisition of E.L.K. Energy by the Applicant was done through a confidential competitive procurement process and further submitted that disclosures could provide unfair advantages to other parties, including unsuccessful bidders.¹⁰ The Applicants referenced EB-2022-0006¹¹, where valuation and calculation of adjustments were treated as confidential by the OEB.¹²

The Applicants also submitted that the redacted information is not relevant to the OEB's assessment of the No-harm Test. The Applicants argued that, as a non-regulated entity, Windsor Canada Utilities is not subject to the OEB's oversight and only the impact of the total purchase price on the acquirer's financial viability is relevant to the OEB's evaluation.¹³

OEB staff objects to the following requests for confidentiality:

- Article 1, Section 1.1, "Deposit" - Similar information was made available in EB-2019-0015.¹⁴ The Applicants have not provided any sort of compelling explanation as to why this needs to remain confidential.
- Article 1, Section 1.1, "Target Working Capital" – OEB staff are unclear as to the sensitivity of this information especially given other publicly available information, including the Working Capital Allowance submitted as part of E.L.K. Energy's cost of service application in 2022 (EB-2021-0016).
- Article 2, Section 2.2 and 2.3, "Purchase Price" and "Delivery of the Estimated Statement and Payout Letters" – OEB staff submits that purchase price was

¹⁰ EB-2025-0172, MAADs Application Updated Cover, June 20, 2025

¹¹

EB-2022-0006, MAADs Application, January 31, 2022

¹²EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025¹³ Ibid

¹³ Ibid

¹⁴ EB-2019-0015, MAADs Application, Appendix D: Securities Purchase Agreement dated October 12, 2018 between North Bay Hydro Holdings Ltd., North Bay (Espanola) Acquisition Inc., The Corporation of the Town of Espanola and The Corporation of The Township of Sables-Spanish Rivers, p. 8)

made available in EB-2019-0015, MAADs Application, p. 36. The calculation of adjustments was also made available in EB-2021-0280, Energy+ Inc. and Brantford Power Inc. MAADs Application.¹⁵ It is unclear why this information requires confidential treatment in the current scenario.

- Article 2, Section 2.6, (a) – OEB staff submits that similar information has been disclosed in EB-2019-0015 and EB-2021-0280.
- Schedule A, Sub schedule 4.11(b) OEB staff notes that the redacted information discloses amounts of various loans, lines of credit, etc. that are held by E.L.K. This same sort of information is typically provided in a utility's rebasing application. The Applicants have provided no cogent explanation as to the harm that could reasonably be expected to result from its public release.
- Schedule A, Sub schedule 4.35 The information in this section is similar in nature to that contained in Sub schedule 4.11(b).
- Schedule C and Exhibit C – OEB staff submits that similar information was made available in EB-2019-0015.¹⁶

Company Structure, Shareholders and Governance Redactions

The Applicants seek confidential treatment for certain information related to the terms of the acquisition concerning shareholders and governance matters. The Applicants argued that redacted information is commercially sensitive, and disclosure could prejudice the Parties' future competitive positions, materially affecting the competitive process, which remains confidential. The Applicants further stated that disclosure could provide an unfair advantage to other parties, including unsuccessful bidders, by revealing details of the negotiations. In support of Exhibit E, the Applicant referenced EB-2016-0351¹⁷ where the allocation of liability was held confidential.

The Applicants also stated that the information is not relevant to OEB's determination of the No-harm Test, having no bearing on the OEB's statutory objectives under section 1 of the *Ontario Energy Board Act, 1998*.

OEB staff does not agree that the information in this category requested to be treated as confidential warrants such treatment:

¹⁵ EB-2021-0280, Energy+ Inc. and Brantford Power Inc. MAADs Application, Merger Participation Agreement, p.24.

¹⁶ EB-2019-0015, MAADs Application, Securities Purchase Agreement, Schedule C, Allocation of Purchase Price

¹⁷ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

- Article 1. Section 1.1, “Governance Representation Agreement” – OEB staff does not agree that the redacted information in the definition for “Governance Representation Agreement” is commercially sensitive or how the disclosure of such information would prejudice the Parties’ competitive position or materially affect the outcome of the competitive process.
- Article 6, Section 6.6– OEB staff does not agree with the Applicants that the redacted information contains commercially sensitive information, or the details pertain to employment history or income of identifiable individuals. OEB staff does not believe that disclosure could impact future competitive negotiating positions of the Parties. Similar information was made publicly available in EB-2019-0015¹⁸.
- Article 9, Section 9.5 – OEB staff submits that the information concerning an advisory committee, and its associated terms, should not be redacted or treated as confidential. Similar information was not redacted in EB-2019-0015 ¹⁹.
- Exhibit B – OEB staff does not support the redaction of the Form of Governance Representation Agreement. While the Applicants claim that the document relates to a term of the acquisition and discloses negotiating strategies, OEB staff is of the view that the agreement does not contain commercially sensitive information that could negatively impact on the Parties’ competitive position.
- Exhibit D– OEB staff does not agree with the redaction of the Form of Director and Officer Releases, nor does it believe that disclosure would cause harm or prejudice to the Parties. While the Applicants also argue that terms of release have been routinely treated as confidential under the purview of the settlement privilege and are presumptively confidential, the Applicants have failed to provide sufficient justification to support this claim. OEB staff notes that settlement privilege appears entirely inapplicable as there is no communication between opposite parties in a “dispute”.²⁰
- Exhibit E– OEB staff does not support the redaction of the Form of Shareholder Release and does not believe that the disclosure of such information is commercially sensitive that may materially impact the Parties’ competitive and negotiating position. The cited OEB decision EB-2016-0351²¹ by the Applicants

¹⁸ EB-2019-0015, MAADs Application, January 19, 2019, p.46

¹⁹ EB-2019-0015, MAADs Application, January 19, 2019, p.38

²⁰ See *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, para. 31 where the Supreme Court of Canada explained settlement privilege as the following: “Settlement privilege is a common law rule of evidence that protects communications exchanged by parties as they try to settle a dispute.”

²¹ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

pertains to termination rights and maximum values for indemnification, which do not apply to this case.

Bank Account Information Redactions

The Applicants requested confidential treatment of banking information, including details involving third parties not directly involved in the transaction. The Applicants submitted that the information is not relevant to the Application, was negotiated in confidence, and that disclosure of the information could harm the Parties. The Applicants referenced EB-2016-0351²² where the OEB treated financial details related to third party contracts as confidential in support of the redactions requested to Exhibit A, Schedule C and Exhibit A, Schedule D..

OEB staff agrees that the information included in Windsor Canada Utilities Schedule A, Sub Schedule 4.29 and Exhibit A, -Schedule C should be treated as confidential. Confidential treatment of this information is consistent with previous OEB decisions.²³

However, OEB staff do not agree that Exhibit A, -Schedule D warrants confidential treatment, as it does not contain commercially sensitive information that could cause harm, and merely provides a list of approved banking institutions.

Non-Regulated Business and Third-Party Information Redactions

The Applicants are seeking confidential treatment for information related to E.L.K. Energy's non-regulated business and third-party agreements on grounds that this information is not relevant to the Application and its disclosure could negatively impact future negotiations by revealing negotiation strategies to unsuccessful bidders.

The Applicants further argued that contracts with third parties containing details such as vendor, customer, employee names, as well as contract values are commercially sensitive and impact third party interests. The Applicant further noted that information such as unit pricing and billing rates of third parties is presumptively confidential under Appendix B of the OEB's Practice Direction. In support of its confidentiality requests for Article 4, Section 4.36 and Schedule A, Sub Schedule 4.36(a), the Applicants

²² *Ibid*

²³ EB-2016-0351, Decision and Order, August 3, 2017, p. 10 and EB-2016-0351, OEB Staff Submission, April 10, 2017, p.10

referenced EB-2016-0351²⁴ where the OEB found financial details relating to third-party contracts to be commercially sensitive.

OEB staff supports the redaction of information which reveals unit pricing and billing rates of third parties in Schedule A, sub schedule 4.26(b). However, OEB staff are of the view that only the information related to third party unit pricing should be redacted.

OEB staff agree that the redactions in section (viii) of Schedule A, Sub Schedule 4.12 qualify as personal information. OEB does not agree that the remaining information included in this schedule, including vendor and customer names, is confidential. No third-party unit pricing or billing rates are disclosed by the remaining sections, such that confidential treatment is warranted pursuant to Appendix B of the Practice Direction.

OEB staff also oppose confidential treatment for the following redactions:

- Article 4, Section 4.36 – OEB staff submits that the information does not contain commercially sensitive or financial details. The Applicants reference EB-2016-0351²⁵, whereby the OEB accepted the redaction of the total compensation amounts by service provider, however, OEB staff notes that no financial information is present in the redacted information.
- Schedule A, Sub Schedule 1.1 (a) – OEB staff does not agree that disclosing this high-level information, which only mentions liens with third parties could negatively impact Seller's negotiating position and therefore should not be redacted. Similar information was made available in EB-2018-0236²⁶.
- Schedule A, Sub Schedule 3.4 – OEB staff disagrees that disclosing this high-level information, which only specifies the consents which need to be obtained by the Seller from third parties, could negatively impact Seller's negotiating position. Similar information was made publicly available EB-2019-0015²⁷.
- Schedule A, Sub Schedule 4.6 – OEB staff disagrees with treating the information as confidential and it is not clear to OEB staff how disclosing this high-level information, which includes the authorizations required to carry on the business, could negatively impact Seller's negotiating position.
- Schedule A, Sub Schedule 4.36(a) –OEB submits that this redaction appears to be unnecessary and does not include any commercially sensitive information.

²⁴ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

²⁵ *Ibid*

²⁶ EB-2018-0236, MAADs Application, Merger Participation Agreement, Part II, June 30, 2018

²⁷ EB-2019-0015, MAADs Application, January 19, 2019, p. 11

The Applicants referenced EB-2016-0351²⁸ which relates to confidential treatment of financial information; however, the redacted information that contains the water heater rental form does not contain any commercially sensitive financial information. OEB staff notes that E.L.K. Energy provides a Water Heater Rental Form on its public website.²⁹

- Exhibit H and Exhibit I – OEB staff does not agree that the redacted information should be treated as confidential. In EB-2019-0015³⁰, a similar agreement was made publicly available.

Labor and Employment Information Redactions

The Applicants argued that disclosure of information in this category is not relevant and could adversely affect the competitive negotiating positions of the Parties, as the transaction has not yet closed. Additionally, disclosure could adversely affect the future bargaining positions of the Applicants and its employees. The Applicants claimed that the information pertains to certain employment-related matters including employment contracts, compensation, and collective bargaining matters, which are presumptively confidential according to Appendix B OEB's Practice Direction. In support of this position in Article 4, Section 4.26 (f) (h) (i) (j) (n) , the Applicants referenced EB-2016-0025³¹ where the OEB determined that such information should be treated as confidential.

In addition, the Applicants also stated that redactions to the following documents pertain to information that is considered personal information under FIPPA:

- Article 4, Section 4.26, (f), (h), (i), (j), (n)
- Article 9, Section 9.4
- Schedule A, Sub Schedule 4.10
- Schedule A,
- Sub Schedule 4.26(a)
- Schedule A, Sub Schedule 4.27(a)

OEB staff agree with the following with:

²⁸ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

³⁰ EB-2019-0015, MAADs Application, Schedule L - Form of In-Kind Services Agreement, January 19, 2019

³¹ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

- Schedule A, Sub Schedule 4.10 (vi)(viii) – OEB staff agrees that the information redacted from section (vi) and (viii) of this schedule qualifies as personal and confidential information, as these contain specific information about compensation and employment status / history of individual employees. OEB staff opposes the remaining redactions.
- Schedule A, Sub Schedule 4.26(a) – OEB staff agrees that the redacted information of employee names and compensation is personal information and does not oppose the redaction.
- Schedule A, Sub Schedule 4.27(a)– OEB staff agrees with the Applicants that details of employee benefits plan, including policy numbers and premium payments are confidential, however the Applicants have not provided an adequate explanation about how this qualifies as personal information – which requires the disclosure of information about an “identifiable individual”. If the Applicants can explain how information in this redaction could identify specific benefits for identifiable employees, the redaction (or certain parts thereof) could potentially qualify as personal information. Given the uncertainty surrounding this information, this is one instance where OEB staff believes that redactions on the basis of non-relevance would be appropriate.

However, OEB staff does not agree with the redactions of the following:

- Article 4, Section 4.26, (f), (h), (i), (j), (n) – OEB staff disagrees with the redaction and how the information qualifies as personal information. The information does not pertain to an identifiable individual. Additionally, it is not evident how disclosure of such information could cause harm to the Applicants or impact future bargaining negotiations considering that the contents consist of general declarations and, for subsections (j) and (n) in particular, considering what has been already disclosed by the Applicants on the public record in the schedules. OEB staff notes that similar provisions in purchase agreements have been disclosed in previous cases including, EB-2019-0015, EB-2018-0082, EB-2021-0280, EB-2022-0006, EB-2018-0014 and EB-2018-0236.
- Article 6, Section 6.15 – OEB staff does not agree that the information is presumptively confidential. There is no specific content related to the collective agreement such as collective bargaining strategies or employer positions. Similar information was made publicly available in EB-2019-0015³² and EB-2018-0014³³.

³² EB-2019-0015, MAADs Application, Securities Purchase Agreement, Schedule I, January 19, 2019

³³ EB-2018-0014, MAADs Application, Merger Participation Agreement, March 7, 2018

- Article 8, Section 8.1, (m) – OEB staff does not agree that the information is presumptively confidential. The mention of collective bargaining is high level and non-substantive. It does not disclose collective bargaining strategies or employer positions.
- Article 9, Section 9.4– OEB staff submits that the information does not qualify as personal or confidential information. The Applicant has not provided sufficient information to support how disclosure of this provision regarding employee retention would impact the negotiation positions of the parties or disclose a negotiation strategy.

Settlement and Indemnification Information Redactions

The Applicants requested confidential treatment for the redacted information in this category, arguing that it is commercially sensitive and its disclosure could prejudice the parties' competitive position in future negotiations. The Applicants further claim that such information could be used against the Parties, and such information has been consistently treated by the parties as confidential.

OEB staff does not oppose confidentiality treatment for Article 10, Section 10.3, (b), (c), (d), (e) and Article 10, Section 10.4, consistent with OEB decision in EB-2022-0006³⁴, where the OEB treated Indemnities, Limitations, and Time Limitations for Indemnity claims as confidential.

However, OEB staff submits that the following redactions are unnecessary and do not warrant confidential treatment:

- Article 2, Section 2.6, (d) – OEB staff does not support the proposed redaction and submits that the redacted information merely references the existence of the documents and outlines what will be calculated. OEB staff does not believe that disclosure of such information could result in harm to the Parties.
- Article 10, Section 10.6 – OEB staff submits that the general notification process should not be redacted. In EB-2019-0015³⁵, similar information was made publicly available.

³⁴ EB-2022-0006, Decision on Relevance and Confidentiality, April 1, 2022, p. 3

³⁵ EB-2019-0015, North Bay_MAADs_20190116, January 19, 2019, p. 56

- Article 10, Section 10.7 – OEB staff submits that the process for handling direct claims should not be redacted. In EB-2019-0015³⁶ and EB-2021-0280³⁷, similar information was not redacted by the applicants.
- Article 10, Section 10.8 –OEB staff submits that the process for handling third-party claims should not be redacted. Similar information was made available in EB-2021-0280³⁸ and EB-2022-0006³⁹.
- Article 10, Section 10.10 – OEB staff disagrees with the redaction and questions how disclosure of information regarding the method of payment could be expected to cause harm and prejudice to the Parties' positions in future negotiations.

Transaction Conditions and Disclosures Redactions

The Applicants argued that information under this category is not relevant and disclosure of such commercially sensitive information could prejudice future competitive position, particularly since the transactions have not closed yet. The Applicants further claimed that making public such information could influence negotiations, inform unsuccessful bidders, and provide an unfair advantage to other parties.

The Applicants further argued that the negotiated terms and conditions are between parties not regulated by the OEB. Additionally, it stated that certain information relates to ongoing legal proceedings and is presumptively confidential under Appendix B(6) of the Practice Direction under litigation privilege. In support of Article 6, Section 6.9, the Applicants referenced EB-2016-0351⁴⁰ where the OEB found that financial details concerning contracts with non-parties to the application were commercially sensitive.

Furthermore, the Applicants classified information in Schedule A, Sub Schedule 6.1(b) as personal information under FIPPA as it pertains to financial, employment history, and contractual matters of named, identifiable individuals.

OEB staff agree to confidential treatment for the following:

³⁶ Ibid

³⁷ EB-2021-0280, MAADs Application, Merger Participation Agreement, November 1, 2021, p. 154

³⁸ EB-2021-0280, MAADs Application, Merger Participation Agreement, November 1, 2021, pages 154-156

³⁹ EB-2022-0006, MAADs Application, Merger Participation Agreement, February 1, 2022, pages 89-90

⁴⁰ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

- Schedule A, Sub Schedule 4.13 –OEB staff supports the redaction of information related to ongoing proceedings not related to the OEB. However, the information pertaining to OEB proceedings should not be redacted.
- Schedule A, Sub Schedule 4.25 –OEB staff agrees that details of insurance policy and claims are confidential and supports their redaction consistent with the previous OEB decision in EB-2018-0236⁴¹.
- Schedule A, Sub Schedule 6.1(b)(x) –OEB staff agrees that the names of employees in (x) constitute personal information and should be redacted. However, OEB staff does not support the remaining redactions as confidential or demonstrate potential harm to the Parties if disclosed. The remaining redactions in this Sub Schedule do not contain personal information as defined in the FIPPA.

OEB staff does not support the confidential request of the following:

- Article 1, Section 1.1, “Termination Date” – OEB staff does not agree that disclosure of the termination date would negatively impact future negotiations or materially harm the Parties’ competitive positions. The redacted content simply specifies when the termination may occur which does not reveal a commercially sensitive term.
- Article 6, Section 6.1,(b) – OEB staff disagrees with the redaction on how the seller’s restrictions during the interim period could cause harm and materially influence the competitive process. Similar information was not redacted in EB-2019-0015 ⁴².
- Article 6, Section 6.9– OEB staff does not agree that the redacted information could prejudice the Parties’ future competitive positions and negotiations. While the Applicants referenced EB-2016-0351⁴³ where it claims financial details involving parties not part of the Application were treated as commercially sensitive by the OEB, the redaction does not contain financial details or vendor pricing.
- Article 8, Section 8.1, (n) – OEB staff does not support redacting the reference. This information is not covered by “litigation privilege” as the document was not created for the dominant purpose of litigation.⁴⁴ The Applicants have not provided

⁴¹ EB-2018-0235, MAADs Application, Merger Participation Agreement, Schedule 5.3 (16), June 30, 2018

⁴² EB-2019-0015, North Bay_MAADs_20190116, January 19, 2019, pages 105-107

⁴³ EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

⁴⁴ *Blank v. Canada (Minister of Justice)*, 2006 SCC 39, paras. 59-60.

any sort of rational explanation how disclosure of this term could reasonably be expected to result in commercial harm.

- Schedule A, Sub Schedule 4.23(a) – OEB staff submits the description of the Applicants’ “intellectual property” does not contain commercially sensitive information and its disclosure would not negatively impact the Parties. Similar information was made publicly available in EB-2019-0015⁴⁵.

Appendix E: Resolution by Parties Approving the Proposed Transaction

The Applicants submitted certain redacted information in the document is both not relevant and confidential. The redactions pertain to the maximum negotiated acquisition price, acquisition structures, shares and Parties’ board position post-merger, and the City of Windsor’s clerk’s signature.

The Applicants argued that redacted information reflects its bidding strategies, which are not relevant to the OEB’s no harm tests, as they involve terms negotiated between parties not regulated by the OEB. Citing the MAADs Handbook, the Applicants further argue that the OEB’s role is not to evaluate whether a better transaction could have been achieved than what was presented.

The Applicants stated that the document was created within the confidential municipal process and includes commercially sensitive information such as valuations and strategies that if disclosed, could prejudice its competitive position and future negotiations. Furthermore, the Applicants argued that the document should remain confidential and not make available to parties that sign the Confidentiality Declaration and Undertaking.

OEB staff opposes the Applicants’ argument that its perceived lack of relevance of the document to the application per the MAADs Handbook warrants the document to be redacted. OEB staff notes that the Applicants filed Appendix E to satisfy the OEB Filing Requirement to provide a copy of appropriate resolutions approving the transaction.⁴⁶ If Appendix E is relied upon as a resolution approving the transaction, it is clearly relevant to the proceeding and parties should be entitled to review the entirety of the resolution to ensure that it in fact authorizes the transaction. At a minimum, OEB staff submits that the Applicants have not provided a justifiable basis for denying access to Appendix E to intervenors that sign the Confidentiality Declaration and Undertaking.

⁴⁵ EB-2019-0015, MAADs Application, Schedule H – Intellectual Property

⁴⁶ MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.8

OEB staff also does not agree with the redactions proposed by the Applicants be treated as confidential. The redaction of the City of Windsor's Clerk's signature is unwarranted as the signature has been already made public in documents such as the Purchase and Sale Agreement and signatures of individuals acting in their official capacity are not considered confidential. The Applicants argued that the document was created within a confidential municipal process, however OEB staff notes that in EB-2019-0015⁴⁷, EB-2018-0082⁴⁸, EB-2021-0280⁴⁹, EB-2022-0006⁵⁰, and EB-2018-0014⁵¹ resolutions approving mergers, acquisitions and amalgamations issued by the municipal corporations were publicly disclosed. The Applicants argued that Appendix E discloses "bidding strategies and valuations that would be very harmful if disclosed" but provided no explanation as to how redacted information reveals bidding strategies or why public disclosure would be "very harmful". There is no suggestion from the Applicants that Windsor Canada Utilities is currently engaged in amalgamation discussions with other electricity distributors for which the terms of its agreement with E.L.K. may be relevant.

All of which is respectfully submitted

⁴⁷ EB-2019-0015, MAADs Application, Appendix G

⁴⁸ EB-2018-0082, MAADs Application, Attachment 6 Resolutions Approving Transaction, March 14, 2018

⁴⁹ EB-2021-0280, MAADs Application, Schedule I, November 1, 2021, pages 185-221

⁵⁰ EB-2022-0006, MAADs Application, Attachment J, February 1, 2022

⁵¹ EB-2018-0014, MAADs Application, Attachment 3, March 7, 2018