

**Windsor Canada Utilities Ltd. and E.L.K. Energy Inc.**

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

**DECISION ON CONFIDENTIALITY AND  
PROCEDURAL ORDER NO. 2  
AUGUST 25, 2025**

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* (OEB Act). Windsor Canada Utilities 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).

Windsor Canada Utilities and E.L.K. Energy (the Applicants) seek confidential treatment for more than 45 pieces of information pursuant to the OEB's Practice Direction on Confidential Filings (Practice Direction).<sup>1</sup> The Applicants filed a table with the individual requests in sequential order as required by OEB. OEB staff's submission organized the requests under certain subheadings as follows:

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

---

<sup>1</sup> Ontario Energy Board, Practice Direction on Confidential Filings, December 17, 2021

- 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
  - 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)

As part of the updated cover letter to the Application filed with the OEB on May 27, 2025, the Applicants stated that a portion of Document 2 should not be provided to intervenors that sign a Confidentiality Declaration and Undertaking. In other words, these redactions were available only to the OEB and OEB staff.

In Procedural Order No. 1, dated June 27, 2025, the OEB directed the Applicants 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 Document 2.

The Applicants provided their response on June 30, 2025, stating that the document contains highly confidential information, including bidding strategies, the maximum negotiated price, alternative acquisition structures, and acceptable outcomes for the future relationship between E.L.K. Energy and its former shareholders.<sup>2</sup> The Applicants claim that such details are not relevant to the OEB's review and note that the [Handbook to Electricity Distributor and Transmitter Consolidations](#) (MAAD's Handbook)<sup>3</sup> 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.

---

<sup>2</sup> EB-2025-0172, MAADs Application Confidentiality Update, June 30, 2025

<sup>3</sup> Handbook to Electricity Distributor and Transmitter Consolidations, July 11, 2024

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

- Article 4, Section 4.26, (f), (h), (i), (j), (n) Employment and Labour Matters
- 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) Benefit Plan
- Schedule A, Sub Schedule 6.1(b) Future Obligations

On July 7, 2025, OEB staff and the School Energy Coalition (SEC) each filed a submission on the Applicants' confidentiality requests.

OEB staff and SEC did not object to the following confidentiality claims in Document 1:

- Schedule A, Sub Schedule 4.25 Insurance Policies
- Schedule A, Sub Schedule 4.29 Bank Accounts
- Exhibit A, Schedule C Escrow Agent Wire Instructions

OEB staff objected to the confidentiality claim for Exhibit A, Schedule D Approved Banks, on the basis that the list of approved banking institutions is not commercially sensitive, while SEC did not object.

SEC did not object to the following provisions of Document 1 remaining confidential as they are unrelated to the regulated business:

- Section 4.36 Water Heater Rental Contracts
- Schedule 4.6 Authorizations
- Schedule 4.36(a) and Attachment Water Heater Contract

The following sections of Document 1 have not been disclosed to SEC:

- Sections 4.26 (f), (h), (i), (j), and (n) Employment and Labour Matters
- Section 9.4 Employee Retention
- Schedule 4.10 (vi) Increases in Compensation and (viii) Termination/Hiring of Senior Staff
- Schedule 4.12 (viii) Material Contracts with Staff
- Schedule 4.26(a) Employee Listing
- Schedule 4.27(a) Attachment Benefit Plans
- Schedule 6.1(b) (x) Termination/Hiring of Senior Staff

OEB staff also supported the following additional redactions related to personal information and confidentiality in Document 1. For personal information as defined by FIPPA, the information would neither be placed on the public record nor provided to intervenors that that sign a Declaration and Undertaking.

- 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 – OEB staff stated that this should be treated as personal information in accordance with FIPPA.
- Schedule A, Sub Schedule 4.12 (viii) Material Contracts – OEB staff stated that this should be treated as personal information in accordance with FIPPA.
- Schedule A, Sub Schedule 4.13 (partial) Proceedings
- Schedule A, Sub Schedule 4.26(a) Employee Listing – OEB staff stated that this should be treated as personal information.
- Schedule A, Sub Schedule 4.26(b) (partial) Independent Contractors
- Schedule A, Sub Schedule 4.27(a) (partial) Benefits Plans
- Schedule A, Sub Schedule 6.1(b) (x) Future Obligations – OEB staff stated that this should be treated as personal information in accordance with FIPPA.

OEB staff commented on the sheer volume of redactions requests as being unprecedented and unnecessary. OEB staff also commented on the widespread redactions for non-relevance. The Applicants claimed that many of its requests for redactions were made on grounds that the information is not relevant to the no-harm test or the OEB's objectives under section 1 of the OEB Act. OEB staff stated that 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".<sup>4</sup> SEC submitted that, absent compelling reasons to the contrary, the entire agreement in which the utility is sold should be public information. OEB staff commented that redactions for non-relevance were added to the Practice Direction as part of broader set of amendments adopted by the OEB in December 2021. OEB staff referenced that 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

---

<sup>4</sup> MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.8

public.” Furthermore, OEB staff noted that the OEB’s Filing Requirements for Consolidation Applications state “the OEB expects that distributors will minimize, to the extent possible, requests for confidential information.”<sup>5</sup> Both OEB staff and SEC opposed the Applicants’ requests for redactions to information in the Purchase and Sale Agreement pertaining to the determination of the purchase price, specifically:

- Article 1, Section 1.1, Deposit and Target Working Capital
- Article 2, Section 2.2 and 2.3, Purchase Price and Delivery of the 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

OEB staff submitted that similar information was made available in previous OEB proceedings, such as EB-2019-0015 and EB-2021-0280.<sup>6</sup> SEC submitted that it believes it is inappropriate for ratepayers of the regulated utility not to have access to the price at which the shareholder sold the utility to another regulated utility.<sup>7</sup>

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 “no harm test”, is commercially sensitive and/or its disclosure could negatively impact future negotiations by revealing negotiation strategies to unsuccessful bidders. SEC did not object to the redactions requested for Section 4.36 “Water Heater Rental Contracts”, Schedule A, Sub Schedule 4.36(b) “Water Heater Contract” and attachment, and Schedule A, Sub Schedule 4.6 “Authorizations”. OEB staff opposed these redactions for various reasons. OEB staff disagreed that EB-2016-0351, which was referenced by the Applicants in support of their redactions to Section 4.36 and Schedule 4.36(a), was applicable as no financial information is present in the redacted information. Regarding Schedule 4.36(a) in particular, OEB staff noted that E.L.K Energy provides a Water Heater Rental Form on its public website. OEB staff also disagreed that the disclosure of Schedule 3.4 and

---

<sup>5</sup> MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.5

<sup>6</sup> EB-2025-0172, OEB staff Confidentiality Submission, p. 8-9

<sup>7</sup> EB-2025-0172, SEC Confidentiality Submission, p. 3-4

Schedule 4.6 could negatively impact the Seller's negotiating position, and information similar to Schedule 3.4 was made publicly available in EB-2019-0015.

Regarding Exhibit H and Exhibit I, OEB staff also identified that a similar agreement was publicly disclosed in EB-2019-0015. SEC submitted that the Contribution Agreement may properly be considered part of the purchase price, although not treated as such. OEB staff and SEC opposed redactions to Schedule 1.1 (a). OEB staff disagreed that the information could negatively impact Seller's negotiating position, noting that similar information was made available in EB-2018-0236, and SEC submitted that the information if not publicly known, would normally be disclosed publicly in a rate case.

Both OEB staff and SEC objected to the redactions requested in relation to Company Structure, Shareholders and Governance Information in Section 6.6 "Shareholder and Directors; Release", Section 9.5 "Advisory Committee", Exhibit B "Governance Nomination Agreement", Exhibit D "Form of Director and Officer Release", and Exhibit E "Form of Shareholder Release", For Section 1.1, "Governance Representation Agreement" OEB staff did not support the confidentiality request. OEB staff disagreed with the submissions of the Applicants that the information is commercially sensitive and could affect competitive positions of the parties. Regarding Section 6.6 and Section 9.5, OEB staff submitted that similar information had been made publicly available in EB-2019-0015. OEB staff did not agree with the Applicants' reasons for confidential treatment of Exhibit D. The Applicants stated that 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. OEB staff argued that settlement privilege appears entirely inapplicable as there is no communication between opposite parties in a "dispute".<sup>8</sup> SEC stated in Section 9.5 and Exhibit B that when a municipality sells its utility, it normally requires a special relationship with the utility after closing. For Section 6.6, Exhibit D, and Exhibit E, SEC submitted that these are standard commercial terms that are not confidential.

Regarding requests for redaction based on grounds that the information is personal information, OEB staff did not agree with the Applicants' requests for redactions to Section 9.4, Schedule A, Sub Schedule 4.27(a), and Section 4.26, (f), (h), (i), (j), and (n). The Applicants also argued that disclosure of the terms would provide sufficient information that could adversely affect the bargaining positions of the Applicants and its

---

<sup>8</sup> 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."

employees. The transaction is not closed and the information could relate to existing employees. OEB staff submitted that the information included in these sections does not pertain to an identifiable individual nor is it evident how disclosure of such information could cause harm to the Applicants or impact future bargaining negotiations. OEB staff identified similar provisions were disclosed in purchase agreements in EB-2019-0015, EB-2018-0082, EB-2021- 0280, EB-2022-0006, EB-2018-0014 and EB-2018-0236. The Applicants argued that 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.

Both OEB Staff and SEC opposed claims for confidentiality in Section 10 and Section 2.6 (d) “Settlement of Dispute”, except for Section 10.3 (b), (c), (d), (e) “Time Limitations” and Section 10.4 “Other Limitations on Recourse and Identification”, where OEB staff supported confidentiality, referencing previous a OEB decision in EB-2022-0006. Regarding Section 10, the Applicants claimed that the parties have always treated the information as confidential and that disclosing such commercially sensitive details in Section 10 and 2.6(d) could negatively impact the parties’ future competitive positions and be used against them in future negotiations. OEB staff submitted past OEB decisions where similar information was made public and disagreed that disclosure could harm any competitive position, while SEC mentioned the information contains standard boilerplate provisions in this type of agreement.

Both OEB staff and SEC also opposed the confidentiality requests for Section 6.1(b) “Conduct of Business Prior to Closing”, Section 6.9 “Termination of Related Party Transactions”, Section 8.1 “Conditions for the Benefit of the Buyer”, and Schedule A, Sub Schedule 4.23(a) “Intellectual Property”. The Applicants submitted for Section 6.1(b) that the terms and conditions were negotiated by parties not regulated by the OEB through a confidential competitive process. Disclosure of this commercially sensitive information could negatively prejudice future negotiations and negatively impact the ability to conduct business during the interim period. Regarding Section 6.9, the Applicants stated that the redactions involve commercially sensitive information related to third-party negotiations, and that the disclosure of such information could prejudice future competitive and negotiating positions. The Applicants referred to EB-2016-0351, where the OEB found that financial details of contracts with non-parties to the application were commercially sensitive. OEB staff disagreed and submitted that the redactions did not contain financial details or vendor pricing. The Applicants claimed that the redactions in Schedule A, Sub Schedule 4.23(a) pertain to the existence of specific intellectual property, which is commercially sensitive, and disclosure could harm the Applicants, given that the transaction has not yet closed. OEB staff submitted that

similar information in Section 6.1(b) and Schedule A, Sub Schedule 4.23(a) was publicly disclosed in a previous OEB proceeding,<sup>9</sup> and Section 8.1 (n) is not covered by litigation privilege contrary to the Applicants' claim. SEC stated that such information is standard commercial provisions and made available in a rate case.

In Document 2, 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 stated that the document was created within the confidential municipal process and included parameters around bidding strategies and valuations that would be harmful if disclosed. The Applicants stated that the document should remain confidential and not be made available to parties that sign the Confidentiality Declaration and Undertaking.

OEB staff opposed the Applicants' argument that its perceived lack of relevance of the document to the application per the MAADs Handbook warrants Document 2 to be redacted. OEB staff noted that the Applicants filed Document 2 to satisfy the OEB's filing requirement to provide a copy of appropriate resolutions approving the transaction.<sup>10</sup> OEB staff submitted that the Applicants have not provided a justifiable basis for denying access to Document 2 to intervenors that sign the Confidentiality Declaration and Undertaking. OEB staff noted that in EB-2019-0015<sup>11</sup>, EB-2018-0082<sup>12</sup>, EB-2021-0280<sup>13</sup>, EB-2022-0006<sup>14</sup>, and EB-2018-0014<sup>15</sup> resolutions approving mergers, acquisitions and amalgamations issued by the municipal corporations were publicly disclosed. OEB staff further stated that 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. Energy may be relevant.<sup>16</sup>

On July 14, 2025, the Applicants filed their Reply Submission. The Applicants agreed with some of OEB staff's submissions pertaining to the following confidentiality requests and confirmed that these sections of Document 1 should not be redacted:<sup>17</sup>

---

<sup>9</sup> EB-2019-0015

<sup>10</sup> MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.8

<sup>11</sup> EB-2019-0015, MAADs Application, Appendix G

<sup>12</sup> EB-2018-0082, MAADs Application, Attachment 6 Resolutions Approving Transaction, March 14, 2018

<sup>13</sup> EB-2021-0280, MAADs Application, Schedule I, November 1, 2021, pages 185-221

<sup>14</sup> EB-2022-0006, MAADs Application, Attachment J, February 1, 2022

<sup>15</sup> EB-2018-0014, MAADs Application, Attachment 3, March 7, 2018

<sup>16</sup> EB-2025-0172, OEB staff Confidentiality Submission, p.19

<sup>17</sup> EB-2025-0172, Reply Submission p.7

- Schedule A, Sub Schedule 4.13 Proceedings – the information pertaining to OEB proceedings should not be redacted.
- Schedule A, Sub Schedule 4.26(b) Independent Contractors– only information related to third party unit pricing should be redacted.

The Applicants stated that one of the key aspects of their confidentiality request is that the transaction cannot close until OEB approval is obtained under section 86 of the OEB Act. The Applicants claimed that if the transaction is not approved, public disclosure of redacted information would be highly prejudicial to the Corporation of the Town of Essex, E.L.K. Energy and Windsor Canada Utilities.<sup>18</sup> Specifically, the Applicants note that third parties will have gained access to the specific terms of the Purchase and Sale Agreement, providing them an advantage to modify their bids accordingly in any subsequent competitive process for a future MAADs transaction involving E.L.K. Energy.<sup>19</sup>

On the issue of relevance of the redacted information, the Applicants referenced section 5.1.10 of the Practice Direction that, "...the OEB may, as a preliminary matter, determine whether the information is relevant to the proceeding. Where the OEB determines that the information is not relevant to the proceeding, it may issue a decision accepting the redactions without assessing the grounds for confidentiality." The Applicants asserted that the OEB conducts this threshold test before resorting to further assessment of the specific grounds for confidentiality.<sup>20</sup>

The Applicants further submitted that the cases OEB staff cited in support of its view that certain information should be publicly disclosed have limited relevance, as not all MAADs applications are created equal. The Applicants argued that there may be more willingness to disclose commercial terms in a transaction involving a non-cash merger which is not the case in the current transaction as it arose because of a competitive bidding process. The Applicants also refuted OEB staff and SEC's claims regarding disclosure of purchase price, arguing that it was derived resulting from a transaction between two parties not regulated by the OEB.<sup>21</sup> The Applicants further stated that SEC and VECC represent ratepayers in this proceeding and have access to this valuation information once a Confidentiality Declaration and Undertaking is signed.<sup>22</sup>

Regarding Employee Matters and Collective Bargaining, the Applicants stated that disclosing this type of information publicly has the potential to adversely affect ongoing employee-employer relationships and could result in negative impacts to ratepayer

---

<sup>18</sup> EB-2025-0172, Reply Submission, p. 5

<sup>19</sup> Ibid.

<sup>20</sup> EB-2025-0172, Reply Submission, p. 3

<sup>21</sup> EB-2025-0172, Reply Submission, p. 6

<sup>22</sup> Ibid.

customer service. Regarding the Applicants request for redaction to section 9.4 “Employee Retention” specifically, the Applicants stated that E.L.K. Energy employees would be able to review terms relating to their own employment which could create unnecessary complications pertaining to a matter unrelated to the proceeding.<sup>23</sup>

On July 28, 2025, the Applicants requested confidential treatment for, or on a portion of, three interrogatory responses. Two of the three requests for confidentiality (Interrogatory Response Staff 6 c and Staff 8 a) are related to portions of the application for which the Applicants have requested confidential treatment.<sup>24</sup> The third discrete redactions (OEB Staff 2 – Attachment 1 – Exhibit A) contain unit pricing of a third party, which the Applicant considered presumptively confidential per Appendix B of the Practice Direction.

No objections were received from OEB staff and SEC on the confidentiality requests in the Interrogatory Responses. As per section 5.1.6 of the Practice Direction, if no objections are received within the applicable time frame, the OEB can proceed to make a determination on the request, without further procedural steps.

## Findings

The OEB agrees with OEB staff that the sheer volume of redactions requested was unprecedented and, in most instances, unnecessary. It was unnecessary as the OEB issues documents to inform potential participants of the OEB’s processes, promoting regulatory certainty and adjudicative efficiency. It appears that the Applicants did not avail themselves of this publicly disclosed information to inform their understanding of the OEB’s processes and expectations. Instead, the OEB was compelled to devote additional resources to the administration and adjudication of these requests for confidentiality, potentially delaying the hearing.

The OEB’s Practice Direction indicates that placing materials on the public record is the rule, and redactions for confidentiality are the exception.<sup>25</sup> The MAADs Handbook (updated in 2024) includes a chapter on confidential information, “To ensure a transparent and accessible review process, applicants should make every effort to file all materials publicly and completely.” Further, the OEB expects that applicants “will minimize, to the extent possible, requests for confidential information.”<sup>26</sup>

---

<sup>23</sup> EB-2025-0172, Reply Submission p.7

<sup>24</sup> EB-2025-0172, Interrogatory Response, p. 1

<sup>25</sup> Practice Direction on Confidential Filings, Dec. 17, 2021, p.1

<sup>26</sup> MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.5

The OEB has no intention of filing a redacted final decision in this proceeding. If the OEB were to approve the 45+ confidentiality requests, the OEB has considered whether it would be able to render a public decision on the Application if it were unable to disclose certain evidence to substantiate its reasons for the decision. For example, the purchase price could not be disclosed publicly, which is fundamental to the OEB's assessment of "no harm" to existing customers and the OEB's reasons for decision (see Table 1).

The OEB has considered the Applicants' concern that it had participated in a competitive RFP process, the redactions were commercially sensitive, significant commercial prejudice and harm would result from broad disclosure, the Buyer (Windsor Canada Utilities) is not regulated by the OEB, and the outcome is not certain as the transaction cannot close until OEB approval is obtained under section 86 of the OEB Act.

The OEB is unable to find sufficiently unique aspects of this Application to justify deviations from OEB practice and precedent regarding MAADs applications. However, the OEB has considered the relatively small size of E.L.K. Energy and the number of employees as a unique factor in assessing labour and employment information. Otherwise, the OEB is of the opinion that information ordered to be placed on the public record would not provide third parties with any advantage in modifying their bids accordingly in any subsequent competitive process for a future MAADs transaction involving one or both of the Applicants.

The Applicants' reply submission focused on the "no harm" test and the attainment of certain statutory objectives the OEB Act.<sup>27</sup> For example, the Applicants claimed that the purchase price information was irrelevant to the no-harm test and as the Buyer is not a distributor or transmitter and is therefore not subject to OEB oversight. The OEB disagrees. The OEB finds the Applicants have a narrow interpretation of the no-harm test and the impact of a MAADs transaction on customers.

The OEB has broad statutory objectives and the "no-harm test" involves multiple quantitative and qualitative considerations. The OEB will be guided by its statutory objectives in considering the potential impacts on price, quality of service to customers, cost effectiveness and economic efficiency.

The OEB notes that redactions for non-relevance were added to the Practice Direction as part of broader set of amendments adopted by the OEB in December 2021 and there is no requirement to redact out non-relevant information from a document that also

---

<sup>27</sup> OEB Act, Section 1(1)

contains relevant information. Generally, the OEB would not expect parties to redact non-relevant information absent a particular concern about the non-relevant information being made public.

A common factor to the findings of the OEB is that the Purchase and Sale Agreement is a MAADs filing requirement, and a final legal document used to implement the proposed transaction.

The OEB has adopted the confidentiality request groupings utilized in OEB staff's submission for the purpose of decision making. The OEB's findings on relevance and confidentiality are outlined and grouped on this basis.

#### Appendix D - Document 1: Purchase and Sale Agreement

The findings in this section address the specific items in Document 1: Purchase and Sale Agreement for which confidentiality was sought by the Applicants. The Applicants' submissions are summarized in its confidentiality request letter and in a summary table filed on June 20, 2025. The OEB's item-specific findings on the confidentiality requests in Document 2 follow the Document 1 findings.

#### **Determination of Purchase Price Information**

The OEB finds the following information in the Purchase and Sale Agreement, for which the Applicants' requested confidential treatment, to be both relevant and non-confidential:

- Article 1, Section 1.1, Deposit and Target Working Capital
- Article 2, Section 2.2 and 2.3, Purchase Price and Delivery of the 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

These findings are based on the following considerations:

- a) The Purchase and Sale Agreement is a MAADs filing requirement, and a final legal document used to implement a proposed transaction.

- b) Similar information was made available in previous OEB proceedings, such as EB-2019-0015 and EB-2021-0280,<sup>28</sup> and several other MAADs proceedings of which a number involved a competitive process and a purchase price that involves the net book value (NBV) of the utility's assets, upon which rates to customers are based.

**Table 1: Prior MAADs applications filed with the OEB**

<b>File No.</b>	<b>Acquisition</b>	<b>Nature of Acquisition</b>	<b>Share Purchase Agreement Disclosure</b>
EB-2019-0015	North Bay (Espanola)	100% share purchase	Yes - \$7,989,539 -1.3 x NBV
EB-2013-0196	Hydro One – Norfolk	100% share purchase pursuant to a sale process inviting bids	Yes - \$93 M (\$39.1 M above \$53.9 NBV) – 1.73 x NBV Certain provision held confidential related to Personal Information under FIPPA, financial/tax acct numbers
EB-2014-0244	Hydro One – Haldimand	100% share purchase	Yes - \$75 M (\$24M above \$51M NBV) – 1.47 x NBV Hydro One filed the SPA redacting Personal Information and other non-relevant info
EB-2014-0213	Hydro One – Woodstock Hydro	100% share purchase	Yes - \$46.2M (\$20.2M above \$26 NBV) – 1.78 x NBV
EB-2014-0217	Cambridge-Brant	100% share purchase	Yes -\$40M (\$16.3M above \$23.9M NBV) – 1.67 x NBV

### Company Structure, Shareholders and Governance

With respect to Article 1 Definitions – Section 1.1 “Governance Representation Agreement”; Article 9, Section 9.5 “Advisory Committee”; Exhibit B, the OEB finds the information to be both relevant and not confidential. The OEB is not convinced that the information is commercially sensitive or that governance representations would

<sup>28</sup> EB-2025-0172, OEB staff Confidentiality Submission, p. 8-9

prejudice competitive position. In fact, the OEB expects and requires submission on the relationship after closing to assure “no harm” after closing of the transaction.

With respect to Article 6, Section 6.6 “Shareholder and Directors; Release”, the OEB finds the information to be both relevant and not confidential. The OEB is not convinced disclosure would cause harm or prejudice the parties in future negotiations. The OEB finds that the terms for shareholder and director release are relevant to understanding the ongoing operation of the regulated utility and therefore, relevant to the “no harm test” for customers.

With respect to Exhibit D “Form of Director and Officer Releases”, the OEB finds the information to be both relevant and not confidential. The OEB is not convinced disclosure would cause harm or prejudice the parties. The OEB finds the Applicants’ claims that such information has been treated as confidential under settlement privilege is not supported. The OEB notes that settlement privilege is inapplicable as there is no communication between opposite parties in a dispute.

With respect to Exhibit E “Form of Shareholder Release”, the OEB finds the information to be both relevant and not confidential. The cited OEB decision, EB-2016-0351, by the Applicants pertains to termination rights and maximum values for indemnification, which do not apply to this case. The OEB is not convinced disclosure is commercially sensitive and represents a material impact to parties competitive and negotiating positions.

### **Labour and Employment Information**

Regarding Employee and Labour Matters and Collective Bargaining (Article 4 – Section 4.26 and Article 6 - Section 6.15), the OEB agrees with the Applicants that disclosing this type of information publicly has the potential to adversely affect ongoing employee-employer relationships and could result in negative impacts to ratepayer customer service. Accordingly, the OEB finds the information could cause potential harm if disclosed; therefore, the information should be treated as confidential.

With respect to Article 8 Section 8.1 (m) “Conditions for the Benefit of Buyer (Collective Agreement)”, the OEB finds the information to be both relevant and not confidential. The information is high level and does not disclose collective bargaining strategies or employer positions.

With respect to Article 9 Section 9.4 “Employee Retention”, the OEB finds the information to be not relevant to the OEB’s assessment of the “no harm test”. Further, the OEB agrees that the public would be able to review terms relating to E.L.K. Energy employees which could create unnecessary complications unrelated to the proceeding. In small utilities, employee information can be easily inferred from limited information.

The Applicants' request is approved.

With respect to Schedule A Sub Schedule 4.10 "Conduct of Business" and Schedule 4.26 "Employee Listing", the OEB finds that the information is relevant and confidential. The discrete redactions in this section pertain to compensation, income, employment history and contractual matters, which could be considered "personal information" under FIPPA, and, accordingly, shall remain redacted.

With respect to Schedule A Sub Schedule 4.27(a) "Benefits Plans", the OEB finds that this information is not relevant and can remain redacted.

### **Bank Account Information**

With respect to Schedule A Sub Schedule 4.29 "Bank Accounts"; Exhibit A - Sub-Schedule C "Escrow Agent Wire Instructions"; Exhibit A - Sub-Schedule D "Approved Banks", the OEB finds these to be confidential for the reasons cited by the Applicants.

### **Non-Regulated Business and Third-Party Information**

With respect to Article 4 Section 4.36 "Water Heater Rental Contracts", the OEB finds this information to not be relevant as it is not a regulated activity by the OEB and can remain redacted.

With respect to Schedule A Sub Schedule 1.1(a) "Permitted Liens", the OEB finds that the information is relevant and confidential. The OEB accepts the Applicants' assertion that disclosure of permitted liens is commercially sensitive and could negatively

impact the future negotiating position of the Seller (the Corporation of the Town of Essex), particularly as the transaction has not yet closed.

With respect to Schedule A Sub Schedule 3.4 "Third Party Consents" and Sub Schedule 4.6 "Authorizations", the OEB finds the information is relevant and not confidential. This information has been filed on the public record in similar proceedings and the OEB is not convinced this information (consents and authorizations to carry out business) would negatively affect the Seller's position.

With respect to Schedule A Sub Schedule 4.12 "Material Contracts", the OEB finds that the information is relevant and confidential as it pertains to contractual matters, including specific vendors, purchasers and other agreements. Information pertaining to specific employees is personal information as defined by FIPPA and will not be placed on the public record nor provided to intervenors that sign the Declaration and Undertaking.

With respect to Schedule A Sub Schedule 4.26(b) “Independent Contractors”, the OEB finds that the information is relevant and partially confidential in that only information related to third party pricing should be redacted.

With respect to Schedule A Sub Schedule 4.36(a) “Water Heater Contract Form”, the OEB finds this information is not relevant and can remain redacted since water heater rentals are not an activity regulated by the OEB.

With respect to Exhibit H “Local Community Commitment Agreement” and Exhibit I “Contribution Agreement”, the OEB finds that the information is relevant and not confidential. A similar agreement was publicly disclosed in EB-2019-0015. In addition, the OEB feels that the Contribution Agreement may properly be considered part of the purchase price.

### **Settlement and Indemnification Information**

With respect to Article 2 pp. 19-20 – Section 2.6(d) “Settlement of Dispute”, the OEB finds that the information is relevant and not confidential. The Purchase and Sale Agreement is a MAADs filing requirement, a final legal document used to implement a proposed transaction. Section 2.6(d) only references the existence of the documents and outlines what will be calculated if there is a dispute.

With respect to Article 10 – Section 10.3(b), (c), (d), (e) “Time Limitations”; Section 10.4 “Other Limitations on Recourse and Indemnification Obligations”; Section 10.6 “Notification”; Section 10.7 “Direct Claims”; Section 10.8 “Third Party Claims”; Section 10.10 “Payment of Indemnification”, the OEB finds that the information is confidential for the reasons cited by the Applicants.

### **Transaction Conditions and Disclosures**

With respect to Article 1 Definitions — Section 1.1 “Termination Date”; Article 6 – Section 6.1 (b) “Conduct of Business Prior to Closing”; Article 6 - Section 6.9 “Related Party Transactions”, the OEB finds that the information is relevant and not confidential. The Purchase and Sale Agreement is a MAADs filing requirement, a final legal document used to implement a proposed transaction. The OEB finds this type of information relates to the risk and potential harm to customers if the purchase offer terminates. Also, customers are directly affected by the conduct of the business prior to closing and the handling of related party transactions.

With respect to Article 8 – Section 8.1 n) “Conditions for the Benefit of Buyer (Final Decision on Seller’s 2025 Rate Application)”, the OEB finds that the information is

relevant and not confidential. This information is not covered by “litigation privilege” as it is not created for the purpose of litigation and the OEB is not convinced disclosure could result in commercial harm. Additionally, this information pertains to a concurrent OEB public proceeding involving E.L.K. Energy<sup>29</sup> which is both relevant and non-confidential.

With respect to Schedule A Sub Schedule 4.13 “Proceedings”, the OEB agrees with OEB staff and finds that the redacted information is relevant and partially confidential. The information pertaining to ongoing legal proceedings not related to the OEB will be confidential. Information related to the two OEB proceedings should be available on the public record.

With respect to Schedule A Sub Schedule 4.23(a) “Intellectual Property”, the OEB finds that the information is relevant and not confidential. The OEB is not convinced the information contains commercially sensitive information and notes that this type of information has been filed on the public record in a similar proceeding.<sup>30</sup>

With respect to Schedule A Sub Schedule 4.25 “Insurance Policies”, the OEB finds that the information is relevant and confidential.

With respect to Schedule A Sub Schedule 6.1(b) “Future Obligations”, the OEB finds that the information is relevant and confidential. The OEB finds the information in Sub Schedule 6.1 (b) (x) to be personal information per FIPPA and should neither be placed on the public record nor provided to intervenors that sign a Declaration and Undertaking.

#### Appendix E – Resolutions by Parties Approving the Proposed Transaction Document 2:

The OEB Filing Requirements require an applicant to provide a copy of appropriate resolutions for approving the transaction. The OEB is not convinced the information filed by the applicant contains commercially sensitive information and notes that similar information been filed on the public record in similar proceedings. The OEB finds that the resolution should placed on the public record without redactions, with one exception: the signatures should neither be placed on the public record nor provided to intervenors that sign a Declaration and Undertaking. The rationale being that signatures can be easily copied to execute fraudulent documents.

---

<sup>29</sup> EB-2024-0015

<sup>30</sup> EB-2019-0015

Applicants' Responses to Interrogatories (July 28, 2025)

The OEB approves the Applicants' request for confidential treatment of discrete redactions in Attachment 1 Exhibit A (Pricing Table for Facility #1, Daily Compound CORRA Adjustment, Term CORRA Adjustment) that contain unit pricing of a third party based on being presumptively confidential per Appendix B of the Practice Direction.

Additionally, the OEB approves the signatures on the Second Amendment to Credit Agreement neither be placed on the public record nor be, provided to intervenors that sign a Declaration and Undertaking, due to the concerns of fraudulent use.

The OEB denies the request for confidential treatment of the Applicant's Interrogatory Response to Staff 6 c) on the same basis as the findings for Appendix D - Document 1: Purchase and Sale Agreement.

The OEB denies the request for confidential treatment of the Applicant's Interrogatory Response to Staff IR 8 a) regarding E.L.K.'s 2025 IRM application which is still before the OEB (EB-2024-0015). The information is relevant to the assessment of "no harm" for this proceeding and the OEB is not convinced public disclosure is commercially sensitive and represents a material impact to parties competitive and negotiating positions. Additionally, any impacts of future variances will be determined by a future panel which is not bound by findings of this panel.

At this time, the OEB is also making provision for the remaining steps in this proceeding. The dates for filing written submissions and reply submissions are provided below. Further procedural orders may be issued by the OEB.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. The Applicants, in accordance with the findings above, file revised evidence by **August 27, 2025**.
2. The Applicants shall file a written argument-in-chief with the OEB and serve it on all intervenors by **September 2, 2025**.
3. Any written submissions by OEB staff and intervenors shall be filed with the OEB and served on all other parties by **September 15, 2025**.
4. Any reply submissions by the Applicants, shall be filed with the OEB and served on all other parties by **September 22, 2025**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2025-0172** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Amber Goher, Advisor, at [Amber.Goher@oeb.ca](mailto:Amber.Goher@oeb.ca). and OEB Counsel, Lawren Murray at [Lawren.Murray@oeb.ca](mailto:Lawren.Murray@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **AUGUST 25, 2025**

**ONTARIO ENERGY BOARD**

Ritchie Murray  
Acting Registrar