



DECISION AND ORDER

EB-2025-0274

WINDSOR CANADA UTILITIES LTD. AND E.L.K. ENERGY INC.

**Motion to Review and Vary the August 25, 2025, Decision
on Confidentiality and Procedural Order No. 2.**

BEFORE: **Patrick Moran**
 Presiding Commissioner

Vinay Sharma
Commissioner

Anthony Zlahtic
Commissioner

February 17, 2026

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1 OVERVIEW

Windsor Canada Utilities Ltd. (WCUL) and E.L.K. Energy Inc. (E.L.K. Energy) (collectively, the Applicants) filed an application on May 13, 2025 with the OEB seeking approval for WCUL to purchase all of the issued and outstanding shares of E.L.K. Energy from the Corporation of the Town of Essex¹. The Applicants sought confidential treatment of certain information within their application. On August 25, 2025, the OEB issued a decision and denied the Applicants' request for confidential treatment related to a resolution adopted by the Windsor City Council and included as part of Appendix E – Resolutions by Parties Approving the Proposed Transaction of the application.²

On September 15, 2025, WCUL filed a notice of motion to review and vary the OEB's decision to deny confidential treatment of the resolution.

For the reasons that follow, the OEB denies the motion.

¹ Pursuant to section 86(2)(a) of the Ontario Energy Board Act, 1998 (OEB Act)

² EB-2025-0172, Decision on Confidentiality and Procedural Order No.2, August 25, 2025.

2 DECISION

2.1 Background

WCUL is a holding company and the sole owner of ENWIN Utilities and ENWIN Energy Ltd. (an unregulated affiliate company). ENWIN Utilities is a licensed electricity distributor³ that owns and operates the electricity distribution system that provides service to approximately 92,000 electricity customers within the City of Windsor.

E.L.K. Energy is a licensed electricity distributor⁴ that owns and operates the electricity distribution system that serves approximately 13,000 electricity customers within the Towns of Essex, Lakeshore and Kingsville. Within these towns, E.L.K. Energy has six non-contiguous service areas, serving the communities of Belle River, Comber, Cottam, Essex, Harrow and Kingsville. E.L.K. Energy is a fully embedded distributor which receives electricity at distribution level voltages from Hydro One. E.L.K. Energy is also a host distributor to Hydro One.

The Applicants filed an application on May 13, 2025 with the OEB seeking approval for the first phase of a multi-phase transaction. In the first phase of the transaction, WCUL sought to purchase all of the issued and outstanding shares of E.L.K. Energy from the Corporation of the Town of Essex pursuant to section 86(2)(a) of the *Ontario Energy Board Act, 1998* (OEB Act).

The Applicants requested confidential treatment for certain information in the application pursuant to the OEB's Rules of Practice and Procedure, the OEB's Practice Direction on Confidential Filings (Practice Direction), and the *Freedom of Information and Protection of Privacy Act* (FIPPA). The information for which confidential treatment was requested was included within both the Purchase and Sale Agreement and Appendix E - Resolutions by Parties Approving the Proposed Transaction.

Regarding the latter, WCUL noted in its request for confidential treatment, that the document in question included commercially sensitive information that could significantly prejudice competitive positions if disclosed. The document included directions to WCUL on what parameters could be negotiated to acquire the shares E.L.K. Energy, including the maximum negotiated price, alternative acquisition structures, and acceptable outcomes for the future relationship between E.L.K. Energy and its former shareholders. WCUL further submitted that its bidding strategies during

³ ED-2002-0527

⁴ ED-2003-0015

the confidential competitive procurement contained in this document are not relevant to the no-harm test.

On August 25, 2025, the OEB issued a Decision on Confidentiality and Procedural Order No. 2 (Confidentiality Decision).⁵

On September 15, 2025, WCUL filed a motion to review and vary the Confidentiality Decision, on grounds that the OEB made a material and clearly identifiable error in its decision to deny confidential treatment for certain information within Appendix E – Resolutions by Parties Approving the Proposed Transaction. In particular, WCUL seeks a review of the following portion of the Confidentiality Decision.⁶

“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 [has] been filed on the public record in similar proceedings. The OEB finds that the resolution should [be] 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.”

In the motion, WCUL argues that the City of Windsor issued the resolution during an in-camera meeting on October 28, 2024 authorizing WCUL, within certain negotiating boundaries, to finalize a purchase transaction to acquire the shares and assets of E.L.K. Energy.⁷ WCUL further states that public disclosure of the redacted information in the resolution compromises the integrity of the competitive bidding process and there were certain outstanding conditions to the Purchase and Sale agreement including OEB approval of the application. WCUL argues that disclosure of the redacted information to competitors and E.L.K. Energy would reveal the potential parameters of the transaction that were acceptable to WCUL and cause significant prejudice.⁸

WCUL argues that the Confidentiality Decision made four material and clearly identifiable errors of fact, law, and/or jurisdiction, including that the OEB’s decision:

- conflates the obligation to file appropriate resolutions with whether those resolutions should be made publicly available;

⁵ EB-2025-0172, Decision on Confidentiality and Procedural Order No.2, August 25, 2025.

⁶ EB-2025-0172, Decision on Confidentiality and Procedural Order No.2, August 25, 2025.

⁷ EB-2025-0172, Motion to Review, September 15, 2025, p.5.

⁸ Ibid.

- fails to articulate a justification as to why the information is not commercially sensitive and improperly concludes that the information is not commercially sensitive;
- undermines the municipal process under the *Municipal Act, 2001*; and
- fails to consider the OEB's obligations under section 17 of FIPPA to withhold disclosure of the resolution.

WCUL states that while the Handbook to Electricity Distributor and Transmitter Consolidations (MAADs Handbook)⁹ requires an applicant to provide a copy of appropriate resolutions for approving the transaction, it does not follow that all information within such resolutions must be publicly disclosed. WCUL argues that, where the Practice Direction permits, the OEB routinely grants such protection for information filed to satisfy its requirements, and that relevance alone does not constitute a sufficient basis for compelling public disclosure of the resolution's confidential content. The unredacted resolution was provided to OEB staff and parties who signed a Declaration and Undertaking in the proceeding.¹⁰

WCUL further states that the Confidentiality Decision does not set out a clear rationale for why the subject information in the resolution should not be treated as confidential, nor does it directly address the concerns raised by WCUL in its submissions.¹¹

WCUL's argument that the OEB's Decision is a "material and clearly identifiable error in law, fact and/or jurisdiction" is also premised on the notion that it "undermines municipal processes expressly designed to safeguard the confidentiality of certain municipal information and business" and disregards the City of Windsor's lawful exercise of its authority under section 239 of the *Municipal Act, 2001*, to conduct its discussion regarding the negotiation parameters for the acquisition in-camera and to issue a confidential resolution.¹²

WCUL also notes that the OEB may in fact be obligated to withhold disclosure of the record under section 17 of FIPPA as it is a record that reveals commercial information that was supplied in confidence to the OEB and could prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of WCUL, and that non-disclosure of this information is recognized in section 11,

⁹ MAADs Handbook, Schedule 2, Filing Requirements for Consolidation Applications, p.8

¹⁰ EB-2025-0172, Motion to Review, September 15, 2025, p.6.

¹¹ EB-2025-0172, Motion to Review, September 15, 2025, p.7.

¹² EB-2025-0172, Motion to Review, September 15, 2025, p.8.

subsections (c) – (g) of the *Municipal Freedom of Information and Protection of Privacy Act*:

“11 A head may refuse to disclose a record that contains [...]

(c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

(g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person; [...].¹³

WCUL argues that since the transaction had not closed disclosure of the resolution publicly could unnecessarily imperil the agreed upon closing terms. If the transaction did not close, WCUL would be significantly prejudiced as its negotiating boundaries for the acquisition of E.L.K. Energy would be in the public domain, however no other bidder in the competitive process would have been compelled to disclose their negotiating limits. Further, it is argued that WCUL would have suffered significant prejudice if the E.L.K. Energy were to initiate a new competitive bidding process for the utility, as all other bidders would have knowledge of WCUL’s confidential negotiating parameters and boundaries, while WCUL would remain unaware of the positions of competing bidders.¹⁴ WCUL also notes that disclosing the redacted information would have implications for other potential deals on the market such as reducing the number of participating bidders and impacting the potential purchase price of the utilities involved.¹⁵

¹³ Ibid.

¹⁴ EB-2025-0172, Motion to Review, September 15, 2025, p.10.

¹⁵ EB-2025-0172, Motion to Review, September 15, 2025, p.11.

On December 1, 2025, WCUL notified the OEB that the transaction had been completed on November 28, 2025, to acquire 100% of the issued and outstanding shares of E.L.K. Energy Inc. from The Corporation of the Town of Essex.¹⁶

2.2 The test for varying a decision

Under Rule 43.03 of the OEB's Rules of Practice and Procedure, "[t]he OEB will only cancel, suspend or vary a decision when it is clear that a material change to the decision or order is warranted based on one or more of the grounds set out in Rule 42.01(a)."

Rule 42.01(a) sets out a number of grounds pursuant to which a party may bring a motion. The one invoked by WCUL in this Motion is that "the OEB made material and clearly identifiable errors of jurisdiction, law and/or fact." The Rule specifies that,

For this purpose, (1) disagreement as to the weight that the OEB placed on any particular facts does not amount to an error of fact; and (2) disagreement as to how the OEB exercised its discretion does not amount to an error of law or jurisdiction unless the exercise of discretion involves an extricable error of law.

WCUL states that the decision commits four material and clearly identifiable errors of fact, law and/or jurisdiction:

- The Confidentiality Decision conflates the obligation to file appropriate resolutions with whether those resolutions should be made publicly available.
- The Confidentiality Decision fails to articulate a justification for the conclusion that the resolution is not commercially sensitive and improperly concludes that the information is not commercially sensitive.
- The Confidentiality Decision undermines municipal processes under the *Municipal Act, 2001*.
- The Confidentiality Decision fails to consider the OEB's obligations under section 17 of the *Freedom of Information and Protection of Privacy Act* to withhold disclosure of the resolution.

¹⁶ EB-2025-0172, WCUL Letter, December 1, 2025.

Findings

WCUL's motion is dismissed.

WCUL's motion seeks a review of the following part of the OEB's decision on confidentiality in EB-2025-0172:

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 [has] been filed on the public record in similar proceedings. The OEB finds that the resolution should [be] 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.

Appendix E is a copy of the resolution passed by Windsor City Council. On its face, the resolution appears to be the result of an *in camera* session held by Windsor City Council that authorized WCUL “to finalize a purchase transaction” on the basis of one of two options identified in the resolution. Each option is subject to negotiation limits. WCUL sought a ruling that the two paragraphs setting out the negotiation limits should be treated confidentially on the following basis:

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 not available 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.

At the time the *in camera* resolution was issued, there was no transaction requiring OEB approval. WCUL was still negotiating. The OEB recognizes that the *in camera* resolution was appropriately confidential at the time it was issued. Eventually, an agreement was reached on the acquisition of E.L.K. Energy Inc. by WCUL, on the basis of one of the two options identified in the *in camera* resolution. This transaction needed OEB approval before it could proceed. The Applicants filed their application seeking approval of the transaction which included both the purchase and sale agreement and the Windsor City Council *in camera* resolution. The OEB ultimately approved the transaction.

WCUL's motion alleges four errors were made in the original decision to deny confidential treatment of the two paragraphs containing the negotiation limits. All four are grounded in the basic question of whether the two paragraphs setting out the negotiation limits should be treated confidentially. This decision focuses on that question.

Based on the fact that an agreement on the transaction had been reached, with the Applicants subsequently applying for approval to proceed with the transaction, it is unclear on what basis the *in camera* resolution needed to remain confidential. By the time the application came to the OEB, the negotiations were concluded and an agreement had been reached. Therefore, there was no longer any basis for a confidentiality request and the OEB's decision to deny the request was appropriate. Arguably, the *in camera* resolution was of little probative value in any event, since it was authorizing WCUL to enter into negotiations and identifying negotiating options, something the MAADS Handbook says should not be filed.¹⁷ Instead, what is required are any resolutions approving the proposed transaction for which OEB approval is sought.¹⁸ The *in camera* resolution does not do that.

The OEB notes that WCUL has filed a notice of appeal to Divisional Court. Section 5.1.15 of the OEB's Practice Direction on Confidential Filings provides:

If the party that made the request for confidentiality indicates, within three business days of the date of receipt of the OEB's order requiring the information be placed on the public record, that it intends to appeal or seek review of the decision, the OEB will not place the document on the public record until the appeal or review has been concluded or the time for filing an appeal or review has

¹⁷ Schedule 2, Filing Requirements for Consolidation Applications, pp. 14-15

¹⁸ *Ibid*, p.8

expired without an appeal or review having been commenced. In the absence of such an indication, the OEB will deal with the information in the manner set out in its order.

In light of this, the OEB requires WCUL to advise within three days following this decision whether it intends to continue with its appeal. If WCUL advises that it is abandoning its appeal, it shall file an unredacted version of the *in camera* resolution along with its response.

3 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Motion by Windsor Canada Utilities Ltd. is denied.
2. Windsor Canada Utilities Ltd., in accordance with the findings above, shall advise by February 20, 2026, whether it intends to continue its appeal to Divisional Court. If Windsor Canada Utilities Ltd. advises that it does not intend to continue its appeal, it shall file an unredacted copy of the *in camera* resolution along with its response.

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-2025-0274** 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 for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

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 at amber.goher@oeb.ca and OEB Counsel, Julia Nowicki at julia.nowicki@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto, February 17, 2026

ONTARIO ENERGY BOARD

Ritchie Murray
Acting Registrar