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BY EMAIL and RESS

March 11, 2014

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0115 – Burlington Hydro Inc. – Notice of Motion

We are counsel to the School Energy Coalition (“SEC”). Enclosed please find the Notice of Motion on behalf of SEC in the above-noted proceeding.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Applicant and Intervenors (by email)

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IN THE MATTER OF the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Burlington Hydro Inc. for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective as of May 1, 2014.

AND IN THE MATTER OF Rule 29 of the Board's *Rules of Practice and Procedure*.

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC has no preference in the method of hearing this motion.

THE MOTION IS FOR:

1. An order requiring Burlington Hydro Inc. to provide a full and adequate response to interrogatory 2.1-SEC-5 and/or 2.1-SEC-4, by producing the benchmarking survey it participated in, and is referred to in the response to interrogatory 2.1-SEC-5.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on an application by Burlington Hydro Inc. ("Burlington Hydro") pursuant to section 78 of the *Ontario Energy Board Act, 1998* for an order or orders approving just and reasonable rates and other charges for electricity distributions to be effective May 1, 2014.
2. SEC is an intervenor in this proceeding.
3. Pursuant to Procedural Order #2 issued January 21st 2014, SEC delivered written interrogatories to Burlington Hydro.

4. SEC sought various information and material that were in addition to Burlington Hydro's application, and are relevant to the proceeding. In 2.1-SEC-4, SEC asked "[p]lease provide details and copies of all performance efficiency benchmarking undertaken by the Applicant."¹ In response, Burlington Hydro discussed its System Performance Report which it provided in its application, and referenced the response to 2.1-Energy Probe-4. Interrogatory 2.1-Energy Probe-4 (and the corresponding response) was primarily about providing references in the application to efficiency benchmarking.² 2.1-SEC-4 asked about all benchmarking undertaken by the Applicant regardless of if it was referenced in Burlington Hydro's application or not.
5. In interrogatory 2.1-SEC-5, SEC asked "[h]as the Applicant compared its OM&A cost per customer, OM&A cost per FTE, and customer per FTE metrics with other LDCs? If not, please explain?"³ Burlington Hydro responded, in part, by stating that "Burlington Hydro participates in a benchmarking survey and is bound by contract to neither disclose the survey nor any details about it unless ordered to do so by the Board."
6. SEC seeks an order from the Board requiring Burlington Hydro to produce copies of this benchmarking survey, which it referenced in the response to 2.1-SEC-5, although the information is more explicitly sought in 2.1-SEC-4, but that has refused to provide based on a contract it has entered into with a third-party.

Survey is Relevant

7. In Procedural Order No. 2, the Board provided an Approved Issues List, included Issue 2.1 which asks: "[d]oes the applicant's performance in the areas of: (1) delivering on Board-approved plans from its most recent cost of service decision; (2) reliability performance; (3) service quality, and **(4) efficiency benchmarking**, support the application?" [emphasised added]
8. SEC submits that the Board and intervenors cannot answer Issue 2.1, which specifically seeks to review Burlington Hydro performance in the area of efficiency benchmarking, without reviewing the studies and surveys that it has conducted. SEC sought that information in interrogatory 2.1-SEC-4.
9. Apart from Issue 2.1, understanding how Burlington Hydro performs against other utilities is an important way that parties can scrutinize the application and to determine if the proposed revenue

¹ Interrogatory 2.1-SEC-4 (See Appendix B)

² Interrogatory 2.1-Energy Probe-3 (See Appendix C)

³ Interrogatory 2.1-SEC-5 (See Appendix A)

requirement will lead to “just and reasonable” rates. The Board was clear in its *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* that benchmarking will be an increasingly important part of rate regulation of electricity distributors.⁴

Confidentiality Agreement Not A Valid Reason for Non-Disclosure

10. A contractual agreement between a utility and a third-party is not a valid reason for non-disclosure of relevant information. The Board has on numerous occasions stated that it is not bound by confidentiality agreements between utilities and third-parties. The Board in EB-2011-0140 wrote regarding a request to limit production of a document by Hydro One Networks Inc:

As set out in the Board’s *Practice Direction on Confidential Filings* (the “*Practice Direction*”), it is the Board’s general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board’s view that its proceedings should be open, transparent and accessible. The *Practice Direction* seeks to balance these objectives with the need to protect information properly designated as confidential. In the context of this proceeding, confidentiality concerns should not prevent access by the Board and parties to this proceeding to information in the possession of HONI and GLPT relevant to the development of the East-West Tie line. The fairness of the process is a primary consideration in this case. **Moreover, the Board is not bound by confidentiality agreements entered into by the utilities it regulates, and regulated utilities may be ordered to produce documents that are the subject of such agreements. The *Practice Direction* provides adequate mechanisms for the protection of confidential material.**⁵ [emphasis added]

11. Further, in EB-2012-0031 the Board ordered production of a benchmarking study even though the terms of that agreement between Hydro One Networks Inc. and the third-party provider did not allow for disclosure. The Board went on to say that:

We are somewhat surprised that Hydro One would agree to the confidentiality arrangements described by the company today. Hydro One is well aware of the Board's view of the importance of benchmarking.”⁶

12. The Board also made similar comments in EB-2011-0123:

Utilities, such as Guelph Hydro must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may reasonably be required to be produced as part of the regulatory process.⁷

⁴ *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, dated October 18 2012, at p.56, 59

⁵ *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14 2012, at p.3

⁶ Motion Hearing Transcript, dated October 23 2012 (EB-2012-0031) at p. 28

⁷ *Decision on Confidentiality* (EB-2011-0123), dated August 19, 2011 at p. 3

13. Recently in EB-2013-0174, the Board ordered Veridian Connections Inc. to produce, on an interim confidentially basis, certain information that it had refused to disclose, in response to the *exact same* interrogatory that is at issue in this motion.^{8,9}
14. The fact that Burlington Hydro has an agreement with a third-party that restricts disclosure is only relevant to its potential confidentiality treatment under the Board's rules. Burlington Hydro, like any other utility, has the ability to seek to have any document it is asked to produce be provided on a confidential basis pursuant to the *Practice Direction on Confidential Filings*. The Board will then after seeking submissions from all parties, determine if such treatment should be accorded.
15. SEC submits that the Board should order Burlington Hydro to provide the full and adequate response to interrogatory 2.1-SEC-5 and/or 2.1-SEC-4, by producing the benchmarking survey it participated in, and is referred to in the response to interrogatory 2.1-SEC-5.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2013-0115.
2. Such further and other material as counsel may advise and the Board may permit.

March 11, 2014

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⁸ *Procedural Order No.4* (EB-2013-0174), dated February 25 2014 at p.2-3

⁹ Both the interrogatory at issue in the Veridian proceeding (EB-2013-0174) and in this proceeding (2.1-SEC-4) state: "Please provide details and copies of all performance efficiency benchmarking undertaken by the Applicant".

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Counsel to the Applicant

AND TO: Intervenors

Appendix A

Response to Interrogatory from SEC

2.1-SEC-4

Please provide details and copies of all performance efficiency benchmarking undertaken by the Applicant.

Response

Burlington Hydro produces its annual System Performance Report (Appendix A in the Distribution System Plan) within which it consistently reviews and measures its distribution system performance. This captures performance in specific neighbourhoods and of every feeder within the distribution system contributing to the annual reliability indices (SAIDI, SAIFI, SAARI). The continuous 10 year review of the performance history of every feeder, as recorded in the System Performance Report, provides a specific measure of the impact of capital and maintenance expenditures, such as underground rebuilds or increased vegetation management, on the feeder performance and service to those customers. This diligent approach to the performance of the distribution system is the key to the maintaining the high levels of reliability expected by Burlington Hydro's customers.

Please refer also to the response to Energy Probe interrogatory 3.

Appendix B

Response to Interrogatory from SEC

2.1-SEC-5

[Ex.4/2/1/Appendix 2-L]

Has the Applicant compared its OM&A cost per customer, OM&A cost per FTE, and customer per FTE metrics with other LDCs? If not, please explain?

Response

Burlington Hydro participates in a benchmarking survey and is bound by contract to neither disclose the survey nor any details about it unless ordered to do so by the Board.

Burlington Hydro prefers to compare its OM&A performance metrics to those of similarly situated electricity distributors, in particular those with 30 or more Municipal Stations and with staffed Control Rooms that operate 24x7. As there are none in Ontario, Burlington Hydro restates its OM&A costs to normalize them for these Burlington Hydro specific features; the comparison of Burlington Hydro's normalized OM&A costs on a per customer, per FTE and per customer per FTE basis shows that Burlington Hydro compares very favourably with the other members of its IRM Cohort.

Appendix C

Response to Interrogatory from Energy Probe

2.1-Energy Probe-3

Ref: Exhibit 1, Tab 1, Schedule 2

- a) Please provide the references to any performance efficiency benchmarking undertaken by the distributor.
- b) Has the distributor considered benchmarking in relation to other distributors and/or to its own past historical performance? Please indicate where in the evidence this information has been provided for capital expenditures and OM&A expenses.

Response

- (a) By committing to producing its annual System Performance Report (Appendix A in the Distribution System Plan) Burlington Hydro consistently reviews and measures its distribution system performance. This captures performance in specific neighbourhoods and of every feeder within the distribution system contributing to the annual reliability indices (SAIDI, SAIFI, SAARI). The continuous 10 year review of the performance history of every feeder, as recorded in the System Performance Report, provides a specific measure of the impact of capital and maintenance expenditures, such as underground rebuilds or increased vegetation management, on the feeder performance and service to those customers. This diligent approach to the performance of the distribution system is the key to maintaining the high levels of reliability expected by Burlington Hydro's customers.
- (b) Burlington Hydro has been very diligent in making comparisons with other LDCs within its peer group, specifically those in the "Mid-Size GTA Medium-High Undergrounding" group as reported in the Ontario Energy Board-sponsored PEG report: "Benchmarking the Costs of Ontario Power Distributors", 20 March, 2008. Twelve LDCs remain in the group after the amalgamation of Barrie Hydro Distribution Inc. with another utility that is not in the peer group. Burlington Hydro also relies on the data provided in the Board's "2012 Yearbook of Electricity Distributors, Ontario Energy Board, August 22, 2013.

The analysis of these comparisons provided good insight into some of the unique characteristics of Burlington Hydro's distribution system, for example

- Acknowledgement of the significant number of Burlington Hydro's "behind the meter" customers which are not included in the direct customer count
- The basic metric does not take into account the legacy infrastructure which current management has inherited and which it may be almost impossible for them to change due to the extremely high cost. For example, Burlington Hydro has 32 municipal substations that have evolved over many decades and serve large areas of the community at 4.16kV and 13.8kV. With a capital cost of many tens of millions of dollars, it would be prohibitively expensive to eliminate these vintage substations, and replace every single customer transformer, through conversion to higher distribution voltages. The trade-off is to modernize the equipment within the substations and to continue to operate them at their current voltage levels. This trade-off results in modestly higher day-to-day operating costs which have a more stable impact on customer rates. The number of substations each utility has varies enormously; in Burlington Hydro's peer group, the comparator LDCs have less than nine substations on average. This factor is advantageous to the operating costs of those LDCs.
- The presented OM&A Cost per Direct Customer metric does not take into account the quality of service that the OM&A expenditure makes possible. In large part due to its 24/7 control room, Burlington Hydro provides consistently safe, high reliability service. Only 3 other LDCs in its peer group have 24/7 control rooms. It must be noted that each LDC presently operating without control room oversight will have to incur the costs of putting that resource in place and continuing to operate it. This has been proven to be a safer, more effective means of operating and maintaining a distribution system and will be vital to the continued success of those LDCs, particularly when dealing with more intelligent grids.

The analysis therefore provided Burlington Hydro with information to determine more justified comparisons within the peer group and the satisfaction that its OM&A costs are reasonable and prudent.

Please also refer to the responses to School Energy Coalition interrogatory 4 and Vulnerable Energy Consumers Coalition interrogatory 6.