



EB-2013-0115

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

AND IN THE MATTER OF an application by Burlington Hydro Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2014.

NOTICE OF MOTION AND PROCEDURAL ORDER NO. 3
March 12, 2014

Burlington Hydro Inc. ("Burlington Hydro") filed a complete cost of service application with the Ontario Energy Board (the "Board") on October 25, 2013 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, seeking approval for changes to the rates that Burlington Hydro charges for electricity distribution, to be effective May 1, 2014.

Burlington Hydro filed its responses to interrogatories on February 27, 2014, requesting confidential treatment for two of its responses. The first relates to School Energy Coalition Interrogatory 9 ("4.1-SEC-9") that requested a copy of the compensation study conducted in November 2011. Burlington Hydro seeks confidential treatment of the study on the grounds that the study is proprietary work that is key to the third party consultant's ongoing commercial success.

Burlington Hydro also requested confidential treatment of its reply to School Energy Coalition Interrogatory 17 ("4.2-SEC-17") that asked what wage increase the Applicant was forecasting for its unionized workforce after the expiry of its current collective

agreement on April 1, 2014. Burlington Hydro stated that it required confidential treatment in order to preserve its bargaining position with respect to collective agreement negotiations commencing in the second quarter of 2014.

In accordance with the Practice Direction on Confidential Filings (the “Practice Direction”), Burlington Hydro filed paper copies of the material for which confidentiality is requested (“the Proposed Confidential Material”) with the Board and publicly filed redacted versions of the affected interrogatory responses.

Under section 5.1.12 of the Practice Direction, if the Board ultimately decides that the Proposed Confidential Material should not be afforded confidential treatment, it will be placed on the public record unless the applicant makes a request within five business days that the material be withdrawn and the Board grants the request. In its February 27 letter, Burlington Hydro indicated its intent to retract the documents in the event that the Board is unable to accord these documents confidential treatment.

The Board will designate as confidential, on an interim basis, the Proposed Confidential Material. The Board will allow qualified counsel and external consultants that wish to review the Proposed Confidential Material to do so after signing a copy of the Board’s Declaration and Undertaking (which can be found in Appendix C of the Board’s Practice Direction), filing it with the Board and serving it on Burlington Hydro.

Qualified intervenors and Board staff who wish to comment on Burlington Hydro’s request for confidential treatment shall file their submissions according to the schedule set out below.

The Board also invites submissions on Burlington Hydro’s request to retract the Proposed Confidential Material. In general, the test the Board must consider under such circumstances is whether the document is relevant to the issues in the proceeding, and whether its probative value is outweighed by any prejudice it might cause the applicant. The Board invites parties to file submissions on whether to allow Burlington Hydro’s request to have the document removed from the record entirely.

On March 11, 2014, the School Energy Coalition (“SEC”) filed a Notice of Motion (“Motion”). The Motion seeks the following relief:

1. An order requiring Burlington Hydro 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.

In response to SEC-5 Burlington Hydro referenced a benchmarking survey but stated that it was bound by contract to neither disclose the survey nor any details about it unless ordered by the Board. The Board will hear submissions on the Motion from the parties in accordance with the expedited schedule set out below.

The Board has scheduled a Settlement Conference in this proceeding to commence on March 19, 2014 and to continue on March 20 and 21 if necessary. In order to allow parties to make productive use of these days, the Board will issue a Decision on the Motion by the end of day Tuesday March 18, 2014. Should the Board determine that the document that is the subject of the Motion is required for the purposes of the proceeding, it will also make an interim determination on the confidentiality status of the document at that time.

As a result, the Board has established the schedule set out below for parties to make submissions on SEC's Motion, Burlington Hydro's request for confidential treatment of the Proposed Confidential Material and its proposal to retract the material if the Board determines that it should not be afforded confidential treatment.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Burlington Hydro shall immediately provide unredacted versions of the Proposed Confidential Material to all qualified parties that have executed a Declaration and Undertaking pursuant to the Board's *Practice Direction*.
2. SEC shall file any additional material on its Motion on or before end of day **March 13, 2014**.

3. Parties wishing to make a submission on the Motion shall file such submissions with the Board and deliver them to all parties by end of day **March 14, 2014**.
4. Burlington Hydro shall file its responses to any submissions on the Motion with the Board and deliver them to all parties by **March 17, 2014**.
5. SEC shall file its response to all parties' submissions on the Motion by noon on **March 18, 2014**.
6. Parties wishing to make a submission on the confidentiality status of the Proposed Confidential Material and Burlington Hydro's proposal to retract the information if it is not afforded confidential status shall file such submissions with the Board and deliver them to all parties by end of day **April 3, 2014**.
7. Burlington Hydro shall file its responses to submissions on the confidentiality status of the documents and the proposal to retract them with the Board and deliver them to all parties by **April 10, 2014**.
8. Parties shall frame submissions related to the Proposed Confidential Material in a manner that will allow the submissions to be placed on the public record.

All filings to the Board must quote the file number, **EB-2013-0115**, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 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, Martha McOuat at martha.mcouat@ontarioenergyboard.ca and Board Counsel, Ljuba Djurjevic at ljuba.djurjevic@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, **March 12, 2013**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary