



EB-2011-0099

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 E.L.K. Energy Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective October 1, 2012.

PROCEDURAL ORDER NO. 3

February 8, 2013

E.L.K. Energy Inc. (“E.L.K.”) filed an application with the Ontario Energy Board (the “Board”) on October 24, 2012 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that E.L.K. charges for electricity distribution, to be effective October 1, 2012.

The Board issued a Notice of Application and Hearing dated November 12, 2012. In accordance with Procedural Order No. 2, dated December 12, 2012, the Board made provision for written interrogatories. On January 30, 2013 E.L.K. filed responses to the interrogatories of the School Energy Coalition (“SEC”), Energy Probe Research Foundation (“Energy Probe”), the Vulnerable Energy Consumers Coalition (“VECC”), EnWin Utilities Ltd. (“EnWin”), the Association of Major Power Consumers in Ontario (“AMPCO”) and Board staff.

Confidentiality

Two of the interrogatory responses filed on January 30, 2013 were filed in confidence.

- AMPCO IR No. 17(l) under exhibit 4: provides the current Salary/Benefit costs for the Director of Regulatory Affairs and Manager of Regulatory Affairs positions and;

- SEC IR No.12 under exhibit 4: provides last three years of E.L.K. Solutions Financial Statements.

E.L.K indicated that it was prepared to provide copies of the confidential material to parties' counsel and consultants upon execution of the Board's form of Declaration and Undertaking with respect to confidentiality, provided that they comply with the Practice Direction and subject to E.L.K.'s right to object to the Board's acceptance of a Declaration and Undertaking from any person.

On February 4, 2013 E.L.K notified the Board that the interrogatory responses filed electronically as a single PDF file ("PDF file") on January 30, 2013 erroneously included the response to AMPCO IR No. 17(b). E.L.K. indicated that the response in question, Appendix AMPCO 17(b) and pertaining to a MEARIE salary survey, is a confidential item and should not form part of the publicly filed material. E.L.K. also noted that during the week of February 4, 2013 it would provide a redacted version of the PDF File, together with particulars on E.L.K.'s confidentiality request in respect to the MEARIE salary survey. E.L.K. also asked the parties to destroy their copies of the PDF file. For the time being, the Board has removed the PDF file from the public record. As the Board has not yet received any further communication from E.L.K. respecting the MEARIE salary survey the Board will, through a separate Procedural Order, establish a process to deal with the treatment of the MEARIE salary survey. Until this issue is resolved, parties are to treat the MEARIE salary survey as confidential.

E.L.K. indicated that it would be prepared to provide copies of Appendix AMPCO 17(b) to parties' counsel and consultants, subject to the same provisions regarding the other two interrogatory responses for which it requested confidentiality.

As an interim measure the Board will allow any external counsel or external consultant for the intervenors that wish to review the confidential information filed in response to AMPCO IR No. 17(l), SEC IR No.12 and AMPCO IR No. 17(b) to do so after signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board and serving it on E.L.K.

Intervenors and Board staff who object to E.L.K.'s requests for confidential treatment of any of the interrogatory responses shall file their submissions by February 14, 2013. Enersource shall file any reply submission by February 19, 2013. If the Board ultimately decides that the document(s) should not be afforded confidential treatment, they will be

placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, Enersource requests that the information be withdrawn.

Technical Conference and Settlement Conference

The Board will provide for a transcribed Technical Conference to be held on February 13, 2013 that will permit intervenors and Board staff to seek further information from E.L.K as a result of the interrogatory responses or to seek clarification of the interrogatory responses. Parties will confirm in advance of the Technical Conference the particular interrogatory responses (including sub-question responses) and/or related areas they will address or on which they will seek clarification at the Technical Conference. E.L.K. shall file responses to any undertakings arising from the Technical Conference by February 20, 2013. A Settlement Conference will follow on February 28, 2013. The Board reminds the intervenors that they should come to the Settlement Conference with their position(s) already prepared since only one day has been set aside for the Settlement Conference.

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. Intervenors and Board staff who object to E.L.K.'s claim for confidential treatment of the material so identified in the responses to AMPCO IR No. 17(I) and SEC IR No.12 shall file their submission with the Board and deliver it to all parties on or before **February 13, 2013**.
2. E.L.K shall file its response, if any, to the submissions of Board staff and the intervenors with the Board and deliver it to all parties by **February 19, 2013**.
3. A transcribed Technical Conference shall be convened on **February 13, 2013** starting at 9:30 a.m. The Technical Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto. Parties participating in the Technical Conference are requested to file with the Board, and copy E.L.K. and all other parties, by **February 11, 2013** confirmation of the particular

interrogatory responses and/or related areas they seek to address or on which they seek clarification at the Technical Conference.

4. E.L.K. shall respond to any undertakings given at the Technical Conference on or before **February 20, 2013**.
5. A Settlement Conference shall be convened on **February 28, 2012**, starting at 9:30 a.m., with the objective of reaching a settlement among the parties on the issues. The Settlement Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto.
6. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than **March 18, 2013**.

All filings to the Board must quote the file number, EB-2011-0099, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/service/>, 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.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, February 8, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary