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February 12, 2013

Delivered by Email

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: E.L.K. Energy Inc. – 2012 Cost of Service Distribution Rate Application
Board File No. EB-2011-0099**

We are counsel to E.L.K. Energy Inc. (“E.L.K.”), the Applicant in the above-captioned matter.

In Procedural Order No.3 in this matter, issued on Friday, February 8, 2013, the Board provided for submissions on E.L.K.’s request for confidential treatment in respect of items addressed in two of E.L.K.’s responses to Board Staff and intervenor interrogatories. One of those responses – to AMPCO Interrogatory 17(1) – included salary information related to the Director of Finance and Regulatory Affairs and the Manager of Finance and Regulatory Affairs positions. E.L.K.’s response indicated that this information constituted personal information that was protected from disclosure under the Board’s *Practice Direction on Confidential Filings* and Subsection 17(1) of the *Freedom of Information and Protection of Privacy Act*. The information was redacted from the public responses, and a confidential unredacted version has been provided to the Board.

The response included a statement that E.L.K. would be prepared to provide the redacted information in confidence to counsel and consultants who had executed the Board’s form of Declaration and Undertaking with respect to confidentiality, and the Board noted this in the Procedural Order. E.L.K. has determined that under Rule 9A of the Board’s *Rules of Practice and Procedure*, it is prohibited from doing so. Rule 9A.02 provides that “Neither the confidential, un-redacted version of the document nor the personal information contained in it will be provided to any other party, including a person from whom the Board has accepted a Declaration and Undertaking under the *Practice Directions*, unless the Board determines that either (a) the redacted information is not personal information, as that phrase is defined in the *Freedom of*

Information and Protection of Privacy Act, or (b) the disclosure of the personal information would be in accordance with the Freedom of Information and Protection of Privacy Act.”

E.L.K. will therefore not be in a position to provide the values requested in AMPCO Interrogatory 17(l) until the Board has made the necessary determination.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky

cc: Mark Danelon, Manager of Finance & Regulatory Affairs, E.L.K. Energy
Intervenors of Record

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