



**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. 4**  
**February 15, 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 on November 12, 2012. In Procedural Order No. 2 dated December 17, 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.

In Procedural Order No. 3 dated February 8, 2013 the Board, among other things, provided guidance regarding the treatment of the MEARIE salary survey (the "salary survey"). E.L.K. had filed the salary survey on the public record and circulated it to intervenors in response to AMPCO interrogatory 17(b); subsequently E.L.K. requested that the salary survey be treated as confidential, and then later requested that it be removed from the record (public or confidential) entirely. E.L.K. requested that the Board and parties destroy all copies of the response and not use in any form or disclose

the information contained there-in and that the Board direct parties that received copies of the salary survey to destroy them and confirm their destruction. E.L.K. also indicated that MEARIE, which had produced the salary survey, may have comments on the matter.

On February 11, 2013 counsel for the MEARIE Group ("MEARIE") filed a letter requesting that the Board destroy all copies of the salary survey in its power, possession or control and arrange for all others that copied the document from the Board to also destroy those copies.

The Board indicated in Procedural Order No. 3 that it would establish a process to consider these requests through a separate Procedural Order. The salary survey was removed from the public record as an interim measure, and the Board also stated that until the issue is resolved, parties that had been sent the salary survey were to treat it as confidential.

The Board now invites submissions on this matter. It appears that there are two issues. The salary survey was filed in direct response to an interrogatory. In requesting an order removing the document from the record entirely, and to have parties destroy the copy of the document sent to them, E.L.K. is in effect providing a refusal to answer the interrogatory. 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 E.L.K.'s request to have the document removed from the record entirely, and whether it should order all copies that were circulated to be destroyed.

The second issue is, in the event that the Board does not order the document removed from the record and all circulated copies destroyed, should the salary survey be treated as confidential? If so, what rules should govern access to the document? Parties making submissions on this issue are referred to the Board's *Rules of Practice and Procedure*, and the *Practice Direction on Confidential Filings*.

The Board notes that MEARIE is not an intervenor in this proceeding. However the Board will afford MEARIE the opportunity to make submissions on the two aforementioned questions if it chooses to do so.

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. Intervenor and Board staff shall file their submissions on the two questions identified above with the Board and deliver it to all parties on or before **February 25, 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 **March 4, 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](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, **February 15, 2013**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary