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July 5, 2013

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

**Re: Cost of Service Application EB-2012-0153  
Withdrawal Submission**

Dear Ms. Walli:

The Board issued its Decision and Rate Order on June 27, 2013. In the decision the Board invited NOW to make submissions with respect to permission to withdraw the Strategic Financial Plan, which NOW filed as its response to SEC's supplementary interrogatory 5-SEC-12s, if it is not accorded confidential treatment. Such submissions were to be filed with the Board and served on all other parties on or before July 5, 2013.

NOW hereby respectfully submits the attached submission.

Yours Truly,

**NORTHERN ONTARIO WIRES INC.**

Geoffrey Sutton, CPA CA  
Chief Financial Officer



## Withdrawal Submission

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These are the submissions of NOW with respect to its request that the Strategic Financial Plan, currently filed in confidence as part of the response to interrogatory 5-SEC-12s, be withdrawn from the record.

In NOW's respectful submission the circumstances of this particular proceeding support the withdrawal of the document from the record. In the alternative, however, given the manner in which this matter has progressed, NOW respectfully submits that the document could instead remain on the record on a confidential basis.

The Strategic Financial Plan was filed voluntarily by NOW in response to interrogatory 5-SEC-12s on the basis that it be granted confidential status; the production of the document was not, and has never been, the subject of an order for production by the Board.

Section 5.1.12 of the Practice Direction provides a 5-day window of opportunity for parties that have voluntarily produced documents on a confidential basis to withdraw the document from the record in the event that confidential status is not granted:

5.1.12. Where the Board has ordered that information that is the subject of a confidentiality request be placed on the public record or disclosed to another party, in whole or in part, the person who filed the information will, subject to section 5.1.13, have a period of 5 business days in which it may request that the information be withdrawn. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board.

Section 5.1.13 specifies that a request to remove a document from the record subsequent to a finding that confidential status will not be extended cannot be made in the event the document has been produced as a result of a Board order:

5.1.13. The ability to request the withdrawal of information under section 5.1.12 does not apply to information that was required to be produced by an order of the Board.

Read together, NOW respectfully submits, these two sections of the Practice Direction on Confidential Filings are clear that a document that has been filed voluntarily on a confidential basis can be withdrawn on request of the producing party within 5 days of the order denying confidential status without further justification; only if there was an earlier order requiring production of the document would such a withdrawal request fail.



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2 NOW submits that any interpretation of Rule 5.1.12 that requires a party to meet some test  
3 in order to withdraw a document from the record undermines the purpose of the Practice  
4 Direction as whole, which is to facilitate the efficiency of the Board's process in terms of  
5 creating a record, both public and confidential, that is relevant to the Board's mandate of  
6 setting rates.

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8 NOW and other parties routinely, NOW respectfully submits, file material requested  
9 through the interrogatory process without conceding its relevance or the requesting  
10 party's ability to compel the production of the document, in order to facilitate the  
11 application process as a whole. NOW and other such parties are encouraged to do this in  
12 part because they are able to seek confidential status for documents and information that,  
13 in the absence of such treatment, they would be compelled to object to producing at all.

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15 If it were the case that parties such as NOW were not able to automatically withdraw  
16 documents that the Board did not extend confidential status to then NOW and other parties  
17 would be placed in the position of having to *ab initio* refuse to produce such documents at  
18 all in order to properly preserve all their rights with respect to the document. Section  
19 5.1.12 of the Practice Direction would become meaningless, as all documents that a party  
20 would refuse to produce voluntarily unless they were afforded confidential status would,  
21 by necessity, be refused for production unless compelled by Board order.

22  
23 In the present case, by way of example, NOW would have been compelled to simply refuse  
24 to produce the document in order to protect all of its procedural rights with respect to the  
25 document. SEC or another party would then have been compelled, if they were so inclined,  
26 to file a motion with the Board to compel production of the document; by necessity the  
27 settlement conference would have either been delayed in order to determine the motion  
28 for production (and costs incurred by all parties to accommodate that additional process),  
29 or the parties would have had to proceed to settlement without having seen the Strategic  
30 Financial Plan at all. In NOW's view the ability to produce documents on a confidential  
31 basis in the first instance and the automatic ability to withdraw such documents under  
32 Section 5.1.12 operate to avoid precisely such a scenario when possible.

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34 Accordingly, in NOW's respectful submission, it is clear in these circumstances that NOW is  
35 entitled under Section 5.1.12 to withdraw the document.

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37 That is not to say that there are no consequences relating to the withdrawal of a document.  
38 NOW concedes that in the normal course the refusal to produce a document may attract a  
39 negative inference as a result of the refusal; alternatively SEC or another party would be at  
40 liberty to make a motion to compel production of the document.



1 However in this case there has been a full settlement on all issues and that settlement has  
2 been approved by the Board, all without any assurance that the document would be placed  
3 on the public record or, for that matter, on the record at all, as the confidential status of the  
4 document and the possibility of its withdrawal were both live issues when the settlement  
5 proposal was filed with the Board. Accordingly, NOW respectfully submits, the issue of the  
6 production of this particular document in this particular proceeding has become moot; the  
7 Board has determined just and reasonable rates for NOW prior to determining whether the  
8 Strategic Financial Plan should be compelled for production.

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10 Having said that, and in consideration for the particular circumstances surrounding the  
11 resolution of the rate proceedings prior to the resolution of this particular production  
12 issue, NOW would respectfully suggest that it would be a reasonable compromise to allow  
13 the document to be placed on the record on a confidential basis, rather than possibly  
14 subject the proceeding to a production motion in a proceeding that has already been  
15 settled on a comprehensive basis.

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17 All of which is respectfully submitted this 5th day of July, 2013