

**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

November 1, 2013

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Brantford Power Inc.  
2013 Distribution Rate Application  
Confidentiality Request  
Board File No. EB-2012-0109**

In accordance with Procedural Order No. 3, please find attached Board staff's submission in the above noted matter.

Yours truly,

*Original Signed By*

Martha McOuat  
Project Advisor  
Electricity Rates Applications

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

Brantford Power Inc.  
Request for Confidentiality

EB-2012-0109

**November 1, 2013**

**Board Staff Submission  
Brantford Power Inc.  
Request for Confidentiality  
EB-2012-0109**

**Introduction**

On October 23, 2013, Brantford Power Inc. ("BPI") filed its responses to interrogatories. By letter of October 23, 2013, BPI requested that three of its interrogatory responses be kept confidential pursuant to Rule 10.01 of the Board's *Rules of Practice and Procedure*. In accordance with the Board's Practice Direction on Confidential Filings (the "Practice Direction") BPI filed a hard copy of the proposed confidential material in unredacted form along with a cover letter setting out its request for confidentiality on all parties to the proceeding.

On October 28, 2013, the Board issued Procedural Order No. 3 wherein it granted the confidentiality request on an interim basis and allowing for parties to file submissions on the confidentiality request.

While the Board's general policy as stated in its Practice Direction is that all evidence should be on the public record, the Board has also recognized that some information may be of a confidential nature and should be protected.

In summary, BPI's confidentiality request relates to the following:

- Interrogatory 4.0 Staff 19a) requests an explanation of the components of a 2012 cost driver of \$217k for amounts owed in relation to a retirement. BPI states that the amount relates to retirement payment(s) to one or more identifiable individuals.
- Interrogatory 4.0 Staff-20 requests salary, wage and benefits information for BPI employees for the years 2008 to 2013, excluding amounts paid to service providers. BPI states that for the period from 2008 to the time of reorganization in 2012, it only had one employee.

In support of its request for confidential treatment, BPI submitted that under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") personal information means recorded information about an identifiable individual, including, among other things, information relating to financial transactions in which the individual has been involved. Section 4.3.1 of the Board's Practice Direction states that subject to limited

exceptions, the Board is prohibited from releasing personal information, as that phrase is defined in FIPPA. BPI has indicated that, in both 4.0 Staff-19a) and 4.0 Staff 20, the requested information relates to financial information specific to identifiable individuals.

Board staff agrees with BPI that the information should be treated as confidential and provided only to participants that have signed the Board's Declaration and Confidentiality Undertaking in accordance with the *Practice Direction*.

- Interrogatory 5.0 SEC-18 requested that BPI provide all outstanding debt instruments not already provided in evidence. In its response, BPI obtained consent and provided the debt instrument from Infrastructure Ontario. The remaining third party lender was RBC, which did not provide consent to public disclosure of its loan agreement with BPI. In declining to provide the loan agreement in response to the interrogatory, BPI filed a letter from RBC outlining RBC's reasons for requesting confidential treatment of the document, as follows:
  - a) disclosure of the Loan Agreement publicly would negatively impact negotiations between RBC and other similar clients who may request similar terms and pricing;
  - b) RBC does not want pricing disclosed to competitors;
  - c) the Loan Agreement contains references to the names of third parties who have not consented to the public disclosure of their private information;
  - d) the Loan Agreement contains certain standard clauses which RBC has developed and which are unique to RBC which RBC does not want competitors to have access to;
  - e) the Loan Agreement contains certain proprietary information; and
  - f) the Loan Agreement contains certain aspects of RBC's lending model which RBC does not want competitors to have access to."

BPI's confidentiality request references Appendix B of the Practice Direction, which includes "third party information as described in Section 17(1) of FIPPA, including vendor pricing information" as the type of information for which confidentiality has been granted.

Board staff agrees that the proposed confidential material contains information or models that are proprietary to RBC, or information that could prejudice its competitive position or interfere significantly with its contractual or other negotiations. As such Board staff submits the RBC loan agreement should be treated as confidential and provided only to participants that have signed the Board's Declaration and Confidentiality Undertaking in accordance with the *Practice Direction*.

- All of which is respectfully submitted –