

**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
27^e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

October 23, 2015

Kirsten Walli
Board Secretary and Manager
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Guelph Hydro Electric Systems Inc.
Application for Rates
OEB File Number EB-2015-0073**

On October 20, 2015, Guelph Hydro Electric Systems Inc. (Guelph Hydro) filed a settlement proposal with respect to its 2016 Cost of Service application for rates effective January 1, 2016. The settlement proposal represents a full settlement on all issues. A decision on the settlement proposal has yet to be issued. The parties to the settlement proposal are Guelph Hydro and the following approved intervenors in the proceeding: Energy Probe Research Foundation (EP), School Energy Coalition (SEC) and the Vulnerable Energy Consumers Coalition (VECC).

While the deadline for submissions in this proceeding has passed, OEB staff considers it necessary to point out one aspect of the settlement proposal that has recently also appeared in another proceeding that followed this one.¹ In the other subsequent proceeding, and any others that may follow, OEB staff plans to make submissions on this particular issue. In order to be consistent, OEB staff is bringing it to the attention of the panel in this proceeding as well.

The settlement proposal in this proceeding includes the following language:

¹ EB-2015-0108

The role adopted by OEB staff is set out in page 5 of the Guidelines. Although OEB staff is not a party to this Settlement Proposal, as noted in the Guidelines, OEB staff who did participate in the settlement conference are bound by the same confidentiality and privilege rules that apply to the Parties to the proceeding. [Emphasis added]

And,

*These settlement proceedings are subject to the rules relating to **privilege** contained in the Guidelines. The Parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the settlement conference are strictly **privileged** and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal. [Emphasis added]*

While the first above-quoted paragraph seems to acknowledge that OEB staff and parties are “bound by the same *confidentiality and privilege* rules”, the second paragraph refers only to “rules relating to privilege contained in the Guidelines”. OEB staff considers it necessary to point out that the OEB document is now called the “Practice Direction on Settlement Conferences” (Practice Direction) and it does not contain any rules relating to “privilege”. The Practice Direction refers to ‘confidentiality’ and **not** the term ‘privilege’.

“Privilege” is a fairly narrow legal doctrine that protects specific categories of information from disclosure in court (or a tribunal). It is OEB staff’s view that the purpose of the confidentiality provisions in the OEB Rules of Practice and Procedure² and the Practice Direction³ is to allow parties in the settlement conference to conduct discussions on a

² The Rules of Practice and Procedure, as amended April 24, 2014 state:

29.09 All persons attending an ADR conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference, except as may be agreed.

29.10 Admissions, concessions, offers to settle and related discussions shall not be admissible in any proceeding without the consent of the affected parties.

³ Practice Direction on Settlement Conferences, April 24, 2014, page 4 states:

Confidentiality

Everyone who attends a settlement conference must treat omissions, concessions, offers to settle and related discussions as confidential and must not reveal any such information outside the conference. In addition, admissions, concessions, offer to settle

without prejudice basis but to also protect the confidentiality of information exchanged in the settlement conference that is not on the public record of the proceeding.

OEB staff are of the view that it would be helpful for the panel to hear submissions from the parties to the settlement proposal and OEB staff on the appropriateness of these paragraphs.

Yours truly,

Original Signed By

Lynne Anderson
Vice President, Applications

and related discussions will not be admitted in any Board proceeding without the consent of parties who are affected. Where necessary to support the rationale for a settlement proposal, factual information and evidence may be disclosed to the Board³.

Role of Board Staff

Board staff who participate in the settlement conference in any way are bound by the same confidentiality standards that apply to the parties to the proceeding. In particular, staff will not discuss the content of the settlement proposal or the process by which the settlement was reached with the Board panel hearing the case.