



BY EMAIL and RESS

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2300 Yonge Street
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February 18, 2021
Our File: EB20200007

Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2020-0007 – Burlington Hydro Inc. – SEC Request For Production

We are counsel to the School Energy Coalition ("SEC"). We write in response to Burlington Hydro Inc.'s ("BHI") letter dated February 17, 2021.

As BHI noted in its letter, in response to certain interrogatories¹, it had indicated it was unable to provide copies of three reports because it had entered into non-disclosure agreements with third-party providers. After reconsidering the matter upon request from SEC, BHI is now prepared to file the reports, and sought consent from those third-party providers. With respect to two reports, a) 2020 MEARIE Management Salary Survey, b) Korn Ferry 2019 Management and Non-Union Employee Pay Report, it did not receive the necessary consent.

SEC requests the Board order BHI to produce copies of these two reports on the record in this proceeding, and preferably, before the commencement of the Settlement Conference beginning Monday, February 22nd. BHI's only objection to filing the reports is that they are unable to do so due to non-disclosure agreements it has signed with MEARIE and Korn Ferry. BHI does not dispute the relevance of the reports, and had indicated that, but for the non-disclosure agreements and its inability to obtain consent, it is prepared to file the reports on a confidential basis.

The Board has said on numerous occasions that non-disclosure agreements are not a valid basis for non-disclosure of relevant documents.² In fact, this very issue was adjudicated in the context of BHI's

¹ Interrogatory Responses 1-SEC-3, 4-Staff-53(a),(d)

² For example: [Decision and Order on Confidentiality and Motion \(EB-2013-0416\), August 25, 2014](#), p.5:

"The Board has confirmed many times that a confidentiality agreement between a regulated utility and a service provider does not prevent the Board from requiring disclosure of information on the public record".

See also, [Decision on Phase 1 Partial Decision and Order: Production of Documents \(EB-2011-0140\), June 14, 2012](#); [Decision on Confidentiality \(EB-2011-0123\), August 19, 2011](#), p. 3; [Motion Hearing Transcript \(EB-2012-0031\), October 23, 2012](#), p.28



last cost of service application (EB-2013-0115) on a motion brought by SEC regarding a similar MEARIE benchmarking report.³ In its decision ordering production, the Board stated:

Distributors cannot limit or exclude the Board's jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process.⁴

The same rationale applies to BHI and the reports at issue in this proceeding.

SEC submits that the Board should order BHI to provide the two reports at issue. If the Board orders production, SEC does not object to the documents being treated as confidential pursuant to the *Practice Direction on Confidential Filing* on an interim basis.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and intervenors (by email)

³ [*Decision and Order on Confidentiality \(EB-2013-0115\), March 29, 2014*](#), p.2

⁴ [*Procedural Order No.4 \(EB-2013-0115\), March 19, 2014*](#), p.3