



Burlington Hydro Inc.

**Application for electricity distribution rates beginning
May 1, 2021**

**PROCEDURAL ORDER NO. 3
February 19, 2021**

Burlington Hydro Inc. (Burlington Hydro) filed a cost of service application with the Ontario Energy Board (OEB) on October 30, 2020, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Burlington Hydro charges for electricity distribution, beginning May 1, 2021.

In responses to interrogatories 1-SEC-2 and 4-Staff-53, parts (a) and (d), Burlington Hydro indicated that it was unable to provide the following three reports because it had entered into non-disclosure agreements with the report providers:

1. 2020 MEARIE Management Salary Survey (Report 1)
2. Korn Ferry 2019 Management and Non-Union Employee Pay Report (Report 2)
3. 2016 Willis Towers Watson Incentive Program Review (Report 3)

School Energy Coalition (SEC), one of the OEB-approved intervenors in this proceeding, requested Burlington Hydro reconsider its position and provide copies of these three reports as soon as possible.

By a letter dated February 17, 2021, Burlington Hydro filed a redacted version of Report 3 on the public record. Burlington Hydro stated that the redacted information related to incentive pay associated with specific positions. In Burlington Hydro's view, the redacted information from Report 3 constitutes "personal information" as defined in the *Freedom of Information and Protection of Privacy Act* (FIPPA) and thus should not be provided to any party, including a person who has provided a Declaration and Undertaking pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice

Direction)¹. Regarding Reports 1 and 2, Burlington Hydro stated that it was prepared to file these reports in confidence but did not receive consent from the report providers.

By a letter dated February 18, 2021, SEC wrote to the OEB requesting Burlington Hydro be ordered to file copies of Reports 1 and 2 on the record in this proceeding, preferably before the commencement of the Settlement Conference beginning on Monday, February 22, 2021. SEC stated that the OEB has said on numerous occasions that non-disclosure agreements are not a valid basis for non-disclosure of relevant documents. SEC further stated that it did not object to Reports 1 and 2 being treated as confidential pursuant to the Practice Direction on an interim basis.

Findings

As soon as possible, Burlington Hydro shall file with the OEB, and provide to intervenors that have executed a Declaration and Undertaking, copies of Reports 1 and 2. Consistent with the Practice Direction, the copies of Reports 1 and 2 provided to (i) the OEB should be unredacted; and (ii) intervenors should be redacted to remove any “personal information” (if applicable). In the covering letter providing Reports 1 and 2 to the OEB, Burlington Hydro should identify the parts of the Reports for which confidential treatment is sought and provide its submissions as to why confidential treatment for such information is appropriate. The cover letter is to be filed on the public record and provided to all intervenors.

In a previous proceeding involving Burlington Hydro, the OEB explained that:

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.²

The same reasoning applies in this proceeding. The OEB does not accept that Reports 1 and 2 can be withheld from intervenors or the OEB based on private agreements with third parties.

¹ Practice Direction on Confidential Filings, October 28, 2016, Page 6

² EB-2013-0115, Burlington Hydro Inc., Procedural Order No.4, March 19, 2014, page 4.

Given that there may confidential information within Reports 1 and 2, these two reports are to be treated as confidential on an interim basis. This will provide parties an opportunity to make submissions on the confidentiality claims. Any submissions from parties on the confidentiality claims of Reports 1-3 should be filed in accordance with the schedule set out in the OEB's Decision on Issues List and Procedural Order No. 2 (Procedural Order No.2).

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. Burlington Hydro shall file with the OEB Reports 1 and 2 in full as soon as possible.
2. Burlington Hydro shall provide copies of Reports 1 and 2 to intervenors that have executed a Declaration and Undertaking as soon as possible. Burlington Hydro shall redact any "personal information" contained in Reports 1 and 2 from the copies to be provided to intervenors.
3. Parties that wish to file written submissions on the confidentiality requests (five interrogatories identified in Procedural Order No. 2 and three reports identified in this Procedural Order No.3) from Burlington Hydro shall file such submissions with the OEB and deliver them to all other parties on or before **February 26, 2021**.
4. If Burlington Hydro wishes to file a reply to any submissions of parties on the confidentiality requests (five interrogatories identified in Procedural Order No. 2 and three reports identified in this Procedural Order No.3), the reply submissions must be filed with the OEB and delivered to all parties on or before **March 5, 2021**.

All materials filed with the OEB must quote the file number, **EB-2020-0007**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document](#)

[Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Shuo Zhang, at Shuo.Zhang@oeb.ca and OEB Counsel, Lawren Murray, at Lawren.Murray@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **February 19, 2021**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar