



Ontario
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BY EMAIL

February 26, 2021

Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Burlington Hydro Inc.
Application for Rates
Ontario Energy Board (OEB) File Number: EB-2020-0007
OEB Staff Submission on Confidentiality**

In accordance with Procedural Order No.3, please find attached OEB staff's submission on the confidential request in the above noted proceeding.

Yours truly,

Shuo Zhang
Case Manager

Attach.

2021 COST OF SERVICE APPLICATION

BURLINGTON HYDRO INC.

EB-2020-0007

OEB STAFF SUBMISSION ON CONFIDENTIALITY

FEBRUARY 26, 2021

Introduction

Burlington Hydro Inc. (BHI) filed a cost of service application (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.

As part of its interrogatory responses, BHI requested confidential treatment of five documents where redactions were made pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction).¹

1. 2-Staff-17
2. CCC-13
3. DSP-DRC-4
4. 2-SEC-14
5. 4-VECC-46

In its responses to interrogatories 1-SEC-2 and 4-Staff-53, BHI further indicated that it was unable to provide copies of the following three compensation benchmarking reports as requested 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. Regarding Reports 1 and 2, Burlington Hydro stated that it was prepared to file these reports in confidence and asked the report providers for their consent to do so but it is not forthcoming.

In its Procedural Order (PO) No. 3 dated February 19, 2021, the OEB found that Reports 1 and 2 cannot be withheld from intervenors or the OEB based on private agreements with third parties. The OEB directed BHI to file with the OEB Reports 1 and

¹ Ontario Energy Board, Practice Direction on Confidential Filings, October 28, 2016.

2 in full, and to provide intervenors who have executed a Declaration and Undertaking copies of Reports 1 and 2 with any “personal information” redacted.

By a letter dated February 22, 2021, BHI advised parties that it had identified another response report (Report 4) which was inadvertently neglected in its interrogatory responses. In that letter, BHI stated that Report 1 contains no personal information. BHI identified certain information in Reports 2 and 4 that it identified as being “personal information”. Full un-redacted versions of Reports 1, 3 and 4 were provided to the OEB.

In accordance with PO No. 3, OEB staff makes its submissions on the confidentiality requests of interrogatory responses and compensation benchmarking reports.

OEB Staff Submission

Interrogatory Responses

BHI explained that the redacted information in Interrogatory Responses to 2-Staff-17 and 2-SEC-14 constitutes information regarding calculations and settings configured within the Evaluation Tool, which was developed by a third-party consultant. BHI submitted that the redacted information is proprietary information that represents commercial and technical material. OEB staff notes that the redacted information consists of detailed assumptions, data, and calculations within the Evaluation Tool. OEB staff does not oppose the requested confidential treatment of these two pieces of information.

In Interrogatory Responses to CCC-13 and DSP-DRC-4, BHI has redacted information related to its customer engagement services provided by Innovative Research Group (Innovative). In Interrogatory Response CCC-13, BHI requested to redact the expected total cost of the customer engagement services. BHI submitted that disclosure of the project cost could reasonably be expected to significantly prejudice and interfere in Innovative’s negotiating position on future engagements with other local distribution companies. In Interrogatory Response 3, BHI has redacted certain information regarding project details and timelines as filed in the written instructions for customer engagement activities. BHI submitted that disclosure of the project details could reasonably prejudice Innovative’s competitive position and approach to customer engagement.

OEB staff notes that similar information was publicly available in previous OEB proceedings. For example, in its recent rate proceeding, Hydro Ottawa Limited (Hydro Ottawa) disclosed its total service cost for its customer engagement activities provided

by Innovative in interrogatory responses.² Hydro Ottawa also provided the statement of work including project details and timelines of customer engagement activities.³ Given the public disclosure of same types of information in other proceedings, OEB staff is not persuaded that disclosure of such information can be expected to prejudice Innovative's competitive position.

BHI has redacted the cost of the Evaluation Tool and Prioritization Tool in Interrogatory Response to 4-VECC-46. BHI did not provide reasons supporting the requested redaction. The principle that underlies the Practice Direction is that the placing of materials on the public record is the rule and the onus is on the party requesting confidentiality to demonstrate that confidential treatment is warranted in any given case. BHI has not explained why these discrete numbers should be afforded confidential status and as such this information should be placed on the public record.

Compensation Benchmarking Reports

BHI has proposed to file partially redacted versions of Reports 2, 3 and 4. BHI explained that redactions relate to two types of information:

1. Personal Information – compensation information associated with specific positions and individuals.
2. Korn Ferry's Company Database – the list of companies contained in Korn Ferry's "All Industrial Market" and "Ontario Utilities Market" database.

With respect to the "personal information" redactions, BHI submitted that the compensation information associated with specific individuals 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.

OEB staff notes that subject to limited exceptions, the OEB is prohibited from releasing "personal information" as that phrase is defined in FIPPA. OEB staff acknowledges that the regulated entity, in this case BHI, should be best positioned to identify "personal information" that may be contained in their filings and to explain the basis for that assessment if needed. This is reflected in the approach to filings that contain personal information as set out in Rule 9A of the OEB's *Rules of Practice and Procedure* (Rules) and the Practice Direction, which place the onus on regulated entities to redact personal

² EB-2019-0261, Hydro Ottawa Limited 2021-2025 Custom IR Application, CCC-15, June 5, 2020.

³ EB-2019-0261, Hydro Ottawa Limited 2021-2025 Custom IR Application, Attachment CCC-33(A), June 5, 2020.

information from their filings.⁴ OEB staff's view is that the framework for dealing with personal information anticipates that the OEB will generally rely on redactions and any explanations made by a regulated entity for the purposes of complying with Rule 9A.

OEB staff agrees that information which discloses or will along with already available information allow someone to ascertain, the actual compensation/salary for a specific BHI employee qualifies as "personal information". However, the redactions proposed by BHI go beyond information that would reveal the compensation/salary amount of a specific employee, and the basis for those redactions is not clear to OEB staff. For example, BHI has redacted the phone number and email address of a Korn Ferry employee and the names of a number of BHI employees in Report 2.⁵ This information appears to fit within the "business identity information" exception set out in section 2(3) of FIPPA. Section 2(3) states that "[p]ersonal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity."

In its reply submission, it would be of assistance for BHI to explain the basis for redacting information as "personal information", beyond information that reveals an individual employee's actual compensation/salary,⁶ with reference to how the redacted information fits within the definition of "personal information" set out in section 2 of FIPPA. Should BHI take the position that the information should be redacted for other reasons (and not because it is "personal information"), BHI should provide an explanation of those reasons in its reply.

That having been said, OEB staff also notes that, in its view, the information that BHI has redacted does not appear to be necessary to adjudicate this matter and therefore is not opposed for this information to be redacted and not maintained in unredacted form on the record of this proceeding.

With respect to Korn Ferry's company database, BHI noted Korn Ferry's position that such information should be permanently redacted. Although in BHI's view, the list of participants does constitute proprietary confidential information, BHI stated that it takes no position and will abide by any OEB direction in this regard.

⁴ The importance of complying with these rules was recently reinforced in correspondence to regulated entities. See the [Letter to All Regulated Entities re: Personal Information in Applications and Other Filings](#), September 28, 2020.

⁵ Similar redactions have been made in Report 4 except that the name of BHI's employee (CEO) is not redacted.

⁶ This would include the variance of a specific individual employee from the compensation of that employee's comparator group (assuming the amount(s) for the comparator groups are disclosed).

OEB staff is aware of lists of participants in compensation benchmarking studies disclosed on the public record in other proceedings. For example, Hydro One Networks Inc. filed un-redacted versions of its compensation cost benchmarking studies prepared by Willis Towers Watson and Mercer in its recent transmission rate application.⁷ These studies include the disclosure of a complete list of participating organizations. Given the public disclosure of same types of information in other proceedings, OEB staff submits that the list of companies contained in Korn Ferry's database should be disclosed on the public record.

In its February 22, 2021 letter, BHI did not state whether it asserts confidentiality claims over any part of Report 1. To the extent that BHI raises such claims in its reply submission, OEB staff notes that the OEB has ordered MEARIE reports be placed on the public record in other proceedings.⁸

All of which is respectfully submitted

⁷ EB-2019-0082, Hydro One Networks Inc. 2020-2022 Custom IR Application, Exhibit F-4-1, Attachment 1, 2 and 3, March 21, 2019.

⁸ EB-2011-0099, Decision on Confidentiality, March 13, 2013, p. 6.; EB-2013-0115/EB-2013-0159/EB-2013-0174, Decision and Order on Confidentiality, May 29, 2014, pp. 7-8, 11.