



**BY EMAIL and RESS**

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2300 Yonge Street  
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February 26, 2021  
Our File: EB20200007

**Attn: Christine Long, Registrar**

Dear Ms. Long:

**Re: EB-2020-0007 – Burlington Hydro Inc. – Confidentiality Submission**

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Orders No. 2 and 3, these are SEC's submissions on the request by Burlington Hydro Inc. ("BHI") for confidential treatment for certain interrogatory responses pursuant to the *Practice Direction on Confidential Filings*.

**CCC-13, DRC-4(a).** BHI claims confidentiality over these two interrogatories on the basis that they would prejudice Innovative Research Group's ("Innovative") competitive position. SEC submits there is no prejudice, and similar information, including with respect to Innovative's customer engagement costs and work plans, are regularly provided on the public record in Board proceedings.<sup>1</sup> The cost information contained in the interrogatory responses are only the total project costs, and not a breakdown of each component, which the Board has previously treated as confidential.<sup>2</sup> Public disclosure of the total cost and the project work plan is not prejudicial to Innovative as the pricing of any specific project is likely based on a multitude of individualized factors.

**4-VECC-46(a).** Similar to SEC's position with respect to Innovative's costs, SEC does not understand how the total cost of the acquisition of the MESTCO Program Evaluation Tool and Prioritization Tool would be prejudice to METSCO's competitive position. BHI bears the onus in demonstrating that confidentiality is warranted, and it has not done so. It is not sufficient to simply assert that there may be prejudice, it must explain how.

**2-Staff-17(c); 2-SEC-14 b).** BHI seeks confidentiality over information contained in parts of two interrogatory responses related to various calculations and assumptions that are used in the METSCO Evaluation Tool, which BHI uses in its project prioritization process. BHI claims that this information is

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<sup>1</sup> See for example, EB-2019-0032, Response to Interrogatory [1-CCC-3](#), and [1-VECC-1](#); EB-2019-0261, Response to Interrogatory [4-VECC-75](#); EB-2018-0028, Response to Interrogatory [1-VECC-3](#); EB-2017-0039, Response to Interrogatory [1-VECC-9](#)

<sup>2</sup> See for example EB-2019-0082, Response to Interrogatory [CME-12](#) where individual cost components are redacted but not total cost. See also EB-2019-0261 Interrogatory Response [1-DRC-7](#) where a copy of an Innovative Statement of Work/Instructions were provided.

proprietary as it consists of the trade secret or financial, commercial, scientific, or technical material that are consistently treated in a confidential manner by the person providing it to the Board. SEC submits the underlying assumptions and calculations used for the purpose of capital project prioritization tools are regularly placed on the public record and usually are included in a utility's DSP. SEC does not understand the basis for BHI's claim as it has not explained why the information is a trade secret, or cited any previous proceeding where this type of information has been treated as confidential. Unless BHI is able to provide further information to substantiate its claim, the request for confidentiality should be denied.

**2020 MEARIE Management Salary Survey.** SEC notes that previous versions of the report have been placed on the public record in previous Board proceedings. This includes BHI's last cost of service application where the Board specifically denied confidentiality treatment to a similar MEARIE salary benchmarking report.<sup>3</sup> At the same, SEC does recognize that the Board has in other proceedings treated "off the shelf" benchmarking reports as confidential.<sup>4</sup>

**Korn Ferry 2019 Management and Non-Union Employee Pay Report.** SEC submits there are two separate issues with respect to the Korn Ferry report.

First, SEC does agree that the report should be treated as confidential. The report appears to have been commissioned by BHI and specifically prepared for its use. On that basis it would appear to have limited value, if any, to any other perspective Korn Ferry client, and so would not harm its competitive position. The report is not an "off the shelf" product that Korn Ferry sells to other utilities similar to the 2020 MEARIE Management Salary Survey. Utility specific compensation benchmarking studies are regularly filed and placed on the public record in Board proceedings.

Second, SEC requests the Board carefully review the material to ensure that non-personal information has not been inappropriately redacted. SEC raises this issue because on its face it appears that BHI has redacted information that clearly includes more than just personal information. BHI's own letter of February 22, 2021 states that it had made redactions to non-personal information at Korn Ferry's urging with respect to "All Industrial Market" and "Ontario Utilities Market" listing of companies and information. SEC submits that by redacting that information, even from the confidential version of the material, it has breached the terms of Procedural Order No. 3. The Board's order was clear that only personal information should be redacted from the version sent to other parties who had signed the Board's Declaration and Undertaking. Yet, BHI has redacted much more on the request of Korn Ferry. This is inappropriate.

Yours very truly,  
**Shepherd Rubenstein P.C.**

Mark Rubenstein

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

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<sup>3</sup> [Decision and Order on Confidentiality \(EB-2013-0115\), May 29, 2014](#), p.7

<sup>4</sup> For example, see [Decision and Order on Notice of Motion \(EB-2014-0116\), February 11, 2015](#), p.10-11