



Ontario
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BY EMAIL

July 14, 2021

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

Dear Ms. Long:

**Re: Brantford Power Inc.
2022 Cost of Service Application
Ontario Energy Board (OEB) File Number: EB-2021-0009
OEB Staff Submission on Confidentiality**

Please find attached OEB staff's submission on the confidentiality requests in the above referenced proceeding, pursuant to Procedural Order No.1.

Yours truly,

Georgette Vlahos
Advisor – Electricity Distribution: Major Rate Applications & Consolidations

Attach.

2022 COST OF SERVICE APPLICATION

BRANTFORD POWER INC.

EB-2021-0009

OEB STAFF SUBMISSION ON CONFIDENTIALITY

JULY 14, 2021

Introduction

As part of its cost of service application (Application) filed on May 12, 2021, Brantford Power filed the following documents in confidence pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction)¹ and the OEB's *Rules of Practice and Procedure* (Rules):²

1. Attachment 4-K: Unredacted Korn Ferry Compensation Presentation (Attachment 4-K)
2. Attachment 4-M: Confidential Compensation Schedule (Attachment 4-M)

With respect to the first item, Brantford Power filed both a non-confidential redacted version and a confidential unredacted version of Attachment 4-K. Brantford Power requests that the unredacted version be kept confidential and not disclosed even to parties that sign the OEB's form of Declaration and Undertaking. Brantford Power stated that this document contains personal information.

With respect to Attachment 4-M, Brantford Power is requesting confidential treatment for the entirety of the document and no redacted version has been provided. Brantford Power stated that it will provide a full copy to individuals who have executed and delivered the OEB's form of Declaration and Undertaking regarding confidential material, subject to Brantford Power's right to oppose any request for access to the confidential materials.³

Attachment 4-K: Unredacted Korn Ferry Compensation Presentation

This document is a presentation made by a compensation consulting firm, Korn Ferry, which outlines the job evaluation process update used by Korn Ferry to evaluate each of Brantford Power's non-union positions (including executive level and non-union group management group (BPPAE)), the salary ranges targeted and salary changes per position, the associated salaries for each position. It also discusses Korn Ferry's suggested changes and implementation including the levels of short-term variable pay for each level.⁴

¹ Ontario Energy Board, Practice Direction on Confidential Filings, Revised February 17, 2021

² Ontario Energy Board, Rules of Practice and Procedure, Revised February 17, 2021

³ EB-2021-0009, Brantford_ConfidentialityREQ_CoS Appl_20210512, Page 1, May 12, 2021

⁴ *Ibid*, Page 3

Brantford Power stated that the redacted information contains personal information, namely position-specific salaries, salary ranges and other compensation-related items. Brantford Power also noted that, for the majority of the positions in the non-union group, there is only one incumbent within each, thereby making the information for each position identifiable to a specific individual.

Brantford Power submitted that the redacted information in Attachment 4-K should be treated as confidential pursuant to section 4.3.1 of the OEB's Practice Direction and consistent with the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Attachment 4-M

This document contains the compensation increases budgeted for Brantford Power's union groups, as well as the non-union management group, and includes the budgeted adjustment rates for employee groups in 2021 and 2022.

Brantford Power submitted that the information in Attachment 4-M is confidential as it contains labour relations information which could reasonably be expected to prejudice the utility's competitive position, interfere significantly with contractual negotiations, and result in significant undue loss or gain to the utility and its employee groups. Brantford Power indicated that confidential treatment of this information corresponds to sections (a) i, (a) iii, and (a) iv of Appendix A of the OEB's Practice Direction.⁵

Brantford Power stated that it is entering contractual negotiations with one of its employee groups and disclosure of the budgetary provisions for labour cost increases and compensation strategy could compromise the collective bargaining process and place the utility in a disadvantageous position.

In Procedural Order No. 1⁶ the OEB made provision for submissions on Brantford Power's request for confidentiality for Attachment 4-M, and its request to not disclose the redacted information in Attachment 4-K to parties that sign the OEB's Declaration and Undertaking. OEB staff's submissions on each document follow.

⁵ *Ibid*, Page 2

⁶ Issued June 30, 2021

OEB Staff Submission

Attachment 4-K

OEB staff notes that the Practice Direction requires the person filing a document containing personal information to file two versions of the document in accordance with Rule 9A of the Rules. Rule 9A.02 provides that the onus to redact personal information is on the person filing the document. The confidential, unredacted version of the document will not be provided to any other party, including a person from whom the OEB has accepted a Declaration and Undertaking under the *Practice Direction* unless the OEB determines that a) the redacted information is not personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, or (b) the disclosure of the personal information would be in accordance with the *Freedom of Information and Protection of Privacy Act*.⁷

It is not clear to OEB staff whether all of the redacted information on Attachment 4-K is personal information as defined in FIPPA. Section 2(1) of FIPPA defines “personal information” as certain types of information about an *identifiable individual*.⁸ It is not clear to OEB staff that all of the redacted information relates to identifiable individuals and therefore constitutes personal information.

OEB staff notes that the only significant redaction of Attachment 4-K is slide 14 which is titled “Grading - Results”.

The unredacted text on the preceding slide (page 13 of Attachment 4-K) states:

- “Generally, organizations will group jobs together if similar size (i.e. similar internal worth) such that they will have the same pay opportunity. This eliminates unique pricing points for all jobs / individual administration.
- The banding was formed in 2014 for BPI and still “fits” the distribution of jobs within the organization.
- Some jobs (2) have increased their accountabilities and as a result have moved up in the organization structure. Other jobs (3) are new and have been evaluated for the first time.

⁷ Rules of Practice and Procedure, Rule 9A.02, Page 6 and Practice Direction, section 4.3.1

⁸ *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, CHAPTER F.31 (FIPPA), Section 2(1) (Definitions)

- As additional consideration, KF provided some insight on typical job names within the market and some titles have been adjusted.”⁹

The unredacted text on slide 14 also states:

- “The banding was formed in 2014 for BPI and still “fits” the distribution of jobs within the organization. The outcome of the evaluation review is as follows:”

(redacted text).¹⁰

To the extent that the redacted information on slide 14 relates to the job bands or grades of identifiable Brantford Power employees, OEB staff agrees that information which discloses or would allow someone, along with already available information, to ascertain the actual compensation for a specific employee constitutes “personal information” and must not be disclosed. For example, if there was only one employee for a given job band and the employee’s identity is ascertainable, then it would amount to personal information which the OEB has prevented from public disclosure in previous decisions.¹¹

However, to the extent that information about job bands and associated compensation does not relate to an identifiable individual, OEB staff believes that such information does not constitute personal information and should be placed on the public record. For example, if there is more than one individual in a given job band and position, then disclosure of the compensation for the job band is not necessarily associated with an identifiable individual.

OEB staff invites Brantford Power to clarify, in its reply submission, whether the information related to all or some of the job band information on slide 14 is associated with identifiable individuals such that it constitutes personal information.

⁹ Exhibit 4, Attachment 4-K, Page 13

¹⁰ *Ibid*, Page 14

¹¹ See for example EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019 (Toronto Hydro) where the OEB found that personal information includes the titles and compensation of specific identifiable individuals not otherwise in the public domain.

Attachment 4-M

As indicated above, this document contains budgeted adjustment rates for employee groups in 2021 and 2022. Brantford Power stated that it is entering contractual negotiations with one of its employee groups, specifically CUPE, as their collective agreement has expired.

OEB staff notes that the Application, as originally filed, states that the most recent agreement with CUPE covers the period April 1, 2017 to March 31, 2021 (signed October 17, 2017).¹²

OEB staff generally agrees that, if Brantford Power is in the process of negotiating a new collective agreement, public disclosure of the subject document could interfere with the negotiations and OEB staff would therefore support the confidentiality request for Attachment 4-M. However, if the negotiations have concluded and do not disclose any strategy for salary adjustments after 2022, then OEB staff's view is that the information no longer warrants confidential treatment.

OEB staff submits that Brantford Power should provide an update on the status of the collective bargaining process in its reply submission on confidentiality.

All of which is respectfully submitted

¹² EB-2021-0009, Exhibit 4, Pages 46-47