

Brantford Power Inc.

**Application for electricity distribution rates beginning
January 1, 2022**

**DECISION ON CONFIDENTIALITY
July 22, 2021**

Brantford Power Inc. filed a cost of service application with the Ontario Energy Board (OEB) under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Brantford Power charges for electricity distribution, beginning January 1, 2022.

As part of its application, 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

- Attachment 4-K – Unredacted Korn Ferry Compensation Presentation
- Attachment 4-M – Confidential Compensation Schedule

With respect to Attachment 4-K, Brantford Power filed both a redacted version for the public record and a confidential unredacted version for the OEB's review only. Brantford Power proposed redactions on page 14 and 17 and requested 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 the redacted information contains personal information.

With respect to Attachment 4-M, Brantford Power filed a confidential unredacted version of the one-page document to be provided only to individuals who have executed and delivered the OEB's form of Declaration and Undertaking. Brantford Power reminded the OEB of its right to oppose any request for access to the confidential materials.³

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

Brantford Power provided reasons for the confidentiality request for each document. With respect to Attachment 4-K, Brantford Power stated 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).⁴

With respect to Attachment 4-M, Brantford Power stated that it is entering contractual negotiations with one of its employee groups and submitted that the information 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.

Procedural Order No. 1⁵ made provision for submissions by OEB staff and intervenors on Brantford Power's request that the redacted information in Attachment 4-M be treated as confidential and to be released only to individuals that sign the OEB's Declaration and Undertaking, and its request that the redacted information in Attachment 4-K be treated as confidential and not to be released to anyone.

OEB staff filed a submission on the request for confidentiality.

OEB staff submitted that it was not clear as to whether all of the redacted information on Attachment 4-K was personal information as defined in FIPPA. OEB staff agreed that information which discloses or would allow someone to ascertain the actual compensation for a specific employee constitutes "personal information" and must not be disclosed. However, to the extent that information does not relate to an identifiable individual, such information does not constitute personal information and should be placed on the public record. OEB staff invited Brantford Power to clarify its confidentiality request in reply submission.

With respect to the information in Attachment 4-M, OEB staff supported the confidentiality request if Brantford Power was negotiating a new collective agreement, as public disclosure of the compensation schedule could interfere with the negotiations. However, if the negotiations have concluded, OEB staff submitted that confidential

⁴ R.S.O. 1990, c.F.31

⁵ Issued June 30, 2021

treatment is not warranted. OEB staff submitted that Brantford Power should provide an update on the status of the collective bargaining process.

In its reply submission, Brantford Power clarified that in Attachment 4-K, the redacted information on page 14 should be considered personal information as disclosure would allow for the inference of salary and compensation information of identifiable individuals, or multiple individuals, through their job titles, when considered together with the other information in Attachment 4-K.

With respect to Attachment 4-M, Brantford Power verified that an agreement with its union had not yet been finalized; therefore, disclosure of the redacted information in Attachment 4-M would pose a risk of undue loss or gain to the parties involved in the negotiations.⁶

Findings

The OEB approves Brantford Power's request for confidential treatment of Attachment 4-M on the basis that union negotiations are ongoing. The unredacted version of the document shall be provided to those individuals who sign the OEB's Declaration and Undertaking form.

With respect to the confidentiality request for information in Attachment 4-K, the OEB does not approve the proposed redaction on slide 17. The OEB finds that this information is not personal information as defined by FIPPA and does not meet the criteria as confidential information, given the OEB's Practice Direction on Confidential Filings. The redacted information only discloses the reason for why there is no market adjustment being made to one salary range, information already publicly disclosed on slide 18, but does not disclose that individual's actual compensation.

The OEB approves the proposed redactions on slide 14 of Attachment 4-K. The redacted information meets the FIPPA criteria and will not be disclosed even to those that sign the OEB's form of Declaration and Undertaking. The OEB agrees with Brantford Power that the provision of this information would allow the inference of compensation information for identifiable individuals or multiple individuals.

The OEB finds that some of the redacted information on slide 14 is relevant to the proceeding. The OEB directs Brantford Power to add a table to Attachment 4-K that provides the total number of positions within each job band, without the provision of any job titles. The OEB is of the view that the addition of this information will provide

⁶ EB-2021-0009, Brantford_Reply Submission_On confidentiality, 20210716, Page 3

transparency to the public regarding the redacted information in Attachment 4-K and will better inform parties.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Brantford Power shall provide individuals that have signed and filed a Declaration and Undertaking with the non-redacted, confidential version of Attachment 4-M for which confidential treatment has been granted, in accordance with the findings.
2. The OEB grants confidential treatment in the form of permanent redaction for information contained on slide 14 of Attachment 4-K.
3. Brantford Power shall file with the OEB a revised version (public and confidential) of Attachment 4-K reflecting the findings, by **July 26, 2021** and provide a revised public version to all parties.

How to File Materials

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2021-0009**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax number and e-mail address.
- Please 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.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web portal can contact registrar@oeb.ca for assistance.

All communications should be directed to the attention of the Registrar at the address below and be received by end of business 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, Georgette Vlahos at georgette.vlahos@oeb.ca and OEB Counsel, Ljuba Djurdjevic at ljuba.djurdjevic@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **July 22, 2021**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar