



August 10, 2021

Delivered by Email & RESS

Ms. Christine Long, Registrar
Ontario Energy Board
P.O.Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: EB-2021-0009 Brantford Power Inc. (“BPI”) – Responses to Interrogatories

Pursuant to Procedural Order No. 1 dated June 30, 2021, please find enclosed BPI’s Responses to Interrogatories.

BPI is hereby requesting confidential treatment, pursuant to Sections 10.01 and 10.02 of the Ontario Energy Board’s (“OEB”) *Rules of Practice and Procedure* (Revised July 30, 2021) and Sections 5.1.1 and 5.1.2 of the OEB’s *Practice Direction on Confidential Filings* (Revised February 17, 2021) (“Practice Direction”) for information provided in response to the following interrogatories, which have been grouped into two categories:

Category 1

1. 4-EP-21 (a) and (b) – Compensation of the CEO.
2. 4-SEC-31(c) – Names of individuals in the labour budget.
3. 4-SEC-40 (b), (d), and (e)– Compensation of the Billing Supervisor, Temporary Customer Care Representatives, and Senior Manager, Engineering and Operations Planning.
4. 4-SEC-41 – Compensation of the Senior Manager, Revenue Assurance.
5. 4-SEC-47 – Non-Management FTEs Salary breakdown.
6. 4x-EP-20 “Confidential EP Interrogatory” – Compensation with and without STVP for sub-groups of STVP-eligible positions.

Category 2

1. 1-SEC-1 – Report titled *Security Program Maturity Assessment – Brantford Power* prepared by eSentire, dated October 17, 2018 (“Security Plan”).



OEB's Considerations for Confidentiality Requests

Appendix "A" to the Practice Direction sets out the OEB's considerations in determining requests for confidentiality. Among those considerations are the following:

- (d) *whether the information is personal information;*
- (e) *whether the Information and Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential;*
- (g) *any other matters relating to FIPPA (the Freedom of Information and Protection of Privacy Act) and FIPPA exemptions; and*
- (h) *whether the type of information in question was previously held confidential by the OEB.*

1. Category 1

The information provided in response to interrogatories in Category 1 above pertains to the compensation of identifiable individuals as well as their sick/vacation time allotment, which is personal information. This is among the factors the OEB considers in determining requests for confidentiality. BPI requests that this information be treated as confidential, as it is information of an identifiable individual relating to financial transactions in which the individual has been involved. In addition, the names that are being redacted are tied to other personal information, namely the sick/vacation time allotted to that individual, and the disclosure of the names would reveal this other personal information. This is consistent with section (b) and (h) of the definition of personal information under section 2(1) of FIPPA.

In addition, the confidential treatment of this information is also consistent with the OEB's Decision on Confidentiality dated July 22, 2021 of this proceeding, where the OEB approved the redacted information on slide 14 of Attachment 4-K and stated that:

*"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."*¹

¹ Decision on Confidentiality dated July 22, 2021 at page 3.



As explained by BPI the letter dated July 26, 2021 in response to OEB's Decision on Confidentiality, BPI provided a summary of the information in Attachment 4-K as requested by the OEB, however, consistent with Chapter 2 of the *Filing Requirements for Electricity Distribution Rate Applications – 2021 Edition for 2022 Rate Applications* dated June 24, 2021, BPI showed job bands with three or fewer positions aggregated with other bands, rather than showing the number of positions in each band. This is to prevent the inference of personal information where readily available information could be used to deduce compensation-related information of identifiable individuals.

Similarly, BPI has redacted compensation information in the response to interrogatories in Category 1 as the information pertains to three or fewer positions and it would be possible to deduce the compensation-related information of identifiable individuals.

BPI requests that the redacted information be treated as confidential, consistent with the OEB's Decision on Confidentiality dated July 22, 2021 in this proceeding.

2. Category 2

In response to 1-SEC-1, BPI is providing a copy of the Security Plan. BPI requests that the Security Plan be treated as confidential in its entirety.

The Security Plan is a document that contains evaluations of BPI's security and recommendations from the subject matter expert, eSentire, which identifies vulnerabilities and gaps of BPI's cybersecurity. If the Security Plan is placed on the public record, it would reasonably be expected to result in a security breach, such as BPI's technical vulnerabilities being exploited by potential attackers and the unauthorized access and release of sensitive data by attackers.

Information and Privacy Commissioner's Decisions

Section 8 (1)(i) of *Municipal Freedom of Information and Protection of Privacy Act*² ("MFIPPA") (equivalent provision found at Section 14(1)(i) of FIPPA) provides that a head may refuse to disclose a record if the disclosure could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

In Order MO-2456,³ the adjudicator of the Information and Privacy Commissioner ("IPC") found that the disclosure of information identifying the types of software products and precautions the City of Vaughan (the "City") relies upon to secure its computer systems could reasonably be expected to lead to a security breach. In this case, the City of Vaughan was requested to release, among other things, their Firewall Security Assessment and Active

² R.S.O. 1990, CHAPTER M.56

³ File Number MA 08-088-2, Order MO-2456 dated August 31, 2009.



Directory and Email Security Assessment Report (“Audits”). The City took the position that certain withheld information in the Audits is exempt pursuant to Section 8(1) of MFIPPA.

The adjudicator’s view was that the withheld information consists of the City’s comprehensive approach to secure its computer systems. The information at issue identified the recommended defaults, permissions, settings and durations for specific events. The adjudicator was satisfied that the disclosure of the withheld portions of the records qualified for exemption under section 8(1)(i).

In a different case, the adjudicator in PO-2391⁴ was satisfied that the records at issue, which were records of the computer system used by the Office of the Registrar General, related to the security of a system as well as a procedure established for the protection of the information contained in the system and that the disclosure of the records could reasonably be expected to endanger the security of the system. The records contained, among other things, information about the security of the system itself. The adjudicator was also of the view that the records related to the specific system used by the Officer of the Registrar General and were not general information about a computer system.

The adjudicator was satisfied that the disclosure of the records could reasonably be expected to endanger the security of a system or procedure established for the protection of the information contained in the system, for which protection is reasonably required, and that section 14(1)(i) of FIPPA applies to the records.

Finally, in PO-2765,⁵ the adjudicator found that some portions of the records in the Privacy Impact Assessments (“PIA”) (i.e. the ODB Drug Program Viewer (the “Drug Programs Branch PIA”) and Integrated Public Health Information System (the “Health Care Branch I & IT Cluster PIA”) contain sufficiently detailed information such that their disclosure could reasonably be expected to endanger the security of the system or procedure. Specific pages of the Drug Programs Branch PIA and the Health Care Branch I & IT Cluster PIA contained detailed procedures and architecture features to address identified security risks. The adjudicator was satisfied that the disclosure of this information could reasonably be expected to endanger the security of the system or procedure, and result in the harms set out in section 14(1) (i).

BPI’s Security Plan contains recommendations on policies and procedures to address identified security risks and protection of that information is reasonably required pursuant to section 14(1)(i) of FIPPA and section 8 (1)(i) of MFIPPA as illustrated in the abovementioned IPC cases.

Whether the IPC or a court of law has previously determined that a record should be publicly disclosed or kept confidential is among the factors considered by the OEB when determining

⁴ File Number PA-040296-1, Order PO-2391 dated May 16, 2005.

⁵ File Number PA07-221, Order PO-2765 dated March 12, 2009.



confidentiality requests. BPI requests that the Security Plan be held in confidence in-line with the decisions of the IPC as cited above.

Security Information Previously Held Confidential by the OEB

In its Decision on Confidentiality for Hydro One Networks Inc.'s ("Hydro One") transmission rates application (EB-2019-0082),⁶ the OEB found that information identified by Hydro One as posing security-related risks such as information third-party software, portions of Hydro One's internal audit reports dealing with physical and cyber security, reliability classifications of Hydro One's facilities, shall be designated as confidential because the disclosure of such information could negatively impact Hydro One's system security.⁷

Also, in Horizon Corporation's ("Horizon") 2015 rates application (EB-2014-0002), Horizon redacted information pertaining to the physical security of its facilities and stated that compromising of Horizon's physical facilities could reasonably be expected to result in unauthorized access to, and release of, personal information with respect to Horizon's customers and employees'; the creation of risks to the safety of customers and staff of Horizon; and unauthorized access to and interference with Horizon's electricity distribution system.⁸

The OEB in Procedural Order No. 1 of that proceeding, determined that the security information is to remain confidential as it recognizes that security of Horizon's facilities is an important aspect in maintaining safe and reliable electricity service and for the privacy of its customers and employees.⁹

Subsequently, in its response to interrogatories, Horizon requested confidentiality over the Horizon Physical Security Report and descriptions of security-related projects contained in the rates application. The OEB granted the request, making reference to its findings in Procedural Order No. 1 of that proceeding that documents relating to the security of Horizon's facilities should be maintained in confidence.

Whether the type of information in question was previously held confidential by the OEB is among the factors considered by the OEB when determining confidentiality requests. BPI requests that the Security Plan be held in confidence, in-line with the Hydro One and Horizon decisions cited above.

BPI is prepared to provide unredacted copies of the Security Plan to parties' counsel and experts or consultants provided that they have executed the OEB's form of Declaration and Undertaking with respect to confidentiality and that they comply with the Practice Direction, subject to BPI's right to object to the OEB's acceptance of a Declaration and Undertaking from any person.

⁶ EB-2019-0082, Decision on Confidentiality dated September 11, 2019

⁷ Ibid at page 6.

⁸ EB-2014-0002 Procedural Order No. 1 dated June 9, 2014 at page 4.

⁹ Ibid.



In keeping with the requirements of the Practice Direction, BPI is filing a confidential unredacted version of the documents in Category 1 and 2 with the Registrar. The unredacted versions of the documents have been marked "Confidential" and BPI has identified the portions of the document in respect of which confidentiality is claimed through the use of document comments. BPI requests that the unredacted documents be kept confidential.

Sincerely,

Oana Stefan

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