



Ontario
Energy
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BY EMAIL

January 17, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
E.L.K. Energy Inc.
Application for 2024 Rates
OEB File Number: EB-2023-0013**

Please find attached the OEB staff's submission on E.L.K. Energy Inc.'s request for confidential treatment of its Emergency Response Plan, in response to Question 3.a) from the Vulnerable Energy Consumers Coalition's (VECC) intervenor interrogatories.

Yours truly,

Original Signed By

Abla Nur
Case Manager

Encl.
cc: All parties in EB-2023-0013



ONTARIO ENERGY BOARD

OEB Staff Submission Request for Confidentiality

E.L.K. Energy Inc.

2024 Rates Application

EB-2023-0013

January 17, 2024

Introduction

E.L.K. Energy Inc. (E.L.K.) filed an application with the Ontario Energy Board (OEB) on October 11, 2023, under section 78 of the *Ontario Energy Board Act, 1998* (OEB Act) seeking approval for changes to its electricity distribution rates to be effective May 1, 2024.

As part of the hearing of the application, E.L.K. submitted written responses to OEB staff and VECC interrogatories. As part of its filing, E.L.K. has requested confidential treatment for E.L.K.'s Emergency Response Plan.

With the exception of any legitimate redactions for personal information, OEB staff submits that E.L.K.'s Emergency Response Plan should be filed on the public record.

Confidential Treatment

In response to interrogatory VECC-3a., E.L.K. is requesting confidential treatment of its Emergency Response Plan, pursuant to the OEB's *Rules of Practice and Procedure* and *Practice Direction on Confidential Filings* (Practice Direction).¹ E.L.K. provided two confidential versions of its Emergency Response Plan:

1. a fully unredacted copy including highlighted personal information that it requests not to be provided to any party in this proceeding; and
2. a redacted copy that does not include personal information and is only provided to parties in this proceeding who comply with section 6 of the Practice Direction.

As part of the cover letter, E.L.K. submits that the Emergency Response Plan contains information that pertains to public security. Specifically, it contains a comprehensive listing of personal contact information, along with the locations of key infrastructure and facilities within and around the E.L.K. service area. E.L.K. expressed concern that disclosure of this information would compromise public safety and the probative value of placing the Emergency Response Plan in the public domain would not outweigh the potential risks to public health and safety.

Staff Submission

In accordance with Part 10 of the Practice Direction, OEB staff reviewed the redactions for personal information to ensure the information qualifies as personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Following that review, OEB staff contacted E.L.K. to ask that the utility file further explanation as to

¹ OEB's [Practice Direction on Confidential Filings](#), revised December 17, 2021.

how certain redacted information qualifies as personal information given the business identity information exception in section 2(3) of FIPPA.

With the exception of any legitimate redactions for personal information, OEB staff objects to E.L.K.'s request to withhold the Plan from the public record.

The placing of materials on the public record is the rule, and redactions for confidentiality are the exception.² E.L.K bears the onus of demonstrating that confidential treatment is warranted over the entire Emergency Response Plan.³ It has failed to do so.

Emergency Response Plans/Power Restoration Plans have been filed on the public record in a number of recent proceedings.⁴ E.L.K. does not explain how its Plan differs from those other documents such that the entirety of its Plan should be confidential. OEB staff further notes that E.L.K.'s Plan includes large appendices that are either (i) a document authored by a third party; or (ii) an agreement between E.L.K and a third party. E.L.K. further does not provide any explanation of how disclosure of that information would compromise public safety.

It is difficult for OEB staff to fairly consider a confidentiality request where the claim is overly broad, as it is here. If there are specific, limited, excerpts of the Plan that do raise a public safety concern, E.L.K should identify those as part of its reply to this objection. In doing so, E.L.K. should provide a detailed explanation of the concern and confirm that the information is not already in the public domain.

~All of which is respectfully submitted~

² Practice Direction, page 1.

³ *Ibid.*

⁴ See EB-2022-0018, [Interrogatory Response to Staff Question 9a where Burlington Hydro filed a copy of its Emergency Operations Plan](#); EB-2022-0317, [Interrogatory Response to Staff Question 5, Attachment 1 where Elexicon Energy filed a copy of its Power Restoration Plan](#); EB-2023-0009, [Interrogatory Response to Staff Question 13b where CNPI filed a copy of its Power Restoration Plan](#).