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OEB File No. EB-2023-0013

January 18, 2024

BY EMAIL AND RESS
registrar@oeb.ca

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

Dear Ms. Marconi:

**Re: E.L.K. Energy Inc. (“E.L.K. Energy”)
Reply to OEB Staff Submissions on Confidentiality Request
OEB File No. EB-2023-0013**

We are counsel to E.L.K. in respect of the above noted matter and are writing in reply to the OEB Staff submissions filed January 17, 2024 in respect of E.L.K.’s request for confidential treatment of its Emergency Response Plan, which was filed in response to VECC-3(a).

E.L.K. Energy disagrees with the submissions of OEB Staff and reiterates its request for confidential treatment made on January 11, 2024. Specifically, and as was explained on January 11th:

“E.L.K. is requesting confidential treatment as the Emergency Response Plan contains information that pertains to public security, particularly it provides a comprehensive listing of contact information (including personal information), names and locations of key infrastructure and facilities in and around the E.L.K. service area. E.L.K. is concerned that disclosure of this information could compromise public safety. A rogue actor could use this information as a road map to sabotage response efforts to an emergency or to coordinate an attack against critical infrastructure and facilities. The probative value of placing the Emergency Response Plan in the public domain does not outweigh the potentially serious risks to public health and safety.”

OEB Staff argue that “Emergency Response Plans/Power Restoration Plans have been filed on the record in a number of recent proceedings.” Staff goes on to assert that “E.L.K. does not explain how its Plan differs from those other documents such that the entirety of its plan should be confidential.”

With respect, this is neither accurate nor correct. The E.L.K. Energy Emergency Preparedness Plan differs in numerous material respects from the three examples cited by OEB Staff in their submissions.

We have reviewed each of the BHI Emergency Response Plan¹, Elexicon Power Restoration Plan,² and the CNPI Severe Weather Event Responsibilities Checklist (the “CNPI Checklist”),³ and note the following:

- The CNPI Severe Weather Events Responsibilities document is a **2 page checklist** that describes the steps that CNPI will take in the event of a severe weather event that if disclosed would pose absolutely no threat to public safety. It does not include a comprehensive listing of contact information (both sensitive customer information, as well as personal information), nor does it contain the names and locations of key infrastructure and facilities in or around the CNPI service area. To imply that this checklist is analogous to the E.L.K. 206 page long Emergency Preparedness Plan is illustrative of a lack of due diligence which informed OEB Staff’s submissions.
- The BHI Emergency Response Plan is a **simple 20-page long process description** that if disclosed would pose absolutely no threat to public safety. It does not include a comprehensive listing of contact information (whether sensitive customer information, as well as personal information), nor does it contain the names and locations of key infrastructure and facilities in or around the BHI service area. **None of the 24 different Appendices cited in the ERP were disclosed by BHI.** By a review of their titles, some of those Appendices contain some of the types of sensitive information that E.L.K. is seeking to prevent disclosure of on the public record.
- The Elexicon Power Restoration Plan is similarly a **simple 18-page long process/definitional document** that if disclosed would pose absolutely no threat to public safety. Again it does not include a comprehensive listing of contact information (whether sensitive customer information or personal information), nor does it contain the names and locations of key infrastructure and facilities in or around the Elexicon service area. **None of the 14 different Appendices cited the PRP were disclosed by Elexicon.** Again, some of those Appendices may include exactly the same types of sensitive information that E.L.K. is seeking to prevent disclosure of on the public record.

By contrast, E.L.K. is seeking confidential treatment of its **206 page long Emergency Preparedness Plan** because, as was expressly noted in the January 11, 2024 submissions, and unlike any of the examples cited by OEB Staff, it:

- provides a comprehensive listing of contact information (including personal information); and
- names and locations of key infrastructure and facilities in and around the E.L.K. service area.

¹ EB-2022-0018, Interrogatory Response Staff-9(a), December 16, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/766153/File/document>>

² EB-2022-0317, Interrogatory Response Staff-05, March 22, 2023, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/783400/File/document>>

³ EB-2023-0009, Interrogatory Response Staff-13(b), October 27, 2023, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/820367/File/document>>

These sensitive factual details are riddled throughout the E.L.K. Emergency Preparedness Plan. See for example:

- Nursing and Rest Homes (pg. 10 – 12) provides a listing of all the nursing homes and resting homes in Essex and Kingsville, together with the # of residents in each, and their respective emergency evacuation plans and whether or not each customer has a generator. With this access to this comprehensive list, a nefarious actor could target the elderly in E.L.K.’s service area.
- Water Intakes (pg. 11-12) provides a listing of all key water intakes for each of E.L.K.’s service area. With this listing, a nefarious actor could target the water supply in E.L.K.’s service area.
- Pumping Stations, Sewage Lift Pumps and Storm Water Pumps (pg. 12-13) provides a listing and specific locations of all the pumping stations, sewage lift pumps and storm water pumps in E.L.K.’s service area. With this listing, a nefarious actor could target the water/wastewater systems in E.L.K.’s service area.
- Emergency Operations Centre (pg. 15-16) provides a description of exactly the equipment and vehicles and supplies that E.L.K. uses to facilitate its emergency response activities. It’s not just a process flow. With this listing, a nefarious actor could target E.L.K. to severely disrupt its emergency response ability.
- Appendix 1 contains an Operating Agreement between E.L.K. and Hydro One that is non-responsive to the interrogatory in question.
- Appendix 2 contains an Emergency Resource Handbook produced by the County of Essex that is non-responsive to the interrogatory in question, and contains problematic listings and locations of key infrastructure and facilities in the County of Essex that are too numerous to enumerate (churches, schools, arenas, hospitals, etc.).
- Appendix 3 contains a Mutual Assistance Plan between various LDCs that is non-responsive to the interrogatory in question.

In consideration of the foregoing, E.L.K. Energy submits that:

1. The sensitive information cited above at pages 10-16 of the E.L.K. Emergency Preparedness Plan should be redacted as confidential due to legitimate public safety concerns as originally set out in the January 11, 2024 letter.
2. The home and cell phone numbers on pages 7-9 of the E.L.K. Emergency Preparedness Plan should be redacted as personal information as originally set out in the January 11, 2024 letter.
3. The information contained in Appendix 1, 2 and 3 should be treated as confidential, failing which E.L.K. requests that the information be withdrawn pursuant to **Rule 9A.03** of the Practice Direction on the basis that the information is non-responsive and not relevant to the interrogatory in question.

4. The balance of the Emergency Preparedness Plan can be placed on the public record.

Enclosed with this reply is an update to the EPP that accords with this revised request.

Please contact the undersigned with any questions.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in cursive script that reads "J Vellone".

John Vellone