



## Westario Power Inc.

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Wednesday, 12 June 2019

Dear Shareholder:

The Board of Directors of Westario Power Inc. is pleased to confirm that the Annual Shareholders Meeting will be held on Wednesday June 26<sup>th</sup>, 2019 at the Best Western Plus in Walkerton, located at 10 Eastridge Road.

(Note: Located directly next to the Westario Power office)

Shareholder luncheon is scheduled for 12:00 noon, with meeting to follow.

The Board requests that the number of delegates from each Shareholder be limited to no more than three (including appointed WPI Director) in order to accommodate the available space.

Please advise Tracey Vanness by phone 519-507-6666 ext 213, by fax 519-507-6777 or e-mail [tracey.vanness@westario.com](mailto:tracey.vanness@westario.com), the names of those attending no later than June 21<sup>st</sup>, 2019 so that all arrangements can be finalized.

Please see attached memo regarding limits on disclosure as a reference for the confidentiality of information to be discussed at the meeting.

Please do not hesitate to call me if you require any additional information.

Yours truly,

*Tracey Vanness*

Tracey Vanness  
Human Resource, Board Secretary, Sr. E.A.

c.c. Municipal Contact  
All Directors



## **Westario Power Inc. - Memo**

### **RE: Freedom of Information Requirements: Limits on Disclosure Obligations**

#### **Introduction**

The Ontario *Business Corporations Act* (the “OBCA”) and the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) set out requirements that affect the rights of municipal Shareholders in Westario Power Inc. (“Westario”) to receive information about Westario and how they can deal with that information. This memorandum summarizes the duties that Directors and municipal Shareholders are under with respect to Westario’s business plans, financial documents and other sensitive information.

#### **Directors and Disclosure**

The Westario Shareholders’ agreement provides that each shareholder is allowed to designate a director. However, this does not mean that such director is a representative of the municipal shareholder that appointed him or her as director. Directors owe a “fiduciary duty” to Westario. In this context, “fiduciary duty” means that the Director has an obligation to act in the best interests of the corporation, not in the interests of any particular Shareholder.

This means that a director could be in breach of his or her fiduciary duty if he or she disclosed the minutes or resolutions of, or other information disclosed at, meetings of the board of Directors to a non-board member.

#### **What Information Are Municipal Shareholders Entitled To?**

Under the OBCA, Shareholders are entitled to review:

- (a) the articles and the by-laws, including all amendments;
- (b) minutes of meetings and resolutions of Shareholders; and
- (c) a register of Directors.

Shareholders are not entitled to access to minutes of Directors’ meetings, Directors’ resolutions or the corporation’s accounting records.

At each annual meeting of Shareholders, the Directors must provide to the Shareholders the corporation’s financial statements, the auditor’s report and any other information required by the articles or by-laws of the corporation.

While Shareholders do not have access to all of the corporation’s records, the OBCA does provide Shareholders with a certain amount of comfort and protection. The Shareholders can, by ordinary resolution, remove any director from office or, by mutual written agreement, remove or modify the rights and powers of the Directors. The Westario Shareholders’ agreement also provides for certain rights to information in addition to those under the OBC.

#### **What Information Is the Public Entitled To?**

*Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) provides that persons may request disclosure of records in the possession or control of “Institutions”. Westario is deemed an **Institution** for the purposes of MFIPPA. Therefore, the records of Westario Power Inc. are subject to MFIPPA requests.

**Institutions** 4.1 “Every corporation incorporated under section 142 of the *Electricity Act*, 1998, ” shall be designated as an **institution**; and therefore be subject to individual requests for access to municipal

records.

MFIPPA provides individuals with a right of access to municipal records. FOI or Freedom of Information typically refers to the rights to or process for access to the records of municipal and provincial government **institutions**. MFIPPA also provides a right of access to a broad range of municipal “records”. A record is defined in part as “any record of information however recorded, whether in printed form, on film, by electronic means or otherwise. However, not all records must be disclosed. (e.g. exemptions such as labour relations or employment records; exclusions such as solicitor-client privileged records, personal information and that which may potentially affect the outcome of a business transaction).

MFIPPA does provide for certain exceptions to the obligation to disclose; the municipality has the right, and in some cases, the obligation, to refuse to disclose certain types of records. Information falling within these exceptions is generally dealt with during Council meetings as matters relating to “legal and personnel”.

A municipality may refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person [including Westario], group of persons, or organization;
- (b) result in similar information no longer being supplied to the municipal corporation where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person [including Westario], group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

As well, subject to certain exceptions, the municipality must not disclose personal information to anyone other than the individual to whom the information relates.

None of the above exemptions to the obligation to disclose described above will apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The Act provides for a “head” of an institution. The head may for example, be either council or the members of a board of a municipality. The head is generally responsible for the institutions information disclosure and privacy decisions.

Generally, an institution is expected to provide the requester with the information and or a decision regarding their request within 30 days from the date a request received.

## **Conclusion**

While there is some sensitive information that Westario may wish or be required to share with its municipal Shareholders, such information will clearly come within exceptions to the obligations of the municipal Shareholders to publicly disclose such information under municipal freedom of information legislation. It will be very important to ensure that municipal Shareholders are aware of these exceptions and that appropriate steps have been taken to ensure that such information remains confidential. This can be done by discussing the information in closed session of Council (such as “legal and personnel”) and ensuring that all copies of documents provided to Council are accounted for.