

January 21, 2015

**By Email and Electronic Filing**

Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**Attention: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2014-0116 – Toronto Hydro 2015-2019 Rates – Procedural Order No. 6**

We are counsel to the Canadian Electricity Association (“CEA”) and are in receipt of Mr. Rubenstein’s letter on behalf of the SEC, dated January 20, 2015. The CEA opposes the SEC’s request to vary the schedule set in Procedural Order No. 6.

Typically, we would be inclined to agree that a moving party should be the last party to provide materials. However, in this case, the SEC’s original motion materials provided only the most meagre support for its motion. The SEC notice of motion has only 13 paragraphs in the “grounds” section, five of which deal with the procedural history of the motion and four of which simply quote from previous Board decisions. The SEC made no attempt to address what it knows is the CEA’s position with respect to copyright, constitutional law and the balance of interests involved in deciding whether confidential materials should be ordered disclosed. This is surprising since the same issues arose before the Board in the context of Oakville Hydro’s rate proceeding in EB-2013-0159 where the SEC was provided with the CEA’s detailed evidence and submissions (that matter settled before the Board made a decision about the CEA materials at issue), so the SEC could have provided a robust notice of motion. Indeed, in objection to CEA’s request for a more prolonged schedule, the SEC asserted that the CEA had already filed affidavit evidence in EB-2013-0159 on the exact same issue and therefore did not need an extension to file its materials (see letter from Mr. Rubenstein dated January 13, 2015).

In such circumstances, where the moving party has provided a nearly bald set of originating materials, it would be unfair to give it the last word and, inevitably, leave unchallenged the bulk of the SEC’s evidence and submissions which will only be delivered in “reply”. Doing so would deprive the CEA of the fair opportunity to respond to the SEC’s materials on matters of substance and deprive the Board of a fulsome record on which to decide the issue.

Moreover, later today the CEA intends to make a cross-motion to the effect that if the Board orders Toronto Hydro to make copies for the SEC of CEA materials (which the CEA opposes), those materials should be treated as confidential. On the SEC's own logic, CEA should have the last word in this regard.

Procedural Order No. 6 properly provided the CEA with an opportunity to respond to the SEC and should not be varied.

Yours truly,

A handwritten signature in black ink, appearing to read 'Mark Rubenstein', written in a cursive style.

Copy: Mark Rubenstein

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