

March 4, 2014

**Via Email**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

**Attention: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: Intervention with respect to Board File EB-2013-0159**

Yesterday afternoon we were retained by the Canadian Electricity Association to participate in the above-noted proceeding with respect to a motion brought by the School Energy Coalition (“SEC”) on February 27, 2014. The SEC motion seeks to compel the disclosure and reproduction, effectively, of confidential benchmarking data and a report owned by the CEA.<sup>1</sup>

The Canadian Electricity Association is the national forum and voice of the evolving electricity business in Canada. Its members include power utilities from across Canada, only some of which are located in Ontario. Information about the CEA, its members and its activities can be found at [www.electricity.ca](http://www.electricity.ca).

Our client requests leave to intervene in the above-noted proceeding for the sole purpose of responding to the February 27, 2014 motion of the SEC.

In addition to seeking leave to intervene, our clients request that Procedural Order No. 3, which deals with the process for addressing the SEC motion, be amended to provide for substantially more time so that the CEA can provide a fair and full response to the motion after consulting with its members.

In summary, the CEA intends to make three submissions if granted intervenor status. First, the CEA is the owner of copyright in both its reports and data models. The SEC, Oakville Hydro and the Board would infringe the CEA’s copyright in these materials contrary to the Federal *Copyright Act* by reproducing or authorizing the reproduction of these materials without the consent of the CEA, which consent the CEA has not granted. Notably, the *Copyright Act* binds

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<sup>1</sup> Oakville Hydro advises the CEA that if its answered the Interrogatory 2.1-SEC-3 as written, its answer might include these CEA materials.

the provincial Crown and is paramount to any Order of the Board in conflict with this Federal statute.

Second, the confidential data of the CEA sought by the SEC relates to many CEA utility members, most located outside Ontario. The OEB has no jurisdiction over these utilities and their data is not relevant to the present proceeding and should not be publicly disclosed (Oakville Hydro had to enter into a confidentiality agreement before accessing CEA data).

Third, it is contrary to the public interest to effectively preclude national benchmarking exercises by compelling disclosure to the public or intervenors. The CEA expects that its members may not continue to participate in benchmarking with Ontario utilities if they are not comfortable that the non-Ontario utilities' data will not be disclosed.

This is a matter of importance to CEA. If the Board orders the CEA's materials disclosed, publicly or on a confidential bases, we request that the Board delay for a reasonable period the implementation of such an Order so that the CEA can seek appropriate relief from the courts.

Yours truly,

**Goodmans LLP**



Peter Ruby  
PDR/umr

Copy: Giovanna Dragic, OEB Staff  
Mark Rubenstein, counsel to the SEC  
James Sidlofsky, counsel to Oakville Hydro