

IN THE MATTER OF the *Ontario Energy Board Act* 1998, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Oakville Hydro Electricity Distribution Inc. for an Order or Orders approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2014.

AFFIDAVIT OF FRANCIS BRADLEY

(Sworn March 21, 2014)

I, Francis Bradley, of the City of Saint-Eustache, in the Province of Quebec, MAKE OATH AND SAY:

1. I am the Vice President, Policy Development of the Canadian Electricity Association (“CEA”), the national forum and voice of the evolving electricity business in Canada. As such, I have personal knowledge of the matters set out below, except to the extent that I indicate that my knowledge is based on information, which I believe to be true.

2. I make this affidavit in support of CEA’s Motion Record in response to the motion brought on February 29, 2014 by School Energy Coalition (“SEC”), asking the Board for an order requiring Oakville Hydro Electricity Distribution Inc. (“Oakville Hydro”) “to provide a full and adequate response to Interrogatory 2.1-SEC-3, by producing copies of two surveys/studies” (the “SEC Motion”).

3. Oakville Hydro is a member of CEA. Oakville Hydro has advised CEA that in order to fully respond to Interrogatory 2.1-SEC-3 as currently drafted, it would be forced to disclose confidential benchmarking data provided to CEA by its members (the “CEA Data”), proprietary

data models used by CEA to analyze such data (the “CEA Data Models”) and the report prepared by CEA containing such analysis (the “CEA Report”, collectively with the CEA Data and the CEA Data Models, the “CEA Property”).

4. CEA is not a party to the proceeding before the Board and has not consented to the disclosure of the CEA Property. As such, the SEC Motion is asking the Board to compel the disclosure of confidential and copyrighted intellectual property owned by a third party.

5. CEA is strongly opposed to the SEC Motion and, as set out in CEA’s Motion Record, seeks an order denying the SEC Motion with respect to the disclosure of the CEA Property. CEA also recommends that the Board require Oakville Hydro and SEC to enter into settlement discussions to consider whether a mutually acceptable resolution can be reached that respects CEA’s copyright, confidentiality requirements and proprietary interests, while providing SEC adequate disclosure to relevant information to the extent that the Board determines such disclosure is warranted. While CEA is not a party to the proceeding, CEA would be willing to participate in such discussions.

Background on CEA

6. Founded in 1891, CEA is the authoritative voice of the Canadian electricity industry, promoting electricity as a key social, economic and environmental enabler that is essential to Canada's prosperity. CEA members generate, transmit and distribute electrical energy to industrial, commercial, residential and institutional customers across Canada every day. Members include integrated electric utilities, independent power producers, transmission and distribution companies, power marketers and the manufacturers and suppliers of materials,

technology and services that keep the industry running smoothly. Only some of those members are located in Ontario and fall within the regulatory ambit of the Board.

7. CEA contributes to the regional, national and international success of its members through the delivery of quality value-added services. In addition, CEA delivers a coherent industry viewpoint to decision makers on critical policy and regulatory issues. One of the services provided by CEA to its members is confidential benchmarking services. These services are sold to CEA member companies operating in Canada and abroad. The methodology, data sets and analytical metrics deployed by CEA, and the benchmarking reports they generate are proprietary and protected by copyright pursuant to Canada's *Copyright Act*.

Description of the CEA Property

8. If approved by the Board, the SEC Motion will result in the Board compelling disclosure of propriety material for which CEA is the exclusive owner of copyright and which comprises CEA's "stock in trade" or commercial endeavour.

9. The CEA Report is in its 51st iteration. Since CEA took over the CEA Report over twenty-five years ago, it has taken steps (as described below) to safeguard the data collection process and provide members a valuable forum to exchange ideas, practices and knowledge. In order to produce the CEA Report, CEA collects confidential CEA Data from participating members. It then analyzes this data using the CEA Data Models, which is comprised of CEA intellectual property, including methodology, data sets, modelling and analytical metrics that have been developed and are owned by CEA as part of its commercial endeavour. CEA is continually adding value to the CEA Data Models through system upgrades and integrating

additional research considered valuable to its members. Members participate on a fee-for-service basis that provides them with access to the CEA Report, as well as the CEA Data Models, which allow them to analyze the data further. The CEA Report is also available for sale to the public and can be purchased through the CEA website. This report provides composite measures only. Under no circumstances is company specific data included in the CEA Report, nor is such data for sale in any form.

10. The CEA Report analyzes the confidential CEA Data of thirty-seven utilities, both international and Canadian. Only eleven, or thirty percent, of the utilities that contributed to the CEA Report are Ontario utilities. Consequently, the Board has no jurisdiction over seventy percent of the utilities that participated in the CEA Report and their CEA Data is not relevant to the present proceeding.

11. To the best of my knowledge, CEA has never authorized the disclosure of the CEA Data Models or the CEA Report to any utility regulator in Canada, nor, to my knowledge, have these materials been disclosed by CEA's members.

CEA's Confidentiality Policies

12. CEA is engaged in many benchmarking activities on behalf of Canadian and international electrical utilities. These activities are premised on the participating utility providing considerable CEA Data about their operations to CEA. All of these utilities have entrusted CEA with their highly confidential and competitively sensitive CEA Data on the express condition that such data will be treated in the strictest of confidence at all times. In order to safeguard the CEA Data, CEA and participating utilities abide by: (a) the Terms of Reference for CEA's

Service Continuity Committee attached hereto as Exhibit “A”; (b) the CEA Data Collection and Sharing Policy, attached hereto as Exhibit “B”; and (c) the CEA Policies for Benchmarking Data in Regulatory Settings, attached hereto as Exhibit “C”.

13. Page 2 of Exhibit “A” provides that “[n]o Member of the Service Continuity Committee or CEA staff will distribute another utility’s data or information of a confidential nature outside the committee without written permission from that utility.” It also provides that “[a]ll data and information collected by the Members of the Service Continuity Committee deemed confidential will not be distributed to non-members or third party organizations.”

14. Similarly, Section 2.1 of Exhibit “B” provides that “[a]ll data ... will be treated as confidential information for the CEA members involved. Information will not be communicated outside the participating organizations without prior written consent of the participant who shared the information, which consent may be withheld at the discretion of the participant CEA member”. While Section 2.5 of Exhibit “B” has a limited exception from the definition of confidential information to exclude information that “is required to be disclosed by law or a regulatory agency having jurisdiction”, as set out in CEA’s Motion Record, I do not believe that the Board has the jurisdiction to compel disclosure of the CEA Property in the current proceeding.

15. Pursuant to Section 7.1 of Exhibit “B”, participating members “agree not to disclose confidential information and data of other members”. Section 7.2 provides that “[m]embers shall only present their own indicators in a public forum, while comparing it to a national aggregate, or masked/anonymous data”. Lastly, Section 7.3 of Exhibit “B” provides that “[a]ny and all information obtained from another program participant should be treated as internal, privileged

communications.” Therefore, were the Board to order Oakville Hydro to disclose the CEA Property, CEA would be required to seek the consent of each and every of the thirty-seven participating utilities. I have every reason to believe that such consent would not be granted.

16. Recognizing that benchmarking data may be of assistance to utilities regulators, CEA has developed policies, as set out in Exhibit “C”, to enable its members to provide benchmarking data in regulatory settings in a manner that does not violate CEA’s copyright, breach the confidentiality terms and conditions that bind CEA and its members, or harm the commercial interests and goodwill of CEA. Policy 1 of Exhibit “C” provides that “[a]ppropriate benchmarking performance information (which is accurate, verifiable, and verified and includes the proper consideration, caveats, standardized interpretations and collection methodologies) will be developed by CEA for use in Regulatory settings.” Policy 4 of Exhibit “C” provides that “CEA and its members will work cooperatively with regulatory authorities to ensure that indicators used in regulatory settings are accurate, verifiable and verified, and are meaningful.” In addition, “appropriate benchmarking indicators for assessing individual company performance over time will be developed.” Policy 7 of Exhibit “C” provides that “[o]nly composite benchmarks deemed appropriate for regulatory environments, will be produced.” To the best of my knowledge, these individual and composite benchmarks have been consistently relied upon by various provincial utilities boards and no such board has ever compelled disclosure of the CEA Data Models or the CEA Report.

Impact of Compelled Disclosure

17. CEA and its members strictly adhere to all of the foregoing policies. Non-adherence by one member, whether on its own volition or by regulatory compulsion, would have a significant

negative impact on CEA and its members. As such, the consequences for non-adherence are severe. Policy 7 of Exhibit “C” provides that the “publication of metrics not identified as appropriate for regulatory environments in composite or other form in a regulatory forum or elsewhere may result in blocking further participation by that member or the termination of further CEA benchmarking on that metric.”

18. Thus, if Oakville Hydro is compelled to disclose the CEA Property or any part thereof, CEA will be required to seek its members’ views about whether Oakville Hydro should be allowed to participate at all in future benchmarking activities. In addition, Oakville Hydro will no longer be entitled to receive future information from CEA about other Canadian utilities’ benchmarking metrics and data. I believe that this would not be in the best interests of Oakville Hydro and its ratepayers.

19. It took CEA many years to build trust among its members sufficient for them to share confidential information with CEA and each other. The trust placed in the disclosing member and the CEA benchmarking process would be ruined and other utilities would be extremely reluctant to provide data to any future benchmarking program if the data provided could be subject to disclosure.

20. Moreover, I believe that such disclosure, whether on a confidential or public basis, would have a chilling effect on industry participation in benchmarking analysis that is integral to measuring performance and yielding efficiencies that ultimately benefit consumers of electricity. In addition, I believe that disclosure of the CEA Property will cause irreparable commercial harm to CEA. Utilities will be much less likely to participate in CEA studies if the confidential outputs are subject to regulatory disclosure. Without the participation of a broad range of

utilities, the analytical work that CEA undertakes becomes less valuable to users. This will result in diminished revenues for CEA over time and the materials that CEA offers for sale will no longer be commercially viable. Thus, compelled disclosure would put CEA's entire benchmarking program at risk.

21. I do not believe that such a result would be in the best interests of CEA, its members, or the electricity industry as a whole.

SWORN before me at the City of
Toronto, in the Province of Ontario
on March 21, 2014.



A Commissioner for taking affidavits

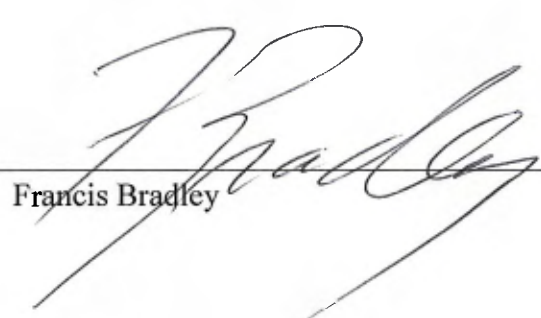

Francis Bradley

Exhibit "A"

Terms of Reference for CEA's Service Continuity Committee

This is Exhibit "A" referred to in the affidavit of Francis Bradley sworn before me this 21st day of March, 2014

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A Commissioner for taking affidavits

2.0 REVIEW OF EPSRA'S SERVICE CONTINUITY REPORTING SYSTEM

2.1 Service Continuity Committee & Terms of Reference

Terms of Reference

revised April, 2010

- **Objectives**

- To add value to SCC members by providing a forum for Distribution System personnel to identify, develop and monitor the relevancy of key performance indicators and actively seek ones that provide a perspective on the continuity of electric supply to the customer.
- To facilitate development of inter-utility networking for Distribution System reliability
- To maintain, update and provide guidance on common definitions and terms used in service continuity performance measurement consistent with Canadian and international utility practices
- Provide guidance with respect to maintaining data integrity
- Reporting to CEA's Consultative Committee on Outage Statistics (CCOS) and supporting its overall mandate of providing its members with relevant comparative reliability information together with a network of contacts to enhance performance
- Coordinate with other CEA groups such as the Distribution Council.

- **Membership**

- Open to all CEA Corporate Utility member companies participating in the program,
- Open to all utilities (non-CEA members) (charged at a different rate than CEA members),
- Members should be drawn from knowledgeable, experienced managers and/or senior professional staff of participating utilities
- Included in program membership fee
- Participation of non-SCC members on various Task Groups will be at the discretion of the SCC and CEA.

- **Term of Office**

- Chair & Vice-Chair: one-two years, to be rotated among the member utilities (as proposed at April 2010 workshop)
- SCC Chair will also be co-opted as a member of the CCOS Committee and participate as required.
- Past Chair: provides guidance and expertise to the committee

- **Meetings/Workshops**

- Frequency/Location: To be determined by the Committee.
- Annual Spring Workshop
- Hold SCC meeting in conjunction with the Annual Spring Workshop. In addition, hold meetings via monthly conference calls (excluding July and December).
- Anyone may attend Workshop from paid up membership. Guideline limit of 2 individuals per company at the discretion of CEA. Host utility provided with additional attendees on a space availability basis.

- **Funding/Administrative Support**

- CEA's role is that of administrator collecting funding and coordinating the Committee operations, including the administration of the database, the preparation and circulation of the reports, and the management and distribution of surveys and survey results.

- **Confidentiality**

- No Member of the Service Continuity Committee or CEA staff will distribute another utility's data or information of a confidential nature outside the committee without written permission from that utility.
- All data and information collected by the Members of the Service Continuity Committee deemed confidential will not be distributed to non-members or third party organizations. Titles and abstracts of presentations are considered confidential and may not be used for the promotion of the Committee without the permission of the author and/or the committee.
- Summaries of data may be used showing industry trends provided they do not in any way identify other Member utilities. If other Member utilities can be identified, written permission is required from the Member utilities in the summary of data.
- Data may be used for confidential internal studies by Member utilities.

Exhibit "B"

CEA Data Collection and Sharing Policy

This is Exhibit "B" referred to in the affidavit of Francis Bradley sworn before me this 21st day of March, 2014

A handwritten signature in blue ink, appearing to read "M. M. Alister", is written over a horizontal line.

A Commissioner for taking affidavits



CEA Data Collection and Sharing Policy

Terms of Data Usage and Code of Conduct

The term “programs” includes the following CEA programs: Occupational Health and Safety (OHS), Analytics, and Sustainable Electricity (SE). This policy is binding on the Canadian Electricity Association (CEA) and members upon signature.

These programs distinguish themselves as primary and powerful tools for all CEA members who strive for continuous improvement:

- through the tracking of key performance indicators (KPIs) and subsequently acting on those KPIs;
- by presenting best practices in key process areas;
- by presenting lessons learned opportunities;
- through networking channels;
- through objective evaluation of quality, as well as accurate and relevant data;
- through proactively searching for change and innovation, and applicable business breakthroughs.

Adhering to the CEA Data Collection and Sharing Policy will contribute to efficient, effective and ethical handling of data in all program efforts. The following sections will help to:

- guide performance benchmarking efforts;
- protect its members from harm;
- ensure that the Benchmarking Data in a Regulatory Setting (BDRS) policies are communicated and adhered to.



Legality

- 1.1 If there is any potential question on the legality of an activity, consult with your corporate counsel.
- 1.2 Avoid discussion or actions that could lead to or imply an interest in restraint of trade, market and /or customer allocation schemes, price fixing, dealing arrangements, bid rigging, or bribery. Don't discuss costs with competitors if costs are an element of pricing.
 - 1.2.1 Ensure that the Canadian Electricity Association's Competition Law Compliance Policy is followed and adhered to. A copy is available upon request from CEA.
- 1.3 Refrain from the acquisition of trade secrets from another by any means that could be interpreted as improper, including the breach or inducement of a breach of any duty to maintain secrecy. Do not disclose or use any trade secret that may have been obtained through improper means or that was disclosed by another in violation of duty to maintain its secrecy or limit its use.
- 1.4 Do not, as a consultant or client, extend benchmarking study findings to another company without first ensuring that the data is appropriately blinded and anonymous so that the participants' identities are protected.

2.0 Confidentiality

- 2.1 All data whether orally or in a visual or written (including graphic, photographic, electronic or any other) form, of a proprietary, business, technical or know-how nature, and which may or may not be expressly identified by CEA members as confidential will be treated as confidential information for the CEA members involved. Information will not be communicated outside the participating organizations without prior written consent of the participant who shared the information, which consent may be withheld at the discretion of the participant CEA member.
- 2.2 CEA members will protect confidential information with the same standard of care that the member would use to protect the member's own confidential information of similar nature and importance and, in any event, with at least a reasonable standard of care.
- 2.3 A company's participation in a study is confidential and shall not be communicated externally without prior written permission, unless the produced report already identifies them as participants.
- 2.4 Information which is identified as "confidential information" or being proprietary in written communication sent by any participant shall fall under the same terms of data usage as identified throughout this document.



2.5 Confidential information does not include information that

2.5.1 is required to be disclosed by law or a regulatory agency having jurisdiction, provided, however, that the CEA member will, to the extent that it is not legally prohibited from so doing, give the CEA member who provided the information prompt written notice of any such required disclosure.

2.5.2 is considered public knowledge and not considered proprietary information. Information published to participant websites, Environment Canada, Statistics Canada or other public bodies are considered public knowledge. However, specific confidential information will not become public information merely because it is embraced by general information in the public domain. Any individual parts of confidential information that becomes part of the public domain shall not compromise the confidentiality of any remaining part of confidential information that has not been so disclosed.

2.6 All data gathering programs shall follow the BDRS policies as an over arching guide to ensure secure and efficient use of the data for benchmarking purposes (see Appendix "A").

2.7 CEA members will promptly notify the CEA member who provided the confidential information in writing if any information comes to its attention which may indicate there was or is likely to be a loss of confidentiality of any of the confidential information. The particular CEA member will use reasonable efforts to retrieve the lost or wrongfully disclosed confidential information and to prevent further unauthorized disclosure or loss.

3.0 Data Usage and Data Presentation

3.1 Use of information obtained through CEA programs for purposes stated to the participants remains as defined by the program.

3.2 The use of communication of a benchmarking partner's name with the data obtained or practices observed requires the prior permission of that partner.

3.3 Contact lists or other contact information provided by CEA in any form may not be used for purposes other than benchmarking and networking.

3.4 Prepare data in an aggregate form so that no one member is portrayed in a negative light.

3.5 Gathered confidential data shall not be provided to regulators by the CEA Analytics, Sustainable Electricity or Occupational Health and Safety programs.

3.6 Data that is prepared for public domain reports shall always be distributed in an aggregate form.

3.7 Aggregate reports shall be prepared both electronically and in print format.



3.8 Lessons learned and best practice presentations are used for performance improvement initiatives within a participant's own organization.

4.0 Preparation

- 4.1 Demonstrate commitment to the efficiency and effectiveness of the program by being prepared prior to making an initial participant contact.
- 4.2 Make the most of your benchmarking partner's time by being fully prepared for each exchange.
- 4.3 Help participating program members prepare for workshops by enabling the construction of an agenda prior to meetings and other events.

5.0 Contact

- 5.1 Respect the corporate culture of partner companies, and work within mutually agreed upon procedures.
- 5.2 Use participant contacts designated by the partner company.
- 5.3 Obtain mutual agreement with the designated participant contact on any hand-off of communication or responsibility to other parties.
- 5.4 Participating members agree to work with other members in their respective groups and agree to be contacted by other such participants.
- 5.5 Obtain an individual's permission before providing his or her name in response to a contact outside the participating groups.
- 5.6 Avoid communicating a contact's name in an open forum without the contact's prior permission.

6.0 Exchange of Information

- 6.1 Programs will be able to provide to its participants the same level of information that CEA requested from them.
- 6.2 Information will be accurate and complete, and adhere to data quality standards and governance established by individual programs.
- 6.3 Information will be delivered in a timely manner as outlined by the stated programs.
- 6.4 Communication will occur early in all relationships to clarify expectations, avoid misunderstanding, establish understanding of data sharing and establish mutual interest in the programs.

7.0 Participating Members

- 7.1 Members agree not to disclose confidential information and data of other members.
- 7.2 Members shall only present their own indicators in a public forum, while comparing it to a national aggregate, or masked/anonymous data.
- 7.3 Any and all information obtained from another program participant should be treated as internal, privileged communications.
- 7.4 Participating members are entitled to request changes and improvements within the data collection and reporting tools, provided the proposed changes remain within a fiscally responsible framework.



- 7.4.1 CEA shall manage such changes or improvements as appropriate.
- 7.5 Participants agree to participate in CEA sponsored surveys and research and/or participant initiated surveys, with the understanding that all results shall be aggregated and individual results shall remain confidential.
- 7.6 Participants agree to participate to the best of their ability in conference calls, meetings and workshops to enhance the benefits of the programs.
- 7.7 Participating members shall abide by the terms of this contract in following the code of conduct and the terms of data usage.



The undersigned agree to follow the CEA Data Collection and Sharing Policy.

Signatures

Participating Member _____

Name of Company Officer _____

Signature _____

Date (dd/mm/yy) _____

CEA Program Director _____

Signature _____

Date (dd/mm/yy) _____

Exhibit "C"

CEA Policies for Benchmarking Data in Regulatory Settings

This is Exhibit "C" referred to in the affidavit of Francis Bradley sworn before me this 21st day of March, 2014

A handwritten signature in blue ink, appearing to read "M. M. Alister".

A Commissioner for taking affidavits

Canadian Electricity Association
Policies
Benchmarking Data in Regulatory Settings (BD/RS)

As Approved by the CEA Board of Directors

Policy 1

Appropriate benchmarking performance information (which is accurate, verifiable, and verified and includes the proper consideration, caveats, standardized interpretations and collection methodologies) will be developed by CEA for use in Regulatory settings. Participating CEA members commit to work towards providing data that meets these criteria, on a yearly basis, that will be used in the development of an agreed-to set of indices.

Policy 2

CEA members do not support a peer-to-peer approach when assessing a company’s performance and especially to establish pass/fail criteria for breach and consequence, due to the complexity of identifying true “peers”. This complexity is due to differences between companies’ geography, climate, customer mix, growth rate, system age, resource mix, degree of interconnection, impact of significant events, and a range of other factors.

Policy 3

As a result of the complexity of “peer” benchmarking, trending the performance of an individual utility over time should be used as opposed to peer-to-peer benchmarking

Policy 4

CEA and its members will work cooperatively with regulatory authorities to ensure that indicators used in regulatory settings are accurate, verifiable and verified, and are meaningful. Through CEA’s Councils, and in cooperation with members of CAMPUT, appropriate benchmarking indicators for assessing individual company performance over time will be developed.

Policy 5

CEA members will meet or exceed standards of data quality, integrity and consistency of reporting for these indicators

Policy 6

Improved productivity and performance result in significant benefits to companies, shareholders and customers. CEA therefore will continue to promote the use of benchmarking to identify best practices for performance improvement.

Policy 7

Only composite benchmarks deemed appropriate for regulatory environments, will be produced. Participants are cautioned that publication of metrics not identified as appropriate for regulatory environments in composite or other form in a regulatory forum or elsewhere may result in blocking further participation by that member or the termination of further CEA benchmarking on that metric.

Policy 8

CEA will subject all proposed new or modified indices to an agreed review process by the appropriate Council to ensure that the qualifying criteria are met.

Prepared by: Francis Bradley, bradley@canelect.ca, 450.472.5552