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BY EMAIL AND RESS

April 2, 2014
Our File: EB20130159

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0159 – Oakville Hydro – CEA Benchmarking Report

We are counsel to the School Energy Coalition ("SEC"). SEC is writing to inform the Board that it is amending the relief sought in its motion. SEC no longer seeks an order requiring disclosure of the benchmarking survey and material prepared by the Canadian Electricity Association ("CEA") in which Oakville Hydro was a participant. Insofar as SEC's motion relates to the CEA survey and material, SEC withdraws that aspect of it. SEC still seeks disclosure of the second, currently unidentified benchmarking study/survey in which Oakville Hydro participated in.

SEC was only provided with, for the very first time, any details about the content or scope of the CEA benchmarking survey very recently. The CEA agreed to confirm those details to the Board in a letter, which was filed earlier today.

Considering the scope of the survey and the specifics of the Oakville application, and seeking to come to a workable solution to this matter, SEC has determined that it does not require disclosure of the CEA document. While the survey subject matter appears to be relevant to the Oakville proceeding, it does not appear to be material, and does not speak to the issues SEC was pursuing when it asked the original interrogatory.

SEC therefore withdraws its request for disclosure of this survey report, without prejudice to its ability to bring a similar request for the same survey, for example in a different proceeding where it has a more material impact on the issues in dispute. SEC maintains that as general principle information such as this should be produced upon request by parties in a Board proceeding, and that the CEA's positions as set out in its written submissions are without merit.

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As SEC has stated before, it is very concerned that increasingly regulated utilities are entering into confidentiality agreements with third-parties that prohibit disclosure of benchmarking studies and other important information. This issue may have been resolved earlier in this proceeding if Oakville Hydro had provided some details about the scope of the survey as originally requested in interrogatory 2.1-SEC-3. In fact, it was not until the CEA had written to the Board seeking intervention status that SEC was aware that one of the studies it sought in its motion had been conducted by the CEA.

While SEC and the CEA were able to resolve the dispute in this proceeding, SEC expects that with the Board's increased focus on benchmarking a very similar dispute will arise sooner rather later where there will be no solution without the Board's adjudication. SEC urges the CEA to either amend its confidentiality agreements with regulated utilities to allow them to provide copies of the benchmarking studies, or to work with stakeholder groups and the regulator to find a mutually acceptable means of providing the relevant information on the public record.

Since the CEA portion of the motion has been resolved, and it was their proposed arguments which required the filing of a Notice of a Constitutional Question which led to the revised submissions timeline, SEC requests that the Board revise Procedural Order No.5 to provide a more expeditious time frame for resolving the remaining aspect of the motion. SEC submits that the grounds¹ in which Oakville has refused to provide the second survey, do not require as lengthy a period for response as was the case with the CEA material.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and Intervenor (by email)

¹ See: Email from Mary Caputi (Oakville) to Mark Rubenstein (SEC) February 27th 2014 , Appendix D to SEC's Notice of Motion