



accessible”.<sup>1</sup> “This is because “the credibility and the legitimacy of the Board and its decisions rests on the open and transparent processes the Board uses.”<sup>2</sup>

To be treated as confidential pursuant to the *Practice Direction*, “the onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.”<sup>3</sup> Further, any harms alleged by the Applicant cannot be speculative, and must outweigh the public interest in providing the documents on the public record.

This is particularly important with respect to the documents at issue. The Board has recognized the importance of benchmarking. The *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* (“RRFE”) provides that benchmarking will be an increasingly important part of rate regulation of electricity distributors.<sup>4</sup> The Approved Issues List in this proceeding, and every other cost of service proceeding for May 1, 2014 rates, includes a specific issue on the topic.<sup>5</sup> Benchmarking is an important way for the Board to determine if rates are “just and reasonable”. SEC has long been a proponent of this approach, and strongly supports the Board’s increasing emphasis in this area.

SEC submits that the Board is not just *encouraging* utilities to conduct benchmarking exercises, but making it effectively a requirement. SEC submits it would not be in the public interest for the Board to on one hand focus on benchmarking, and then on the other hand not allow the public to see the results of these surveys.

### **Benchmarking Survey**

In its Oakville Hydro’s email to SEC dated February 7, 2014 it set out the grounds on which it opposed disclosure, and if so, on the public record.<sup>6</sup> With respect to those specific grounds, SEC makes the following comments:

***Disclosure Could Prejudice Economic and Financial Interests of ██████████*** SEC submits that public disclosure will provide no significant financial loss to the ██████████. In fact, SEC would expect that an order requiring disclosure will instead send a strong message to other distributors that, through ██████████ or another entity, benchmarking is an expectation of the Board, and a good utility management practice. The more information of this sort is made public, the more utilities will be driven to excel through the expectations of their customers. Conversely, hiding the benchmarking information undermines the Board’s RRFE direction.

Further, SEC submits that none of the information is truly proprietary. ██████████ has collected information that is either publically available, or regularly disclosed in the regulatory process, and compared that information against other publicly available or regularly disclosed information.

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<sup>1</sup> *Practice Direction on Confidential Filings* at p. 2

<sup>2</sup> *Decision on Confidentiality* (EB-2013-0234), dated April 8 2014

<sup>3</sup> *Practice Direction on Confidential Filings* at p. 2

<sup>4</sup> *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, dated October 18 2012, at p.56, 59

<sup>5</sup> “Does the applicant’s performance in the areas of: (1) delivering on Board-approved plans from its most recent cost of service decision; (2) reliability performance; (3) service quality, and (4) **efficiency benchmarking**, support the application?” [emphasis added]

<sup>6</sup> Email from Mary Caputi to Mark Rubenstein, dated February 27 2014 (see Appendix D to SEC Notice of Motion)

Regardless, even if [REDACTED] would suffer some financial loss, the public interest in producing this important information, paid by ratepayers, comparing Board regulated utilities, must outweigh any potential harm.

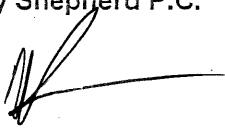
***Other utilities will no longer participate in benchmarking surveys as their participation is premised on confidentiality.*** LDCs cannot limit or exclude the Board's jurisdiction and policies by private agreement amongst themselves or with their service providers. As the Board has said in the past, utilities "must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may reasonably be required to be produced as part of the regulatory process."<sup>7</sup> This information falls squarely into that category. Further, most of the data that seems to be the input to the survey are information that is available either from the Annual Yearbook of Electricity Distributors, or if not there, would be information that would in the regular course be publicly disclosed during a cost of service rate application.

Oakville Hydro, like any other utility who participates in these surveys, should be commended for doing so, and it is indeed an appropriate activity of [REDACTED] to manage and promote these initiatives.<sup>8</sup> Collective action by the [REDACTED], to improve their outcomes through benchmarking of various facets of their operations and costs, is precisely what the Board has been promoting. SEC expects that going forward more - not less - utilities will be undertaking benchmarking studies such as the one at issue.

### Summary

SEC submits the Board should not accord confidentiality treatment to benchmarking documents at issue but should instead allow them to be open to public scrutiny. The public interest is best served by having the information in full on the public record.

Yours very truly,  
Jay Shepherd P.C.



Mark Rubenstein

cc: Applicant (by email)

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<sup>7</sup> *Procedural Order No. 4* (EB-2013-0115), dated March 19 2014 at p.4. *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14 2012, at p.3

<sup>8</sup>

[REDACTED]