



Jay Shepherd

Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

January 8, 2015
Our File No. 20140116

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2014-0116 – Toronto Hydro 2015-2019 Rates – Motions Day

We are counsel for the School Energy Coalition (“SEC”). We are writing with respect to Procedural Order No. 4, and SEC’s motion to require production of those Canadian Electricity Association (“CEA”) benchmarking studies which the Applicant Toronto Hydro Electric System Limited (“Toronto Hydro”) has in its possession and has refused to produce.

At the Technical Conference, the Applicant refused to provide even the most basic information on the CEA benchmarking studies, e.g. the dates and subject matters of those studies.¹ SEC has been diligent in trying to follow up to obtain that information, but Toronto Hydro has refused to provide it on the basis of lack of consent from the CEA.²

SEC believes that it is prejudiced in its ability to make submissions at the hearing on January 19th. While it appears self-evident that benchmarking studies in which Toronto Hydro is a participant are relevant, there is a lot of difference in level of relevance, and materiality for example between a “service continuity” (i.e. reliability) benchmarking study in which we know Toronto Hydro was a participant³, and a benchmarking study of information technology (“IT”)

¹ Technical Conference Transcript, dated November 18th 2014 at p.158-160. See Appendix B to the Notice of Motion of the School Energy Coalition, dated December 19th 2014.

² Emails between Mr. Rubenstein (SEC Counsel) and Mr. Smith (Toronto Hydro Counsel). See Appendix C to the Notice of Motion of the School Energy Coalition, dated December 19th 2014.

³ Letter from the CEA to the Board (EB-2013-0159), dated April 2nd 2014. See Appendix to this letter.



costs. A reliability benchmarking study would be potentially of greater importance, and useful to determining the issues to be decided in in this proceeding. Depending on the scope of an IT study, it may be of less importance. Similarly, a hypothetical benchmarking study of 2010 call-centre response times, while relevant, is not in the same category as a 2013 benchmarking study of the relationship between capital spending by category and reliability metrics.

There can be no reasonable argument that the general subject matters or dates of CEA studies are proprietary in nature, but it is undoubtedly true that lack of that information prejudices SEC in preparing for the hearing of our motion.

This letter therefore asks that the Board order Toronto Hydro to prepare a list of the studies that are described in the SEC motion, and for each provide the subject of the study, the date, and the study period, and to file that list on or before January 13, 2015, the date for filing further materials on the motions.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (email)
Jay Shepherd, JSPC (email)
Interested Parties (email)

Appendix

April 2, 2014

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

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Board File EB-2013-0159

We act as counsel for the Canadian Electricity Association (“CEA”) with respect to a motion (the “SEC 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 and entitled “2012 Annual Service Continuity Report on Distribution System Performance in Electrical Utilities” (the “CEA Report”).

We are pleased to advise that the SEC has agreed to withdraw the SEC Motion. SEC’s agreement to withdraw its motion is subject to the following two conditions: (i) that CEA confirms to the Board and SEC that the CEA Report deals with service continuity benchmarking using data provided by individual utilities and presented on an aggregate basis; and (ii) that CEA disclose to the Board and SEC the names of each of the individual Ontario utilities that participated in the CEA Report. Both of these conditions are acceptable to CEA.

With respect to the first condition, we confirm on behalf of CEA that the subject matter of the CEA Report relates exclusively to measuring utilities’ service continuity performance based on various analytical metrics using data contributed by individual utilities and presented on an aggregated basis.

With respect to the second condition, on behalf of CEA, we can advise that the following Ontario utilities participated in the CEA Report: Enersource Hydro Mississauga, Horizon Utilities, Hydro One, Hydro Ottawa, Newmarket-Tay Power Distribution Ltd., Oakville Hydro, Oshawa PUC Networks, Power Stream Inc., St. Thomas Energy, Toronto Hydro, Veridian Connections, and Waterloo North Hydro.

Please be advised that by separate correspondence we are advising the Attorneys General of Canada and Ontario that the Notice of a Constitutional Question, which was served on March 24, 2014 is being withdrawn.

Please address any further correspondence on this matter to the attention of the undersigned.

Yours very truly,

Goodmans LLP



Robert Malcolmson
RZM/pg

Copy: Maureen Helt, Legal Counsel, OEB
Harold Thiessen, Case Manager, OEB
Giovanna Dragic, OEB Staff

TO:

APPLICANT

**Oakville Hydro Electricity
Distribution Inc.**

Rep. and Address for Service

Mary Caputi
Manager
Oakville Hydro Electricity Distribution Inc.
861 Redwood Square
Oakville, ON L6J 5E3
Tel: 905-825-6373
Fax: Not Provided
Email: mcaputi@oakvillehydro.com

Applicant Counsel

James Sidlofsky

Partner
Borden Ladner Gervais LLP
40 King Street West
Suite 4100, Scotia Plaza
Toronto ON M5H 3Y4
Tel: 416-367-6277
Fax: 416-361-2751
Email: jsidlofsky@blg.com

Bruce Bacon

Consultant
Borden Ladner Gervais LLP
40 King Street West
Suite 4100, Scotia Plaza
Toronto ON M5H 3Y4
Tel: 416-367-6087
Fax: 416-3617366
Email: bbacon@blgcanada.com

INTERVENORS

**Association of Major Power
Consumers in Ontario
(AMPCO)**

Shelley Grice

Econalysis Consulting Services
34 King Street East Suite 630
Toronto ON M5C 2X8
Tel: 416-348-0193
Fax: 416-348-0641
Email: shelley.grice@rogers.com

**Energy Probe Research
Foundation**

Randy Aiken

Aiken & Associates
578 McNaughton Ave. W.
Chatham ON N7L 4J6
Tel: 519-351-8624
Fax: 519-351-4331
Email: randy.aiken@sympatico.ca

David MacIntosh

Case Manager
Energy Probe Research Foundation
225 Brunswick Avenue
Toronto ON M5S 2M6
Tel: 416-964-9223 Ext: 235
Fax: 416-964-8239
Email: DavidMacIntosh@nextcity.com

HVAC Coalition

Martin Luymes

Co-ordinator
HVAC Coalition
2800 Skymark Avenue
Building 1, Suite 201
Mississauga ON L4W 5A6
Tel: 905-602-4700 Ext: 235
Fax: 905-602-1197
Email: mluymes@hrai.ca

Jay Shepherd

Jay Shepherd Professional Corporation
2300 Yonge St. Suite 806
P.O. Box 2305
Toronto ON M4P 1E4
Tel: 416-483-3300
Fax: 416-483-3305
Email: jay.shepherd@canadianenergylawyers.com

School Energy Coalition

Wayne McNally

SEC Coordinator
Ontario Public School Boards' Association
439 University Avenue
18th Floor
Toronto ON M5G 1Y8
Tel: 416-340-2540
Fax: 416-340-7571
Email: wmcnally@opsba.org

Mark Rubenstein

Jay Shepherd Professional Corporation
2300 Yonge St. Suite 806
P.O. Box 2305
Toronto ON M4P 1E4
Tel: 416-483-3300
Fax: 416-483-3305
Email: mark.rubenstein@canadianenergylawyers.com

Jay Shepherd

Jay Shepherd Professional Corporation
2300 Yonge St. Suite 806
P.O. Box 2305
Toronto ON M4P 1E4
Tel: 416-483-3300
Fax: 416-483-3305
Email: jay.shepherd@canadianenergylawyers.com

**Vulnerable Energy
Consumers Coalition**

Michael Janigan

Special Counsel
Public Interest Advocacy Centre
ONE Nicholas Street
Suite 1204
Ottawa ON K1N 7B7
Tel: 613-562-4002 Ext: 26
Fax: 613-562-0007
Email: mjanigan@piac.ca

Mark Garner

Project Manager
Econalysis Consulting Services
34 King Street East
Suite 630
Toronto ON M5C 2X8
Tel: 647-408-4501
Fax: 416-348-0641
Email: mgarner@econalysis.ca

Bill Harper

Econalysis Consulting Services

34 King Street East

Suite 630

Toronto ON M5C 2X8

Tel: 416-348 0193

Fax: Not Provided

Email: bharper@econalysis.ca