

January 10, 2015

Via Email and Electronic Filing

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

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Intervention with respect to Board File EB-2014-0116

We are counsel to the Canadian Electricity Association (“CEA”) in the above-noted proceeding with respect to a motion brought by the School Energy Coalition (“SEC”) on December 19, 2014 in the above noted proceeding. The SEC motion seeks to compel the disclosure and reproduction by Toronto Hydro, effectively, of confidential benchmarking data and reports and data models owned by the CEA.¹ Clearly the CEA has an interest in this motion and since it was served with the SEC’s motion materials, the CEA’s interest in the matter appears to be accepted by the SEC.

The CEA 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.

Our client requests leave to intervene in the above-noted proceeding for the sole purpose of responding to the December 19, 2014 motion of the SEC.

If granted leave to intervene, our client intends to deliver a Notice of Constitutional Question pursuant to the Board’s *Rules of Practice and Procedure* and section 109 of the *Courts of Justice Act*, a draft copy of which is enclosed.

In addition to seeking leave to intervene and in light of the rapidly approaching deadline for the delivery of materials with respect the SEC motion, our client requests that Procedural Order No. 4, which deals in part 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 particular, because the motion was served on the CEA the day

¹ Toronto Hydro-System Electric Limited (“Toronto Hydro”) advises the CEA that if it answered Interrogatory 1B-SEC-8, as currently drafted, its answer would include these CEA materials.

the holiday period started and a procedural order issued only this week, the CEA has not yet had a reasonable opportunity to obtain from its members fulsome evidence of the potential effect of the Board ruling in favour of the SEC motion. In “Decision and Order on Confidentiality” dated May 29 2014 in Board file EB-2013-0159 (to which the CEA was not a party), the Board’s ruling turned in part on the third party in that case not having substantiated its statements about economic financial or loss and the effect of disclosure on its benchmarking activities. The CEA, a national organization, intends to provide evidence in this regard, but doing so is not something that can be done within a few weeks. The CEA has many members interested in this proceeding, and the very serious issues it involves, and we are concerned that it will take some time to collect the evidence it would be fair to put before the Board. On all other aspects of the SEC motion the CEA has made substantial progress preparing its materials in an attempt to assist the Board as quickly as possible. We request that the Board schedule a hearing of the SEC’s motion in April 2015, with the CEA’s motion materials due by March 16, 2015.²

In summary, the CEA intends to make three submissions if granted intervener status. First, the CEA is the owner of copyright in both its reports and data models. The SEC, Toronto 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 the provincial Crown and is paramount to any Order of the Board in conflict with this federal statute.

Second, the confidential data sought by the SEC relates to many CEA utility members, most located outside Ontario. The Board has no jurisdiction over these utilities and their data is not relevant to the present proceeding and should not be publicly disclosed.

Third, it is contrary to the public interest to effectively preclude national benchmarking exercises by compelling disclosure to the public or interveners. 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.

In this proceeding, as related to these three submissions, the CEA’s proposed intervention primarily represents an interest or policy perspective relevant to the Board’s mandate and to the proceeding for which cost award eligibility is sought. Therefore, the CEA requests that the Board determine that the CEA is eligible for an award of costs under s. 3.03 of the *Practice Direction on Costs Awards*.

This is a matter of importance to CEA. If the Board orders the CEA’s materials disclosed, publicly or on a confidential basis, 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.

² We note that there must be 15 days between the date when CEA files its Notice of Constitutional Question and the hearing, but submit that more time than that is required for a fair hearing of the issues.

Finally, the CEA reiterates to the Board its offer, made last year, to work with the Board outside the context of a specific rate proceeding on providing benchmarking data that is useful to the Board and acceptable to the CEA and its members. In the CEA's view, a public policy discussion about properly obtaining benchmarking data is vastly preferable to the adversarial approach forced on the CEA by the SEC.

Yours truly,

Goodmans LLP

A handwritten signature in black ink, appearing to read 'Peter Ruby', with a stylized, looping flourish at the end.

Peter Ruby

Encl.

Copy: Michel Shneer
Maureen Helt, Senior Legal Counsel, OEB
Mark Rubenstein, counsel to the SEC
Crawford Smith, counsel to Toronto Hydro

6409933